62D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 1152

REPORT

(To accompany H. Res. 576)

IN THE MATTER
OF THE

IMPEACHMENT OF

CORNELIUS H. HANFORD

UNITED STATES CIRCUIT JUDGE FOR THE WESTERN DISTRICT
OF THE STATE OF WASHINGTON

WITH TRANSCRIPT OF TESTIMONY TAKEN AND EXHIBITS
OFFERED IN THE CITY OF SEATTLE, WASH.,
FROM JUNE 27 TO JULY 22, 1912

AUGUST 6, 1912.—Referred to the House Calendar and ordered
to be printed, with illustrations

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LIST OF WITNESSES.

FIFTEENTH DAY'S PROCEEDINGS.

SIXTEENTH DAY'S PROCEEDINGS.

SEVENTEENTH DAY'S PROCEEDINGS.

EIGHTEENTH DAY'S PROCEEDINGS.

EXHIBITS.

EXHIBITS—Continued.

No.	Page of record.	Description.
25	274	Newspaper clipping offered by Olsson.
26	Omitted.	
27	507	Affidavit of John H. Perry.
28	1095	Summary of certificates of various clerks for last 20 years showing dates in each year on which Judge Hanford held court.
29	1097	Statement showing work of Judge Hanford outside of district court during last two years, giving title of cases, etc.
30	1226	Citations in re Sullivan case.
31	1262	Opinion of Judge Hanford in matter of petition of H. C. Littooy for writ of habeas corpus.
32	1352	Amended petition to reopen estate of Heckman & Hanson.
33	1352	Petition in re Ballinger et al.
34	1409	Order of sale in case of Heckman & Hanson, filed Dec. 3, 1901.
35	1410	Report of receiver with respect to sale of assets of Heckman & Hanson.
36	1413	Order approving fourth report and directing receiver.
37	1415	Order directing final distribution signed by Judge Griffin.
38	1417	Petition for discharge of bankrupt in case of Heckman & Hanson.
39	1418	Order of discharge of bankrupt in case of Heckman & Hanson.
40	1433	Power of attorney given R. A. Ballinger by Andrew Heckman.
41	1435	Original petition to reopen proceedings before Judge Hanford in re Heckman & Hanson.
42	1433	Master's report in re Heckman & Hanson.
43	1445	Judge Hanford's opinion in re Heckman & Hanson.
44	1521	Argument of Gerold Finch before Judge Hanford in re Heckman & Hanson.
44½	1521	Supplemental argument in same matter.
45	1471	Original resolutions adopted at the meeting first called by Judge Hanford.
46	1467	Supplemental report of the committee of the bar association in re Gerold Finch.
47	1474	Final report of the Seattle Bar Association in re Gerold Finch.
48	1505	Photo of check signed by M. F. Mayhew for $150.
49	1510	Certificate of deposit of Scandinavian-American Bank dated Apr. 17. 1902, $150.
50	1511	Photographic copy of cover of bank book of Peter L. Larson in the Scandinavian-American Bank.
51	1512	Photographic copy of one of sheets of book of which No. 50 is photo of cover.
52	1516	Photographic copy of check book showing blank checks and stubs.
53	.....	Note and collection teller's cash book, Scandinavian-American Bank.
54	.....	Copy of certificate of deposit register, Scandinavian-American Bank.
55	.....	Copy of bills receivable register, Scandinavian-American Bank.
56	1523	Complaint in case of Heckman & Hanson in which receiver was appointed.
57	1556	Copy of note of Heckman & Hanson payable to Scandinavian-American Bank, dated Oct. 31, 1900.
58	1556	Note of Heckman & Hanson payable to Scandinavian-American Bank, dated Nov. 22, 1900.
59	1557	Note of Heckman & Hanson payable to Scandinavian-American Bank, dated Oct. 18, 1900.
60	1686	Newspaper clipping of advertisement of the real Dr. Brown.
61	1801	Newspaper clipping of article in Seattle Times by W. A. Simmonds.
62	1927	Stipulation in re Schooner Alice.
63	2002	Copy of letter written by Judge Hanford dated Seattle, Wash., Oct. 20, 1896.
64	2040	Abstract of matters in regard to Pacific Packing & Navigation Co.
65	2040	Abstract of matters in regard to American Fisheries Co.
66	2247	Assignment of claims of Heckman & Hanson against Schooner Alice to Scandinavian-American Bank.

EXHIBITS—Continued.

No.	Page of record.	Description.
67	2247	Letter from Scandinavian-American Bank, dated June 13, 1901, demanding settlement of account.
68	2254	Abstract of title to Schooner Alice.
69	2284	Transcript of record of revision in circuit court of appeals in the Knosher case.
70	2287	Opinion of circuit court of appeals on appeal from decision of Judge Hanford in regard to allowances to receivers in Knosher case.
71	2327	Petition for modification of opinion in case of Western Drygoods Co. *v.* Sutcliff Baxter et al.
72	2333	Brief of petitioners on petition for review in re Western Drygoods Co. *v.* Sutcliff Vaxter et al.
73	.....	Briefs in the matter of Charles Knosher & Co., No. 4541.
74	.....	Certificate made in compliance with subpœna in the matter of Charles Knosher & Co., No. 4541.
75	Omitted.	
76	2486	Certificate of John P. Hoyt as referee in Knosher bankruptcy case.
77	2486	Brief of the receiver and trustee in Knosher & Co. case, United States Circuit Court of Appeals.
78	2565	Bond subscription in Hanford Irrigation & Power Co.
78½	2634	Ruling of J. Hanford in granting nonsuit in Greenwood case.
79	2642	Petition for the appointment of guardian in the Greenwood case.
80	2645	Statement of the administration of Sutcliff Baxter, receiver, in the matter of the Seattle Paint & Varnish Co.
81	Omitted.	
82	2766	Statement of receipts and disbursements of the receivers and trustees in case of Western Steel Corporation.
83	2885	Copy of letter received by Burpee from Kerr & McCord.
84	2767	Review of files in case of Western Steel Corporation.
85	3020	Address of Judge Hanford on subject of conservation.
86	3023	Speech on adoption of certain resolutions, etc.
87	3050	Summary of record in re Scoby *v.* Bothwell.
88	3077	Summary of record in case of Augustus S. Peabody *v.* City of Seattle, et al.
89	Omitted.	
90	3117	Copy of remarks of the court in case of Peabody *v.* City, dated Aug. 31, 1911.
91	3117	Remarks in case of Peabody *v.* City of Seattle et al., on dissolving imjunction.
92	3117	Ruling of Judge Hanford in Peabody case.
93	3140	Comparative statements showing relative rank of judges remaining on bench, etc.
94	3141	Abstract of Judge Hanford's published decisions.
95	3203	Opinion of the United States Circuit Court of Appeals for the Ninth District in re King County et al., appellants, *v.* Northern Pacific Ry. Co., a corporation.

IN THE MATTER OF THE IMPEACHMENT OF CORNELIUS H. HANFORD, UNITED STATES CIRCUIT JUDGE FOR THE WESTERN DISTRICT OF THE STATE OF WASHINGTON.

AUGUST 6, 1912.—Referred to the House Calendar and ordered to be printed.

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

REPORT.

[To accompany H. Res. 576.]

The Committee on the Judiciary having had under consideration House resolution 576 report the same back to the House with the recommendation that the resolution proposed by this committee which accompanies this report be agreed to.

The resolution (H. Res. 576) was carefully considered by the committee, and under the authority conferred by this resolution James M. Graham, Walter I. McCoy, and Edwin W. Higgins were appointed the subcommittee of the Committee on the Judiciary, and were directed as such subcommittee to inquire into the alleged misconduct of Cornelius H. Hanford, United States judge for the western district of the State of Washington, and to report the result of their investigation to the Committee on the Judiciary.

The report of the subcommittee giving account of the acts and doings of the same is hereto attached and made a part of this report.

The committee after having carefully considered the report of the subcommittee agreed to the recommendations reached by the subcommittee, and adopted the same as the conclusions of the Committee on the Judiciary.

Impeachment is designed to remove unworthy persons from office. The officer convicted in an impeachment proceeding is nevertheless subject to indictment, trial, and punishment in the proper court, for any crime he may have committed. Impeachment is the method adopted for the removal from and disqualification to hold office. The Constitution provides that, "the party convicted" (in an impeachment case) "shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law" for his crimes. It was said by Mr. Bayard in the trial of Blount that—

> Impeachment is a proceeding purely of a political nature. It is not so much deisgned to punish the offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity. (Wharton's State Trials, 263.)

If this judge has been guilty of any crime the courts which administer the criminal law are the proper tribunals to try and to punish him.

The committee recommend that the testimony taken by the subcommittee in this case be printed and transmitted to the Attorney General of the United States for his consideration and use to the end that if any crimes have been committed against the laws of the United States the Department of Justice may take cognizance of the same and see that the guilty parties are tried and punished in the appropriate tribunal.

The committee has considered the following letter:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., July 23, 1912.

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

DEAR JUDGE CLAYTON: The President has received a telegram from Judge Hanford, United States district judge, Western District of Washington, tendering his resignation as United States judge and stating that a letter follows. Before acting upon this resignation the President asks me to inquire of you whether the acceptance of the resignation would in any way interfere with the plans of the committee engaged in the investigation of the charges against Judge Hanford. I shall be very glad to have a statement of the attitude of your committee and of your own recommendations in the premises.

Very truly, yours,

[SEAL.] GEO. W. WICKERSHAM,
Attorney General.

To this letter, in accordance with the direction of the committee, the chairman made the following reply:

AUGUST 3, 1912.

The ATTORNEY GENERAL,
Department of Justice, Washington, D. C.

DEAR SIR: Your letter of July 23 came duly to hand. Reply thereto has been delayed for the purpose of having the subcommittee, composed of Messrs. Graham, McCoy, and Higgins, to return from Seattle, Wash., to Washington, D. C., and report to the Committee on the Judiciary the result of their investigation of the charges against Judge Hanford. The Committee on the Judiciary gave consideration to this matter and has directed me to say that the acceptance of the resignation of Judge Hanford would not in any way interfere with the plans of the committee which has heretofore been engaged in the investigation of the charges against Judge Hanford. There appears to be no good reason why the resignation of Judge Hanford should not be accepted. The committee will submit to the House of Representatives the recommendation that the testimony taken in the investigation of the alleged misconduct of Judge Hanford be forwarded to you for your consideration and use so that your department may take cognizance of any infractions of the criminal laws of the United States which said testimony may disclose or tend to disclose.

Yours, very truly,

HENRY D. CLAYTON, *Chairman.*

It appeared to the committee that there was no good reason why the resignation of the judge should not be accepted. And it appears to the committee that the further prosecution of the impeachment proceedings is inadvisable. Among the reasons for this conclusion may be stated in substance the reasons assigned by the subcommittee:

(1) The chief good which successful impeachment proceedings could effect would be the removal of Judge Hanford from the bench. That good his resignation accomplished.

(2) The record of the evidence shows that he is 64 years old his next birthday, and hence not entitled to retire on pay. Therefore

his resignation brings him no emolument or reward and involves no expenditure of public money.

(3) The committee do not think it necessary or advisable to pursue the impeachment further merely for the purpose of making him ineligible to hold office in the future, as his age and the circumstances disclosed by the testimony render such a contingency highly improbable.

(4) Bringing the witnesses from Seattle and vicinity to Washington, a distance of over 3,000 miles, to prosecute an impeachment proceeding before the Senate would involve an expenditure approximating $70,000. This expenditure of public money could not be justified in this case where the judge is now out of office and doubtless will never again be appointed to office.

The committee recommend that the following resolution be agreed to:

Resolved, That the Committee on the Judiciary be discharged from further consideration of and action under House resolution 576.

Resolved further, That the testimony taken by the subcommittee of the Committee on the Judiciary under the authority conferred by House resolution 576 be printed as a part of this report and transmitted by the Clerk of the House of Representatives to the Attorney General for his consideration and with the recommendation that the Department of Justice take cognizance thereof, and take whatever action may be deemed advisable in case said testimony discloses or tends to disclose any infractions of the laws of the United States.

REPORT TO THE COMMITTEE ON THE JUDICIARY BY THE SUBCOMMITTEE APPOINTED UNDER HOUSE RESOLUTION 576 TO TAKE THE TESTIMONY IN THE MATTER OF THE ALLEGED MISCONDUCT OF CORNELIUS H. HANFORD, UNITED STATES JUDGE FOR THE WESTERN DISTRICT OF THE STATE OF WASHINGTON.

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

On Thursday, June 13, 1912, the Committee on the Judiciary adopted the following resolution:

Resolved, That James M. Graham, Walter I. McCoy, and Edwin W. Higgins, members of this committee, be appointed the subcommittee by virtue of the authority given under House Resolution No. 576, passed by the House of Representatives on June 13, 1912, authorizing an inquiry into the alleged misconduct of Cornelius H. Hanford, United States judge for the Western District of the State of Washington, and that the said subcommittee shall have all the powers authorized by said resolution hereinbefore named.

In pursuance of said resolution, the subcommittee left Washington on June 21, 1912, and reached Seattle the evening of June 25. Wednesday, June 26, was spent in making the necessary preliminary arrangements for proceeding with the hearings, and on Thursday, the 27th, the taking of testimony was begun in a court room of the Federal Building in Seattle, and was concluded on Monday, July 22, 1912. The subcommittee sat every day between those days except Sundays and the Fourth of July, making in all 21 days of actual work, including several evening sessions. Two hundred and three witnesses were examined and 3,291 typewritten pages of testimony were taken, not including 94 exhibits which were made part of the record, and not including 138 collateral exhibits which were received tenta-

tively by the subcommittee and taken back for examination by the members of the whole committee and for such use as the committee might desire to make of them.

The subcommittee had almost, but not quite, completed the taking of testimony when, at the morning session on Monday, July 22, counsel representing Judge Hanford asked for a conference with the members of the subcommittee, and the request was granted. They then informed the subcommittee that Judge Hanford had concluded to send his resignation to the President. Thereupon the subcommittee went into executive session to consider what its course of action would be, and after careful consideration of the premises unanimously reached the conclusion not to proceed with the taking of further testimony unless directed to do so by this committee; and the chairman of the subcommittee was directed to wire Chairman Clayton for instructions. After having ascertained that Judge Hanford's resignation was, in fact, forwarded to President Taft, the chairman of the subcommittee wired to Chairman Clayton as follows:

JULY 22, 1912.

Hon. HENRY D. CLAYTON,
House of Representatives, Washington, D. C.:

Judge Hanford has just now forwarded his resignation to the President. We are not quite done taking testimony, but nearly so. The subcommittee unanimously favor discontinuing the taking of further testimony. Wire advice immediately.

And in a short time he received the following reply:

WASHINGTON, D. C., *July 22.*

Yes; I advise you to take no further testimony.

The subcommittee then reconvened in open session, and the chairman publicly announced that, owing to the resignation of Judge Hanford, the hearings would be discontinued, and the subcommittee adjourned subject to the call of the chairman.

The subcommittee was moved to recommend the discontinuance of the hearings by a number of reasons, among which might be mentioned the following:

(1) The chief good which successful impeachment proceedings could effect would be the removal of Judge Hanford from the bench. This good his resignation accomplished.

(2) The record of the evidence shows he is only 64 years old his next birthday, and hence not entitled to retire on pay. Therefore his resignation brings him no emolument or reward and involves no expenditure of public money.

(3) The subcommittee did not think it necessary or wise to pursue the matter to a final conclusion merely for the purpose of making him ineligible to hold office in the future, as his age and the circumstances disclosed by the testimony render such a contingency highly improbable.

(4) Bringing the witnesses from Seattle and vicinity to Washington, a distance of over 3,000 miles, to prosecute an impeachment proceeding before the Senate, would involve an expenditure approximating $70,000.

There were other reasons suggested and discussed, but those given above were deemed by the subcommittee sufficient to justify them in recommending the discontinuance of the hearings.

The subcommittee further reports that Judge Hanford was represented during the hearings by able and learned counsel, namely, Mr.

E. C. Hughes, Mr. Harold Preston, and Mr. C. W. Dorr, and that they were given wide latitude in the examination of all the witnesses and in the production of evidence on behalf of Judge Hanford, so that the record contains such evidence in defense as counsel desired to offer as well as the incriminating evidence, and on the whole record the subcommittee respectfully suggests that it clearly appears that Judge Hanford's usefulness as a Federal judge is over; that his personal and judicial conduct disqualify him for that position and that this committee recommend that his resignation be accepted.

The subcommittee respectfully submits herewith a complete transcript of the testimony taken and originals or true copies of all exhibits offered and admitted in evidence, and recommend that this committee have the same printed.

They also submit certain documents designated as collateral exhibits which were not made a part of the record because they were not considered relevant, but which were taken along by the subcommittee for such further use as this committee might think fit to make of them But the subcommittee does not recommend that they be printed.

All of which is respectfully submitted.

JAMES M. GRAHAM,
Chairman.

WALTER I. McCOY.
EDWIN W. HIGGINS.

TRANSCRIPT OF TESTIMONY.

BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

FIRST DAY'S PROCEEDINGS.

THURSDAY, JUNE 27, 1912.

Present: Hon. James M. Graham (chairman), Hon. Edwin W. Higgins, Hon. Walter L. McCoy.

The committee was called to order at 10.30 o'clock a. m. by Mr. Graham (chairman) presiding.

The CHAIRMAN. The committee will please be in order.

The committee is present this morning in pursuance of resolution No. 576 of the House of Representatives, which I will read:

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Cornelius H. Hanford, United States judge for the Western District of the State of Washington, and say whether said judge has been in a drunken condition while presiding in court; whether said judge has been guilty of corrupt conduct in office; whether the administration of said judge has resulted in injury and wrong to litigants in his court and others affected by his decisions; and whether said judge has been guilty of any misbehavior for which he should be impeached.

And in reference to this investigation the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, if necessary, and to appoint and send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. The said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee and the process and orders of said subcommittee and shall attend the sitting of the same as ordered and as directed thereby, and that the expense of such investigation shall be paid out of the contingent fund of the House.

In pursuance of the authority given the Committee on the Judiciary by virtue of that resolution the whole committee, on Thursday, June 13, 1912, took the following action:

Mr. Webb offered the following resolution, which was adopted:

Resolved, That James M. Graham, Walter I. McCoy, and Edwin W. Higgins, members of this committee, be appointed the subcommittee by virtue of the authority given under House resolution number five hundred and seventy-six passed by the House of Representatives on June thirteenth, nineteen hundred and twelve, authorizing an inquiry into the alleged misconduct of Cornelius H. Hanford, United States judge for the Western District of the State of Washington, and that the said subcommittee shall have all the powers authorized by said resolution hereinbefore named.

I hereby certify that the above is a true and correct copy taken from the minutes of the Committee on the Judiciary of the House of Representatives, United States, for Thursday, June 13, 1912.

J. J. SPEIGHT,
Clerk, Committee on the Judiciary, House of Representatives, United States.

This has been verified by affidavit.

Resolution No. 576 of the House of Representatives was received in evidence and marked "Exhibit 1."

The resolution authorizing the appointment of the subcommittee, dated June 13, 1912, was received in evidence and marked "Exhibit No. 2."

The CHAIRMAN. In pursuance of the resolutions just read, the subcommittee is present this morning and ready for business. We labor under some disadvantage, being entire strangers here, and not knowing very well how to find witnesses and arrange for beginning. We used the telephone, and hope to have some witnesses here this morning. We are under the further misfortune of not knowing whether they are here or not, but I am informed that by 11 o'clock we will be able to have a round-up of witnesses, and probably proceed with the production of testimony.

I am sorry to say that a very tardy notice was sent Judge Hanford. We had hoped that it would reach him last night, and I understand it did.

The notice to Judge Hanford was received in evidence and marked "Exhibit No. 3," reading as follows:

SEATTLE, WASH., *June 26, 1912.*

DEAR SIR: The subcommittee of the Committee of the Judiciary of the House of Representatives, Washington, D. C., will convene to-morrow, June 27, in the court room, Federal Building, in Seattle, for the purpose of taking testimony under House resolution 576, a copy of which is attached hereto. You can, of course, be present at the session of the subcommittee, in person and by counsel, if you so desire.

Respectfully, yours,

JAMES M. GRAHAM, *Chairman.*

HON. C. H. HANFORD,
Seattle, Wash.

The CHAIRMAN. I am informed that the judge is here this morning. Are there any appearances of counsel that should be entered at this time?

Mr. PRESTON. Gentlemen of the committee, I am a member of the bar of this city, and my name is Preston.

The CHAIRMAN. What is your full name?

Mr. PRESTON. Harold Preston.

The CHAIRMAN. Have you any firm connection that you would wish to go into the record—any particular firm?

Mr. PRESTON. I am a member of the firm of Preston & Thorgrimson. Mr. E. C. Hughes, also a member of the Seattle bar, of the firm of Hughes, McMicken, Dovell & Ramsey, and myself have been requested by the Seattle Bar Association to appear before your body to represent Judge Hanford at this hearing. That selection of the bar association proving satisfactory to Judge Hanford, we are here this morning in that capacity. You will see that our employment is not the ordinary employment, and there are two sides to it—one side in addition to the ordinary. The bar association is just like you gentlemen are in this matter; they are anxious for a full investigation. They would deem it their duty to assist you, if you desire any assistance in any way. Therefore we are able to express to you this morning our desire to be one of cooperation and not hostility. You gentlemen labor, as the chairman has stated, under the disadvantage of being strangers here. The case, or the proceedings, has aspects

also that do not pertain to the ordinary case in court with which lawyers have to do, in that there are no charges, there is no complaint served requiring answer and notifying the person interested of what he is expected to meet, and I take it, perhaps, that you gentlemen do not know yourselves and are here to find out and, finding out, to make a thorough investigation. That being so, it has occurred to us that it would not be taken amiss by you gentlemen if we were to call your attention to some things that have happened here that had been made the ground of public criticism of Judge Hanford.

The CHAIRMAN. Do you mean this by way of an opening statement?

Mr. PRESTON. Yes, sir.

The CHAIRMAN. I hardly see what good that would do.

Mr. PRESTON. I do not know that I will have you understand that as an opening statement, but I thought it best to call your attention to some cases concerning which criticism has been made recently, and with the idea of suggesting to you gentlemen something in aid of your work in investigating those cases if you should desire. That statement would liken itself somewhat to an opening statement, but that is not the purpose of it so much as the purpose to call attention to this case, and I will tell you that we are here in this case in the capacity in which we have acted. You will be able to find the facts. For instance, take the Olsson case——

The CHAIRMAN. Just a moment. The Chair thinks he speaks the sentiments of the committee when he states that it might help if you would submit a written statement covering the points you speak of. I do not see how it would help us to fill the record at this time with matter of that sort. As we go on doubtless points will develop which we may deem it worth while to investigate, and I hardly think it would be wise for us to fill the record with a statement of that kind, which we are, as a committee, to examine first. If you wish to submit a statement in writing to that effect the committee will give it careful investigation and determine whether it will go into the record.

Mr. HIGGINS. Is it your purpose to suggest to the committee at some time during the investigation the names of witnesses you wish to have us subpœna?

Mr. PRESTON. I expect to do that, and I was going to refer to that among other matters in my statement to you. Take the Olsson case, which is the most prominent matter. We will have that during the day for you if you desire it in printed pamphlet form, the complete record in that case. I take it that would be of assistance to you. There are other cases that we will get to assist you in in the same way.

The CHAIRMAN. Well, do you approve of the suggestion the Chair has made in the record?

Mr. PRESTON. Of course we have to bow to your ruling in it, although it would not be satisfactory, because we have had but little time and we have had no written statement nor an opportunity to prepare one.

The CHAIRMAN. Well, you will have plenty of time. If you submit that statement, the printed record will be under the control of the committee, and even though it does not come in at this time we can have it printed at the beginning of the hearing if we deem it proper to do so.

Are there any other appearances?

Mr. HUGHES. I would make this suggestion, Mr. Chairman: To comply with your request at as early a date as it may be convenient to do so to submit in written form any statement of the facts relative to the subject matters of inquiry for your assistance, it might be helpful to us if at some time at your early convenience you would indicate to us the subjects that have been brought to your attention about which you would be glad to have an explanatory statement from us. That may assist us; otherwise we are groping when we are offering an explanatory statement of facts to you.

The CHAIRMAN. In that regard, Mr. Hughes, I might suggest that there was filed with the committee a number of charges—I think I may call them so—by Mr. John H. Perry, of this city. In my office at Washington I exhibited those to Mr. Dorr, of your city, who then claimed to represent Judge Hanford. There were some other papers then in my hands in the nature of charges, all of which were submitted to Mr. Dorr, so that I assume that Judge Hanford is not in entire ignorance of some of the charges that it will be our duty to investigate.

Mr. HUGHES. Mr. Dorr just arrived from the East and the only opportunity for conference with him has occurred this morning in this court room within the last half hour, and I think it is correct to say that Judge Hanford has had no opportunity to confer with him. He gave us a brief statement of the facts that you have just made known to us. Could Mr. Preston and I have an opportunity to see those charges?

The CHAIRMAN. Yes, indeed.

Mr. HUGHES. Mr. Dorr, at the request of members of the bar here, did represent Judge Hanford, and his representation to you that he was representing him was correct.

The CHAIRMAN. I do not doubt that.

Mr. HUGHES. And he doubtless would be representing him here now if he had been present in the city at the time. He has just arrived and there has been no opportunity to confer with him.

Mr. HIGGINS. Have you seen the Perry affidavit?

Mr. HUGHES. We have not, and we have had no information except such as we have gained from the public press.

The CHAIRMAN. I regret that we have but one copy of it, but that copy is at your service, and it might be desirable while you have it if you would have a number of copies made of it so that we might have the original back as soon as convenient.

Mr. HUGHES. We will be very glad to do that. What I had reference to more particularly was that it has been intimated in the public press that certain criticisms were made respecting certain cases, as Mr. Preston has already suggested. If there are any other cases brought to your attention which you desire to inquire about, I think we can help you by making a statement of the facts, and I think I need not assure you that if we make a statement of the facts it will be a fair and impartial one.

Mr. HIGGINS. You say you appear, as I understand it, at the request of the local bar association.

Mr. HUGHES. Yes, sir.

Mr. HIGGINS. I would suggest that you furnish to the reporter a copy of the resolution which appointed you and your association.

Mr. HUGHES. Yes, sir [handing copy of resolution to reporter, which is marked "Exhibit No. 4," reading as follows]:

Whereas charges have been made in Congress against the personal character and official conduct of Judge C. H. Hanford; and

Whereas the Committee on Judiciary of the House of Representatives has been directed to inquire and report whether the action of the House is necessary concerning the same; and

Whereas the board believes that the members of this association have the highest respect for Judge Hanford's personal character and the utmost confidence in his integrity; and

Whereas the board believes that the charges are unfounded in fact and is desirous of lending Judge Hanford such aid and assistance as is in its power in securing a thorough and impartial inquiry on the part of the said Committee on Judiciary of said charges: now, therefore,

Be it resolved by the Board of Trustees of the Seattle Bar Association, That a committee of three members of this association, consisting of E. C. Hughes, Esq.; Harold Preston, Esq.; and such other persons as they may select, be appointed for the purpose of rendering Judge Hanford, professionally, such aid and assistance in the matter of said inquiry as is in their power.

Be it further resolved, That said committee of three be empowered and requested to call to their aid and assistance such other members of this association as in its judgment may be deemed necessary to accomplish said purpose.

The CHAIRMAN. In further answer to your question, Mr. Hughes, with reference to special and particular cases, I assume that you know, and that it is generally known, that the matter of disfranchisement of one Olsson is one of the cases particularly mentioned.

Mr. HUGHES. Yes, sir.

The CHAIRMAN. That matter comes before the committee largely through a copy of a petition for a rehearing, and indeed a copy of the entire record, I think, with the exception of the ruling on the petition for the rehearing is before us. With that I assume you are familiar. You have had access to the record?

Mr. HUGHES. Yes, sir.

The CHAIRMAN. I might also add at this time a word as to what we conceive to be our duty here. The committee and the subcommittee is of opinion that we are largely in the nature of a commission, or that if we were a single individual that we would be a commissioner merely to take testimony. We are not to report any conclusions, and our instructions are, and our duty is, to find and report all the relevant evidence. We are not limited to any specific charges that have been or may be made. It is our duty, and it will be our policy, to find all the relevant facts and report them to the whole committee, and we hope to be able to do that, as it is our duty to do it, without either fear or favor or prejudice.

Is there anything further in the way of preliminaries, gentlemen? If there is not, we could possibly expedite matters by taking a short recess to find out, as a famous statesman once said, "where we are at," and in the meantime you can have the Perry charges. I would suggest that you have copies made as soon as convenient in order that we might have the original back.

Thereupon the committee, at 10.30 o'clock a. m., took a recess until 11.30 a. m., at which latter hour the chairman continued the recess until 2 o'clock p. m. the same day.

AFTERNOON SESSION.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will please be in order.

Mr. HUGHES. May it please the committee, I would like at this time to announce for the purpose of the record that Mr. C. W. Dorr, of the firm of Dorr & Hadley, will be associated with Mr. Preston and myself.

The CHAIRMAN. The reporter will make a note of that. The committee wants to acknowledge its indebtedness to counsel for their generous aid in assisting the committee in getting the record of the court in the Olsson matter in such shape, so far as the record is concerned, that no witness will be necessary. With their assistance we have prepared a printed statement of the court record and all that transpired, or nearly all that transpired, in connection with the Olsson matter, except the testimony which was given. The printed statement we will now give to the official reporter of the committee, as part of the record, subject, however, at any time before it leaves for Washington to be printed, to any corrections so as to make it conform to the official court record.

Document marked "Exhibit No. 5."

The official reporter of the committee was then duly sworn by the chairman.

LEONARD OLSSON, being first duly sworn, testifies as follows:

Mr. GRAHAM. State your full name.

A. Leonard Olsson.

Q. You spell it O-l-s-s-o-n?—A. Yes.

Q. Where do you live?—A. Tacoma.

Q. How long have you lived in Tacoma?—A. Permanently for the last three or four years.

Q. Where were you born?—A. Sweden.

Q. When were you born?—A. The 14th of January, 1879.

Q. Making you now how old?—A. Thirty-three years last January.

Q. When did you come to America?—A. 1900.

Q. Where did you come to after reaching this country?—A. New York.

Q. How long did you remain there?—A. Only a few weeks.

Q. And then?—A. Then I left by ship and came out here.

Q. What route did you take out here?—A. I took the route around Australia and Tasmania and came to Portland, Oreg., via Japan.

Q. I wish you would repeat that answer.—A. I came across the Atlantic, rounded the Cape of Good Hope, around Australia, and across the Pacific Ocean to Portland via Japan.

Q. You came from Sweden that way?—A. From New York City.

Q. And when did you reach Seattle?—A. I arrived in Astoria, Oreg., in 1901, in March.

Q. What is your occupation now?—A. Longshoreman.

Q. How long have you been engaged in that occupation?—A. For the last four years.

Q. Since you have been on the Pacific coast?—A. No; I was sailing first. Since 1908 I have been a longshoreman.

Q. What other work have you done at any time?—A. Sailing, as a seaman.

Q. Are you a married man?—A. No, sir.
Q. Are you an unmarried man?—A. Yes, sir.
Q. Have you any relatives in America?—A. Yes; I have a sister.
Q. Where does she live?—A. In New Haven, Conn.
Q Is she married?—A. No, sir.
Q. Have you relatives still living in the old country?—A. Yes, sir.
Q. Are your parents living?—A. I have a mother and sisters.
Q. When did you apply for your first papers, so-called, to become a citizen of the United States?—A. In 1905, in San Francisco.
Q. When did you apply for your second papers to admit you to full naturalization?—A. 1909.
Q. Where?—A. Tacoma, Wash.
Q. Have you those papers?—A. No, sir.
Q. Where are they?—A. I delivered them over to my attorney, Mr. Nichols; I don't know where they are.
Mr. GRAHAM. Can we have them in connection with his testimony, Mr. Nichols?
Mr. NICHOLS. The papers were surrendered to the Federal court, in obedience to Judge Hanford's order; they are on file now with the clerk.
Mr. GRAHAM. Mr. Hughes, can we have those papers so that they can be put into the record in connection with his testimony?
Mr. HUGHES. They are in custody of the clerk at Tacoma, and I would suggest that we request the clerk to make certified copies of them and send them over.
Mr. GRAHAM. Yes; and then they can be inserted at this point.
Papers referred to are given the marking as "Exhibit No. 6," to be supplied later.
Mr. GRAHAM. Mr. Olsson, do you recall the occasion when you were brought into court in a proceeding held with reference to disfranchising you?
A. Yes, sir.
Q. Revoking your naturalization papers?—A. Yes.
Q. Where was that?—A. In Tacoma; in the Federal Building.
Q. When?—A. The 1st of May, this year.
Q. Were you a witness then?—A. I was a witness in my own behalf.
Q. You were sworn and testified?—A. Yes, sir.
Q. Who asked you the questions?—A. The district attorney and the judge.
Q. Mr. McLaren?—A. Yes.
Q. Who else were present at the time you testified?—A. Well, the judge of the court.
Q. Name some of those who heard you testify, as you can now recall.—A. Mr. Nichols, my attorney, the district attorney, the clerk of the court, and my own four witnesses present here, and that is all, except some people I didn't know—gentlemen who were strangers.
Q. Was your testimony taken down in shorthand or in any way which you know of?—A. Not that I noticed.
Q Is your recollection clear now as to what you testified then?—A Yes.
Q State to the committee as nearly as you are able to do it what your testimony was on that occasion?—A I was asked whether I was attached to the Constitution of the United States or not, and I replied that the question I was asked by the examiner was if I was

devotedly attached to the Constitution, to which I answered that I had no superstitious reverence for the Constitution, but expressed a willingness to abide and obey the laws and the Constitution of the United States.

Q If you said anything further, tell us what it was —A I was asked about if I was a member of any organization, and I replied I was a member of the Socialist Labor Party, and I was also asked if I was a member of an organization known as the Industrial Workers of the World, to which I replied that there was two organizations known by that name and that I at that time belonged to the one with headquarters at Detroit, Mich. I was also asked if I believed in organized government, to which I replied yes; I also was asked if I wanted to abolish political government, to which I replied yes, stating that political government would be useless when the Socialists established their industrial republic or industrial government; and that was about all.

Q. Were any questions asked you about the principles which the Socialist Labor Party stood for?—A. Not to my recollection

Q At that time did the Socialist Labor Party have a national platform adopted at a national convention?—A Yes, sir.

Q. Is that platform printed?—A. Yes, sir.

Q. Can you furnish the committee with a copy of it?—A I have a copy here—it is a copy taken from a paper—it is the only one I could get [producing document]

Q. The paper which you hand me purports to be the Socialist Labor Party platform for the year 1912; did it have a platform prior to that time?—A. Yes, sir.

Q. Have you any of those earlier platforms?—A. I think I have a copy here.

Q. Speak up louder, Mr. Olsson.—A. I think I have a copy—no; I think one of my witnesses has one, Mr. Rush.

Q. If you can I wish you would produce it; we do not care where you get it from?—A. I have one; here is a copy of it [producing document].

Q. The clipping which you handed me seems to be taken from the Daily People.—A. Yes, sir.

Q. A Socialist paper, I believe, published in———A. In New York City.

Q. In the city of New York?—A. Yes, sir.

Q. While the date line does not appear on the clipping, I see in the columns some news dispatch dated Cordova, Alaska, June 8, and I suppose then that this paper was dated about June 8, 1912.—A. Yes.

Q. The paper on its face shows that this was adopted by the national convention of the Socialist Party April 10, 1912.—A. Yes, sir.

Q. Did you attend the convention?—A. No, sir.

Q. Where was that convention held?—A. New York City.

Document received in evidence and marked "Exhibit No. 7."

Q. The little folder you handed me purports to be the principles of the Socialist Labor Party for what year?—A. Adopted at the convention of 1904 and reaffirmed at the convention of 1908. I can procure you a real copy of the platform.

Q. The same one adopted in 1904 was reaffirmed or readopted in 1908, was it?—A. Yes, sir.

Q. Now, without reading this, is there any material change from the platform of 1904 and 1908 to the platform of 1912?—A. No, sir.

Q. It is quite short, and as my colleague suggests, I think it had better also go into the record.

Document received in evidence and marked "Exhibit No. 8."

Q. Are you in harmony with the principles of your party as enunciated in these platforms?—A. Yes, sir.

Q. Were you all the time since their adoption?—A. I became connected with the Socialist Party in 1905. Since that time I have been in harmony with its principles.

Q. What was your age when you left Sweden?—A. Twenty-one years.

Q. At that time were you associated with any Socialist organization?—A. No, sir.

Q. Were you raised in the country or in a city?—A. In the city.

Q. How large a city?—A. Ten thousand inhabitants.

Q. What was the name of it?—A. Christianston.

Q. What was your education in your native country?—A. Public-school education.

Q. Are the schools there graded schools as they are here?—A. Yes, sir.

Q. How many grades did you go through?—A. I went through the last grade.

Q. Corresponding with the eighth grade in our schools?—A. Yes, sir; the eighth grade.

Q. That was the entire extent of your school education?—A. Yes, sir.

Q. Did you have any English instruction in Sweden?—A. No, sir.

Q. Do you read and write English?—A. Yes.

Q. Where and when did you learn to speak and read and write English?—A. During my stay in this end—traveling in ships—sailing. ships.

Q. Had you any instructor?—A. No, sir.

Q. Did you learn it yourself?—A. I learned it myself.

Q. At the time you made your application to become a citizen, that is, when you took out your first papers, could you then read and write English?—A. Well, I could not read and write it as good as I can now—a little, I would say.

Q. How about reading it?—A. I could read fairly well.

Q. You stated then, as you have told us, that you were familiar with the principles of the Constitution of the United States.—A. Yes, sir.

Q. How did you become familiar with them?—A. Through reading them.

Q. Do you remember in what you read them—what book was it that you found the Constitution in?—A. It was a book called the Constitution—entitled the "Constitution," I do not remember the author's name.

Q. What else did it treat of or deal with besides the Constitution of the United States; was it a history of the United States?—A. No; it was just a compilation of the Constitution with the various amendments and the Declaration of Independence, and so forth.

Q. With comments on those paragraphs?—A. Yes; and then it had a preface commenting on it.

Q. When did you begin that study?—A. Several years ago; I don't know exactly.

Q. Did you do that as a matter of curiosity, or did you do it in order to qualify yourself to become an American citizen?—A. I did it for the sake of knowledge and the desire to know.

Q. When you came to the United States was it your intention to remain here as long as you lived, or did you come with the intention of staying a while and then going back to your native country?—A. Well, I left my native land as a sailor, and I had no destination exactly. I just happened to get shipped this way and with no intention of staying anywhere except calling at ports; but finally I landed here, and conditions and so forth made it that I finally decided to stay.

Q. What is your present intention?—A. Of remaining.

Q. Making this your home during your life?—A. Yes, sir.

Q. During the court proceeding for the purpose of revoking your naturalization papers, did you have an opportunity to explain your position with reference to the Constitution as fully as you cared to explain it?—A. No; I was asked questions and I did not ask permission to explain; I answered the questions asked me, that is all.

Q. Did the questions asked you enable you to explain your position fairly and fully?—A. Well, not fully, I would not say, but fairly, perhaps—not as fully as I should desire.

Q. Do your party platforms which have been offered in evidence and which have gone into the record, explain your views with reference to those matters as fully as you cared to explain them, or would you like to add to the statements in the platforms any explanation or statements as to the belief you entertained at that time or now?—A. I think the platform will explain sufficiently my views—that is, that the Socialist Party stands for organized government and that it teaches revolution—that is, not revolution in the vulgar sense, but a complete change in government to be obtained by the means provided in the Constitution and the Declaration of Independence. I think the platform states that fully.

Q. What means do you refer to in that answer?—A. By ballot—the people casting their votes at the ballot in the regular way and then abolishing the Constitution and adopting the new—whatever they decide.

Q. Did you state at your examination that you believed in doing away with all political government?—A. Yes, sir.

Q. And substituting for it what?—A. Industrial government.

A. Now, can you without taking too long a time explain what you mean and what Socialists mean by industrial government as distinguished from political government?—A. Yes, sir; I can, and the platform will state it.

Q. That is fully stated in there?—A. Yes, sir; it is, and a couple of paragraphs can easily be read that will state it in more explicit language than I can state it.

Q. So that we can get the meaning of those two things as they are understood in the Socialist mind from there.—A. Yes.

Mr. HIGGINS. Is that the Socialist mind or the Socialist labor mind?

A. That is the Socialist Labor Party.

Q. That is the difference within the Socialist mind?—A. That is the difference within the Socialist mind.

Q. And is that also the difference within the minds of the members of the Industrial Workers of the World?—A. Yes.

Q. That is entirely different from the Socialists.—A. Yes, sir.

Q. There are three different parties—the Industrial Workers of the World, the Socialist Labor, and the Socialist.—A. There are two Industrial Workers of the World—there are two organizations known by that name, one practically agrees with the Socialist Labor Party, and one does not.

Mr. GRAHAM. You agree with the one which entertains views like those of the Socialist Labor Party?—A. Yes.

Q. Now, did you, when you applied for your first papers and during the interval up to the time when you applied for your second papers and when you applied for your second papers, entertain any views on government in addition to those that were expressed in these platforms—any other, or different views?—A. When I applied for my first papers at that time I did not have—I had not become connected with the Socialist movement, but in the interval between getting my first and final papers I became a Socialist—or immediately after.

Q. So that at the time when you were admitted to citizenship the views which you entertained were those expressed substantially in these two platforms which have gone into evidence here?—A. Yes.

Q. And you did not entertain anything different in the way of views or anything additional?—A. No, sir.

Q. That is the whole of it?—A. That is the whole of it.

Q. Did you at any time during the proceeding to revoke your papers state that you were not attached to the principles of the Constitution?—A. No, sir.

Q. Have you at any time participated in any assemblage which was engaged in propagating doctrines hostile to the Government of the United States?—A. Well, that is all owing to what you mean by—no, not hostile to the Government—no, sir; no, sir; it all depends.

Q. I wish you would repeat your answer, and you may make any explanation you choose on that point.—A. Well, I mean I have participated in political meetings, of course criticising, say, the present administration, of the Republican administration, if that is what is meant by government, then, of course, the criticism was hostile, but if by government is meant the fundamental Constitution, and so on, of course it was not hostile in the way that it advocated changes legally allowed by the Constitution.

Q. Were you asked by Mr. Smith, John Speed Smith, whether you were devotedly attached to the principles of the Constitution?—A. Yes, sir.

Q. He used the word "devotedly," did he?—A. Devotedly.

Q. Do those two Socialist labor platforms that have been offered in evidence here and admitted, give an explanation of the Socialist Labor Party views in regard to the private ownership of property?—A. Yes, sir; fairly well.

Q. What do you mean by fairly well?—A. Well, they deal with it quite liberally. Of course, they can not in a short platform deal with all features of it, but it deals with it liberally.

Q. But in a general way.—A. Yes.

Mr. GRAHAM. Do you wish to cross-examine the witness, Mr. Hughes?

Cross-examination:

Mr. HUGHES. Just a few questions.

Q. Mr. Olsson, when you filed your petition to become a citizen, you verified it in the manner required by the statute, did you?—A. Yes, sir.

Q. And when you were admitted to citizenship you took the oath required by the statute, did you?—A. Yes, sir.

Q. Subsequently you signed and swore to the petition of one Esslen?—A. Yes, sir.

Q. On April 12, 1910, asking to become a citizen of the United States?—A. Yes, sir.

Q. And you were a witness for him on the 8th of August, 1910, in the superior court of Pierce County, Wash.?—A. Yes, sir.

Q. At the time when he applied to be made a citizen?—A. Yes, sir.

Q. You were examined by the investigator of the Department of Commerce and Labor at that time, were you?—A. Yes, sir.

Q. Who was that person?—A. Mr. Enslow, I think his name is.

Q. At that time did you not testify that you were not attached to the principles of the Constitution of the United States, in answer to a question propounded to you by Mr. Enslow or by Mr. Smith?—A. I answered to the question "Devotedly attached" "No."

Q. Do you say now that the question as propounded to you by Mr. Enslow or Mr. Smith was whether you were devotedly attached or whether——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Or wasn't it the question were you attached—"Are you attached to the principles of the Constitution?"—A. It was if I was devotedly, and special emphasis was laid on the "devotedly."

Q. You were also one of the witnesses who signed the petition of one Stossell?—A. Yes.

Q. Also filed on the 12th of April, 1910?—A. Yes, sir.

Q. You swore to the contents of that petition?—A. Yes, sir.

Q. That petition was in the form required by law?—A. Yes, sir.

Q. And your oath was in the form required by law?—A. Yes, sir.

Q. At the hearing of the application of Mr. Stossell on August 8, 1910, before the Superior Court of Pierce County you were a witness for Mr. Stossell, were you not?—A. Yes, sir.

Q. Were you examined by Mr. Smith?—A. Yes, sir.

Q. Mr. John Speed Smith?—A. Yes, sir.

Q. Did he not at that time ask you the question whether you were attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same?—A. He asked me the question you are saying, with the difference of the word "devotedly."

Q. You say he asked you if you were devotedly attached?—A. Devotedly attached to the Constitution.

Q. But with the exception of the use of the word "devotedly" the question otherwise was as I have previously put it to you?—A. Yes, sir.

Q. And you answered that you were not?—A. Yes, sir.

Q. Now, was Stossell admitted to citizenship?—A. Yes, sir.

Q. Was Esslen admitted to citizenship?—A. No, sir.
Q. The court denied the admission to citizenship?—A. Yes, sir.
Q. After you had given testimony and after the filing of your affidavit in support of his admission to citizenship?—A. Yes, sir.
Q. Didn't you testify, then, that Mr. Esslen entertained the same views that you did on public questions?—A. I do not recollect whether it was asked of me.
Q. He did, as a matter of fact, didn't he?—A. I beg pardon?
Q. He did entertain the same views as you did?—A. He entertained the same views as I did.
Q. He is a member of the same organization with you?—A. He belonged to the same organization that I did.
Q. You also signed the petition of Karl Oleson on June 11, 1910, to become a citizen of the United States?—A. Yes, sir.
Q. You signed that as one of the witnesses and took the oath on that petition as prescribed by law?—A. Yes, sir.
Q. And you were a witness for Karl Oleson on the hearing of his petition on September 12, 1910, before the superior court of Pierce County?—A. Yes, sir.
Q. At that time you were examined by Mr. John Speed Smith, were you not?—A. Yes, sir.
Q. He appeared as an examiner and an officer of the Department of Commerce and Labor?—A. Yes, sir.
Q. Did he not at that time, among other things, ask you this question whether you were attached to the principles of the Constitution of the United States and well disposed to the well order and happiness of the same, using the words prescribed in the statute?—A. He asked me the question only that I would add that he asked me if I was devotedly attached.
Q. And you answered that you were not?—A. Not.
Q. Didn't he at the same time ask you how long you had entertained that opinion regarding the Constitution of the United States?—A. Yes, sir.
Q. And your attitude towards the good order and happiness of the people?—A. Yes, sir.
Q. And you answered him, about three years?—A. Several years, sir.
Q. Several years?—A. Yes, sir.
Q. And you gave him a time prior to your own admission to citizenship?—A. Yes, sir.
Q. You have stated that certain persons were present at the hearing before the district court of the United States at Tacoma in May last; now, is it not true that Mr. John Speed Smith was also present and was a witness against you?—A. Yes, sir.
Q. Did he not testify at that hearing that he had propounded the questions as I first propounded them to you, without the use of the word "deboted" or "devotedly"?—A. He testified to that—he said that.
Q. And after you gave testimony saying that the word "devotedly" was included in his questions didn't he take the stand again and deny your testimony to that effect?—A. I don't think he was on the stand after me.
Q. But the clerk of the superior court, Mr. McFarland, was called in rebuttal, wasn't he?—A. I think he was on the stand before me.

Q. Well, he was called in rebuttal at any rate, wasn't he——

Mr. GRAHAM. The witness would not understand what you mean, perhaps, by rebuttal.

The WITNESS. I don't understand rebuttal.

Mr. HUGHES. I refer to the clerk of the Superior Court of Pierce County, Mr. McFarland, who was clerk at the time when you were admitted to citizenship; was not he called as a witness after you had testified?

A. I do not recollect whether he was ahead of me or after me.

Q. But you do recall that he was called as a witness and testified?—A. Yes, sir.

Q. And do not you recollect that he disputed your testimony and testified to the effect that Mr. Smith had not used the word "devotedly" in his questions?—A. No, sir; he did nothing of the kind. He said that he did not know whether the word "devotedly" was used or not.

Q. Didn't he testify to the best of his recollection that the question was not propounded in that way and that he had never heard it so employed by Mr. Smith?—A. He said he did not know whether it was used or not; he could not recall.

Q. To make this examination brief, did not Mr. Enslow also give testimony in the hearing to cancel your certificate of admission to citizenship?—A. Yes, sir.

Q. In May last?—A. Yes, sir.

Q. And his testimony was substantially that of Mr. John Speed Smith?—A. Yes, sir.

Q. Did not the judge, while you were upon the witness stand, ask you to explain the propaganda to which reference had been made either by you or one of your witnesses?—A. To explain the propaganda?

Q. Yes.—A. No, because I could not explain that.

Mr. GRAHAM. Will you repeat your answer?

A. I mean I could explain it to them, but I was not asked.

Mr. HUGHES. Didn't he ask you to explain the propaganda to which you were pledged, as had been stated in the evidence of one of your witnesses?

A. He asked me to explain the principles I stood for—I think that was his question—the principles which I believed in.

Q. You were a believer in and have been an advocate, by public speech, of the doctrines of the Industrial Workers of the World, or a certain branch of them, have you not?—A. The Industrial Workers of the World, with headquarters at Detroit, Mich.; yes, sir. The socialists are the political industrial workers of the world.

Q. Were you not identified with and a believer in the doctrines of the Industrial Workers of the World who recently have made demonstrations at Tacoma and in Seattle?—A. No, sir.

Q. Not that branch?—A. Not that branch.

Mr. HIGGINS. Do you object if I ask him a question here?

Mr. HUGHES. Not at all.

Mr. HIGGINS. Where is the branch located, or the headquarters located, which Mr. Hughes referred to?

A. Chicago.

Q. And are they affiliated in any way at all with the Detroit branch?—A. No, sir; they separated in 1908.

Q. How is that?—A. They separated in 1908, four years ago—they split.

Q. And what was the reason for the separation?—A. It was a disagreement as to tactics.

Q. As to what?—A. As to tactics.

Mr. HUGHES. What do you mean by that?

A. Well, the methods used in the organization and propaganda and so on.

Q. They differed as to methods but not as to their propaganda?—A. Yes, sir; they differed as to the methods and propaganda; that implies tactics.

Q. Have you any statement of the teachings of the Industrial Workers of the World whose cause you have espoused?—A. No; but I could get some, I could explain it.

Q. You have made speeches frequently on street corners and in halls, advocating the doctrines of the Industrial Workers of the World, or that branch of that order which you affiliate with?—A. No, not frequently, not being much of a speaker, but sometimes.

Q. Didn't you testify at this hearing that you believed that the Constitution of the United States should be and would be entirely overthrown by the adoption of the principles of government which the orders which you are affiliated with advocated?—A. No; the question was not exactly so. The question was if I believed in the overthrow of political government and I answered yes, because it would become useless.

Q. You did believe in the overthrow of political government?—A. Yes, political government.

Q. By that you understood that the Constitution, the present fabric of government, would be overthrown or abolished, didn't you?—A. Well, all features of the Constitution necessarily do not need to be overthrown, so far as I understand it.

Q. You believed and so testified at that time that by the adoption of your theory of government the present fabric of government would be entirely abolished and the Constitution obliterated?—A. Yes, sir.

Q. In all its parts?—A. Well, not the Constitution exactly need not be—well, I don't know—it would be for the people to decide. I can explain to you what I mean by political and industrial governments in a few words and we, perhaps, will understand each other.

Q. Do so.—A. In political government to-day the representatives are elected from geographical demarcations, whereas industrial government as we propose to establish it, the representatives instead of being elected from geographical demarcations will be elected from trades and industries—that the industries will be represented instead of the geographical boundary lines as to-day. That is the distinction between political and industrial government.

Q. Under your system there would be no Congress?—A. No Congress—there would be a Congress. I just stated that the representatives to the House of Representatives or Congress, whatever you want, would be elected from trades and industries—they are from the industries instead of, as to-day, from geographical districts.

Q. You expected to abolish courts—your theory of government?—A. Courts, very likely, would become useless, most of them anyway.

Q. Just another question: You said you opposed the government

by the Republican Party—you equally oppose government by the Democratic Party, I suppose?—A. Yes.

Mr. HUGHES. That is all.

Mr. MCCOY. When you were a witness for those three men who were applying for naturalization, were questions in regard to the Constitution apparently read to you?

A. Well, the examiner asked me the questions without reading them from any book, but just verbally.

Q. Did the man or the men who asked you the questions appear to be reading from any paper of any kind?—A. No, sir.

Q. They did not?—A. No, sir.

Q. Were the questions, or was the question as to your devotion to the Constitution or adherence to it, asked of you in more than one form of question?—A. Not at the time I appeared as a witness; but when I received my final papers the question put to me then was if I was willing to abide and obey the Constitution and laws of the United States, to which I answered, "Yes, sir."

Q. I am referring to the time when you appeared as a witness for the other applicants.—A. No.

Q. Now, at any of those times was this question as to your adherence to the Constitution asked in more than one form?—A. No, sir.

Q. It was simply stated to you once and you just answered those questions once?—A. Yes, sir.

Q. When did you become affiliated with the Industrial Workers of the World, the branch to which you belong?—A. I became affiliated in 1905, just after its organization.

Q. Was that before or after you took out your final papers?—A. That was after, the latter part of 1905 or perhaps the beginning of 1906; I can not say within a few weeks.

Mr. HUGHES. Just another question.

Q. You spoke of studying the Constitution from some work that contained the Constitution and the discussion of it; do you remember the author of that work?—A. No; I do not, but I think I can secure it. I know the library where I received it quite well.

Q. Was it one of the publications that you obtained after your connection with those branches of the Socialist Party which you identified yourself with?—A. Yes, sir.

Q. Was it one of their publications?—A. No; it is a large volume.

Mr. MCCOY. When you say you got it out of a library, you mean——

A. Yes.

Q. A public library?—A. No, sir; the Socialist Labor Party library in Tacoma; but it is not a socialist publication.

Mr. DORR. I do not think Mr. Olsson understood the last question that was asked him by Mr. McCoy in regard to his naturalization.

Mr. GRAHAM. I don't understand you, Mr. Dorr.

Mr. DORR. I think Mr. McCoy's last question was asked in regard to his final papers, and the answer was as to his first papers. I think he meant his first papers, because he was not admitted until 1910.

Mr. MCCOY. First papers, it should be.

Mr. GRAHAM. Mr. Olsson, if you were asked the question now, "Are you attached to the principles of the Constitution," what would your answer be?

A. I would answer, if by attached is meant a willingness to obey and abide the laws and the Constitution, "Yes."

Q. Well, what else have you in mind that the question might mean?—A. Well, according to the views of various persons—of Mr. Enslow, for instance—it seems to me something sacred; that it should remain forever as it is; that it should not be touched.

Q. Do you mean by that that it would be wrong or even reasonable to attempt peacefully to change the provisions of the Constitution?—A. Yes, sir.

Q. You thought the question as asked you included that element in it, did you?—A. Yes, sir.

Q. And with that thought in your mind you refused to say that you were attached to it in that way?—A. Well, devotedly attached.

Q. Attached to it in such a way that it would be a crime almost to change or modify it?—A. Yes, sir.

Q. In your political belief do you stand only for peaceful changes in the Constitution, or would you be willing to change it violently?—A. Only for peaceful.

Q. How do you stand with reference to changes in the Constitution by the use of force or violence?—A. We are opposed—explicitly opposed.

Q. And when you say peaceful changes, how would those changes be brought about, how effected according to your opinion?—A. By educating the people and propagation and the use of the ballot, changing them by the ballot, by legal way—amending it.

Q. Why did you not make those thoughts clear to the court at the time in question here?—A. Well, I was on the witness stand and I was asked questions, and I replied and I had no opportunity to express myself except in reply to questions as they were asked.

Q. If you had been asked those questions then would you have made answers similar to what you have made now?—A. Yes, sir.

Q. You entertained the same views then that you have expressed here?—A. Yes, sir.

Q. Are they the views of your party associates also?—A. Yes.

Q. You stated a while ago to Mr. Hughes that you thought you could get the platform of the branch of the Industrial Workers of the World, to which you are attached.—A. Yes, sir.

Q. Can you produce it?—A. Yes, sir.

Q. When was this platform which you can produce adopted?—A. In 1905.

Q. Has there been any adopted since?—A. No; the same one stands.

Q. Is it a political party, in the sense of having candidates and voting for them. A.—No; it is a union.

Q. It limits its activities to industrial affairs altogether?—A. Yes, sir.

Q. But the industrial labor party includes both politics, in the sense I have referred to, and industrial affairs also.—A. No; it is politics alone.

Q. Only political?—A. Yes.

Q. Are you now willing to abide by and obey the provisions and principles of the Constitution, subject to your right to peacefully advocate a change in the Constitution?—A. Yes, sir.

Q. Are you willing to obey it as it is until you and your associates can effect a peaceful change in it?—A. Yes, sir; and that is the thing we advocate.

Q. Are those part of your principles?—A. Yes, sir.

Mr. GRAHAM. Nothing further I would suggest to Judge Winsow and Mr. Nichols that if you have any questions that you wish to ask, and will reduce them to writing, that the committee will see that they are asked the witness.

Mr. WINSOW. I was going to suggest a question which might be answered in an instant.

Mr. GRAHAM. I did not catch you.

Mr. WINSOW. I was going to suggest a question to the committee which you can ask.

Mr. GRAHAM. You may do it; if you wish to do it now you can, or you can wait until Mr. Hughes is through.

Mr. WINSOW. I will wait until Mr. Hughes has finished.

Mr. GRAHAM. Proceed, Mr. Hughes.

Mr. HUGHES. Just one question of the witness for the better identification of the particular order that he has referred to.

Q. Who is the head of the Industrial Workers of the World to which you belong?—A. Mr. Richter.

Q. Living where?—A. In Detroit, Mich.

Mr. WINSOW. I was going to suggest that the witness be permitted to explain the difference between the Industrial Workers of the World, that he belongs to, and the others that his attention has been called to.

The WITNESS. I can do it in an instant.

Q. You may explain to the committee the difference between the Industrial Workers of the World, with which you are affiliated, and the other branch of that organization with which you are not affiliated.—A. I will state the difference by first stating the similarity between them. The similarity is that they both propose to organize the workers in the shops, that is, to organize the wageworkers of the land, but the organization to which I belong advocates the use of the ballot, that is, advocates political action in the use of the ballot on election day, whereas the Industrial Workers, or the other faction, repudiates the ballot, and says it is no use to use the ballot, that is, to use direct action, as they call it.

Mr. GRAHAM. In other words, when the occasion requires it, they use violence?

A. Well, they have to interpret that; I can not answer for them.

Mr. GRAHAM. If there are no other questions to ask, I suggest that this witness be excused.

Mr. WINSOW. The counsel have done better than I could.

Mr. GRAHAM. We will ask you to produce the platform of the Detroit branch of the Industrial Workers of the World, and the reporter will insert it in the record.

Document marked "Exhibit No. 9" to be produced later.

GUSTAVE RUST, being first duly sworn, testifies as follows:

Mr. GRAHAM. State your name.

A. Gustave Rust.

Q. R-u-s-t?—A. Yes.

Q. Where do you reside?—A. Tacoma, Wash.

Q. How long have you lived there?—A. Since 1898.
Q. What is your occupation?—A. Carpenter.
Q. Has that been your occupation since manhood?—A. It has been my occupation since 1901, two years after I came to this State, because I could not get any work at my occupation and I had to do something else.
Q. What did you do when you quit carpenter work?—A. That is, before I started as carpenter I worked as a machinist's helper in the N. P. shops—the Northern Pacific shops at South Tacoma.
Q. Are you a married or single man?—A. I am a single man.
Q. Where were you born?—A. Germany.
Q. When did you come to America?—A. I came to America in 1884.
Q. When were you naturalized, if you were?—A. I was naturalized in Ramsey County, Minnesota, 1896.
Q. You are now a citizen?—A. Yes, sir.
Q. Have you relatives in America, brothers or sisters, or a father or mother?—A. No; only sisters.
Q. Where do they live?—A. They live at Tacoma.
Q. Are you acquainted with Leonard Olsson?—A. Yes, sir.
Q. How long have you known him?—A. I have known him since 1905.
Q. Where were you and he then living?—A. Leonard Olsson was sailing up and down the coast and I seen him occasionally, and about a year after that he came and got a permanent job as longshoreman, or two years after, so we associated frequently after that.
Q. Are you associated with him in the political party to which he belongs?—A. The Socialist Labor Party; yes, sir.
Q. How long have you been associated with him in that party?—A. I have been a member of the Socialist Labor Party, you mean?
Q. Yes.—A. Since 1896.
Q. And are you connected in any way with the I. W. W.?—A. No, sir.
Q. With no branch of it?—A. No, sir.
Q. Will you tell the committee, if you can, a few of the material points of difference between the Socialist Labor Party and the Socialist Party?—A. The material difference of the two organizations is the Socialist Labor Party and the Socialist Party is in the tactics of organization and in tactics of the press. The Socialist Labor Party believes in an organized or owned press—that the press shall be owned by the membership of the organization—whereas the Socialist Party has a privately owned press.
Q. Would you mention some of the papers which illustrate this difference. For instance, what paper or papers are privately owned that are Socialist papers?—A. That is, advocating the Socialist Party principles?
Q. Name some.—A. The Appeal to Reason is one.
Q. Is that privately owned?—A. That is privately owned.
Q. By whom?—A. Whalland & Co., of Loretta, Kans.
Q. And they operate the paper and run it, of course, for personal profit?—A. Like any other corporation; yes, sir.
Q. Do you know any other paper?—A. The Volkszeitung, in New York.

Q. Now, name some of the other kind that are owned and run by the members of the party in common.—A. That is the Socialist Labor Party?

Q Yes.—A. There is the Daily People which is published in New York, the Weekly People which is published in New York, and there is the Volksfrund and there is the Arbitzein published at Cleveland, Ohio, a German organ, and there is a Hungarian paper, I forget the name—it is a jawbreaker of a name to me.

Q. Worse than the one which you have given?—A. And there is also a Jewish paper and there is also a Scandinavian and a Swedish paper that they call the Arbiter.

Q. Apart from the manner of their ownership, is there any other radical or material difference?—A. Yes, sir; there is.

Q. What is it?—A. The Socialist Labor Party holds that the working classes have got to be organized politically and industrially, whereas the Socialist Party do not indorse or do not hold neither—all their belief is just to have the working classes organized politically.

Q Were you one of the witnesses who was present on the occasion referred to and testified about by Mr. Olsson a while ago?—A That is when Mr Olsson's hearing was, on the 1st of May, 1912, at the Federal building at Tacoma, Wash.?

Q. Where?—A. At the Federal building at Tacoma, Wash —yes, sir

Q. Were you present?—A. Yes.

Q. What was the hearing to which you referred about, when you were present?—A. What do you mean?

Q. What was the subject matter of that hearing?—A. In reference to me, sir?

Q. No, in reference to Olsson—what was the hearing about at which you were present? I want to know whether it was the same one that we were inquiring about —A. The reference was that the witnesses that were asked were questioned as to how they had made Olsson's acquaintance and of course as I said here, I said in the organization where we met frequently, and what those organizations stood for and what their aims and objects were for

Q. Who was on the bench?—A. Mr Hanford.

Q Judge Hanford?—A. Judge Hanford.

Q. Name as many of the others who were there as witnesses as you now remember.—A. There was Mr. Speed Smith, and I believe there was two more witnesses.

Q Can you think of their names?—A. I didn't know at that time, I don't even know now; I believe Mr. Enslow—but who it was I don't know, but Mr. Smith, I am sure.

Q. You do not know what they were trying to determine at that hearing—was it a question affecting the citizenship of Mr. Olsson?—A That is my understanding.

Q Were you a witness?—A. I was a witness, yes, sir.

Q. Did you hear all the testimony?—A. I did, sir.

Q. Tell the committee now, as well as you can, everything that Mr. Olsson said, all the questions asked him, and the answers he made on that occasion.—A. Mr. Olsson was asked if the Socialist Labor Party—what their aims and objects was, and Mr. Olsson answered the

court that their objects was to bring changes in the present government from a political government to an industrial government.

Q. Go on now and tell us any other questions that were asked of him and the answers that he made—now, let me help you—who asked the questions that you have just stated?—A. The court.

Q. Did the court ask him any other questions?—A. Yes, sir; I presume the court asked how this was going to be brought about, so Olsson replied, in a political way, by the ballot; or through political action.

Q. What was said, if anything, about Olsson's loyalty to the Constitution?—A. I believe Mr. Olsson was asked—now, I could not recollect whether by the prosecuting attorney—I don't know his name.

Q. Mr. McLaren?—A. McLaren, or by the court—now, I could not recollect which—if he held the same views when he got his papers—his final papers—as he did at the time he was on for hearing, and Mr. Olsson answered "Yes, sir."

Q. Was he asked anything about those views?—A. He was asked about those views, and he explained them.

Q. Can you tell what the question asked him was and what his explanation was.—A. The question was asked, if I am not mistaken, by the court, if he was devotedly attached to the Constitution, and Olsson answered "No." I recollect that much.

Q. You are clear, are you, in your recollection that the word "devotedly" was used then?—A. Because the court asked him if he held the same views prior that he got his citizen papers and Olsson answered "Yes, sir."

Q. Well, in what connection, now, was that word "devotedly" used?—A. The examiner, Mr. Speed, had asked Olsson this question prior or at the same time when he was a witness for the applicants who applied for citizenship.

Q. Well, go on, if you have anything further to say, tell it—about what Olsson said at that time.—A. That is about all that I can recollect that I know of.

Mr. McCoy. Have you had occasion to observe Mr. Olsson's habits since you first became acquainted with him?

A. Yes, sir.

Q. What have you observed about them?—A. All I observed and all I can say of Mr. Olsson is that he has got no bad habits to my knowledge; that he is moral—a man, wherever I met him, or any of my friends met him, wherever I go, in conversation or had any talk about Olsson.

Q. Have you had occasion the meet him frequently since you first became acquainted with him?—A. I had occasion, as I say, for the first year when he was sailing I would meet him about every two weeks, the way the boats go up and down from San Francisco to Tacoma and so on, but after that he got an occupation as longshoreman and I met him sometimes once or twice a week.

Q. On what occasions would you meet him?—A. I would meet him in our business meetings—our propaganda meetings.

Q. And you saw him going to and coming from those meetings, did you?—A. I was there myself.

Q. Well, did you have anything to do with him at all except in the meetings, did you see him after the meetings were over and observe

how he conducted himself?—A. Yes, sir; sometimes we would walk a block together until we got to the departing—he went his way by himself and I went my own—as I say, we met about once or twice a week.

Q. You frequently walked home together as far as your paths went along in the same direction?—A. Until we made connections with the car.

Q. And you say you never observed anything against him as a man of sound character?—A. No, sir.

Mr. GRAHAM. Mr. Hughes, do you wish to ask any questions?

CROSS-EXAMINATION:

Mr. HUGHES. You were a witness at the hearing on May 1 before Judge Hanford?

A. Yes, sir.

Q. You gave some testimony respecting the propaganda of the orders to which Mr. Olsson belonged, or made some reference to the propaganda of the orders, didn't you?—A. Yes, sir.

Q. Who examined you?—A. You mean on the witness stand in Tacoma, Wash.?

Q. When you were put on first, who examined you?—A. It was the prosecuting attorney, if I am not mistaken.

Q. Were you not first examined by Mr. Nichols, the attorney for Mr. Olsson?—A. I believe Mr. Nichols first and then Mr. McLaren.

Q. Is not the same thing true as to Mr. Olsson; did not Mr. Nichols examine Mr. Olsson also?—A. I believe so.

Mr. HUGHES. I merely called attention to this because the witness did not mention it.

Mr. GRAHAM. Mr. Winsor, have you anything that you wish to suggest?

Mr. WINSOR. Nothing, sir.

ANTONE ESKELUND, being first duly sworn, testifies as follows:

Mr. GRAHAM. Where do you live, Mr. Eskelund?

A. 3848 South Tacoma Avenue.

Q. How long have you lived in Tacoma—or is that in Seattle?—A. No; that is in Tacoma.

Q. South Tacoma Avenue, Tacoma.—A. Tacoma.

Q. How long have you lived there?—A. I have lived there since 1900; in the city of Tacoma.

Q. Are you a man of family?—A. Yes, sir.

Q. Do you own your own home?—A. No, sir; I do not own any home.

Q. What is your occupation?—A. I am a car repairer at the N. P. shop at South Tacoma.

Q. You mean the Northern Pacific Railroad Co.?—A. Yes, sir.

Q. How long have you been in the employ of that company?—A. Since I came to Tacoma.

Q. That is 12 years ago?—A. In July, 1900.

Q. How long have you known Mr. Olsson?—A. For the last five or six years.

Q. How intimately have you known him?—A. What?

Q. How well have you known him?—A. Well, I have been associated together with him off and on for the last six years quite frequently.

Q. Do he and you agree politically?—A. Yes, sir.

Q. Are you a member of the Socialist Labor Party?—A. I am a member of the Socialist Labor Party.

Q. How long a time have you been a member of the Socialist Labor Party?—A. Well, I first joined the Socialist Labor Party, it was in St. Paul, Minn., in 1895, the first part of Jaunary.

Q. That is about the time the party was organized, wasn't it?—A. That is about the time the propaganda began through the West.

Q. Were you present in the court in Tacoma on the occasion about which we have been inquiring?—A. Yes, sir.

Q. How did you happen to go there?—A. I was called in as a witness to testify in regard to Olsson's character, I guess, more than anything else.

Q. Were you present during the entire hearing?—A. Yes, sir.

Q. Who else do you recall who were there?—A. Well, I could not recall any of them by name, because I did not get them; I heard them at the hearing, but my memory is not strong enough to repeat them.

Q. You were not then acquainted with them?—A. Three witnesses on the side of the prosecution were examined.

Q. Did you know Mr. Rust then, Gustave Rust?—A. I did.

Q. Was he there?—A. Yes, sir.

Q. Did you know Mr. McLaren, or did you learn who he was, the attorney for the Government?—A. I saw the district attorney examine us there, but I didn't know his name at the time.

Q. And do you recall now what order the witnesses testified, about who was the first and who was the next, and so on?—A. Well, I think the examiner called Smith, I think was the first man and then his assistants, and then the clerk that took the notes at the proceedings in court where Olsson and the inspector had their argument in regard to——

Q. Did Olsson testify before or after you?—A. Olsson testified the last.

Q. Where were you when he gave his testimony?—A. I was in the room.

Q. Were you within hearing distance?—A. Well, I was, to a certain extent.

Q. Were you paying attention to his testimony?—A. I did; yes, sir.

Mr. HIGGINS. What do you mean by that then, do you mean that you could not hear everything that was said when you say "to a certain extent?"

A. Well, the court room down there was either very dull or the people that done the speaking spoke very low, and of course I could not distinguish everything that was said.

Mr. GRAHAM. Well, Olsson talks pretty plainly and distinctly, but yet do you say that you did not understand all that he said?

A. I didn't understand all the questions propounded to the witnesses on the lack of hearing it.

Q. Why, was the questioner's back to you at the time?—A. I guess they were; yes, sir.

Q. Well, tell the committee now all that Olsson said there, and the questions asked of him, as well as you can remember them.—A. Well——

Q. First, who asked the questions, to begin with?—A. The district attorney asked him questions—I do not recollect the substance of them—the only recollection remaining to my mind was his honor, the judge asking him in regard to the private property question, and there was also a paper read on an expression out of the Socialist paper, and Olsson indorsed the expression.

Q. Now, let us go back to the judge and his questions. Tell the committee, if you please, what questions the judge asked him and what answers he made to them. Tell them as fully and as accurately as you can.—A. Well, he asked him questions in regard to his views upon private property.

Q. Can you give us the question as it was put—can you tell us the questions that the judge asked him; for instance, did the judge say, "What are your views about private property?"—give us the questions as the judge put them, as nearly as you can.—A. Well, the question was put to him in that manner in regard to his views on private property—taking them away.

Q. Go on and tell it.—A. And then, in the meantime, that paper was read, that expression out of that paper was better worded than I could do it, and it was indorsed by Olsson as correctly stated from the Socialist point of view.

Q. What paper was it—can you produce it?—A. No; I can not produce it because it was handed to the judge on the bench.

Q. Who read this paper?—A. The judge read the sentences bearing on that question, and Olsson indorsed it, to my recollection.

Q. Did the judge read the paper as a part of his question?—A. Yes.

Q. And asked Olsson if those views were his views?—A. Yes, sir.

Q. And what was Olsson's answer?—A. To the best of my knowledge, he indorsed the subject.

Q. Well, can you tell us the substance of what was read out of the paper?—A. No, sir; I could not, but it was bearing on the ownership of productive property.

Mr. GRAHAM. Unless you can get the paper, your statement as to its contents does not enlighten us much. Is there any way that we can get that paper to refresh the witness's recollection to see what it was that was read?

Mr. HUGHES. I was inquiring in regard to that, and I have come to the conclusion that the witness must have been mistaken about that. That is the only conclusion that I can reach. Judge Hanford says that no paper was handed to him, and if it is in reference to any memorandum it must be something which the court had. Our information is that no paper was read by the witness in answering the questions, or was handed to the court. Probably Mr. McLaren or some of the other witnesses can enlighten us on that.

Mr. GRAHAM. Mr. Eskelund, as I understand your testimony now, you say that the judge read from a paper a certain statement concerning the ownership of property—private property?

A. Yes, sir.

Q. And asked him if the statement as read was the same as the views he entertained on that subject, and that Olsson said they were.—A. He indorsed the question, to all appearances.

Q. But you can not tell us the substance of what the judge read?—A. No; I can not. My mind is not strong enough to keep it in recollection, and I did not expect the question would come up.

Q. Do you recall anything else that Olsson said there?—A. Well, he stated in regard to the Industrial Workers.

Q. What did he say in regard to them?—A. They were organized in the industrial field, with the cooperating by the ballot, or enforcing the ballot by the control of industries through their organization.

Q. Do you recall anything being said about his objecting to the principles of the Constitution?—A. Yes, sir. Some questions and answers were propounded at that hearing the same as there has been here this afternoon, practically.

Q. As stated by him this afternoon?—A. By Olsson and the inspectors, of course, holding the opposite view in regard to their devotedly attachment to the Constitution.

Q. Have you any recollection as to the use of the word "devotedly"—was the word "devotedly" used in the question asked Olsson or not?—A. When he got his citizenship?

Q. No; at this hearing at Tacoma at which you were a witness.—A. To the best of my knowledge the same—the questions were used in Tacoma as has been used here this afternoon.

Mr. McCoy. Mr. Eskelund, when Judge Hanford read from this paper which you say he read when he asked the question; did he state in reading the views about the private property substantially as it is expressed in the Socialist Labor platform?

A. The publication that was read was not a Socialist Labor Party publication, but they expressed the views very clearly on the point to my recollection, yes.

Q. That paper expressed its views in regard to the ownership of private property in substanitally the same form as the views of the Socialist Labor Party are expressed in their platform of 1912, is that your recollection of it?—A. Yes, sir.

Mr. Graham. Do you wish to cross-examine the witness, Mr. Hughes?

Mr. Hughes. Nothing.

Mr. Winsor. I have not got anything.

Katrina Gelterman, being first duly sworn, testifies as follows:

Mr. Graham. You give your name to the reporter.

A. Katrina Gelterman.

Q. Are you a married or a single lady?—A. I am a widow.

Q. Where do you live?—A. 3706 South T Street, Tacoma, Wash.—

Q. How long have you lived in Tacoma?—A. Fourteen years.

Q. What was your husband's business while he lived?—A. Blacksmith.

Q. Are you acquainted with Mr. Olsson?—A. Yes; I am acquainted with him.

Q. Are you in any way related to him by blood or marriage?—A. No, sir.

Q. How long have you known Mr. Olsson?—A. About four years.

Q. Do you remember the occasion when there was a hearing in the United States court at Tacoma in which his citizenship was involved?—A. Well, I was there but I could not recollect very much of it.

Q. What were you doing there?—A. I just was called about his character, how good a man he was.

Q. As a witness?—A. As a witness.

Q. Was your husband and Mr. Olsson acquainted?—A. No.

Q. Were you called as a witness and did you testify?—A. I was just called as to the character of the man.

Q. And you did testify as to that?—A. Yes.

Q. Now, where were you sitting when he testified—that is, how near him were you?—A. Just about as far as that first row of those benches.

Q. That would be about 20 feet?—A. Well, yes; but that court is longer.

Q. Then I don't think I understood you; how far was it?—A. But that court is higher and it makes such an echo that you can't understand when you are sitting back?

Q. You mean the hearing qualities there are not good?—A. No.

Q. Well, did you, as a matter of fact, hear Mr. Olsson when he testified?—A. Yes; some.

Q. Could you tell us now what he said?—A. Well, I think his talk was just about the same explanation as he said it here in court today, to my knowledge.

Q. Can you repeat it yourself?—A. No; I don't hardly believe I would be able to.

Q. Did you understand what they were talking about?—A. Well, I understood fairly well.

Q. About political action and industrial affairs and all that—did those words convey some meaning to your mind?—A. Well, I don't think there was much question about the Industrial Workers at the time being.

Q. Well, now, can you try to tell us yourself what Olsson said there?—A. Well, I don't believe I can tell anything.

Q. Do you remember anything being asked him as to whether he was attached to the principles of the Constitution of the United States?—A. Well, I believe I do.

Q. Do you remember what answer he made?—A. He said yes. I don't believe there was much attached—more than just if he wanted to abide the law and he said yes, he would.

Q. Did he say anything about changing the law?—A. Well, he said he was advocating the people or if the people saw fit it would change the Government.

Q. Was there anything said about changing it any other way than by an election or by the ballot?—A. By the ballot.

Q. How long did the proceeding there in court last that day?—A. I could not say.

Q. How long were you there?—A. I think it was about an hour and a half.

Q. Do you know whether you were there at the beginning of it and stayed through to the end of it?—A. Yes, sir; I was there at the beginning of it.

Q. Did you know when you left the courtroom what action would be taken in Olsson's case?—A. No, sir; I don't recollect any more.

Mr. GRAHAM. That is all.

Mr. HUGHES. I would like to ask just a question or two.

Mr. MCCOY. Pardon me, can I ask a question now?

Q. What about Mr. Olsson's character; is he a man of good character so far as you know him?—A. So far as I know him, yes.

Q. How far do you know him, what opportunities have you had for observing him?—A. Well, he comes to the house frequently and he is always a man of good character and good nature.

Q. How long has he been making frequent visits to the house?—A. Well, that is sometimes once a month.

Q. How long has he been doing that, ever since you have known him, three or four years?—A. Ever since I have known him.

Q. Are you a Socialist?—A. No, sir.

Q. You are not?—A. No.

Mr. HUGHES. Just a question.

Q. You sat back of the railing, except when you were on the witness stand at this hearing, didn't you?—A. Yes, sir.

Q. And that courthouse is longer and even noisier than this one?—A. Yes, sir.

Q. And the railing is back farther from the desk, considerably, than it is here, is it not?—A. Yes.

Q. And sitting back there in the seat behind the railing it was impossible for you to hear all that the witnesses said and all the questions which were asked?—A. No, sir.

Q. I say, it was impossible for you to hear—you could not hear all of it, could you?—A. Oh, no, sir.

Mr. GRAHAM. Will you, Mr. Hughes, in some way, put that in feet so that those who read the record may have some idea as to that distance?

Mr. HUGHES. I don't think that she could tell. I will put it this way and we can agree as to the distance.

Q. The distance from the desk where the witnesses sat and the court's desk there is probably one-third greater than it is from this railing to the desk in front of the committee here.—A. Yes, sir; every bit of it.

Q. Probably more?—A. Probably more

Mr. HUGHES. That would be about 35 or 40 feet.

Q. And you sat in the seat back of the railing?—A. Yes, sir.

Q. And those other witnesses who have testified here also sat back here with you?—A. Yes, sir.

Q. Except when they were on the witness stand?—A. Yes, sir.

Q. And that court room is a very noisy one and it is very difficult, from the position which you occupied, to hear what the witnesses are saying or what questions are asked them, is it not?—A. Yes, sir; indeed it is.

Mr. HUGHES. Mr. Russell, the postmaster here, tells me that he has a diagram of the Federal building at Tacoma and can give us the exact distances.

Mr. GRAHAM. I do not think that it is at all material—I think the record so far made is sufficient.

LOUISA ESKELUND, being first duly sworn, testifies as follows:

Mr. GRAHAM. Give the stenographer your full name.

A. Louisa Eskelund.

Q. You are the wife, are you, of the gentleman who was on the witness stand awhile ago?—A. Yes, sir.

Q. Mr. Antone Eskelund?—A. Yes, sir.

Q. And you live in Tacoma?—A. Yes, sir.
Q. You have lived there about as long as your husband?—A. As long as my husband.
Q. Were you married when you came there?—A. Yes, sir.
Q. Mrs. Eskelund, you were a witness in this Olsson matter on the occasion about which we have been talking, were you?—A. Yes, sir.
Q. Were you in the court room there during the entire hearing?—A. Yes, sir.
Q. Did you hear what took place there?—A. I did not hear all of it; no; I could not hear very well.
Q. Did you hear Olsson testify?—A. I heard him speak, but I could not hear a word he said.
Q. Do you mean by that that you could not understand what he said?—A. I could not hear what he said; no.
Q. Could you tell any of what he said?—A. I guess I could at the time, but I do not remember now.
Q. For what purpose were you called as a witness there?—A. For to testify to his character.
Q. He was a friend and acquaintance of your husband's, was he?—A. Yes, sir.
Q. And in that way you knew him?—A. Yes; I knew him that way.
Q. For how long?—A. About four or five years.
Q. Were you called as a witness and sworn?—A. Yes, sir.
Q. And gave testimony?—A. Yes, sir.
Q. Now, can you recall anything that the judge said?—A. No; I could not.
Q. You heard him, didn't you?—A. No; I didn't hear him very well.
Q. The judge was facing you, and that makes a great difference in hearing?—A. Yes, sir; I know, but I could not hear very well in that room.
Q. Well, are you able to tell the committee anything which Mr. Olsson said on that occasion?—A. No, sir; I could not.

Mr. GRAHAM. That is all that I care about. Does anybody else wish to ask any questions?

Mr. Hughes, are there some other witnesses present that you can call; and if so, who are they?

Mr. HUGHES. I presume the district attorney and Mr. John Speed Smith, the examiner, and Mr. C. A. Enslow, who had previously been an examiner and was called by the Government as a witness, they are here.

CHARLES A. ENSLOW, being duly sworn by the chairman, testified as follows:

Questions by the CHAIRMAN:

Q. State your name.—A. Charles A. Enslow.
Q. Where do you live?—A. Seattle.
Q. What is your present occupation?—A. Lawyer, attorney at law.
Q. Are you practicing your profession?—A. I am endeavoring to; yes, sir.
Q. If you are not, it is the other fellow's fault?—A. I am doing the best I can to puzzle the other fellow.
Q. From what we have heard, you have occupied a Government position?—A. Yes, sir; for 19 years.

Q. Do you still hold it?—A. No; I am thankful that I do not.

Q. Since when did you cease to hold it?—A. I wrote my resignation to Washington on the 11th day of May of last year, to take effect at the end of May of last year.

Q. What was the position from which you resigned?—A. Naturalization examiner.

Q. What are the duties of that office?—A. The duties of that office are to obey the instructions of the superior officer and to make investigations of such persons as petitioned for naturalization. That includes a search into his private life as far as possible, in order that all about him may be ascertained for the use of the courts who pass upon the papers.

Q. Who was your superior officer?—A. Well, in this district, John Speed Smith, chief examiner.

Q. Who is present here to-day?—A. Yes, sir.

Q. Mr. Enslow, do you recall the occasion when proceedings were had for the purpose of revoking the papers issued to Mr. Olsson?—A. The proceedings were had upon my recommendation.

Q. Well, you recall the occasion of the hearing, then?—A. Yes, sir.

Q. It was at Tacoma?—A. At Tacoma on the 1st of May.

Q. Of this year?—A. Of this year.

Q. You were present then?—A. I was there as a witness for the Government.

Q. Judge Hanford occupied the bench?—A. He heard the case; yes, sir.

Q. Well, who testified at that hearing?—A. The first witness was John Speed Smith; the second, myself; the third, R. E. McFarland; the fourth, Leonard Olsson; the fifth, I believe, was Mr. Rush; the sixth was the gentleman, Eskelund; then, I believe, that Mrs. Eskelund testified; and after her the other lady, whose name I have not at this moment.

Q. Now, as a lawyer, of course you realize the condition we are in here. Unfortunately, no certificate of evidence was preserved, and our purpose at this time is to get as accurately as possible the testimony that was offered on that occasion. What we want to get is what a certificate of evidence will show, if you had one, that is, all the testimony produced then and there.—A. I understand you.

Q. Will you give us that as well as you can?—A. My own testimony?

Q. Well, all of it, more particularly Olsson's; but you may give it all. Give us Olsson's first.—A. Olsson's testimony you want?

Q. Yes, sir.

Mr. HIGGINS. How long did the entire hearing last?

Mr. ENSLOW. About three hours. I know there was some trouble about some of the parties catching the 5.35 train, and I think it opened about 2 o'clock.

The CHAIRMAN. Now, give us the questions asked Olsson and the answers made by him as nearly as you are able to do it.

Mr. ENSLOW. United States Attorney McLaren opened the questioning on the part of the Government, after Mr. Olsson had been questioned by his attorney, but I presume that we had better first begin with the beginning with the questioning by the attorney for Mr. Olsson.

The CHAIRMAN. Yes.

Mr. ENSLOW. Which went to the good character and reputation of Mr. Olsson subsequent to the time of his naturalization as well as to his good character previously. I might add that I thought it was entirely outside of the record. The same questions were asked practically that have been asked by the chairman of the committee as to Mr. Olsson's arrival and his work here, and it elicited a response to each question that Mr. Olsson had been a peaceful law-abiding man. Then these various witnesses were brought on to establish the fact from their point of view, and they also testified to his good morals. The ladies testified that they had met him from once a month to once in a summer and so indicated that they had had not a very close personal knowledge of the man.

The CHAIRMAN. The committee is not particularly interested in that feature of it; it is the feature more particularly upon which the decision of the court hinged that we are anxious to hear; that is, as to the testimony in regard to the condition or state of his mind; give us that as fully and accurately as you are able to.

Mr. ENSLOW. The questions that brought out Olsson's opinions were asked by the judge. He asked if he knew Bruce Rogers, for one thing, and he said that he did. And the court asked him what was his opinion with respect to the change in our form of government as it related to the ownership of private property. Olsson testified that he belonged to a propaganda that had for its purpose the abrogation—that was the word that was used—of the present Constitution, to substitute therefor a sort of a plan or system in the nature of an industrial republic. I do not know that he used the word "republic," but an industrial form. And he also testified to the fact that he was a member of the I. W. W., but afterwards explained that it was a certain branch of it and that he was a member of the Socialist Labor Party, and went into some explanations in, I believe, a modified form that he gave to the committee here to-day. He was asked as to his attachments to the United States Government at the time he made the declaration, or rather his oath in court at the time of the hearing of his naturalization.

The CHAIRMAN. Which one; the first or the final?

Mr. ENSLOW. For his final. And he stated that he had not an opportunity at that time to explain, or rather was not called upon by a specific question to explain his attachments. The question was then asked as to the hearing of the Esslank case, after I myself asked the questions in that court, and he stated there, as he stated here to-day, that he was asked if he was devotedly attached to the Constitution, and stated that I had asked him that question. There was no rebuttal, but, if I may add, I have never used that word in connection with that question in court and I have never asked that question in court except upon that occasion, because I do not think the question means anything when it is asked. I have heard Chief Examiner Smith ask that question a great many times and he never has used the word "devotedly" in my presence. There was further testimony given along the lines of the proposed change and what the propagandists stood for, and he stated there that the propaganda had as its object the substitution of an industrial form of government for that which we now have in this country. And the court at this point asked the question whether or not the proposed government would entirely do away with the present form, and the response was

that it would render the present form unnecessary. Those questions, of course, are not in the exact language of the judge nor in the language of Mr. Olsson in his reply, but that is the sense of it.

The CHAIRMAN. Is that all of it, as far as you recollect?

Mr. ENSLOW. That is the principal of it.

The CHAIRMAN. Was anything said about the formal statement of the principles of the Socialist Labor Party in their platform?

Mr. ENSLOW. There was an offer made to the court to read certain documents in the shape of printed papers that were brought there, but the court refused to accept them, saying that he had seen them and seen enough of them, or something to that effect.

The CHAIRMAN. Do you know what they were?

Mr. ENSLOW. Well, I did not look at them at all.

The CHAIRMAN. Who offered them?

Mr. ENSLOW. They were offered in evidence by Mr. Nichols, attorney for Mr. Olsson. Whether or not they were produced by Mr. Olsson or some other person I do not know.

The CHAIRMAN. Where Nichols got them you do not know?

Mr. ENSLOW. No; I do not know.

The CHAIRMAN. Well, now, does that complete the telling of all you recall?

Mr. ENSLOW. That completes the telling of all I recall concerning Olsson's testimony. My own I have not given yet.

The CHAIRMAN. Well, go on now and tell the testimony of the other witnesses who testified on that occasion just as if you were making the certificate of evidence, or, as we sometimes say, a bill of exceptions.

Mr. ENSLOW. Mr. Smith testified that he had examined Olsson in connection with the case of Stossel on the 8th day of August in the superior court of Pierce County, at which time he asked Mr. Olsson if he was attached to the principles of the Constitution and had used the statutory language. I do not think I could repeat it now. I never took the trouble to learn it, and that Olsson had stated that he was so attached. That began at the hearing in the superior court of Pierce County in September. In addition to the questions being asked of Olsson by Smith, Smith asked him how long he had been of this opinion that he announced at this time; and that Olsson had stated for several years—two or three years; and that for that reason the party who had petitioned for naturalization with Olsson as a witness had been denied the right; that he also testified to having made the affidavit upon which the action to cancel the certificate was based. Mr. McFarland, who is deputy clerk of the superior court of Pierce County, testified at the time of the hearing in September when Karl Oleson was denied with prejudice, noted on a paper that he had at that time before him for Mr. Smith's recollection the answer of Oleson in order that it might be made a matter of record for any action taken in the future.

The CHAIRMAN. Just wait a moment. Karl Oleson was no relation whatever to Leonard Olsson, was he? I notice the name spelled Oleson in one case and Olsson in the other.

Mr. ENSLOW. When Karl Oleson came to the courthouse in Pierce County with Leonard Olsson, the witness, I asked him the question. That is what started this originally. I understood at that time that they were not related.

The CHAIRMAN. Now go on with the testimony in the Tacoma court.

Mr. ENSLOW. Mr. McFarland was questioned then as to the use of the word "devotedly" in the question asked Oleson at that time, and he stated that he was not able to state positively, but that he did not believe the word "devotedly" was used; that he had heard Mr. Smith ask the question several times and had never heard him use the word "devotedly;" and that was the sum and substance of Mr. McFarland's testimony as I remember.

The CHAIRMAN. Who else testified other than Olsson and his friends?

Mr. ENSLOW. Well, there were the ladies.

The CHAIRMAN. Well, the two who are here?

Mr. ENSLOW. Yes, sir.

The CHAIRMAN. That gives the entire list of witnesses, then?

Mr. ENSLOW. That is as I remember; yes, sir.

Mr. HUGHES. Mr. Chairman, he has not stated his testimony yet—what testimony he gave on that occasion.

The CHAIRMAN. How is that?

Mr. ENSLOW. No; I have not stated my testimony yet.

The CHAIRMAN. Give yours.

Mr. ENSLOW. The testimony I gave was to the effect that long about the 9th or 10th of June, 1910, while I was engaged in making a copy of the records in the courthouse in Pierce County, this Karl Oleson came to the clerk's office and petitioned for his second papers—that is, his certification of naturalization—and I had been ordered to Tacoma with a view of making an investigation of all the petitioners and their witnesses who would appear before the court at its next hearing; that would include all those who had been three months or longer petitioning. I asked the clerk of the court to give me a list of the petitioners and witnesses in order that I might make an examination of them there to determine their fitness in order that they might not be required to come to the grand-jury room in the chamber of commerce in response to letters, thinking it would save them time.

The CHAIRMAN. I understand this is purely explanatory, but not a part of your testimony.

Mr. ENSLOW. I testified to this at the hearing. This is my testimony, practically in the words I gave at that time.

The CHAIRMAN. Very well.

Mr. ENSLOW. That Karl Oleson and Leonard Olsson came, and I began their questioning as to their arrival, and so forth; and it early developed that Leonard Olsson held what I deemed to be peculiar views, and of course I asked him questions along that line, and his responses led me to believe that if he was not an anarchist he was an extreme socialist; also that he had been for a length of time that antedated his petition for naturalization and the granting of it, and, in view of that, that when he had made the statement that he was attached to the Constitution that there was the element of fraud there that would vitiate the certificate and render it of no value. And we had an argument, such as we used to have over free silver on the street corners—those street-corner orators.

The CHAIRMAN. Is this a part of your testimony?

Mr. ENSLOW. Yes, sir; that is what I testified. And that on the next day he came to the grand-jury court room with a bunch of papers, which he gave me, including "Voice of the People," a platform, some tracts, and again endeavored to convince me that his ideas were proper ideas. He led me to believe still further than he had the day previous that he was an anarchist, and I so reported to the Government and recommended that the action to open the records be taken. I also testified at the hearing in regard to asking the questions in court when Mr. Esslund was denied, when it was brought out that he stated that he was not attached to the Constitution. That was the sum and substance of my testimony.

By Mr. MCCOY:

Q. Were you an assistant to Mr. Smith in your duties?—A. Yes, sir.

Q. What were your duties in your office?—A. My duties were to obey the instructions of the chief examiner and make investigations and conduct examinations in court.

Q. What were you to investigate?—A. Well, a man's antecedents, his present opinions with respect to whether or not he was a polygamist or anarchist or whether he was a man who believed in the destruction of rulers, and things of that kind—anything that would go to his moral character.

Q. Have you in mind the wording of the statute which describes the qualifications for citizenship?—A. Well, no; I do not know that I could repeat that word for word.

Q. Well, how long were you an examiner?—A. About a year.

Q. How many people did you examine?—A. Oh, I suppose in that length of time a couple of thousand; may be more.

Q. How long is the section of the statute—how many lines which embodies the description of the qualifications of applicants for citizenship?—A. I suppose a dozen lines. I knew it once when I had use for it, but I have been engaged otherwise since and I have not gotten it down now.

Q. Has anybody a copy of it here?

Mr. HUGHES. I will pass it up to you; I have it right before me [passing the paper in question to Mr. McCoy].

Q. Did you submit, or was it your practice to subject all applicants to exactly the same sort of an examination?—A. No, sir.

Q. What made the difference between the examination of one man and another in your practice?—A. A man can tell in about a half-dozen questions whether another man is an anarchist or polygamist. For instance, if he shows tendencies that way, then his questions will be along that line necessarily. Otherwise we accept men as being what they outwardly appear and what their language to us would indicate.

Q. In other words, you would indulge in practically a cross-examination according to circumstances as they develop at the time?—A. Decidedly.

Q. What were Mr. Smith's duties—what was his title?—A. Chief naturalization examiner.

Q. What were his duties in that office?—A. Well, as supervisor he was to issue instructions to his examiners and we were to follow them.

Q. Did he ever examine applicants for citizenship himself?—A. Oh, yes.

Q. Were you ever present when he made such examination?—A. Yes, sir; I have heard him examine probably as many as 500.

Q. Were his practices in examinations substantially the same as yours? When cross-examination was necessary, would he indulge in it according to the situation?—A. Yes, sir. He went farther than I did in the matter of asking this question as to the attachment to the Constitution and used the language of the statute. I did not. I did not, because if you will read the language of the statute there you will see that that to the mind of a man who hardly speaks the English language it is meaningless.

Q. Now, you say he went farther than you went. Did he not only read the language of the statute, but also indulge in the same cross-examination you indulged in?—A. Yes, sir. He would ask him about his knowledge of the Constitution, whether he was a polygamist or anarchist, and those questions that are supposed to be required by the statute.

Q. Well, in other words, you mean he followed the verbiage of the statute?—A. Exactly.

Q. And in addition to that he did the same thing that you did?—A. Yes, sir.

Q. Can you give us any illustration of the sort of questions that you would ask of an applicant when they are situated very much in the same way that Olsson was situated when he was applying?—A. Well, I would ask him his name. There is a card form that is usually filled out, and as we go along filling out these cards for use in court we question them just as our minds happen to think the question ought to be framed. We ask him his name and present address, where he came from and where he was born, the date of his birth, and the place of landing, the vessel he came on, the number of years he has been here and when he arri ed, and determine to find out at that point whether he had been in the country continuously for five years last past preceding the date of his application. Then we ask him if he was a polygamist and believes in the practice of polygamy and anarchy; also whether he had ever been in the army and navy, and all the questions that the statute requires to be asked. In doing this it generally produces answers which lead into other lines which would enable us to see whether or not he was attached to the principles of the Constitution.

Q. Did you ever have occasion to cross-examine a man specifically on the question of his devotion to the Constitution and attachment to it?—A. Well, yes; I questioned all of them, but I did not frame my questions——

Q. On some questions you have found it necessary to push a man further than you would push another man on those same questions, would you not?—A. Yes, sir.

Q. How about Mr. Smith—did he follow that same practice that I just mentioned?—A. As a general principle; yes, sir.

Q. Now, do you want the committee to understand that any of the times on any of the occasions when you heard Mr. Smith examine 500 applicants for citizenship that he never used the words "devotedly attached to the principles of the Constitution"?—A. I want the committee to understand that I never heard him use that word.

I know it, because he always used the language of the statute. He had it down to his tongue's end.

Q. Now, you testified here this afternoon that he not only did that but did the same thing you did, which was not to use the wording of the statute.—A. That is true exactly.

Q. When he did not read verbatim the statute you want the committee to understand that he never used the word devotedly attached or any other word resembling that?—A. Never in my presence.

Q. In all of those 500 applicants?—A. Never in my presence.

Q. Now, then, just what did he do when he departed from the reading of the statute?—A. He may have asked any other sort of question. I never paid any attention to the question except when it was asked in my presence, and it was asked in that way invariably.

Q. You were there 500 times?—A. Yes, sir.

Q. What were you doing there?—A. I was there assisting Mr. Smith.

Q. And the only way you recall now in which he ever asked that question was directly in the wording of the statute?—A. Exactly; I never heard him ask it in any other way.

Q. What was the other question on that point he was asking when he departed from the phraseology of the statute?—A. Well, he elaborated that and asked them as to certain branches of the Constitution. For instance, if he was asked What particular branch of the Constitution are you particularly attached to? some men would answer, well, that they were attached to that which gave them the right of religious freedom, and the answers would be as varied as the men themselves.

Q. Now, have you heard him use the word "particularly" on those occasions?—A. I never heard that, that I remember of.

Q. I thought you said just this minute that he would say to them, "What section of the Constitution are you particularly devoted to?"—A. That was my language in explanation of the question in answer to you. I would not attempt to repeat any of the exact questions Mr. Smith asked or any that I asked.

Q. Well, now, could you say, Mr. Enslow, would you undertake to say, that in all those 500 times, more or less, in your presence, when Mr. Smith was examining, that he never used the words devotedly attached?—A. I could say that I never heard him use it.

Q. And you say that positively?—A. Yes, sir; I would not have said it in the first place unless I was positive of it in my mind.

Q. Now, do you want this committee to understand that that is a positive statement, or that to the best of your recollection he never used it?—A. The answer to the question is that I have never heard him use that, and I have heard him ask the question 500 times.

Q. And you never heard him use an adverb that would take the place of the word devotedly?—A. I never heard him inject an adverb into that question.

Q. I wish you would again explain further what you mean by saying that he did what you did.—A. I never have asked that question according to the statute myself. I never have asked that question.

Q. Now, tell us how you would ask the question.—A. I would ask him if he believed in the Constitution of the United States; that was always my form of question.

Q. Did you ever ask anybody as to his degree of attachment to it?—A. I never asked them as to their degree. If he said yes, I would consider him as an honorable man and as entitled to have it so recorded on the card.

Q. So you thought that one short, specific question on your part was a better way to test their fitness than all the words of the statute?—A. Yes, sir; it was better because they could understand my question better.

Q. How is that?—A. Because they could understand my question.

Q. You thought you could test him by one simple question better than by the use of the language of the statute?—A. Yes, sir.

Q. That is what you mean by saying that you departed from the wording of the statute?—A. Yes, sir; I never used the language of the statute.

Q. You confined your cross-examination to the one question which you have stated?—A. Yes, sir; unless, as I have stated, they were backward in their answers, and it seemed that further questions along that same line were necessary.

Q. Tell us what you do when you find that out.—A. Well, I would do like I did in the case of Olsson. I believe that was the most flagrant case I have had though. I had an argument with him for about three-quarters of an hour.

Q. That is, you mean Leonard Olsson?—A. Yes, sir.

Q. Well, he was not arguing with you endeavoring to get his citizenship papers, was he?—A. No; he was trying to argue with me that his ideas and theories were proper.

Q. Do you mean for us to understand that when you have examined the applicants for citizenship that you have had a similar kind of argument with them that you had with Leonard Olsson when he raised the question and when you raised the question?—A. I said that I never met a case like Olsson's in my experience.

Q. Did you ever have an argument with applicants for citizenship similar to that you had with Olsson when the question came up about revoking his citizenship?—A. No, sir; for the simple reason that I allow them to talk and I put it down on the cards for the use of the examiner who made the examination of them in court. Olsson was a citizen the first time I met him; Mr. Eskelund was not.

Q. I appreciate that. My question is this: You said that Olsson's case was the worst case you ever met with?—A. Yes, sir. He advanced ideas that were revolutionary.

Q. We have been talking not about cases where a man's citizenship might be taken away from him but where they are applying for citizenship. Now, on these applications before you did you ever have occasion to go into this question of socialism with any of those applicants?—A. Only to the extent that I should ask them if they were anarchists or if they believed in the Constitution, and if it came out that they were Socialists I would always note it on the cards. Now, a Socialist, as a rule, is not ashamed of his belief, and I would not think that he should need to be, and I would note it on the cards that he was a Socialist there, so that if it came up in open court it might be elaborated on.

Q. In other words, you do not think that if a man is a Socialist it would disqualify him for citizenship?—A. No; I would be partially disqualified myself if that were true.

Q. You mean that you are partially a Socialist?—A. Not that I am affiliated with the party, but I recognize that their principles are not without justification.

Q. Did you make up your mind that Olsson was an anarchist?—A. That was the idea that I had.

Q. Will you state anything that he said to you that made you believe he was an anarchist?—A. Well, he stated in the conversation he had with me that he did not believe in this form of government; that it was a plutocracy, and that the Senate of the United States ought to be wiped out, and that the entire system should be changed so that the working classes and certain others would not have as hard a time; and that he believed in using all peaceable means to effectuate that end. That is not his exact language. I do not want to put that wording in his mouth, but that is the impression he made upon me.

Q. You want us to understand that Olsson made the impression on you that he was in favor of using any kind of means in changing the form of government?—A. Yes, sir; I got the impression that Olsson was in favor of using force.

Q. You got that impression?—A. That is my impression; because I have a distinct recollection of the impression he made on me both the first time and at the time I met him in the grand-jury room, which was the following day.

Q. Now, what did he say to you in words that gave you that impression?—A. Now, that is two years ago, and I do not know that I can repeat exactly the words.

Q. Let us have the substance of any words that were used.—A. Well, it was along the lines that the wealth of the Nation had crushed the workingman, and that it was now time for the workingman to entirely turn that over and take everything away and divide it up and start out again; that was the trend of it and the gist of it.

Q. Do you think that in order to accomplish that result it would be necessary to use force?—A. That is, you want my opinion of it or the opinion I got from him?

Q. No; you can not give me his words, and I am trying to ascertain how you got the impression that he was an anarchist.—A. It was that way, from his words that I formed the impression that he was an anarchist—from his mannerisms.

Q. Did his manner give you the impression that he was an anarchist?—A. He had an impediment in his speech that is rather unpleasant to hear when he is under extreme excitement, as he was the day or the two days that he talked with me.

Q. In other words, you think that some impediment in a man's speech is an evidence of his anarchistic principles? Is that what you mean?—A. It is not evidence that he was an anarchist, but it is a matter which impresses one who is listening to what he said. I believe that was your question.

Q. Can't you give us something or other definite as to what he said that would make you think that he was an anarchist?—A. I do not know that I can repeat any positive statements, no; nor did I do it on the hearing on May 1.

Q. What is an anarchist?—A. An anarchist, according to the statute, is a man who believes that the rulers of the Governments of the world should be killed.

Q. Will you kindly look at the statute and see where there is any such impression conveyed?—A. Well, I do not know that there is any such impression conveyed unless you want it conveyed that way [examining statute]. That is where I got my idea of what constitutes an anarchist.

Q. Specify, what you are reading from.—A. Section 7 of the naturalization act:

> That any person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers either specific individual or of officers generally of the Government of the United States or of any other organized Government because of his or their official character, or who is a polygamist.

That, of course, goes beyond the definition of the anarchist. That is where I got my ideas of what constitutes anarchy.

Q. And you wish the committee to understand that Mr. Olsson in anything that he has said to you gave you the impression that he believed in killing rulers?—A. I believe from the impression that I got from him that he was a man who would eventually grow to be such a man as Ling and those men in Chicago were; that was the impression I had.

Q. You testified that Olsson handed you some papers or pamphlets?—A. Yes, sir.

Q. Did he tell you for what purpose he handed them to you?—A. Well, he wanted me to read them and see that his doctrine was right.

Q. You understand then that he supposed that his doctrine was stated then in those papers which he handed to you?—A. Yes, sir; that was the idea that I got.

Q. Did you read the papers that he gave you?—A. I did not.

Q. Why not?—A. Well, I had sent out five or six hundred cards for men to go to the grand jury room for examination and investigation, and I held office open until 12 o'clock at night in order that we might do it so that they might not have to get off in the daytime and lose their time. I was very busy all the time and when I came back to Seattle I left them in the office and I was busy and did not read them. Anyway, he told me about what the principles were.

Q. You knew that he was a foreigner, didn't you?—A. Yes, sir.

Q. And what he handed to you was printed in the English language, was it not?—A. Yes, sir.

Q. At that time you were contemplating taking some action looking to the revocation of his naturalization paper?—A. No, sir.

Q. Was it on account of anything that he said to you at that time that you recommended such action?—A. Yes, sir, it was; in view of his appearance in court and of his affirmative statement that he was not attached to the Constitution. I want to say that so far as Olsson being a foreigner is concerned, it never entered into it with me.

Q. My question merely went to the fact that you relied apparently on the statement of a man who obviously is somewhat unfamiliar with the language rather than to read the statements which he handed to you printed in the English language and which he claimed, and which you knew he claimed, stated his position.—A. Well, Mr. Olsson

had better command of the English language than I have myself, and he uses words more understandingly than I do. He impressed me at the time of the examination in Tacoma as being a man of a very high degree of intelligence and has so impressed me since. I believe he could better convey his ideas to me by word of mouth than I could get them from a printed paper.

Q. You say it was on your recommendation or suggestion that these proceedings to revoke Olsson's naturalization papers were started?—A. Well, it was not my intention in recommending that the proceedings be started that they ought to be started in the United States court. Other papers were canceled in the Pierce County court about the same time, six others to my knowledge, and it was done in the State court, where I can see that this should have been done

Q. How did this come to get into the Federal court?—A. Well, it was taken up by the Federal authorities. I recommended it and went East on a vacation, and when I came back the case was started, or started shortly after, and I did not know anything about it until after it was started.

Q. To whom did you offer the recommendation?—A. To Mr. Smith.

Q. Was any talk had at that time between you and Mr. Smith as to where the proceedings should be commenced?—A. Not that I remember of.

Q. You say you were surprised that it got into the Federal court instead of the State court?—A Yes, sir.

Q. Why?—A. Because a State court, if a fraud had been shown, would have opened its record and canceled its order granting him his admission. Fraud will always open the court's record.

Q. Did you confer at all with Judge Hanford in regard to this case before the proceeding was started to revoke the papers?—A. I never did.

Q. Did you ever talk with him about it since?—A. Not until the day that we went down on this motion to reopen the case, and then he asked me to look over a statement that he had prepared and see if it correctly or practically correctly stated the facts so far as I was concerned in the hearing on May 1; that was all.

Q. You went with the judge on the train from here to Tacoma?—A. I went into the train where the judge was, and the judge sent a gentleman and asked me to see him, and he handed me the paper which I have just stated. I read it and told him it was practically correct, and then got up and went out on the back platform, and sat down with Mr. Gorham, as I understand his name to be, since.

Q. Did you on that day have any discussion with Judge Hanford about the matter, otherwise than as it might affect the statements?—A. The only other statement I made was that I might intervene in the case on behalf of the Government, in view of the fact that the Attorney General had instructed the United States attorney to take the case up or assist in taking it up on behalf of Olsson, and that I would intervene, if at all, for the purpose of taking up the Government's side, so far as I was interested in it.

Q. At that time you had resigned, hadn't you?—A. Yes, sir; I had resigned a year ago.

Q. You mean you were going to intervene on the side of Olsson?—A. No, sir; on the side of the Government, so that the briefs in

the case might go to the circuit court of appeals, if it went at all, with both sides represented. I apprehended that the United States attorney's instructions from his superiors would not make the Government side of the case as complete as I believed the case warranted it should be.

Q. Did you believe that a record ought to be kept of this conversation, which took place when the application for a rehearing was reopened?—A. Yes, sir.

Q. Have you set forth all the conversation you had with Judge Hanford at that time, or on that day?—A. Yes, sir; that is the only thing. The conversation did not consume 5 minutes.

Q. Did you ever discuss with Judge Hanford your views of the situation generally of the Olsson case?—A. I do not think I ever spoke to Judge Hanford a dozen words in my life except as I have spoken to you here, except over there at the time I was having a hearing for naturalizations in his court, and I would make the motion to deny or admit. I am not personally acquainted with Judge Hanford more than to know that he is the judge of the court.

Q. On that day you spoke of that you were on the train with him you had no further discussion except to look over the statement of facts which the judge showed to you to see as to its accuracy and also to state to him that you might intervene in the case?—A. Yes, sir; and he intimated that I was in accord with his decision as made upon the case, but that was all; that was just that statement which came up in connection with a proposed intervention, or that I was not sure that I would intervene at that time.

Q. Did he express any opinion to you about his opinion at that time?—A. No, sir; none whatever. I had no more idea of what his opinion or judgment would be before the case was started.

Q. I do not mean what his opinion or his decision would be on the motion to reopen, but I mean as to the former opinion?—A. He made no representations to me along that line at all.

Q. In other words, you did not discuss the topic generally with him?—A. Absolutely no.

Mr. HUGHES. The witness has been examined to considerable length, and I would like only to ask one or two questions that seem to me pertinent.

By Mr. HUGHES:

Q. Mr. Enslow, you have already indicated in answer to questions propounded to you, that you yourself as a lawyer, in the light of your previous experience as an official of the Government, thought the the judge's decision was right. That is immaterial to this committee. What I want to ask you is whether there was anything in the attitude, conduct, or demeanor of the judge in the trial of Olsson on the first of May that indicated any bias or prejudice or any disposition not to give Olsson a fair hearing upon the evidence produced at that trial?—A. No; the judge's language was incisive. He asked the questions in a pointed way that would bring out a reply like he wanted it, I presume; but so far as his demeanor generally it was just as I have seen him in the court in a few other cases.

Mr. HUGHES. That is all.

Mr. MCCOY. What do you mean by an incisive way?

A. Well, when he asked if he knew Bruce Rogers he asked the question bluntly; that is to say, are you acquainetd with Bruce Rogers. He did not drag his sentences at all. It was nothing that would have any effect upon any person to whom the question was directed, as I believe.

Mr. HUGHES. Mr. Enslow, you have often seen and heard Judge Hanford in the court room, have you not?—A. Quite frequently.

Q. His manner is always that way, is it not, incisive?—A. Yes, sir.

Q. Very much so—direct and often brief and pointed in his questioning?—A. Yes, sir.

Q. And sometimes brusque in his manner of statement?—A. Yes, sir; he has been very brusque to me sometimes.

Q. I want to know whether there was anything different in his demeanor in this case from any other cases which you have seen him try?—A. Not noticeably, so far as I can recall.

Mr. HIGGINS. You were interrupted when you were about to say that he had been very abrupt to you sometimes.

A. Well, I don't know exactly what you want to know—do you want a specific case?

Q. I want to know what you were going to say when you were interrupted.—A. I was going to say that there have been times when he did not fully agree with me; that I felt the manner in which he turned me down was rather brusque.

Q. Was there anything about his manner more than you have already indicated in response to Mr. Hughes's questions?—A. Not that I noticed.

Q. Which showed a lack of judicial temperament?—A. No, no; I don't think that there was.

Q. Was this case, in all essential particulars, the same as many similar cases which you have had before him since you have occupied the position of examiner?—A. Well, yes. His mannerism was just the same as in other naturalization cases I had before him, or in other civil cases I had before him.

Q. Has he, before this time, upon your representation, declined to issue certificates of naturalization?—A. Yes, sir.

Q. In a large number of cases?—A. In a few. I suppose there might have been two or three or half a dozen. That was, though, on the examination—upon the petition, not for a cancelation—at the time of the examination in court on the petition.

Q. The original issue?—A. The original issue; yes.

Mr. MCCOY. Did the judge's manner on the occasion of May 1 and his manner of asking the questions or other manner, indicate to you in any way what his notions were about Mr. Olsson's beliefs?

A. The only statement that would indicate to me that he was biased at all, if that word might be used, was when he made the comment that he did not want to see those papers; that he had seen enough of them already, or something to that effect, and I do not say that there was any irony or anything of that kind in the statement. It may have been the judge's manner of making the statement.

Q. Are you referring to the occasion when the motion was made for the rehearing?—A. No, sir.

Q. Or the original?—A. The original motion for the cancellation.

Q. What papers were being submitted to him that drew out that remark?—A. I do not know the name of the paper. It was, as I

stated a moment ago, papers that were submitted, as I believe, by Mr. Nichols. I believe it is papers that are published in behalf of the Socialist Labor Party. It may have been The People.

Q. You do not mean a legal paper?—A. No, sir; some printed paper.

Q. You supposed it was some Socialist propaganda that was being submitted?—A. Yes, sir; that was the idea.

Q. And what was it that the judge stated?—A. Well, I do not want to put language into the judge's mouth, but it was to the effect that he did not care to see those papers; that he had seen enough of them anyway.

Q. That was the only thing that made any impression upon you to the effect that he was opposed to Socialism in any way?—A. Yes; that is all that I can recall now.

Q. Did his manner of asking Olsson questions give you any such impressions?—A. No; not more than I have explained, that they were pointed and asked in sharp language. But the court has used that language on other occasions, and to me myself.

By Mr. HUGHES:

Q. After talking with Mr. Nichols, who sits by my side, I want to ask you for the purpose of refreshing your memory if this is not the fact: That when certain papers were offered by Mr. McLaren or by Mr. Olsson of this character Mr. Nichols objected to their competency or relevancy and the court sustained the objection?

Mr. ENSLOW. Now, it may have been that there was a procedure along that point; I know there were papers.

Q. Was that the only circumstance under which Judge Hanford excluded papers on the objection of Mr. Nichols?—A. Assuming that he did exclude them as stated, that was the only thing that came under my observation, and I might be mistaken as to where these papers came from, because I did not pay close attention.

Mr. MCCOY. All that would be necessary for the judge to do would be to sustain the objection and not say, I have seen enough of those papers, would it not?

A. I do not know; I am not of a judicial mind myself.

Mr. MCCOY. I take it from your experience as a lawyer.

A. Yes; but the lawyer on the other side of the bench is entirely different from the judge on the bench.

Q. Well, all that is necessary for the judge to do when he makes his ruling is to overrule the objection or sustain it, is it not?—A. Yes; that is the usual practice.

The CHAIRMAN. Has Mr. Winsor—have you anything to suggest?

Mr. WINSOR. I would like, Mr. Chairman, to have it appear that this witness is the one who filed the so-called intervention. He is the individual who interposed the intervention that appears in the record.

The CHAIRMAN. That is correct, is it not, Mr. Enslow; that you are the same person who intervened in the hearing in a petition for a new trial or a rehearing?

Mr. ENSLOW. Yes, sir; for the purposes as I have explained in my statement of a few minutes ago.

The CHAIRMAN. You filed the petition or leave to intervene?

Mr. ENSLOW. Yes, sir; petition to intervene.

Mr. HUGHES. Page 29 of this record.

The CHAIRMAN. At page 29 of the printed pamphlet which we have had, the words occur:

Mr. ENSLOW. If your honor please, will you entertain at this time a petition in intervention in this case of the United States against Olsson. I have the petition here in words as follows:

You are the person there referred to?

A. I am the person.

Q. And that was the language used?

Mr. MCCOY. The stenographer might add that that appears in Exhibit — of this record.

The CHAIRMAN (after conference with Mr. Winsor). Mr. Winsor desires that you be asked whether you have a personal interest in the matter to the extent that it impelled you, of your own motion, to intervene in a way adverse to Olsson's interest. That, I believe, you have already stated to be true.

Mr. ENSLOW. I have intervened for the purpose solely of presenting the law points, and I presented the recommendations to the Government in the first place as a strict matter of law. Mr. Olsson's political beliefs have nothing whatever to do with it. It was a case of whether fraud had entered into it or not.

The CHAIRMAN. Your general view of the whole situation, including his political beliefs, was such that you deemed it your duty to intervene in a way adverse to his claim for citizenship?

Mr. ENSLOW. Not adverse to his claim for citizenship; no, sir; but adverse—well, now, I want to say adverse to possibly allowing a citizenship paper to be obtained where fraud entered in, as I believe, in this case.

The CHAIRMAN. I understand you very well, Mr. Enslow. What you mean to say is that you had nothing personal against Mr. Olsson.

A. Absolutely not.

Q. But that you intervened in this matter on account of the principles he entertained, just as you would have intervened against anyone else wanting to acquire citizenship or retain it who entertained principles like his?—A. Yes, sir. Mr. Olsson and I are very good friends to-day. I have not a thing in the world against Mr. Olsson, nor have I any desire to keep him out of his citizenship papers, but I would like to have him get them in such a way that they would be of some value to him.

Mr. MCCOY. Do you mean to say that you have not anything against a man who believes in killing rulers?

A. But he has represented to your body that he does not believe that to-day.

Here there was some disorder in the court room.

The CHAIRMAN. We must have order here. I want you to understand that at the outset; this is not a show, and if you want to indulge in anything of that kind you should get out.

A. (Continuing.) Mr. Olsson has modified his views very materially since the first time I talked to him.

Q. One more question—who is Bruce Rogers?—A. I do not know the gentleman at all.

Q. Do you know why the judge asked Olsson if he knew Bruce Rogers?—A. I subsequently learned that Bruce Rogers was a man

who was at the head of the Industrial Workers of the World here and in some official capacity with them, and that he had instigated certain matters here that occasioned some difficulty.

Q. Let me ask you again, what was Olsson's answer—that he did or did not know Rogers?—A. I don't know that I can state whether he said yes or no. I could not go in the record either way—yes or no.

Q. Did Judge Hanford make any other reference to Rogers, or his principles, or his conduct, than the mere question, "Do you know Bruce Rogers"?—A. Well, not that apply to Rogers, because I did not know Rogers or his principles at that time, nor do I now.

Q. Did he make an explanation as to why he asked the question?

A. No; I did not know; the only thing that I know is that I learned since that Rogers was an instigator in certain difficulties here. What prompted the judge, I do not know.

Q. Did you know that Judge Hanford knew that?—A. I did not.

The CHAIRMAN. You may step aside.

Mr. PRESTON. I understood the witness to testify that his interest in the matter was to set aside naturalization papers which he thought had been obtained upon false testimony, and not about the political principles at all; now, I would like to suggest that perhaps his answer was misunderstood by the committee.

The CHAIRMAN. If you are exactly right, I did misunderstand him, but I am not sure that you are exactly right. I am inclined to think that I came as near being right as you did, and I understood him that way, taking all his answers into consideration, it is exceedingly reasonable that, as a public spirited citizen, in the view that he entertained of Olsson's principles, that he would take action if he thought that Olsson wanted to kill everybody in authority it certainly was his duty to take some steps to deprive him of the rights of a citizen.

Mr. PRESTON. I was afraid that I would be misunderstood. I did not mean to criticise the chairman of the committee at all. My suggestion was that perhaps the fact might be further developed by further inquiry of the witness. The witness has since testified to the fact that in subsequent conversations with Olsson he believes that Olsson has modified those views. Now, I understood him to say that the reason he wanted to intervene was that he considered the papers had been obtained by false testimony, and he wanted to see them canceled for that reason.

The CHAIRMAN. The chairman did not understand you to criticise him, and he does not mind it if you do.

The WITNESS. Might I state that my object in intervening was not in opposition to the principles of the Socialist Party or Mr. Olsson. I believe that Mr. Olsson's papers were obtained through fraud and therefore they are invalid. I conceive it to be a fact that if Mr. Olsson's papers are cancelled, and he again is granted papers that he will have something of value; whereas a paper that is invalid can be attacked on the ground of fraud at any future time and is of no value to him.

The CHAIRMAN. But, Mr. Enslow, that raises the question of the fraud.

A. That is the only question I raised.

Q. And the fraud, in your mind, involves the things which Mr. McCoy referred to a while ago—something which, in your mind, bordered on a state of anarchy in Olsson's mind; so that it comes

back to the same place that I spoke of, in the end.—A. Back to the same thing.

Q. Because if there was a fraud at all it was in that he represented himself as not being an anarchist when you thought he was one.—A. Yes, sir.

Q. And as an anarchist, it was your opinion that it would be part of his duty, if he lived up to his principles, to wipe out those in authority?—A. Exactly so.

Q. So we come back to the same hole. The committee wants Mr. Olsson to remain until the testimony on this matter is closed.

Whereupon, at 6 o'clock p. m., the committee adjourned to meet at 9.30 a. m., Friday, June 28, 1912.

SECOND DAY'S PROCEEDINGS.

FRIDAY, JUNE 28, 1912—9.45 A. M.

Continuation of proceedings pursuant to adjournment.

All parties present as at former hearing.

Mr. GRAHAM. The meeting will be in order. Is Mr. Smith present?

Mr. JOHN SPEED SMITH. Yes, sir.

JOHN SPEED SMITH, having been first duly sworn, testified as follows:

By Mr. GRAHAM:

Q. State your name.—A. John Speed Smith.

Q. Where do you reside?—A. Seattle.

Q. How long has this been your residence?—A. Since the latter part of November, 1907.

Q. Do you hold any official position?—A. I do.

Q. What is it?—A. Chief—my official title is chief naturalization examiner.

Q. Located here?—A. With headquarters at Seattle, comprising the naturalization district of the States of Washington, Idaho, Montana, and Oregon.

Q. With headquarters at Seattle?—A. Yes, sir; 406 this building.

Q. How long have you held that position?—A. Since November, 1907.

Q. Did you hold any Government official position prior to that time?—A. I did, sir.

Q. What was it?—A. I was assistant chief of the special examination division of the Bureau of Pensions, of Washington, D. C.

Q. How long have you been in the Government employment?—A. I have been in the Government service in various capacities since 1882. The position I previously held was Assistant Chief of the Division of Naturalization, which I held since the latter part, I think, about 1898.

Q. How many subordinates have you at present?—A. Three examiners and one stenographer and typewriter.

Q. Mr. Enslow, who testified yesterday, occupied the position of——A. (Interrupting.) Naturalization examiner.

Q. (Continuing.) Examiner?—A. Yes, sir.

Q. Examiners, I suppose, have the subdivisions of the territory?—A. Yes; they are assigned by me as the work warrants.

Q. You sometimes participate actively in the examinations yourself?—A. Yes, sir.

Q. That is, your work is not entirely confined to superintending?—A. No, sir; I conduct the examinations in open court probably more than any one of my examiners—as much, anyhow. Of course, the force is so small and the territory is so large and so many courts that all of us do the same kind of work, both investigating and attending the hearings upon these petitions in open court.

Q. The statute, I believe, does not require the making or keeping of a permanent record of these examinations?—No, sir.

Q. What is your practice with reference to that? Have you at any time made it a practice to keep a record of them?—A. Oh, yes. If you wish it I will outline as briefly as I can the method, if you desire to know how we conduct these examinations.

Q. Yes; do so.—A. The duties of the naturalization examiner are to make preliminary inquiry as to the qualifications of applicants for citizenship, in the interim—period intervening between the filing of the petition and the date of hearing on that petition in open court. The period required by law must be at least 90 days; no petition can be heard, under the law, in less than 90 days after the filing. The object of the naturalization service is to gather such information as it can of the applicant and his witnesses and be present in court to inform the court with reference to his qualifications. The service is an assistant to the courts if anything develops in the preliminary examination either showing that the petitioner does not meet the statutory requirements of the law, or that if there be anything developed upon the examination that goes to the character of the applicant, it is the duty of this service to inform the court, lay all the facts before the court, and then the court, of course, only passes upon the case. That is the duty, in brief, of the examiner in the naturalization service. In order to do that I use a card system which contains, briefly, all of the principal matter that the petitioner swears to in his petition.

Q. Have you one of those cards?—A. Yes, sir; I have brought it down for the purpose of——

Q. (Interrupting.) Kindly let us look at it.—A. (Witness produces card.) This service is—the district is so large, so many courts, and having so few examiners, that it has been deemed the best policy to pay the greatest attention to the larger ports, the seaport towns; that is, attend the hearings and investigate as many of the petitions filed therein as possible. The outlying courts, where the number of applications are few, comparatively, and where the applicants are usually homesteaders or men who live out on a farm and are usually well known, those examinations are made by correspondence, because it is impossible to get around and personally interview them; and for that purpose I have adopted a circular that I mail to the petitioner, propounding a number of questions touching his qualifications, and also a circular letter which is mailed to each witness, the two witnesses, and when those are received, upon examination it can usually be determined if there is any reason to oppose the naturalization or to inform the court whether there is any reason why they should not be admitted or whether they have failed to comply with the requirements of the law in other particulars; and I have those circulars here; if the committee wish, I will submit them.

Q. Is the report card of the examination——A. (Interrupting.) This card, if you will pardon me——

Q. Yes.—A. That card, when it is filled out on its face there from the petition itself, affords data upon which to make the examination and also aids the examiner when he is conducting an examination in open court.

Q. Is the report card which you have handed us prepared and sent out from the department, or was it——A. (Interrupting.) I got that up in my office and it was approved by the department and they furnish me with that. I will say that that is now obsolete; there is a little different card used now, just within the last month, but it is substantially that.

Q. Have you the circular to which you refer, that you say is sent to the applicant to have answers filled in?—A. It is done in cases where we can not personally——

Q. (Interrupting.) Is that prepared by you or by the department?—A. That was gotten up in my office with the assistance of the examiners and submitted to the department for their approval and approved by them, and it is used throughout the naturalization service; that is furnished by the Government.

Q. This petition, or rather a statement by the petitioner, is filled in by him and signed but not sworn to?—A. That is right; correct.

Q. It is for the examiner's information merely?—A. That is the idea, exactly; likewise the circular sent to the witnesses. I will add that when we send out the circular to the witness we ask him, if he is a naturalized citizen, to present his certificate in court at the final hearing that he may prove that he is a citizen.

Q. Have you convenient at this time the particular statutory requirements under which you are acting; the specific sections of the statute which have application to your work?—A. No; I have not, Mr. Graham.

Q. In the pamphlet furnished us by counsel there are some excerpts from the statute on page 13 of the pamphlet. You might look at that, and if you or counsel could furnish us at this time the particular sections of the statute which have peculiar application we would like to insert them in the record here.

Mr. HUGHES. Mr. Chairman, at the request of Mr. McCoy, on yesterday I furnished a pamphlet containing the statutes on the subject and the regulations of the department—the rules of the department. I think Mr. McCoy must still have it.

The WITNESS. I don't understand your question, Mr. Chairman.

Mr. GRAHAM. My purpose is to get into the record at this time the particular sections of the statute, and, indeed, any construction which the Department of Commerce and Labor has given them, and put those in the record now.

A. Do I understand you want to know by what specific authority this service is in existence—the naturalization service?

Q. Oh, no; not particularly that.—A. I have the naturalization law here.

Q. That is what I want.—A. I have the act here. Section 28 of the act authorizes the Secretary of Commerce and Labor—gives him the power—to make rules and regulations as may be necessary for properly carrying into execution the provisions of this act.

Mr. HUGHES. If the chairman will permit me, I would suggest that the witness state the act; that is, give the date of the passage of the act by Congress—this section 28—for the record.

A. The act of June 29, 1906, which became effective 90 days thereafter, this act repealing the previous naturalization law.

Mr. GRAHAM. You need not mind that.

A. This twenty-eighth section that I have referred to authorizes the Secretary of Commerce and Labor to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this act. Does the committee want me to take these up in detail?

Q. Only those sections of it that shed light on your particular part of the work.—A. Yes. Under this act the naturalization service was organized, divided into naturalization districts throughout the country, with a chief examiner and assistants, the purpose of which, as stated before, is to inquire into the merits of each application, acting as assistant to the courts and advising them in any instance where a case should be denied, and also rendering such assistance as possible to applicants. In pursuance of that I have an office here and have four States in this district.

Q. Now, what particular sections guide you and inform you as to what persons should be admitted to citizenship and what ones should not?—A. The second subdivision of section 4 of this act prescribes what the petition for naturalization shall contain, which is sworn to by the petitioner before the clerk of the court.

Q. How long is it?—A. Well, that is nearly a page. It states what the petitioner shall swear to.

Q. Very well.—A. Then the third paragraph of that section——

Mr. MCCOY. What section is that?

A. That is the second subdivision of section 4. The first part of that section relates to the first paper, the declaration of intention. The second subdivision relates to the petition that he files. The first section sets out what he shall swear to. Then the fifth paragraph of the second subdivision sets forth what the witness shall swear to. The last paragraph—the fourth paragraph of the second subdivision—specifies that the declaration of intention shall be filed with the petition, and also a certificate from the Department of Commerce and Labor shall be filed with it, provided it be an alien who arrived in the country subsequent to June 29, 1906. There are some cases being filed under that act, under that provision.

Q. Proceed.—A. Then the third subdivision of section 4 is with reference to his taking an oath to support the Constitution, by the petitioner; the fourth subdivision states what shall be made to appear to the satisfaction of the court; and the fifth refers to any hereditary title, which he must renounce before he can be admitted, if there be such an alien.

Q. You are not troubled much with this portion of that provision?—A. Haven't had one so far.

Q. Proceed.—A. The sixth subdivision of that section is with reference to a declaration of intention made by an alien who dies, allowing his widow and minor children to predicate a petition thereon. Section 5 of the act is with reference to the posting of the names of the petitioners and witnesses in a conspicuous place in his office during the 90-day period——

Q. (Interrupting.) In whose office?—A. The clerk's office where the petition is filed. That is for the purpose of giving publicity to the matter and giving anyone—any citizen—an opportunity of appearing. Section 6 is with reference to when these petitions may be heard—or may be filed and docketed and heard.

Q. Section 7.—A. Section 7 bars certain aliens, with reference to those who disbelieve in or are opposed to organized government.

Q. It prescribes the necessary qualifications?—A. Yes, sir; the necessary qualifications.

Q. It is not long, is it?—A. No.

Q. Will you please read it into the record at this point?—A. (Reading:)

SEC. 7. That no person who disbelieves in or is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocates or teaches the duty, the necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

That completes it.

Q. Am I right in saying that from the seventh to the fifteenth section there is nothing that has peculiar application to your work or to the case we are now inquiring into?—A. From the seventh—the entire law has application, if you please.

Q. Well; I said peculiar application.—A. Well, I will point out where I think that the——

Q. (Interrupting.) Well, do so, proceed as rapidly as you can. I am asking you on the theory that you are expert as to this law.—A. I thought I had it right—the second paragraph of the second subdivision of section 4 requires an applicant to set forth that he is attached to the principles of the Constitution of the United States, and requires this petition to contain every fact material to his naturalization, so that——

Q. (Interrupting.) That is covered by the circular which you have handed us, is it not?—A. Well, the petition that the applicant signs before the clerk of the court, and swears to contains—it is incorporated into the law, which may be found on page 13 of the pamphlet of this act. This statement is contained in every petition: "I am attached to the principles of the Constitution of the United States," in addition to the various other allegations required by him to be made.

Q. That, you say, is from one of the paragraphs of the subdivision of section 4?—A. Yes, sir. The statement is embodied in the form of the petition that he signs and is embodied in the law.

Q. It is quoted from the statute, is it not?—A. Yes, sir; quoted from the statute.

Q. Well, now, we were at the seventh section.—A. Then the seventh section——

Q. (Interrupting.) You have read that into the record?—A. Yes, sir. He swears in this petition that he is attached to the principles of the Constitution of the United States, and the petition that he signs is a part of the law—embodied in the law—the form is set forth.

Q. Stick to the statute now, however, Mr. Smith.—A. Yes.

Q. From the seventh section on to the fifteenth, is there any provision that is peculiarly applicable, for instance, in the Olsson case?—A. Yes; I think section 7 is.

Q. That you read?—A. Yes.

Q. I said from seventh to the fifteenth.—A. (After examining.) No, sir; I don't find anything following section 7, that has any special bearing, as I understand, on this case.

Q. I assume that you know, from your experience and practice with it, whether there is or not?—A. Yes, sir.

Q. The fifteenth section seems to deal with the question of instituting proceedings as to the validity of naturalization papers issued?—A. Yes, sir.

Q. Or the revoking of them?—A. Yes, sir.

Q. You might read it into the record.

A. (Reading):

SEC. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavits showing good cause for, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; if the holder of such certificate should be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the law of the State or the place where such suit is brought.

Q. That is the whole section?—A. Yes, sir.

Q. Do you know of any adjudicated cases on this section, except the Olsson case and the Johansen case?—A. I can't recall just now. There have been a great many such cases.

Q. Very well.—A. Yes.

Q. We can find it. Now, after the fifteenth section, is there anything that has peculiar application, for instance, to the Olsson case, until you reach the twenty-third section?—A. (After examining) No, excepting the third paragraph of section 15 prescribes as to the certificate that shall be furnished the department upon cancelation, and, if it be another court, that the clerk of that court out of which the certificate issued, must also be furnished with a decree, in order to make the record clear. That is the only thing that I see.

Q. That is, whenever there was any record of the application or issuance, upon revocation the record of the revocation must be filed in the other places?—A. In the court where the——

Q. (Interrupting.) So as to make the records in those various courts complete, showing the whole transaction?—A. And also a copy of the decree to the department, advising the department.

Mr. DORR. Is it the understanding of the committee that the witness read the entire section 15? I think he only read the first paragraph of the section.

The WITNESS. I only read the first paragraph. That is the reason I am calling attention to this.

Mr. GRAHAM. (Interrupting.) We are asking Mr. Smith, on the theory that he is an expert in this law, if there is any other part of section 15 that has application?

A. That is the one I just——

Q. (Interrupting.) You may read it.—A. I didn't understand; I beg your pardon.

Q. Read whatever that is in section 15 that has application——A. (interrupting.) I have read section——

Q. (Continuing.) To the Olsson case.—A. (Continuing.) The first paragraph of section 15 [reading].

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States after time for filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancelation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order, it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same on record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provision of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

Mr. GRAHAM. Let me ask you, Mr. Dorr, did you think this had some application to the Olsson case?

Mr. DORR. I think the last paragraph——

Mr. GRAHAM. (Interrupting.) If so, I wish you would point it out.

Mr. DORR. I think the last two paragraphs have, as I take it. The second paragraph is not that one that relates to——

Mr. GRAHAM. And the ones that you think have, what is that relation, as you see it?

Mr. DORR. It prescribes the duty of the court in these cases.

Mr. GRAHAM. But in a class of cases of which the Olsson case is not one.

Mr. DORR. No, sir; in all of the cases where proceedings are instituted to revoke or cancel the naturalization certificate.

Mr. GRAHAM. Very well. It is in now.

Mr. DORR. The second paragraph which the witness read, applying to cases where the citizen has departed from this country, has no application, but all of the other provisions of the section have.

Mr. GRAHAM. That would be hardly worth stating for the record.

Q. Is there anything from the fifteenth to the twenty-third which in your judgment should go into the record, shedding some light on the Olsson matter?—A. Yes, sir; I think section 23.

Q. Well, up to 23 was my question.—A. No, sir.

Q. Section 23 provides a penalty, I believe?—A. Yes, sir.

Q. In case the certificate of naturalization has been wrongfully obtained?—A. Wrongfully obtained.

Q. You may read it into the record.—A. (Reading:)

SEC. 23. That any person who knowingly procures naturalization in violation of the provisions of this act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction, the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled to to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material facts required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Q. Now, Mr. Smith, if there are any other provisions in the act which in your judgment should go in the record as having some bearing on the Olsson case, you may point them out to me.—A. I regard the petition itself as very material, Mr. Chairman, because——

Q. (Interrupting.) In what section is it provided for or covered?—A. It follows the form of declaration of intention, following section 27. Section 27 prescribes that the following forms—that substantially the following forms—shall be used in the proceedings to which they relate. Then the form of the declaration is given, the form of the petition is given, and I regard the petition particularly as material in this matter.

Q. You might explain why you so regard it.—A. Because the petitioner swears to these words, "I am attached to the principles of the Constitution of the United States."

Q. Very well. Is there any other reason why you regard it as material?—A. No special reason.

Q. Very well. That covers the statute then, as you understand it. Are you personally acquainted with Leonard Olsson?—A. Only know Mr. Olsson by examining him in open court in connection with naturalization cases.

Q. That of course, was after he became a citizen himself?—A. Yes, sir.

Q. How long after he became a citizen was it that you met him or became acquainted with him?—A. If I remember, the records in his case, Mr. Olsson was naturalized in January, 1910, in the Superior Court of Pierce County, at Tacoma, Wash.

Q. Just a question there: I am not quite familiar with the titles of your various courts. The superior court——A. (Interrupting.) Is the State——

Q. (Continuing.) Is your ordinary nisi prius court of general jurisdiction?—A. Yes.

Mr. DORR. Of the State.

Mr. GRAHAM. Yes, sir; corresponding with the State circuit courts in some of the older States.

Mr. DORR. Yes.

Mr. HUGHES. In some of the States it is known as circuit and in some as district courts. In this and some other States it is known as superior court.

Mr. GRAHAM. In other words, it is your State nisi prius court of general jurisdiction?

Mr. HUGHES. Yes.

Mr. GRAHAM. Yes. Very well.

A. As stated, Mr. Olsson was naturalized in the Superior Court of Pierce County, at Tacoma, Wash., in January, 1910. I first saw Mr. Olsson in August following, when he appeared as a witness in a naturalization case.

Q. In what case, if you recall?—A. (After referring to paper.) In petition No. 651 in that court, of Camille Stoessle.

Q. C-a-m-i-l-l-e?—A. Yes, sir; S-t-o-e-s-s-l-e.

Q. Did anything occur on that occasion to arrest your attention——A. (Interrupting.) Yes, sir.

Q. (Continuing.) To Mr. Olsson?—A. Yes, sir.

Q. What was it?—A. My examination of Mr. Olsson as to the qualifications of this petitioner for citizenship.

Q. Well, you might tell what it was in the examination that arrested your attention to him.—A. The particular thing that called my attention to Mr. Olsson was that in answer to my question as to his own qualifications to act as a witness for an alien, whether or not he was attached to the principles of the Constitution of the United States.

Q. You followed a printed formula, did you, in asking the question?—A. No, sir; I never followed any printed formula, except in special cases.

Q. What was the question that you asked him?—A. I asked him in this case if he was attached to the principles of the Constitution of the United States.

Q. In other words, speaking literally, your question was, "Are you attached to the principles of the Constitution of the United States?"—A. Yes, sir.

Q. Well, go on.—A. To which he replied that he was not.

Q. Now, give his answer literally, if you can?—A. Well, that is my recollection of it.

Q. "I am not"—were those words used?—A. He first said, "I am not."

Q. Was anything further said by you to him or him to you——A. (Interrupting.) No; not——

Q. (Continuing.) In that connection?—A. Not on that point; no, sir.

Q. In pursuance of that answer, did you take any affirmative action?—A. No, sir.

Q. Well, that was all that occurred at that time, was it?—A. Well, that was one of the developments in that case. This petitioner was admitted to citizenship.

Q. I mean with reference to Olsson——A. (Interrupting.) Yes.

Q. (Continuing.) Was that all that occurred at that time?—A. No, it was not. No, I misunderstood you. I regarded Mr. Olsson as an incompetent witness, because of his answer, and I suggested to the court that he was not a competent witness to testify to another man's qualifications when he himself was not attached to the principles of the Constitution.

Q. Do you recall just what you said to the court?—A. No; only in substance, Mr. Graham. I can not give the exact wording, I am not——

Q. (Interrupting.) When did you say it to the court?—A. Following Mr. Olsson's examination.

Q. Then and there?—A. Yes, sir; yes, sir.

Q. Was this in the court?—A. Yes, sir.

Q. And in the presence of the judge?—A. Yes, sir.

Q. Who was the judge?—A. Judge Chapman—Judge W. O. Chapman.

Q. He was a State judge?—A. Yes, sir; in the superior court. He was hearing these naturalization cases on this particular day.

Q. Well, my question was, at that time and place did you say anything further to Olsson, or he to you, in that connection?—A. No; I don't recall. When Mr. Olsson answered my question in that way, I regarded Mr. Olsson as not being qualified to testify to another man's qualifications, and I made the point—called the court's attention to it.

Q. That is the important feature. It is not so much what you thought or regarded, as what you did.—A. Well, that is what I did.

Q. And you did and said something, which you told us?—A. Yes, sir.

Q. Very well. Now, after that did you have any further association or connection with Mr. Olsson?—A. Yes, sir.

Q. When and where?—A. The following month, September, 1910, Mr. Olsson appeared as a witness in petition for naturalization No. 682, in the same court, of Karl Olsen.

Q. O-l-e-s-e-n?—A. O-l-s-e-n. This is the petitioner's name. He appeared as a witness for Karl Olsen, petition No. 682. Knowing from my record that he had testified as a witness in August in the case of Victor Immanuel Eskelund, being naturalization petition No. 650——

Q. (Interrupting.) Stop there a moment. Saying that he had testified, "he" means who?—A. Mr. Leonard Olsson. Showing that he had appeared as a witness for this man Victor Immanuel Eskelund, and knowing from my records that Mr. Eskelund's petition had been denied by Judge Chapman, with prejudice, because the petitioner was not attached to the principles of the Constitution of the United States, and had stated—having personal knowledge as to Mr. Karl or Mr. Leonard Olsson's own statement in the case of Camille Stoessle—that he was not attached to the principles of the Constitution of the United States when he appeared as a witness in September for Mr. Karl Olsen, I purposely asked him the following question——

Q. You are using memoranda for reference now?—A. As to the names.

Q. What are those?—A. These are the cards, if Mr. Chairman please, on which the data that I have just referred to was put.

Q. Very well. Go on.—A. On September 12, 1910, Mr. Leonard Olsson appeared as a witness for Karl Olsen and, in view of what I have just stated, I purposely framed my question as follows——

Q. Go on.—A. (Continuing.) "Mr. Olsson, are you attached to the principles of the Constitution of the United States and are you well disposed to the good order and happiness of the same?"

Q. You are now reading from manuscript which you used at that time, are you?—A. I am testifying now from my personal knowledge in this case.

Mr. McCoy. That don't answer it. Did you have that paper in front of you when you asked the question?

A. Yes, sir; I did. I had this paper.

Mr. Graham. Was my question correct?

A. Yes, sir; I had this paper. I didn't understand you.

Mr. Graham (addressing the reporter). Repeat the question to him.

The Witness. Are you attached——

Mr. Graham (addressing the witness). No; wait a minute. [Addressing the reporter:] Read it.

The question was read by the reporter.

A. I am giving the data from the same card; yes, sir. I don't mean to say I am reading this question that I asked Mr. Olsson, but I am using the data—this card—to refresh my mind as to the number of the petition and who testified.

Mr. Graham. If you will listen carefully to the questions as I frame them, so that I think they can be clearly understood and specifically answered, we will save time by doing that.

A. Very well, sir.

Q. The thought I had in my mind was to get whether you were speaking from recollection or whether you were reading from a written paper that you used at the time you asked the question?—A. I am reading from this record here the number of the petition, the name of the applicant, and when the petition was filed, and when these occurrences took place.

Q. Very well. The question which you asked Olsson then was practically a quotation from the statute itself, wasn't it?—A. At this time; yes, sir.

Q. At that time.—A. In the Karl Olsen case, now, I used the words of the statute in this question.

Q. Now, stick to the case we were at.

Mr. Hughes. What is the case?

Mr. Dorr. It is the Karl Olsen case, Mr. Chairman.

Mr. Graham. The Karl Olsen case.

A. Yes.

Q. And Leonard Olsson was called as a witness, and the question you asked Leonard Olsson then, based on your former experience with him, was practically a quotation from the statute?—A. Yes, sir.

Q. That is, it was the language of the statute?—A. Yes, sir.

Q. Very well. Go on.

By Mr. McCoy:

Q. I would like to ask a question. Did you, in answering a question a minute ago, read from the paper which you have in your hand?—A. I use all these papers, Mr.——

Q. (Interrupting.) You testified, Mr. Smith, a minute ago that when you were examining Leonard Olsson in the Karl Olsen case, you asked him a certain question?—A. Yes, sir.

Q. Now, in answering Mr. Graham's question as to whether or not you read from that paper you haven't made it clear.—A. Well, I am not reading from this paper as to the question I asked Mr. Olsson. I remember the question, but I have not it recorded here.

By Mr. Higgins:

Q. That paper that you have in your hand, as I understand it, is an official record in your office?—A. In my office; yes, sir.

Q. That is the record which you keep in all naturalization cases?—A. Yes, sir.

Q. That is a part of the official record, and it is kept on file in all cases?—A. Yes, sir.

Q. Now, does that appear on your card which you hold in your hand, that you state is an official record kept in all cases—does that card differ in any respect, in what appears on it, from any other of the cards that you have on file?—A. Oh, no; there may be data on it that other petitions would not have——

Q. (Interrupting.) But is there anything unusual, peculiar, exceptional, or extraordinary about the memoranda or the details or the data which appear on that card? It is an official file in your office?—A. No, only that which pertains to this particular case.

Mr. McCoy. Let me see the card, please.

A. (Witness produces card.)

By Mr. Graham:

Q. Can you proceed now, Mr. Smith?—A. Yes, sir.

Q. Just begin where you left off in the narrative you were beginning.—A. In the Karl Olsen case September 12, 1910, I examined Mr. Leonard Olsson as a witness. In the light of my information about Mr. Leonard Olsson in the preceding cases, I asked him, in this Karl Olsen case, if he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, to which he answered that he was not. I then asked Mr. Olsson how long he had entertained those views. His reply, as I remember it, was "between to and three years." I then called his attention to the fact that he was naturalized in January of that year himself, and that at that time he was not attached to the principles of the Constitution of the United States, to which he assented as before, and that was the extent of my examination of Mr. Olsson, and that is the last time I examined him in any naturalization case.

Q. In that examination of Mr. Leonard Olsson, did you use the word "devotedly"——A. (Interrupting.) I did not.

Q. (Continuing.) As an adverb, to qualify the attachment?—A. I did not.

Q. Did you use any qualifying word?—A. I did not.

Q. Now give the committee, as well as you can, any particular reasons, if there are any, why you have a distinct recollection on that point?—A. Because of Mr. Olsson's testimony in preceding cases, my attention was directed to him as a witness, and I omitted, in examining him in the previous—asking him in the previous month how long he had entertained sentiments that were not in accord with the Constitution, so I determined to ask that question in the next case that came up which was——

Q. (Interrupting.) Ask what question in the next case?—A. How long he had not been attached to the principles of the Constitution.

Q. Yes.—A. To enable me to determine whether or not he had deceived the court when he became a citizen himself.

Q. But the thought I want particularly to direct your attention to is the word "devotedly," which, I believe, you know is not in the statute.—A. Not at all.

Q. And is there any way by which you can tell us why you recall that case and recall whether or not you used the word devotedly?—A. I will say, in the first place, I have never used that word, "devotedly," because it is not relevant; it has no materiality whatever; it is not in the statute, and in all of the cases that I have examined in open court, I have never used the word "devotedly," and it has been a matter that I don't understand how Mr. Olsson has gotten that word into his head, because I am very positive that I have never asked that question—asked a man if he was devotedly attached to the Constitution, because the law does not require it, and I do not see any reason for asking it and I have never asked it in any of my examinations.

Q. Is your answer based on habit—that is, on your recollection or custom of not using it, and from that do you infer that therefore you did not use it on that occasion?—A. It is based on a clear recollection that I did not use it, and, further——

Q. (Interrupting.) What called it to your attention in such a way as to give you a clear recollection that you did not use it?—A. I framed the question, I added, in addition: "Are you attached to the principles of the Constitution of the United States". and added, "and well disposed to the good order and happiness of the same," at this particular time, is one reason I recall the question.

Q. Had you theretofore had any discussion with anyone, or conversation with anyone, as to the use of the word "devotedly"?—A. No.

Q. Had it ever come up in any way prior to that time in your work?—A. No, sir.

Q. There was nothing, then, at that time to fix your mind on that word "devotedly"?—A. No, I have never——

Q. (Interrupting.) When did you first think of it in this connection, or when was it called to your attention first in this connection?—A. Why, I think the first that I knew that the word "devotedly" got into this case was when the cancellation proceedings were heard before Judge Hanford, when Mr. Olsson claimed that I had asked him if he was devotedly attached. Up to that time I don't recall ever—anything in connection with the word "devotedly" at all.

Q. Well, how much time had, if any, elapsed, from the time when Olsson says you did use the word "devotedly" until the time when the hearing was before Judge Hanford in which it was first called to your attention?—A. Why, the hearing was in September, 1910, in which I believe Mr. Olsson says I asked him if he was devotedly attached.

Q. September 10, was it?—A. September 12, is my recollection. In the Karl Olsen case, as I understand, Mr. Olsson claims we asked the question if he was devotedly attached. And he makes that in his testimony, as I recall, in cancellation proceedings here in May of this year.

Q. Do you remember whether there were any newspaper men present at the hearing in Tacoma on September 12?—A. I don't, sir.

Q. Did you have any conversation with any of them at the time?—A. On the 12th?

Q. Yes.—A. You mean when Mr. Olsson testified in——

Q. (Interrupting.) As you have stated, as a witness in the other case?—A. Are you referring to the cancellation proceedings, Mr. Graham?

Q. No, I am referring to September 12, 1910.—A. I think there was a newspaper man there. I don't recall his name.

Q. My attention is called to a clipping of the Tacoma Ledger of September 13, 1910, from which I will read to you:

While testifying in favor of an applicant for naturalization papers yesterday afternoon in Judge C. M. Easterday's department of the superior court, Leonard Olsson, a naturalized citizen of the United States, said he was not devotedly attached to the principles of the Constitution of the United States and was not when he was admitted to citizenship.

A. If that date is the correct date that was.

Q. The day after the hearing, wasn't it?—A. Yes.

Q. The next issue of the paper, I presume?—A. Yes.

Mr. McCoy. Just a minute. The stenographer did not get your answer, I presume.

A. Yes, that is correct, I presume.

Mr. Graham. Can you in any way account for the use of the word "devotedly" in that newspaper article——

A. (Interrupting.) Only——

Q. (Continuing). At that time?—A. In this way only—that Mr. Olsson may have used the word "devotedly" in answer to my questions.

Q. Well, he may have, but——

A. (Interrupting.) I don't recall that he did, Mr. Chairman, I don't recall that he used the word "devotedly." I recall that he said that he did not believe in the Constitution of the United States.

Q. Any of us could guess at what he may have said, but that would not be testimony.—A. I understand that, and I don't remember him using the word "devotedly," Mr. Chairman.

Mr. McCoy. You won't say that he did not?

A. Oh, no. Oh, no; I won't say that he did not. I say that I did not ask him if he was devotedly attached to the Constitution.

Mr. Graham. Were you present at the proceedings to revoke his naturalization papers?

A. Yes, sir.

Q. What part had you in inaugurating that proceeding?—A. Under section 15 of the act I made the necessary affidavit, reciting the facts as to Mr. Olsson's testimony, and referred my affidavit, with a letter of transmittal, to the United States attorney, for action under that section. At the same time——

Q. (Interrupting.) Who was the United States attorney?—A. Mr. Elmer E. Todd.

Q. He was the United States district attorney for this district?—A. Yes, sir.

Q. Go on, Mr. Smith.

A. I transmitted my affidavit, with the usual letter in such cases, by authority of the Secretary of Commerce and Labor, and at the same time sent a copy of my affidavit and a copy of my letter to Mr. Todd, to my immediate official superior, the chief of the Division of Naturalization, Department of Commerce and Labor, Washington, D. C.

Q. You may look at that paper and see if it is a correct copy of a letter you transmitted to your chief [handing paper to witness].—A. (After examining.) This is a report, a copy of a letter that I addressed to my official superior, giving the result of the cancellation proceedings.

Mr. GRAHAM. I might state gentlemen, that this is a copy of a letter obtained from the Department of Commerce and Labor in response to a request made by Mr. Dorr on me. I think I gave it to you and you have copies of it.

Mr. HUGHES. Yes, I think so; but, Mr. Chairman, that is not the letter—not the report that the witness speaks of.

The WITNESS. No.

Mr. HUGHES. That is a letter written by the witness, according to the purport of it on its face, as to the hearing. The report he made was before the commencement of the proceedings by the district attorney, and that report is not apparently present.

Mr. GRAHAM. Have you that report, or a copy of it?

A. Yes, sir; I have the report right here, Mr. Chairman.

Q. You mean when the proceedings were instituted—that is what you refer to?—A. Yes; the one of which you testified awhile ago.

Mr. MCCOY. I understand Mr. Hughes to say that there was a report made before these proceedings were instituted.

Mr. HUGHES. I understood the witness to say, Mr. McCoy, that he presented his affidavit to the district attorney and made report of his action to his superior officer.

The WITNESS. That is correct.

Mr. GRAHAM. That is what he said.

Mr. HUGHES. Now, I understood it was that report that you were calling for and that the chairman might be under a misapprehension as to whether the letter he had was that report.

Mr. GRAHAM. It will straighten out, because we will get both in the record.

The WITNESS. I did think so, that you were referring to the time I made the——

Mr. GRAHAM (interrupting). Very well. The report that you had in mind is now in your hand, is it?

A. Yes, sir.

Q. Very well, let us see it, if you please. [Witness produces paper.]

Mr. GRAHAM. Mr. Smith, I call your attention to a letter dated September 21, 1910, signed by you as chief naturalization examiner and addressed to Chief of Division of Naturalization at Washington. That is a correct——

A. (Interrupting.) Yes; that is the letter of transmittal.

Mr. GRAHAM (continuing). Copy of the letter? Also a letter of the same date written and signed by you and addressed to the Hon. Elmer E. Todd, United States attorney at Seattle, Wash.; also an affidavit signed and sworn to by you before R. M. Hopkins, clerk of the United States District Court for the Western District of Washington. Those letters, being fastened together at this time, may go in as Exhibit —.

The WITNESS. That followed the usual routine in such matters—those letters.

Mr. GRAHAM. You have stated that those are correct copies of the letters and of the affidavits?

A. Of the originals.

Q. You may read them.

Witness here read the letters above referred to.

The WITNESS. Do you want the affidavit read?

Mr. GRAHAM. The affidavit is already in the record as a part of the proceedings in the Olsson case. It appears at page 8 of the pamphlet

which was handed us. It is therefore unnecessary to read it, but, in order to round out the record at this point, it may go in the record again in connection with the letters.

Q. In that same connection you wrote to the Chief of the Division of Naturalization at Washington on May 13, 1912, concerning these same matters. I hand you a copy of that letter, furnished by the department, and ask you to look at it and see if it is a correct copy. [Handing paper to witness.]—A. I have not my copy here, but I presume it is. As near as I can tell from reading it, I think it is correct. I have a copy of this letter in my own files.

Mr. GRAHAM. As stated, I received it from the department to comply with a call made by Mr. Dorr on behalf of Judge Hanford. It is an official file and it may go in as Exhibit 10, or whatever it is, the serial number.

Paper referred to was marked "Exhibit 10."

Mr. GRAHAM. Gentlemen, if you have seen it, it is not necessary to read it, is it?

Mr. HUGHES. No.

Mr. GRAHAM. You were present, Mr. Smith, in court, at the hearing for the purpose of revoking his naturalization certificate?

A. Yes, sir.

Q. Were you there during the entire proceeding?—A. Yes, sir.

Q. That is, during the taking of the testimony?—A. Yes, sir.

Q. Did you hear all that was testified to at that time?—A. I did, Mr. Chairman, but my hearing is not acute and I can't say that I caught everything minutely in the testimony; I only know in a general way.

Q. What is the extent of your defect of hearing?—A. Well, I have one ear that is quite deaf and if I have my audience on the left I can hear fairly well by paying particular attention.

Q. How old is that defect?—A. Oh, it has been in existence 30 years, I presume, all of that; since I was a lad.

Q. Does it change, grow better, or worse with age?—A. Well, I have not noticed any perceptible difference in it in the last 15 or 20 years. I have one defective ear.

Q. And what about the other one?—A. Well, it is fairly good. As I say, when I—it depends a great deal on how distinctly a person talks, depends a great deal on how I am located with reference to the party speaking; but my hearing is not acute.

Q. Do you remember how you were located at that time with reference to the witness chair?—A. Sitting in front part of the time, and part of the time on the side. I remember I changed my seat during that hearing and went over and sat in the jury box.

Q. How far would that put you from where the witness sat?—A. Well, within 4 or 5 feet—no; not that close; possibly 8 or 10 feet, I should judge.

Q. When you were not sitting in the witness box, how far away from the witness were you?—A. I was sitting near the United States attorney and I should judge as far as from here to Judge Winsor, as I recall the distance in that court room there.

Q. That would be about 25 or 30 feet—30 feet?—A. About the end of that table, as I recollect.

Q. Well, putting that in feet, it would be about how many feet?—A. Twenty feet perhaps, 15 or 20.

Q. Did you have any duties to perform there in the way of assisting the district attorney?—A. (Interrupting.) No, sir.

Q. (Continuing.) Coaching him?—A. No, sir; I did not.

Q. Did you have any occasion to leave the court room during the hearing?—A. No, sir.

Q. Did you have anything to do there except to give your own testimony?—A. That was all.

Q. When you were sitting by Mr. McLaren—he was the district attorney, was he not?—A. Yes; he had charge of the case.

Q. Did you as a matter of fact suggest things to him?—A. I believe I did, I think I—I recall now of calling—I had some literature there that I showed Mr. McLaren.

Q. That had a bearing upon the hearing?—A. Yes.

Q. Now, Mr. Smith, go on in your own way and tell us about the testimony given on that occasion.—A. I testified on behalf of the Government, as I have stated here to-day. Mr. Enslow testified practically as he has stated, as I remember.

Q. It would be more satisfactory, I think, if you would state what he testified.—A. I can't or I won't undertake to use Mr. Enslow's language. I can not do that, Mr. Chairman, I can only state——

Q. (Interrupting.) You may give the substance of it; give it the best you can.—A. The substance of it was in regard——

Mr. McCoy. (Interrupting.) Mr. Chairman, just a minute. [To the witness:] We don't want you to testify in the language of Mr. Enslow, Mr. Smith; testify to your own recollection.

A. Yes, sir.

Mr. McCoy. It makes no difference what Mr. Enslow's recollection was. It is what you recollect.

Mr. Graham. Well, with this qualification: I think my colleague, Mr. McCoy, refers to Enslow's testimony yesterday. With that you have nothing to do now.

A. No.

Q. But if you can give his testimony as he gave it then, do so.

Mr. McCoy. Oh, surely.

Mr. Graham. Forget what he said yesterday and go back and give us all that he said on the former occasion.

A. My recollection about Mr. Enslow's testimony at the cancelation proceedings was that he told his occupation and his connection with the case as an examiner for the naturalization service. Mr. Enslow stated in his testimony as to his former position as naturalization examiner, and, as such, having investigated Mr. ——the petitions on which Mr. Olsson was a witness, and testified with particular reference to conversations, as I recall, that he had with Mr. Olsson in regard to his peculiar belief, and he testified that Mr. Olsson had extreme views about government.

Q. Now, that is not very satisfactory. Can't you give us in substance this way: "The district attorney asked him so and so; Olsson answered so and so?"—A. No, sir; I can not, Mr. Chairman.

Q. You see you are not touching the testimony at all, except merely referring to the subject matter about which they testified. Give us the substance of what he said, if you can not do any better.—A. I remember that he testified that Mr. Olsson told him that he was not attached to the principles of the Constitution, and in detail explained his peculiar beliefs, and testified that Olsson said that his

beliefs would eventually do away with the Government entirely; and it was along that line—the substance of what he testified to.

Q. Did he testify as to what would be substituted for the Government as now constituted?—A. He said he went into those matters with Mr. Olsson with great particularity while he was examining these petitions on which Mr. Olsson testified, and he became satisfied that Olsson had dangerous views in regard to our Government, gleaned from what he stated to him in making these investigations.

Q. Now, give us Olsson's testimony.—A. Mr. Olsson has a peculiar lisp in his talking and I remember—it was while he was testifying that I changed my seat down there, trying to get—hear just what he did say. I remember him admitting that when I examined him in these other cases that he said that he was not devotedly attached to——

Q. (Interrupting.) Well, leave the other cases out. This is particularly with reference to the hearing for canceling his certificate.—A. He admitted my testimony; I remember that; that is, he admitted that I asked him the questions that we have been speaking of here.

Q. It would be much more satisfactory if you could tell us what he said.—A. I remember him saying in answer to Judge Hanford's question that he was—no, what he meant, that he didn't—by devotedly, that he didn't worship the Constitution as an idolator would, or was not superstitiously attached to the Constitution; I remember that, and that his views of the Government were such that it would eventually do away with all political government. I remember him saying, "Oh, let them keep the money, but the other property will be into the hands of the general public." I recall him using that language.

Q. Did you hear him distinguish between political government and what he called industrial government?—A. Only that he said in answer to Judge Hanford's question with reference to the Constitution guaranteeing property rights—he said he understood that, but notwithstanding, all property would go, under his idea of government—his propaganda—would become common and it would do away with political government and be no use. I remember him saying that, and he said, "Oh, let them keep the money." I recall those words.

Q. The money they might retain?—A. Might retain, but the rest, all other property would go, because common and political government would be abolished and there would be no use for it.

Q. Did you understand, from what he said, that the change he stood for would mean that rather a change or shifting in the ownership of the property than the abolition of ownership?—A. He said to me that it would be abolition of it.

Q. The abolition of the private ownership?—A. Yes.

Q. But under his theory, as you tell it, would there not remain a public ownership still?—A. I don't know what he means, Mr. Chairman; I don't know what he means; I have not been able to find out what it means. I don't——

Q (interrupting.) Let me get your own view on that point. Does not the word "property" necessarily imply ownership in somebody?—A. Yes.

Q. (Continuing.) Or bodies?—A. Yes.

Q. Could you conceive of property without an owner or owners?—A. Well, now, I don't understand I am being examined as to socialism here, Mr. Chairman.

Mr. McCoy. That is not socialism, Mr. Smith; that is a maxim of the common law that there can't be any property without somebody owning it, and that is what the derivation of the word means.

A. If you will permit me——

Mr. Graham. Go on.

A. Mr. Chairman, I would like to say right here, because—I would like to say that so far as socialism is concerned or religion, or economic questions, that that matter has never been brought out or those questions been asked with my permission or by me in connection with any naturalization proceedings.

Mr. McCoy. No, you don't claim to be a profound student of any of those.

A. No, sir, I don't; I don't claim to know anything about it much; I have never attempted to find out. My business is in this work, Mr. Chairman, as I understand it, to find out if an applicant is an honest man; whether he has resided in the country a sufficient length of time to be made a citizen and has complied with the laws; but to assist the court as to whether a man is a socialist, Democrat or Republican, or a Prohibitionist, or whatever his views may be, have never been inquired into by my direction or by myself or any of my examiners. The question of socialism has nothing to do with a man's naturalization, and there have only been three cases, to my knowledge, in the four years—over four years that this service has been in existence in this district—where anything has occurred with reference to socialism, and the question was brought up by either the judge or the party himself.

Q. What was it that in your mind moved you to make the complaint and to institute the proceedings to cancel his certificate of citizenship?—A. I will tell you in a very few words. My knowledge of Mr. Olsson testifying in a petition where the petitioner himself said that he was not attached to the principles of the Constitution, was denied citizenship on that ground; my knowledge, gained from examining Mr. Olsson in open court, the next petition, wherein Mr. Olsson himself stated that he was not attached to the principles of the Constitution of the United States; and my personal knowledge of his testifying in open court, in the Karl Olsen case, to the same thing, led me to believe and I yet believe that when he filed his own application for citizenship he did not tell the truth when he said—when he took the oath of allegiance and swore in his application that he was attached to the principles of the Constitution of the United States. That is all there was in that case so far as——

Q. (Interrupting.) Of course you can distinguish very clearly between your convictions and the testimony upon which they rest. Now, you will readily concede that we could not—the committee or Congress could not act on your conclusions—but if there are any other facts or statements from which you drew your conclusions that you have not told us we want you to put those facts in the record that others may draw their own conclusions from these facts.—A. I assure the committee that I do not want to keep back anything and will not knowingly keep back anything in regard to this matter.

Q. Is there anything further in the way of facts which you can think of that you can say now?—A. No, sir; I don't think of anything. When a man says in court, on two occasions, under oath, that he is not attached to the principles of the Constitution of the United States, I think I, as a public officer, should take cognizance of it, and did so, and believe that he was not sincere and honest in his own naturalization.

Q. Did you, then, or did anyone, so far as you know, ask him to explain wherein or how or why he was not attached to the principles of the Constitution?—A. No. To be frank with you, I did not regard it as necessary.

Q. Do you know any man anywhere who could read and think who would not modify the Constitution in some way if he could?—A. Well, I can only speak for myself. I would not. I am satisfied with it.

Q. Would you limit the number of terms that a President might serve if you had your way?—A. I have not studied that—given it any special consideration, Mr. Chairman.

Q. Have you thought about the matter at all as to how the Constitution could be improved?—A. Why, I can't say that I have, with a view to improvement.

Q. Are you in favor of the fourteenth amendment?—A. Yes.

Q. That was a change in the Constitution?—A. Yes.

Q. There were other changes. The fourteenth amendment implies 13 before it.—A. The Constitution has been changed a number of times. I admit that it can be changed, Mr. Chairman.

Q. When he answered that he was not attached to the principles of the Constitution, why didn't you inquire of him what particular thing in it he was not attached to?—A. I did not regard it as necessary, Mr. Chairman. He had previously stated that he was not attached, and it occurred to me that it was a matter that should be taken up. He swore that he was attached to it when he was naturalized, and then he, not a great while afterwards, makes a contrary statement. One or the other is not true. It occurs to me that a man who is applying for the privilege of citizenship ought to at least be in the country long enough to understand something about our form of government and be able to take an honest oath that he believes in our institutions and our form of government and the Constitution; and because of those contradictory statements it did not seem to me—they being absolutely inconsistent—I based my objection on that.

Q. Don't you think, from his answers, that Olsson shows himself to be a well-informed and a highly intelligent and a thoughtful man?—A. I do; yes. I think Mr. Olsson is intelligent.

Q. And that he has given some attention to the provisions of the Constitution?—A. He had. I had no personal contact with Mr. Olsson except on these two occasions, as I told you, in court.

Q. When you asked that question and he made the answer that he did, what did you have in your mind as the principles of the Constitution; what did that phrase mean to you?—A. Well, attachment to the principles of the Constitution.

Q. For instance?—A. For instance, three coordinate, independent branches of government. I think if a man don't—if a man believes in abolishing one of them, he can't say he believes in the principles of the Constitution.

Q. But you did not ask him on that point, did you, specifically?—A. No; I did not go into it, as I stated, Mr. Chairman. I didn't go into that.

Q. So far as you know or tell us now, your mind and his mind did not meet as to what the principles of the Constitution meant?—A. No, sir; that is true; I did not go into those details, as I stated. I did not go any further. I asked him how long he had entertained those views and found out that it antedated his own naturalization, as embodied in my affidavit.

Q. When you say his own views, what views?—A. Well, his statement that he did not believe in the principles of the Constitution; was not attached to the principles.

Q. Well, let me ask you on that question: If every citizen who was not satisfied with the Constitution as it is were to be disfranchised, how many voters do you think would be left?—A. Sure you, Mr. Chairman, don't want to ask me a question that I can't answer, that would be entirely guesswork. I would have to say something about how I feel about that, Mr. Chairman. I think that a native-born citizen perhaps can say a good many things about the Government—that is my personal view—but that an alien, it would not seem to me it would be becoming in an alien. It seems to me that a man who comes to this country and seeks a home, certainly where everything is extended to him, giving him every opportunity, that he certainly ought to be able to and ought to find out whether he is attached to our form of government before he comes into court and asks that privilege.

Q. You would make a distinction then, between the extent of the belief in the Constitution and its principles between a native-born citizen and a naturalized citizen, would you?—A. No, I can't say that, but I think that it seems to me that he does not stand; it does not appear to me that an alien who comes to the country within—as in this case, for instance—within three years after Mr. Olsson landed in the United States he had very marked or positive views about our form of government, I believe he stated that he belonged to an organization here in 1905, and, as I remember, he arrived in the United States in 1900—a few years after his coming here.

Q. Have not the great political parties, all of them, been inserting in their platforms propositions in favor of changes in the Constitution?—A. Yes, sir.

Q. Some of them declaring that it ought to provide for the enactment of the income-tax law, for the election of United States Senators by the people, for a single term for the President, or not more than two terms, and a number of other things of that sort. Now, would not a foreigner who came here to live have the same right a native-born citizen would have to advocate those things?

Mr. HIGGINS. Mr. Chairman, does it occur to you that these questions from this witness are material in this inquiry, inasmuch as they do not appear to have been raised before the court that had the determination of this question? It seems to me that they are academic in their character and might be interminable in their length.

Mr. GRAHAM. They come near answering the latter description already. My purpose was to get at the witness's state of mind, and I think if we can get his state of mind clearly in that regard, that it

would tend to show whether or not there was any element of unconscious prejudice in him; but I think my colleague's criticism is well founded and I shall abandon the examination.

The WITNESS. Well, Mr. Chairman, will you allow me to say something right here?

Mr. GRAHAM. Yes.

A. I want to say that the instructions that I have received from my official superiors, in outlining the scope and character of this work, is to confine it to the requirements of the law, and we have conscientiously endeavored to do that, for the purpose and sole purpose of assisting the courts in preventing the naturalization of unworthy applicants, rendering assistance as much as endeavoring to keep out those who do not come within the law.

By Mr. HIGGINS:

Q. Well, in this particular case, as I understand it, you were acting under the instructions of your immediate superior?—A. Yes, sir.

Q. You were carrying out directions which he gave you?—A. Yes, sir.

Q. And that you did not act upon your own initiative, except upon the authority under which you were directed?—A. Yes, sir; in the regular way in every particular in all the things.

Q. But it was from orders from Washington?—A. What?

Q. It was by orders from Washington, wasn't it?—A. The general order that I have, when I find that a man has been illegally naturalized, is to bring an action to cancel his papers, and in this case, as I have stated, I believed that this man had been illegally naturalized, and in pursuance——

Q. Did you take this matter of revocation of naturalization papers of Mr. Olsson up on your own initiative?—A. Yes, sir.

Q. You did not then receive any such direction from your superior?—A. Only that I had general instructions as to how to treat each case as it developed. As soon as I made this——

Q. (Interrupting). Were you acting then under some general order?—A. Yes, sir.

Q. Which is not included in the naturalization law?—A. General instructions from—you noted, in my letter of transmittal to Mr. Todd, I say by direction of the Secretary of Commerce and Labor.

Q. Have you offered to the committee that one general order under which you were acting?—A. I have not been asked for it.

Q. Can you find it?—A. I think I could find it in my files.

Q. Will you produce it to the committee?—A. I will be glad to produce it.

Mr. GRAHAM. Let it go in at this point when produced.

(Paper referred to was later produced by the witness and marked Exhibit —.)

The WITNESS. When it develops that a party has received his certificate illegally even in the investigation of a naturalization case, proceedings can be brought in the same court upon the request of the petitioner. In no instance have the proceedings ever been brought in the State court except where the petitioner requested—consented to it.

Mr. HIGGINS. To whom do you report?

A. I report to the chief of the Division of Naturalization.

Q. How frequently?—A. Oh, every day.

Q. And these cards which you have offered here, are they files——A. (Interrupting.) They are simply my office files. They do not belong in Washington at all.

Q. Do you send a duplicate of it to Washington?—Not of files; no, sir.

Q. Do you send a report of each individual case?—A. Send the report; no, not of each individual case. A report of those that are—I report all petitions admitted at a hearing, and then any denials I report those individually, by number and name.

Q. With the reason for the denial?—A. Yes, sir. This is just for use in the office in making the examination.

Q. In initiating proceedings for a revocation, you are governed by this general order that you have referred to?—A. Yes, sir.

Q. Which is formulated by the Secretary of the Department of Commerce and Labor, under the authority of the act of 1906?—A. Yes, sir.

Q. Giving him power to make rules and regulations?—A. Yes, sir.

Q. To carry out the objects and purposes of the act?—A. Yes, sir. If in the course of my examination I find that a party holds a certificate illegally procured, or fraudulently, why, it is my duty to take cognizance of it.

Q. You do take cognizance of it?—A. Yes, and I do take cognizance of it. There are many instances of illegal naturalization where there is no element of fraud, under the old law, and some, a few, under the present act, when the alien or even the court officially made a mistake, and no fraud being involved, the matter has been brought to the court taking that action, and upon the proper request of the party holding the certificate, setting forth the error and requesting a revocation, the certificate has been canceled, but——

Q. (Interrupting.) Now, in this particular case that we have under consideration, the Leonard Olsson case——A. Yes, sir.

Q. (Continuing.) Did you talk with Mr. Olsson before the petition for revocation was brought?—A. I did not.

Q. Did you talk with him between the time he was a witness for Karl Olsen and the time when the petition was brought for revocation of his own certificate?—A. I did not.

Q. Nor since?—A. No, sir.

Q. Had you any acquaintance with him except as you have indicated, as an advocate and a witness?—A. No, sir.

Q. Or made no inquiry from others about him?—A. Well, the examiners had told me about Mr. Olsson distributing these literature on the street corners.

Q. You mean the witness of yesterday?—A. Yes.

Q. I don't just recall his name?—A. Mr. Enslow.

Q. Enslow?—A. Yes, and also another examiner who is not here with me now, Mr. Graham, who was then in this service and who was with Mr. Enslow in making the preliminary examination. That is all.

Q. Where is Mr. Graham now?—A. Mr. Graham is at Denver, Colo.

Q. What is his full name?—A. William S. Graham.

Q. Is he in the Government service?—A. Yes, sir; he has charge of the naturalization district there.

Q. You say Mr. Graham and Mr. Enslow reported to you the literature which Mr. Olsson was circulating?—A. Mr. Enslow re-

ported to me that, and Mr. Graham was with Mr. Enslow conducting the investigations when these cases first came up, and heard Mr. Enslow and Mr. Olsson discussing these questions.

Q. Did they turn over to you the literature or copies of the circulars which they said Mr. Olsson was exhibiting?—A. I believe that they did. I don't know what became of it.

Q. What was the character of it?—A. Why, it is literature that you can see distributed on the streets out here——

Q. (Interrupting.) I haven't been out here and I have not seen it distributed. I would like to know just what it is.—A. I think some of it is—on socialistic doctrines. I didn't go through it carefully and read it, and I don't know where it is now; but they had—this is what they found Mr. — reported to me that Mr. Olsson was doing down there.

Q. Did that have on your mind some effect as to the qualifications of Mr. Olsson for citizenship?—A. Well, perhaps it did; I can't say that it did. My idea was—the motive in this matter or what prompted me to bring this matter was that Mr. Olsson did not testify truthfully in his own naturalization as to his attachment to the Constitution.

Q. Now, do you, as an examiner, put that question to all aliens desiring admission?—A. In court?

Q. Yes.—A. That is attachment to the Constitution?

Q. Yes.—A. Yes, sir.

Q. Suppose—it may not be at all material to this inquiry, but for my own personal information—suppose that the alien qualifies somewhat, you then, as a matter, of course, in practice, examine him further as to his qualifications as to the degree of attachment?—A. No, no.

Q. That is, you submit, as you did to Mr. Olsson, the broad, general, comprehensive inquiry?—A. Yes, sir.

Q. And if there is a qualified affirmation, you do not go into the qualifications?—A. That is the court—let the court determine that.

Q. The judge does that?—A. Yes; the judge. As a matter of fact——

Q. (Interrupting.) Did the judge do it in this case?—A. My recollection is that he did not.

Q. That he did not?—A. No.

Q. What questions did the judge ask him?—A. I don't remember now. This case was—there was another witness in it that was disqualified on account of lack of knowledge; that is, hadn't known the petitioner a sufficient length of time, and it was jurisdictional and the petition was dismissed. I don't——

Q. (Interrupting.) Did Judge Hanford ask him any questions?—A. Are you speaking of the——

Q. (Interrupting.) I am speaking now of the Leonard Olsson case.—A. Cancellation proceedings?

Q. Yes.—A. Oh, Judge Hanford——

Mr. HUGHES (interrupting). I think, in fairness, for the record, it ought to be made to appear that the witness's last answers were given with reference to another case and not to the case before Judge Hanford.

The WITNESS. Yes; I was.

Mr. HUGHES. He was understanding it to relate to one of the proceedings in the superior court. That was evident.

The WITNESS. Yes; that is what I meant.

Mr. HIGGINS. I evidently did not understand the witness or he did not understand me, or both.

Mr. PRESTON. He is thinking, if I may be permitted, of Judge Easterday in the Karl Olsen case.

The WITNESS. Judge Easterday is the judge who heard the petition in which Mr. Leonard Olsson was a witness, and I thought you had reference to that, Mr. Higgins.

Mr. HIGGINS. The chairman of the committee had brought you up to the point, as I recall it, when you were endeavoring to give this committee your own idea of what was said in Judge Hanford's court at the time of the revocation of Mr. Olsson's certificate.

A. Yes, sir.

Q. Now, I am asking you what questions, if any, Judge Hanford asked after you had interrogated Mr. Olsson as to his attachment to the Constitution.—A. Now, right there, there is where I did not understand you. I did not interrogate Mr. Olsson at all in that. The United States attorney conducted the examination.

Q. Very well.—A. So I did not ask him any questions.

Q. Well, that is really not my question. I want to know what Judge Hanford asked.—A. I remember Judge Hanford calling his attention to that section of the Constitution with reference to depriving people of their property without due process of law and asking if he understood that, and he said he did. I remember Judge Hanford asking him that question specifically.

Q. What else, what further question, Mr. Smith, did you hear the court ask?—A. As I recall, the court asked him to explain his propaganda—I think that word was used—and I remember the court asking him——

Q. (Interrupting.) What explanation, if any, did the witness make? A. Well, he went on then. I can only say in general terms as I recall what he said, that his scheme was that the property would become—all producing property should go into the hands of the people and that a political government would be abolished, under his ideas. In brief, that is what it was. I won't pretend, Mr. Higgins, to repeat these words, because, as I say, I do not recall just the words he used, only in a general way—the substance of them.

Q. I want you to relate, as near as you can, your recollection of the questions which Judge Hanford asked in that proceeding, and of the replies to those questions, your own recollection of it, having been in court at the time the matter was heard.—A. I recall Judge Hanford asking him, "Do you understand that clause of the Constitution with reference to that property can not be taken from anybody without due process of law, under the Constitution?" And Mr. Olsson replied that he did; and then I think the judge asked him how he reconciled that to his propaganda, and I remember him saying, "Oh, let them keep the money, but all other property will become a common ownership, and that will abolish the present political form of government and there will be no necessity for it." That is as near as I can remember what he said in reply to that.

Q. Have you stated, now, all that you can remember as to the questions asked by Judge Hanford and the replies made by Mr.

Olsson at that time?—A. I think I have, Mr. Higgins. I would be glad to reproduce it if I could.

By Mr. GRAHAM:

Q. Just a question or two before my associate begins asking. Mr. Smith, in his answer that he was not attached to the principles of the Constitution, did you understand that he meant he would, if he could, abolish this Government by any means within his power, or only by peaceable means?—A. I don't know what he meant, Mr. Chairman.

Q. Well, what was the thought in your mind?—A. That he did not—did not have an attachment for our form of government.

Q. But did your mind go further than that and consider violent changes by a revolution or by force?—A. Oh, I can't——

Q. (Interrupting.) Or by the taking of the lives of those in authority, or anything of that sort?—A. I am satisfied—it never occurred to me that Mr. Olsson believed in unlawfully assaulting or killing or violence. I am satisfied——

Q. (Interrupting.) You never thought that he could under that provision of the law?—A. No; it did not occur to me at the time, and it never has occurred to me since, that Mr. Olsson believes in killing.

Q. Or in violent or forcible revolutions?—A. No; I can't say that I believe that the man believes in violence, but he don't believe in the form of government, in my judgment, that we have, and he won't hesitate to abolish it, in my judgment. I think the man is honest about it.

Q. That is, if his party had the majority of the votes?—A. Well, I don't know how——

Q. (Interrupting.) Is that the way you understood it?—A. I don't know how. I don't know what he means, Mr. Chairman. I am satisfied he don't believe in our institutions.

Q. And you have told us all the facts upon which your belief is based?—A. Yes; I have told you all I can.

Q. Did you have any conversation with Judge Hanford about the matter at any time except when the hearing was on there in court?—A. No. I have not conversed with Judge Hanford in connection with the matter.

By Mr. HUGHES. I don't get your answer, Mr. Smith.

A. No, sir.

By Mr. McCOY:

Q. Mr. Smith, I call your attention to this card, which is headed "Court No. 120, petition No. 682," which appears to be a record in the case of Karl Olsen. I wish you would take that card and explain how it was made up, who made it up, whose handwriting is on it, according the the stages it went through from the start to the finish [handing card to the witness].—A. I recognize the handwriting of Mr. Enslow, as is the custom. This is made from the petition book on file in the clerk's office.

Q. Now, you are referring to the side of the card which has on it "Court No. 120"?—A. Yes, sir.

Q. "Petition No. 682"?—A. Yes, sir.

Q. When it is taken out for use, it is a form with questions printed on it in typewriter type?—A. Yes, yes.

Q. And blanks are left for the report of the answer of the question that is asked?—A. No; these are not questions here, Mr. McCoy; This is what the petitions contain. These are not questions. The petition itself shows the court number, number of petition; the petitions are all numbered.

Q. The person in your office who has the duty to perform checks the petition——A. (Interrupting.) Gets this data from it.

Q. And from the petition he fills in the memoranda that appear there after the typewritten part?—A. Yes; from the petition.

Q. From the petition?—A. Yes, sir.

Q. And those memoranda in this case are filled in in Mr. Enslow's handwriting; is that right?—A. Yes, sir.

Q. Is there anything on that side of the card that is not in his handwriting?—A. I don't recognize any.

Q. Except the printing?—A. Yes, sir.

Q. Well, then, turn over to the other side of the card. Now, at the top on the reverse side, the side headed "Examiner's report," is some writing in black ink—whose handwriting is that?—A. Mr. Enslow's.

Q. And it is signed with Mr. Enslow's name, isn't it?—A. Yes, sir.

Q. Then, below that there is some writing in red ink?—A. Yes.

Q. And handwriting?—A. Yes, sir.

Q. And whose handwriting is that?—A. Examiner Graham.

Q. At the bottom of the card the word "Action" is printed?—A. Yes, sir.

Q. That is on this reverse side with the date September 12, 1910?—A. Yes, sir.

Q. And a memorandum is below that?—A. Yes.

Q. Whose handwriting is that in?—A. Examiner Graham's.

Q. Is this the same handwriting as that?—A. Yes, sir; the same one. I recognize it as such. I tried to explain why that was on there.

Q. Just one moment.—A. Yes, sir; I am pretty sure that that is the same handwriting, because Mr. Graham was there with me.

Q. Well, I don't know that it makes much difference; I should say that you are mistaken, though, on comparing the two. Just take a good look at those two and see [handing papers to witness].—A. I am satisfied that Mr. Graham wrote both.

Q. All right. Had your attention been called to this Karl Olsen case before this card which we have been talking about was made out?—A. No, sir.

Q. When did you first see this card?—A. Well, I could not answer that question.

Q. I don't mean that you shall give me the date on which you first saw it, but when in the course of this Olsson proceeding did you first see it?

Mr. HUGHES. You mean this Karl Olsen proceeding?

Mr. MCCOY. Yes; Karl Olsen.

A. Why, some time before the hearing, September 12; but I am in and out, and those were prepared for the hearing on the 12th. I don't recall—I don't know how long before that it was that the examinations were made, but——

Q. (Interrupting.) You remember whether or not you had any conference with either Mr. Enslow or Mr. Graham in regard to this card

and its contents before you went into court in the Karl Olsen case?—A. I don't recall now, I don't recall now, but on seeing that indorsement there, why, I possibly did say something; discuss the matter with both of them.

Q. Now, just try to refresh your recollection about that, Mr. Smith. You have a very clear recollection about a very definite form of question which you asked in this matter; you have stated that you made up your mind before you went into this matter, into court, that you were going to do a certain definite thing. Now, just keep those two statements in mind and then try to tell me whether you do not remember a definite consultation about these memoranda, this one in black ink on the reverse side of the card and the one in red ink.—A. I recall directing Mr. Graham to make that memoranda on there so that I would not forget what was intended to be done.

Q. You recall now that you directed Mr. Graham to indorse on the back of this card the memorandum which there appears in red ink?—A. Yes, yes.

Q. And the purpose of your giving him that instruction was so that you might not forget——A. (Interrupting.) Overlook.

Q. (Continuing.) To call special attention to what the memorándum called attention to?—A. Yes, sir.

Q. Well, then, I will read. This is the red-ink memorandum which the witness has just testified to: "Witness Leonard Olsson to be asked from what time he had failed to believe in the form of Government in the United States." Now, I ask you to read what I just read [handing card to witness].—A. You have read it correctly.

Q. Well, now do you still testify that you have a present recollection of having asked Leonard Olsson in this Karl Olsen case the very words which you testified to this morning?—A. Yes, sir.

Q. Well, why did you depart from the memorandum?—A. Well, I didn't put the—I didn't tell Mr. Graham the exact words to put on that card, Mr. McCoy; I just merely told him to make a memorandum so that I would not overlook to find out from Mr. Olsson how long he had entertained those views. I did not——

Q. (Interrupting.) Entertained what views?—A. The same views that he expressed in the preceding months in these same cases that I have referred to, that he was not attached to the principles of the Constitution.

Q. Now, tell the committee the exact words that you used when you instructed Mr. Graham to write those words on that card.—A. I can not undertake to do so. I told Mr. Graham to note on the card so that I would not overlook this.

Q. Overlook what?—A. Ascertaining how long Mr. Olsson had not been attached to the principles of the Constitution.

Q. Well, is that what you told Mr. Graham?—A. I would not undertake to give the exact words, but my idea was—what I wanted Mr. Graham to do was to make a notation on there, so that I would not overlook that particular point which I had overlooked, as testified to, in the former petition.

Q. When you were in court in the Karl Olsen case examining Leonard Olsson, did you have that card in your hand?—A. I presume I did.

Mr. McCoy. I want this to go into evidence.

(Card referred to and marked "Exhibit 12.")

Mr. McCoy. Now, this card is now marked "Exhibit 12." On the side of it which is headed "Examiner's report," there appears this writing by Mr. Enslow, from which I read a part:

Witnesses are both Socialists, but state that Olsen has no leaning that way.

I presume that the Olsen referred to is the applicant for citizenship?

A. Yes, sir.

Q. Now, those words are underscored in red lead pencil, who underscored the words?—A. I don't know.

Q. Do you remember whether that was on there when it was handed to you?—A. I can't say as I remember that particularly, but I presume it was. I don't know. I would not undertake to say, but I think it was, Mr. McCoy.

Q. You stated in answer to a question of the chairman, that the particular thing that you had in mind in going through those naturalization law books, and the thing that you wanted particularly to call our attention to was this—one of them at any rate—was this petition for naturalization, and you handed the committee a copy of the naturalization law of November 11, 1911, and at page 13 appears the form of certificate, and you have underscored there the words, "I am attached to the principles of the Constitution of the United States." Did you give that part of the certificate, or do you give that part of the petition more consideration than any other part of it when a man applies for citizenship?—A. I can't say that I do. That is one of the qualifications.

Q. But why do you particularize that when the first part of the eighth paragraph of the petition reads:

I am not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in organized government.

A. Well, I merely made reference to that as to what the petition—the petitioner is required to state. It is not embodied in the law there, but it is in the petition which he swore to, that is all. Just merely to show what he swore to.

Q. Well, isn't the main underlying principle of the Constitution, and the underlying thought there, the thought of organized government?—A. Yes, sir.

Q. And does not the propaganda—whether that word is plural or not I don't know—don't the teachings of the Socialists lead to a more highly organized form of government than we have at present?—A. I believe that it is so claimed, Mr. McCoy, I——

Q. (Interrupting.) Isn't that the thing that makes you object to it and makes me disbelieve in it?—A. I want to say that the Socialistic end of that proposition does not—did not actuate me in making my—starting this action.

Q. Do you think that you can read the clause, "I am attached to the principles of the Constitution of the United States" and confine a man's right to naturalization to his answer to that question without knowing something about these other things, or this other thing, namely, "I am not a disbeliever in or opposed to organized government"—isn't that the fundamental thing?—A. Yes, I always ask those questions in court.

Q. What weight do you give to them? If a man says, "Yes, I believe in organized government" and then you ask him whether he is attached to the principle of the Constitution, and he says, "No," what is the situation, then, in your mind as to his rights to naturalization?—A. Well, my mind is that they conflict, that he can not be attached to the Constitution—if he says that he believes in organized government, and then says he is not attached to the Constitution of the United States it seems to me that——

Q. (Interrupting.) You think that is an irresistible body coming up against an immovable force, or the other way?—A. No, I can't say that.

Q. Well, isn't it your obligation, then, if you want to give a man an opportunity to become a citizen, to ask him what he means by answering one question in the negative—answering one question one way and one question the other, don't you give him a chance to explain what he means?—A. Oh, yes; if there is anything inconsistent there. I didn't examine Mr. Olsson in his own naturalization case, Mr. McCoy, at all.

Mr. HIGGINS. The real duty finally devolves upon the court, doesn't it, to determine those questions?

A. Yes.

Mr. MCCOY. But you instituted this proceeding?

A. Absolutely with the court.

Q. But didn't you institute this proceeding to revoke his certificate?—A. I made the affidavit upon which it was brought, yes, sir.

Q. Why was this revocation proceeding brought in the United States district court instead of in the State court?—A. Because we are instructed to bring them in the United States court. We are instructed so to do, to bring those actions in the United States court.

Q. Who instructs you to do that?—A. Our department; that is, refer them to the United States attorney—to make the affidavit and refer to the United States attorney. It is his duty, it is not—I have nothing to do with it after the affidavit is made upon which the proceeding is based. I have nothing whatever to do with the matter then; it is in the hands of the United States attorney.

Q. Where are such proceedings usually instituted, in the State court or in the Federal court?—A. In the Federal court.

Q. Do you know of any proceedings in the State court?—A. Yes, sir; that is——

Q. (Interrupting.) Did not Mr. Enslow testify here yesterday that they were more frequently brought in the State court than in the United States court?—A. I remember him stating something about that. I would like to explain what those proceedings are; I would like to state what they are. So far as my knowledge goes, and I know all of the cases—all of the cases that have been brought for cancellation in the State court were in those cases where there was an irregularity—illegal naturalization without any fraud or intent to deceive, and upon the applicants consenting and requesting, the action was brought in the court where he was naturalized, and the order of naturalization set aside, and then reapplying, to conform strictly with all the provisions of the law. But in no instance where there has been any fraud charged and without the consent of the party who holds the certificate, do I know of that there has been any action brought in the State courts. It is where the parties holding

consent and recognize the illegality, and being a shorter way to cancel the certificate, to enable him to promptly reapply to get the papers that can not be attacked. That is the only instance in which we have brought them in the State court.

Q. You say that some literature was handed to you—some Socialist literature was handed to you by Mr. Enslow or Mr. Graham?—A. I believe Mr. Enslow brought—collected some and brought it to the office.

Q. Did you ever show that to Judge Hanford?—A. No, sir.

Q. But you did show it to Mr. McLaren?—A. Well, not the document that Mr. Enslow had, but some that have come into my hands since then. I had some at the trial of this cancellation case.

Q. Did you bring them into court with you and there first hand them to Mr. McLaren?—A. To Mr. McLaren; yes, sir.

Q. That was the first time you had——

A. (Interrupting.) In the cancellation proceedings.

Q. Right in court?—A. Yes, sir. I don't remember now what they were. As I remember now, they were not considered by the court.

Q. Now, when Judge Hanford asked Mr. Olsson about the provision in the Constitution as to not depriving a man of his property without due process of law, and when he called his attention to the Socialist teachings with reference to that point, did Mr. Olsson say at all how he proposed to bring about that change in the form of ownership?—A. He answered the question, but I can't give his language.

Q. Did he say anything about bringing about the change under that very provision of the Constitution, namely, by due process of law?—A. I don't know. I don't remember him saying—mentioning anything about that provision. I believe he said that he was going to bring it about by ballot—through the ballot.

Q. In your affidavit on the revocation proceedings, referring to Leonard Olsson, you state:

> That Leonard Olsson, as a witness for Karl Olsen, stated in open court, in answer to interrogatories propounded by affiant, that he, the said Leonard Olsson, was not attached to the principles of the Constitution of the United States; that he believed in radically changing it.

Are those two things synonymous in your mind, that is, is one who believes in radically changing the provisions of the Constitution not attached to the principles of the Constitution?—A. Yes, I will have to say that——

Q. (Interrupting.) You think those are synonymous; you think those two things are synonymous?—A. Yes, sir; looks to me like it.

A recess was here taken until 1.30 o'clock this afternoon.

AFTERNOON SESSION.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

Same witness on the stand.

Mr. McCoy. Mr. Smith, the Socialists have been pretty active in pushing their cause in the State of Washington, haven't they—in this part of it?

A. I am not advised as to what the Socialists are doing, only what I have seen in the papers.

Q. Is it not a fact that they have been pushing their propaganda, as it is called, pretty hard, and that there has been a strong feeling of opposition aroused as to them here in this State?—A. It would seem so from the newspaper notoriety that has been given it.

Q. Don't you find from talking with people and from what you see in the papers that it is commonly believed that the Socialist propaganda is to create turmoil and end in chaos?—A. I have frequently heard that said.

Q. And that it has no reverence for the Constitution of the United States?—A. Yes, sir, I have heard those expressions.

Q. Do you think that a man should have a reverence for the Constitution before he is fitted to become a citizen?—A. Personally, I do.

Mr. HIGGINS. Do you figure, Mr. McCoy, that it is illuminating to get the views of all these witnesses upon these academic questions? Inasmuch as this witness is not to be the judge I care very little myself what his views are on the question and I do not see how it is important.

Mr. MCCOY. I have an opinion that it has some bearing on the witness's testimony.

Mr. HIGGINS. If he were the judge it probably would, but the duty did not devolve upon him to reach that conclusion.

Mr. MCCOY. Well, he had to reach the conclusion as to whether or not he would bring a case before the court.

Mr. HIGGINS. No; he has to present the facts.

Mr. MCCOY. His duties, according to his own testimony, involved the bringing to the attention of somebody—some court that had jurisdiction in the matter anything that he thought would lead or ought to lead to the revocation of naturalization papers, and I just wanted to know in what attitude he approached the performance of those duties; that is all.

The CHAIRMAN. Proceed.

Mr. MCCOY. In the hearing on the question of the revocation of the certificate of naturalization of Leonard Olsson, did you hear any evidence which tended to prove that he believed that the main purpose of the Socialist was to completely eliminate property rights in the country?

A. I so concluded from his testimony.

Q. Now, what kind of property rights did you conclude that he believed ought to be eliminated?—A. I remember one thing—all producing property—land.

Q. What did he mean by the elimination of property rights?—A. I don't know what he means—I did not attempt to——

Q. (Interrupting.) I am not asking you what Mr. Olsson means, but whether you heard any testimony which lead you to believe that he believed—which lead you to believe that he believed that property rights should be eliminated; now you say that you did hear some such testimony. Is that your answer?—A. Yes, sir.

Q. Now what was the testimony which you heard at any time in these revocation proceedings which led you to think that he believed that property rights should be eliminated?—A. As I recall it, he stated that all producing property should be owned in common, and according to his propaganda when that shall be attained there would

be no use for the present form of government. Now, how he arrives at that I do not know.

Q. Did you get the impression that in anyway he was to wipe property rights out of existence?—A. I don't know. Common ownership is what I gathered.

Q. That is the property was to be owned by the Government and the fruits of it distributed among the people?—A. I think that is about it.

Q. Does that eliminate property rights?—A. No; I don't suppose it does.

Q. Then there was not any testimony which you heard which led you to think that he wanted to eliminate property rights, but simply wanted to change the form of ownership; wasn't that all?—A. You might put that conclusion on it.

Q. Now, what was the impression which you got?—A. I got the impression from this testimony that he did not believe in the form of government that we have in this country.

Q. I am talking now not about the form of government, but about property rights.—A. I can not enlighten you any further on that.

Q. In other words, you did not get any impression about it?—A. Yes, that he did not believe in the institutions of this country, I got that impression.

Q. Confine yourself now to the question of property rights; did you get any impression as to his beliefs as to property rights and, if so, what?—A. I will say that I can not give you any further information on the subject.

Q. Well, you know what your own impression is.—A. My own impression is that Mr. Olsson is not—his views are not in accord with the form of government that we have.

Q. Now, Mr. Smith, I think you are intelligent enough to distinguish between——A. I am trying to——

Q. (Continuing.) Between the form of government and property rights—I am asking you to confine yourself strictly to property rights. Did you get the impression that he meant simply that property should be owned by the Government, and the fruits of it distributed among the people?—A. Yes, sir; I may say that I did get that impression.

Q. That is the impression that you got, and that is what you would believe to be opposition to the principles of the Constitution, is it?—A. I do not regard that as in keeping with the form of government that we have.

Mr. McCoy. That is all, Mr. Chairman.

The Chairman. Gentlemen, do you wish to cross-examine?

Mr. Hughes. Mr. Chairman, at this time, before cross-examining the witness I would like to present to the committee, so that they may be introduced in evidence, the certified copies of the petition for naturalization of Leonard Olsson and of his oath of allegiance and of the order of court admitting him to citizenship, and also a certified copy of his naturalization papers, which papers are duly certified according to acts of Congress by the clerk of the United States district court at Tacoma. They were called for on yesterday, and we have requested that they be furnished, and I now have them [handing documents to the chairman].

I want to have them identified first, and that is my purpose in presenting them at this time, as I want to use them to call the witness's attention to certain matters which are in there, and I would ask that they be treated as in evidence.

(Documents above referred to are received in evidence and marked, respectively, the petition as "Exhibit 13" and the certificate as "Exhibit 14.")

Cross-examination:

Mr. HUGHES. Mr. Smith, when you were examined this morning you referred to the forms that are set forth in section 27 of the act of 1906, being the present naturalization laws of Congress; you did not read the form of the declaration of intention or the form of the petition for naturalization, nor the form of the several affidavits, the affidavit of the petitioner and the affidavit of his two subscribing witnesses, did you?

A. I did not.

Q. Neither did you read the form of the certificate of naturalization, did you?—A. No, sir.

Q. I will now ask you to examine the certified copy of the petition for naturalization of Mr. Olsson, which is introduced in evidence as Exhibit No. 13, and state whether that is the form as prescribed in the act of Congress, except that as to the matters descriptive of the man and the facts relating to the man for which there are blanks in the form, it has been filled in here, and as to matters printed which are not applicable to the particular petitioner, the printed matter appears there, but is shown stricken out in the certified copy before you.—A. These papers would seem to meet the requirements.

Q. If you have any doubt of it, glance at the act itself.—A. (Referring to the act.) I see nothing here but what is in accord with the statutes.

Q. So that by an examination of Exhibit No. 13, the Judiciary Committee will have before them the form of the petition as prescribed by the act of Congress—that is what I want to get at.—A. Yes, sir.

Q. Is the oath of the petitioner, as set out in this Exhibit No. 13, with the exception of the name and the date and the name of the officer certifying to the oath, that prescribed in the act of Congress?—A. Yes, sir.

Q. Is the affidavit attached to Exhibit No. 13, purporting there to be subscribed by two witnesses, upon the form set out in the act of Congress for the affidavit to be made by the witnesses?—A. Yes, sir.

Q. I will ask you if the certificate of naturalization of Leonard Olsson as set forth in Exhibit No. 14 is according to the form for the certificate prescribed in section 27 of the act of Congress.—A. Yes, sir.

Q. Now, referring again to Exhibit No. 13, I observe that a part of it is the oath of allegiance given or made by Leonard Olsson at the time of his admission to citizenship; is that in the form prescribed by the acts of Congress?—A. Yes, sir.

Q. In the examinations for the admission of aliens to citizenship, is the proceeding a formal one in court or an informal one?—A. I would say it is a formal one.

Q. Does the applicant appear by attorney?—A. Very rarely.

Q. The conduct of the examination is what?—A. Usually at the request of the court; either myself or the examiner who happens to attend at those hearings conducts the examination of the petitioner and the witnesses for the court. Oftentimes the court asks questions, and then the court, of course, decides whether the applicant comes within the law.

Q. I will ask you the question so that there may be no confusion between the different proceedings which have been referred to. I believe you did not read in evidence section 15 of the act of Congress—the act of 1906.—A. I think I did.

Q. Was it read in evidence?—A. I think I read it all.

Q. You have nothing to do directly with the institution of the proceedings in court for the cancellation of the certificate of admission to citizenship?—A. No, sir.

Q. Your function under your instructions from your superior is, when the information comes to you, to make the necessary affidavit and supply it to the district attorney?—A. Yes, sir.

Q. And there your official duties cease?—A. Yes, sir; it then goes under——

Q. In this case who had charge of the bringing of that proceeding?—A. The United States district attorney.

Q. For this district?—A. For this district.

Q. Who was the officer who actually had charge of the conduct of that proceeding?—A. Mr. W. G. McLaren.

Q. Where was it instituted; that is to say, in what court was it begun in the first instance—in Seattle in the northern division or at Tacoma in the southern district?—A. At Tacoma.

Q. And when was it instituted—that does not appear in the record, and I think it should appear and perhaps we can get the fact later though.—A. I have forgotten the exact date, Mr. Hughes.

Q. Shortly after the date of your affidavit, however, wasn't it?—A. Yes, sir.

Q. In the fall of 1910?—A. 1910.

Q. 1910 was it?—A. Yes, sir.

Q. In the fall of 1910?—A. Yes, sir.

Q. What Federal judge customarily presided in the western district?—A. Judge Donworth at the time.

Q. In the Southern division of the western district, I mean.—A. Judge George Donworth.

Q. Until his resignation did any other judge have anything to do with those proceedings?—A. Not to my knowledge.

Q. Do you recall when he resigned?—A. Judge Donworth?

Q. Yes.—A. No, I do not just at this time.

Q. It was about the 1st of March of this year, wasn't it?—A. Yes, sir.

Q. 1912?—A. Yes, sir.

Q. And shortly after Judge Hanford went to Tacoma once a week to hear such matters as required attention and might be brought up for hearing other than at the regular term time.—A. Yes.

Q. And this case was one brought up on one of those occasions when Judge Hanford made his weekly visit to Tacoma?—A. Yes, sir.

Q. Who conducted the prosecution of that case?—A. The United States district attorney.

Q. Did he examine the witnesses produced on behalf of the Government?—A. He did.

Q. Who cross-examined them?—A. I think Mr. Nichols, the attorney for Mr. Olsson.

Q. Who directed the examination, or conducted the direct examination, I should say, rather, of the witnesses produced on behalf of the defendant?—A. Mr. Nichols.

Q. And who, if anyone, cross-examined them?—A. Mr. McLaren.

Q. And I understand you to say that in addition to that Judge Hanford, himself, asked the Witness Olsson certain questions?—A. Yes, sir.

Q. In order that there may be no confusion in your testimony in this case—you first had your attention called to the question of Mr. Olsson's beliefs respecting the Constitution by the Osslund case, was it?—A. The records—I testified that the records of my office showed that the Osslund case had been denied by the court because the petitioner stated that he did not believe in the principles of the Constitution; that in the Stossell case——

Q. One moment. Now, was your attention called to the fact that Mr. Leonard Olsson was one of the subscribing witnesses to the petition of Osslund?—A. Yes, sir.

Q. And that he was also one of the witnesses at the hearing upon that petition on the 8th of August?—A. Yes, sir.

Q. And that he had taken the oath prescribed by the statute in both instances?—A. Yes, sir.

Q. The next case was the Stossell case. Do I understand you to say that you were present when he was examined in the Stossell case?—A. Yes, sir.

Q. Was your attention called to the fact that he was one of the subscribing witnesses in the Stossell case on the petition of Stossell?—A. Yes, sir.

Q. And that he had taken the oath prescribed by statute?—A. Yes, sir.

Q. And you, yourself, heard his testimony upon the hearing on the 8th of August?—A. Yes, sir.

Q. Before Judge Chapman?—A. Yes.

Q. And the same is true as to Karl Olsen, is it not?—A. Yes.

Q. He was a subscribing witness upon the petition of Karl Olsen?—A. Yes.

Q. And he was a witness upon the hearing of his application?—A. Yes.

Q. And gave the testimony that you have already detailed?—A. Yes.

Q. Having in mind the oath which he had subscribed on his own petition; the testimony that the law would require him to give at the hearing of his application; and this oath of allegiance which he took on his admission, do I understand you to correctly say that you considered the affidavits he made in those other proceedings that I have mentioned and the testimony he gave upon their applications directly contradictory of his own oaths in his own proceeding?—A. Yes, sir.

Q. And that was the reason why you made the affidavit and presented it to the district attorney?—A. Yes, sir.

Q. And in so doing, you were governed by your instructions and by the provisions of section 15?—A. Yes, sir.

The CHAIRMAN. It might be worth while there to insert in connection with the answer the particular language in section 15, which you and the witness referred to.

Mr. HUGHES. Well, section 15 makes it the duty of the district attorney, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. The balance of the section relates to the method of procedure. I take it that the first section is what the witness referred to. Am I right?

The WITNESS. Yes, sir.

Q. And it was because, in your opinion, if he had made the same answers, the same oath on his petition, and the same answers at the time of his admission that he subsequently made as a witness for the other parties, the court would have denied his citizenship—denied him admission to citizenship—and you believed that that constituted a fraud upon the court, and that was the reason that you filed this affidavit with the district attorney for his action. Is that correct?—A. Yes, sir.

The CHAIRMAN. Are there any further questions? Mr. Nichols, is there anything which you wish to suggest?

Mr. NICHOLS. I have nothing to suggest, Mr. Chairman.

Mr. HUGHES. I might call attention to the fact that you asked for his general instructions from Washington and you have omitted to ask for the production of them now. If he has them, I suppose this would be the time, while he is being interrogated.

The CHAIRMAN. Have you brought with you the general instructions from Washington, of which mention was made this forenoon?

A. I have not, Mr. Chairman, but I will have an examination made of the files in my office and I will get them ready—I will say that I will be back in a couple of days and I will get them.

Mr. HUGHES. Before proceeding with any other witness, if you are through with this witness, I want to submit to you the certified copy of the demurrer and the ruling of the court for which request was made on yesterday.

The CHAIRMAN. Just a moment. Before the witness leaves the stand there are some papers that I want to identify. [Papers marked "No. 15," for identification, are shown to the witness.]

Mr. Smith, I hand you a copy of a report which you made to the chief of the Division of Naturalization, with a letter which accompanied it when it was sent to me from the office. I now show you this in obedience, or rather in conformity, with a request which Mr. Dorr made of me and of which I spoke this morning. I now show you this document.

A. I have already identified this.

Q. I just want you to identify it now in connection with the other documents, as I want to put it in the record at this time.—A. As I

stated before, this appears to be a correct copy of my letter. I have a copy in my own files.

The CHAIRMAN. The letter which accompanied it may go in with it.

The WITNESS. Of course I do not know anything about the first letter. The second one is mine, and I identified it. The signature seems to be that of Charles Earl, Acting Secretary of the Department of Commerce and Labor.

(Letter of Mr. Earl, acting secretary, and a copy of Mr. Smith's letter are put in the record at this point and marked "Exhibit No. 16.")

The CHAIRMAN. If there are no further questions, this witness will be excused.

Mr. HUGHES. I do not know whether a record was made of the statement that I made that I had produced the certified copy of the demurrer and the order of Judge Donworth overruling the demurrer, but it was arranged yesterday that it should be interpolated in the record already introduced, so that there should not be any confusion. I will state right at this time that it appears at page 8 of the record already introduced by the chairman [referring to Exhibit No. 5].

The CHAIRMAN. Is that paper here now? It should be a part of Exhibit No. 5, inserted at page 8. Mr. Smith, when may we look for the printed matter which you promised to furnish us?

Mr. HIGGINS. He said that he would have it inside of two days.

W. G. McLAREN, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name, please.

A. W. G. McLAREN.

Q. And your residence?—A. Seattle.

Q. Your present occupation?—A. Attorney at law.

Q. Do you hold any official position?—A. Yes, sir; I am United States attorney for the western district of Washington.

Q. How long have you held that position?—A. Since the first of last month.

Q. Before that did you hold any official position?—A. Yes, sir; I was assistant United States attorney since October, 1908.

Q. Mr. McLaren, do you know Mr. Leonard Olsson?—A. I know him from seeing him in the court room in connection with these proceedings; that is all.

Q. What particular proceedings do you refer to?—A. The cancellation proceedings.

Q. Was that the first time you saw him?—A. It was.

Q. You conducted that proceeding on behalf of the Government?—A. Yes, sir.

Q. And Mr. Nichols on behalf of Mr. Olsson?—A. Yes.

Q. Were there any other attorneys connected with it at that time?—A. No; there were not.

Q. Was Mr. McKay there then or not?—A. No; he was not.

Q. What was your first connection with that proceeding?—A. Why, when the case was started my best recollection is that it came to me in the first instance; that is, it came to the office, and I was assistant United States attorney at that time and in the natural division of the work in the office at that time. This was no exception—cases of that character had been usually assigned to me, so that that explains my first connection with the case.

Q. Were you familiar with the facts of it or the alleged facts of it before the hearing began?—A. Yes, sir.

Q. From whom did you learn, then?—A. Mr. John Speed Smith, the naturalization examiner.

Q. Was there any other business transacted in court that day?—A. I do not recollect. There were no other cases tried that day; I am quite certain of that. I beg pardon, yes; there were several motions argued before the court on that day.

Q. Before or after this hearing?—A. Before.

Q. Did you participate in any of them?—A. No; they were all private citizens.

Q. This is the only proceeding that you had in the court that day?—A. Yes; unless I may have had some ex parte orders signed—I do not recollect that I had.

Q. Starting now with the beginning of the proceedings in court, will you give us as good an account of what occurred there as you can?—A. Yes, sir. I called as witnesses for the Government's side of the case, Mr. Smith, who testified before you this morning, Mr. Enslow, who testified before you yesterday, Mr. McFarland, who was deputy county clerk of the superior court in which the naturalization certificate of Leonard Olsson had been issued. Mr. Enslow testified, as nearly as I can recollect now, about to the following state of facts: That at the time in 1910 when these proceedings regarding Leonard Olsson's application took place he was one of the examiners of the naturalization bureau; that on one occasion when he was in Tacoma making some preliminary examinations of the witnesses and applicants he met Mr. Leonard Olsson; that he was examining Mr. Olsson as a witness for some other applicant, whose name I do not now recall, and in that discussion with Leonard Olsson he learned—he got his impression of him that he was not in smypathy with out Government at all. That discussion, if you might call it such, did not last very long, for the reason that Mr. Enslow was busy with the other matters that he was there attending to in the examination of other witnesses. However, he testified before Judge Hanford in this hearing that he got the impression then that Leonard Olsson was a very radical man in his views toward the Government.

Q. What word did he use?—A. Radical. He testified further, I think on the following day, or at any rate a very few days after that, while he was carrying on some of his duties also in Tacoma, that he had another discussion with Leonard Olsson, brought about by Olsson coming to his office where he was and again explaining his views on matters of government and bringing along with him some literature, I believe, of the same character. That discussion—I asked Mr. Enslow if that second meeting was of his seeking or Leonard Olsson's; and he said it was Leonard Olsson's; that he came there voluntarily without any suggestion from Mr. Enslow. At that discussion, which lasted much longer than the first one, he discussed thoes various matters with Leonard Olsson, or at least Olsson did with him—as I recollect it he said that Olsson did most of the discussing—and Enslow testified that he got the impression, and so testified, that Leonard Olsson was a very radical man in his views toward the Government—as I recollect it, his words were something like this—that if he was not an anarchist he was verging pretty close in that direction; that is as nearly as I can recollect the substance of it. Enslow also testified

that in August or September, 1910, I forget which, he was present in the superior court of Pierce County, at Tacoma, when Leonard Olsson did appear as a witness for some other applicant; that his attention—now at this point I am not certain whether it was Mr. Enslow or one of the other witnesses, Mr. McFarland, testified to what Mr. Olsson testified to as a witness, and I will take that up later, if it is satisfactory to the commission.

Enslow testified also that he had seen Leonard Olsson conducting or participating in a number of street-corner meetings on the streets of Tacoma in which he was, you might say, urging his views and distributing literature. He did not see any of the literature and knew nothing of its contents, except that he might infer it to be of a general nature the same as the subject matter of the discussion between himself and Olsson previously.

As I say, I am not clear now whether Mr. Enslow testified to what I am now going to say, or whether it was some other witness; but I know that Mr. McFarland testified that he was present at the time Leonard Olsson testified in the superior court as a witness for some other applicant for naturalization, and that his attention had been previously called to Leonard Olsson's testimony by Mr. Smith. Mr. Smith had requested him to take particular notice what Leonard Olsson testified or might testify in response to Smith's questions; and he testified that Mr. Smith asked Olsson while he was on the stand whether or not he was attached to the principles of the Constitution of the United States and well disposed to the happiness and good order of the United States, and that Olsson said "No." Mr. McFarland was also questioned as to whether or not there was any qualification of Leonard Olsson's degree of attachment, either in the questions put to him or the answers which he gave, and he said there was not. As I say, I am not clear whether Mr. Enslow testified to that or not, but I do know that Mr. McFarland did. I also called Mr. Smith as a witness. Now, just a moment—yes; I called Mr. Smith as a witness, and he testified that he was present in the superior court at the time—sometime in September, I think, or August, 1910—when Leonard Olsson was a witness for another applicant, when he was asked if he was attached to the principles of the Constitution of the United States and Olsson replied that he was not. Then, continuing Mr. Smith's testimony, he testified that it occurred to him afterwards that he had failed to ask Olsson whether or not he had entertained these same views at the time he himself was naturalized. So he made a note of the next case in which Leonard Olsson appeared as a witness, so as to be present and examine him on that further point, which he did, and it was that second examination at which Deputy Clerk McFarland was present and testified concerning. He testified that he asked Olsson if he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, and Olsson replied "No," or that he was not—I forget the exact words. He then asked Olsson how long he had entertained those views, and he replied "Some two or three years." He asked him again if he entertained those views at the time he himself—he, Leonard Olsson—was naturalized, and the answer was that he had. The testimony was also brought out by Mr. Enslow, I believe it was, that in one of the cases for which Leonard Olsson had appeared as a witness in the superior court the application of the applicant was

denied by the superior court for the reason that and on account of the views which that applicant entertained toward the Government, and that applicant's views were substantially the same as those of Leonard Olsson.

The CHAIRMAN. That last statement of yours was a mere conclusion of the witness, was it, or was that a statement made of the views of each of those men?

A. Well, it was not a statement of the views of each of those men, but it came about in this way. He had just finished testifying regarding what Leonard Olsson's views were and then he put in this other statement that this particular applicant had been denied citizenship in a hearing in which Leonard Olsson was a witness for the reason that he entertained certain views, and he said those views were substantially the same as those of Mr. Olsson.

Q. So that it was just judgment or opinion?—A. It was his judgment on the comparison of the two statements of the views, yes, sir.

Q. That is what I wanted to get at?—A. Yes, sir. I do not now recollect any other material matter that was developed by the Government's witnesses. Do you wish me to go ahead with the defendant's?

Q. Yes, sir, if you have finished with the Government.—A. I think I have. I may think of something later on; I do not now. The witnesses for the defense were Mr. Rush or Rash and Mr. and Mrs. Eskelund and a Mrs. Gelterman—I forgot how the name is spelled—the two women testified in response to questions by Olsson's attorney that they considered Olsson was a good citizen and that he had conducted himself as such. It did not appear, so far as I could gather from the cross-examination of them, that they had any other basis for their opinion or any other opportunity for knowing of Olsson's fitness, or otherwise, than you might say a neighborhood acquaintance with him and seeing him on the street occasionally in Tacoma.

The CHAIRMAN. Perhaps we might shorten that, Mr. McLaren, in this manner—am I right in saying that Olsson's standing and reputation for honesty and industry and such habits as this was not questioned at all?

A. Yes, sir, that is correct.

Q. Then the character of that is not really worth bothering with.—A. And I did not consider it so at the time of the hearing. I can not distinguish now as to which men testified to certain things in Olsson's behalf—there were two men testified in his behalf.

Q. Rust and Eskelund?—A. Yes, sir—one of those witnesses—well, they both testified to having known Olsson for several years and considering him a good citizen. That they belonged to the same organization as Mr. Olsson and it was at the meetings of this organization that they had learned whatever they knew regarding Olsson's fitness for citizenship, and at those meetings they were accustomed, I think about every two weeks, to meet and discuss governmental matters.

Q. Do you refer to the Socialist Labor Party?—A. No—one of them—one of those meetings—one of those organizations, I think, was the Socialist Labor Party, in view of what Olsson himself testified to later that he belonged to that party. That there was apparently some sort of society which this witness himself attended and which

required some sort of a pledge to be given and signed by the applicant before he could be admitted to that organization. My best recollection is that the witness did not testify that Olsson himself belonged to that particular organization. I went into it, as showing the attitude of this particular witness towards such questions in a general way. One of those witnesses, and I forget now which one, when questioned as to his attitude toward the government and accomplishing the changes, said that he was in favor of abolishing our present form of government entirely and when asked how that was to be brought about he replied by ballot and backing up our ballot by our might. Olsson himself testified in his own behalf saying that——

Q. Before you leave that question. Was his answer developed in any way by question or any explanation given as to what he meant by his answer?—A. Olsson's?

Q. No; the one which you have just recited, that he would effect the change by ballot and by backing up the ballot by their might.—A. That answer was developed in response to one of my questions on cross-examination, he having testified in chief that he believed in abolishing our present form of government entirely and substituting for it what he called, I think, an industrial democracy—I think that was the expression he used.

Mr. HUGHES. An industrial what?

A. An industrial democracy—I am not positive about the exact wording of it—and I asked him how he expected to accomplish that and he gave the answer that I have just stated—"By our ballot and backing up our ballot by our might." Olsson himself testified that he had entertained the same views for a number of years, I forget how many years, but at least antedating his application for citizenship; that he was devoting considerable time, I might say, to the urging of the adoption of his views among his acquaintances and people generally; that he did not believe in our form of government at all; that he thought that it ought to be entirely changed; that the workingman did not have a fair chance with our present system of government.

On cross-examination Judge Hanford asked him some questions, as I recollect it, about as follows: Whether or not he was familiar with a certain provision of the Constitution regarding the taking of property without due process of law. Olsson replied that he was familiar with it. He then asked Olsson how he expected his proposed system of government, if any, to be brought about with reference to existing property rights—whether he intended that all property rights should be taken away. Olsson replied that he did not mean that. The judge enumerated certain classes of property, for instance, stocks, bonds, securities, or moneys, and buildings that people have put up on lands and so on. Olsson said he did not mean all of it. He said, "Let them keep their money and securities, and such papers," as the judge had given as instances, "but," he said, "I mean that we should take away all of the land and the products of collective labor—that they should belong to the people."

The judge also asked him if he knew one Bruce Rogers, and I do not recollect whether Olsson said he did not or whether he was not sure; at any rate, the judge went on and explained who Bruce Rogers was; that he was quite a prominent Socialist in this locality and had

written certain public letters in the newspapers, setting forth certain views that were supposed to be entertained by himself and others of the same organization. At that point Olsson said he was not a Socialist, but he belonged to the Socialist Labor Party and explained the same—just what the difference was—that the Socialist Labor Party had in mind more the particular interests of the laboring classes, and as far as I recollect that was the substance of the distinction. At that point he produced certain publications which he had in his pocket, which I presume contained views similar to the ones he entertained. I received those from him and offered them in evidence and they were denied—the judge did not receive them.

Q. What did the judge say in passing upon the matter?—A. He said, "No; I do not care to see them," he said, "I have heard enough about these already," or some such language as that.

Q. Did you look at them sufficiently to be able to tell us what they were about?—A. No; I did not look at them at all.

Q. Whether they were platforms or some other form of literature?—A. I did not examine the contents at all. As I recollect it, it was a newspaper, but I would not be positive about that.

Q. Did Mr. Olsson make any statement then as to what was in this paper?—A. Except to this extent. I was asking him at the time about certain publications of the I. W. W. organization and I think it was at that point that he pulled these papers out of his pocket. I did not examine their contents. I thought this way: If they do represent his views I will simply pass them to the court, if the court cares to consider them—I mean as a branch of the Socialist organization or Socialist Labor Party, as he put it—I did not examine their contents, and the judge did not receive them in evidence or consider them. On cross-examination it was also brought out that Leonard Olsson was belonging to the I. W. W. organization. I had been furnished at the trial, by Mr. Smith, with certain pamphlets, copies of their literature, containing their constitution and by-laws, and, I think, one newspaper publication from Spokane.

Q. Do you recall the name of it?—A. Of the paper?

Q. Yes.—A. No; I do not, Mr. Chairman. I asked the defendant if those publications represented his views, he having testified that he belonged to the I. W. W. and they being I. W. W. publications, and he looked at them and he said that they were not published by the same faction of the I. W. W. that he belonged to.

Q. Then when the papers were given you it was not claimed that they were obtained from Olsson or that he had been circulating those or similar ones?—A. Yes.

Q. They were simply papers that Mr. Smith had found somewhere and handed to you?—A. Yes, sir; which might possibly set forth the views of the organizations in which or with which Mr. Olsson was in sympathy. That was the idea in putting those in, but when he said that they were not——

Q. (Interrupting.) Did you find that out before you offered them in evidence?—A. I found that out before I offered them in evidence; when he said that they were not published by the same faction of the I. W. W. that he belonged to, I did not offer them in evidence.

Q. Was it at that time that he distinguished between the wings of that organization, if he did so distinguish?—A. He made some distinction. Pardon me, you mean——

Q. The I. W. W.—A. He made some distinction between the faction which he belonged to and the faction which was responsible for these publications. The nature of that distinction was not made clear to me, and I can not give any impression that I got from it.

Q. Well, did he refer to his branch of it as having its headquarters at Detroit, Mich.?—A. No; he did not.

Q. Very well.—A. (Continuing.) He testified also regarding the answers which he gave and the questions which were put to him while he was asked questions as a witness, and in that respect, too, he controverted the testimony of Mr. Smith and Mr. McFarland in this: He said the question was whether he was devotedly attached to the principles of the Constitution of the United States and if that was the question that he answered when he gave the answer that he did. I asked what he meant by being devotedly attached to the Constitution, and he said, "I mean this, that I do not worship the Constitution as a man might worship his idol or an image." That was about the answer he gave in answer to that question.

Q. Was here any controversy or comment at that time on the use of the word "devotedly;" that is, as to whether he used that word on some former occasion or not?—A. Why, that is the very controversy I have just now been telling about; that he claimed that he was asked the question with the word "devotedly" in it. The other witness denied that that qualification was ever put in the question or the answer.

Q. Just how did he come to make that denial?—A. In response to a question by his own attorney.

Q. Do you recall the question?—A. I believe it came up something like this, that Mr. Nichols asked him if he had heard the testimony of the Government witnesses regarding his having testified so and so regarding his attachment to the principles of the Constitution of the United States, and Olsson said he had; and I believe Mr. Nichols then asked him to state to the court just what the question was that was put to him and what his answer was, and he answered as I have just indicated to you, that the question contained the qualification "devotedly."

Q. Did he go any further in his explanation than as you have stated, to say that he did not worship it—that he gave a negative answer; did he, of his own motion or in answer to the questions, say what his affirmative state of mind was on that point?—A. Yes, sir; he did at that time and generally throughout his testimony; that is, he believed in abolishing entirely our present system of government; that we ought not to have a political government at all; that it was not necessary; that if those changes which he had in mind could be brought about—and then he used the expression "in an industrial form of government."

Q. A democracy?—A. I can not say about his using the word "democracy," but that was the way I caught it.

Q. Did he give any explanation of that phrase, as to his understanding of what the industrial democracy would be or what kind of a government that would be?—A. No; he did not. He did not explain what form of a government that would be at all. He made several statements regarding it, but I could not interpret them as being in the nature of an explanation or discussion or as to what kind of government that would be.

Q. How much of the questioning was done by Judge Hanford?—A. Just what I have indicated to you.

Q. Well, you mentioned, as I remember it, only in regard to his stating certain constitutional provisions regarding the taking of property without due process of law.—A. Yes, sir; and also if he knew and was in sympathy with the views of one Bruce Rogers.

Q. Did Judge Hanford say anything further about Mr. Rogers?—A. No; except in explaining to the witness that—

Q. What I want to get at is this, did he say anything to indicate that one holding views similar to Mr. Rogers's views would be in bad standing in his court, for instance?—A. May I answer that question this way?

Q. Answer it your way, your answers are very clear and satisfactory to the committee.—A. When he asked the witness if he knew Bruce Rogers and the witness seemed to be in doubt as to who might be meant, the judge said that Mr. Rogers was a prominent—I think he said a prominent Socialist and a prominent member of some organization of that kind who in a certain public letter on a certain date had expressed the following views—and then the judge read a sentence—I think he read it, or gave it from memory. I don't know which, but I thought at the time that he was reading it from a clipping that he had, which contained a statement of some very violent views—I can't give the language of it—toward the Government, and at that point the witness replied that he was not a Socialist himself and did not know Bruce Rogers—that he belonged to the Socialist Labor Party. I did not get the impression from the distinction that the witness made out between the Socialist Party and the Socialist Labor Party that there was any—well, I don't recollect any other difference except emphasis that he placed on the laboring classes, which he thought would be more clearly represented by the labor party.

Q. Did he express any views as to how the change should be effected?—A. By ballot.

Q. And was there any expression with reference to the use or not use of force in effecting the change?—A. Not in so many words.

Q. In other words, did he say anything with reference to the views of the Socialist Labor Party as to effecting the changes by violence or not effecting them that way?—A. Not in so many words; no.

Q. Did he in any way?—A. Well, to my way of thinking he did; yes. That is, he said "by ballot," and I got the impression from what he said and the way in which he said it that he intended the ballot to be final; that if they outnumbered them that they would have what they were seeking for. As I say, he did not make any express statement to that effect.

Q. Did he convey to your mind the impression that it was by purely peaceful means they hoped to effect the change?—A. No; he did not.

A. He did not?—A. No; he did not.

Q. Did he give you any different impression from that? —A. Yes, sir.

Q. Well, the ballot, of course, would be a peaceful way of effecting it—now what was the thing that gave you the impression that he would stand for other means than the peaceful ones?—A. I can not give any exact language at this time which gave that impression to me. I got my impression, as I say, partly from what he said and

his general manner and demeanor while he was saying it, while he was testifying throughout. Well, one expression now recurs to me, that by the ballot, if they outnumbered the other side, you might say, on the voting, that that would be the end of it; and that impression that I got was, I might say, corroborated by the testimony of one of his own witnesses who said on cross-examination that he intended to bring this about "by our ballot and backing up our ballot by our might."

Q. Then you charged Olsson with the effect which the other man's remark "By our might," made upon your mind?—A. No, I do not say that I did that, Mr. Chairman, but——

Q. (Interrupting.) Well, can you think of any language that Olsson used which would justify an inference that he had any other than peaceful means of accomplishing his party's purposes in his mind?—A. Not at the present time, no.

Q. How long did the entire hearing take?—A. To the best of my recollection it was about a couple of hours; I am not certain, but I think about a couple of hours.

Q. Waiving, for the purpose of the question, these peculiar political views of Mr. Olsson; in all other respects did he impress you as a man worthy of citizenship, as to intelligence, sincerity, and industry and habits of life, in every way except his connection with this Socialist Labor Party—did he impress you as a man who was worthy of being admitted to citizenship?—A. He did in all the qualifications which you have mentioned, except sincerity.

Q. Give us your impression on that line.—A. My impression on that was gathered from the way in which he answered the question regarding his attachment to the principles of the Constitution. His answer and the manner of making it when he put in the word "devotedly" was evasive—that is the impression I got.

Q. Were you moved in any way in reaching the conclusion there, by the statements made and the testimony given by Mr. Smith and the other witnesses who contradicted him on that point?—A. Not any more so than one ordinarily would where there is a dispute in testimony—a flat contradiction.

Q. If he were correct and that the word "devotedly" had been used on the former occasion, your conclusion would be erroneous, would it not? That he used it evasively on that day?—A. No, I would not say that it would be; that is, you mean this, that my conclusion of his evasiveness was based entirely on the fact that his testimony was contradictory of the other witnesses. I did not base my conclusion entirely on the fact that his testimony was contradictory of that of other witnesses, but it was his manner in giving the answer.

Q. What would your conclusion be if, as a matter of fact, the word "devotedly" had been used on the former occasion?—A. Do you mean as to his evasive manner?

Q. Yes, sir.—A. Well, that would lessen, of course, my impression as to his evasiveness.

Q. Would it not remove it so far as that word was concerned?—A. No, it would not.

Q. Of course you would not claim, Mr. McLaren, that even if your conclusion were correct and that his answer was evasive, that that would disqualify him for citizenship; in other words, you do not think that a disposition to be evasive in giving answers in and of itself

would disqualify a man from becoming a citizen?—A. Not necessary, no; it would depend on the questions concerning which he might be said to be evasive.

Q. If that was a cause for disfranchisement it would operate pretty generally?—A. Yes, it probably would.

Q. Is there anything else concerning the hearing there which you wish to add; let me put it to you as a lawyer—this was considered as a proceeding in the nature of a chancery proceeding, wasn't it?—A. Yes, sir.

Q. And the evidence, if preserved, would be practically called a certificate of evidence?—A. Yes, sir.

Q. Now, supposing we were trying to prepare a certificate of evidence; is there anything that you think of which you have not told which should be added in order to make a complete certificate of evidence?—A. No; I do not think of anything, unless it would be the fact that at the close of the testimony and of the argument on both sides that the judge said that this was a matter of considerable importance, and he would take it under advisement, and at that point I think the court was adjourned.

Q. How soon after that was the decision rendered?—A. About two weeks, to my best recollection.

Q. That was the written opinion which is published?—A. Yes, sir.

Q. Was that the first hearing of the kind in which you participated?—A. Yes. We have had a number of cases for cancellation, but I think this was the only contested case that I ever had anything to do with.

Q. Was there aything said by the judge or by you or by any of the officials there as to the necessity or propriety of keeping a record of the evidence?—A. None whatever.

Q. As a matter of fact, no record whatever was kept?—A. No.

Q. And we are entirely dependent upon the recollection of those who were there as to what evidence there was?—A. As far as I know there was no record kept by anybody; there was no official record kept, I know that.

Q. No minutes made of it?—A. No.

Q. So far as you know?—A. So far as I know.

The CHAIRMAN. That is all that I desire to ask.

Mr. WINSOR. I would like the article signed Bruce Rogers, which has been referred to, to be brought into the record if it can be produced; that is the article which the judge used in questioning Olsson.

The CHAIRMAN. Enough has been said about it to make it admissible, at least if we can find it.

Mr. HUGHES. Mr. Chairman, I would like to hand you the article. If you will permit me to make a suggestion, I would suggest that the witness be shown the article and asked after examining it if he can recall what portion the judge read as the basis for propounding the question to the witness Olsson. [Here Mr. Hughes hands document to the chairman.]

The CHAIRMAN. Mr. Witness, we hand you a clipping from the Post-Intelligencer of date March 25, 1912, and I will ask you if you can identify that as the clipping from which Judge Hanford read on the occasion you have described.

A. The best of my recollection is that this is the article from which Judge Hanford either read or quoted from memory.

Q. Can you indicate in it the particular portion of it which the judge read?—A. My best recollection is that——

Q. Just indicate it first and we can use it after you have pointed it out.—A. It is paragraph 3 [pointing], the third paragraph.

Q. Consisting of these four lines and a half?—A. No; that is not the one. Pardon me; it is there [pointing].

Mr. HIGGINS. Will you mark it, please?

A. (Witness does so.) Yes, sir; that is it.

Mr. HIGGINS. Your request was that the whole article be inserted in the record?

Mr. WINSOR. Yes.

The CHAIRMAN. Why should it go in, except that portion of it referred to by the judge? Is there any reason why the rest of it should go in?

Mr. WINSOR. Simply, as interpreting that part, the whole context of the paper should go in.

Mr. MCCOY. Suppose we let it all go in, there is no materiality to it, because the witness at the time said that he did not know Bruce Rogers, or whatever the man's name is, but if anyone wants it in it might go in.

Mr. WINSOR. It shows the different forms——

The CHAIRMAN. It sheds light on the court's state of mind, that is all, or it might do so.

Mr. HIGGINS. Will you read it, Mr. McLaren?

The CHAIRMAN. The committee is inclined to think the whole thing may go in.

Mr. HIGGINS. Will you read, Mr. McLaren, the section, to the best of your recollection, that Judge Hanford read and had in mind at the time he was interrogating the witnesses in this case?

Mr. MCLAREN. Yes, sir.

The CHAIRMAN. I suggest that it be marked as an exhibit first.

(Newspaper clipping marked "Exhibit 17.")

The CHAIRMAN. Proceed.

A. I am not certain that the judge read the entire paragraph, but it was in this paragraph; he read at least part of it, and I think he read all of it—shall I read it all?

The CHAIRMAN. I do not want you to read any more than the judge read or that the judge by his questions indicated that he had in his mind, if you are able to do that.

A. This is what I have in mind that the judge read [reading]:

> We do not regard the American flag in any greater degree than we do the Russian, German, or English flags, or that of any other capitalist or feudal nation whose people depend in the main for their food, clothing, and shelter upon the capitalistic mode of production involving the essential exploitation of labor through a system of wage slavery. We propose to abolish all such systems and governments and to substitute therefor a manner of human society by cooperation and mutual aid pretty much like the present day trusts, and based directly upon the industries. To be absolutely direct, we propose the entire overthrow of the Government of the United States and to establish an industrial republic wherein all present-day political functions will become extinct.

Mr. MCCOY. Mr. McLaren, at the hearing on the revocation question was any witness asked what Mr. Leonard Olsson testified on his admission to citizenship?

A. No; for the reason that that was admitted in the pleadings; in the petition for revocation it alleged that he had testified that he was attached to the principles of the Constitution of the United States and that allegation was admitted by the answer.

Q. That was not elaborated?—A. No.

Q. By any testimony further than that?—A. Not that I recollect at all.

Q. Now, did Mr. Nichols on his cross examination of the Government's witnesses bring out the question, or attempt to, as to whether or not the word "devotedly" was used?—A. Yes, he did.

Q. And that was on the examination of Olsson following that that he denied, or at least he asserted that he had not been asked that question?—A. Yes; Mr. Nichols asked each of those witnesses if it was not true that the qualification was put in the question, and they each denied it.

Q. Now, Mr. McLaren, is it or is it not true that the advocacy of socialism here in the State of Washington has become so active that it aroused a certain opposition of a determined character in any way?—A. No, I can not say that it has.

Q. Has there not grown to be rather an almost bitter feeling on the question here on the coast?—A. No, I can not say that there is. There has been a great deal of feeling aroused on the question of the I. W. W. organizations, but not particularly so, I think, with reference to socialism.

Mr. HIGGINS. I wish you would furnish the name of that organization instead of the initials.—A. It is the Industrial Workers of the World.

Mr. MCCOY. Well, as the matter of socialism was talked about here and written about in the newspapers has there not a marked division, an active division of sentiment on the question of the socialist doctrines, arisen?

A. Not to my knowledge. The only incident that might perhaps bear out such a statement would be that paragraph of the clipping which I read to you a moment ago, which was published in the public press of this city.

Q. You mean that that article aroused a discussion of a general nature in regard to socialism?—A. Well, the expression of such views as those—I do not know whether that particular article did or not, but I know that that portion of it, as I say, if anything, would tend to bring about the condition which you have just suggested that it would be or was some such expression as that taken in connection with the certain agitations by the other organization, the I. W. W.

Q. You say that it would tend to do it. Do you mean it has actually excited or brought about that result here?—A. No; I am not certain that it has. I say this, that so far as my knowledge goes nothing would tend to produce that result unless it was that quotation that I have referred to. In that connection, of course, you will bear in mind that the defendant denied being a socialist.

Q. For the purpose of my question I was classing the socialists and the Socialist Labor Party adherents in the same classification. Now, can you, Mr. McLaren, let us hear in a little more detail how the evasiveness, as you characterized it, of Mr. Olsson was exhibited at this time, what questions were asked of him, and the answers to

which indicated any such attitude?—A. Well, the question regarding the devotedly qualification about his attachment, and I might say also the questions as to how he expected to bring about those changes in the Government, to my mind they were evasive; that is, the exact means.

Q. Well, was he asked specifically whether he believed in retaining certain provisions of the Constitution or doing away with them?—A. Well, I think I asked him that for the purpose of—that is, in substance that—for the purpose of ascertaining whether he was opposed simply to certain specific provisions of our Constitution or whether he was opposed to it in its entirety, and his answers, in substance, were that he was opposed to it altogether and opposed to our present form of government and opposed to any political government. I asked him that so as to bring out that very thing—whether or not he was simply opposed to some one or two or several specific provisions of the Constitution.

Q. Did he not explain that his opposition to political form of government simply meant that the socialists would like to change the method in which property is owned and the fruits of it distributed?—A. No.

Q. Was not that the distinction that he made?—A. That is the distinction that he dwelt upon principally; yes.

The CHAIRMAN. Mr. McLaren, are you familiar with the instances testified about by Mr. Smith where the certificate of naturalization was denied?

A. No, except as to——

Q. In which Leonard Olsson was a witness for the applicant?—A. I have no direct knowledge of any of those cases. I got my information from Mr. Enslow and from Mr. Smith and from the other witnesses, and they testified to that in court, as I have just indicated.

Cross-examination:

Mr. HUGHES. Mr. McLaren, if I may be permitted by the committee, for the purpose of refreshing the witness' recollection I would like to propound such questions to Mr. McLaren as will accord with Judge Hanford's recollection of the questions propounded by him to Mr. Olsson. I simply want to ask you, Mr. McLaren, if I am so permitted, whether these are not substantially the questions propounded——

The CHAIRMAN. (Interrupting.) You can use your own judgment as to the form of the question. Of course, I would say to you, in frankness, that so far as I, as chairman, am concerned, the testimony would have a great deal more weight if the witness gave it from his recollection rather than if you give a narrative statement of it for him and he gives his assent to that statement.

Mr. HUGHES. I do not see how I can ask him if such and such questions were asked unless I present the questions.

The CHAIRMAN. It would be very easy to ask him in this instance, at least, if you care to do it, what question was asked, but you can pursue your own course now.

Mr. HUGHES. Of course, this is a cross-examination and he has already given the narrative.

Q. I would like to ask you if the first question propounded by Judge Hanford was not this: "Have you read the Constitution of the

United States?"—A. Yes, sir—"Have you read it and are you familiar with it?"

Q. And the witness answered that in the affirmative?—A. Yes, sir; he did.

Q. Didn't he then ask this question—and I am only attempting to give it in substance—"Do you understand that one of its articles"—referring to the articles of the Constitution—"provides that no person shall be deprived of life, liberty, or property without due process of law"?—A. Yes, sir; that is the substance of it—he called his particular attention to that provision.

Q. Quoting the provision?—A. Yes, sir; substantially.

Q. And what answer was given?—A. He said that he was familiar with it.

Q. He said he knew that that was in the Constitution?—A. Oh, yes; and was familiar with it.

Q. Did not Judge Hanford then ask the witness in substance this question: "Do you believe, notwithstanding that provision of the Constitution, that it is right to take away from the owners of property all their money and bonds and valuable securities and buildings and lands and factories and means of transportation"?—A. Yes, sir; that is the substance of the question that I testified about a while ago when the judge enumerated certain specific classes of property.

Q. The question as I have stated it covers the field substantially embraced in the question propounded by Judge Hanford?—A. Yes, sir; it does.

Q. Now, do you recall what answer the witness made to that question?—A. He said this, that he did not mean to deprive people of all of that property, meaning all those different kinds of property, and he said that their money and their—that other classes of personal property you mentioned—he did not mean to include those, but he said their lands and all the product of collective labor should be taken away.

Q. Did he say to whom they should belong?—A. He said they belonged to the people generally.

Q. He said they belonged to the people generally?—A. Yes, sir.

Q. That is, was to be taken from the individual ownership?—A. Yes, sir.

Q. From the persons who might now own them?—A. Yes, sir.

Q. And given over to the community—to the people generally?—A. Yes, sir.

Q. Did not Judge Hanford ask him this question thereupon, to wit, "By what method do you believe the change of ownership can be accomplished"?—A. Yes; I think he did ask that question in substance.

Q. And what answer did Mr. Olsson make to that?—A. By the ballot.

Q. By the power of the ballot, wasn't it?—A. By the power of the ballot, yes—now——

Q. And what question immediately followed that?—A. I do not recollect. I can not recall what followed that immediately.

Q. Well, was there anything said by the witness, called out by the question propounded in that connection as to the manner of acquiring possession and control for the benefit of the community?—A. I can

not recall it, Mr. Hughes. There was one witness—I don't think it was Mr. Olsson, but my recollection is not clear.

Q. Confining yourself to Mr. Olsson and as to your recollection of him—did not he testify in that connection, following the question that I have referred to, that when the individuals had been deprived of their property and there was no property besides the common property, there would be no longer any necessity for government, or political government of any kind?—A. Yes, sir; that there would be no need for government; yes.

Mr. McCoy. Government, or political government?

A. Government.

Mr. Hughes. Are you certain about that?

A. Yes, sir; I answered it.

Q. I mean as to whether he used the word "government" or "political government"?—A. Yes, sir; I say "government." He did not use the words "political government." He said there would be no need for government when that was accomplished.

Q. Was anything said about courts at that time or any need of courts?—A. I do not recollect that there was. There may have been; I do not recollect, Mr. Hughes. I recall one other question that the judge asked him. He said: "Mr. Olsson, we have under our present Government certain officers, such as constables, sheriffs, and such like," and he asked him what his views were regarding public officers of that kind under his proposed change, and he said they would not be needed, or words to that effect.

Q. Can you state what character of government he contemplated would take the place of our existing form of government?—A. No, I can not.

Q. So far as shown by his answers at that time?—A. I beg pardon?

Q. I mean so far as shown by his answers at that time.—A. I can not, except in his own words when he said that he would abolish all political governments and substitute an industrial organization or an industrial republic or a democracy. I forget which word he did use after the ord industrial—his idea, in substance, being that the laboring classes would be in control.

Q. Was it in the same connection with those questions which you have already stated Judge Hanford propounded to him, and following them, that he called his attention to Bruce Rogers?—A. It was in the same connection; yes sir.

Q. Do you remember what answer the witness made as to whether he knew Bruce Rogers or knew of his doctrines and read any of his publications?—A. He said he did not know him, and I believe he said he was not familiar with whatever doctrines Bruce Rogers might have.

Q. When Judge Hanford read or stated the quotation from the article published by Bruce Rogers in the Post-Intelligencer under date of March 25, 1912, which you have already quoted in the record, did Judge Hanford follow it by asking the witness whether he approved those views?—A. He asked some such question as that, and it was in answer to that question, I believe, that the witness said that he himself was not a Socialist.

Q. Well, was not that question proposed with the idea of calling for an answer as to whether the statements contained in the article of Rogers's which were repeated in that hearing were a fair expression of his own views on the subject?—A. I can not recollect, Mr. Hughes.

Q. Well, did he in this connection answer or did he refuse to answer or did he appear to evade?—A. Well, I thought his answer was evasive.

Mr. McCoy. Which answer do you mean—the one in which he said he was not a Socialist?

A. The answer to the question as to whether or not he knew Bruce Rogers and was in sympathy with the doctrines contained in that letter. He answered it—so far as I can recollect the only answer he did give was that he did not know Bruce Rogers and was not a Socialist himself, and from that he branched off into explaining what he was—that he was belonging to the Socialist Labor Party.

Mr. Hughes. Were there any other questions propounded by Judge Hanford?

A. I do not recall any; no.

Q. Had you examined him previously?—A. Somewhat; yes.

Q. Do you recall; that is to say, he had been examined in chief by Mr. Nichols?—A. Yes.

Q. And then examined somewhat by you before Judge Hanford asked him the questions?—A. Yes, sir.

Q. And after the questions Judge Hanford propounded did you propound further questions to him?—A. I think I did—I resumed the cross-examination; yes, sir.

Q. You have stated that when the witness produced certain papers that you offered them in evidence.—A. Yes; I did.

Q. Was there an objection made to their being introduced in evidence?—A. Well, I do not recollect.

Q. On the part of Mr. Nichols?—A. I do not recollect. I think there was, but I am not clear on that subject. I know they were not admitted.

Q. At the conclusion of the testimony were arguments made?—A. Yes, sir.

Q. By counsel for both sides?—A. Yes, sir; there were.

Q. And after argument the court announced, as you have heretofore stated.—A. Yes, sir.

Q. That on acccount of the importance of the question involved that he would take the case under advisement.—A. Yes, sir.

Q. You argued it on behalf of the Government?—A. Yes, sir.

Q. I take it that your argument was for the cancellation of the certificate on the evidence and under the law.—A. Yes, sir; it was.

Q. That was then your conviction, was it, or were you simply presenting that merely in your conception of your general duty as an attorney for the Government?—A. That was my conviction. May I be allowed to answer further on that question, Mr. Hughes?

The Chairman. Yes; make any explanation you desire.

A. It represented my convictions, for the reason that I felt that his true views had not been presented to the court which granted him his papers, and on account of that irregularity, and least constructive fraud, the papers ought to be canceled. I felt that way for another reason, on account of the fact that I knew, as has been testified in that hearing, that the same court which granted his papers had denied other applicants papers for substantially the same grounds that we were now seeking to have those canceled.

Q. Mr. McLaren, did you report the result of this case to the Government?—A. Yes, sir.

Q. Have you that report?—A. No; I have not got it with me. We make our usual reports of all those cases both at the time they are started and at the conclusion of the case—we are required to make a regular report.

Mr. DORR. I think the committee has the copy of that report as furnished by the Attorney General—we are alluding to the report made by Mr. McLaren on the Leonard Olsson case.

The CHAIRMAN. That has already gone into the record.

Mr. DORR. I think not—not his report—it was the report of Mr. Smith.

The CHAIRMAN. Are you through with the examination. If you are, I had intended to have the witness identify that report.

Mr. HUGHES. Yes; if the chairman intended to present that matter at this point I will desist.

The CHAIRMAN. Mr. McLaren, I hand you a copy of a letter furnished me by the Attorney General purporting to be a copy of your letter to him [showing].

A. Yes, sir.

Q. That is the one to which Mr. Hughes refers, is it not?—A. Well, I did not think it was. I thought he had reference to the regular report we make on each case when it is started and the report at the time of its closing. That was the special report that was called for.

Mr. HUGHES. It was my intention to call for both the first report, the former report, and the subsequent report. This would have been the second document, and which I would have called for, this being the one which more particularly sets out the facts.

The CHAIRMAN. The former report should go in first. If you have it, you may offer it.

Mr. HUGHES. We have not got it. I supposed that Mr. McLaren had a copy of it, and I was not sure but the chairman also had it.

The CHAIRMAN. Not that I know of.

The WITNESS. I have a letter-press copy, and I can have one made from the letter press.

The CHAIRMAN. Is it here?

A. It is in my office.

Q. In Seattle?—A. Yes, sir.

The CHAIRMAN. Mr. Reporter, when we get it it can go in and be marked "Exhibit No. 17." Of course, it can be compared with the original if it can be had, as to its accuracy. It may go in first, and then after that the special report made by Mr. McLaren to the Attorney General can go in and be marked "Exhibit No. 18."

The WITNESS. I think there was a regular report at the conclusion of the case, but I am not certain until I examine my records.

Mr. HUGHES. Those documents having been introduced, there are one or two other questions that I would like to ask the witness.

The CHAIRMAN. At this point there is another letter from the Attorney General which should go into the record, and you may desire to ask some questions on that—that letter accompanied the special report [showing].

Mr. MCCOY. In regard to these exhibits, I think the stenographer ought to indicate in the way that it is usually done what such exhibit is, giving the date of it saying "I offer a certain letter bearing

such and such a date, from a certain person to so and so," and then giving its number instead of the fact that this paper is simply marked as an exhibit.

Mr. HUGHES. I think so, and in that way there would be much less confusion.

Mr. MCCOY. Yes; if you do not identify it by the date as well as by the exhibit number, you are apt to get in trouble.

Last document referred to is marked "Exhibit No. 19."

The CHAIRMAN. You have stated that from the hearing of the evidence that it was your conviction that Olsson's certificate should be revoked?

A. Yes, sir.

Q. And you argued, not only as was your duty, but according to your conviction, but the Attorney General of the United States did not agree with you about that, did he?—A. No.

Q. He has instructed you since to facilitate in every way within your power the opening of the decree and the securing of a new trial for Olsson.—A. Yes, sir; that is the substance of his telegram to me.

The CHAIRMAN. In that connection I will read into the record a letter from the Attorney General to Congressman Victor L. Berger, which was handed me for that purpose, and I will ask to have it marked "Exhibit No. 20." I will now read Exhibit No. 20. This is on the letterhead of the Department of Justice, office of the Attorney General, Washington, D. C., with the initials W. H. and the date June 4, 1912, and is addressed to the Hon. Victor L. Berger, House of Representatives. [Reading:]

MY DEAR MR. BERGER: After you left here yesterday I found upon investigation that the department had already caused inquiries to be made into the case of which you spoke to me, namely, the proceeding in the western district of Washington, to cancel the naturalization certificate of Leonard Oleson, and upon examining the report I find that the proceeding was initiated at the instance of one of the local officials of the Department of Commerce and Labor and brought by the district attorney without previous communication with this department. I find, moreover, that no report had been taken on the trial of the testimony of the witnesses and that the counsel for Mr. Oleson had requested that the decree be opened in order to enable him to make a record. I have instructed the United States attorney to facilitate him in every way within his power toward the opening of the decree and the securing of a new trial, or failing that, of an appeal to the circuit court of appeals. I have further notified the United States attorney that upon the facts stated by Judge Hanford in his decision the department was of the opinion that a great injustice had been done to Mr. Oleson in canceling his certificate of naturalization.

I am yours, very truly,

GEORGE W. WICKERSHAM, *Attorney General.*

Q. Did you receive a copy of that letter?—A. No, I did not.

Q. But the information referred to in it you did receive.—A. I received a telegram asking me to cooperate with the defendant in having the case reopened for a new trial.

Q. Have you the telegram accessible now?—A. I think so.

Q. It might go in in connection with this letter.—A. I will produce it later. It is not here.

The CHAIRMAN. It will be marked "Exhibit No. 21."

Q. Was the telegram followed by a letter or other instructions?—A. No, it was not at that time. I received no letter from the department until after the rehearing proceedings had been had.

Q. Have you any other official communication from the Attorney General's office relative to this matter?—A. I got a second telegram

since the rehearing proceedings, instructing me to cooperate with the defendant on appeal to the circuit court of appeals.

Q. With the defendant Olsson?—A. Olsson. I can produce that telegram if you care for it. I have not got it with me.

The CHAIRMAN. It should probably go in with the other; have you it with you now?

A. No; it is in my office.

The CHAIRMAN. It will be marked "Exhibit No. 23."

Q. I understand you to say that was all the official communications you received from Mr. Wickersham, the Attorney General?—A. I just think that I have a letter from the department asking me to report on the case, which I now have here; do you care for that letter [producing letter]?

The CHAIRMAN. Yes; that can be marked "Exhibit No. 22."

Mr. HUGHES. There are two or three questions that I would like to ask. At the time of the hearing on the petition to vacate the judgment and granting a rehearing of the cause had there been any application made for the settlement of a bill of exceptions?

A. No, there had not.

Q. Or the settlement of any statement of the evidence or statement of facts?—A. No.

Q. Has any yet been made?—A. Not to my knowledge.

Q. So that, so far as you are advised, no differences exist and no difficulty would arise in attempting to settle a bill of exceptions?—A No; not so far as I know.

Q. And having the evidence certified for the purpose of appeal?—A. No difficulty, so far as I know.

Q. Did you orally argue the demurrer?—A. Yes, sir.

Q. To the complaint?—A. Yes, sir; I did; that was argued in either March or April before Judge Donworth.

Q. Before the retirement of Judge Donworth from the Federal bench?—A. Yes, sir; in April, 1911.

Q. A year prior to the trial?—A. Yes, sir.

Q. And your demurrer was resisted by an oral argument by the present counsel for Mr. Olsson?—A. It was their demurrer.

Q. It was their demurrer to your complaint?—A. Yes, sir.

The CHAIRMAN. You mean by the counsel for defendant, Mr. Nichols; his present counsel?

A. Yes.

Mr. HUGHES. I will put it directly; did Mr. Nichols appear in support of his demurrer?

A. Yes, sir; it was his demurrer.

Q. And he argued orally his demurrer?—A. Yes, sir.

Q. And you orally argued it?—A. I resisted it.

Q. Did Judge Donworth file any written opinion?—A. No.

Q. Did he deliver any oral opinion?—A. Yes, sir; there were several points argued in the demurrer. Do you want me to go into that?

Mr. HUGHES. I beg your pardon.

A. I say there were several points argued on the demurrer and Judge Donworth rendered an oral opionion at the time overruling the demurrer.

Q. Do you recall what construction he placed upon the law?—A. In substance I do. One point was raised that the section was—that section 15 under which I was operating was unconstitutional as delegat-

ing certain legislative powers to the courts, and particularly considering the fact that there was no statute of limitations within which such an action might be taken, and also the point that the petition itself did not state any grounds for a cancellation. The judge overruled all of those points and stated in substance, as I recollect his oral opinion on that last-mentioned point, that it would be necessarily a question of fact to be developed at the trial as to what extent, if at all, he was not attached to the principles of the Constitution of the United States at the time he made his application; he said that was a matter which could not be tested by demurrer.

Q. Did he at that time announce the holding that if he had misstated the facts upon the question of his answers in regard to his attachment to the principles of the Constitution that it would be such a fraud upon the court admitting him to citizenship as would require the setting aside of his papers?—A. I do not recollect that he did.

Q. Was not that question involved in the demurrer?—A. Yes, sir; it was.

Q. And was it decided by the court in support of your contention?—A. Yes, sir.

Mr. McCoy. How do you know that; how could you come to that conclusion? Did the court write any opinion or have one published?

A. No; there was no written opinion handed down.

Q. Were there several points on which he might pass in connection with the matter that were necessarily involved in the determination of it?—A. He had to pass on all of them to overrule the demurrer.

Q. You say he had to find that way?—A. Yes, sir; in order to overrule the demurrer, he did; yes, sir.

Mr. Hughes. That is all I care to ask.

The Chairman. Are there any other questions, gentlemen, which you wish to submit to the committee?

Mr. Winsor. There is one question which I would like to submit to the witness, to Mr. McClaren, and that is if through his conduct for the revocation proceedings of Olsson——

The Chairman. You will have to speak a little bit louder, Judge Winsor, or come nearer.

Mr. Winsor. I desire to ask if through his conduct in the revocation proceeding against Olsson he acted under the feeling that a person who advocated a change of this form of government to an industrial democracy was unfit for American citizenship. I put that question direct, because from all his testimony I drew that inference, and I would like to have it appear on the record directly.

The Chairman. Mr. McLaren, is it necessary for me to repeat that question to you, or did you follow it?

Whereupon the official stenographer repeats the question to the witness.

The Chairman. The latter part of that is your comment and is not a part of the question, and may be stricken, but you may answer the first part of the question as it has been read to you.

The Witness. No; I did not; I acted with this feeling that belief, that Olsson's attitude toward the Government had not been made known to the court at the time he made the application for and was granted his citizenship; that the question of whether or not he might have been entitled to citizenship was a question in the consideration of which the court ought to have known his views; that since the

court which granted his citizenship did not learn his views, that that was a fraud upon the court out of which the papers were issued. I was confirmed in that feeling by the fact that other courts, and the superior court in particular which granted those papers, had denied other people citizenship on that or substantially that same ground.

Mr. WINSOR. And if the court denied other citizenship upon the views possessed by the applicant in regard to such a change—that is, from a political to an industrial democracy——

The CHAIRMAN. Your question seems incomplete to me.

Mr. WINSOR. It is in connection with the previous testimony of this witness.

The CHAIRMAN. Mr. McLaren, the question seems to be: If the court denied other applicants citizenship because they believed in a change from a political government, or a political republic to an industrial republic.

A. I can not answer that specifically, because I do not know the exact views which were held by those applicants which were denied.

Q. Do you know the exact grounds on which they were denied?—A. I am informed by the naturalization officials——

Q. Mr. Smith?—A. Yes, sir; that is the extent of my knowledge, and Mr. Enslow.

Q. Do you regard Mr. Smith as sufficiently informed on those legal questions to give you a full and complete report of such facts as would enable you to form that judgment?—A. Yes, sir; I do; him and Mr. Enslow, the other witness who was present at the time that applicant was denied citizenship.

Q. But the accuracy of the judgment would depend entirely upon the accuracy of his report?—A. Yes, sir; I am speaking now upon what I based my judgment.

Q. Do you recall any of the cases by name where citizenship was denied, as you stated?—A. No; I do not; I think they were testified about by Mr. Smith and by Mr. Enslow at this hearing.

Q. Do you refer to the cases in which Leonard Olsson appeared as a witness for the applicant?—A. I think he was a witness in one of those cases; yes, sir.

Q. Both those applicants were denied citizenship on entirely other grounds?—A. No; they were not; one of them was and the other was not.

Q. Two were denied on the ground that one of the witnesses in each case had not known the applicant for a period of five years?—A. That is true as to one or two of the cases.

Q. Is it not true as to the two of them, according to Smith's testimony?—A. It may be so, but it is not true as to the case upon which I am basing my answer. There was one case where the superior court expressly——

The CHAIRMAN. You can not recall it.

Mr. HUGHES. The Eskelund case, if I may be permitted to suggest.

Mr. MCLAREN. Yes.

The CHAIRMAN. Are there any other questions you wish to suggest?

Mr. NICHOLS. I would suggest one question, Mr. Chairman. I would like to have the question asked of the district attorney, if it has not been his theory and his action on the trial of the case of Mr. Olsson in the court at Tacoma as a retrial of Mr. Olsson's qualifica-

tions for citizenship rather than as a trial of the question of fraud committed by Mr. Olsson at the time he was admitted?

The CHAIRMAN. See if I have caught the point by my repeating the question. Mr. McLaren, in conducting the trial with a view of revoking his certificate of naturalization, did you proceed upon the theory of determining his qualifications for citizenship upon the theory of proving that he had committed a fraud upon the court when he obtained that?

Mr. MCLAREN. I proceeded on the theory——

The CHAIRMAN. That is the idea, is it, Mr. Nichols?

Mr. NICHOLS. Yes.

Mr. MCLAREN (continuing)—on the theory that he had committed a fraud on the court which issued the paper, and in doing that, of course, I had to go into the other matter incidentally.

The CHAIRMAN. Now, what occurred in the trial, either in any statements which were made or in any evidence which was produced which tends to show that you were proceeding on the theory of fraud rather than on the theory of qualification?

A. The testimony of two, or possibly three, witnesses, I forget which, for the Government, that the applicant Olsson stated to the court—no; I will ask that that be stricken out—the fact that the issues in that cancellation case admitted that he had stated to the court that he was attached to the principles of the Constitution of the United States and the testimony of two, or possibly three, witnesses as to Olsson's own admission that he was not attached at that time and never had been for two or three years back.

The CHAIRMAN. If you put it on the theory that he had committed a fraud, the use of the word "devotedly," qualifying "attached," would be one of the most material points in the case, wouldn't it? In other words, if Olsson understood that he had been asked whether he was devotedly attached and he answered on that understanding, it would tend very strongly to show that he was not guilty of a fraud, would it not?

A. Yes, sir; it would.

Q. Whereas if the word "devotedly" were not used, the case of fraud would be somewhat strengthened?—A. Yes, sir; I think so.

Q. Trying it on that theory, how does it happen that you did not pursue more carefully the testimony with reference to whether he did or did not answer as to being devotedly attached to the Constitution?—A. I examined all the witnesses that were available as to his answer; that is, Mr. Enslow and Mr. Smith, and Mr. McFarland.

Q. Did you argue it on that theory; did you dwell upon the use or nonuse of the word "devotedly" in your argument?—A. Yes, sir; I did. I pointed out the contradiction in the testimony, that Olsson's statement was that he was not devotedly attached, and the fact that two or three, I forget which, of our witnesses denied flatly that feature of it, and that statement is contained in my report also to the Attorney General.

Q. You are willing to concede now, are you not, that if the words "devotedly attached" were used, or if Olsson believed that phrase was used and answered accordingly, that there would be little or no ground for charging him with fraudulent intent?—A. Yes, sir; I think that is substantially true. I might put it, perhaps, in the way that Judge Donworth did when he passed on the demurrer, that it

would be a question of fact as to the degree in which he might differ from the principles of the Constitution and he said that could be tried out only upon the trial of the facts.

Q. Of course you would also concede that a man might differ from some of the principles laid down in the Constitution and still be loyal to it while he was peacefully endeavoring to change it?—A. To some of the principles of it; yes.

Mr. McCoy. Has an appeal been taken, Mr. McLaren, from the refusal to reopen the case?

A. No; it has not. It has not been taken yet.

Q. Has any appeal been taken from the adjudication revoking the papers?—A. No; there has been no appeal taken at all.

Q. Suppose an appeal is taken from the decree or order, or whatever it was, revoking the papers, how is the circuit court of appeals going to know what the facts were?—A. The same as the former procedure was before we had the facilities for taking down the reports of cases. It will be by a certified statement of facts prepared to the best of the ability and recollection of those who heard the testimony.

The Chairman. You mean of the judge?

A. Yes.

Q. Do you know of any way to get a certificate of it if the judge refuses to sign it?—A. As he stated on the rehearing, that he said he would make that certificate up, assisted by any suggestion that counsel on both sides would be able to make in regard to refreshing his memory as to the fact.

Mr. McCoy. Do you know whether the judge kept any minutes?

A. No; I do not.

Thomas Taylor, being first duly sworn, testifies as follows:

The Chairman. What is your name?

A. Thomas Taylor.

Q. Where do you live, Mr. Taylor?—A. At present I live at 304 Wallace Building, Tacoma.

Q. How long have you lived in Tacoma?—A. Well, just about eight years and a half.

Q. Where did you live prior to that?—A. Well, I was in Canada.

Q. What was your business?—A. Longshoreman.

Q. How long has that been your occupation?—A. For the last five years.

Q. Are you a man of family?—A. No, sir.

Q. Do you know Mr. Leonard Olsson?—A. Yes.

Q. How long have you known him?—A. For the past five years.

Q. Are you and he associated?—A. Yes, sir.

Q. In any organization?—A. Yes, sir.

Q. What is it?—A. The Socialist Party and the Industrial Workers of the World, with their headquarters in Detroit, Mich.

Q. Do you recall seeing Mr. Leonard Olsson about the 12th of September of last year, and to fix your recollection of that date I will say that that was near the time when Eskelund applied for naturalization papers in Tacoma; do you recall that?—A. Yes.

Q. What was Eskelund's other name——

Mr. Dorr. That would be 1910; you said last year.

The Chairman. 1910 I meant; thank you for the suggestion.

The Witness. 1910.

Q. What recalls that to your recollection?—A. Well, I was sitting in the hall reading, at headquarters.

Q. That means the headquarters of the Socialist Labor Party?—A. Yes, sir; they call them sections. The headquarters actually are in New York, but we call it a headquarters of a section.

Q. Go on and tell what it was.—A. I was reading and Olsson came in, and I turned around and he went to the dictionary, and I said, "What is wrong, Olsson?" and he said, "I just came from the court, and I want to turn up a word." And I said "Yes," and I got interested right away myself. He said the examiner in the court room had asked him if he was devotedly attached to the Constitution, and he wanted to see what bearing the word "devotion" had—"devotedly attached"—he wanted to see what bearing "devotedly" had with the "attached."

Q. Did he find out?—A. Yes.

Q. Well, was there any further discussion there as to the meaning of that word?—A. Well, I made the suggestion that it qualified the attachment; the word attachment.

Q. How soon was that after he had been in court in connection with his application for naturalization?—A. Well, now, I could not say.

Q. Was it the same day or some other day?—A. Oh, yes, yes; it was the same day; it was the afternoon, and I happened to be sitting in the hall and he told me he had just come from the court, or was there in the court that day during the day.

Q. Did he mention in that conversation who the applicant was?—A. No; I don't think he did.

Q. Do you know from any other source whom the applicant was?—A. Yes; because we are all more or less acquainted with one another; we are right on the beach.

Q. Well, who was it?—A. Well, it was Eskelund, and the other one was Charley Oleson.

Q. Spell that first name.—A. E-s-l-o-n-d.

Q. Eslond?—A. Eslond.

The CHAIRMAN. Do you gentlemen wish to ask him any questions?

Mr. HUGHES. Just one.

Q. You say that he mentioned that he had been a witness on that day for Eskelund and Karl Olsen?—A. Well, now, I don't exactly know; you see it is carrying my memory back a little far as to the exact statement that was made, outside that we immediately went to the dictionary and turned up that word "devoted," finding out what qualification it had on the word "attached."

Q. I understood you to say that he gave as a reason that he had been just recently that day in court and that he was a witness for Eskelund and Karl Olsen; is that correct?—A. Yes; I think that is correct.

Q. Are you positive whether he mentioned the name of any of the persons for whom he was a witness on that day?—A. No; I would not be positive, it is so far back.

Q. Are you positive as to who he stated it was that asked him any such question and how such a question arose?—A. He said the examiner.

Q. Eh?—A. He said the examiner was asking him that question, whether he, Olsson, was devotedly attached to the Constitution.

Q. Did he say when and where the examiner had asked him that question?—A. No; he did not.

Q. He did not say whether it was in court or not?—A. No; he did not, but I naturally implied that it would be the man in court.

Q. Did he tell you about talking with the examiner at his office?—A. Yes; I think he did mention that.

Q. About his having a discussion with the examiner at his office, or any discussion, on the subject of his views?—A. Yes, sir; he did mention that he had a discussion with the examiner in some way.

Q. Well, was that the occasion of his coming to the headquarters and asking and looking up the use of the word "devotion," or "devoted," or "devotedly"?—A. No; it was not.

Q. Did he tell you that he did not know what the word "devoted," or "devotedly," meant?—A. No; he did not say that, but he wanted to see it exactly; he had a hazy idea what the word meant, and I did myself, but as to giving a correct definition, I don't know that I could do it right now myself.

Q. How long have you lived in Tacoma?—A. Well, about seven or eight years.

Q. Have you lived there continuously during that time?—A. No.

Q. Where have you been in the meantime?—A. About two years and a half ago I was in Cosmopolis and Aberdeen.

Q. How long were you there?—A. Probably about four or five months.

Q. Have you been anywhere else except at Tacoma and Cosmopolis during the last seven or eight years?—A. Oh, yes.

Q. Where?—A. Well, now, I go different places; I am a wage slave and those are around a good deal.

Q. Have you been at any other place for any specific length of time during the period which you have named?—A. No, sir.

Q. Just tramping around from one place to another?—A. I don't think I got your question right.

Q. You say you have been at several places other than Cosmopolis and Tacoma?—A. Yes, sir.

Q. I want to know whether you have been at any other places than those two?—A. Yes, sir; I worked in the logging camp.

Q. Any places where you stayed for any length of time?—A. Well, what do you mean by any length of time?

Q. Have you been living or abiding at any particular place other than Tacoma and Cosmopolis?—A. Well, I was at a logging camp, I think it was in 1908, for about three months, and then I came back and I have been steamboating on the Sound and then I went to Tacoma and I have stayed there, with this exception—of, yes, I was down in Portland once but only for a few days, just the trip.

Q. During this year have you had any trouble with the law officers of the courts?—A. None; not the slightest.

Q. None during that time?—A. No, sir.

Q. Or at any other time?—A. No, sir.

Q. You never had any conflict with them at all?—A. No, sir; never whatsoever.

The CHAIRMAN. Does anyone else desire to suggest a question?

Mr. WINSOR. Not any.

J. W. A. NICHOLS, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name.

A. J. W. A. Nichols.

Q. And your address?—A. 504 Bank of California Building, Tacoma.

Q. How long has Tacoma been your home?—A. About 15 years.

Q. And what is your profession?—A. A lawyer.

Q. Practicing your profession?—A. Yes, sir; trying to.

Q. Mr. Nichols, you were the attorney for Mr. Olsson on the occasion of the application to cancel his certificate, I believe?—A. I was.

Q. We had the date of that a number of times, but it will not hurt to get it again—when was it?—A. Well, I do not remember the date, Mr. Chairman.

Q. It was sometime in May of this year?—A. Yes, sir; I think it was.

Q. Commencing with your appearance in court there and beginning with the opening of this case, will you please, in your own way, state to the committee—state what occurred there as if you were preparing a bill of exceptions?—A. Mr. Olsson brought me the petition and affidavit served upon him by the Government and requested me to make appearance in the court and defend the case for him. After taking the papers and studying them and the law in connection therewith, I filed a demurrer on behalf of Mr. Olsson—a demurrer to the petition and affidavit together. That demurrer is a part of this record. Some time after that the demurrer came on for hearing before Judge Donworth and it was argued before the judge by Mr. McLaren and myself. Judge Donworth, after the arguments of counsel, overruled the demurrer.

Mr. HUGHES. May I suggest to the witness to speak as distinctly as possible. I find myself distressed in the effort I am forced to make to hear him.

The CHAIRMAN. You will have to be lenient with him; he is a lawyer.

The WITNESS. I am glad there is some evidence that I am a lawyer besides my success in this case.

The CHAIRMAN. Proceed.

A. After the demurrer was overruled I prepared an answer to the petition and affidavit, which was verified by Mr. Olsson and filed by me in the cause. The matter then rested for a considerable period and I had thought the Government had abandoned the case, but last April or May I received notice that the case would be called for trial. In accordance with that notice I notified Mr. Olsson and went into the merits of the case with him; subpœned four witnesses and we appeared on the day of the trial. The case was called for trial before Judge Hanford at the Federal court in Tacoma. The Government produced its witnesses, Mr. John Speed Smith and Mr. Enslow, I think his name is, and Mr. McFarland.

At this point does the committee wish me to recite the evidence produced?

The CHAIRMAN. That is the main thing that we do want.

A. I am not sure which witness was produced first at the trial, Mr. Smith or Mr. Enslow, but I will give the testimony of the two witnesses as I remember it.

Mr. Smith testified that Mr. Olsson—Leonard Olsson—had appeared as a witness in the superior court upon the application of some other party for admission to citizenship, and in reply to a question by Mr. Smith directed to Mr. Olsson on that hearing Mr. Olsson had stated that he was not attached to the principles of the Constitution of the United States. That evidence was given over my objection on the ground that Mr. Olsson at that hearing was not under examination as to his qualification; he was not sworn to testify as to his own qualifications for citizenship. Mr. Smith, I think, further testified that on another occasion under similar circumstances in the superior court Mr. .Olsson again appeared as a witness in another case, and then testified substantially to the same thing, that he was not attached to the principles of the Constitution of the United States, and had not been for some two or three years. That testimony was given in response to questions by Mr. McLaren, the district attorney. When I took Mr. Smith for cross-examination I particularly directed his attention to the question as to whether or not he had not asked Mr. Olsson if he was devotedly attached to the principles of the Constitution instead of using the statutory language. Mr. Smith denied that such was the fact. When Mr. Enslow was testifying, he testified mostly to the effect that Mr. Olsson had been seen by him distributing some socialistic tracts, and had advanced to him some theories and doctrines appertaining to socialism. This evidence also was all given over my objection as being irrelevant, immaterial, and incompetent to the issue. Mr. Enslow's testimony all through was directed to his own impressions that he had received from conversations with Mr. Olsson, and not to facts relative to the issues then being tried—not to anything that Mr. Olsson had said directly or done directly. I questioned both of those witnesses to ascertain if they knew anything with regard to Mr. Olsson's conduct during the five years preceding his admission to citizenship which would disqualify him as a citizen and whether they knew anything derogatory in his conduct; whether they knew whether he had been guilty of any misconduct, any crimes or misdemeanors or violence toward the community. To all of these questions they answered in the negative. Mr. McFarland was then called as a witness, and in answer to interrogatories propounded by Mr. McLaren he stated upon his direct examination substantially as Mr. Smith had testified; that on the hearings in the superior court where Olsson was a witness he had stated that he was not attached to the principles of the Constitution of the United States. His testimony was very brief, and that was practically all that he testified to. On cross-examination by myself I directed his attention to the word "devotedly," and I asked him specifically if he did not hear at that time the language of Mr. Smith, and that it contained the word "devotedly," and he said that he did not. I asked him if he had paid attention enough to the question so that he could testify now that the word "devotedly" was not used. He said that he did not and could not say positively; that he did not know whether the word "devotedly" had been used or not. That was about the substance of the Government's testimony, as I remember it, in chief.

I then called the witnesses for the defense. Mr. Eskelund, I think, is the name of one and Mr. Rust the name of another, and two ladies whose names I forget—they testified here yesterday. My examination of each and all of those witnesses was directed to the conduct and

character of Mr. Olsson during the five years preceding his admission to citizenship; and I did that on the theory that the statute required his attachment to the Constitution of the United States to be evidenced by his behavior; the language of the statute being in substance that on his admission to citizenship it should be shown by the evidence of witnesses that during the five years preceding his admission his behavior was that of a person attached to the principles of the Constitution and well disposed toward the good order and well being of the same, and on that theory that his attachment should be shown by his actions, I directed my entire examination of those four witnesses to their knowledge of his conduct and behavior during those five years preceding his admission. They each and all testified that he was a man of exceptionably good habits and character; that they had known him personally during all that time and that he had visited in their homes and they had met him in a social way in other places, in the hall of the Socialist Labor Party that they had heard him advance his theories and doctrines with regard to the Socialist Labor Party and that they, during that entire time, had never heard any expression from him advocating violence or any misconduct, nor had they known of any act that would in any way disqualify him, and that they each and all were willing to give it as their opinion that he was a good citizen and in every way entitled to citizenship. That was the substance of their testimony in chief. On cross-examination one of the men, I forget which one it was, Mr. Eskelund, I think, was induced to say that he was a member also of the Socialist Labor Party and met Mr. Olsson in the Socialist Labor Hall and heard him speak in advocacy of the Socialist Labor Party's doctrine, and I do not remember what further there was testified by Mr. Eskelund. The last witness called by myself was Mr. Olsson.

The CHAIRMAN. You have not given us anything which you elicited from Mr. Rust in connection with this.

A. Mr. Rust testified substantially the same as Mr. Eskelund as to his acquaintance with Mr. Olsson during the preceding five years or more and his personal knowledge of Mr. Olsson's good habits; that he was a hard-working man, working at his occupation as a longshoreman and spending his evenings in study. I do not remember at this time now any other matters that I brought out at that time. On cross-examination the subject of socialism was gone into.

Q. If you can do so, I wish you would state fully what you developed by Olsson himself.—A. I had forgotten that.

Q. Well, you may do that at this time.—A. The last witness I called was Mr. Olsson himself. I think now, as I remember it, I began by directing his attention to the evidence that had been adduced by Mr. Smith and Mr. Enslow with regard to the use of the word "devotedly" in the questions asked him while he was a witness in the other cases. Mr. Olsson most emphatically asserted that the word "devotedly" had been used in the questions asked him and that because of the use of that word he had answered the questions in the negative, and on being asked to explain what he meant by answering those questions in the negative when they contained the word "devotedly," he stated in substance that he meant that he was not idolatrously attached to the Constitution of the United States—that he did not worship it as an idolator worships an idol. As I remember now, I asked Mr. Olsson some leading questions as to whether he was

an anarchist or not. He emphatically denied being an anarchist or a polygamist. I think I asked him, as I remember it now, if it was his purpose to obey and support the Constitution of the United States and the laws of the United States, and he answered that it certainly was, so long as the laws remained on the books. He used that expression particularly as I remember it—"so long as the laws remained on the books." I do not recall now any further testimony of Mr. Olsson on direct examination. On cross-examination he was interrogated as to his socialistic beliefs, and I do not remember now whether it was brought out by Mr. McLaren or Judge Hanford—I know they both interrogated Mr. Olsson as to the extent of his attachment to the Constitution of the United States—what changes he would advocate and how they would be brought about in his estimation. It was asked him, I remember this—Judge Hanford calling his attention to the provision of the Constitution as to due process of law and asking him if he believed in that principle and Mr. Olsson answered that he did.

As I remember it now, Judge Hanford then questioned him with regard to the rights of property, if he did not know that property could be taken from persons without due process of law. Mr. Olsson answered that he knew that that was the injunction of the Constitution. On being asked in regard to his beliefs as to the ownership of property, he made some statement that he believed lands and mines, and I think some other species of property, that I do not recall now, should become the common property of the whole people and not be subject to private ownership. At that point I think it was Judge Hanford asked him how he would bring about that change and his reply was that he would bring it about by the ballot. As I remember it, there was nothing further gone into at that time in the way of trying to get Mr. Olsson to explain how, by the use of the ballot, that would be brought about, but I know that he repeated at least once or twice that the changes which he advocated should be brought about by the use of the ballot and the vote of the people. He was then asked by Judge Hanford some question as to the Socialist Labor Party and the Socialist Party—I am not sure that the judge made that distinction, I am not clear about that, but Mr. Olsson in his answer did make that distinction in his answer to Judge Hanford's question. Mr. Olsson stated that he was not what is generally understood as a Socialist, but he belonged to the Socialist Labor Party, and I think then that the judge questioned him as to the difference between the two. At that point Mr. Olsson took two papers out of his pocket and started up toward the judge's desk, saying, that he had the platforms of the two parties which he would be glad to have the judge read, but the judge declined to accept the two papers. All this evidence as to Mr. Olsson's relation to the Socialist Labor Party and as to his beliefs with regard to the rights of property was admitted over my objection; the objection being on the ground that the evidence was in nowise relative to the issues of the case. My theory of the case being at the time, and my whole objection and examination to their examination being based on the conception that the only charge against Mr. Olsson was the charge of fraud committed by him when he received his certificate of admission to citizenship, and that fraud could not be shown by showing his doctrines and political beliefs and his theories with regard to the ownership of property.

Q. Have you anything you wish to add as to the arguments made at that time to the judge?—A. Well, at the close of the testimony arguments were made by Mr. McLaren and myself. Mr. McLaren contending that the evidence showed that Mr. Olsson had testified falsely when he testified on his own examination that he was attached to the principles of the Constitution of the United States. My argument, of course, was directed to the insufficiency of the evidence, the irrelevancy of the evidence as to that question of fraud, and drawing particular attention to the fact that Mr. Smith's questions to Mr. Olsson at the time he was a witness in these other cases were not within his province; that Mr. Olsson at that time was not under oath as to his own qualifications, but only as to the matters to be testified to respecting the applicant at that time for citizenship; and that even if given falsely at that time they would not under the statute at that time be perjury; that they could in no wise be used in condemnatory of Mr. Olsson; that the question as to whether he was attached to the principles of the Constitution or not was a question peculiarly for himself to determine as a matter of expression and for the court to determine by his behavior during the five years preceding his admission, and that question had been adjudged and determined by the court which admitted him, and therefore it was not a subject for reexamination. That was the line of my argument before Judge Hanford. I did not elaborate on the argument very much—I never do when addressing a court—I assume that the court is experienced in those matters and when a point is presented and made and it is well founded, that it does not need elaboration.

Q. Did Judge Hanford do or say anything during the trial which tended to show his state of mind on the question?—A. Nothing, except so far as his question related to what I conceived to be these irrelevant matters, namely, his socialism and the doctrines of the Socialist Labor Party. I recall now, which I had forgotten, the same matter which was testified by other witnesses: Judge Hanford asked Mr. Olsson if he was acquainted with this noted Socialist leader—I have forgotten his name.

Q. Mr. Rogers?—A. Yes; Rogers. Mr. Olsson testified he did not know the man and was not acquainted with him and never met him and did not know who he was. Now, there was nothing in Judge Hanford's language or manner that indicated any bias to me except the fact of his allowing what I conceived to be irrelevant evidence introduced a basis for a judgment to be rendered in the case. Of course, I conceive it to be the duty of a judge at all times to render a judgment solely upon the evidence—relevant evidence—material evidence and the law of the case; and, of course, when a judge goes farther than that, in my opinion, I think he is committing error and I never have failed to call the judge's attention to that fact and urge upon him a correction of the error.

Q. Does that complete the statement of what you regard as the material things that occurred during the hearing?—A. I think so, Mr. Chairman, so far as I recall now.

The CHAIRMAN. Mr. Hughes, you can cross-examine.

Cross-examination:

Mr. HUGHES. Mr. Nichols, you have mentioned the fact that the judge asked if he knew who Bruce Rogers was.—A. Yes, sir.

Q. Did you make mention of another fact testified about by Mr. McLaren, that the judge called attention either by reading or by statement made at the time to two certain doctrines in some publication which had appeared over the hand and signature of Bruce Rogers in a daily paper of this city—do you recall about that—I simply want to refresh your mind?—A. I had forgotten that in passing over the testimony. As I remember it now, Judge Hanford did read to Mr. Olsson from some paper. As I stated before, I consider that whole proceeding absolutely erroneous and wrong and I did not pay much attention to the form of the questions for that reason; but I recall that Judge Hanford did read something to Mr. Olsson, and the question was then, I think, as to whether he knew the author of it or subscribed to the opinion—I do not recall which.

Q. And you do not recall what Olsson's answer was.—A. I know Mr. Olsson said he was not acquainted with Mr. Rogers.

Q. But as to whether he assented to the views that were expressed in Mr. Rogers' statement which were read.—A. I am sure he did not assent; I do not recall whether he expressed a dissent or not.

Q. Now, to refresh your memory further, was not this question propounded to him as to whether he had knowledge of that provision of the Constitution which declares that the property of the individual shall not be taken by process of law without due compensation—I think you omitted any reference to the latter part "could not be taken without due compensation" in your testimony—was not that particular declaration of the Constitution called to the attention of the witness.—A. I do not recall now whether the compensation clause was mentioned or not, I presume it was.

Mr. McCoy. Is there any clause in the Constitution which speaks about compensation?

The Witness. I do not know; I think now that you recall it that way to me—I do not think that there is—I think that is a statutory provision.

Mr. Hughes. Yes, I guess it is a statutory provision.

The Witness. It is in our statute laws.

Mr. Preston. It is in our State constitution.

Mr. Hughes. In our State constitution but not in those words in the Federal Constitution.

The Witness. No, I do not think that that language is in the Federal Constitution.

Q. But without the "due process of law"—that it could not be taken by process of law without just compensation, as held by the courts in construing that provision, isn't that true?—A. I do not recall whether that was gone into by the judge or not. I know that I was somewhat disgusted by their going into the branch of the subject that I considered wholly irrelevant.

Q. And you believed all the time that that was irrelevant and immaterial.—A. I did and I believed that the judge was doing me an injustice by allowing it to get into the case—and I think so yet.

Q. In that connection did not Mr. Olsson testify that the only method he had to suggest for the accomplishment of this change and depriving the individual of property, was the power and use of the ballot; to do it by voting to take the property away from them.—A. No, sir, Mr. Olsson did not express it that way. Mr. Olsson expressed it to the effect that he believed the change should be

brought about by due process of law, and when asked what was meant by due process of law he said that it meant by the vote of the people in changing the laws. He did not say that the property of one person should be voted over to another without compensation. There was nothing of that kind in his testimony—nothing that could be construed to that effect.

Q. Do you think, Mr. Nichols, that a fair presentation of the case of Mr. Olsson could be made to the circuit court of appeals upon a bill of exceptions which embodied under certificate of the court the statement of the facts which you have here made to-day.—A. No, I do not.

Q. Haven't you attempted to state the facts fully and truthfully as they occurred?—A. I have tried to, but I am afraid my presentation of them might not be accepted.

Q. That is, presuming that, I am asking you if you believe that a fair presentation of the case and of your contentions in the case and the proper protection of the rights of Mr. Olsson, could be had if a bill of exceptions embodying the facts as you have stated them yourself, were certified for the court for the purposes of that appeal.—A. Well, I rather think that I should answer that in the affirmative, and yet after seeing my testimony written out it might be that there is something I have omitted that I would think material.

Q. And as an honest man, you would present your refreshened recollection to the court and you would expect Mr. McLaren as an honest man, if it was correct, admit it. —A. I certainly would.

Q. And he would expect Judge Hanford to certify to it, and would not you?—A. I would, if the judge's remembrance of the testimony was the same as ours.

Q. Well, you have no reason to think that he would not certify to a statement of facts of that kind.—A. I have never had occasion to doubt Judge Hanford's willingness to give a correct statement of the facts when he understood the facts

Q. You never had any difficulty with him, and have no reason to anticipate that you would have any difficulty in getting a fair statement of the facts?—A. I never had any difficulty with Judge Hanford in getting a fair statement of the facts.

Q. Your grievance is chiefly in the construction of the questions of law, is it not?—A. Yes, sir; largely. I have read Judge Hanford's opinion on file in this case, and also the report of his later opinion given on the petition for rehearing, and the judge's remembrance of the facts as outlined in those two instruments does not coincide wholly with my own—largely it does coincide, but there are some material differences.

Q. Nothing there to indicate that those differences could not be fairly reconciled when the matter was presented by you and Mr. McLaren before him?—A. Not unless the judge should be firm in adhering to his remembrance, as stated in those instruments.

Q. The real contention made is the trial of the case, and the argument which was submitted to the court was whether or not Mr. Olsson had deceived the court admitting him to citizenship by not truthfully, fairly, and fully stating facts in his original petition, in his evidence, and in his oath of allegiance—that was the real contention, wasn't it—you on the one hand arguing that the evidence

offered by the Government was in the main irrelevant, immaterial, and incompetent evidence, or immaterial to what you conceived to be the true issue.—A. Well, the question is so involved that I can not answer it by yes or no.

The CHAIRMAN. Do you wish to have it read by the reporter?

Question repeated to the witness.

The CHAIRMAN. Strike out all the last part commencing with "You on the one hand."

The WITNESS. The real contention, according to my conception, was whether Mr. Olsson had been guilty of fraud. The question tried there was as to his qualifications for citizenship.

Mr. HUGHES. But the real contention as made in the argument by Mr. McLaren was that he had been guilty of fraud, deception of the court in the affidavit he made, in his petition to become a citizen, and in the proof he offered upon which he was admitted by the superior court of Pierce County to citizenship; that was Mr. McLaren's contention, was it not?

A. That was a secondary part of the contention.

Q. Well, it was his contention that the proof he offered established the fact that such misrepresentation as that had been committed by Mr. Olsson—Mr. McLaren argued to that effect, and your contention was that the evidence by which he sought to prove it was immaterial and irrelevant to that issue.—A. Wholly so.

Q. And the court ruled against you upon your objections.—A. Yes, sir.

Q. And if the court was wrong upon that his contention is wrong.—A. It certainly is.

Q. And if he was right on that his contention is right—now, that is all.

The CHAIRMAN. Any other questions to suggest?

Mr. WINSOR. Well, I would like the witness to answer as to who introduced the examination as to Olsson's political beliefs.

The CHAIRMAN. Who introduced that part of the examination which referred to Olsson's political beliefs?

A. It was the Government, I think; I am not sure whether that branch of the subject was first suggested by Judge Hanford or not, but it was by the Government or Judge Hanford in his cross-examination—we never referred to it on our side of the case until it was drawn in.

The CHAIRMAN. Is there anything further?

Mr. WINSOR. Yes. Do you deem the statement of facts as cited in the judge's opinion just to Olsson?

A. No; I do not think it is full enough. I do not think it is fair to Mr. Olsson. I think there are statements in there that are not in accord with the evidence.

Mr. WINSOR. That is all.

Mr. MCCOY. Mr. Nichols, it did not appear on this hearing how fully Olsson was given an opportunity to state his views at the time he was admitted to citizenship.

A. It did not appear how fully he was given that opportunity.

Q. Nor how fairly and truthfully he had answered the full questioning along those lines.—A. That was not made to appear except that Mr. Olsson did state in answer to some question that he had not been given a fair opportunity to explain that upon his first hearing.

Q. That is when he was admitted to citizenship—is that what you mean by his first hearing?—A. No; at the time Mr. Smith stated that Mr. Olsson was testifying as a witness in the other case—he was not at that time given an opportunity to explain what he meant.

Q. In other words, he was pinned down more or less to a categorical answer to a categorical question.—A. That was his complaint.

Mr. HIGGINS. I do not know but what it has already appeared in the record, Mr. Nichols, but do you happen to know before what judge Mr. Olsson was admitted to citizenship?

A. I think it has been stated that he was admitted before Judge Chapman of the superior court.

Q. Of the State court?—A. Yes.

Q. Held where?—A. Held in Tacoma.

Q. Mr. Leonard Olsson?—A. Mr. Leonard Olsson.

Mr. HUGHES. Are you not mistaken? Was it not stated that it was before Easterday? It was in the month of January.

A. I think I am right in stating Judge Chapman, but I am not sure.

Mr. MCCOY. There is Mr. Olsson in the court room and he can answer that question; he ought to know.

Mr. OLSSON. It was before Judge Shackleford.

Mr. HUGHES. I suppose it is in the record.

The CHAIRMAN. Mr. Olsson, have you the platform which you promised to provide for us?

Mr. OLSSON. Yes, sir.

LEONARD OLSSON, recalled, testified as follows:

The CHAIRMAN. Will you please let me see that paper? [Witness hands paper to the chairman.]

Q. Mr. Olsson, the little pamphlet which you have handed me purports to be the preamble and constitution of the Industrial Workers of the World, with general headquarters at Hamtramck, Mich. Now, apart from this constitution and by-laws, did the Industrial Workers of the World, with headquarters there in Michigan, adopt a political platform?—A. No; that is a union—the political clause is in the preamble.

Q. That is, this is their only declaration of principles which you know of?—A. Yes, sir.

The CHAIRMAN. It may go into the record as Exhibit No. 24.

Mr. HIGGINS. Before you mark it as an exhibit I would just like to precede it by one question.

Q. That is the platform which you referred to on yesterday when you were on the stand?—A. Yes, sir; that is one of them.

Q. And the declaration of the principles of the Industrial Workers of the World which you told the committee that you would get?—A. Yes, sir.

Q. And that is to-day the existing platform and the latest declaration of the principles of the Industrial Workers of the World?—A. Yes, sir.

Q. And the only one?—A. Yes, sir.

The CHAIRMAN. You said yesterday that they were of Detroit, Mich., but the place named here is a suburb of Detroit?

A. Yes, sir; but it is located at Detroit at the present time. The book was sent out when the headquarters was at Hamtranck, but to-day they are at Detroit.

Mr. HIGGINS. In answer to some inquiries yesterday you said there were two communities of the Industrial Workers of the World, and that one was located at Detroit and one at some other place.

A. One at Chicago.

Q. Now, the document which has been marked "Exhibit No. 24" is the one which you referred to yesterday as being the platform of the organization located at Detroit.—A. At Detroit.

Q. And that is the organization with which you are affiliated.—A. Yes, sir.

Q. And which you are a member of?—A. Yes.

Mr. HUGHES. May I ask when did those two branches separate—when was that separation?

A. In 1908.

Q. Both retained the same name.—A. Both the same—both claimed to be the only one, or the original one.

Mr. HIGGINS. Is there any rivalry or real difference between the two organizations?

A. Yes, sir.

Q. Have they separate officers?—A. Separate officers.

Q. Who was the president of the Industrial Workers of the World with which you are affiliated?—A. The general secretary and treasurer is Herman Richter.

Q. Where does he live?—A. Detroit, Mich.

Q. He is the general secretary?—A. Treasurer

Q. Who is the president?—A. There is no president.

Q. Who are the other general officers of the organization?—A. It has a general executive board.

Q. How many of them are there?—A. I think there are seven members, I am not positive.

Q. Can you name them?—A. No, I could name a couple; Rudolph Katz and Robert McClure—Rudolph Katz, of Paterson, N. J., and Robert McClure, of Philadelphia, Pa., and the others I can not name.

Q. Do the political principles in the declaration of the Industrial Workers of the World and the Socialist Labor Party differ?—A. Well, they do not differ at all—they do not differ—they harmonize.

Q. They work in harmony?—A. That is, the Socialist Labor Party is a political organization and the Industrial Workers of the World is an industrial organization.

Q. So that the Socialist Labor Party is a mere instrument or branch or means of carrying out the doctrines of the Industrial Workers of the World?—A. No, they are distinctly separated.

Q. Do they both agree to the same principles?—A. To explain it, I will say, for instance, myself as a citizen, as a voter I am organized according to geographical distances, but as a worker, as a longshoreman I am organized as my industry, and the same man is in two different things.

Q. Then the Industrial Workers of the World might be regarded somewhat like the American Federation of Labor?—A. Yes; you might call them an organization or a union.

Q. How?—A. Yes; a union.

Q. Do you belong to a labor union?—A. Yes.

Q. Which one?—A. The Longshoremen.

Q. The Longshoremen's Union?—A. Yes.

Q. Is the Longshoremen's Union affiliated with the American Federation of Labor?—A. Yes.

Mr. McCoy. You had some discussion with Mr. Enslow as to your beliefs, I believe?

A. Yes, sir.

Q. Did you ever say anything to Mr. Enslow from which he could infer that you advocated the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers?—A. No, sir.

Q. Either of specific individuals or of officers generally?—A. No, sir.

Q. Of the Government of the United States?—A. No, sir; absurd.

Q. Or of any other organized Government?—A. No, sir.

Q. You never advocated any such a thing?—A. No, sir.

Q. You never believed in it, did you?—A. No, sir.

Q. Did you ever belong to any organization which either advocated or taught any such practices?—A. No, sir.

Q. And, to repeat my question again for emphasis, did you ever say anything to Mr. Enslow from which he could possibly have inferred that you believed or taught or advocated any such a thing?—A. No, sir.

Q. I show you a newspaper clipping and I will ask you whether you ever saw it before.—A. Yes, sir.

Q. When did you first see it?—A. It was of the Tacoma Ledger of September 13, 1910.

Q. And that was the day after Olsen—what is his name?—A. Karl Olsen.

Q. Karl Olsen applied for citizenship and the day after you testified on his behalf?—A. Yes, sir.

Q. And do you know how that account got into this paper?—A. I presume there was a reporter present. I observed a lady with a pencil and a pad sitting in the court when I was questioned by Mr. Smith.

Q. Did you give that statement as it appears in this clipping, or the substance of it, to any reporter?—A. No, sir.

Mr. McCoy. I will ask that this be marked "Exhibit No. 25."

Q. And where did you get that clipping?—A. I got it from the Tacoma Ledger.

Q. You saw the whole of the Tacoma Ledger, and this you cut out?—A. I cut it out and I wrote on the top of it the date and the name of the paper.

The Chairman. Is that in your own handwriting?

A. Yes, sir.

Mr. Higgins. Did you cut it out at the time?

A. Yes, sir.

Q. On the date?—A. Yes, sir.

Q. And wrote what appears on the top of it?—A. Yes.

Mr. Higgins. At the time you cut it out?

A. Yes.

Mr. Higgins. Is this date here September 10, 1910?

A. September 13.

Q. Did you write that on there at the time that you took the clipping out of the paper?—A. Yes, sir.

The Chairman. Mr. Hughes, do you wish to further examine the witness?

Mr. HUGHES. I am somewhat at a loss to see on what theory a newspaper clipping would become evidence.

Mr. HIGGINS. On the theory, I think, that perhaps we may be wanting to accumulate a record so large that we may have to have a special train to carry it to Washington.

Mr. HUGHES. What prompted you to clip out this article and preserve it?

The WITNESS. Well, just curiosity. I have a couple more I think I got out of papers at the time.

Mr. HUGHES. I do not care to add anything more to what I have said as to the incompetency of this newspaper clipping.

The CHAIRMAN. I might state as a reason I had for reading the first part of it into the record that I regarded it as strongly corroborating of the statement that the qualifying adverb was used, as stated by Olsson.

Mr. HIGGINS. Don't you think, Mr. Chairman, that the best way would be to get the reporter who wrote this article and who was present and furnished the item for the paper, rather than to offer it in this way?

The CHAIRMAN. What you say would be a good thing to do and we can yet do it, but it would not detract from the reason I gave—the fact that it appeared in the paper in the ordinary course of the editing and publishing of a paper, so soon after the fact, is corroborative evidence as to the theory of the witness—it is not conclusion—there may be other evidence, and, as I said, if we can get the reporter who wrote it it would be even better evidence, and we may do that.

Mr. HUGHES. It would not occur to me to be competent evidence in any court.

The CHAIRMAN. The Chair does not agree with you.

Mr. HUGHES. That a newspaper clipping, without being authenticated and without having produced the person who wrote it, and without any evidence as to what transpired at the time—that that is competent evidence? It seems to me that it is in the remotest degree secondary evidence.

The CHAIRMAN. Well, secondary evidence in the remotest degree is competent sometimes.

Mr. HUGHES. Sometimes.

The CHAIRMAN. And this is one of those times.

Mr. HIGGINS. I hardly think, Mr. Chairman, that it has been established even that it appeared in the Daily Ledger.

Mr. MCCOY. The paper was offered for what it was worth, and I am frank to say that if we were conducting a trial in a court, and that I were a judge on the bench, I think that I should sustain this objection. I do not believe, myself, that under the court law that that would be strictly competent evidence, but as we are in an inquiry of this kind we do not confine ourselves to competent evidence. If we did so, we would keep out half what has been said here to-day.

The CHAIRMAN. We have given this matter more space than it is worth—it goes into the record. Is there anything further with Mr. Olsson?

Mr. DORR. I would like to ask him a question, if I may?

The CHAIRMAN. You will have to choose who will do the examining on that side. Either one can examine him, but only one should do so.

Mr. HUGHES. Just one more question, then.

Q. Do you belong to what is known as the Home Colony, in Pierce County?—A. No. sir.

Q. Have you ever belonged to that?—A. No; I never have been there.

Mr. McCOY. What is the Home Colony?

A. Well, what I heard, it is a certain amount of people who call themselves anarchists.

Q. What do they have—a farm, or something of the kind?—A. Yes, sir; they have a kind of a cooperative land—that is, I heard they have. I think it is more broken up now. A few years ago it was supposed to be a cooperative affair where there should be no—they have a general system of cooperation between one another—an anarchistic community.

Q. What is the meaning you attach to the word "anarchistic" in connection with this Home Colony?—A. Well, that is, they don't believe in the highly concentrated form of government and they rather retrograde back to the individual, and in the extreme each individual was, as you say, to paddle his own canoe.

Q. That is, on the property that they own?—A. Yes.

The CHAIRMAN. If you are through with Mr. Olsson, he may be excused. If there is some way of locating the newspaper reporter, the committee would be glad to have him here and produce him—can you aid us?

Mr. HUGHES. We will do our best to aid you. We have already taken steps to locate that reporter and ascertain the truth. I may say frankly that it does not seem of any consequence; but we want to aid you in getting at the fact instead of having newspaper clippings and rumor. It is important now to know what occurred before the judge who heard the testimony, and as we view this matter we want to give the best evidence of it possible, and we will help you to do it.

The CHAIRMAN. In any such case we want all the evidence—the best where we can get it, or such evidence as we can get, if we can not get the best.

Mr. HUGHES. We will take steps and endeavor to locate the reporter—the paper and the date and the reporter who wrote it, and, if possible, to get that reporter here.

Whereupon a further hearing is adjourned until to-morrow, June 29, 1912, at 9.30 o'clock.

THIRD DAY'S PROCEEDINGS.

JUNE 29, 1912—9.45 a. m.

Continuation of proceedings pursuant to adjournment.

All parties present, as at former hearing.

Mr. GRAHAM. The committee will be in order. Mr. McFarland.

R. E. MCFARLAND, having been first duly sworn, testified as follows:

Mr. NICHOLS. Mr. Chairman, I would like to ask the committee to ask the reporter whether I testified yesterday as the newspaper report of it gives it this morning. If I did, it was an inadvertance. The newspaper report——

Mr. GRAHAM. What newspaper?

Mr. NICHOLS (continuing)—says Mr. Nichols testified that "Olsson emphatically said that the word "devotedly" was not used in the hearings in which he had been a witness." Now, my testimony, as I intended to give it, and as I think I did give it, was that Olsson emphatically testified that the word "devotedly" was used.

Mr. GRAHAM. That was your testimony.

Mr. NICHOLS. That was my testimony? Well, then, it is correct. The newspaper reporter has it that I testified that it was not used.

Mr. MCCOY. Mr. Nichols, was it your desire that we would stop now while the reporter located your testimony on that point?

Mr. NICHOLS. I only wish to ascertain if the record that the reporter has is as I think I gave it.

Mr. GRAHAM. I would suggest that you wait until the notes are transcribed, when you can see it and satisfy yourself as to what the testimony is, and you may call attention to it if you wish.

Mr. NICHOLS. That is satisfactory.

By Mr. MCCOY:

Q What is your full name, Mr. McFarland?—A. R. E. McFarland.

Q. What is your business?—A. Real estate business at the present time

Q. Where do you live?—A. In Tacoma

Q And how long have you lived there?—A. For a little over 12 years last past, continuously

Q Were you present in Judge Hanford's court on the hearing of the application to revoke the citizenship papers of Leonard Olsson?—A. Yes, sir.

Q. In what capacity were you there?—A. As a witness.

Q. Were you clerk of the court at that time?—A. No, sir.

Q. To what fact were you a witness?—A. I was called by the Government attorneys to testify as to evidence that was given by Mr. Olsson in a case on which he was a witness in the superior court something like two years before; I don't remember the exact dates.

Q And on the application of some other person to be admitted to citizenship?—A. Yes, sir.

Q What was the name of that person?—A. I don't remember that.

Q Were you clerk in the superior court at the time?—A. I was deputy clerk.

Q Deputy clerk?—A. Yes, sir.

Q At the time this other person applied for citizenship, when Leonard Olsson was there as a witness on his behalf?—A. Yes, sir.

Q Well, now, will you state to the committee, as well as you can recollect, all the testimony that was given at the hearing before Judge Hanford on the petition to revoke the citizenship papers of Leonard Olsson?—A. The testimony that was given by me?

Q. No; by yourself and everybody else, if you can recollect?—A. Well, the testimony that I gave there was this: That at the hearing in the superior court where Leonard Olsson was a witness for some other party to become a citizen, in answer to the question that was asked by Mr. Smith, who was the examining attorney for the Government—in answer to the question whether or not he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same, he answered in the negative. Then the next question following that—well, there had

been some preliminary questions leading up to this, I don't remember the exact language of them, but in answer to the following question, which was, "How long have you held these views?" He answered that he had held them for several years. Then Mr. Smith asked him the question, "Did you hold these views at the time that you took out your citizen papers" or "secured your papers" I don't remember the exact wording, and he said that he did. At that time Mr. Smith stopped the examination and made some argument to the court relative to the witness holding such views was not a competent witness for another man to become a citizen.

Q. Well, is that what you testified to at the hearing before Judge Hanford?—A. Yes, sir.

Q. You testified to all of that?—A. I testified to all of that. I testified to the three questions and their answers.

Q. Are you able at this time to state, in a narrative form or otherwise, what the other witnesses before Judge Hanford testified to? What did Leonard Olsson testify to at that time?—A. Well, I would not be able to give very much of that, because I sat quite well back in the court room and Mr. Olsson talks very quickly, and it was very hard for me to catch the drift of a good deal of the testimony. I don't feel that I am competent to go into that; I didn't catch enough of it to give you a detailed account of it.

Q. Do you remember what you testified to on the cross-examination by Mr. Nichols, if you were cross-examined by him?—A. Why, Mr. Nichols asked me but very few questions. I think he asked me something as to whether or not the word "devotedly" was used in the question, and my answer to that was that in my experience of three years and a half as deputy clerk in charge of naturalization in the Pierce County court that I had heard the word used a number of times, perhaps a half a dozen in all, but ordinarily that word was not used in the question; the question would be, "Are you devotedly" or "Are you attached," not "devotedly," but "Are you attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same?" I believe the statute provides the question. I can't give it in just the exact words, but it is practically the same thing every time.

Q. Did you testify that in answer to Mr. Nichols's question?—A. Yes, sir.

Q. Do you remember what questions, if any, Judge Hanford asked on the occasion when you were a witness?—A. I could not state the substance of the questions. I know it was a general questioning along the lines of this—some socialistic propaganda that Mr. Olsson brought out in his answers, and the judge did not ask his questions in a very loud tone of voice, and, as I said before, I was sitting quite well back and I did not get the exact substance of them, only just the general run of the questions.

By Mr. Higgins:

Q. Was there anything about this case, Mr. McFarland, to particularly call it to your attention, to distinguish it from other cases of this same nature?—A. At the time of this hearing, when Mr. Olsson was a witness, Mr. Smith asked me, I think it was, I think the hearing came up in the afternoon, if I remember rightly, and going up from the clerk's office to the court room he said: "When I examine

Mr. Olsson this afternoon as a witness, I wish you would take the testimony, that is, take the answers to the questions." Well, I am not shorthand at all, but when Mr. Olsson was placed on the stand I moved up to the reporter's desk, right below the judge's desk, and took just a scrap piece of paper that laid there and my lead pencil and waited; and having been in these cases, seen so many of them, I knew about the general run of the testimony that he would want kept, and when he asked that first question, whether or not he was attached to the Constitution of the United States, I took enough of that so that I would know what the question was and took the answer, and I took those three questions down at that time. And when I was called by telephone last night to come over here to-day I hunted my desk at home for about two hours to find that scrap of paper. I laid it away some time ago, and at the time I laid it away I told Mrs. McFarland that I would probably want that some time in the future, and I have so securely laid it away that I can't find it myself now; and I also hunted my office desk this morning for it, but I can't locate that piece of paper.

Q. What were the three questions that you took down?—A. The question as to whether or not he was attached to the Constitution of the United States and well disposed to the good order and happiness of the same, which was answered in the negative, and whether or not, how long he had held these views, which was answered, "For several years" or "Two or three years," I don't remember just—it was "Several years" or "two or three years," and whether or not he held these views at the time that he secured his own citizen papers, which he answered that he did, and the questioning of the witness stopped at that point.

Q. You mean the questioning of the witness by Mr. Smith?—A. Yes.

Q. Well, then, did the court take up the witness and question him?—A. I don't think that he did.

Q. What followed those three questions?—A. Why, Mr. Smith moved to have the petition dismissed on the grounds that a man as a witness for a petitioner holding those views was not a competent witness—a man who was not attached to the Constitution of the United States was not a competent witness to be a witness for another man to become a citizen, and, if I remember rightly, the case was dismissed.

Mr. McCoy. On that ground?

A. I think that was the ground; yes, sir.

Mr. Higgins. That motion was made by Mr. Smith immediately after the three questions, which you have told us about?

A. Yes, sir.

Q. Do you recall any questions that the court asked the witness?—A. No, I don't recall any that he asked at that time.

Q. Well, do you recall whether he asked him any or not?—A. I don't think he did after this motion was made.

Q. Well, did he before?—A. No; Mr. Smith conducted the examination up to that time.

Q. You made a note of the questions and answers at the request of Mr. Smith?—A. Yes, sir.

Q. Did you turn them over to Mr. Smith?—A. No; he didn't ask me for them; he asked me to keep them, was all.

By the CHAIRMAN:

Q. Mr. McFarland, how do you reconcile your testimony, if I understand it, that you missed most of the testimony, and can not now tell it to us? Was that the same occasion when the Leonard Olsson cancellation hearing was on?—A. No, that was the hearing when he was a witness. You see this hearing when Mr. Olsson was a witness was something like—well, it was in the fall, I think, of 1910, and it seemed that they wanted this testimony for future use, and I was asked to just take those questions that would be vital in such a case of that kind.

Q. That was the case in the fall of 1910, you mean?—A. Yes, sir; and of course when I was called as a witness in the Olsson case, where they were trying to take his papers from him, that was the only part of the thing that I remembered; having written it down at that time, it impressed it on my mind. I would not have remembered the questions at all, hearing it as often as I did, you know. It was a monthly occurrence, and all day and perhaps two days of it; a man would not remember the questions that were asked of any particular individual unless it was called to his attention to do so.

Q. When you speak of hearing the word "devotedly" used in the questions a half dozen times or so, who used it?—A. It would be impossible to say. During my time there as deputy clerk we had some five or six different examiners from time to time that would handle the cases, and I am satisfied in my mind that I have heard the word used, but so seldom that it was not an ordinary circumstance to have it used in that question.

Q. Did it at the time strike you as being peculiar? I mean more particularly to say, did you fix your mind on it in such a way as to have a recollection of how often you heard it?—A. Oh, I don't suppose I heard it during the three years and a half over half a dozen times.

Q. That is not my question. The question was as to your mental condition. Did you notice it and fix your mind upon it when the questions were asked and try to determine whether or not that word was used in the question?—A. At the time of this hearing?

Q. Prior to it?—A. I don't believe I get you yet quite on that.

Q. Well, let's get together.—A. Yes.

Q. Did you have in your mind an opinion as to whether the word "devotedly" should or should not be used in the question before the Leonard Olsson cancellation hearing?—A. No, I never paid any particular attention as to whether it should be used or should not.

Q. You would not be very certain, then, as to the number of times you noticed it, not having the point in your mind particularly?—A. I would not be certain as to the number of times, only I know I heard it used, but seldom.

Q. Of course you would not pretend to say whether it made an impression on your mind so that you would remember it every time it was used in fact?—A. No, I would not want to say that; I could not say that.

Q. Until this case came up as to the hearing for the cancellation of Olsson's certificate, was there any acute controversy in your presence as to whether it should or should not be used in the questions?—A. No, there never had been.

Q. Was there anything that riveted your attention to the word "devotedly" in the question until that came up?—A. No.

Q. You say that in the hearing to cancel the certificate the case was dismissed?—A. It is my impression now that that case was dismissed at that time.

Q. By a verbal order of the court then, was it?—A. It would be by a verbal order of the court and the order—there was an order in the—on the back of the petitions in the book furnished by the Government, denying or admitting, and spaces for the reason, and that record there would show; but without looking it up I would not be positive whether that case was dismissed or not, but I think it was.

Q. There were no minutes kept, of course, as to the evidence; the judge, if he afterwards considered it, had nothing but his recollection of the evidence to go by?—A. That is all, and the different orders that would be entered on the back of the application and signed by the judge himself.

Q. Bit it is your recollection, is it, that he reached a conclusion then and there and announced that conclusion?—A. Yes, sir.

The CHAIRMAN. Do you wish to examine him further?

Mr. McCOY. Yes, I do.

By Mr. McCOY:

Q. At the time Mr. Smith was examining Olsson as a witness in that naturalization case, did he have in his hand a paper from which he seemed to be reading the question?—A. Why, Mr. Smith almost always had in his hand a little note sheet that they use in—they use it in kind of a preliminary looking up of these different applicants, you know, and he most always has that in his hand when he is asking questions; but that does not have any questions on it; just simply has a report of the case upon to that time, and they ask these questions offhand.

Q. Now, what sort of an examination, as a general thing, was conducted in these citizenship cases? Was it a mere prefunctory asking or formal questioning and the questions in the wording of the statute?—A. Well, there is about a hundred different questions that they ordinarily ask.

Q. I mean when it comes down to the questions about the Constitution and that part of the examination, do they simply ask a categorical question and get a categorical answer "yes" or "no"?—A. Well, they are asked a question this way: "Have you ever read the Constitution of the United States?" And his answer will almost invariably be "Yes." And then the next question that ordinarily follows would be "Well, what did you find in the Constitution?" Or "What is the Constitution?" To which the applicant would give the best synopsis that he could of what he thought the Constitution was of the United States, and there seems to be no general set of questions, but they all are along the same line; they will not be varied from very much. The questioning that is done and was done during the time that I was deputy clerk, was to ascertain in a general way what knowledge the applicant had of the form of government of the United States, and how its laws were made, and all such things as that, and to ascertain if he was well enough informed to be—well, to be a qualified voter if he was admitted—should be informed somewhat.

Q. But when it came down to the question about his attachment or otherwise to the Constitution, that was simply asked him practi-

cally in the wording of the statute?—A. Yes. Yes, it might be varied from slightly, but ordinarily asked in the wording of the statute.

Q. Are you having in mind the witnesses on these applications or the applicant himself?—A. The applicant himself. Of course where there was a doubt, as there seemed to be in Mr. Smith's mind as to the attachment of this witness, who was a witness for the applicant, then he would bring out these questions enough to ascertain whether the witness himself was attached to the Constitution of the United States.

Q Well, did there seem to be any doubt in the mind of Mr. Smith on this particular occasion?—A. Why, I think there was.

Q. Well then he asked further questions to resolve that doubt one way or the other?—A. He asked but very few questions after he led up to this point. He asked the witness the ordinary questions as to the qualifications of the applicant for a good moral citizen and all of those things, up to that time, the length of time that he had know him and where he had known him and how well acquainted he was with the applicant—things of that character; then when he got to these questions he asked those three and stopped.

Q. Did not conduct any further cross-examination of him after that point?—A. No further examination at that time.

Q. Did he make any comment on the Constitution?—A. Why, he did somewhat, yes, but I could not begin to tell it now; it has been a long time since that.

Q. Did the judge ask any questions of his own volition at all?—A. I don't think he did at that time.

The CHAIRMAN. Do you desire to inquire some further?

Mr. HUGHES. Just two or three questions.

Mr. NICHOLS. Before cross-examination, I would like to ask the committee to ask one more question. I wish the committee would interrogate the witness as to whether or not Mr. Smith, at the time Leonard Olsson was a witness in the other case in the superior court, or just prior to that time—if Mr. Smith did not tell this witness that he, Smith and Enslow, were after Olsson and were going to get him, or words to that effect.

Mr. DORR. I would like to inquire if that is assumed to be a part of the evidence that was adduced before Judge Hanford in the cancellation hearing?

Mr. NICHOLS. No.

The CHAIRMAN. The witness may answer, if he can.

A. Just read that question again, please, just read the whole statement until I get back.

The statement of Mr. Nichols was here read by the stenographer.

A. Mr. Smith, as we went upstairs in the afternoon—this hearing was in the afternoon— says "When Olsson takes the stand, I want you to get his testimony, as" he says, "I am going to bring out testimony there to show that he is not a qualified citizen and his papers should be revoked." He did not use the words that he was going to "get him" and he did not connect Mr. Enslow with it in any way.

By the CHAIRMAN.

Q. Did you make any response to his remarks?—A. I told him I would take his testimony.

Q. Was there anything further said by him on that subject?—A. No, not that I remember of.

Q. Let me ask you here, for information only: How does it become material that the witness who testified for the applicant should be himself interrogated as to his citizenship, what fact is in issue except his character and residence?—A. Why, I believe if I was on the stand myself that I would object to answering those questions if they were put to me. I don't think, myself, that they were material.

Q. Or relevant?—A. Yes. The man had his citizen papers, had been admitted, and unless for reason they had been revoked, in all intents and purposes he was qualified, if he was a man of good moral character himself, to act as a witness for another man.

Q. If he was credible?—A. Yes.

Q. And testified that the applicant resided in this country five years to his knowledge and had the other qualifications——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Would he not be a competent witness in your judgment?—A. He would be a competent witness, if, as you say, he was a credible witness. The law says that he shall be a credible witness.

Q. And in your judgment only such facts as tended to impeach his credibility would be proper?—A. I think that perhaps the reason Smith asked these questions was to bring out the fact that he was not a credible witness, that he was not attached to the Constitution of the United States.

Q. That is, that his political beliefs affected his credibility and tended to impeach him on truth and veracity?—A. Well, there was no questions asked at that time—no political belief at all.

Q. But your answer, as I understand it, means that you can impeach a man's veracity by ascertaining his political views?—A. No, I don't want my answers to show that.

Q. Well, what did you mean? Did Smith think so, in your opinion?—A. I don't think that he thought his political views affected it in any way.

Q. What did you mean in your reply, in which in substance you said that the question would only be a proper one as affecting his credibility?—A. Well, if in answer to the question—if he was not attached to the Constitution of the United States, he would hardly be a credible witness.

Q. Well, that is the very point I am trying to get to and what I thought you said before. Do you think that was Mr. Smith's opinion?—A. I think so.

Q. Do you know whether, or did anything occur there that enabled you to say whether that was also the court's opinion?—A. It must have been the court's opinion when he dismissed the case, that the fact that the witness had acknowledged that he was not attached to the Constitution of the United States made him not a credible witness.

Mr. McCoy. Is Mr. Smith in court—John Speed Smith?

Mr. Dorr. No, sir; he left the city yesterday for the eastern part of the State.

Mr. McCoy. I thought if we could identify the case that was in the superior court at the time that it might help. The witness does not seem to remember.

Mr. Hughes. It was the Karl Olsen case, Mr. Smith testified.

Mr. Preston. My understanding and my memorandum of Mr. Smith's testimony was that Karl Olsen was admitted.

Mr. NICHOLS. I think that is correct.

Mr. HUGHES. My recollection is that he said that one of the cases, he was not sure which, there were two on the same day, was dismissed for want of one witness—for want of sufficient witnesses.

Mr. MCCOY. That case in regard to which we had that card here yesterday——

Mr. HUGHES. That is the Karl Olsen case.

Mr. MCCOY. Well, on the bottom of that was a memorandum to the effect, as I recollect it, that the case was dismissed because of the fact that one witness had not been in the country five years—he didn't know that Olsson had been here for five years. Now, he probably was admitted later, then, if that was the case.

Mr. PRESTON. I can help you, sir, to the fact that you are after. The witness, Smith, gave the number of that case also. I have it noted here, 682, September 12, 1910, Karl Olsen. I took it as he testified. I think you will find that in the notes.

Mr. MCCOY. Well, has the reporter that exhibit? The exhibit would settle that.

The STENOGRAPHER. It is back in the office.

Mr. MCCOY. Well, I don't know as it makes any difference.

The WITNESS. It would be a very easy matter to ascertain whether that applicant was admitted at that time or not, or whether my memory serves me right, by telephoning to the Superior Court of Pierce County about that number; would give it in just a moment.

Mr. MCCOY. We have a card here that will show it.

The WITNESS. Yes, sir.

The CHAIRMAN. Do you wish to examine him further, Mr. Hughes?

Mr. HUGHES. Yes; a few questions.

By Mr. HUGHES:

Q. Karl Olsen was admitted in your court, that is the court of which you were clerk, in January of that same year, was he—I mean Leonard Olsson?—A. I don't remember the date; he was admitted in that court.

Q. And when he was admitted, of course he took the oaths that are prescribed by the statute?—A. Yes, sir.

Q. Gave the testimony required by the statute?—A. Yes, sir.

Q. Referring to the witness who supports the petition of one seeking to become a citizen, the law requires that he shall be a credible witness who is a citizen of the United States?—A. Yes, sir.

Q. Now, I will ask you if it was not Mr. Smith's contention before the court in the argument that you say he made, that Karl Olsen having, when admitted to citizenship, sworn that he was attached to the principles of the Constitution and taken the oaths required, had necessarily sworn in conflict with the testimony he then gave before the court, which rendered him not a credible witness, and therefore not competent within the statute.—A. Was not that the argument Mr. Smith made when he was objecting to him as a witness?

Mr. DORR. You used the name "Karl Olsen."

Mr. HUGHES. I meant Leonard Olsson.

A. You meant Leonard Olsson?

Q. Yes.—A. That was the substance of the argument, as it necessarily would be.

Q. But you are not a lawyer, and you do not profess to pass judgment upon whether it was sound or not?—A. Oh, no, no.

Q. As I understand you, you hear so many of these cases that you would not be able to fix in mind what occurred at the time Leonard Olsson was examined as a witness on the Karl Olsen application, but for the request of Mr. Smith that you make notes?—A. I would not—well, we would hear from 15 to 35 of them at a time, you know, and I had just simply to keep track of it whether they were admitted or denied, and in the meantime take them into the private office and administer the oath to them, after they had been admitted, and fix out cards for them to take down to the court room so that they could go down there and sign up their final papers, and there were several of those things that the deputy clerk would have to attend to and he would not be paying but very little attention to the usual run of the examination unless it was called to his attention.

Q. And now, is it a fact that the reason why your memory was fixed as to the particular questions propounded to Leonard Olsson, and his answers was because you did take notes?—A. Because I wrote them down at the time and I looked at them several times in the first six months afterwards.

Q. You were called to be a witness upon the hearing before Judge Hanford when they sought to cancel his citizenship papers in that proceeding?—A. Why, the notes were taken—was nothing said about it, as I remember, but they were taken just to be prepared in case there was a case.

Q. That was not my question, but I say you were subsequently called to be a witness———A. (Interrupting.) Oh.

Q. (Continuing.) In the proceeding before Judge Hanford?—A. Yes, sir.

Q. For the cancellation?—A. Yes, sir.

Q. Did you refresh your recollection from the memoranda after you had taken it, so that you might testify with a greater degree of accuracy when you were called as a witness in this proceeding for the cancellation of Leonard Olsson's papers?—A. I attempted to refresh my memory the same as I did last night and this morning before coming here and tried to find those notes, but I could not find them.

Q. You could not find them at that time?—A. No. I have got them somewheres, I know they are not destroyed, but an accumulation of papers for two or three years, you know, you don't know just where they are always.

Q. Will you please state what is your best recollection of the exact words of the question propounded by Mr. Smith, the first question propounded by Mr. Smith to Mr. Olsson in September, 1910, before the superior court?—A. My best recollection is, "Are you attached to the Constitution of the United States and well disposed to the good order and happiness of the same?" To which Mr. Olsson answered in the negative; whether the answer was "No" or "I am not," I do not remember. The next question was, "How long have you held these views?" The answer was either "Two or three years" or "Several years." The third question was, "Did you hold these views at the time that you became a citizen?" And the answer to that was "Yes."

Q. And that was the testimony you gave before Judge Hanford?—A. Yes, sir.

Mr. NICHOLS. I would like to ask the committee to bring out from the witness whether on cross-examination in the trial before Judge Hanford the witness did not make the statement that he was not sure whether the word "devotedly" was used in the question or not.

The CHAIRMAN. You have heard the question offered by Mr. Nichols, have you?

A. Yes, sir.

The CHAIRMAN. The reporter will repeat the question.

The statement of Mr. Nichols was here read by the stenographer.

A. I did.

The CHAIRMAN. What is the answer?

A. I did. I am not positive whether the word "devotedly" was in the question at that time or not.

The CHAIRMAN. And you so answered on the hearing before Judge Hanford?

A. I did; yes, sir.

Mr. HUGHES. May I ask, Were you asked—did you state what was your best recollection in that connection?

A. At the hearing before Judge Hanford?

Mr. HUGHES. Yes.

A. No; I was not asked that question.

By Mr. MCCOY:

Q. Have you ever said to anybody, Mr. McFarland, that Mr. John Speed Smith had said to you that he was going to "get" Olsson, have you ever told anybody that Mr. Smith said that?—A. Oh, I think that looking back now over it that perhaps at the time I discussed it with some of the clerks, there in the court there, that they were getting this testimony to try to take Olsson's papers away from him.

Q. No. Have you ever said to anybody that Mr. Smith had said to you that he intended to "get" Olsson, using the word "get," that is where the emphasis is?—A. I don't remember ever having discussed that with anybody.

Q. Now, I don't ask you whether you remember having discussed it with anybody, but have you ever stated to anybody that Mr. Smith used the word "get" in saying anything about this matter with reference to the testimony that he was to produce from Olsson on that day?—A. I have no recollection of it.

Q. Now, in answer to a question asked by Mr. Hughes, you said that Mr. Smith's argument in the superior court would necessarily be to the effect that Mr. Hughes stated. Have you any recollection of just what his argument was, or is your recollection that that was the sort of an argument that would be used on an occasion of that kind?—A. Well, my only recollection is that was the general line of the argument when anything of this kind came up—the incompetency of a witness—it was just the general line of argument; it is practically like the questions, a set argument; you can't get away from it, you know.

Q. Had there been any other occasion when you were present when the question of the credibility of the witness was attacked be-

cause of something he had stated on his own naturalization proceedings?—A. No; never had had a case similar to that.

Q. What did you mean by a general line of argument of this kind?—A. Well, if they set up in their questioning anything that would show the witness was not a credible witness, the argument would be along the line of what they set up at that time. For instance, one man they set up that he had been arrested a number of times for gambling. Well, the argument was along that line—that on account of his gambling he was not a credible witness.

Q. Have you any recollection now, independent of what your memory of the custom was, as to just exactly what the line of argument was that Mr. Smith used?—A. I could not give you the wording of it.

Q. No; the line of argument.—A. Well, the line of argument was along the line that the witness testifying that he was not attached to the Constitution of the United States, for that reason he was not a credible witness for another man to take out papers. Now, that is as near as I can give it to you.

Q. Was it that he was not a credible witness for that reason, but for that reason he was not a fit witness to be testifying on behalf of another man who was applying.—A. Just read that.

Question read.

A. Give me that again, I want to get it.

Mr. McCoy. Strike it out. I will ask it in another way.

Did not Mr. Smith argue that because he stated as you claim—because Olsson claimed, as you claim, that he was not attached to the principles of the Constitution, that therefore he was not a fit witness to act when another man was applying for citizenship?

A. Well, the argument was along that line, but whether he said he was not a fit witness or not, I don't remember.

Q. Well, was he questioning Leonard Olsson's veracity at the time, or his fitness, because of his lack of belief in the Constitution?—A. Well, I don't believe that I can answer your question as to what Mr. Smith was trying to bring out there.

Q. Well, I am only asking you as to what he was trying to bring out, from your recollection of what he said.—A. Well, he was trying to bring out the fact that Olsson was not attached to the Constitution of the United States; that is the way it impressed me.

Q. That is it exactly.

The Chairman. Any further questions? You may stand aside Mr. McFarland.

Gentlemen, what about the lady reporter of the Tacoma Ledger?

Mr. Hughes. We have made inquiry and are informed by the Ledger people that they had no lady on court assignment at any time, and that they are unable to locate the reporter who turned in this particular manuscript. The information that we have is that that reporter who is supposed to have attended the duty of court reporting at that particular time has left their employ since then and they do not know his whereabouts. That information of course, was obtained by consultation with those who are now connected with the office, and probably further information could be had, but that is all the information we have been able to get in this short period.

The CHAIRMAN. Is there any question that the clipping which was offered in evidence yesterday was taken from that issue of the Tacoma Ledger?

Mr. HUGHES. We have not attempted to verify that at all, but I assume, from the questions that were propounded to them, and the answers they gave, that that probably was true. But we inquired as to who reported their court proceedings in the superior court at that time, and the answers were as I have stated.

Mr. MCCOY. Is there any public library here? Wouldn't there be a file of the Tacoma Ledger in the public library?

Mr. HUGHES. Quite likely. It is an easy matter to ask.

The CHAIRMAN. The testimony yesterday, in the absence of any contradictory evidence, was sufficient to establish the fact that this was a clipping from that issue of the Tacoma Ledger, not perhaps very clear or very convincing, but in the absence of any evidence to the contrary, I think it is quite enough to establish that fact.

Mr. MCCOY. I want to ask Mr. McFarland a question.

By Mr. MCCOY:

Q. You need not take the stand. Right there. Just one question. After these proceedings in the superior court, did you have a talk with any reporter of any newspaper as to the case in which Leonard Olsson testified?—A. After the hearing?

Q. Yes, after the hearing at which you made this memorandum of which you speak.—A. Why, I could not say whether I had any talk with them after or not. The reporters used to come in here, and if they were not there during the hearing they would come in and just run over my records to get, as they called it, the "dope," to see who was admitted and who was denied, and if anybody was denied they would ask what the grounds were.

Q. Have you any recollection whether that happened in this case?—A. The reporter was there that day, but whether he was there at the time this hearing was going on I don't remember.

Q. Well, have you any recollection as to whether any reporter spoke to you after the case was over; after looking over your files or what not, did you tell any reporter that Karl Olsen had been refused admission to citizenship?—A. I could not answer that question without looking up those notes of that day.

Q. Do you know who the reporter was who was there that day?—A. I don't remember his name, but I am under the impression it was a fellow by the name of Clay.

Q. From what paper?—A. From the Ledger.

Q. Tacoma ledger?—A. Yes.

Q. Do you know where he lives now?—A. The last I heard from him, about a year ago, he was in Chelan.

Q. In where?—A. In Chelan.

Mr. HUGHES. Chelan, Wash.?

The WITNESS. Chelan, Wash.

Mr. MCCOY. Wherabouts is that, what part of the State?

A. Over east of the mountains.

Q. Where?—A. Over east of the mountains, above Wenatchee.

Mr. MCCOY. All right, Mr. McFarland.

Mr. HUGHES. As I recall the name it was the name "Clay" that was reported. I was not sure when the question was propounded to

me by the chairman, but since Mr. McFarland states the name, that is my recollection of the name given by the Ledger people as the person who was reporter at that time.

Mr. McCoy. Mr. McFarland, what was Mr. Clay's entire name, do you remember?

A. No, I don't remember his initials, but I can send it to you from Tacoma, if you wish it.

Mr. McCoy. Well, will you do that?

A. Yes.

Mr. McCoy. Thanks.

Mr. Preston. It was Claude—our information is that the name was Claude Clay.

The Witness. Wasn't it Claude A. Clay?

Mr. Preston. I don't know the middle initial; Claude Clay.

The Witness. I don't remember the initial, I thought it was "A."

The Chairman. Gentlemen, are there any other witnesses on this branch of the case to be called at this time? You intimated yesterday, Mr. Hughes, that there might be some others who had knowledge of it.

Mr. Hughes. I don't recall having made such a remark.

The Chairman. I may have misunderstood you. Regardless of that, do any of you gentlemen interested know of any other witness who should be called on this branch of the inquiry?

Mr. Nichols. None that we know of. There is none other that we know of.

The Chairman. And how is it with you, Mr. Hughes, and your associates, are there any others that you think of who should be called, except this Mr. Clay?

Mr. Hughes. Not that we know of at the present time. We know of no one at the present time who should be called. If it should develop that anyone else was present at that hearing, who has any recollection, it might be proper later on.

The Chairman. If it should, the committee will hear you.

A. M. Oleson having been duly sworn, testified as follows:

By the Chairman:

Q. State your name.—A. A. M. Oleson.

Q. Where do you live, Mr. Oleson?—A. Seattle.

Q. How long have you lived in Seattle?—A. Six years.

Q. What is your present occupation?—A. Life-insurance solicitor.

Q. For what company or companies?—A. Mutual Benefit Life, of Newark, N. J.

Q. How long has that been your business?—A. Two years.

Q. What is your age?—A. Forty-two.

Q. Are you acquainted with Judge Hanford?—A. I know him by——

Q. (Interrupting.) That is. do you know him by sight or otherwise?—A. I know him by sight.

Q. How long have you known him by sight?—A. Possibly three or four years.

Q. If at any time during the three or four years that you have known him you have seen the judge when he appeared to be under the influence of some intoxicant, you may tell about it.—A. Well,

Mr. Chairman, in that connection, I would like to make a statement, if it is proper.

Q. Well, the committee would rather you would not, unless the committee can hear your statement in executive session, so to speak.—A. Well, then, I will answer by saying that if I have seen him I would be unable to fix a date upon which I have seen him, therefore I don't think it would be competent for me to answer.

Q. The committee does not quite agree with you about that, and I think the committee will have its way in that regard.

The CHAIRMAN. Read the question to him as originally asked.

Question read as follows:

If at any time during the three or four years that you have known him you have seen the Judge when he appeared to you to be under the influence of some intoxicant, you may tell about it.

Q. Just if you know. Did you see him when in your opinion he was under the influence of some intoxicant? That is all the question goes to.—A. I have seen him when he appeared to me to be under the influence of liquor.

Q. How often would you say you have seen him during that time, Mr. Oleson, when he appeared to you to be under the influence of some intoxicant?—A. I could not say. I can only at the present time recall one instance, but if I had certain notes that I made I possibly could recollect others.

Q. Were the notes you speak of made on the occasions when you saw the Judge?—A. Made at the time; yes, sir.

Q. By you?—A. By me.

Mr. HIGGINS. Where are they now?

A. They are, I presume, in the possession of the Burns Detective Agency.

Mr. HIGGINS. By whom were you employed at that time?

A. At that time, for that special case.

The CHAIRMAN. Are you now in the employ of that agency?

A. Not regularly; on call only.

Q. Are those notes now in Seattle?—A. I don't know.

Q. Well, in the ordinary couse of business, do you know whether they probably would be?—A. Most likely, yes.

Q. To whom did you give them, Mr. Oleson?—A. To Mr. Thayer, manager for the Burns Detective Agency.

Mr. HIGGINS. What is his full name?

A. Walter R., I think.

Mr. HIGGINS. And his address?

A. 308 Hinckley Building is the only address I know.

The CHAIRMAN. Now, as to the occasion which you told us about a little while ago, where did you see the judge on that occasion?

A. On a street car.

Q. Going where, from where to where?—A. Going home.

Q. What time in the day or night was it?—A. Possibly 6.30 in the evening, or thereabouts.

Q. For how long a time did you have an opportunity to observe the judge?—A. Possibly 15 minutes.

Mr. HIGGINS. Don't make your question "possibly."

A. I will put it in a different way, then.

Mr. HIGGINS. It might possibly be any time.

A. I will put it in a different way. The length of time that it requires the judge to go from down town to his home.

The CHAIRMAN. Would that be about 15 minutes?

A. About 15 minutes.

Q. I suppose when you said, "possibly" you meant "about?"—A. I meant "about;" yes.

Q. Well, "about" is a better word, because "possibly" might be a second or it might be a year.—A. All right.

Q. Were you on the car?—A. I was.

Q. Mr. Oleson, tell the committee as well as you can the observations you made which led you then to conclude that the judge was under the influence of intoxicants.—A. The fact that he continually went to sleep in the car, or, rather, I won't say go to sleep, but kept nodding his head and dropping his head and hitting it against the window and straightening himself up.

Q. Where was he when you first noticed him on that occasion? Was he on the car, getting on or going——A. (Interrupting.) He was on the car.

Q. Did you see him get off the car?—A. I did.

Q. Tell us what you observed as to his condition in getting off and after he got off?—A. I saw nothing that would indicate that he was under the influence of liquor when he got off the car, because he walked straight and went directly into his home.

Q. Were you near enough to him to notice whether there was any odor of liquor?—A. No, sir; I was not.

Q. How many other persons were on the car?—A. One other that I knew.

Q. Is that person in or about Seattle now?—A. Yes, sir.

Q. Who is he?—A. Mr. Nordskog.

Q. Spell it.—A. N-o-r-d-s-k-o-g.

Q. Was he in the same employment you were, did you say?—A. He was.

Mr. HIGGINS. Employed on the same case?

A. Yes, sir.

The CHAIRMAN. Could you fix the time or approximately the time when this happened, Mr. Oleson?

A. No; I could not, Mr. Chairman.

Q. The year?—A. I can fix the year and——

Q. What year?—A. It was in 1911.

Q. What month?—A. I could not say whether it was in September or October, in fact it is not clear in my mind whether it was in the latter part of August or not.

Q. Your notes would reveal that?—A. My notes would tell. It is nearly a year since and I have had no opportunity of looking them over. I was called up here on a moment's notice.

Q. Did you get on the car because you knew the judge was there?—A. Yes, sir.

Mr. HIGGINS. Do you mean, Mr. Oleson, that you saw the judge get on the car?

A. I did.

Q. Did you see him before he got on the car?—A. I did.

Mr. HIGGINS. Where?

A. I saw him—directly before he got on the car on this occasion, I think, coming out of the Butler bar. Now, I will not say for certain that that was on this particular occasion or not.

The CHAIRMAN. What part of the city is that in?

A. That is in the down-town district, at Second and James.

Q. How far from the United States courthouse building—post-office building?—A. Probably seven or eight blocks.

Q. Well, what was his appearance with reference to sobriety when he left this building, whatever it was, and when he went to the car and as he got on it?—A. There was nothing to indicate that he was under the influence of liquor when he went to the car or got on the car. The only thing that I mentioned was with reference to his going to sleep in the car.

Q. How soon after he got on did you and your associates get on?—A. Directly.

Q. At the same stop?—A. At the next crossing, I believe, one, and the other possibly right at the time; I don't remember.

Q. How soon after he got on did he go to nodding or sleeping or whatever his condition was?—A. Almost directly, as far as I can remember.

Q. How much of the time during the 15 minutes or so you rode with him was he in that condition?—A. Well, now, that would be hard to define, because he was nodding off and on almost all the time.

Q. What chance have you had to observe men who are under the influence of liquor or any intoxicant?—A. No more than any other man who is around town.

Q. I am not sure they all have the same chance, but have you seen a great many men who were under the influence of liquor, more or less intoxicated, in your time?—A. Yes; in my 42 years I have seen a great many men under the influence of liquor.

Q. From your observation and your knowledge of those things, what do you say as to whether or not Judge Hanford was more or less intoxicated that night?—A. My personal opinion is that he was; but at the same time it is possible that it might be due to a sleeplessness or heavy work.

Q. Without fixing dates, can you think of any other occasion when you saw him, in your judgment, under the influence of some intoxicant?—A. I can recall——

Q. (Interrupting.) I want to say to you at this point, we will try to help you. I hope it won't be difficult——A. Yes.

Q. We will give you a chance to verify the dates later on; we do not desire to take any advantage of you in that regard.—A. Well, in a case as important as this I do not feel I should be required to depend on my memory altogether, where a whole year has elapsed.

Q. That is true; but you can state your reservations, you know, and then later we will hope to be able to get those facts for you. When you are not clear in your recollection, you can tell us so and then give us the exact dates later, if you find the notes. Now, with that explanation, can you recall any other instance when you saw the judge, as you thought, under the influence of liquor or some other intoxicant?—A. Yes; I can recall one instance when he appeared to me so.

Q. Was that before or after the one you have related?—A. I could not say.

Q. Can you give us——A. (Interrupting.) It may have been the same evening, for all I know, because this was later in the evening. It was on the occasion, I think, of Dr. McCormick's lecture at the Alhambra Theater.

Q. Who is Dr. McCormick, Mr. Oleson?—A. I don't know, except that he was a medical lecturer. I am not sure that it was Dr. McCormick, but that was my impression.

Q. It was a lecture at the Alhambra Theater in this city?—A. Yes, sir.

Q. How long after you saw the judge on the street car was that?—A. I could not say.

Q. But it was the same evening?—A. It may have been the same evening.

Q. Oh, well, on the occasion you now speak of, where was he when you first noticed him?—A. Coming from his home, going down town in the evening.

Q. Afoot?—A. No; on the street car.

Q. Mr. Oleson, where was he?—A. With reference to his home?

Q. When you first saw him on this occasion?—A. With reference to his home?

Q. Yes.—A. He came directly out of his home, as far as I remember, and got on the street car.

Q. Did you get on that car?—A. I did.

Q. How far did you and he ride together?—A. As far as the Alhambra Theater, I think, or I won't say for sure. I rather think the judge went to his office first. Now, there I am up against it again. I don't want to say.

Q. Well, will you give us your best recollection of the time or about the length of time that you saw him before he entered the theater that evening?—A. My recollection is that he went from his home to his office, and I did not see him again until he came out of his office again and went to the Alhambra. That is my recollection.

Q. Was there anything in his appearance and actions during that time which lead you to believe he was intoxicated?—A. Yes; I think his actions were very much the same as I have described in the other instance.

Q. Well, tell first what he did on the car.—A. He seemed to be nodding and going to sleep, the same as the other instance that I have described, and for that reason it may possibly have been the same evening; I can not say.

Q. Were there many people on the car on that occasion?—A. There were several; yes.

Q. Do you know, from your observation, whether he attracted the attention of others on the car by his conduct or actions?—A. That I could not say.

Mr. HIGGINS. Was your associate with you then?

A. My recollection is that he was, but I won't say for sure.

Q. You gave his name before. I don't just recall it.—A. Nordskog.

Mr. HIGGINS. What is his first name?

A. A. A. — Arney.

The CHAIRMAN. Did you observe him on the way from the office to the theater?

A. My recollection is that I did, but I won't say that for sure.

Q. Have you a recollection as to how he went, whether he walked or rode?—A. I think he walked.

Q. What is the distance from his office to this theater?—A. Just about three blocks, I think—three or four blocks.

Q. Did you attend the meeting at the theater?—A. I did.

Q. What was it, simply a lecture?—A. Just a lecture; yes.

Q. Where was the judge located in the building?—A. He was sitting on the stage.

Q. Were there many others besides the lecturer on the stage?—A. There were a great many; yes.

Q. Did you know any of them?—A. Yes. Dr. Matthews was there, for one.

Q. Give that name in full, can you?—A. Dr. Mark A. Matthews, I think it is.

Q. Do you recall any others?—A. My recollection is that Judge Burke was there.

Q. Those gentlemen are both at Seattle?—A. And Dr. McCulloch, I think, presided.

Q. Did the judge participate in any active way in the meeting?—A. He did; he made a speech—talked.

Q. What was the lecture about, what was the subject matter of it?—A. It was purely medical, as I remember it—hygienic.

Q. At what stage during the meeting did Judge Hanford address the audience?—A. Toward the last, I think.

Q. From the time that he appeared on the platform, or the time that you first saw him there, tell the committee what his actions were with reference to his being affected by any intoxicant—as to his being sober or otherwise.—A. Well, I could not say, except that he seemed to be affected by some drowsiness that he had previously been affected by.

Q. How did it affect him—what effect had it on him? Just tell what he did.—A. Why, he nodded his head as though he had great difficulty in keeping awake.

Mr. HIGGINS. That was during the time he was on the stage?

A. During the time he was on the stage; yes, sir.

The CHAIRMAN. How long did you say the meeting lasted?

A. About an hour and a half or two hours.

Q. Well, do you want us to understand that all of that time, except when he was addressing the audience, that he was nodding?—A. No, sir; he did not get there until late. I don't suppose he was on the stage over a half hour; I would not say for sure, but something like that.

Q. That is, altogether——A. Altogether.

Q. (Continuing.) Or before he began speaking?—A. Before he began speaking.

Q. And in that half hour how much of the time was he nodding?—A. A great part of the time.

Q. Now, in this nodding operation, will you tell us the best you can the movements which his head would make, how low would it hang, if it hung? You know what I mean. Tell us about that.—A. Just simply nodding, because he would arouse himself every minute or so and straighten up.

Mr. HIGGINS. That is, you mean to say that it indicated that he was——

A. (Interrupting.) Drowsy.

Mr. HIGGINS (continuing). Feeling sleepy and then——

A. (Interrupting.) Arousing himself.

Mr. HIGGINS (continuing). Would throw his head back?

A. Yes, sir.

By Mr. HIGGINS:

Q. How frequently was that?—A. Every few minutes.

Q. That occurred on the street car?—A. Yes, sir.

Q. Also when he was sitting on the platform in the theater?—A. Yes, sir.

Q. After he ceased speaking, as well as before?—A. My recollection is that he was about the last speaker. Now, I would not be positive as to that.

Q. How long did he speak?—A. Just a few moments.

Q. Do you recall what subject he discussed?—A. No, I don't.

Q. How many people——A. (Interrupting.) I would not say.

Q. Well, what was the nature of the meeting?—A. It was a meeting, as I understand it—I didn't know what meeting was there when I came there, but gathered from the newspapers the next day and from what I heard there that it was a meeting under the auspices of the medical association here; that Dr. McCormick was a lecturer who went all over the country delivering these lectures.

Q. Now, aren't you able to tell, Mr. Oleson, of others who were in the theater or on the stage?—A. No, I can't recall at the present time. I didn't charge my memory with it after the report was made, and I had no further interest in it. I think my report shows others. The newspapers of that day will probably tell. I am safe in saying that a great many of the prominent men in this city were on the stage.

Q. It was a meeting which attracted wide public interest in Seattle?—A. It did, or at least in the lecturer.

Q. You have named two instances where you thought that the judge was under the influence of liquor. Are there any others?—A. None that I can recall distinctly.

By the CHAIRMAN:

Q. Did you during the evening observe him going into or coming out of any places where drink was sold, a saloon, club, or——A. (Interrupting.) Late in the evening?

Q. Well, before that meeting?—A. No. He went directly, as I remember, from the courthouse to the meeting.

Q. Did you observe him after he left the meeting?—A. I am not positive as to that. No; I won't——

Q. Do you know how he went home or if he went home after the meeting?—A. I am not sure as to whether he went to the Washington Hotel on that occasion or not.

Q. Would your minutes show that fact?—A. They would show it; yes, sir.

Q. Did you hear the judge while he addressed the meeting?—A. I did.

Q. Have you heard him talk to public gatherings often?—A. It is the first time that I have heard him.

Q. Was there anything in his manner of address which caused you to have any opinion as to whether he was sober or not sober?—A. I would not say at the present time whether there was or not; not unless I had my notes to see. I think I am safe in saying that an average person who was not watching him closely for a particular purpose, there may not have been anything in his address that would indicate it.

Q. Well, to you how did it appear?—A. My impression is now that I thought his talk was slightly rambling, but I will not be sure as to that.

Q. From all that you observed of him that evening from the time you saw him get on the car until you lost sight of him after the meeting, that is, from what you observed of him and from your knowledge of those matters, what would you say as to whether or not he was under the influence of some intoxicant that night?—A. Well, from what I have already said my impression is that he was; my personal opinion is that he was.

By Mr. Higgins:

Q. The only indication, as I understand it, Mr. Oleson, upon which you base that opinion is the fact that he nodded his head?—A. It is.

Q. Did he not stagger?—A. No, sir; not that I remember.

Q. And you say the only evidence that he gave to you of his being under the influence of liquor was the fact that his head would nod and then he would catch his head?—A. That is the only recollection I have at the present time without consulting the notes I made at the time.

Q. He was formally introduced by the chairman of this meeting?—A. He was.

By Mr. McCoy:

Q. Are you a relative of Leonard Olsson?—A. No, sir.

Q. Apart from those two occasions, do you recall any other, without asking you to fix the date at this time, when you saw him when in your opinion he was under the influence of liquor or some other intoxicant?—A. I don't.

Q. For how long a time had you been observing him?—A. About 12 or 14 days, I think, to the best of my recollection.

Q. Both those instances would come within 12 or 14 days?—A. They would; yes, sir.

Q. And that was some time between the first of August and the last of September, 1911?—A. Some time between the first of August and the middle of October, I should say; I can't fix it any better.

Q. Well, it was in the fall of 1911?—A. It was; yes, sir.

By Mr. Higgins:

Q. How long had you been employed before this by the detective agency?—A. This was my first case.

Q. I don't think you have named, for the purpose of the record, the agency by which you were employed?—A. Yes, I did. I have named it.

Q. Won't you state it again?—A. The Burns—William J. Burns National Detective Agency.

Q. Who have a branch office at Seattle?—A. Yes, sir.

Q. And who was your client?—A. I don't know.

Q. Who were you seeking to serve in your employment?—A. The William J. Burns Detective Agency.

Q. And did they give you the instructions?—A. They did.

Q. What were they?—A. Simply to follow Judge Hanford wherever he went.

Q. You did that for 12 or 14 days?—A. Yes, sir.

Q. During that time Mr. Nordskog was with you?—A. Yes, sir.

Q. All the time?—A. Yes, sir.
Q. Anybody else?—A. No one.
Q. Do you happen to know whether other men from the agency were similarly employed at that time?—A. Not of—I have no personal knowledge of it.
Q. How frequently did you——A. (Interrupting.) I do know it as a matter of information.
Q. As a matter of common talk?—A. Yes.
Q. Hearsay?—A. Yes.
Q. You didn't confer or cooperate with anybody except Mr. Nordskog?—A. No one except the manager of the agency.
Q. Mr. Thayer?—A. Mr. Thayer.
Q. How frequently, Mr. Oleson, would you report to Mr. Thayer?—A. Well, my recollection is that we made no verbal report to Mr. Thayer at any time; that it was simply done by reports—the written reports that were handed in every day, which covered the day's work.
Q. Did you and Mr. Nordskog both sign the same report?—A. We signed no reports.
Q. You did not sign the written report which you handed to Mr. Thayer?—A. Only by initials.
Q. Did you and Mr. Nordskog make separate reports?—A. We did.
Q. Or join in one?—A. No; we made separate reports.
Q. And then initialed them?—A. Yes, sir.
Q. What was your habit, Mr. Oleson, during that 12 or 14 days; won't you indicate to the committee just the line of action that you took?—A. The instructions were simply to follow Judge Hanford wherever he went, which we did.
Q. That is, you went to his house?—A. Home.
Q. In the morning?—A. In the morning. Went home with him in the evening.
Q. And during the day shadowed the place to which he went?—A Yes, sir.
Q. What was his habit as to the time of leaving home?—A. He went directly to the courthouse.
Q. As to the time of day?—A. All the way from 9 o'clock, I think, in the morning until half past 9 or 10; I think as late as 10 o'clock.
Q. In the morning?—A. In the morning; yes.
Q. And would he walk or ride?—A. He took the street car in front of his home invariably—that is, at times he would walk down a block or two and take the street car.
Q. Go direct to the Federal building?—A. Go direct to the Federal building.
Q. That was his practice during all the times that you have referred to, the 12 or 14 days?—A. It was.
Q. Where would he go to lunch?—A. To the Rainier Club.
Q. And you went there?—A. Yes, sir.
Q. Then you noted his leaving the Rainier Club?—A. Yes, sir.
Q. Then where would he go?—A. Directly to the Federal building.
Q. How long would he remain there?—A. Until about 5, my recollection is; 5.30 possibly.
Q. Then what was his habit?—A. He invariably went directly to the Rainier Club.
Q. How long would he remain there?—A. Oh, from a half an hour to an hour, I think. I would not say that for sure now. That is my recollection.

Q. What time would he reach the Rainier Club in the afternoon?—A. I think about 5.30; I won't say that for sure; sometimes between 5 and 6 o'clock.

Q. And you and Mr. Nordskog kept the entrance to the Rainier Club in view?—A. All the time; yes, sir.

Q. How far is his home from the Rainier Club?—A. Well, it is about a 15-minute ride, I think, by car. I would not say in miles just how far it is.

Q. Would he walk home from——A. (Interrupting.) No; he invariably took the street car.

Q. And you and Mr. Nordskog took the same car?—A. Yes, sir.

Q. Well, he went home then to dinner, I assume?—A. Yes, sir.

Q. How long would he then remain at home?—A. Why, oftentimes he would stay home all evening; other times he would come down town; go to the Federal building.

Q. That is, go direct from his home to the office building, to the courthouse, or the Federal building?—A. That is my recollection of some of the evenings that he came down town.

Q. On the evenings that he came down town, Mr. Oleson, and came to the Federal building, how long would he remain at the Federal building?—A. Oftentimes until 10, 10.30, 11 o'clock; that is my recollection.

Q. There would be evenings, I understand you, when he would not leave his home at all?—A. Yes, sir.

Q. Can you give the committee any idea of the number of evenings in the 12 or 14 that you watched him when he would not leave his home at all?—A. No; I could not. In fact, I am not, Mr. Chairman, justified in sitting on the witness stand and talking in this rambling way, because my recollection is very indistinct. It was all in a day's work, and when the day's report was in I dismissed it from my mind, and it is nearly a year ago.

Q. Well, what other places, Mr. Oleson, did you note the judge went after reaching home for dinner? You spoke of his going to the Federal building. Where else did he go?—A. I think he invariably went over to the Rainier Club after he left the Federal building.

Q. Are you in the Burns Agency employ now, Mr. Oleson?—A. Simply on call as an extra man.

Q. Have you been employed by them recently?—A. Not within the last month.

Q. You stated, in answer to Mr. Graham, that you knew or had known Judge Hanford for three or four years?—A. By sight.

Q. How frequently during that time would you see him?—A. Well, not very often.

Q. Did you have occasion to meet him on the street in going back and forth to your home?—A. Just in passing; possibly be in court holding court at times when I would drop in.

The CHAIRMAN. Gentlemen, in view of what the witness has stated about his minutes and the unsatisfactory testimony he gives as to time and dates, I feel that we would make time if we could stop here and give him and his associates, if necessary, an opportunity to consult those notes, help them to find them, or have them brought here some way. It is a waste of time going over the ground this way, with the probability of having to go over the same ground again after he refreshes his recollection. The chair thinks, if there is not

objection to that course, that it might be well to take a recess now. Would you mind waiting to cross-examine or to make your examination after he had an opportunity to refresh his recollection?

Mr. HUGHES. It is satisfactory to us, your honor, to adjourn at this time.

The CHAIRMAN. I think that would save time for all of us. Then Mr. Oleson might stand aside. I am informed there is a witness here whom we might call in the interim between now and noon.

Gentlemen, before calling this witness the committee wants to say that while we want to work as hard as we can, we do not want to absolutely shock you by violating your local customs. What is the usual custom here for Saturday afternoon work?

Mr. HUGHES. The usual custom at this season of the year is not to work on Saturday afternoon; that is, it is a universal holiday in the courts.

The CHAIRMAN. Would they be likely to do anything to us if we did work? Is the custom strong enough to make it dangerous to work?

Mr. HUGHES. I think it would be dangerous to yourselves, but I do not anticipate that that danger will come from any act of the people of this community.

JOHN BATHURST, having been first duly sworn, testified as follows:

Mr. MCCOY. Mr. Oleson, you had better remain until the committee determines about the afternoon's session.

Mr. MCCOY. What is your name, Mr. Bathurst?

A. John Bathurst.

Q. Where do you reside?—A. In the city of Seattle.

Q. How long have you lived here?—A. Oh, about 20 months.

Q. Do you know Judge Hanford?—A. I do, by sight.

Q. Have you ever seen him when you thought he was under the influence of some intoxicant?—A. I have.

Q. When?—A. I can't say the date, but it was in September or October of last year, 1911.

Q. Where?—A. On Fourth Avenue.

Q. State what you observed?—A. I was waiting at the corner of the library for my wife to come in. We were going to church. It was about 6 o'clock.

Q. What day of the week?—A. Sunday.

Q. What did you observe; explain what you saw?—A. I saw a man come staggering toward me.

Q. From where?—A. Apparently from the Rainier Club. I didn't actually see him leave the club, but I had not seen him beyond it.

Q. Explain his physical actions on that occasion?—A. He was very, very drunk or very, very ill.

Q. What made you believe that?—A. Because of his condition, staggering from side to side on the sidewalk and thence into the street once.

Q. How long at that time did you observe him?—A. I observed him for quite a distance. He was coming to me. I thought the condition ought to be noted at the time, so I—three men were in conversation on the opposite side of the street in front of the Y. M. C. A., and the car not being quite due, I passed across the street and called their attention to the disgraceful state of a Federal judge.

Q. Well, for how long a time did you observe him on that occasion?—A. Oh, a quarter of a mile possibly.

Q. And what was his condition during all the time—what were his actions, rather, during all the time you observed him?—A. The same, along the sidewalk. The sidewalk was very wide.

Q. You say he went from one side of it to the other?—A. Yes.

Q. Where did he go when he disappeared from your sight?—A. I have no idea.

Q. Did you take the car?—A. No; I still waited for my wife.

Q. Did he go out of your sight by turning a corner or getting onto a car, or what?—A. No; he just passed along; some people coming along; he passed from sight just as the car came along on which my wife was. He passed from sight by some people just when my attention was directed to the car in which my wife came along. I saw him pass along probably 200 yards from me.

Mr. McCoy. That is all.

By the Chairman:

Q. What is your business, Mr. Bathurst?—A. I am weighmaster for the city of Seattle at the present time—weighmaster in the sanitary department.

Q. Is that a city office?—A. Yes.

Q. How long have you held that office?—A. For since the 1st of November last.

Q. What was your occupation when not holding an office?—A. Prior to that I was United States commissioner for five years in Alaska—the prior occupation.

Q. Have you ever had any official relationship with Judge Hanford?—A. I have not.

Q. Have you any ill will of any kind toward him?—A. I have not——

Q. (Interrupting.) Apart from any feeling you may have about the matter of which you have testified to having?—A. I have, from his general conduct on the bench; I admit that.

Q. Well, have you any other?—A. I have not.

Q. Have you had any litigation in his court?—A. I have not.

Q. Has he at any time done what you conceived to be a personal injury to you?—A. He has not.

Q. When did you first observe that sometimes the judge became intoxicated?—A. That sometimes?

Q. When did you first observe it? Was this time you told the first time?—A. This is the only time that I have seen him, save once; I seen him once visibly on the street, passed him once on the street, visibly under the influence, but not to that extent.

Q. Well, to what extent?—A. To the extent that one who has seen men under the influence of liquor at all on the street would know them in that condition; can recognize them in that condition. It was palpable to me.

Q. What experience or opportunity have you had to observe men under the influence of liquor?—A. Oh, the trying of probably 200 cases of drunken men.

Q. And as to seeing men under the influence of liquor, what opportunity have you had?—A. Unfortunately it was very frequent with me in Tanana.

Q. Have you any principles which make you particularly adverse to the use of liquor?—A. I have not. I use it occasionally myself.

Q. To be specific, are you a prohibitionist?—A. No; I am not.

Q. You don't object to the moderate use of liquor?—A. I do not.

Q. You admit that you have some feeling if not some prejudice against the judge on account of certain things?—A. I have. I would not call it prejudice; I would call it experience.

Mr. HIGGINS. Call it what?

A. Experience.

The CHAIRMAN. What do you mean by that?

A. Not personal experience; experience from decisions rendered on the bench.

Q. Observation?—A. Observation.

Q. Are you a lawyer.—A. No, sir. Necessarily have studied law quite a bit in the office.

Q. Do you mean by decisions your opinion of the justice and rightness of the judgments he renders?—A. Yes, sir.

Q. And to what do you refer?—A. More especially to—I will be frank—to our car-line fight.

Q. Has that case a name by which you know it?—A. Why, it was the old Renton car line which has been before him; certain matters. Many and various——

Q. (Interrupting.) Seattle, Renton & Southern; was that it?—A. Yes; Seattle, Renton & Southern. Very many and varied phases of it have been before Judge Hanford.

Q. Well, without going further into the details of it, then, his official action in that matter is one reason why you dislike his conduct on the bench?—A. Yes, sir; but that didn't prejudice me against Judge Hanford. But the fact that I saw him dreadfully intoxicated myself, and the fact that it was a matter of public knowledge that he was an awful user of intoxicating liquors, focused the opinion and formed the opinion in my mind that he was a man totally unfitted for the bench, and I have had that in my mind since.

Q. Have you any other case in mind which added or contributed to the formation of the opinion you have about him in his official capacity?—A. Nothing I think that would tend toward prejudicing me against the judge.

Q. Have you at times attended court when the judge presided?—A. Once or twice.

Q. Was there anything in his demeanor on the bench, his conduct toward litigants or lawyers or witnesses that contributed in any way toward the state of your mind?—Nothing beyond apparent inattention.

Q. What?—A. Apparent inattention.

Q. In what way do you mean? Explain, please, what you mean, Mr. Bathurst, by apparent inattention?—A. Why, apparently not paying attention to what was going on in the court.

Q. Well, that means——A. (Interrupting). I remarked that phase of it to my brother-in-law on leaving Judge Hanford's court. Maybe——

Q. (Interrupting.) What you said to your brother-in-law would not amount to much, but you might tell us what made you think what you said to your brother-in-law. What was it?—A. That was

it, it was the lack—apparent lack of attention to what was going on in his court.

Mr. HIGGINS. Who is your brother-in-law?

A. Mr. Fordyce Rhodes.

Mr. HIGGINS. Is he a lawyer?

A. No; he is professor of the high school—Frankling High School.

The CHAIRMAN. Inattention might be the result of various things.

A. Certainly.

Q. It might be the result of sleep, might be sort of contemptuous inattention. Will you please give us some better definition of the particular kind of inattention that you think Judge Hanford exhibited?—A. I could give you one instance, sir, in this town, which would perhaps show my thought and frame of mind. In seeing a murder case here, I have seen the judge take a newspaper——

Q. (Interrupting.) What?—A. In witnessing a murder case here, I have seen a judge——

Q. (Interrupting.) Well, this is a judge, not Judge Hanford?—A. No; not Judge Hanford. I have seen the judge take a newspaper in his hand——

Q. (Interrupting.) I don't think we care for that. One judge at a time.—A. It was that kind of inattention that it was no attention apparently being paid to the case. It is——

Q. (Interrupting.) But you could not be sure, could you, Mr. Bathurst, whether he was really attending to it or not?—A. No, sir.

Q. You limited your expression to "apparent" inattention?—A. Yes, sir.

Q. By that you meant that in spite of appearances he might be giving it close attention, is that so?—A. Very possible.

Q. Very well. We will not pursue it further. Is there any other matter you have in mind——

A. (Interrupting.) No, sir.

Q. (Continuing.) Which you think you ought to tell the committee?—A. No, sir.

Q. (Continuing.) In support of the statement you made that in your opinion Judge Hanford was not a proper kind of man to occupy the bench. Have you told us all that occurs to you?—A. No, sir. I have told you all—I can not go into the phases of the litigation which were taken up in Judge Hanford's court, which impressed themselves upon my mind as to the injustice that was being rendered there. That will come before you——

Q. (Interrupting.) We would not want your view from a legal standpoint, of the particular cases, but if you care to mention any cases the treatment of which helped to produce your state of mind, you may do that.—A. Why, I don't think I would, sir—it is just the whole case, the whole fighting which we were subjected to out on that line, and I would not wish this committee to assume that any impression that Judge Hanford made upon my mind by these cases would induce me to come into this court and swear that I saw him intoxicated upon the street on a Sunday afternoon, and in a bad state of intoxication.

Q. You stated to Mr. McCoy that he wobbled. You did not use that word, but that is what you meant?—A. He staggered.

Q. He staggered from one side of the sidewalk to the other, and at least once got off the sidewalk out on the street?—A. Yes, sir.

Q. How wide was the sidewalk?—A. Oh, the sidewalk must be eight feet wide there.

Q. How far out from the sidewalk did he go in the street?—A. Well, he recovered himself just at the edge.

Q. Was there any other reason than his condition for his getting off the sidewalk?—A. Certainly not.

Q. That you know of?—A. Certainly not.

Q. How far did he go before he got back on the sidewalk?—A. He recovered himself directly.

Q. In a step or two?—A. No, sir; he almost instantly recovered himself and stepped back onto the curbstone.

Q. Did both feet get off the sidewalk onto the pavement?—A. I think—I could not be sure.

Q. Were you close enough to give us any information as to what the nature of that intoxicant was?—A. No, sir; I was not close enough to smell him.

Q. Did you follow him from the point at which you first observed him?—A. I did not.

Q. Did you know any of those to whom you spoke about the incident?—A. They were strangers to me—entire strangers.

Q. Did you observe whether other persons on the street observed the judge and followed him with their eyes?—A. I did; two——

Q. (Interrupting.) To what extent was that done?—A. There were not many people, the street was quite quiet; Fourth Avenue very often is at that time on Sunday.

Q. Tell us to what extent he attracted attention?—A. Two young girls I saw particularly turn and laugh at the judge; that was all that I noticed—noted particularly besides those to whom I called attention.

Q. Did you know who he was without inquiry?—A. Oh, yes.

Q. Did the persons to whom you spoke on the other side of the street know who he was without being told?—A. That I don't know, because I simply called their attention and they did not—I didn't enter into any conversation.

Mr. HUGHES. I don't hear you, sir.

A. I simply called their attention to the fact and did not enter into any conversation with them.

The CHAIRMAN. Mr. Hughes do you wish to examine further?

By Mr. HUGHES:

Q. Mr. Bathurst, you say that you have been living here 20 months?—A. A year ago last October since I came down.

Q. That is, you came here in October, 1910?—A. 1911–1910.

Q. And you came from whence?—A. From Alaska.

Q. From Tanana?—A. From Tanana.

Q. How long had you lived there?—A. Since 1903.

Q. In what town?—A. Town of Tanana, at the mouth of the Tanana River.

Q. What was your business there?—A. United States commissioner.

Q. No other business than United States commissioner?—A. Not beyond mining.

Q. How?—A. Not beyond mining.

Q. Not beyond mining?—A. No.

Q. But that is the principal business of most men in Alaska?—A. Well, the principal business is mining there, you know; when he is in that business that is the only business that keeps him occupied all the time.

Q. I am trying to find out what you were doing. Did you simply conduct the office of United States commissioner?—A. Yes.

Q. Or were you mining?—A. No. The rest of the time—I was there from 1903. I was commissioner in 1905. Before that I was mining, prospecting.

Q. And after that, the last five years you did nothing but attend to such duties as came before you as United States commissioner?—A. Yes; that is all.

Q. How did you come to leave Tanana?—A. Why, wife wanted to leave; wanted to come out; been there 12 years; hadn't made anything.

Q. How long were you here before you got a public position here?—A. One year.

Q. What did you do in the meantime?—A. Nothing.

Q. Nothing at all?—A. No.

Q. Except to live down on the Renton line and feed upon discontent; is that it?—A. Oh, no, sir; we are perfectly contented there now.

Q. You lived there, did you, on the Renton line?—A. Yes, sir.

Q. And the people in that locality thought they had a great many grievances against the Seattle, Renton & Southern road?—A. They didn't think anything about it; they were certain they had.

Q. Yes, quite certain. The litigation you refer to was in whose court?—A. Mostly in Judge Hanford s court, I guess.

Q. Are you sure about that?—A. Oh, no, not positive; there was some of it before the——

Q. (Interrupting.) In fact, what litigation occurred was in the State court until the injunction suit brought by Peabody——

A. (Interrupting.) Yes, the litigation——

Q. (Continuing.) The trustee?

A. (Continuing.) Was in the State courts, and the decisions in the Federal court.

Q. The case you refer to is the case before Judge Hanford in which a temporary injunction was issued—a temporary restraining order?—A. One.

Q. What?—A. One.

Q. That is the case you refer to, isn't it, the one in which there was a temporary restraining order?—A. Not especially. That was one part of it.

Q. Well, do you know of any other case?—A. I take the whole proceedings. I don't call it a case; I take the whole proceedings.

Q. I am talking about the proceedings before Judge Hanford. Do you know of any other case in which there was any interest—public interest on the part of the people down there, except the case of Peabody, as trustee, in which a temporary restraining order was issued against the city and the Seattle, Renton & Southern Railway?—A. Yes.

Q. Will you tell me what other case there was?—A. The case which pretty nearly caused wholesale riot, you know, down there, at the time the injunction was issued against the people.

The CHAIRMAN. I didn't catch your answer.

Answer read.

Mr. HUGHES. That is the case that I have just spoken of—the case of Peabody, as trustee, against the city of Seattle and the Seattle, Renton & Southern Railway.

A. And that is the injunction——

Q. (Interrupting.) In which the temporary injunction was issued—A. There were two different injunctions entirely. One was restraining the people from getting together and agreeing not to pay the 5 cents, and the other was an injunction issued against parties involved one against the other in the company—Peabody, Houghteling, and somebody else, and Crawford.

Q. Will you tell me whether there was more than one case of that kind in Judge Hanford's court, to your knowledge, sir?—A. Yes, sir. I don't know whether it was more than one case; there was more than one phase of it.

The CHAIRMAN. Just a minute, gentlemen. The examination will have to be carried on without heat.

Mr. HUGHES. I did not mean to display any heat.

The CHAIRMAN. Very well. Guard yourself. The testimony will have to be carried on without heat.

Mr. MCCOY. Read the answer, please, and I suggest that we have the last two or three questions read so as to see where we are at.

The stenographer here read from the record as follows:

A. There were two different injunctions entirely. One was restraining the people from getting together and agreeing not to pay the 5 cents, and the other was an injunction issued against parties involved one against the other in the company—Peabody, Houghteling, and somebody else, and Crawford.

Q. Will you tell me whether there was more than one case of that kind in Judge Hanford's court, to your knowledge, sir?—A. Yes, sir.

The WITNESS. The only word "additional"—the "additional" 5 cent fare.

Mr. HUGHES. The only point I am trying to get at, Mr. Bathurst, is this: So far as——

Mr. MCCOY (interrupting). Excuse me, Mr. Hughes. As the answer stands now it is not correctly reported—what the witness said. It simply is "Yes, sir," and the witness added "at least there were two aspects of the case." As it is now, it is on the record as stating that there were two suits. Now, I don't know whether there were or not, but he did not say there were two suits. He said "Yes, there were at least two aspects."

The WITNESS. Phases.

Mr. MCCOY. Isn't that what you testified to?

A. Several phases of that suit. I don't know how many suits they entered.

Mr. HUGHES. My only purpose is to locate the suits.

Mr. MCCOY. I understand. I want to get the witness down right.

Mr. HUGHES. As a matter of fact, the controversies you refer to were phases of one suit, not different suits, before Judge Hanford?

A. It was all one, it has been all one proceeding, so far as I know, except—save that of the people against Crawford.

Q. You refer to the meeting at the Dreamland Rink following that restraining order?—A. Just repeat your question.

Question read.

A. Oh, no, no.

Q. Were you present at that meeting at the Dreamland Rink?—A. Yes, I was present at that meeting. That is not the meeting I am referring to at all; I am referring to the state of the people out there upon the line.

Q. Oh.—A. I am not referring to that meeting in any way.

Q. The meeting in the Dreamland Rink was right following this restraining order, wasn't it?—A. That meeting was, I suppose, right afterwards.

Q. And any meetings that you refer to out there in the Renton district, so far as they were affected by this case, were just about that time?—A. Yes.

Q. The same time. Have you lived on the Renton line ever since you came to the city?—A. Yes, save for about six weeks.

Q. How many times have you ever been in Judge Hanford's court?—A. I could not say. Few, maybe three, maybe four.

Q. Were you there as a witness——A. (Interrupting.) No.

Q. (Continuing.) Or party?—A. No, just——

The CHAIRMAN. Mr. Witness, wait until the question is completed before you answer it.

Mr. HUGHES. Did you have any business in court at the times you were present in the court room?

A. No, sir.

Q. There simply as a causal visitor in the court room?—A. Yes, sir.

Q. Were you there any length of time?—A. Yes, twice I stayed for probably an hour or hour and a half.

Q. Were you there because you were interested in hearing some particular case of any consequence that was pending?—A. Oh, no; I was waiting down town; just dropped into the court room.

Q. No purpose, but simply casual?—A. Quite so.

Q. When were the occasions when you were in Judge Hanford's court room while he was presiding?—A. Oh, during last winter.

Q. Before you entered the city employment, or after?—A. Yes, before. Not this winter, this recent winter. A year ago—a year ago this winter.

Mr. MCCOY. The winter of 1911?

A. 1911, yes.

Mr. HUGHES. Was that before or after this injunction suit that you speak of?

A. Oh, I was in Judge Hanford's court before, and probably after.

Q. Do you remember what cases were pending on trial before Judge Hanford when you were in his court?—A. I do not, save the last time that I was in.

Q. What was that?—A. That was a white-slave case.

Q. A white-slave case. You were not interested in any as a witness or otherwise in the case?—A. No; I didn't stay long.

Q. Did you stay until the trial was ended?—A. I did not.

Q. Do you say that he seemed to be inattentive to that case?—A. No, no.

Q. Did you know that Judge Hanford gave the maximum sentence in that white-slave case, and did that afford any prejudice in your mind?—A. That decidedly would not prejudice me.

Q. It would not?—A. I should approve of it.

Mr. HIGGINS. I don't hear your answer.

A. I say I should approve of that.

Q. Do you know what attorneys were conducting the cases when you were present in court? Take the white slave case, the district attorney, I suppose, was on one side. Do you remember what attorney was on the other?—A. I don't remember the man's name. I should know him if I saw him.

Q. On the other occasions when you were present, do you remember what attorneys were conducting the cases?—A. The first time I was in I think civil cases were being tried.

Mr. MCCOY. Louder.

A. I say the first time I was in I think civil cases were being tried. The State's attorney was not—the district attorney was not engaged.

Q. Do you remember who the attorneys were?—A. I do not. I have a very limited acquaintance with attorneys in Seattle.

Q. You could not recall who they were?—A. I could not. Mr. Hughes, I don't want anything that I have said of Judge Hanford in the court to be assumed to impute any intoxication to him in the court room. I will say that now, that I saw not the slightest sign of it.

Q. Who were present, if you can name any persons, in court at the time when you saw what you have described here as apparent inattention on the part of the court?—A. There was an attorney here that I saw was present in court at the time.

Q. Can you name him?—A. No; I can't. I can show him to you if he was here. He was here just now.

Mr. HIGGINS. You will have to keep your voice up.

A. I will turn toward you. I say, there was an attorney here just now that I would recognize. He was in court at the time. He is a small man. Very much like Mr. McLaren, who sat here.

Mr. MCCOY. He has now left?

A. Heavy mustache. He has now left. A small man was there—a straw hat.

Mr. PRESTON. Mr. Shaffner has been sitting here.

Mr. HUGHES. A black mustache?

A. Yes; heavy mustache.

Q. Mr. Shaffner?

Mr. MCCOY. Hold on. No, no; that is not——

The WITNESS (interrupting). I am not identifying him.

Mr. MCCOY. That is not right. He says he don't know the witness's name. Don't, Mr. Hughes, put your supposition as to what the witness means into the record.

Mr. HIGGINS. I think Mr. Hughes is only trying to refresh the witness's mind.

Mr. MCCOY. The witness says he does not know.

Mr. HIGGINS. I don't know what the object of asking it is, but if there is any object I would like to have it put in that way.

Mr. HUGHES. I do not like to have comments made upon a question before I ask it; it does not seem quite fair to me.

The CHAIRMAN. I think Mr. Hughes has a right to suggest a name in the question; I think it is entirely proper.

Mr. HIGGINS. I have no doubt about it.

The CHAIRMAN. That is only a question. If the witness does not agree with the suggestion, he can say so.

The WITNESS. You see, I have not the slightest idea of saying what the man's name is.

The CHAIRMAN. And you are perfectly capable of saying so.

Mr. HUGHES. If I may proceed, Mr. Chairman?

The CHAIRMAN. Proceed.

Mr. HUGHES. Mr. Shaffner was sitting by the side of the reporter yonder a few moments ago—the gentleman with a black mustache——

A. (Interrupting.) I could not say that——

Q. (Continuing.) Sitting in that seat.—A. I could not say that, but doubtless——

Q. (Interrupting.) Let me finish my question, please. Do you know a lawyer by that name?—A. I don't.

Q. So that you could not tell whether it was Mr. Shaffner or not?—A. No, sir.

Q. But you do know that it was a gentleman with a black mustache, a youngish man, who sat in one of those seats on the front row?—A. Yes.

Q. A few minutes ago?—A. Well, I don't know about a few minutes ago; I could not say that.

Q. When?—A. He was here all day yesterday, and he will doubtless be in again presently, and I will identify him for you. He will surely be in.

Q. Was there any occasion when you met Judge Hanford personally?—A. Have I met him?

Q. Yes, sir.—A. No, sir.

Q. Have you ever heard him deliver any public addresses?—A. I have.

Q. Where?—A. At this meeting that the last witness was speaking of.

Q. At the meeting at the Alhambra Theater?—A. Yes.

Q. On any other occasions?—A. No—just recently—you will have to refresh my memory, though; Judge Hanford spoke—I have heard him within the last month or two.

Q. Within the last month sometime?—A. Not within the last month; the last month or two.

Q. On Decoration Day?—A. No; I din't hear him then.

Q. Well, I am trying to get at the places and times when you have seen Judge Hanford to identify him—as to the time.—A. I have seen him quite a number of times; passed him quite a number of times on the street.

Q. Well, and did anybody tell you it was Judge Hanford?—A. No; didn't have to after I had once seen him.

Q. Where was he the first time you saw him?—A. The first time I saw him was shortly after I came from Alaska.

Q. Where did you see him then?—A. In the court room.

Q. In the Federal court room?—A. In the Federal court room.

Q. Do you know his brother, Frank Hanford?—A. I don't.

Q. Do you know whether you would be able to recognize the one from the other if you saw them on the street at different times?—A. I certainly do.

Q. And yet you say you don't know his brother?—A. I certainly think that I would be able to recognize Judge Hanford anywhere I saw him apart from anybody else.

Q. What day was it when you saw Judge Hanford coming out of the Ranier Club, when you say that he was intoxicated?—A. Now you have—I didn't say that.

Q. You said it was Sunday at 6 o'clock in the evening, but can you give me the time more specifically?—A. No; alter your question.

Mr. McCoy. You have made him say what he did not say. He specifically stated that he did not see him coming out of the club.

Mr. Hughes. When you saw him coming from the direction of the Rainier Club?

Mr. McCoy. That would be more accurate.

A. What day was it? Nothing further than it was Sunday.

Q. Well, can't you fix the time more definitely, sir?—A. I can not at all. If I had known it would be any use in an investigation I certainly would have noted it down, and all particulars; but at that time I did not hope for any investigation and therefore I did not make any note of it.

Q. About how long ago was it?—A. This was in October or September of last year.

Q. That is approaching it—in September or October?—A. Yes.

Q. Of 1911?—A. 1911.

Q. You are able to fix it as being one or the other of those months, are you?—A. Yes.

Q. And you are able to fix the time as a Sunday and the hour as about 6 o'clock?—A. Yes.

Q. And the occasion as one on which your wife visited the library?—A. No, we were going to church.

Q. Did I misunderstand you? Didn't you say your wife was in the library?—A. No.

Q. What did she——A. (Interrupting.) She was coming on the car. I was waiting at the corner of the library—waiting for the car to come.

Q. And she was coming on the Renton car, which comes up Fourth Avenue?—A. Yes, sir.

Q. Well, I misunderstood you, sir. From what place did you go to the corner of Fourth and Madison Street?—A. The Y. M. C. A.

Q. Had you been at the Y. M. C. A. building?—A. I had.

Q. How long had you been there?—A. Oh, possibly two hours.

Q. And expecting the arrival of this car, you walked across Fourth Avenue to the opposite corner of Fourth and Madison?—A. I did.

Q. Do you remember whether you went on to the northeast corner, where the library building is located?—A. No, the other corner.

Q. The southeast corner?—A. Yes.

Q. That is the one nearest the Rainier Club?—A. Yes.

Q. How long had you been standing there before you noticed the gentleman that you took to be Judge Hanford?—A. Oh, possibly 5 minutes. I had met a car on which my wife did not come, and then I was going to watch for the next. Possibly I had been there 5 minutes; might have been 10.

Q. Now, this man came, you say, from the direction of the Rainier Club, which would be south?—A. Yes.

Q. And, I take it, on the east side of the street?—A. The up side of the street.

Q. Well, the east side of the street. You have been here long enough to know locality and direction, haven't you?—A. Oh, well, I will have to think——

Q. (Interrupting.) The side you were standing on?—A. I would have to figure around now.

Q. The side you were standing on?—A. Yes.

Q. And coming toward you?—A. He was coming toward me.

Q. Now, how near had he come to you when you walked across the street again to speak to the gentlemen standing on the opposite side in front of the Y. M. C. A. Building?—A. About as near as you are to me; possibly not quite so near.

Q. He had not yet passed you?—A. No.

Q. Before he reached you?—A. Yes, sir.

Q. And when within 10 to 20 feet of you, you left the sidewalk and walked across the street——A. (Interrupting) No, he was nearer than that; he was very close to me, very close.

Mr. McCoy. How close is Mr. Hughes to you now?

A. It was just—well, about the distance to Mr. Hughes.

Mr. McCoy. How many feet would you say?

A. Oh, I would say about 8 feet.

Mr Hughes. About 8 feet?

A. Yes, sir.

Q. Well, he had not yet passed you?—A. Not when I left the sidewalk.

Q. Did you ask these gentlemen their names?—A. I did not.

Q. You went simply to call their attention to what you had observed?—A. I did.

Q. Did you think they were not observing what you saw?—A. I could see they were not observing. There were three talking together very earnestly over something, just in front of the door of the Y. M. C. A, and one had his back toward the other side of the street.

Q. You thought it was disgraceful and improper?—A. I certainly did.

Q. And was it your purpose to add publicity to it?—A. It was.

Q. Without trying to find who they were?—A. Without trying to find who they were.

Q. Then you had no other purpose than to simply have as many people as possible see what you thought was a disgraceful circumstance?—A. None whatever.

Q. Have you ever seen these gentlemen before or since?—A. I have not; would not recognize them if I saw them.

Q. You could not give us any information as to who they were?—A. Not the slightest.

Q. Did they make you any answer?—A. They looked.

Q. That is not answering my question, sir. Did they make you any affirmative answer?—A. They made an answer to look.

Q. Did they make any affirmative answer of any kind, any verbal answer?—A. No; not to my recollection. They spoke of it one to another.

Q. Did you enter into any conversation at all with them?—A. I did not.

Q What did you say to them?—A. I said "Note—"well, I can't recollect the exact words—I said "Take notice of the disgraceful condition of a Federal judge," I said "See that Federal judge going up there," I said "Notice his condition."

Q Then, without waiting, you turned around and walked back, did you?—A. Just stood there long enough for them to turn and look, and then I walked back across the street.

Q. You say they made no answer or no comment of any kind to you.?—A. Not to my recollection. They probably said something, but I didn't note what they said.

Q. Where was this man when you got back to the side from which you had started?—A. Judge Hanford?

Q. Yes, sir; if it was Judge Hanford?—A. Oh, I could not say just how far he had got up. He was some distance up the street.

Q. Can you give us any idea how far?—A. No; I can not. I still saw him, that is all I know.

Q. Well, did you continue to watch him?—A. Yes; until the car came. The car was just coming then.

Q. Well, now, he had gone past the library building?—A. That I don't remember.

Q. What direction did he go, that is what I am trying to find out?—A. He was going in that direction. I have answered that several times.

Q. Going north?—A. Yes; he was going north.

Q. Of course the Federal building has two streets.—A. Going up there is only one way for him to go. If I am on the corner opposite the library and he is coming from the Rainier Club there is only one way for him to be traveling.

Q. He continued right along in that direction?—A. Yes.

Q. On the east side of Fourth Avenue?—A. Yes.

Q. Can you tell me now how far he passed by Madison Street?—A. I can not.

Q. As you watched him?—A. As I watched him. Oh, yes, I said about possibly a quarter of a mile. Well, I limited that to two or three hundred yards, and it may be over——

Q. (Interrupting.) You don't mean that you think that two or three hundred yards and a quarter of a mile are synonymous?—A. No, I don't, not for a minute.

Mr. HUGHES. I would like to ask, may I explain, just a few more questions, if possible, for the purpose of locating the time, if I can.

The CHAIRMAN. Mr. Hughes, just go on. I think the committee is of the mind that when we adjourn it will be until Monday; so just continue until you are through; don't feel under any restraint at all.

Mr. HUGHES. Thank you. At the request of my associate, would you wait just a moment for him? He has occasion to go out and would like to hear the balance of the testimony.

The CHAIRMAN. Certainly.

Mr. HUGHES. I only want to direct it to one subject.

A short recess was here taken.

The CHAIRMAN. We will be in order.

JOHN BATHURST on the stand.

Mr. HUGHES. I may say, for the information of the committee and of the witness, the examination discloses that this restraining order in the suit against the Seattle, Renton & Southern road was on the 22d of August, 1911.

Mr. HUGHES. And I want to ask if the occasion that you have referred to, when you saw Judge Hanford on Fourth Avenue, was subsequent to that time?

A. The only way I could say to that was by knowing the date of that order. I can tell you that.

Q. Well, I say the date was August 22?—A. Oh, then it was after that.

Q. It was after that?—A. Yes.

Q. Do you have any recollection of that event which would enable you to say how long afterwards it was? A. Not at all.

Q. Do you recall what occurred at the Y. M. C. A while you were there; was there any meeting there, or any special occurrence there that would enable us to fix the date?—A. If there was—there probably was some meeting—I don't know what it was. I merely went into the reading room—into the front room, office.

Q. Can you mention anything that occurred at the Y. M. C. A. which might aid us in fixing the date?—A. I can not, and I will tell you further, that I have tried my utmost to find something to fix this date now. When I decided that I would come here and tell this, I tried, by calling my wife's attention to it, to fix the date, but I could not, and I can not state anything more positive than I have done.

Q. To whom did you first report the fact that you had observed Judge Hanford on this occasion?—A. My wife.

Q. Well, I mean to whom among any persons who might be interested in any proceeding against Judge Hanford.—A. I did not report it to anybody.

Q. When did you first make it known to anyone that you would be or could be a witness to that event, to that circumstance, against Judge Hanford?—A. Why, I stated to my wife that I would willingly testify.

Q. Have you to anyone else?—A. Yes.

Q. Now, that is what I want to find out. Did you report to anyone else?—A. I came here yesterday and volunteered the information to Mr. McCoy.

Q. Did you, prior to that time, inform anyone else?—A. I may have done in my own home, but not for purposes of giving evidence.

Q. Well, it does not seem to me yet that that is a full answer.—A. That is the fullest answer I can give.

Q. Did you to anyone else than in your own home?—A. No.

Q. Ever give the information to anyone else——A. (Interrupting.) Oh, yes. Oh, yes, I have, outside, given the information to other people, but not reporting it.

Q. How?—A. Not reported it.

Q. Not what?—A. I have not hesitated to state that I saw Judge Hanford drunk, when the matter of Judge Hanford came up.

Q. Can you tell me when and to whom you first made any report or statement of it to anyone other than your wife?—A. No; I can not.

Q. You have no recollection of it?—A. Not the slightest. Prob-

ably have done it to two or three friends that I have spoken with, but not more, and just immediately——

Q. (Interrupting.) Will you name those two or three?—A. No; I could not.

Q. You can't name any of them?—A. I can not. Of course, I may have said it to them and I may not, just a matter of casual conversation.

Q. Do you know of no way of fixing more definitely the particular Sunday?—A. I have already told you that I have endeavored my utmost to fix that Sunday and I can not.

Q. To what church did you go?—A. That I can not say. We went to either the Presbyterian or the Methodist Church.

Q. Do you go regular to church on Sunday evening?—A. I do not.

Q. This, then, was not a usual occurrence for you and your wife to come up on a Sunday evening?—A. It was not usual; very frequently, though.

Q. What?—A. It was very frequent.

Q. To what church did you commonly go?—A. Sometimes I went to the Presbyterian and sometimes to the Methodist.

Q. Do you mean to say that you do not remember to what church you went on this particular occasion?—A. I certainly do mean to say so. I already have said so.

Q. Do you remember where you first went when your wife got off the car?—A. I remember that we took a walk.

Q. Do you remember where you walked?—A. Just the streets we went on I don't know. We went up Fourth Avenue and around some streets there.

Q. What time did church service begin?—A. That I could not say; 8 o'clock, I think.

Q. And did you stroll around from 6 o'clock until 8 with your wife?—A. No; but it was not—it was about 6 o'clock—the car didn't get in—I suppose it was about a quarter past 6, somewhere about that, possibly 20 past.

Q. Did you stroll around on the streets with your wife from then until 8 o'clock?—A. Until church time, yes.

Q. Well, I fixed the hour at 8 o'clock from your lips.—A. Yes.

Q. Was that right?—A. That is right.

Q. Didn't you and your wife know before leaving home that you were to meet and go to church; had you not previously arranged that?—A. No; I think not that day. I had come down town, was down town, and had telephoned her to come down.

Q. You had telephoned her to meet you?—Q. Yes.

Q. How did you come to have her meet you two hours or thereabouts before church time?—A. Well, because we wanted to go for a walk.

Q. You wanted to go for a walk?—A. Yes.

Q. Around the streets?—A. Yes, sir.

Q. And yet you don't know where you walked or how you put in that time?—A. Why, I certainly don't know. We didn't notice on such an occasion as that, walking around; I would not wish to try to identify the streets.

Q. Have you any recollection of the person who preached that night, or the subject?—A. I have not.

Q. Or occasion?—A. I have not. Either Dr. Leonard or Dr. Matthews.

Q. You don't remember what the subject of the sermon was, or anything by which we can fix the time from anyone else than you?—A. No, no.

Q. Have you talked with your wife about it?—A. I have.

Q. Neither of you remember what church you went to or what the occasion was nor who preached nor what the sermon was about?—A. No, no. As a matter of fact, a sermon does not impress itself very much upon me at any time.

Q. Now, what kind of a day or evening was this, do you remember that?—A. Oh, it was a nice day.

Q. A sunshiny, bright evening?—A. That I don't remember. I remember it was quite fine, quite nice.

Q. A fine day. It is your best recollection that this was in the month of September, or would you put it later?—A. I would not just, between the two, September or October.

Q. But you do fix it as being——A. Eventually it was——

Q. (Continuing.) In one or the other of those two months?—A. I rather lean toward October.

Q. But you did fix it as being in either one or the other of those two months?—A. Yes, yes.

Q. Are you accustomed to visiting the Y. M. C. A.?

Mr. HUGHES. I am not asking this irrelevantly, but for the purpose of endeavoring to fix the time.

The CHAIRMAN. We are trusting largely to your good judgment, that you will not ask unnecessary questions or unnecessarily extend the examination.

Mr. HUGHES. Without the explanation the commission might think it was an irrelevant question.

A. At that time I was; yes.

Mr. HUGHES. You are, then, familiar with the fact that changes have been made in the arrangements in the rooms of the Y. M. C. A.?—A. Yes.

Q. Can you fix the time with reference to those changes?—A. I believe it was before the changes were complete.

Q. How long?—A. But I would not endeavor—I would not endeavor to say anything about it—not to fix it at all, because I don't know.

Q. Before the changes——A. (Interrupting.) I would not endeavor to guess at a thing that I could not tell you definitely.

Q. Don't you remember——A. (Interrupting.) I don't.

Q. (Continuing.) What the appearance and conditions were at that time?—A. I don't.

Q. But your recollection is that it was before the changes were made?—A. No; my recollection is not so at all. I say it might have been.

Q. I misunderstood you, then, sir. What was the fact?—A. I don't know the fact at all.

Q. You don't know? Can you recall what you read that day?—A. No; I read a good deal.

Q. Well, but did you call for any books; was there anything——A. (Interrupting.) No.

Q. (Continuing.) In the record there by which we can locate the time?—A. No.

Q. Anything that occurred at the Y. M. C. A.——A. Mr. Hughes, let me tell you this: I have tried my utmost to fix this recently and I have told you 20 times I have tried to fix this date for the purpose of giving it to you, but I can not. I have tried to call up to the utmost anything that occurred at the time which would aid me in fixing the date. There is nothing, positively nothing, that you can get from me which will fix this date, because I can not fix it myself.

Mr. HIGGINS. When did you begin to try to fix the date?

A. Oh, as soon as I heard of this investigation.

Mr. HIGGINS. That is, within the past two weeks?

A. Yes.

Mr. HIGGINS. Did you try before that time to fix the date with any certainty?

A. No; I didn't.

Mr. HUGHES. Now, we want also to try, and that is my purpose.

A. Yes.

Q. It is not with any other thought, Mr. Bathurst.—A. Well, it is only a waste of time; that is all.

Q. Do you remember who was the secretary?—A. I don't know the secretary.

Q. You don't know who the secretary is?—A. No, no.

Q. You never knew who the secretary was?—A. Oh, I may have seen his name.

Q. You don't know who was in the place occupied by the secretary?—A. No; I don't. I don't know where the secretary's office is.

Q. Can you describe any person who was there at that time?—A. Oh, I know them by sight.

Q. Can you mention anyone who was there on that occasion?—A. I can not.

Q. Can you mention anything you read at that time?—A. I can identify a half a dozen, I suppose, if you want to go over there and have me identify them.

Q. You mean persons now?—A. Yes; persons that were there.

Q. But you don't know them?

The CHAIRMAN. The question was whether you can recall anything you read while you were there that time?

A. Oh, no. My habit was to take up a paper here and there and read it while I waited there; that is all my habit.

The CHAIRMAN. The question was not what your habit was, but whether you remembered anything you read that particular time?

A. I don't.

By Mr. HIGGINS:

Q. Did you try to fix the date in any other way than by talking the matter over with your wife?—A. There was positively no way. I have tried every way and there is positively no way of me fixing it. It was——

Q. (Interrupting.) Did you try in any other way than by talking it over with your wife?—A. I have tried to think of some way, to think of some possible way of fixing it.

Q. Well, did you talk with anybody except your wife?—A. No.

Q. In attempting to fix the date?—A. No, no; I haven't. Of course that is the only one by whom I could fix it, if she had remembered.

By Mr. HUGHES:

Q. Let me ask you another question, then. They have changed the location of the reading room?—A. Yes.

Q. At different times?—A. Yes.

Q. In the Y. M. C. A? Do you remember which room it was that you were in?—A. That I could not say. I waited there, and I believe that so far as my recollection goes that alterations were then on.

Q. Well, do you remember———A. (Interrupting.) But I could not undertake to say they were. I believe the alterations were then on and that I sat in the office room, the part that had then been cut off from the reading room.

Q. I understood you to say earlier that you were in the reading room. Was I wrong about that, sir?—A. Oh, well, you must—you can let that go, if you understood that, because the reading room—it is all reading room.

Q. I only want to know the fact. I am trying to find out something that may help us, that is all—A. It is all reading room.

Q. It was the general office then?

Q. The general office?—A. Yes.

Q. Did they have books and magazines there?—A. I believe at that time that the other part was reserved—I am not sure, but I think that the other part, which is now the general reading room, was reserved for members of the association, of which I was not one.

Q. Were you a member?—A. I was not.

Q. You were not?—A. No.

Q. Did they have any books and magazines in the room where you were?—A. I can't tell you that, whether they were there that day or not.

Q. Well, but if you read any books or magazines you could tell me that, couldn' you?—A. I didn't say anything about magazines.

Q. Well, you have said that you read?—A. Yes, sir.

Q. What did you read, do you know?—A. As I said just now, it was my habit———

Q. How?—A. I didn't say I read even. I said my habit was to pick up any of the papers and read.

Q. How long were you there?—A. I say about two hours, probably—possibly.

Q. Do you now say that you don't know whether you did read or did not read?—A. Well, as a matter of memory, I don't. The chances are that I read all the time.

Q. How frequently do you visit the Y. M. C. A., or did you at that period visit the Y. M. C. A. on Sundays?—A. Oh, I visited it very often.

Q. On Sundays?—A. Yes.

Q. At that period?—A. Yes.

Q. Although you were not a member?—A. Yes.

Mr. MCCOY. Are nonmembers allowed to go there without any question?

A. Certainly, certainly.

Mr. MCCOY. Invited to go there, are they?

A. Invited to go there. I always———

Mr. HUGHES. You need not make any significance of that. I am only trying to see if there is some way of flxing the time.

The CHAIRMAN. Make it just as brief as you reasonably can.

Mr. HUGHES. I think that is all. He does not seem to be able to give me anything definite.

The WITNESS. I would like to assist Mr. Hughes if I possibly could, but I can't. I can not—positively can give him no idea as to the particular date. If I—as I said before—if I had any idea that the evidence would have been of use in the future, any hope that an investigation would have been made, I certainly would have noted it down; but I was not tracking Judge Hanford, or anything of the kind, and therefore I did not.

Mr. HIGGINS. I don't hear you.

A. I say I was not tracking or dogging Judge Hanford, and therefore I didn't make any note of the occasion. At that time we didn't hope for any investigation.

Mr. HUGHES. What was your last statement?

A. I say at that time we didn't hope for any investigation.

The CHAIRMAN. That is entirely immaterial.

Mr. HUGHES. That is all with this witness. There is a matter I want to call attention to before the adjournment.

The CHAIRMAN. Any questions you wish to suggest, Mr. Nichols?

Mr. NICHOLS. No.

By Mr. McCOY:

Q. Did I understand you rightly when I thought I understood you to say that when you went across the street and spoke to these two men and said what you have testified——A. (Interrupting.) Three men.

Q. (Continuing.) Three men, that they said something to each other?—A. Yes.

Q. One of them said something to the other two, or whatever it was?—A. Yes.

Q. Do you remember what any of those men said to any other or others of them?—A. I didn't. My attention was more particularly—directly—then attracted to Judge Hanford again, because the spectacle imposed itself so upon me and I was disgusted.

Witness excused.

Mr. HUGHES. Mr. Chairman, I think it is proper and fair that in view of the investigation that has taken place respecting the Olsson case this statement should be made, which Mr. Nichols will confirm: That Judge Hanford has advised Mr. Nichols that the statement that he made here upon the witness stand, coupled with the statement of certain matters involving the questions and answers as Judge Hanford understands them, would be entirely satisfactory to him to sign and that he would sign them as a bill of exceptions, and that Mr. Nichols says that the two together, with such minor changes as he would want to make would make a fair and just bill of exceptions upon which the cause of Leonard Olsson could be fully and fairly reviewed in the court of appeals; and I make this statement in the presence of Mr. Nichols for his confirmation.

Mr. NICHOLS. Mr. Chairman, I said, after receiving Judge Hanford's notes and memoranda here, that so far as I know now, I think we can make an accurate statement of facts. That is my personal

opinion. I do not mean that as an agreement at this present time, and particularly because my associates are in doubt as to whether an agreed statement of fact will be proper at all in an appeal in an equity case. But with my own remembrance of the facts and Judge Hanford's together, I think we can agree upon it, if it is proper to do so.

The CHAIRMAN. Is there anything further at this time?

The witnesses who are now under subpoena will all be here promptly at or before 9.30 on Monday morning. The committee will be in recess until that hour.

FOURTH DAY'S PROCEEDINGS.

MONDAY, JULY 1, 1912—9.45 a. m.

Continuation of proceedings pursuant to adjournment. All present as at former hearing.

O. T. ERICKSON, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name.

A. Oliver T. Erickson.

Q. Where do you reside?—A. In this city.

Q. Give your address.—A. 768 Belmont Place.

Q. How long have you lived in this city in all?—A. 12 years.

Q. What is your present occupation?—A. I am engaged—do you mean the name of my business?

Q. Yes.—A. Manufacturer.

Q. Of what kind?—A. Electrical machinery.

Q. How long have you been in that business?—A. 12 years.

Q. Do you hold any official position?—A. Yes.

Q. What is it?—A. City councilman.

Q. How long have you held it?—A. Since last year—a year and about three months.

Q. Have you held any other official position in this city at any time?—A. No.

Q. Mr. Erickson, are you acquainted with Judge Hanford?—A. I know him by sight.

Q. For how long a time?—A. About six years.

Q. Have you had any business in his court at any time?—A. No.

Q. Have you had any personal relations with him?—A. No.

Q. Have you now any ill-feeling or animosity toward him personally?—A. No.

Q. If you at any time have seen Judge Hanford when you considered him under the influence of intoxicants, I wish you would please state it to the committee.—A. Well, I have seen him that way several times.

Q. Can you recall the first instance?—A. Yes.

Q. About how long ago was it?—A. About five years ago, I think.

Q. What were the circumstances?—A. Well, I was riding on the street car.

Mr. HUGHES. Sir?

The CHAIRMAN. Do you remember where and in what direction?

A. It was on one of the Broadway and Pike cars, going north.

Q. That was in the direction of his home?—A. Yes.

Q. Which of you were first on the car?—A. I don't recall.

Q. How long did you ride on the car with him?—A. Probably 10 minutes.

Q. Tell the committee what you observed when you believed he was intoxicated.—A. Well, he was sitting within a couple of feet in front of me and the conversation turned on his condition and my attention was directed to it.

Q. How were the car seats arranged?—A. They were running across.

Q. Crosswise?—A. Yes.

Q. Were you in front of him or behind him?—A. Behind.

Q. From where you sat had you an opportunity to see his face?—A. At times, sideways, not square in the face.

Q. Now tell the committee as well as you can what it was that attracted your attention and the attention of others to him at that time.—A. Well, it was his condition.

Q. Describe it.—A. Well, sitting in the seat with his head flopping from one side to the other, sometimes rising up straight and then falling over in the side of the seat again.

Q. Which one of you got off the car first?—A. I did.

Q. How many persons, to your knowledge, talked about his condition at that time?—A. I can not tell, I do not recollect how many.

Q. To what extent was his appearance and demeanor noticed by those in the car?—A. Well, I do not recall the conversation or who started the conversation or anything of that sort. I remember there was some joking around about it, backwards and forwards.

Q. Do you know any of those with whom you talked and whom you heard talking about or joking about it?—A. I do not know at this time who it was. I do not know that I could recall at that time.

Q. At that time had you any knowledge—I mean before that time had you any knowledge either from observation or otherwise that Judge Hanford sometimes got in that condition?—A. Only by hearsay.

Q. I want to get out as to what extent did what you observed there surprise you?—A. Well, of course I was surprised to learn that that was the judge on the bench.

Q. Was it then you first knew who he was?—A. Yes, that is, it was the first time I knew him by sight.

Q. Do you recall who gave you the information as to who it was?—A. No, I do not recall.

Q. Since then I suppose you have become acquainted and familiar with him?—A. Yes.

Q. Well, what would you say as to your certainty as to the identity of the person you saw on the car; are you sure that it was Judge Hanford?—A. Yes, sir.

Q. Will you give the committee a more accurate idea of the extent of the intoxication at that time.—A. Well, that is the extent of it as far as I could observe sitting in the car—his actions in the car.

Q. Were you close enough to observe any odor?—A. Not at that time—yes, I was too—I was near enough so that I could get a whiff of it.

Q. What was it, do you know?—A. Whisky.

Q. After that did you observe him in an intoxicated condition—tell us as nearly as you can when the next time was—by the way,

before leaving that, can you in time locate it, about when it was.—A. About five years ago as near as I can locate it.

Q. Well, if afterwards you saw him under the influence of any intoxicant tell the committee about it.—A. Well, I saw him several times—several times after that when I was satisfied in my own mind that he was in that condition.

Q. How often?—A. I presume I have seen him that way half a dozen times, probably more.

Q. Do you recall any other or any subsequent specific and particular time?—A. Yes, sir; I recall one particular time.

Q. Tell the committee about that.—A. Well, I was on the car one afternoon going home and he was in the car at that time and I sat down opposite a man by the name of Ward whom I had known for some time and he called my attention to it and we commented on his condition and the fact that a man of that kind should be on the bench.

Q. What time of the day or night was this?—A. It was in the afternoon.

Q. What time of the day or night was that other, the first instance which you related?—A. That was in the afternoon.

The CHAIRMAN. From my experience here it is almost necessary for one even in the afternoon to ask what kind of light there was.

A. Well, this was in the summer time and a well-lighted car.

The CHAIRMAN. This is the summer time.

Q. Well, on this second occasion please tell us more particularly what occurred; for instance, was the car furnished the same as the other; did the seats run crosswise of the car?—A. Yes, sir.

Q. Where were you seated with reference to him?—A. I think about three seats from him.

Q. Before or behind him?—A. Behind him.

Q. Did anyone sit in the seat with him?—A. No.

Q. You say Mr. Ward sat in the seat with you?—A. Yes, sir. There was very few passengers in the car at the time—I do not recall that there was any others besides Ward and myself and the Judge or not.

Q. What led you to believe that he was intoxicated at the time?—A. Well, the same manifestations. Whenever the car would give a jolt it would rouse him up so that he would wake up and slobber over on the other side and drop down into a doze.

Q. What can you say as to whether that might have been habitual, without intoxication?—A. I should not judge so from my knowledge——

By Mr. HUGHES:

Q. From what? A. From my knowledge of men.

The CHAIRMAN. He said he should not judge so "from my knowledge," and then he was going on when he was interrupted—what did you say?

A. "Of men."

Q. Was that all your answer—well, if you have any other reasons for reaching the conclusion which you reached, tell us what it is.—A. Well, the fact that it was perceptible—so perceptible to Mr. Ward and to myself both, I was perfectly satisfied in my mind of his condition.

Q. Did you notice any odor?—A. I do not recall—I do not recall whether I did at that time or not.

Q. Which of you got on the car first?—A. I think the judge was on the car when I got on.

Q. Do you know which of you got off first?—A. I did.

Q. What direction was he going then?—A. Going north.

Q. Toward his home?—A. Yes.

Q. About what hour, could you tell us, that it was?—A. It appeared to me as though, if I recollect right, between 4 and 5.

Q. In the afternoon?—A. Yes.

Q. Do you recall any other specific occasion?—A. Yes; I recall one occasion when he got off the car.

Q. Was that before or after the other occasion?—A. That I do not recollect—I think, though, that was before the time that I talked with Mr. Ward.

Q. As to the time on the second occasion you described can you fix that approximately?—A. When I saw him with Mr. Ward?

Q. Yes.—A. That was in the afternoon.

Q. I know, but can you state the year or the month?—A. Oh, I think that was about two years ago.

Mr. HIGGINS. That is the last time?

A. That is the last time that I saw Ward particularly.

Q. You did not fix the time before that as to how long ago it was.

The CHAIRMAN. He said about five years ago, was what he said.

Mr. HIGGINS. Yes, that was the first time, but the second time he did not fix.

The WITNESS. No.

Q. When was that?—A. Well, I do not recall just when that was, sometime during those years.

Mr. HUGHES. We can not hear the witness here.

Mr. PRESTON. Might I have the last answer read?

Witness' answer is read by the stenographer.

Mr. HIGGINS. You were giving the occasions chronologically, that is to say you are relating the time when you first saw him and the time when you next saw him and the last time.

A. No.

Q. Please do so.—A. The time I was speaking about, if I recollect right, the chairman asked me for some specific time, and that was when I saw him with Mr. Ward and I mentioned that distinctly, but other times that I saw him I could not give any surrounding circumstances.

Q. How long ago was it you saw him with Mr. Ward?—A. That was about two years ago, as near as I can recollect.

Q. About two years ago?—A. Yes.

Q. And then at the time which you are questioned about now, that was later than that?—A. No; before that.

Q. How much before?—A. Well, I do not recollect; sometime during that period; I do not remember just when it was.

Q. It was after the time that you first saw him?—A. Yes; my attention was called to that for the simple reason that he got off before I did, and he lived out beyond where I did, and that was why I noticed him when he got off.

The CHAIRMAN. How much this side of his home did he get off?

A. About six or eight blocks, I should think.

Q. After that do you know where he went?

A. No; I do not.

Q. Tell us the manner of his getting off.—A. Well, he was very unsteady and got off the car, and owing to the fact that he got off at that place I turned around to observe him and I noticed when he got off the car, and I noticed just as the car started where he was standing, apparently trying to get his bearings—rather unsteady on his feet.

Q. Do you recall, without giving the time or even the approximate date, any of the other occasions when you saw him and any of the circumstances connected with it?—A. No, I can not.

Q. Where it was you saw him on those other occasions?—A. I used to see him at intervals, of course, traveling backward and forward. At that time I lived on that line, or rather I traveled on that line, and I used to see him occasionally.

Q. Apart from the time you saw him get off the car have you ever noticed him on the street when he was under the influence of intoxicants?—A. No, I have not.

Q. Have you ever attended court held by him?—A. Yes.

Q. What can you say as to his apparent condition at any of those times?—A. I never saw anything to indicate intoxication at those times.

Mr. HIGGINS. You will have to speak up a little louder, Mr. Erickson; it is difficult to hear—the acoustic properties of this room are very bad.

The CHAIRMAN. Well, is there any other instance connected with the matter which came under your knowledge which you ought to tell the committee which you know of?

A. I do not recall anything at this time.

Q. When were you subpœnaed as a witness?—A. Saturday, I think—Friday or Saturday. [Here witness produces the subpœna and hands it to the committee.]

Mr. MCCOY. You have spoken, Mr. Erickson, of three times seeing Judge Hanford in what you supposed that condition which you described—I understand you rightly when I understoood you to say that there were other times you had seen him.

A. Yes, sir.

Q. And when were those?—A. Well, during that period I saw him at different times.

Q. Always in the car?—A. Yes, sir.

Q. And what were the conditions at those other times that he was in the condition which you speak of him being in?—A. The same; in the same condition that I saw him in the other times.

Q. And those were always on the car?—A. Yes.

Mr. HIGGINS. Do I understand you to say, Mr. Erickson, that every time that you saw him in this street car that he was in this condition which indicated to you that he was intoxicated?

A. Oh, no; I did not say that each time that I saw him that I was satisfied that he was intoxicated or under the influence of liquor, or that he was in that condition.

Q. And did you see him at other times when he was not in the car, except the time when you spoke of seeing him on the bench?—A. Yes, sir; I would see him on the streets frequently.

Q. Before the time that your attention was first called to his condition on the street car.—A. Before?

Q. Yes.—A. No, I never knew him before that time.

Q. I want you to tell the committee just how and what was said to you the first time that you knew it was Judge Hanford and when you spoke of seeing him in the car.—A. Well, there was some joking backward and forward about it; my attention was called to him, and I asked some questions about him in a joking way and somebody answered, I do not recall who it was—there was two or three sitting around and they were discussing it.

Q. Did you know the people you spoke to?—A. No, I do not recall who they were.

Q. Did you know them at the time?—A. No, only in a passing way, seeing them on the car.

Q. You did not know at the time what their names were?—A. No, I do not recall now who they were except that I saw them on the car probably a few times.

The CHAIRMAN. Do you wish to examine Mr. Erickson further?

Mr. PRESTON. Please indulge us for just one moment.

Cross-examination:

Mr. PRESTON. I understand you to say, Mr. Erickson, that the first occasion, about four years ago or five years ago, was in the summer time.

A. Yes, sir.

Q. Between 4 and 5 o'clock in the afternoon, and you were going home to your dinner, I suppose—was that your hour for going home to dinner—was that the occasion?—A. No, that was not my hour for going home to dinner—sometimes I went home earlier in the afternoon.

Q. Well, you were going home from the day's work.—A. It is between 4 and 6, I could not say positively that I was not going to my dinner—I was going home—I could not say positively that I was going home to dinner.

Q. What I was trying to get at—that was your trip home after the day's work.—A. Yes, that is my recollection.

Q. And was the same true on the second occasion?—A. Yes, sir.

Q. And on the third occasion?—A. I think in all the cases.

Q. You say that on this first occasion you were seated two seats in the rear of Judge Hanford?—A. As near as I can recollect.

Q. Well, are you clear that you were not sitting in the next seat to him, behind him?—A. I think not; I am not clear on that, however.

Q. You were behind him—the third seat behind him?—A. It was within 2 or 3 feet, I should say.

Q. And at that time he nodded his head, apparently in sleep, and as the car moved he would seem to recover himself and his head would come up, and then he would nod again—is that your description of him—is that a fair description of it?—A. At that time, the first time that I saw him I was on the car and I either saw him go—I think he went from one seat to another, or he came into the car, that is my recollection, and passed us, and that was how the conversation came about.

Q. Well, at that time you detected the odor of whisky, you say?—A. I think at that time I could sniff the whisky—yes, sir.

Q. Now, on the second occasion, you say it was the same as the other—that is, it was this nodding process which you described?—A. Yes, sir.

Q. Did you on the second time get any odor of whisky?—A. I do not recall now.

Q. Did you on the third time?—A. No; the third time was when I spoke of that I saw him get off the car—no, I did not.

Q. Will you please—I take it that it was on the third occasion as you have arranged them chronologically, that you talked with the gentleman by the name of Ward?—A. Yes, sir; I think so.

Q. Do you know any further description of Mr. Ward—what are his initials or anything of that kind?—A. I think his name is John Ward; he was in the plumbing business.

Q. He is a plumber?—A. Yes, sir.

Mr. HUGHES. Of the firm of Ward & Shearer?

The WITNESS. I think that is the firm; I do not know the firm name; but he is a plumber, and he did some work for me.

By Mr. PRESTON:

Q. And is that Mr. Ward still in Seattle?—A. Well, I am not sure of that, but I think so.

Q. Did you ask Mr. Ward on that occasion who that gentleman was, referring to Judge Hanford?—A. No; no, sir; Mr. Ward spoke to me.

Q. Mr. Ward spoke to you—what did he say to you, as nearly as you can recollect?—A. My recollection is Mr. Ward said, "What do you think of such a man as that being on the bench?"—that is my recollection of his first—what he said first, and I made some remark about it, and said that I thought at the rate he was going on he would not stay very long on the bench, or something of that sort.

Q. And that was all the conversation, so far as you recollect?—A. Well, no; I think we conversed for some little time.

Q. I mean on that subject?—A. I recall his speaking that way about it first.

Q. And you do not recall any further conversation on that subject with Mr. Ward at that time?—A. No, I do not recall it now.

Q. On the second occasion, it was that he got off the car, six or eight blocks this side of his home.—A. Yes, sir.

Q. And that would be about where—about Harrison or Republican Streets.—A. Tenth Avenue, where the Broadway car touches Tenth Avenue and it runs across on Roy and it takes across diagonally there and touches Tenth Avenue, and it was at that point.

Q. Now what cross street is that?—A. Tenth Avenue and where you leave Roy—the car takes a turn through the property and runs diagonally and comes in on Tenth—it was at the point where it intersects Tenth Avenue.

Q. Tenth Avenue and Roy, would you say?—A. No, it is not Tenth and Roy, because it leaves Roy and runs diagonally—they condemned a piece of property there and they run diagonally acr ss the corner in order to get over to Tenth with the Broadway & Pike Street line. The streets separate there and this line cuts across diagonally and then the street runs the other way over onto Broadway.

Q. I show you, Mr. Erickson, a little rough diagram of the car line, which, if it is right, you will recognize it. This is going north [showing]?—A. Yes.

Q. And you would say that he got off on Roy, or here on Mercer?—A. It was not Mercer; it is north of Roy when you leave—when you come to Roy the street runs this way at Roy—it separates there and goes over here on Broadway [showing] and then it goes over this way and strikes Tenth.

Q. Now, what is your recollection of about where he got off—just indicate it here?—A. Right on this corner [showing].

Q. You could not be mistaken—it could not be Mercer, a block sooner?—A. No, sir, it was north of Roy.

Q. Are you sure of that?—A. Because I got off at Aloha, and it was just this side of where I got off.

Q. Did you know that Judge Hanford's daughter lives right by there?—A. No, I did not.

Q. Did you ever see him get off there before?—A. No, sir.

Q. You didn't know that oftentimes, very frequently on his way home he gets off there?—A. That was the only time I saw him get off there.

Q. You do not know that very frequently on his way home he gets off at that point and goes over to his daughter's house?—A. No, I do not know that.

Q. Have you ever had any talk with this Mr. Ward since about that occasion?—A. No, I have not.

Q. You never have?—A. No.

Q. Now, please search your memory and be certain about that if you can, Mr. Erickson.—A. Yes—no, I have never talked with him about it since.

Q. Now if you had known the fact, assuming it to be a fact, that Judge Hanford was troubled with insomnia so that he slept very little at night and that it was quite a frequent thing for him, on getting on a street car, to have spells of drowsiness; if you had known that fact, assuming it to be a fact, before this court, would you then have formed the opinion that that condition was produced by intoxication?—A. There is quite a difference, in my opinion, of a man going asleep from drowsiness and going to sleep from the effects of intoxication—in their actions.

Q. What is the difference, in your experience and observation?—A. Because if a man goes to sleep from drowsiness, when he wakes up he sits up straignt and can see clearly—his head does not drop to one side or the other.

Q. Suppose he does not entirely rouse himself?—A. I beg pardon.

Q. I say, suppose it is drowsiness and the man does not entirely arouse himself, would it be so then that he would sit up straight and see clearly?—A. Well, I could not answer as to any fine distinctions of that kind. All I can say, Senator, in regard to this was that I was satisfied in my own mind that the man was intoxicated from my own knowledge of those conditions.

Q. Not having any knowledge of your own as to other circumstances in his manner of living that might produce such drowsiness?—A. Yes.

Q. Did you, subsequent to that time, have occasion in a public address in the city of Seattle to refer to this incident?—A. One of them.

Q. When was that public address delivered?—A. Last summer.

Q. About what time last summer?—A. Twenty-fifth of August, I think.

Q. Here in Seattle?—A. Yes.

Q. In the Dreamland Rink?—A. Yes.

Q. I have here in my hand what purports to be a report of your address on that evening, and with the permission of the committee I would like to ask if it is correctly reported.

The CHAIRMAN. A little louder, please, Mr. Preston.

Mr. PRESTON. I have here in my hand what purports to be a copy of Mr. Erickson's address on that occasion at the Dreamland Rink——

The CHAIRMAN. What was the date of that?

Mr. PRESTON. August 25, as Mr. Erickson just testified, 1911, and with the permission of the committee I would like to quote from that, as it is contained here, that part of the address referring to Judge Hanford's intoxication on the car, and I will ask the witness if he is correctly reported?

The CHAIRMAN. Very well, you may do so.

Mr. HIGGINS. Won't you identify the document for the benefit of the record, so that there may be no mistake about what you have there?

Mr. PRESTON. I did not propose to put it in unless the committee wants it in; I only propose to use a few lines of it.

Mr. HIGGINS. You refer to a little paper-covered pamphlet entitled "Is Lese Majeste a Crime in America?"

Mr. MCCORD. It doesn't make any difference whether it is identified or not—the question, when Mr. Preston reads it, is if Mr. Erickson will testify that that is correctly reported.

Mr. HIGGINS. Well, it is a document entitled "Is Lese Majeste a Crime in America?" followed by the question, "Should men be jailed for free speech?"

Mr. PRESTON. Yes.

Mr. HIGGINS. Followed on the title-page by this statement:

> For making these speeches advocating the impeachment of Federal Judge C. H. Hanford the speakers were arrested. Price 10 cents. Metropolitan Press Printing Co., Central Building.

And it appears to be a document of 32 pages; is that the one you were reading from?

Mr. PRESTON. That is the one I was reading from. I was reading from page 4, as follows:

> I was trained to respect the courts above other men when I was a young man, but I have learned through my life of experience in both public and private life that they are only human. One day a few years ago I was going home on the car that leads into my neighborhood, and a man came staggering into that car and sat down in front of me. I spoke to a friend, and I said to him, "Who is this old gentleman with such a skate on?" He said, "That man is a judicial saint. Can't you see the halo around his head?" I said, "No, I can't see the halo, but I can smell the whisky." That man was Judge Hanford. And, my friends, I have seen him in that condition repeatedly.

Is that a correct report of your remarks, or substantially correct?

A. Substantially correct; yes, sir.

Q. Now, on the second occasion—that is, the occasion when you say he got off there near Roy Street—how far did you sit from him in the car that time?—A. I do not recall just how far it was I sat from him at that time.

Q. And the time you talked with Mr. Ward, do you remember how far you sat from him in the car at that time?—A. We were only a few seats from him.

Q. More than one seat, I take it, from your use of the word "few."—A. Yes, sir; I think we were. I am sure he was not in the next seat to us, and I think he was either two or three seats away or some such matter.

Q. And on the second occasion the same?—A. Yes, sir.

Q. More than one, and possibly two or three—now, you can not now recall any man or woman who was on the car on the first occasion, except yourself and Judge Hanford?—A. No; I can not recall who was present.

Q. And the nearest you can identify the time is by saying that it was about five years ago?—A. Yes, sir.

Q. Now, on the second occasion, do you remember anyone that was on the car with you and Judge Hanford?—A. No; I do not.

Q. On the third occasion do you remember anyone there other than Mr. Ward, who was on the car with you and Judge Hanford?—A. No; I do not. I do not remember anybody else. I did not talk to anybody else—I do not recollect whether there was anyone else on the car or not.

Q. And on the first occasion was some body your seat mate on the car?—A. Yes.

Q. And was Mr. Ward sitting with you on this other occasion in the same seat?—A. Yes.

Q. And on the second occasion, do you remember whether anyone was sitting with you in the seat?—A. No; I do not recall that anybody was sitting with me or not.

Q. Do you know Judge Hanford's daughter, Mr. Haynes?—A. No; I do not.

Q. Do you know where she lives?—A. No.

Mr. PRESTON. That is all the questions that I care to ask.

Mr. MCCOY. You said you were a councilman; you mean that you are one of the common council of the city of Seattle?—A. Yes.

Q. Did you testify in answer to a question of one of the members of the committee that on this occasion when Mr. Ward was in the car with you that you were sitting there when Judge Hanford came in?—A. No; I think Judge Hanford was in the car before I came in that time; it is my recollection that I got on the car at Pike Street, on the corner of Pike; I came up on Pike Street and Broadway, near the high school.

Q. And that he was in the car when you got in on that occasion?—A. Yes.

Q. Mr. Preston has quoted from a speech which you made on some occasion last August; I will ask you now if your present recollection of the occurrences referred to in that speech the same as the quotation would indicate now?—A. Well, substantially, that is a long time ago and I do not remember. I do not remember distinctly the incidents in connection with that.

Q. What I mean is, is your present recollection of the incidents referred to in your speech just what it was at the time when you made the speech; so far as what was quoted by Mr. Preston is concerned—do you remember what Mr. Preston read here?—A. Yes.

Q. My question is whether your present recollection of the incident referred to in that quotation is now what it was at the time when you made the speech?—A. Yes; substantially so.

Q. And when you made the speech did you believe that you were then correctly stating what took place on the occasion referred to?—A. Well, I believed it was substantially what occurred; yes, sir.

Q. Have you ever during the five years while you have known Judge Hanford by sight, seen him on the cars when he was not in the condition which you have indicated?—A. Yes, sir.

Q. In other words, you have seen him in the car on other occasions?—A. Yes, sir.

Q. Frequently?—A. Yes, sir.

Q. Did you ever know him to get off the car at any other time at the point where you said he got off on this one occasion?—A. No; that was what attracted my attention.

Q. That was the only time you ever saw him get off there?—A. That was the only time I saw him get off there.

Q. Where does he live?—A. He lives out on Tenth Avenue—I don't know just how the streets run out there, whether it is Tenth or not, but it is just this side of the Leary home on the Broadway and Pike Street line.

Q. Was the point where Judge Hanford lives beyond the point where he got off on this occasion?—A. Oh, yes; that was what attracted my attention.

Mr. HIGGINS. Reference has been made, Mr. Erickson, to this pamphlet, which I thought to identify for the purpose of the record, but perhaps it might be as well at this time in this connection for you to state briefly what this mass meeting at the Dreamland Rink in Seattle on August 25, 1911, was.

A. That was a mass meeting called for the purpose of asking for the impeachment of Judge Hanford.

Q. Asking for the impeachment of Judge Hanford?—A. Yes; that was the purpose of the meeting.

Q. What occurred, if anything, which gave rise to that demand at that time?—A. An injunction that he issued against the people of the Rainier Valley in regard to the Seattle, Renton & Southern Railway.

Q. I want you to state in your own way briefly the circumstances of that injunction.—A. For two years prior to that the people in the Rainier Valley had been fighting with the Seattle, Renton & Southern Railway Co., and Mr. Crawford, its president, for the rights to which they were entitled under the charter of the city and under their franchise; the litigation extended over, I think, as nearly as I can remember, about two years and there were two cases involved, one was in regard to fares and the other was in regard to transfers. And we had a very bitter fight to get their rights; we thrashed it out in the superior court here and we carried it to the supreme court, both cases, and the people there won. The court decided they were entitled to a 5-cent fare and that they were entitled to the transfer. Then the railroad company, or those interested with them, asked for this injunction enjoining the people of the valley from interfering in any way or obstructing the railroad company from collecting the 10 or 15 cent fare, or whatever it was, and enjoining the railroad company to not issue those transfers, which injunction was removed

a day or two after that to some extent. The feeling roused over this injunction after the case had been fought so long and so bitterly and decided by the courts, it roused such a feeling that this mass meeting was called to protest against that and to ask for the impeachment of Judge Hanford.

Q. Were formal resolutions adopted at that meeting?—A. Yes.

Q. Do you happen to know whether they appear in this pamphlet?—A. I could not tell you. I have seen the pamphlet, but I have not read it all through.

Q. Were they the resolutions which were circulated in the Seattle Star?—A. I am not positive about that—whether the resolutions that were adopted that night had been circulated in the Star or not, I do not recall.

Q. Did the Seattle Star circulate the petition for the impeachment of Judge Hanford?—A. They printed a form for the signatures, yes, sir.

Q. As the result of or following that meeting you were arrested?—A. Yes, sir.

Q. And placed under $5,000 bail.—A. Yes.

Q. On what charge?—A. Interfering with the course of justice.

Q. Contempt of court?—A. Oh, no.

Q. Was the injunction in force at the time you held the meeting at the Dreamland Rink?—A. I think it was.

Q. Now just a minute; you were very prominent, Mr. Erickson, in that controversy, were you not?—A. I presided at that meeting.

Q. Do you know of anything in connection with the issuance of that injunction by Judge Hanford or in connection with that controversy in any way which you can give the committee which would tend to show that Judge Hanford was unfit, by temperament or otherwise, to be a Federal judge, except what the record, the court records, of that case would show?—A. I do not think I can tell you anything which the record would not show.

Q. That is, you can give the committee no information concerning the issuance of that injunction by Judge Hanford except what the committee can get from the court records?—A. I think not.

Q. Well, are you sure about that?—A. I could not give you anything which the records would not show.

Q. So, so far as you are concerned, the committee would have to go to the records—to the files of the court in that case to get the facts concerning Judge Hanford's relations to that case. Isn't that the fact?—A. Yes.

Mr. HIGGINS. That is all.

The CHAIRMAN. Any further questions?

Mr. PRESTON. I would like to ask a few questions in regard to the matter just referred to by Mr. Higgins.

The CHAIRMAN. Proceed.

Mr. PRESTON. Mr. Erickson, you said that this was an injunction issued out of Judge Hanford's court at the instance of the railroad company; by the railroad company, I suppose you mean—what is the name of it—the Seattle, Renton & Southern Railway Co.?

A. I mean the same people. This particular injunction, as I understand it, was asked for by Peabody, Hotelling & Co., which, of course, is the same thing; they are the bondholders in that case—practically the same.

Q. I thought probably that you would correct that fact if I called your attention to it.—A. Yes.

Q. But the suit in which Judge Hanford's order was issued was a suit brought by the trustee under its bond mortgage, either Peabody himself or Peabody, Hotelling & Co.; I do not know myself whether it was the firm or Peabody, but I think it was Peabody, but it is immaterial.

Mr. HIGGINS. Can you not furnish the committee at this time, Mr. Preston, with the title of that case so that it may get into the record?

Mr. PRESTON. Yes, I will do so.

Q. You spoke of that order as an injunction. Now, if the records in that case show that it was a temporary restraining order returnable in eight days, when the application for the temporary injunction should come on, you would modify your evidence to that extent, would you not?—A. I do not know what legal phrase to use—we called it an injunction.

The CHAIRMAN. Are you a lawyer, Mr. Erickson?

A. No.

Mr. PRESTON. Now, that restraining order or injunction, whichever you please to call it, was issued on the 21st day of August, was it not?

A. I don't know the exact date.

Q. Does your memory serve you———A. I don't know the exact date.

Q. You didn't know at the time of the Dreamland Rink meeting that—you referred to the litigation in the State court.—A. Yes.

Q. Are you aware of the fact that the trustee was not a party to that litigation—Augustus S. Peabody I refer to, the trustee for the bonding issue?

Mr. HIGGINS. Are you able now to furnish the reporter with the title of that case in full, Mr. Preston?

Mr. PRESTON. The case is entitled "In the United States Circuit Court for the Western District of Washington, Northern Division. Augustus S. Peabody, of Chicago, Ill., trustee, complainant, *v.* The City of Seattle, municipal corporation of the first class of the State of Washington and the Seattle, Renton & Southern Railway Co., a corporation of the State of Washington, defendants. No. 2012."

(Whereupon the question was repeated to the witness as follows:)

Q. Are you aware of the fact that the trustee was not a party to that litigation, Augustus S. Peabody, I refer to, the trustee for the bond issue?—A. Yes, I am aware of that.

Q. You are aware that he was not?—A. I am aware of that fact, yes.

Q. And were you aware of that fact at the time of the Dreamland Rink meeting?—A. Yes.

The CHAIRMAN. Just there will you give us a little information, Mr. Preston; can you give us the appearances for Mr. Peabody and for the two defendants in that petition?

Mr. PRESTON. I know who they were, and I can give you them from memory.

The CHAIRMAN. That will do.

Mr. PRESTON. My understanding is that Kerr & McCord were solicitors for the complainant and the city appeared by the corporation counsel, Mr. Scott Calhoun.

Q. And the railway company?

Mr. PRESTON. And the railway company by——

Mr. HUGHES. Howard D. Hughes appeared with Scott Calhoun.

The CHAIRMAN. Is he connected professionally with Mr. E. C. Hughes, of counsel in this case?

Mr. PRESTON. No, he never has been. He was assistant to the corporation counsel.

Mr. HUGHES. He was a student in my office for years and then for four years was assistant to the corporation counsel.

The CHAIRMAN. My question was who represented the railway company.

Mr. PRESTON. Morris B. Sachs.

The CHAIRMAN. Of what place?

Mr. PRESTON. Of Seattle. I believe there was later an intervention on behalf of some of the people residing out in the affected district and unless I am mistaken the interveners were represented by Mr. H. H. A. Hastings.

The CHAIRMAN. Well, now while we were on that point, can you give us the title of the suit or suits concerning this same subject matter that were brought and litigated in the State courts, and the respective counsel?

A. I can not do it now, but I will obtain it for you.

Mr. ERICKSON (the witness). May I call your attention to one matter?

The CHAIRMAN. You may call our attention to anything you wish, Mr. Erickson.

Mr. ERICKSON. I have been informed that Mr. Crawford, who was the president of that railroad, and against whom this restraining order was drawn, has sworn since that time that this restraining order asked for by Peabody, Hopkins & Co. was prepared in his office.

The CHAIRMAN. Who is Mr. Crawford?

A. He was the president of that road.

Mr. MCCOY. One of the defendants in the Peabody suit?

The WITNESS. Yes.

The CHAIRMAN. What is his full name?

The WITNESS. I do not recall his initials.

Mr. HUGHES. W. R.

The WITNESS. That is right—W. R. Crawford.

The CHAIRMAN. Of Seattle?

The WITNESS. Yes.

Mr. HIGGINS. You mean he swore in some of the legal proceedings to that effect?

The WITNESS. Yes.

Mr. HIGGINS. Where?

A. What they are now litigating in regard to the control of the road—they are asking for a receiver—two receivers have been asked for. One has been granted by the State court and another is asked for by the Federal court I believe—I don't know much about that phase of it, but it seems to me now that in the court proceedings Peabody, Hopkins & Co. were litigating with Mr. Crawford, and in these proceedings I am advised that he swore that that restraining order was prepared in his office.

Q. Are you able to locate that testimony for us?—A. I will try.

Q. Not at this moment, but later.—A. I will try to.

Q. And give us the information that you refer to as accurately as you can.—A. It was generally understood at that time that that was the case.

Mr. PRESTON. At the time of this Dreamland Rink meeting, or since, were you aware of the fact that the verified complaint upon which the temporary restraining order was issued, contained no reference to the previous litigation in the State court?

A. I didn't know anything about that.

Q. Have you learned or did you know that when the matter came up before the court for the temporary injunction—I do not refer now to the original restraining order—the temporary injunction, that it was Judge Hanford from the bench who suggested to the corporation counsel the fact of the possibility of collusion between the complainant and the railway company defendant in that case and called the attention of the corporation counsel to the decision of the Supreme Court of the United States upon that point which would defeat any injunction?—A. I do not remember that detail.

Q. And that it was upon that suggestion——

Mr. McCOY. I want to suggest this to you—I do not want to change the course of your examination—if that is the fact there must be somebody who can testify to it.

Mr. PRESTON. Oh, yes; there is, too.

Mr. McCOY. Then I do not see any use in asking Mr. Erickson, who is not a lawyer, or in taking him through that kind of an examination; if it is relevant and if we can get some one who knows the fact all right, but if Mr. Erickson thought he knew it, it would only be a matter of hearsay. I only make that suggestion in order to save time.

Mr. PRESTON. It would not be a matter of hearsay if he were in the court when the judge made that suggestion.

Mr. McCOY. Then I suggest, Mr. Preston, that you ask him that, if he was ever in the court and knew from actual knowledge anything about it, and if he says no, we can get the people who really know.

Mr. HIGGINS. You will be able to furnish the committee evidence of that fact?

Mr. PRESTON. Oh, yes, sir, but sir, my object in asking the question was to develop the fact that since the Dreamland Rink meeting and its results have been referred to, that those facts which were really so important to a just understanding of Judge Hanford's attitude, were unknown to Mr. Erickson, who was the chairman of the meeting which took the action. Now, there is another pertinent fact I would like to ask him about.

The CHAIRMAN. Are you taking the resolutions on the subject as evidence?

Mr. PRESTON. No, sir, simply that they have been brought into the case.

The CHAIRMAN. You want to show that those who participated in the Dreamland Rink meeting did not have full knowledge?

Mr. PRESTON. I want to show whether or not Mr. Erickson did have. I don't know whether he did or not.

The CHAIRMAN. Do you think, Mr. Preston, that the Dreamland Rink meeting and the resolutions adopted at it are sufficiently con-

vincing or of sufficient importance as evidence to justify us in taking up time with it?

Mr. PRESTON. No, sir, but this attitude of Mr. Erickson's I think, is material.

The CHAIRMAN. I think we can trust to your judgment not to fill the record with chaff—that was the point we had in mind—proceed along that line.

Mr. PRESTON. Did you, at the time of the Dreamland Rink meeting know that the temporary restraining order having been issued on August 21 and some commotion down in that neighborhood having arisen, on the morning of August 22, that Judge Hanford upon learning of that telephoned to the corporation counsel's office to know if they were not going to come into court with something antagonistic to or in opposition to the temporary restraining order.

The WITNESS. I think it was reported in the newspapers, if it was not I was advised by somebody—some man living in the Rainier Valley that this restraining order or injunction, whichever you please to call it, was issued without a heading—is that correct?

Q. That is correct.—A. Well, that is one of the things to which we took exception in that meeting.

Q. But you have not answered my question yet.—A. Was not that the question which you asked me?

Q. I asked you whether you knew at the time of the Dreamland Rink meeting that when Judge Hanford learned of the way his temporary restraining order had operated, that he at once telephoned to the corporation counsel's office to know if he was not going to take some action against that injunction, and that he was informed by the corporation counsel's office that they were not.—A. I knew nothing about it.

Q. That was the point on which I wanted to ask you. Were you at that time advised of the fact that that same forenoon of August 22, having received a negative answer from the corporation counsel's office, that Judge Hanford sent for the attorney for the complainant, for the superintendent of the railroad and had them come to his chambers; told them that they must run their cars and carry the passengers if they did not get a cent for it, and then and there, upon his own motion, modified the order which he had made before, so that those who were required by conductors to pay a greater fare than 5 cents were entitled to receipts for it.

The CHAIRMAN. Wait a moment, I want to suggest this to you, Mr. Preston, doesn't it occur to you that you are making yourself a witness now? Those are statements of fact rather than questions, and doesn't it occur to you that they are not shedding much light on the matter, while they are filling the record with immaterial stuff, as I think. I will have to ask you to change the form of this examination.

Mr. PRESTON. Well, I have no further questions to ask. I simply wanted to ascertain—I do not think that Mr. Erickson knew that fact and I wanted to ask him if he did.

The CHAIRMAN. Let me suggest this to you, while I do not think it would mislead or deceive the Judiciary Committee, that it is not quite fair to ask a question by stating "Are you not aware that it is a fact so and so," it puts your statement in the form of testimony rather than a question, and it is not the best way to frame a question; but I

think we will abandon this line of examination unless you have something else.

Mr. PRESTON. I have no further questions to ask whatever.

The CHAIRMAN. You can put that in properly later on when it may come in more properly than it does now; at this time it is only filling up the record by asking him as to matters which you suggest yourself that you believe he does not know.

Mr. PRESTON. If I knew he did not know I would not ask him. I said to you, sir, I thought he did not know. I do not know, I never spoke to Mr. Erickson in my life.

The CHAIRMAN. He is not a lawyer, and he probably does not know——

Mr. PRESTON. I understand, but you do not want to put me in the position, sir, of suggesting that which I do not know, as I did not know—I did not know, as I said to you, I do not know what the answer was.

The CHAIRMAN. Haven't you a pretty strong belief that he did not?

Mr. PRESTON. Yes, sir; because I have the testimony accessible, sir, so that you need not be impressed by my own statements—they will come in the form of testimony of parties present.

The CHAIRMAN. I do not wish to do you any discourtesy of any kind, but I do not want to waste time further along that line. Is there any other question that anyone desires to ask this witness?

Mr. MCCOY. You stated that you were arrested in connection with something that happened at this meeting at the Dreamland Rink?

A. Yes.

Q. What were you arrested for?—A. The charge stated that I had been interfering with the course of justice.

Q. Were there any papers served on you at the time you were arrested?—A. No.

Q. Did you ever see any written complaint of what you had done at that meeting?—A. Yes.

Q. Have you any copy of it with you?—A. I have it at home.

Q. What court was it in?—A. It was here in this building—the Federal court.

Q. At whose instance was the order of arrest issued?—A. I think it was the attorney's.

Q. What attorney?—A. The United States attorney.

Q. Well, will you produce the order; will you let us have it?—A. Yes, I will.

Q. Who signed the order?—A. I do not recall now.

Q. Were you taken into custody?—A. Yes, sir.

Q. By whom?—A. The deputy United States marshal.

Q. What did he do to you—did he lock you up?—A. Yes.

Q. Where?—A. The county jail.

Q. How long were you there?—A. Four days.

Q. What bail was demanded?—A. $5,000.

Q. In this complaint was it alleged how you were obstructing the course of justice?—A. I am not clear on that; it was sometime since I read it; I got it last summer and it is quite a lengthy document.

Q. Was there anything in that complaint charging you with anything besides speaking at this meeting?—A. No.

Q. Had you, as a matter of fact, done anything except to speak at this meeting?—A. No.

Q. How long were you in jail?—A. Four days.

Q. Do you mean that you were locked up for four days?—A. Yes.

Q. How did you get out?—A. I was brought down here and some friends volunteered to go on my bail.

Q. A $5,000 bail?—A. Yes, sir.

Q. And the only thing you had done was spoken at that meeting?—A. Yes; that's all.

Q. How long were those cases pending in the State court involving the question of the transfers or the fares of this Seattle, Renton & Southern Railway?—A. It was back and forth in the courts for about three years, the two questions.

Q. Are you in the habit of reading newspapers?—A. Yes, sir.

Q. During the time those cases were in the court were they reported in the newspapers?—A. Yes, sir.

Q. Were they reported fully in the newspapers?—A. Yes, sir.

Q. Were they headlined in the newspapers?—A. I do not recall that they were headlined—that is, that they had any scare heads over them.

Q. Were they a matter of common talk in the city of Seattle?—A. Yes, sir.

Q. Amongst everybody?—A. Yes, sir; everybody—we had a mass meeting about it.

Q. While they were pending in the State court?—A. Yes, sir.

Q. Did the State court have anybody arrested for attending these mass meetings?—A. No, sir.

Q. Did you ever hear of anybody being arrested because of any criticism of the State court, or any reference whatever to the proceedings in the State court?—A. Not in this case that I recall.

Q. Do you know on whose initiative this order of arrest was made?—A. I beg pardon; there was an editor of a paper arrested here for contempt, but I do not recall which particular case it was in; there was some comment in the paper.

Mr. HUGHES. You are talking with reference to the State court now?

Mr. MCCOY. Yes.

The WITNESS. That was in the superior court; that was not in the State court.

Mr. MCCOY. When; do you remember?

A. No, not exactly.

Q. One of the papers here?—A. One of the papers—the editor of one of the papers was arrested for contempt, I think—no, that was in connection with the Duwamish Valley fight. We had the same kind of a fight down in the Duwamish Valley that we had in the Rainier Valley, and during that controversy one of the editors of the Star was arrested for contempt of court.

Q. For what?—A. For printing something about that matter.

Q. Now, those cases had been decided, had they, in the highest court of the State of Washington before this meeting—this mass meeting of which you spoke?—A. Yes, sir.

Q. How populous is the territory through which this road runs, this street railroad?—A. Well, I presume there is something like 10,000 or 12,000 people that live down there in that valley—what we call the Rainier Valley.

Q. And does that road run into the city of Seattle?—A. Yes, sir.

Q. And how large, roughly speaking, is the patronage on the road?—A. I do not know, I am sure; I think they run something like 12 or 15 cars on that line.

Q. A day?—A. I mean continuously backward and forward.

Q. Continuously?—A. Yes, sir.

Q. What is the length of the road?—A. It is about 5 or 6 miles.

Q. Now, as I understand, this temporary restraining order, it forbade the patrons of the road to demand transfers?—A. Yes.

Q. What was the point about the fares—about the amount of the fares?—A. About the amount of the fare, yes, sir.

Q. And it forbade them to ask for any receipts, did it?—A. No.

Q. For the excess fare?—A. I think that was the way it was stated.

Q. So that the railroad was claiming one amount and the people along the road claiming that the smaller amount should be paid?—A. They claimed what the State courts had allowed them.

Q. That is ,they claimed that a smaller amount should be paid than the railroad company was demanding?—A. Yes, sir.

Q. And the order forbade them to ask for any receipt when they paid the larger amount, is that right?—A. I do not recall whether that first order forbade them asking for any receipts, because I don't think the receipt question came in until the second order; when the order was modified there was some order came up after that in regard to those receipts—that they should be compelled to ask for those receipts—that they must pay their fare and ask for the receipt, or something of the kind, I don't remember just the details of that, but that was modified—that was in the modified injunction or restraining order.

Q. Who was the mayor of the city at the time that this restraining order was issued?—A. Dilling.

Q. Who?—A. Dilling—George W. Dilling.

Q. Do you know how soon after the order was originally issued it was modified, this temporary restraining order?—A. I think it was two days afterwards.

Q. Well, during that interval were there any protests made?—A. Well, I should say the whole town was protesting.

Q. What form did the protest take?—A. Of mass meetings.

Q. Did you take any legal advice before you held this Dreamland Rink meeting?—A. No.

Q. Were you ever advised that the temporary restraining order is not a matter of right; that nobody has a right to demand a temporary restraining order?—A. I don't know anything about the legal phase of it.

Q. And that even an injunction is not a matter of legal right, but it is purely a matter of grace from the court?—A. I knew everybody here that I associated with considered it a rank injustice and we got together to protest against it.

The CHAIRMAN. Are there any further questions along this line? Mr. Erickson, you live in the city?

A. Yes, sir.

Q. Are you going to be in the city continuously for some time?—A. Yes, sir.

The CHAIRMAN. I did not think the examination would take the time that it has, but of course we will reach the injunction proceeding

of which you spoke in due course, and it is quite likely that you will be needed again, but until the testimony in regard to that is being introduced, as far as I now believe, you may be excused on the theory that you will remain in the city.

Mr. HIGGINS. I would like to ask one question.

Q. When you stated in answer to Mr. McCoy's question that you had no legal advice, you meant no personal attorney?—A. No.

Q. John H. Perry is a lawyer, is he not?—A. Perry did not have anything to do with me going to that meeting.

Q. That is hardly an answer to my question.—A. Well, I did not know Perry at that time.

Q. And that is hardly an answer to my question, either.

Q. Please state it again. [Question repeated to the witness.]—A. Yes, sir.

Q. And at the time that you were arrested he was also, was he not?—A. Yes.

Q. On the same general charge that you have stated to the committee?—A. Yes.

Q. And he was the attorney at that time for some of the people that were with you arrested?—A. He was attorney for the Star, I understand; I don't know that positively, but I understand he was their attorney.

Q. But he was not yours?—A. No.

The CHAIRMAN. Under the conditions stated, Mr. Erickson, you may stand aside.

Mr. PRESTON. Might I ask Mr. Erickson a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. PRESTON. You say you stayed in jail four days; you did that when you were able to give the bond at any time, were you not, and didn't you?

A. Why, if I stirred around town I might have found people who would go on my bond.

Q. Didn't you declare yourself at that time as refusing to give a bond?—A. I said I did not have the $5,000 to put up, and I did not, and then they took me to jail.

Q. And while you were in jail didn't you make public declaration that you refused to give bail?—A. No.

Q. Did you make the declaration at all?—A. I did not.

Q. You could have given the bail if you had wanted to?—A. After I got in jail there were volunteers came forward to go on my bail.

Q. And you did not accept their assistance?—A. They were going to have a hearing and I put that matter off until we had the hearing.

Q. You declined to accept it for four days, their assistance to give bail; is that correct?—A. I did not decline it.

Q. Yes, didn't you?

The CHAIRMAN. You declined to accept it for four days.

Mr. PRESTON. You declined for four days to accept the offers of bail, now did you, Mr. Erickson; that is the question?

A. Well, I want to understand that clearly before I answer it.

The CHAIRMAN. Just strike that out and start over again and ask the question and put it in a different form.

Mr. PRESTON. Did you for that period of four days decline the assistance offered you of bail?

A. During the period that I was in jail people came there and offered to go on my bail if it was necessary, and I took no steps to give bail.

Mr. HIGGINS. Did you decline; that is the question asked you; did you decline to accept bail bond after you were arrested and in jail for four days?

A. Well, I don't just understand what you mean by declining.

Q. Did you refuse to accept bail?—A. I didn't ask for bail or have any paper prepared for me.

Q. That is not the question; did you decline to leave the jail when friends tendered bail?—A. I had people come up there and offer to go on my bail, and I told them that I would have no bail bond prepared until I came into court.

The CHAIRMAN. In that connection, did you demand that you be brought into court?

A. No; I made no demand at that time.

Q. How did you finally get to give the bond?—A. There was a day set for the hearing.

Q. That was four days after you were incarcerated?—A. Yes, sir.

Q. So that you came out in the orderly way, according to the order of the court?—A. Yes.

Q. At that time you gave a bond?—A. Yes.

Q. Well, was there any suggestion made to you from the authorities that if you put up $5,000 that it would be taken as a bond and you could get out?—A. No; I had no communication with the authorities whatever from the time I left the courtroom here until the marshal came after me.

Q. You said you did not have $5,000 to put up?—A. No.

Q. How did you come to make that remark?—A. Well, the situation was this: Judge Totten, I think it was, who had charge of the case, stated that a bond was necessary to give and I told him I didn't have $5,000 and I would not go and ask anybody to go on my bond under those circumstances; if I had violated the law I felt that I should take care of myself and I did not want to go and ask my friends to keep me out of jail; if I had violated the laws I wanted to take the consequences and if I did not I wanted the odium to go to the people who sent me there.

Q. Some of the questions and answers, I think, made it material to inquire now as to your pecuniary liability—were you worth more than $5,000?—A. Yes.

Q. You may name some sum, if you will, as a minimum that you were worth at that time—we would like to get your financial standing?—A. I presume I had property at that time worth $10,000 or $15,000.

Mr. MCCOY. What was the outcome of those proceedings?

A. They were dismissed.

Q. By whom were they dismissed——A. By the attorney.

Q. By the district attorney?—A. By the United States district attorney. He took the matter down to the United States grand jury and they refused to indict us.

Q. Where?—A. Tacoma.

The CHAIRMAN. Did the grand jury take any action; did they find a true bill or not a true bill or did they take any action at all?

A. I am not clear on that point. All that I know is that I learned through the reports in the paper and from my attorney that the case was dismissed.

Mr. McCoy. Is the matter still pending in any way?

A. I can not answer that question; some one told me since that they were liable to arrest me again at any time if they wanted to, but I do not know about that.

The Chairman. Are there any further questions of Mr. Erickson? If not, he will be excused. That is all.

R. D. Brown, being first duly sworn, testifies as follows:

The Chairman. State your full name.

A. R. B. Brown.

Q. Where do you live, Mr. Brown?—A. Seattle.

Q. How long have you lived in Seattle?—A. Eight years.

Q. What is your business or profession?—A. Lawyer.

Q. Are you practicing your profession?—A. Yes, sir.

Q. How long have you been a lawyer?—A. About 19 years.

Q. Practicing all that time in Seattle?—A. All the time in the State, but not in Seattle.

Q. Does your practice extend both to the State and Federal courts?—A. Yes, sir.

Mr. Higgins. Speak up, I can not hear you.

A. Yes, sir.

The Chairman. You are an example of that rara avis, a lawyer and bashful. Of course you are acquainted with Judge Hanford.

A. Yes.

Q. How long have you known the judge?—A. I presume about 15 years I have known him by sight; I have never been personally or intimately acquainted with him.

Q. Have you seen Judge Hanford at any time during your acquaintance when he appeared to you to be under the influence of some intoxicant?—A. I could not say that. I saw him on one occasion in which it seemed to be difficult for him to keep awake.

Q. What was the occasion?—A. During the trial of a case.

Q. In his court?—A. Yes.

Q. Do you recall the case?—A. Yes, sir; it was the case of Benjamin H. Greenwood, a minor, by Sarah Small, his guardian ad litem, *v.* The Puget Mill Co.

Q. A corporation?—A. A corporation.

Q. What was the nature of the case?—A. It was an action brought by Greenwood, by his guardian, to recover damages for personal injuries sustained while in the employ of the Puget Mill Co.

Q. Tell the committee, if you please, what occurred during the trial that was unusual and arrested your attention—anything to which you referred.—A. During the progress of the trial the judge was sitting with his back partly toward the attorneys, about in the position that I am sitting now.

Q. With reference to the jury box?—A. With reference to the jury box—the jury being at my back.

Q. Was it in this court room?—A. It was not in this court room; no, sir; it was in the old building occupied by the court before this building was completed.

Q. To add to your description, your back is now turned almost squarely to the jury box?—A. Yes.

Q. Go on.—A. During the examination of a witness I noticed the judge's eyes close and his hands drop down to his side and he seemed to be dead to the world, so to speak, for a short interval of time, it seemed to me about a half a minute, and it just reminded me of a child who would close its eyes and go to sleep very suddenly and then rouse up and look around. I could not say that it was because of drink. I do not know anything about that. It just attracted my attention, and after the trial—a short time after that—the case was dismissed and the plaintiff in the case, who was a bright, intelligent boy, was sitting, so to speak, nearer in front of the judge than I was, and I was commenting somewhat on the fact of the case being dismissed for such grounds as it was dismissed——

Q. You mean that the judge held that the plaintiff's evidence did not make a case?—A. No, he did not hold that. He seemed to think that it was a strong case, but he dismissed the case for the reason that there was a variance between the proof and the allegations of the complaint, which was in plain violation of the statute which said that a case could not be dismissed for that reason. And the boy, after the case, said we could not expect anything else from a judge who was asleep half the time during the trial, and by that I noticed that he had noticed also that the judge had been asleep.

Q. Did anything occur during that trial with reference to one of the jurors, or any of the jurors—was there any other incident which occurred during the trial?—A. With the jurors?

Q. Yes.—A. I don't remember.

Q. Do you recall anything of a juror desiring to retire for a while?—A. Well, I don't think that I remember anything about that; it might be that if such an occurrence did take place—I don't remember of any juror at the time retiring.

Q. How long did the trial last?—A. Well, it lasted the greater part of one day.

Q. Was that time occupied in the production of evidence?—A. In the selection of the jury and the production of the plaintiff's evidence.

Q. How long a time was consumed in producing the evidence?—A. My recollection is now that we began the evidence in the forenoon and rested the plaintiff's case sometime between 3 and 4 o'clock in the afternoon.

Q. Are you able to tell the committee how much of that time the judge appeared to you to be in such condition that he did not know fully the evidence.—A. That was the only time; I only noticed him just the once, and that was only toward the close of the case.

Q. How were you seated with reference to him and with reference to having an opportunity to notice him?—A. I was seated about in the position that the judge is at the present time.

Q. With relation to you?—A. With relation to you, almost directly in front of him; the plaintiff sitting to my right still farther over than that.

Q. So that from where you sat while you watched the jury the angle from the line of vision to the jury would be a little less than a right angle from the line of vision to him?—A. Yes, sir.

Q. Well, have you any opinion from your observation of him then as to whether he did or did not follow the evidence produced?—A. I

didn't—I don't think that he did, judging from the manner in which he commented upon the motion that was made at the close of the evidence for a nonsuit.

Q. Did the defendants' attorney file a motion to dismiss the case?—A. He made an oral motion at the close of plaintiff's testimony, based upon the usual stereotyped grounds for a nonsuit at the close of plaintiff's evidence, claiming that the evidence showed contributory negligence and assumption of risk, and after the argument——

Q. Did he also claim that there was a variance between the declaration and the proof?—A. I do not know. I would not say that that was embodied in the motion.

Q. Was the motion afterwards reduced to writing?—A. It was never reduced to writing.

Q. Did you have a reporter there?—A. Oh, yes; I presume the reporter reduced it to writing at the time. The whole transaction was taken down by a stenographer.

Q. I understood you to say that you were the plaintiff's attorney. Am I right in that?—A. I was one of the plaintiff's attorneys.

Q. Who was associated with you?—A. An attorney by the name of A. J. Speckert; it was his original case.

Q. Where is he now?—A. Here in the city.

Q. And who were the defendant's attorneys?—A. The defendants' attorneys were Messrs. Hughes, McMicken, Dovell & Ramsey.

Q. That is the Mr. Hughes now present?—A. Yes; he was the head of the firm and the case was conducted by Mr. W. T. Dovell.

Q. When the motion was made to dismiss were the facts argued pro and con?—A. Yes.

Q. Did any of the attorneys in the argument dwell upon the ground on which the court dismissed the case?—A. I don't think so; I know I did not, because it never occurred to me. The only point that I remember of arguing in the case was the question of the assumption of risk. I called the court's attention to the fact that the supreme court of this State had decided that there could be no question of assumption of risk where one received injuries from machinery that the law required to be kept boxed and safeguarded; that it took the question of assumption of risk out of the case.

Q. In other words, the defendants had violated the statutory provision.—A. Yes; and I thought it was a plain case of the violation of a statutory duty, and the court seemed to think—he said he presumed that this court would be bound by that decision, but in commenting on the case he thought that there was some variance between the allegations of the complaint and the proof, and dismissed the case, and it took me by surprise, but he afterwards, however, acknowledged his error and granted a new trial in that matter.

Q. I was going to ask you if the judgment was entered?—A. Well, I do not know that it had been formally entered, because I immediately made a motion to vacate the order for a new trial, and I think the custom is that they do not formally enter the judgment in writing until after that motion is disposed of.

Q. I think you inadvertently said you made a motion to vacate the order for a new trial; you do not mean that.—A. I mean to vacate the order of dismissal.

Q. Was the motion for a new trial argued at length, or did the judge enter that without argument?—A. It was argued, but I could not say

that it was at length. I think when I filed my authorities and motion, my recollection is that the court notified the attorneys to be in court on the day fixed, and we were there, and the court seemed to have made his mind up without any argument that a new trial would have to be granted, and there was very little said at that time.

Q. What ultimately became of the situation?—A. The case was dismissed twice after that.

Q. By the plaintiff or by the court?—A. By the court on the defendant's motions, and dismissed the last time upon a ground that the court had previously held was not a ground for dismissal.

Q. What was that?—A. That the question involved a fraudulent settlement that had been made with the boy's mother prior to the bringing of the action, and it was the contention of the defendant's attorneys that the action could not be maintained until the money was paid back to the Puget Mill Co. that an agent of the liability company had paid to the boy's mother, the mother having no authority to accept the money.

Q. She was not at that time his legally appointed guardian?—A. She was not his legally appointed guardian and in fact never became his legally appointed guardian.

Q. And as I understand you, you said that question was once raised and the judge held that it did not estop the boy from suing through his lawful guardian, but later on that he dismissed the case for the reason that the settlement you refer to was conclusive on the boy?—A. Yes; that was the final ruling, and the case was in court and out of court—we fought it in this court for something like two years, I think, and after that, the boy not being able to appeal to a higher court, practically had to abandon his case. Afterwards——

Q. You say practically.—A. That is, in this court; and in order to keep the case from outlawing, and to get some little something out of the case, we again started his action in the State court for less than $2,000; his original action was brought for $15,000.

Q. Was the suit brought in the Federal court in the first instance or was it removed to there?—A. It was removed to the Federal court.

Q. On what grounds?—A. On the ground that the defendant was a foreign corporation.

Q. Diversity of citizenship?—A. Yes.

Q. What became of the suit which was brought in the State court which was not removed?—A. It is still pending there, but they have set up the same defenses there; they set up the defense of the dismissal in this court and they are claiming that we can not bring it over there now for the reason that——

Q. They are putting up the defense of res adjudicata?—A. Yes; res adjudicata. That question never has been determined—it is still in court.

Mr. McCoy. Is it the law in this State that a nonsuit amounts to a conclusive judgment against the plaintiff?

A. They claim that it having been adjudicated in the Federal court that an action could not be brought until the money which was paid to the boy's mother was returned, is binding upon the State courts.

Q. The adjudication consists simply of a dismissal in the nature of a nonsuit?—A. Yes.

Q. And that is claimed to be a conclusive judgment?—A. I say that question, though, has never been decided in the State court.

The CHAIRMAN. How does your record show—judgment for the defendant in the court?

A. In this court.

Mr. MCCOY. Have you any statutory provision in this State to the effect that a nonsuit is not a conclusive judgment?

A. We have.

Q. You have a statutory provision of that kind?—A. Yes; and we further have a statute that an action shall not be dismissed for the reason that there is a variance between the proof and the complaint, so long as the proof is sufficient.

The CHAIRMAN. I want to ask you to produce that statute for us, can you do it at once?

A. I can do it in a very short time.

Q. Is it long?—A. No; it is very short.

Q. I would like to put it into the record at this point.—A. I think perhaps my brief is on file in this case in the court here.

The CHAIRMAN. We will have those sections of the statute put in as Exhibit No. 26.

Q. Is there any other fact or incident connected with that case which you have not told us which you ought to tell the committee?—A. I think that those are the only incidents. Of course I felt that the court having held once—having ruled that the payment under the circumstances and the conditions in which this payment was made to the boy's mother, was not a defense to a legal action—I thought that it should become the law of the case and he should have ruled that way when the motion was raised the third time.

Q. How much was paid to her?—A. $120.

Q. Did the court give any reason either in rendering his verbal opinion in the case or at any other time, as to why a payment to the boy's mother, who was not the lawful guardian, was conclusive of his rights in the premises?—A. He gave no reason; in fact he was strongly of the opinion when the matter was first argued at length that it was not a legal defense, and I could find no authority in any court anywhere that had held that it was a legal defense; but during the progress of the case, having dismissed me—I might state this, that I then amended the reply which I had filed which set up all of the facts and circumstances under which this purported settlement was made with the boy's mother, so as to make my complaint more nearly conform to the evidence in the case, and the defendants filed the same answer that they had filed before.

Mr. HUGHES. You said you amended your reply.

A. I mean complaint.

The CHAIRMAN. Do you call it a declaration or a complaint—have you a code?

Mr. HUGHES. A code?

The WITNESS. In the State court we have a code.

The CHAIRMAN. Proceed.

A. They filed their same answer and I filed the same reply, and then they renewed their motion for just judgment on the pleadings and also filed a demurrer.

Q. To what—a demurrer to the complaint?—A. I don't know whether they demurred to the complaint or to the reply—I suppose it was to the reply they were demurring—the reply was the lengthier pleading than the complaint, really, because it set up all the facts as

to fraud and the circumstances under which the settlement was made. When this matter came up for hearing the second time Judge Whitson was on the bench and he took the matter under advisement and sustained the——

Q. That was the matter of the demurrer?—A. Yes, sir; the matter of the demurrer and the motion. I think the record does not show anything about the demurrer, but he sustained the motion and ordered the action dismissed. This, of course, was practically a reversal of Judge Hanford's opinion. Then I moved to vacate his order and to reinstate the case, and Judge Hanford granted it; and after being reinstated the second time I made some slight amendment to my reply again, it having gone over another term and I thought I was where I could better the reply.

Mr. McCoy. Do you mean your reply to the complaint?

A. No; it was the reply I amended the second time—the other pleadings stood as they were. So having gotten back in court the second time, they filed their motion again for the third time; it was the same motion which Judge Hanford had overruled and the same motion which Judge Whitson had sustained; and Judge Hanford reversed his former ruling and followed Judge Whitson, dismissing it the third time. I felt that Judge Hanford's first ruling was right and it had become the law of the case and it should have been followed regardless of Judge Whitson. I think yet that it was right. I think there was no question but what Judge Whitson was in error, and Judge Hanford was in error the last time.

The Chairman. One question. In such a case as you have described where it was apparent that the judge was going to dismiss at the end of the plaintiff's evidence, do not the lawyers move for a nonsuit—is there any statute or any practice in this State making it unnecessary to do that?

A. Making it unnecessary to move——

Q. Making it unnecessary to take a nonsuit, to save your rights for another suit?—A. No; I think not. I do not think we have any statute.

Q. In the third proceeding, I understand you, the judge made the order dismissing the case and with that order was made an entry of judgment for the defendant with costs?—A. Yes; that is correct.

Q. If he entered that judgment would not the next step be either for some good reason to set aside the judgment or to take an appeal?—A. The rules and the law I suppose, also, is to move for a new trial provided the court committed any errors.

Q. Of course the judge controls his judgment during that term of court and he might set the judgment aside if entered, and in your case he did in some way get around the order, dismissing it, whatever it was.—A. Yes; he vacated the order, and, I believe, for that reason that he had no right to dismiss it upon that ground, because, he having admitted that the case as made by the plaintiff was sufficient, and it clearly showed negligence on the part of the company.

Q. Was the evidence produced more than once or only once?—A. It never was—we never could get to the jury after that first time.

Mr. McCoy. This is the law of Washington, is it not? "Section 729 of Pierce's Washington Code, 1905: When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause." That is the law, is it not?

A. That is the law, but that is not the law of which I spoke.

The CHAIRMAN. That is the law on this point.

Mr. MCCOY. Mr. Graham was asking you the question whether, in order to get rid of that judgment, you could begin another action right away after the nonsuit was entered; could you do that?

A. Yes, sir; but it would be in the same position; you would have to pay the additional fees.

Q. If you cared to begin all over again, the moment the judgment of nonsuit was entered you could begin right over again on the same cause of action, but perhaps you would have to pay the costs of the first suit if the question were raised.—A. Yes.

The CHAIRMAN. I am confused about it, because my State is a common-law State, and if the judge there entered judgment for a defendant and the term of court at which he entered it had passed he would have no more control over it than if he was not the judge, and the attorney for the plaintiff would be barred to commence another action.

The WITNESS. But we usually make a motion for a new trial, because it saves us putting up a new fee and new costs.

Q. It saves you putting up the costs of a new suit?—A. Yes.

Q. Have you no statute which enables the plaintiff to sue without costs if he be unable to pay them?—A. Well, I don't think there is any in our State.

Q. With reference to the question of variance, the question was handed to me to call attention to the laws of the State just mentioned, Pierce's Washington Code of 1905, section 420:

420. VARIANCE ALLOWED.—No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled, and thereupon the court may order the pleading to be amended upon such terms as shall be just.

421. PRACTICE IN CASE OF VARIANCE.—When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence or may order an immediate amendment without costs.

422. FAILURE OF PROOF.—When, however, the allegation of the cause of action or defense to which the proof is directed is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Does the last section I read apply to your case?—A. The last section—I understood you that you read more than one section, didn't you?

Mr. MCCOY. Did Judge Hanford grant the motion for the new trial on the ground that there was an immaterial variance?

A. Yes.

Q. And at that time I suppose that that last section, section No. 422, was discussed and considered?—A. Yes.

Mr. MCCOY. At the close of the plaintiff's case a motion was made to dismiss, you say?—A. Yes.

Q. A motion was made on several grounds?—A. My recollection is—I only recollect the two grounds, contributory negligence and assumption of risk.

Q. Was there any motion made to dismiss on the ground that there was a material variance between the pleading and the proof?—A. I don't understand that there was such a motion.

Q. Was any one or all three of these sections 420, 421, and 422 of Pierce's Code discussed at the time that motion to dismiss was made?—A. No.

Q. Did anybody point out to the court or call the court's attention to the fact that unless a party had been actually misled—unless the defendant had actually been misled in maintaining his defense on the merits there was no variance—was that point discussed?—A. No; I do not think it was discussed at all. I have no recollection of any mention being made of it by either side.

Q. At the time when, as you say, Judge Hanford changed his ruling as to the effect of the alleged settlement with this boy's mother; was that ruling changed in open court during the course of the trial or was it on some proceeding based on the pleadings—some motion on the pleadings?—A. It was based on the same motion for a dismissal that had been previously made.

Q. It was a motion on the pleadings?—A. Yes, sir.

Q. Regardless of any evidence which might have been taken at the time?—A. Yes, sir.

Q. Were any cases cited by the defendant's attorney which he claimed established as a matter of law that the settlement with the boy's mother worked an estoppel against a suit by a properly appointed guardian ad litem for a minor, I mean—not a boy exactly, but a minor?—A. There were no such cases as that cited. He cited one or two cases in which this same court, Judge Hanford, had held that a void settlement even would be a defense to a legal action until it was vacated and set aside by a separate action, but there were no cases produced and I have been unable to find anywhere any court ever held that state of facts, such as was involved in this case, would be a legal defense.

Q. In other words, the cases that were cited involved transactions between those who were of full age and competent to act for themselves.—A. Yes, sir; parties that were interested.

Q. What comment, if any, did Judge Hanford make on the cases involving an infant?—A. None. He commented upon it very little. He simply held the fact that if such a settlement was made it could not be interposed as a legal defense—that was his first ruling.

Q. I want you to confine yourself to the time when he changed his ruling.—A. No comment at all upon it, except that he would sustain Judge Whitson's ruling since he had made his former ruling.

Q. Was that the ground upon which he ruled differently the second time because Judge Whitson had so held?—A. Yes.

Q. It was because the other judge had decided that way and that was why he came to decide that way, or was it because he himself had changed his mind?—A. That was the reason he decided that way, because Judge Whitson had.

Q. Is Judge Whitson a circuit judge?—A. He is a circuit judge from the eastern side of the State.

Mr. PRESTON. Don't you mean a district judge?

The WITNESS. Yes, sir; I do. I meant district judge instead of circuit judge.

Mr. MCCOY. Did you call Judge Hanford's attention to the fact that he himself had previously decided the other.

A. Yes.

Q. What did he say as to that?—A. Well, he did not want a different ruling every time a different judge came on the bench, and so he said he would sustain Judge Whitson's ruling, or words to that effect.

The CHAIRMAN. Mr. Brown, you did not appear as a witness voluntarily?

A. No, sir.

Q. You were subpœnaed and compelled to come in.—A. Yes, sir.

Q. I understood you to mean in part that Judge Hanford, as to the question of settlement by the boy's mother, clearly departed from the law to the disadvantage of your client. To what do you attribute his action, his want of knowledge of the law or something else? If you have any opinion on that point, you may state it.—A. It was hard for me to believe that a man who had been on the bench for 23 years would dismiss a case on that account, for the reason that he gave, not knowing that we had such a statute, unless that it should have been——

Q. Are you addressing yourself to the question of variance now?—A. Yes.

Q. That is not what I am asking you about. I am asking you about the alleged settlement which you say he held concluded the boy's rights, or estopped him from bringing any other suit, so to speak. Now, as his mother was not his lawful guardian that would put the judge in the position of holding that, as a matter of fact, a person who did not legally represent another could make a settlement that would bind that other person without that other person's consent, or where he had no consent to give. Now, that seems an extraordinary situation, and I will ask you if you will tell us, in your opinion, what moved the judge to so hold. Was it a want of knowledge of the law or was it some other motive?—A. I attributed——

Q. I do not insist on an answer. I put it to you whether you will answer that or not.—A. I confess that I was at a loss to know why he did it. I never could figure it out, unless it was because his mind was not active, that it would be subject to spells in which he would not have full control of his faculties. That was about the way that I sized it up at the time.

Q. But this came up so often about those spells, that if they were the cause of it that it would have to be numerous and oft repeated.—A. My practice before Judge Hanford since I have been here had been very limited, and I rarely appeared in his court where there was a contested case. I think this was the hardest fought case, in fact the only hard-fought case that I ever did have in his court, and so I have not been with him enough that I could form perhaps as good an opinion as some other attorneys who had been with him more frequently and knew his habits and his customs. It struck me though, from what experiences that I had, that his mind was not active—that is, that at times he had had lapses of memory and perhaps would do things that he would not do at some other time. Not through any bad motive, but I attributed it perhaps to his age.

Q. For causes that he could not overcome—A. Yes.

Q. Did you know anything in his habits or mode of life which would tend to induce that condition of mind?—A. No; I do not. I know nothing of his personal life at all. I do not think that I ever saw him on the street more than once or twice. I do not think I ever saw him outside of the courtroom in 15 years, though I have

known him about 20 years. I do not think that I have ever seen him more than 20 times outside of the courtroom in that time.

Q. Do you know of any other case in which you were not personally interested like this one, or nearly like it?—A. Not to my own knowledge.

Q. Do you in any way?—A. I have heard other complaints made as to cases of this character.

Q. By attorneys who participated in those cases?—A. Yes; I have heard of other cases, but I do not know anything about the cases.

Q. What cases did you hear of?—A. I would not know them—I do not know that I could give you the titles of the cases.

Q. Do you recall who told you of them?—A. I would not be sure about who called them to my mind now, but I heard it discussed among attorneys; I have heard the attorney's names used who were interested in the case that they were complaining of.

Q. Who are they? A. Herbert W. Myers.

Q. Of Seattle?—A. Yes, but I do not know anything of his case, and I never heard him say it himself.

The CHAIRMAN. Any other questions of this witness?

Mr. HUGHES. I would suggest that we take a recess at this time for this reason——

The CHAIRMAN. It is not necessary that you give any reason.

Mr. HUGHES. The committee will now be at recess until 1.30 p. m.

AFTERNOON'S PROCEEDINGS.

Continuation of proceedings pursuant to recess.

All parties present as at former hearing.

R. B. BROWN resumed the stand.

By Mr. HUGHES:

Q. Mr. Brown, in order to get the matter of record in orderly form, so that the proceedings in the court and the pleadings may be brought in to explain the transactions to which you have testified, let me ask you just a few questions. In the first place, the suit of Greenwood against the Puget Mill Co. was brought by Mr. A. J. Speckert as attorney for the plaintiff?—A. I think my recollection is that our names both appear.

Q. In the original——

A. Interrupting. In the original action.

Q. But he was her attorney and you were called in to be associated with him?—A. Yes.

Q. Commenced in the State court and removed to the Federal court, on the ground of diversity of citizenship?—A. Yes, sir.

Q. The case came on for trial before Judge Hanford and a jury in the Federal court. Do you remember at what time, at what term of the court, in what year?—A. The case came on for trial in Judge Hanford's court in June, 1906.

Q. June, 1906?—A. Yes.

Q. The jury was impaneled, the testimony of the plaintiff was introduced, and at the close of it, Mr. Dovell, of my firm, who appeared for the defendant, moved for a nonsuit?—A. Yes, sir.

Q. There was a stenographer in court who took the testimony?—A. Yes, sir.

Q. Do you remember who that stenographer was?—A. I don't know his name; I don't remember his name.

Q. It would be an easy matter to ascertain?—A. Oh, yes. I think I have a transcript of a part of the plaintiff's evidence; I don't know but all of it.

Q. The motion for a nonsuit was taken down by the stenographer?—A. I presume it was.

Q. Do you recall now whether any part of the arguments of counsel were taken down by the stenographer?—A. I don't know as to that. It is not usual for stenographers to take down the argument of counsel, but they sometimes do do it.

Q. It is usual for them to take down the motion and the——A. (Interrupting.) They should take down the——

Q. (Continuing.) And the ruling of the court, at least?—A. They usually take down the oral motion and the ruling of the court.

Q. Do you recall at what length the motion was argued?—A. Yes; I recall that it was not argued at any great length.

Q. But at the conclusion of the argument the court granted the motion for a nonsuit?—A. He did.

Q. And you now believe that the stenographer recorded what the court said, don't you—that is your best recollection?—A. I don't know whether he did or not, but——

Q. (Interrupting.) I am not meaning here to——A. (Continuing.) But I think that he should have done that.

Q. If he did, that can be ascertained?—A. Yes.

Q. I have not had time—I am just asking for information here, not for any other purpose—I have not had time to make that investigation. Immediately following you made a motion for a new trial or a rehearing?—A. I did.

Q. And that motion, upon a very brief presentation of the matter on your part, was granted, wasn't it?—A. It was.

Q. No record of that would exist except the order of the court setting aside the nonsuit?—A. And the——

Q. (Interrupting.) In other words, what I wanted to get at was whether there was a memorandum opnion filed by the court, if you recall, upon your motion for a rehearing or for a new trial.—A. My recollection is that I prepared an order vacating his former order and granting a new trial, but——

Q. (Interrupting.) That probably is the only record of the court at that time?—A. Except the briefs.

Q. Did you file a brief?—A. I filed a little memorandum, notes of points that I relied upon to sustain my motion for a new trial.

Q. Do you recall whether Mr. Dovell filed an opposing brief at that time or served one?—A. I don't think that he did.

Q. Very well, pass that by. After the motion had been granted, you and Mr. Speckert prepared an amended complaint, did you not?—A. We did. I prepared it myself.

Q. And that was filed in the case, by leave of court?—A. Yes.

Q. To that an answer was filed by the defendant?—A. It was.

Q. By Mr. Dovell, for the defendant?—A. Yes, sir.

Q. And to that answer you filed a reply?—A. Yes, sir.

Q. The answer sets forth various affirmative defenses to which it was necessary, under the practice, for you to file a reply?—A. Yes, sir.

Q. Mr. Dovell demurred to your reply, did he not?—A. Yes, sir.

Q. And was it that demurrer that was brought on for hearing before Judge Edward Whitson?—A. Yes, sir; he filed a motion and demurrer both at the same time and they were both taken up together.

Q. The motion was for judgment upon the pleadings?—A. It was.

Q. And the demurrer was to the legal sufficiency of the affirmative matter set up in your reply?—A. I presume so; yes.

Q. That was fully argued before Judge Whitson, wasn't it, at one time, the motion and the demurrer?—A. It was.

Q. Did you make the argument on behalf of the plaintiff, or did you and Speckert join in the argument?—A. I made the—all—I think I was alone in all subsequent proceedings.

Q. Did you serve and file with the court a brief upon that hearing?—A. My recollection is that no brief was prepared, because it had—the same question had been argued before before Judge Hanford——

Q. (Interrupting.) Well, but Judge Whitson would not know anything about the argument before Judge Hanford.—A. Well, what I was going to say was I did not know that Judge Whitson was going to be on the bench at that time and I don't think that there was any; for that reason I don't think there was any briefs filed.

Q. Both of you made arguments before Judge Whitson?—A. Yes; a very short argument.

Q. Do you remember whether you filed a memorandum of authorities or a brief with Judge Whitson subsequent to the argument?—A. I don't remember as to that. I know that he did take it under advisement and——

Q. (Interrupting.) Did he file a memorandum opinion in writing? A. He did.

Q. That would be of record, wouldn't it——A. (Interrupting.) Yes.

Q. (Continuing.) In the files of that case?—A. Yes.

Q. Now, at that time he sustained the motion for judgment upon the pleadings, did he?—A. He did.

Q. And you subsequently moved for a rehearing, and that argument for a rehearing of Judge Whitson's decision when heard came on before Judge Hanford, didn't it?—A. It did; yes, sir.

Q. Judge Whitson presided in the eastern district of Washington?—A. Yes, sir.

Q. And just happened to be holding this court at the time when this matter was on the calendar for hearing; in other words, he was not specially assigned in any way to hear this case, but just happened to be presiding here in the absence of Judge Hanford at the time when this demurrer and motion came up for hearing?—A. I presume so. I don't know anything about that.

Q. And your motion for a rehearing of it occurred after Judge Whitson had gone back to Spokane, and came on for hearing before Judge Hanford?—A. Yes; my motion to vacate his order and for a new hearing again.

Q. Well, that was a motion for a new hearing?—A. Yes.

Q. And that was argued before Judge Hanford?—A. Yes, sir.

Q. Were briefs submitted to Judge Hanford at that time?—A. I am not sure as to that, but I think there were.

Q. Yes. And Judge Hanford on that argument denied your motion for a rehearing and vacation of the order of Judge Whitson?—A. No, sir; he sustained it; reinstated me again.

Q. He again reinstated you?—A. Yes, sir.

Q. When did he——A. (Interrupting.) Reversed Judge Whitson.

Q. How?—A. How is that? He vacated Judge Whitson's order of dismissal and I came back in again.

Q. Did you file further amended pleadings then?—A. And then I made a little amendment to my reply, but not to change the facts, but in fact to make it stronger in my favor; and then your firm renewed the same motion that you made in the beginning of the original action.

Q. And when you say my firm, Mr. Dovell conducted it altogether, did he not?—A. Yes.

Q. And on that motion you had another argument before Judge Hanford?—A. Yes, sir.

Q. And that was a full argument, was it not——A. (Interrupting.) Yes, sir.

Q. (Continuing.) On the law, and on that argument he sustained the motion of Mr. Dovell, did he not?—A. Yes, sir.

Q. Now, just one or two other questions in that connection, to correctly convey the facts to the committee. The plaintiff in this case was Greenwood, by a Mrs. Small as guardian?—A. As guardian ad litem; yes, sir.

Q. As guardian ad litem. Mrs. Small was the mother of Greenwood?—A. Yes, sir.

Q. Having subsequently married?—A. Yes, sir.

Q. And her name at that time was Small?—A. Yes, sir.

Q. The pleadings showed that she had been appointed guardian, and as such had made a settlement with the insurance company—the accident insurance company—did they not, and that they had——A. They——

The CHAIRMAN. (Interrupting.) Wait a minute.

A. Just a moment. The pleadings——

The CHAIRMAN. Is it wise to waste time on this?

Mr. HUGHES. Yes; probably the pleadings will speak for themselves.

The CHAIRMAN. Do you think it is wise to waste time on it when we will have the pleadings?

Mr. HUGHES. No; I think that is right; I think that is right. I merely wanted to bring out the fact. At any rate, I simply want to show——

The CHAIRMAN. (Interrupting.) Let him answer.

Mr. HUGHES (continuing). That the plaintiff, Mrs. Small, was the mother, and whatever is shown in the pleadings about a guardian relates to Mrs. Small, the mother, who was the guardian ad litem prosecuting this action.

The WITNESS. Yes; she was appointed guardian ad litem just previous to bringing this action for damages.

The CHAIRMAN. Now, there is another proposition wrapped up in the question which I interrupted which, as I understood it, involves the time of her appointment and whether she made the settlement after she was appointed guardian or before.

Mr. HUGHES. That, I think, all appears in the pleadings, does it not?

The WITNESS. There is not any question——

The CHAIRMAN. (Interrupting.) He may give his version of it.

A. There never was any question in any court, and, as I understand, it was conceded by Mr. Dovell all the time that there was an attempt made to have Mrs. Small appointed guardian, but that it was wholly illegal; that there was not a legal step about it, and any steps that was taken in the matter was taken after they had paid her $120 and got her to sign a receipt purporting to give her five hundred, and——

The CHAIRMAN. (Interrupting.) I will ask you, then, as experts in the law, for my own satisfaction, what court here appoints guardians?

Mr. HUGHES. The superior court; the State court.

The CHAIRMAN. The same one that tries the cases?

Mr. HUGHES. This is the Federal court that tried it.

The CHAIRMAN. Well, your State nisi prius court?

Mr. HUGHES. Yes; the nisi prius court. It is also a probate court.

The CHAIRMAN. When that court appoints a guardian under your law, has that guardian the power to make a settlement for her ward without the approval of the court that appoints him or her?

Mr. HUGHES. I do not think that the guardian would have the power to——

The CHAIRMAN. (Interrupting.) It would be singular if she had.

The WITNESS. I can tell——

The CHAIRMAN. (Interrupting.) Is there any pretense in this case that the court which appointed the guardian did approve of the alleged settlement made by the guardian?

The WITNESS. I think I can make that clear to your honors. The statute in this State in relation to the appointment of a guardian, a general guardian, requires that a petition must be filed and 10 days' notice given, and if the minor is more than 14 years of age he has the right to nominate his guardian. After a guardian is appointed, we have another section of the statute that provides for the settlement of claims of this kind, and no settlement can be made by the guardian until 10 days' further notice is given. The pleadings in this case show, and the facts show, that Mrs. Small made a settlement on one day and on the same day she was appointed guardian, and on the same day the court made an order authorizing her to settle it, without any notice, and while the boy was unconscious and knew nothing of the transaction. That was the facts in the case, as disclosed in the testimony, and is the actual facts in the case.

The CHAIRMAN. Is there any controversy that under that state of facts such a settlement would be at least voidable?

The WITNESS. There is not any controversy, as I can understand, but what they acknowledge and the court ruled that it was absolutely void, and Judge Hanford so held in his first ruling, that it was absolutely void and not a legal defense.

Mr. MCCOY. Was this appointment as guardian the appointment of general guardian?

A. Yes; it was an appointment as a general guardian, the one I speak of.

By the CHAIRMAN:

Q. Then the same person afterwards brought the suit?—A. Yes.

Q. As guardian ad litem?—A. A year or so afterwards.

Q. Now I think I have got it straight.

The WITNESS. When this case was commenced, I knew of course that this question would be raised, and I thought it would look better to the court to have this same woman appointed this boy's guardian ad litem for the purpose of bringing this suit, and so I had her appointed in the State courts guardian ad litem of this boy, so that it would not look as though there was any collusion between the boy and the boy's mother, and for that reason I had her appointed, rather than some one else.

Mr. MCCOY. You say the settlement was for $120, and the receipt given was for $500?

A. The plaintiff's contention was that an agent of some liability company from Tacoma had come to the boy's mother, and represented to her that it was a custom of the Puget Mill Co. to pay their employees that were injured a certain sum of money whether they owed it to her or not, and under that state of facts, why, they gave her $120, and she signed a receipt for five hundred. The contention in the pleadings was that there was a full settlement for $500, under authority of the court.

The CHAIRMAN. Was there any controversy as to the amount actually paid?

A. That question never came up, we never got that far. So far as the evidence showed when the case was dismissed, there was no controversy, of course, because the plaintiffs testimony was all there was before the court.

The CHAIRMAN. Proceed, Mr. Hughes.

By Mr. HUGHES:

Q. Now, without confusing the record about any proofs, all the facts were set up in the pleadings about which the judicial action of Judge Whitson was based; isn't that true?—A. I think so.

Q. And they will speak for themselves, will they not?—A. They will.

Q. All the facts were set up in the pleadings upon which the final action of Judge Hanford was based; isn't that true—I mean after Judge Whitson's decision?—A. In the pleadings? Sure, the pleadings, yes.

Q. I say the action of Judge Hanford was based upon a motion for judgment upon the pleadings, and his decision was based entirely upon the facts set forth in the pleadings; isn't that true?—A. Well, I presume it was. I don't see how he could get outside of the pleadings to sustain the motion.

Q. You have also stated that the decision of the court was contrary to what had been previously decided by the supreme court of this State—in your direct examination, upon the question of——A. (Interrupting.) Contrary to what had been decided by the supreme court?

Q. By the supreme court of the State, on the question of the necessity of repaying what had been paid in settlement before a party could prosecute an action?—A. I don't remember of saying that; but that——

Q. (Interrupting.) I understood you to say so.—A. No; I say that the motion dismissing an action, taking it from the jury for the reason that there was a variance, was in plain violation of the statute of this State.

Q. But I understood you to speak of a decision being directly contrary to a decision of the supreme court.—A. I did speak of a decision where the supreme court had decided that the question of assumption of risk was not in fact in it.

Q. Did you not testify that the dismissal of the action upon motion on the pleadings or on the proofs because the party had not repaid the money was contrary to the decision of the supreme court—that is, where the defendant had paid the plaintiff in settlement, that the supreme court of this State had held that it was not necessary to repay the money?—A. Well, our supreme court has held that where——

Q. (Interrupting.) That was one of the points of criticism you made, was it not, against Judge Hanford's decision?—A. No; I don't think that the ruling of our supreme court had anything to do with my criticism of Judge Hanford's opinion, although our supreme court has held, and they still hold, and it is a rule in our State court, that where a fraudulent settlement is made it is not necessary to repay the money or to bring an action to set aside that fraudulent settlement before you can institute your action for damages.

Q. I understood you to so testify in chief.—A. Well, I don't think I did, but that is the fact, that is true.

The CHAIRMAN. It is immaterial. Go on, if you want to ask him any questions.

Mr. HUGHES. I do not think it is immaterial, or I would not ask it.

The CHAIRMAN. What is the materiality of it?

Mr. HUGHES. I will show you in just a moment.

The CHAIRMAN. I would like to have it before you proceed further on that line, for I do not see it.

Mr. HUGHES. I am going to show it right now.

The CHAIRMAN. What is it?

Mr. HUGHES. Now, as a matter of fact, was not the decision of Judge Whitson and the final decision of Judge Hanford on that question based upon the different rule laid down by the circuit court of appeals for this circuit in the case of Hill *v.* Northern Pacific Railway Co. (113 Fed , 914), and in the case of Price *v.* Conners (146 Fed , 503), and subsequent cases, in which they hold that in the Federal court it is necessary for a party suing in that kind of a case, who has made a settlement, alleging afterwards that it was fraudulently procured, to return the money before he can prosecute the action, and in which decisions they are at variance with the decisions of the supreme court of this State Isn't that true?

A. I can explain that. Judge Whitson granted the motion, I think, for that reason, but those decisions had nothing whatever to do with Judge Hanford's opinion in ruling the first time that a settlement such as was set up in this case was no defense, nor it had nothing to do with his last ruling when he sustained Judge Whitson, because he believed then, and always believed, in my opinion, that a settlement made under the conditions in which this was made, by the boy's mother, without the boy's knowledge or consent, was not a defense in this court or any other court, and I don't think that these

authorities sustain the point at all. I argued then and I argue now that they had no bearing upon the case whatever, and I don't think there is a decision in the United States that will uphold any such a ruling as that. If there is, I have never been able to find it.

Q. I did not mean to call for your opinion about the matter. I was asking simply for the question of fact, whether this rule as laid down by the circuit court of appeals was not applied by Judge Whitson in his decision and afterwards followed by Judge Hanford as controlling upon the trial court.—A. That was Judge Whitson's opinion, that this Hill case that you speak of and the Conner case was the rule laid down in this circuit.

Q. Now, as the final judgment in the case was based upon the pleadings, there would have been no necessity, in case of an appeal, for any transcript of the evidence or any statement of facts, there was none. An appeal to the circuit court of appeals would have been upon the simple record constituted by the pleadings, would it not?—A I presume it would; yes, sir.

Q. And necessarily an inexpensive appeal, would it not?—A. Not very inexpensive.

Q. So far as the record is concerned —A. I will state, in answer to that, that this boy was not only the support of a widowed mother who had several children but they were very poor and he could not see his way clear to appeal this case.

Q. Very well, I don't care to pursue that.—A. And he could not raise money to appeal it.

Q. But you did decide instead of appealing to bring another action in the superior court of the State for less than $2,000, did you not?—A Yes, sir.

Q. Your first action having been for $15,000?—A. Yes, sir.

Q And you preferred to waive your claim for fifteen thousand and sue for less than two thousand so as to limit the jurisdiciton of the trial court to the superior court of the State?—A. Well, that was all that I could do under the circumstances. The boy——

Q. (Interrupting.) You could have appealed, couldn't you?—A. The boy hadn't the money to appeal, and the matter dragged along until the time for appeal had expired.

The CHAIRMAN. To what extent did the injury interfere with his earning capacity?

A. Why, I think that—well the—his injuries consisted of both broken legs and spine injured, so that he was deformed; one leg is 2 inches shorter than the other.

The CHAIRMAN. I am referring more particularly to his capacity to earn money to defray the expenses of an appeal.

A. Well, I think that he was incapacitated to a great extent. There are some classes of work that he can do, but of course he will never be as strong again as he was before the injury.

Mr. McCOY. Where does the circuit court of appeals sit?

A. San Francisco, I think.

Mr. McCOY. Is that the only place they hear appeals?

A. Well, I think that they do sit here sometimes now.

Mr. HUGHES. They sit here every September, do they not?

A. Well, I could not just say as to that. I don't think every September, I would not say that; but I think they do sit here now; but whether they did at that time or not I don't know.

Q. You don't testify that they do not sit here every September, do you?—A. How is that?

Q. You would not testify that they do not sit here every September?—A. Oh, I think that is a matter of record. I don't know.

Q. It is a matter of record right here.—A. Yes.

Mr. McCoy. What did they do; do you recollect whether they sat here at that time?

A. That is what I don't remember. I don't think they did. I think if I had appealed at that time I would have had to have gone to San Francisco. The next session of the court after that, I think, was at San Francisco.

The Chairman. How far is San Francisco from Seattle?

A. Well, I would judge it is about 2,000 miles; close to it; it would be just a guess, though, as to the distance.

Mr. Higgins. That is a fact that can be established by the record, too.

The Witness. Yes; it can be established by geography.

Mr. Hughes. Mr. Brown, at that time the circuit court of appeals sat at San Francisco, at Portland, and at Seattle, holding sessions in Seattle once in each year, in the month of September; isn't that the fact?

A. I don't know whether it is or not.

Q. You don't know?

The Chairman. If you state that it is a fact, we will be willing to accept it as a fact and pass on.

Mr. Hughes. It is.

The Chairman. Don't waste any more time on it.

The Witness. My understanding was that cases appealed at a certain time were tried at a certain place, if they were appealed at another time, then we waited until they came here, and I think that was the rule then. That is my recollection of it, that it was owing to the time that you took your appeal, where you had to try your case.

Mr. McCoy. You had to perfect your appeal at the next term of court, wherever it sat?

A. I think that was the custom then, but I am not positive.

Mr. Hughes. I hope the committee will not assume anything so contrary to the fact. In other words, if the case came on so that you could make your record before it would be heard here, you would either hear it, at your option, in San Francisco, or have it continued until they sat here at their regular term of Seattle; isn't that true?

A. Well, I would not say it was true; no.

Q. Did you make any effort to find out?

Mr. Higgins. Is it the fact, Mr. Hughes?

Mr. Hughes. Sir?

Mr. Higgins. Is that the fact?

Mr. Hughes. That is my understanding of the practice; always been the custom, in my own experience, if we desired to have a case heard in San Francisco, if it came up there six months prior to its coming up here that we could have it heard in San Francisco, or, if the parties desired, it would go over until the term here.

Mr. McCoy. But suppose the respondent should make a motion to dismiss the appeal at the next term of the circuit court, what would happen then? Would the court say "we will wait until the——"

Mr. HUGHES. (Interrupting). I think without any question, if, for instance, the appellee or the apellant, as the case might be, or the plaintiff in error, appealed the case and applied to the court to have it continued to this term, I understand they have always continued it to this term, unless some showing was made of emergency or reason why it should be sooner heard. That is my understanding of the uniform practice. Anything else would be an abuse of discretion by the court anyway.

Mr. PRESTON. Another thing, Mr. Hughes, I will state the fact: They do not dismiss an appeal; that can be heard on briefs; a man does not have to be there.

The CHAIRMAN. What is the purpose of this whole line of examination? Is it to show that Mr. Brown did not appeal the case for the reason that he stated but for some other reason?

Mr. HUGHES. My purpose is this: In the first place I think it is rarely true that there is not one side or the other in every lawsuit in which the attorney is dissatisfied with the decision of the court. I am merely pointing out here the remedies that the party had, as bearing upon the strength of his conviction that the court was wrong and as to whether or not the committee, this tribunal, ought to take the opinion of a disappointed attorney or go into the record and determine for itself. I am merely trying to show that if he felt himself aggrieved he had a simple record made by the pleadings on which the final action of the court was based, which could have been reviewed inexpensively by the court of appeals.

The CHAIRMAN. What does that mean, how much money does "inexpensively" cover in that remark?

Mr. HUGHES. Well, a transcript of the pleadings in this case.

The CHAIRMAN. About how much?

Mr. HUGHES. Could not cost but a few dollars.

The CHAIRMAN. About how much would the whole, the record fees and attorneys, cost?

Mr. HUGHES. The record has to be transcribed. That would consist of the amended complaint, the answer, the reply, and the order of the court dismissing the action.

The CHAIRMAN. I don't care for that, Mr. Hughes. You can think those over. Just put it in a lump sum. About how much in your judgment would it have cost?

Mr. HUGHES. Well, outside of the briefs, it does not seem to me that it should have cost over $50 to have the record transcribed and printed in the circuit court of appeals, if it was limited to the pleadings in that case.

The CHAIRMAN. As you see it, would it have been necessary for the boy's attorney to go to any other point, Portland, or San Francisco, or any other place, in any view of the case?

Mr. HUGHES. I don't think it would have been if they desired to hear it here; they could have had it heard here at the September term.

Mr. MCCOY. They would have had to retain somebody at the next term—to appear in court at the next term of court to make the motion, wouldn't they?

Mr. HUGHES. Not at all; it could be done by written motion filed with the court. I will try to get at the rules later on.

The CHAIRMAN. We don't mind it except for the time it is taking, and the value of it. If that is the point you have in mind, you may just get to it directly.

Mr. HUGHES. To get at the matter correctly, under the statute which prescribes for the holding of court here, cases that are docketed between April 1 and September can be heard here under the statute. If a case arises earlier than that, for instance, if the decision should occur in October, after the court here, or later, they have six months in which to appeal. All they have to do is to delay the taking of an appeal for that length of time so as to have it docketed and come here of necessity, regardless of any application to the court at the next term. So that it is always possible to have any case appealed from this court heard in this city if counsel desire it, without any reference to the opposing counsel. Now, I don't care to pursue that any further.

Mr. HIGGINS. Do you agree to this statement, Mr. Brown?

A. Well, that was never my understanding of it. I never understood it in that way at all at that time. I don't know what the rule is now. I don't appeal very many cases to the circuit court, in fact, I have never appealed one yet, but——

Mr. HIGGINS. Did you ever have a case——

A. (Continuing.) I have studied that.

Mr. HIGGINS. Did I understand you to say you have never had a case in the circuit court of appeals?

A. I have never appealed a case from the district court here to the circuit court of appeals.

Mr. HIGGINS. Did you ever have a case in the circuit court of appeals?

A. No; but I read the rules over at that time, and my understanding of them was that I could not get a hearing here; and I estimated the cost that it would take to make up this appeal and I could not see how we could get up an appeal and go down to San Francisco short of $150 or $200. The printing of briefs and the record in the case, in the way that the United States courts require them to be gotten up, I could not see how an appeal could be taken short of $150, and the boy had no money, and of course under the laws of this State an attorney is not presumed to put up the money to carry on litigation—they disbar them for that—so I didn't appeal it; I didn't put up the money myself. The boy had not the money and we could not appeal and I could see no reason for appealing. If Judge Hanford had the same view of the law at the close of the case that he had before, I considered it was his duty to stay by the law regardless of Judge Whitson. There is no reason why Judge Whitson should come in here and reverse his case and then force the plaintiff in this case out of court because he had no money and could not appeal from it. If he believed it was the law, why, he should have made the same ruling he did at first and we could have had our trial here, there would have been no need of an appeal; and that is the only thing that I was aggrieved over.

Mr. HUGHES. It is not my purpose to draw out personal opinions of this witness at all, but merely to try to get certain facts of record categorically, so that this committee can get at the record and any other proof they may desire as to the facts.

The CHAIRMAN. I wish you would do it in brief.

Mr. HUGHES. Just a little more, if counsel will only confine himself to answering my questions—I mean the witness.

The WITNESS. You wanted to know the reason why I didn't appeal, and I gave it to you.

Mr. HUGHES. I didn't ask you that.

Mr. HUGHES. After the dismissal of the action, the final dismissal in this court, you have already testified that you commenced an action in the State court for less than $2,000. To that complaint the defendant, through Mr. Dovell as its attorney, filed an answer setting up affirmative defenses, the same defenses that had been interposed in the Federal court; isn't that true, coupled with the action of the Federal court, pleading also the action of the Federal court?

A. No, I don't think that that is——

Q. (Interrupting.) I don't care to go into that. He filed an answer with affirmative defenses?—A. Yes, he did that.

Q. The answer will speak for itself. To that answer you filed a demurrer on April 30, 1909, didn't you?—A. Yes, sir. I don't know the date. I presume I did, though.

Q. And that demurrer you have never sought to bring on for hearing; isn't that true?—A. That is true; yes, sir.

Mr. HUGHES. That is all.

The WITNESS. Nor the defendant has never sought to bring it on for hearing. And I will explain further, in relation to that, that the boy for the last year has been on board a steamship and I have seen him but once, and for the last six months I have been trying to get hold of him and I can't locate him, neither can I locate his mother. I have written her several letters and my letters are returned, so I don't know where the boy is just at this present time; but he is on board some ship somewhere down about San Francisco or Panama, but he has not been in the city, and so I did not want to bring the matter up until I could hear from him or until he returned to the city.

Mr. HUGHES. I don't know that it is necessary to ask the witness, the committee will doubtless understand that question, but you don't mean to convey the impression to this committee that your client was necessary for the purpose of arguing a demurrer in the superior court and settling the issues in the case?

A. I didn't know how soon it would be necessary to have him. I wanted him here when the matter came up.

Mr. HUGHES. That is all.

The CHAIRMAN. Oh, I think we can see through that. The chairman at least could see a reason to support Mr. Brown's conduct, in this, that if the matter was disposed of and the issues made up, the case would then be ready to set, and it might be forced to a setting when the witnesses and plaintiff are not here. I do not think he is to blame for letting it drift under the circumstances he speaks of.

If that is all now, we will permit Mr. Brown to stand aside.

WALTER R. THAYER, having been first duly sworn, testified as follows:

By the CHAIRMAN:

Q. Tell your name, please.—A. Walter R. Thayer.

Q. Where do you live?—A. Seattle.

Q. How long?—A. Ten years.

Q. What is your business?—A. Manager of the William J. Burns National Detective Agency.

Q. In what capacity?—A. Managing the office.

Q. I believe it is the custom for those in your employ to make written reports to you of the work they do?—A. Yes, sir.

Q. Do you know one A. A. Nordskog?—A. Yes, sir.

Q. And a Mr. Oleson?—A. Yes, sir.

Q. Whose first name I have not——A. (Interrupting.) Alfred Oleson.

Q. And Mr. Kohler?—A. Yes, sir.

Q. His first name is what?—A. Antone Kohler.

Q. Have you any rule as to what you do with written reports made by those in your employ, and by these persons particularly?—A. Yes, sir.

Q. What is that rule?—A. They turn the reports in to me and I generally examine them and turn them over to the stenographer and she typewrites them.

Q. Were any of the three persons I have named employed under your supervision to take note of the conduct or action of Judge Hanford?—A. Yes, sir.

Q. If they made any reports to you in writing concerning that gentleman, you may state.—A. They did.

Q. If those notes were transcribed by anyone, who did the transcribing?—A. Well, after the stenographer typewrote them, the reports, they were turned back to me and I destroyed them.

Q. You did not catch my question. I did not ask you what became of the originals; I asked you if the originals were copied by anyone who did the copying?—A. Why, my stenographer copied them.

Q. What was her name?—A. Her name at that time was Miss Genevieve Farren.

Q. What is her name now?—A. Her name is Mrs. Walter Thayer at the present time.

Q. She is now your wife?—A. Yes, sir.

Q. What became of the original notes?—A. I destroyed them,which is the custom of the office.

Q. What is your last answer?—A. Which is the custom of the office.

Q. We don't care anything about the custom beyond these notes. Have you yourself any knowledge as to the accuracy of the transcript made?—A. No, sir.

The CHAIRMAN. Well, I think that is all I wish to ask you. Any further questions from Mr. Thayer?

Mr. DORR. Are there any further questions from the committee?

The CHAIRMAN. Do you wish to ask?

Mr. DORR. I wish to ask a few.

The CHAIRMAN. Do so.

By Mr. DORR:

Q. Mr. Thayer, you spoke of Mr. Oleson and two other men. Who were the other two?—A. A. A. Nordskog and Antone Kohler.

Q. Antone——A. Kohler.

Q. How long were they directed to trail Judge Hanford?—A. For a period of about two months, from August 26 to October 28, I think, a period of about two months.

Q. In 1911?—A. Yes, sir.

Q. That was immediately following the Dreamland Rink meeting, was it not?—A. Yes, sir.

Q. Who was the client who employed you?—A. John Perry.

Q. John Perry?—A. Yes, sir.

Q. John H. Perry?—A. Yes, sir.

Q. A lawyer?—A. Yes, sir.

Q. Do you know of any other interested party in this employment except Mr. Perry?—A. No, sir.

The CHAIRMAN. What is the purpose of that?

Mr. DORR. I want to find out, if the chairman please, who instigated this.

The CHAIRMAN. But what has that to do with the committee's work?

Mr. DORR. Beg pardon.

The CHAIRMAN. What has that to do with the committee's work?

Mr. DORR. Well, I can see, I think, that it might be very——

The CHAIRMAN. (Interrupting.) What is the materiality of it, if answered?

Mr. DORR. It might be very material information for the committee.

The CHAIRMAN. Point out how.

Mr. DORR. If it could be traced back to this Dreamland Rink meeting.

The CHAIRMAN. Well, how would it be material then?

Mr. DORR. I think it would show malice on the part of the people who started this inquisition; it might tend at least in that direction.

The CHAIRMAN. Oh, I think that is pretty remote. If any of those persons are on the stand, you might ask them about it. But doesn't that seem a bit remote?

Mr. HIGGINS. These persons do not know by whom they were employed, because I asked Mr. Oleson, when he was on the stand the other day, and he stated he knew nothing about for whom he was working. It seems to me that the only way that that matter could be developed for the record would be through the testimony of the manager for the agency who made the contract for the employment of these men.

The CHAIRMAN. But how does that become material to any examination of this witness or to the examination of the detectives. Is it proposed to show that they have ill will or malice or prejudice toward Judge Hanford?

Mr. DORR. It has already appeared, Mr. Chairman, that Mr. John H. Perry, and certain other men, were arrested by the United States authorities for participation in this Dreamland Rink demonstration, and it appears now by this witness that the employment was entered into on the very next day I think, the very next day following the meeting at the Dreamland Rink, and that Mr. Perry, one of the participants in that meeting who was arrested, was the employer of the agency. Now, it does seem to me, and it appeals to me with a great deal of force, that it may develop and quite naturally will be developed that was a motive back of the employment which prompted Mr. Perry and his associates to go into this detective agency for the purpose of trailing Judge Hanford, and I think that it is only right and fair and just, if we are going to get at the truth of this matter, that we may investigate the motive that is back of it.

The CHAIRMAN. Now, let me see how I understand it and see whether it agrees with your understanding. This witness was put on merely as a connecting link, because of a destruction of certain writings, and for no other purpose. That is true, isn't it?

Mr. DORR. Well, I——

The CHAIRMAN. Can you imagine any theory, even of cross-examination, that would make it competent to ask the questions you were asking, under those circumstances?

Mr. DORR. I think so. He was asked whether he was employed to do this work.

The CHAIRMAN. He was asked that by you, I believe, wasn't he?

Mr. DORR. Well, he was qualified by the chairman as the manager of the detective agency——

The CHAIRMAN. Yes.

Mr. DORR. (Continuing.) Having charge of this work.

The CHAIRMAN. That was all.

Mr. DORR. Now, I think that would open up to the cross-examiner——

The CHAIRMAN. (Interrupting.) I don't agree with you at all. Now, the next step——

Mr. DORR. (Continuing.) And why?

The CHAIRMAN. Because I think you are——

Mr. DORR. I said, "Who employed him and why."

The CHAIRMAN. The next step in the proceeding is this: He was introduced as an introductory witness who leads to his wife. She will, if she can, if it be the fact, testify as to the accuracy of the transcript from the destroyed papers. That would pave the way to the introduction of the fellows who did the observing. The material question is as to the truth of the facts they testified to. Now, how could the thing you speak of, the prejudice of Mr. Perry or anybody else, growing out of the Dreamland meeting—how can you connect that with the truth of the testimony of these men?

Mr. DORR. For the reason that you, Mr. Chairman, and every lawyer knows, that truth is tested very largely by motive that has prompted an action.

The CHAIRMAN. What motive will you show on the part of this witness? The motive always goes to the witness, doesn't it?

Mr. DORR. I did not——

The CHAIRMAN. Are these men you are asking about witnesses?

Mr. DORR. I didn't expect to show any motive, by this witness, on the part of the employer.

The CHAIRMAN. I think you see my point.

Mr. DORR. I expect to find out who the employer was.

The CHAIRMAN. Well, I think at this time it is not in order, as far as the chair is concerned.

Mr. HIGGINS. What is the question, Mr. Reporter, that was objected to?

(Last question read by the reporter.)

The CHAIRMAN. The chair thinks the question is not a proper one at this time.

By Mr. DORR:

Q. Now, Mr. Thayer, you say this employment extended about two months?—A. I think so.

Q. From the 26th of August, 1911, until some time in October?—A. Yes, sir.

Q. October 28, or thereabouts?—A. Yes, sir.

Q. How often did you receive the reports from your three operatives?—A. Every day.

Q. Every day?—A. Yes, sir.

Q. Those three men were employed to shadow Judge Hanford at all of the time, as I understand it?—A. Well, we changed about with those men.

Q. Yes, sir.—A. Sometimes one would shadow for several days at a time, and then we changed and put another one on.

Q. But during those two months it was your purpose to have some one or more of your operatives trailing Judge Handford and shadowing him constantly?—A. Yes, sir.

Q. And that was done, as you know?—A. Yes, sir.

Q. And it covered a period of two months, as you have stated?—A. Yes, sir.

Q. Were there any other men engaged in this work, except the three that you have mentioned?—A. Yes, sir.

Q. Who were the others?—A. A. C. Staples.

Q. Any one else?—A. There is another man shadowed him for a couple of days—George H. Schober.

Q. That is five that you have named now. Were there any others?—A. I believe that is all.

Q. Were there any women employees or operatives?—A. No, sir.

Q. Just these five men?—A. I think so.

Q. Was that all within the two months time that you mentioned?—A. I think so; yes, sir.

Q. And have you the reports for all of those days from all of these men?—A. Why, not in my possession now; no.

Q. Where are they now?—A. The committee has them.

Q. Well, does the committee have the entire number of reports, full reports?—A. Yes, sir; all that I have.

Q. From all two months?—A. Yes, sir.

Q. From all the men?—A. Yes, sir.

Q. That would be at least one report for every day for the entire two months?—A. I think so; yes, sir.

By Mr. McCoy:

Q. Are all the men who were assigned to this particular work in Seattle now?—A. All except A. C. Staples.

Q. Is he out of the city?—A. Yes, sir.

Q. Where is he?—A. Spokane.

Q. Does he live there?—A. No, sir; he is on some work for the agency.

Q. How soon will he be back?—A. Oh, in two or three months.

Mr. Dorr. May I ask a question that was brought up by Mr. McCoy?

The Chairman. Yes.

By Mr. Dorr:

Q. He could come back in one night's travel, could he not?—A. Yes, sir.

Witness excused.

Mrs. Walter Thayer, having been first duly sworn, testified as follows:

By Mr. McCoy:

Q. What is your name, please?—A. Mrs. Walter Thayer.

Q. Before your marriage to Mr. Thayer, you were working in the office with him as a stenographer?—A. Yes, sir.

Q. In the course of your employment there did you transcribe some notes made by Mr. Oleson, Mr. Nordskog, Mr. Kohler, and Mr. Staples?—A. Yes, sir.

Q. Concerning Judge Hanford?—A. Yes, sir.

Q. Do you recall the doing of that work?—A. Yes, sir.

Q. What do you say as to whether the transcribed copy was a correct transcript of the original notes handed you?—A. Well, I am positive it was correct, because I copied them every day as they were sent in to me.

Q. What pains did you take to find out whether they were correct or not—how did you check up, in other words?—A. Well, they were handed to me every day by the manager. I presume they were correct. Very often the boys gave them to me, handed them to me, and I handed them to the manager.

Q. What was your manner of making the transcript; did you have the copy before you and follow it?—A. Yes, sir.

Q. Your work was done with the typewriter, of course?—A. Yes. sir.

Q. What experience had you at that time in typewriting?—A. Why, I had been working for them since the 26th of May, 1910.

Q. Had you any experience in the work of copying or typewriting before that time?—A. No, sir.

Q. Did you take a course in typewriting?—A. At the Seattle Commercial College.

Q. Are you a graduate?—A. Yes, sir.

Q. Well, do you say now that those notes which were given you were correctly copied?—A. Well, they were copied just as the men gave them to me.

Q. That is what I mean.—A. Yes, sir.

Q. You say that your work in copying them from the notes handed you to the typewriter work was accurately done?—A. I intended it to be so.

Q. Well, what do you think about it; do you think it was?—A. Yes, sir.

The Chairman. That is all I wish to ask.

By Mr. Higgins:

Q. These reports, Mrs. Thayer, you received sometimes from Mr. Thayer?—A. Very often; mostly from him.

Q. And at some other times from the men who were at work on this case?—A. If Mr. Thayer was not in the office, I usually took the reports when they brought them.

Q. Were they always made on the same kind of paper, uniform paper?—A. You mean written by the operators originally?

Q. Yes.—A. Usually.

Q. What is the practice, what is the fact, so far as this case goes—that the same form was used on the daily reports?—A. Yes, sir.

Q. And written by the operatives?—A. Yes, sir.

Q. How, with pencil or ink?—A. With pencil; sometimes with ink.

Q. What was said when the operative turned the report in to you, Mrs. Thayer, by him?—A. "This is my report for yesterday," or "Here is my report," or something like that.

Q. Did he tell you the case?—A. No, sir; it was written under the title of the case, the number. We go by numbers always.

Q. Did he write it?—A. Yes, sir; he wrote it.

Q. Did he write the number or was that furnished you by the office?—A. Why, that was furnished by the office when he started the case—when he started to work.

Q. Did you make a comparison after you had typewritten the reports?—A. Yes, sir.

Q. How long since you have seen the typewritten report that you made?—A. Oh, my, I haven't seen them hardly since I wrote them.

Q. After writing them you turned them in to Mr. Thayer?—A. Yes, sir.

Q. You haven't seen them since?—A. No, sir.

Q. You did not change in the reports the phraseology at all?—A. Well, in some little instances where they used very very bad grammar I did, but as a rule I copied it just as they wrote it.

By Mr. DORR:

Q. You would change it in some instances where you did not approve of the language; is that the way I understand it?

The CHAIRMAN. The grammar, she said.

Mr. DORR. When you did not approve of the grammar used, you changed it in some instances?

A. In some instances.

Q. How frequently was that, Mrs. Thayer?—A. Not very often. The men that we had on the cases were—they wrote very nice reports and I didn't have to change them very much.

Q. Would these men write the reports up in the office after they returned, or would they have them written up when they came to the office to deliver them?—A. Why, I don't know where they wrote them.

Q. Did they write them in your presence——A. (Interrupting.) No, sir.

Q. (Continuing.) In any instance?—beg pardon.—A. No, sir.

Q. Did they keep their memoranda in notebooks or on separate sheets of paper?—A. I don't know.

Q. Well, when they were turned in to you would they be turned in in the form of separate sheets of paper or in notebook?—A. Sheets of paper; separate sheets of paper.

Q. On blank forms printed by the office?—A. No, sir; on ordinary paper.

Q. Just on any kind of paper, or was there any uniformity to it?—A. Well, they have paper in the office, in the operatives' room, that they usually use.

Q. Is it printed paper or just blank paper?—A. Blank paper.

Q. And was it this kind of paper that they turned in to you with the notes upon it?—A. Yes, sir; usually.

Q. Usually. Now, can you recall any specific instances where you changed the grammar of any of these reports?—A. No, sir.

Q. You don't know how many times that occurred?—A. No, sir. I never changed the thought, understand, of the report; it was just the——

Q. (Interrupting.) Never changed the thought, but you would change the language to improve it?—A. Sometimes.

Q. Did you identify these typewritten reports in any way after you wrote them out, by an initial or signature or any mark of identification?—A. No.

Q. You could not tell, by looking at them now, whether you wrote them or not, could you?—A. Why, yes; I could.

Q. How could you do that?—A. Well, they are written on the kind of paper we use at the office, and I presume I could tell the work that I have typewritten.

Q. Can you tell your typewriting from any others——A. (Interrupting.) I think so.

Q. Stenographer's work; are you sure about that—on the same machine and with or on the same paper [papers handed to witness by Mr. McCoy]?—A. I know that is my work.

Q. You recognize it, do you?—A. Yes, sir.

Q. What you are looking at is a part of your work?—A. Yes, sir.

Q. And you have not seen those papers since last fall, 1911?—A. No, sir.

Q. Do you know where they have been kept?—A. They have been in Mr. Thayer's hands. I have not inquired as to where they were.

Q. How many copies did you make, Mrs. Thayer, altogether, of each report?—A. An original and a carbon copy.

Q. Just two.

The CHAIRMAN. Any further questions of this witness? You may stand aside, Mrs. Thayer.

Witness excused.

A. A. NORDSKOG, having been first duly sworn, testified as follows:

Mr. MCCOY. Your full name is what?

A. A. A. Nordskog.

Q. And where do you live?—A. Seattle.

Q. How long have you lived here?—A. Six years.

Q. What is your present employment?—A. At present I am developing some patents I have worked on off and on the last three years.

Q. Were you ever in the employment of the Burns Detective Agency?—A. Yes.

Q. Are you now?—A. No.

Q. When did you leave the employment?—A. Oh, some weeks ago.

Q. How did you get your instructions for your work while you were in their employment?—A. Do you mean regarding this particular case?

Q. Or any case. Yes; this particular case at least.—A. I was requested by Manager Thayer to shadow the judge.

Q. What judge?—A. Judge Hanford.

Q. When was that?—A. I believe it was Sunday afternoon the first time that I was notified, and I commenced work on Monday morning. I believe that was August 27 or 28 last.

Q. What instructions were given you at that time?—A. I was told to shadow Judge Hanford, to make notes as to where he went, as to his conduct, as to his physical condition, and so forth, each day.

Q. And you did enter upon that undertaking, did you?—A. Yes, sir.

Q. And how long a period of time were you on that assignment?—A. The first time I was two days, I believe, and then being called on another proposition I dropped it, and later I was put on, I believe, after a lapse of a week or two; I don't remember exactly, and I worked then, I believe, almost 30 days.

Q. Continuously?—A. Continuously, and then I was off again for a period of a few days and put on again for, I think, four days the last time.

Q. That was the last that you had to do with that particular matter?—A. Yes.

Q. Did you during that assignment, while you were active on it, keep any memoranda of what happened?—A. Yes.

Q. When would you make such memoranda—when did you make it?—A. I made notes as I went along, as a matter of convenience, so as not to become muddled as to the facts. A person runs for a day and tries to remember dates and places; he sometimes becomes confused, and I would most generally jot down the notes as I went along.

Q. During the day?—A. During the day.

Q. What did you do with the notes after they were made?—A. I would use them for reference when I was making up my daily report.

Q. And did you make your daily report after you had finished each day?—A. Sometimes I would make it at night, and generally I would wait until the next day.

Q. Why was that?—A. By reason of the fact that it was so late at night sometimes that I didn't have time—tired and worn out from the day's work—I would lay it over until the next day.

Q. And you jotted down these memoranda and from those you made up a continuous story of what you had done?—A. Yes.

Q. Is that right?—A. That is correct.

Q. And what did you do with that?—A. I submitted it to the headquarters, to Mr. Thayer, and if he was not in I would give it to the lady who is now Mrs. Thayer.

Q. When you say submitted it you mean handed it over?—A. Yes.

Q. Were the memoranda that you made correctly made so as to correctly state the incidents that you observed?—A. Yes.

Q. And was the narrative story which you made up—stories which you made up from these memoramda made up so as to correctly state the incidents?—A. They were.

Q. After handing in these narratives to Mr. Thayer, or to the lady who is now Mrs. Thayer, did you in any instance see them again?—A. I don't believe I ever had occasion to refer to or see the typewritten sheets after they had been written.

Q. Well, did you have any occasion to or did you see any of your own work that was handed in and after it was handed in?—A. No.

Mr. Higgins. That is to say, after the typewritten copies were made of your report you did not see it?—A. Yes.

Mr. McCoy. You say also that you did not at any time see the typewritten copies of your report?

A. I don't remember of ever having seen any of the typewritten reports after I submitted my reports to the office.

Q. Have you seen them at any time since they were typewritten—recently?—A. Yes.

Q. When did you last see them?—A. Last evening.

Q. Are these papers here on the desk the typewritten copies [handing papers to witness]?—A. They seem to be the same reports that I saw, without going into details. I have not got time to read it over.

Q. Well, now, state to the committee, as nearly as you can recollect, everything that you observed about Judge Hanford's conduct from the time that you were assigned to his case to the close. Make your statement of facts as nearly chronologically as you can, and whatever you remember, and as complete as you can.—A. During the investigation the things that were the easiest to remember, and by reference to the reports last night, I noticed several instances—in many instances—where the judge, after leaving the bench or after leaving his office in the Federal building, that he went, as a rule, almost invariable rule, to the Rainier Club on Fourth Avenue and would remain there, say, from 5.15 p. m. until 6 or 6.10 p. m., along in there somewhere, after which he would go down town and generally go down Marian Street to Second Avenue, and in passing the Saratoga bar he would enter the Saratoga bar, where he would take a usual drink. As nearly as I remember now, he would have a sherry and egg in that place, and he would walk down the street, and on many occasions he entered the Sutherland bar in the Alaska Building, where he would have another drink, and, as a rule, he would go across the street to the Butler Hotel, where he would enter the bar and have the third drink, which completed his round-up of the bars for that evening, as a rule. I don't remember in any instance where I have seen him take more than three drinks in three different bars; that is, during the same hour.

Mr. HIGGINS. Well, more than that during the same day?

A. Yes; I have seen him—perhaps would lead up to that later—but in answer to your question I would state that on several occasions he would, so to speak, go the rounds during the dinner hour, between 6 and 7 p. m., and——

Mr. HIGGINS. What do you mean when you say "go the rounds"?

A. Well, with reference to these three bars that he would enter——

Mr. HIGGINS. Would that be three drinks then?

A. Yes.

By Mr. HIGGINS:

Q. That is, he would take one drink at each bar?—A. Yes.

Q. So when you speak of his going the rounds you mean that he took three drinks, in the Sutherland bar and the——A. (Interrupting.) Saratoga and the Butler.

Q. And Butler. Just in that connection, so that we may understand your testimony—and there are others besides ourselves that have got to read this record—won't you state to the committee as to the character of Second Street?—A. Second Avenue, you mean.

Q. Second Avenue. Is it or not one of the prominent thoroughfares of the city?—A. It is.

Q. Now, as to the Butler bar and the Sutherland bar, is it?—A. Yes.

Q. And the other one that you mentioned?—A. The Saratoga.

Q. Are those reputable saloons?—A. So to speak, they are. They are clean bars.

Q. Yes.—A. Considered, I presume, first-class bars.

Q. And on what streets are they located?—A. They are all on Second Avenue.

Q. And Second Avenue is one of the most prominent business streets of the city, isn't it?—A. It is.

Q. And a brightly lighted street?—A. Yes.

Mr. HIGGINS. That is all.

By Mr. McCOY:

Q. You were asked about whether or not Judge Hanford confined his drinks to this hour or whether to some other time of day. Go ahead with that.—A. On—I won't say several occasions, but I remember at least once, and I think twice, perhaps more than that, but I will not say definitely, because it is not clear in my mind, but I know that after having gone to the Saratoga and the Sutherland and Butler bars during the evening hour between 6 and 7, that he has gone to perhaps three bars, not the same ones, after 11 p. m. or after midnight, just before going home.

Q. Where were those bars?—A. One is the Bronson bar, at Second and Marian, and the Rathskeller bar.

Q. Where is that?—A. That is on Second Avenue and Pike, I believe.

Mr. HIGGINS. Is that a prominent bar in the city?

A. Perhaps one of the most prominent.

Mr. HIGGINS. Is it a reputable saloon?

A. Supposedly.

Mr. McCOY. Well, how about Bronson, as long as you are going into that. Is that the same sort?

A. Well, the Bronson is not perhaps—it is not as popular a place as the Rathskeller. The Rathskeller is popular by name and has been for a long time, but the Bronson bar is not in the same class with the Rathskeller, by far. It is an ordinary bar. It is a nice clean place, by the way.

Q. Where is the other one, now?—A. The Savoy bar, which is located in the Savoy Hotel on Second Avenue, and the Mission bar.

Mr. HIGGINS. I would like to know the character of the Savoy as well.

A. The Savoy bar is about in the same class as the Rathskeller bar, and the Mission bar at Second and Union—near Union Street—is a reputable place, so to speak, and is a clean place, although not in the class with the Savoy or the Rathskeller bars.

Mr. McCOY. Go on and continue your story from the point where you were interrupted, about whether or not the three drinks in the afternoon were all.

A. I believe I answered that.

Q. You answered that, but you were telling your observations in a general way when that question came in. Now, just pick up what you have to say from there and go ahead.—A. After having the three drinks that I mention, namely, in the Saratoga, the Sutherland and the Butler bars, as a rule he would go across Second Avenue from the Butler Hotel, diagonally across from Second and James

on the south side of James Street, where he would wait for a Broadway car, and after entering the car, he would walk generally to the front end, nearly to the front end of the car, take a seat—a side seat—and I remember very distinctly of having seen him when it was very hard for him to keep awake, his head would drop from one side, then to the other, sometimes dropping right forward, and sometimes by the sudden jerk of the car he would suddenly wake, turn around and look out of the car window to see just where he was and see how far he had gone. That would occur perhaps a dozen times or more during his ride homeward, that is, from Second and James to the point where he gets off the car up on Tenth Avenue North. At times he was much worse than others. I have seen him when he has——

Mr. HIGGINS. That don't convey to my mind any information at all, Mr. Witness. I wish you would state just the condition that you saw him in, without indulging in comparison.

Mr. MCCOY. I suggest that the witness, Mr. Chairman, be allowed to go on.

Mr. HIGGINS. Well, I assume that the testimony should be intelligent.

The CHAIRMAN. It would be more orderly if one of the committee would interrogate and then the other.

Mr. HIGGINS. It would save time, I think, if we should get the witness's story in the best form as we go along.

The CHAIRMAN. The chairman's experience is that the interruptions always waste time. Proceed.

Mr. HIGGINS. I want you to be specific, Mr. Witness, and not general in your statements. That is my criticism of your testimony.

Mr. MCCOY. Have you any way in your mind in which you can measure any of these things by any degree of mathematical accuracy, so that you can first state a standard and then say what "more" means?

A. In the first place, I will say that I have seen him when I thought he was sober, and from that standpoint all the other occasions must be measured.

Q. Taking that as a standard, is there any way in which we can say, to a degree of mathematical accuracy, all the stages from that to any condition you have ever seen the judge in, or must your description be general?—A. I can say that I have seen him when, as I have stated before, in the sleepy, nodding condition; I have seen him, then, when his eyes seemed to be bloodshot—they were bloodshot—and it seemed to be hard for him to make out just exactly where he was; that in walking on the streets at times when I noticed he would be looking around wondering where he was. One night—I believe that he walked from the Rainier Club—the night I have reference to, he walked up as far as the library, on Fourth Avenue, and he started to go across the street toward the Lincoln Hotel. He suddenly changed his mind and went back to the library side of the street; he walked north to Union Street and he stopped at the corner, oh, right up there by the gas company's office on Fourth Avenue, up near Union Street; stopped and looked around as though wondering or meditating as to where to go. He then went to the corner of Union Street and Fourth Avenue and went in on Union, on the south side of Union Street, all this time walking very slowly.

There was evidence of an overload that night, and that I am sure of; I don't have to guess at that; and when he got over to the corner of Second Avenue—I believe that is where the Wilhard Hotel is—he stopped and leaned up against the building. I didn't know but what he was going to wait for a street car at that point, although I knew that there were no cars passing that corner that would convey him to his home unless he would transfer, and that he could avoid by walking a couple of blocks more. In a minute or two he went to Eighth Avenue, and he stopped again at Eighth Avenue and stood there for several minutes, and I thought again that he was waiting for a car to take him home. This was late at night, I should say between 12.30 and 1 o'clock at night, and, while I think of it, I believe that is the same day that the President—President Taft—spoke at the armory. Referring to the date, I believe it was the 9th of October. I have that fixed in my mind because of one thing that has been fresh in my mind ever since that occurred on that day. And it was raining that night; it was not raining hard, but it was a drizzling rain, such as we have here. And then he walked from Eighth Avenue and Union Street, he walked up—oh, there is a street that is cut through there continuing from Union Street and runs across to Pike Street, meeting Pike Street, I believe, at Terry Avenue. And he continued up Pike Street, walking very slowly all the time. It looked at times as though he was hardly able to walk along; it seemed very difficult for him to proceed. He went to Harvard Avenue on Pike Street and turned off on Harvard, remaining on the west side of the street, and as he approached—I believe it was Thomas Street, I believe it was between John and Thomas Streets that he stopped on the sidewalk and we approached nearer; we didn't know just exactly how fast he was walking at the time, it was quite dark just in that section, and by getting a little bit nearer to him we noticed that he had stopped to respond to a very urgent call, seemingly.

Q. State it plainly.—A. Well, he stopped to urinate on the sidewalk. That was right near Thomas Street, on Harvard Avenue, about 30 feet from the crossing.

The CHAIRMAN. You say he stopped to do that; did he do that?—A. I know he did that, and another party that was with me also knows it.

Mr. HIGGINS. Were there other people near by at the time?

A. The man with whom I was walking was there.

Mr. HIGGINS. That is Mr. Staples?

A. Mr. Staples.

Mr. HIGGINS. Anybody else?

A. No one that I know of. And after starting along again he proceeded up Harvard Avenue until he got to Roy Street, I believe, and then he went to Tenth Avenue, and continued on to his home. It was about 2 o'clock in the morning before he got home. He had walked very slowly and it was raining all the time.

Mr. MCCOY. And where was it you first saw him that evening?

A. I saw him down town, I saw him—I believe that evening he went to the Saratoga, to Sutherland's and to the Butler bar.

Q. And where did he start from when you saw him that evening?—A. From the Federal building, I believe, as usual.

Q. This building we are in now?—A. Yes.

Mr. HUGHES. For my information, is the time referred to late evening or the early evening? He has mentioned two occasions I think.

Mr. MCCOY. I mean now referring to the time when he started on this walk that you have been describing, where did he start from, this Federal building or where?

A. No; he left the Rainier Club.

Q. Well, did you see Judge Hanford go out of this building, this Federal building that evening?—A. I don't believe I saw him leave this building that evening. I remember that he left the club that evening and that I went home with him.

Q. What time was it when he left the club?—A. I believe it was after 12 o'clock at night.

Q. That it was from there that he went to these saloons that you have told about and then continued this walk that you have just been describing; is that right?—A. No. The evening that he walked home in the rain, that I have just told about, he did not go to the saloons at all from the club.

Q. Where did he start from, as far as you observed that night, when he took this long walk?—A. That is just what I told you, that he left the club, he went from the club directly home.

Q. Let me see if I get it right. You first began to tell us that Judge Hanford made it a practice to go to these three or four saloons. Then you were asked whether that, as I remember it, happened commonly between the hours of 5 and 7, or whenever it was; then you were further asked, if I remember it, whether in addition to those times there was any day when he went to other saloons, and he said, "Yes; there was one time when he did go to three or four more." Is that right?—A. That is correct.

Q. Now, that is not the night, however, which you have just been describing when this long walk took place in the rain?—A. No; it is not.

Q. That was another night?—A. That is another night.

Q. Well, now, on the night when he went to the saloons late, as you have just testified where did he come from when you saw him late in the evening?—A. Well, that of course would lead him back to his home originally. We would take him home from the office in the evening and then take him from the home down town——

Q. (Interrupting.) Well, now, of course, when you say "take him" you mean follow him?—A. That is what we—we generally use that term "take him."

Q. Take it on this particular night when he, as you testified, went to the saloons in the afternoon and then went again late in the evening, did you that night follow him home after 6 o'clock or so?—A. Yes.

Q. And then when he came out of the house that evening where did he go?—A. On the occasion just referred to he went from his home down Tenth Avenue North and then went over—well, he continued down Tenth Avenue North. It curves at Roy Street, and after reaching Harrison Street he turned east on Harrison Street and entered a residence, an apartment house, the door number of which I have learned is 1008.

Q. Now, what evening was that——A. He did that——

Q. (Continuing.) Of these two that you have been telling about?—A. Well, he did that on this special night that I have reference to, October 9, I believe it was—the record will show—I think it was October 9; that was the night that Taft spoke at the armory.

Mr. HUGHES. When you speak of leaving the house and coming down, is that after the dinner in the evening, after his dinner hour in the evening?

Mr. MCCOY. That is what I was trying to find out. I don't know.

Mr. HUGHES. I didn't know but I might have missed it, that is all.

Mr. MCCOY. What I was trying to ask you was this: You have been speaking about two nights more particularly. One was the night that President Taft was here and another night, or rather, another day when Judge Hanford you say went in the afternoon in some saloons and then later in the evening went to the saloons. Those were two distinct days, as I understand it, weren't they?

A. Yes.

Q. Now, on the day when he went twice to these three or four different saloons, once there in the evening and once later in the evening, did you follow him home at dinner time?—A. I did.

Q. Where did he go to when he came out of the house after the dinner hour?—A. The one night, I believe, that I have fresh in my mind, he left home about 9 o'clock.

Q. Is that this same night that I am asking you about?—A. Yes, it is the one you are trying to get at, I believe.

Q. Was that the night when he went first in the afternoon to these saloons, then he went home, and then he came out? Now, you are talking about that same night when he went to the other saloons; is that it?—A. Yes, sir.

Q. All right, that is what I wanted to know.

The CHAIRMAN. I will say to the witness that on any of these points as to dates or to facts you have a right to refresh your recollection by reference to the minutes you made at the time.

A. Yes, of course that would be quite difficult now, running over all those reports; there is quite a number of them there.

The CHAIRMAN. Well, I merely would inform you about it.

Mr. HUGHES. That is not now, the 9th of October, but another time?

Mr. MCCOY. This is another time, I believe.

A. This was not the 9th of October. And on this particular occasion I believe it was just 9 o'clock when he left his residence, and he was wearing a bright red flower, I don't remember whether it was a carnation or whether it was a rose, and he went to his office—I noticed the lights were turned on in his offices in the Federal building immediately after he entered the Federal building—and remained there until about 11 o'clock, I believe, it was about an hour and a half. From the Federal building he went down Fourth Avenue to the club—the Rainier Club—and left the Rainier Club, I think, about 12.45 a. m., after midnight; he went to the Bronson bar first, Second Avenue and Marian Street, and the next, I think, was the Rathskeller bar and had another drink, and then to the Savoy bar. I believe that was three that he went to that evening that I remember. And I think he boarded a car that evening, or that night, I would not say for certain. There was two or three times that he walked home, walked all the way from down town out to his home, but I believe

that night that I have reference to that he boarded a car. On another occasion when he left the Mission bar just before 1 a. m., after having been to two others, that he walked home after having been to the Mission bar.

The committee here took a short recess.

Mr. McCoy. Give us any other instances which you recollect as to Judge Hanford's conduct in any respect that you noticed.

A. On one night—I don't remember now whether he just came from the Rainier Club and walked homeward or whether he had gone to any bars just previous—but I remember very distinctly one night when he walked up as far as Broadway and Pine Street, where he boarded a northbound car; that was also late at night, I believe it was about 1 o'clock a. m. And on this night he was seemingly intoxicated, because of the fact that he could hardly sit up in his seat. I have seen him when he could hardly hold his head up and when he seemingly could not hold his head up, but on this occasion he fell forward and had to hold himself constantly with his hand on the bar of the seat, and I believe that he fell asleep part of the way—it was not very far to his home—but in getting off the car that night he was much more unsteady than I had seen him on previous occasions because generally when he would drop his head and his eyes were bulged and seemingly worn out and tired and under the influence of liquor, he generally could walk pretty straight, stand up pretty well, but on this occasion he had a great deal of difficulty in maintaining his balance.

And there is one more occasion, I think it was on a Saturday night; in fact, I am quite certain it was, when he did not go home to dinner. He left his office, I believe, about 5 o'clock—5 30—and went to the Rainier Club and remained at the Rainier Club until almost 11 o'clock p. m. When he left the club he walked to Madison Street, boarded a Madison cable car, got off at Broadway, and walked northward, and that night I believe that he had a great deal more than what was good for him, because when he walked he tried to walk very rapidly and seemlingly for the one purpose of keeping his balance I have seen people in the same state many a time; when they want to keep their balance they usually get a quick stride and try to walk rapidly; and many times during the walk between Broadway or between Madison Street and Harrison he would sidestep quickly, set one foot out as though trying to catch himself. So I feel quite certain that on that night he was pretty well intoxicated He walked up to Harrison Street and then he went east on Harrison to the residence that I have mentioned before—1008 East Harrison Street. He entered there about 11.15 p m.

Q. Was that the last you saw him that night?—A. No; I remained there until he left that place. I think it was about 1 50, or about 2 a. m , along in there somewhere; it was near to 2 o'clock, it was not far off, about 2 o'clock a m. that he left this residence, and then he walked up Tenth Avenue to his home, arriving at his home some time after 2 o'clock.

Q Do you think of any other occasion on which you noticed his conduct when he seemed to be under the influence of liquor?—A. There was one night I remember when he left his home about—that is, before going home he had gone to the Saratoga, Sutherland, and

Butler bars, I believe, which was quite his custom at the evening hour; and going home that evening he was in the condition that I have described.

Q. What condition?—A. Nodding his head, going to sleep, waking up every once in awhile to find out where he was, looking out of the car window to determine where he was; and on leaving his home that night—I think it was about 8 o'clock, or a little after—I am not sure—he boarded a car up in that vicinity, within a block or two south of his residence. As a rule he would walk south from his residence while he was waiting for a car, and going down on the car that night he was worse on going down than he was when he went home in the evening.

Q. Worse in what respect?—A. That is, that he had a great deal more difficulty in keeping awake than he did on going homeward. I remember very distinctly when he passed the Alhambra Theater he was what I should—thought at the time that he was sound asleep; a sudden jerk of the car in stopping, the grinding of the wheels seemed to arouse him, and in waking up he sort of licked his chops, so to speak, rubbed his whiskers, and looked over his glasses out of the window and looked at the Alhambra Theater and kind of stared at it for a few seconds I didn't know at the time why he paid so much attention to the theater, but I learned later that he was to speak there that evening. But he did not get off there; he went over to the Federal Building and went up to his office, and after being in his office for about half an hour I should say, he went over to the Alhambra Theater and went on the stage. The medical association—they had a meeting there that evening. There were quite a number of prominent citizens on the stage, and Judge Hanford was one of the speakers booked to speak there that evening, so he took his position on the stage. After he got on the stage I was not in a position to note his condition or see what he was doing, because of my position in the theater. He was sitting at the left wing on the stage and I was at the left side of the opera house, so that I could not see him.

Q. Where is that theater?—A. Located at Westlake Avenue and Pine Street.

Q. About how far from this Federal Building?—A. Oh, about three blocks or more.

Q. Well, finish what you have to say about that particular occasion.—A. I saw him when he was introduced by the speaker of the evening, by the chairman, and he gave a short speech. I think that it was—I don't remember just the substance of what he said, but it was supposedly in keeping with the subject of the evening, which was on medical matters—hygiene; and I have heard Judge Hanford speak on a previous occasion, and I was quite inclined to believe then that that was not his best and was far from his best; that is, although what he said might have had some weight, but the way it was said it did not appeal to me as being presented in the manner Judge Hanford was accustomed to rendering; in fact, I know it was not.

Q. Well, why, what was the distinction; what was the difference?—A. Well, his hesitation as he went along, his sentences seemed to be broken, disconnected. It perhaps would not be so noticeable to anyone who was not looking for something like that, but knowing as I did that he was in that condition I would notice it perhaps much more than anyone else. Some one else might have believed that it was due

to the fact that he was not familiar with the subject on which he was speaking, which might have been true; but, as I say, that was my opinion.

Q. Well, finish up that day.—A. He left the theater about—well, it was between 10.30 and 11 o'clock, in company with a young man whom I did not know, and he walked over to the Washington Hotel, where there was a banquet, and after the banquet, which was about—the time he left, I believe, was about 12.10 a. m., after midnight; he left the Washington Hotel in company with Judge Burke. They walked down to Pine Street, then down to Third Avenue, then up Union Street to Seventh, up Seventh Avenue to Madison, up Madison to Broadway, up Broadway to Pine Street, where they stood for about five minutes, I should judge, and talked, after which the judge boarded a Broadway car.

Q. Which judge?—A. Judge Hanford. Judge Burke walked south on Broadway, but Judge Hanford boarded a car going north and got off the car at his home. That was, I think, about, oh, it must have been considerably after 1 o'clock when he got home.

Q. Is there any other occasion when you observed his conduct when you thought he was under the influence of liquor, that you have not mentioned?—A. There was one night—I don't remember whether it was Sunday night or not—I remember very distinctly when he left the Federal building he walked down a few paces on Third Avenue as though he was going to board a Nineteenth Avenue car, and the car does not stop below Union Street on Third Avenue; instead it goes around the corner on the north side of the Federal building, and he seemed determined to board the car, so he followed that car a few paces, sort of ran behind the car, then suddenly changed his mind and did not take the car; I don't know why. Then he cut across diagonally to the northwest corner of Third and Union and followed the north sidewalk down toward Second Avenue, and he came back; he started out toward the center of the street and he went—came up toward the car tracks and went around the car tracks, and circled around. I didn't know just where he was going. I stood still for a few minutes to watch him. He just went up and whirled right around the car tracks and came right back and went down the same sidewalk again; waited at Second Avenue and Union Street until a Broadway car came. As near as I remember, that was about 7 o'clock in the evening. I think that was on a Sunday night, I believe it was, because the general order of things seemed to be changed. At 7 o'clock he generally was not down to his office, so I believe it was on Sunday night.

Q. Had he gone into any place where he could get a drink on that night?—A. The only place, I believe, that he had been that night before going to the Federal building was the Rainier Club.

Q. Have you any notion whether liquor is served in that club to members?—A. I don't know.

Mr. McCoy. How is that, Mr.——

Mr. Preston. It is.

Mr. Hughes. Yes, sir.

Mr. McCoy. Do you know of any other occasion on which you noticed him when you thought he was under the influence of liquor?

A. There was one night that—the occasions were so frequent that it is hard to make any distinction between them except reference to the

notes, but on this occasion I remember when he got off. I know that although his condition was much better then than some of the times I have mentioned, he seemed to me to be under the influence of liquor, because of the condition of his eyes; they were bulged out seemingly, and he had difficulty in keeping awake all the way from the city; and that night he got off the car at John Street on the Broadway line. He went north on Broadway from John to Republican Street, I think it was; then he went west on Republican Street and north on Republican; on the west side of Republican, and entered a residence about half way between the blocks—between Republican and Mercer, I believe it is; and that same evening he—after leaving there—I think that it was just the dinner hour when he was there—and on going to the city again he went to the Rainier Club.

Mr. HUGHES. You mean he went from this residence back to the city; is that what you mean?

A. Yes; from the residence on Harvard Avenue north of Republican Street. Then he went back to the city. I don't remember whether he went to his office first or not, but I remember quite distinctly that he went to the Rainier Club that night; whether it was directly from the residence or directly from his office, that I can't remember now, and that was also on one of the occasions that I have referred to when he went to three bars, I believe it was the Bronson, the Rathskeller, and the Savoy bar, after he left the Rainier Club at midnight.

Mr. MCCOY. Well, what was the rest of the observation at that time?

A. Well, that was the night I have reference to, that he walked home. It was not raining that night, but he walked the entire distance from the city to his home, and his condition was not as bad that night as the night that I mentioned when it was raining, but——

Q. (Interrupting.) Well, describe what it was.—A. Well, his general demeanor was—it was hard to tell from his general demeanor whether or not he was intoxicated. His walk was slower than it usually is, and following him all the way home I had a chance to see just what his condition was by observing him very closely, but one that was just passing by perhaps would not notice it at all, that there was any difference in his condition; but as to the state of his intoxication that I would not care to say, because I don't know whether he was badly intoxicated or not. He kept up pretty well, excepting for the fact that he walked home. I didn't know why he should undertake to walk home after the midnight hour, except that it was that he might want to avoid being seen on a car at that time of night in that condition. He might have felt his condition more than I could see it.

Q. Well, if you have any other time in mind when you thought you saw Judge Hanford under the influence of intoxicants, let us have that.—A. I can't remember any occasions that he was intoxicated, or seemed intoxicated. There may have been other times, according to the reports that I made, but I can't remember them at the time.

Q. Were these visits in the afternoon just before the dinner hour to these saloons that you have mentioned a matter of daily, or almost daily, occurrence while you had the judge under observation?—A. Yes, they seemed to be a matter of established custom; there may have been once or twice while I had him under observation that he did not go to those bars during the dinner hour, or just before going

home to dinner, but it seemed to be an established rule with him that he would go to these places.

Q. How often did you ride in the car with him—that is, did you do it frequently or only once in a while?—A. No; it was a daily occurrence so long as I was shadowing him.

Q. You mean you rode in a car with him every day?—A. Yes, sir.

Q. Well, when he was apparently under the influence of intoxicants?—A. Yes, sir.

Q. Were there other occupants of the cars on these different occasions besides yourself and Judge Hanford?—A. There was only—there were quite a number of people in the car, as a rule, but only one whom I knew, and that was the party that was with me shadowing him.

Q. Was Judge Hanford's condition a matter of comment on the part of other passengers in the car than yourself and your companion at any time?—A. I don't remember of hearing anyone pass a comment on it. In fact, we never did ourselves, because it was something that we did not care to discuss; we did not care to make ourselves conspicuous by speaking of it.

Q. Where is Judge Hanford's residence?—A. I believe the number is 1503 Tenth Avenue north.

Q. Have you now narrated all the occasions when you saw Judge Hanford when you thought he was under the influence of intoxicants, that you can remember with any degree of detail?—A. Yes; I think I have.

Q. You spoke of a house on Harrison Street; was that house Judge Hanford's residence?—A. It is not where he resides.

Q. How often was that, during the time you had him under observation, did he go there?—A. How many times, did you ask me?

Q. Yes.—A. That I can not say without referring to my former records.

Q. I am not asking you to do that. Did he go there on several occasions?—A. He did.

Q. A dozen?—A. To my knowledge he might have gone that many or more times; I will not say definitely.

Q. Well, of course, "might have"——A. (Interrupting.) I think it was at least that many times, to my knowledge.

Q. At least a dozen times?—A. I think so.

Q. That you saw him go there?—A. Yes, sir.

Q. Well, now, just explain, tell all about it, tell us all about these visits to this house on Harrison Street.—A. The nature of the calls from observation on the outside, were seemingly the same, excepting that the hours of entering and leaving were different. Sometimes he would enter a little after 8 in the evening, and his hours of entering would vary from 8 p. m. to 11.15 p. m., which is the latest that I have seen him enter.

Q. What about the hours of leaving?—A. The hours of leaving varied from, well—I should say 9 p. m. until 2 o'clock a. m.

Q. Tell all that you observed in a general or specific way; just tell the story as you please.—A. Before the judge would enter the residence at 1008 East Harrison Street I noticed that it was a rule to keep one of the blinds on the south side—a sort of a bay window there—as a rule to keep that blind raised just a few inches, perhaps 6 or 8 inches.

Mr. McCoy. Do you mean a blind or a shade?

A. A shade, a window shade, and when the judge would come up to the porch, walk upon the porch, he would give a couple of raps on the glass window, as a rule, on the door, on the glass in the door.

Mr. Hughes. How is that?

A. He would rap on the glass in the door. There is a glass window in the door, and the door was opened by a woman, and without any words, so far as I know, and at times I was right near by, just a few feet from him, I suppose, at the time he entered, and I do not remember of ever hearing any words passed while they were in the doorway; and after the door was closed immediately the window shade would be lowered so that there was nothing to be seen from the street. That was an established rule that the curtain always went down immediately after the judge entered the door. And after the judge left the house the curtain would rise about the same number of inches that it was before he came in. After leaving the place sometimes he would go home, if it was real late, at other times he would go down to the city.

Q. Well, have you anything else to state in a general or specific way about what you observed there.—A. From the outside there was nothing more to observe.

Q. Did you ever take a photograph of Judge Hanford coming out of that Harrison Street house?—A. Yes, I did.

Q. When was that?—A. It was one night in October; I don't remember the exact night, but I believe it was the 17th of October.

Q. At what hour had he gone into the house on that evening?—A. At 8.40 p. m., I believe it was.

Q. And what time was this photograph taken?—A. Twenty minutes past 10.

Q. I show you a photograph, and I will ask you is that the one which you refer to [showing]?—A. Yes, sir; that is the photograph. I refer to the upper one there.

Photograph is marked "Exhibit No. 26."

Q. What was it; was it a flashlight photograph?—A. Yes, sir; a flashlight.

Q. I show you this Exhibit No. 26. Is that the photograph of Judge Hanford on the front steps of that house?—A. Yes.

Q. And back of that is a photograph of a woman. Is that the woman who occupied the house?—A. I believe it is; yes, sir.

Q. Did you ever see her outside the house?—A. Yes, sir; several times.

Q. With Judge Hanford?—A. Yes, sir; that is, I have seen Judge Hanford on the street with her, I think on two occasions; I am not sure as to more than that.

Q. Describe those occasions.—A. One was on a Sunday afternoon; they met as though by appointment at the corner of Eleventh and Aloha, which is about half way between his residence and her residence. They walked up to Volunteer Park and went through the park, through the south end of the park.

Q. What is Volunteer Park; is that a public park in the city?—A. That is a city park; yes. They walked through the park and went down to Nineteenth Avenue, where they boarded a car southbound; it was about half past 2 in the afternoon.

Q. Sunday, did you say?—A. Sunday afternoon. And the woman was heavily veiled; I did not get to see her face so as to be able to identify her; and they got off the car at East Union Street, at Nineteenth Avenue; they walked east on Union Street to Twenty-third Avenue, where they stopped, as though waiting for the Twenty-third Avenue car, but they continued on in a few minutes and walked south on Twenty-third Avenue, and they stopped at Cherry Street, where the judge bought some candy and went in there at the drug store on the corner, and they continued south on Twenty-third until they were down below—well, they were below Jackson Street. I am not very familiar with the streets below Jackson Street. They were a couple of blocks south on Jackson Street, and they walked eastward along the car line and then continued south. I don't know just what the street is; I think it must be Twenty-sixth or Twenty-eighth, or somewhere along there. They waited there a few minutes and took a car going north, the East Union and Yakima Avenue car. The judge got off the car at First Avenue and Union Street, and the woman got off the car at Fourth Avenue and Pike street. She went back to the Union Bakery between Second and Third, on Pike Street, and bought some pastry, and then she went to Second Avenue and took the car, the Broadway car, and went up to Harrison Street and went home. That was the first time that I knew where she lived.

Q. Did Judge Hanford go there that evening?—A. I think he did. I think the record will show that he went there that evening.

Q. Did you see her on any other occasion in his company coming out of her own house?—A. Well, there was one night—it was in October, I believe—when the judge went down to the Harrison Street residence, the woman's residence, and after remaining inside for about five minutes they came out together; they boarded the Broadway car, inbound, at Harrison Street and got off at Second Avenue and Pine Street, I think, and walked—yes, they walked north to the Moore Theater, located on Second Avenue up above the Washington Hotel. They entered the theater; the judge had bought the tickets that evening before he went home; it was about 6 o'clock; so they went directly into the theater and were seated by the usher. They sat on the left-hand side part of the house about 10 or 12 rows from the front, I should judge. And after the show was over—during the show, however, they spoke to one another on two occasions that I know of. Beyond that I could not say; but I remember that they spoke to one another twice, and when they left the theater they left through the north automobile entrance, where they have the taxicabs and automobiles, on the north side, and they walked east to Third Avenue and down Third to Pine Street, where they stopped for about a half a minute or a minute, as though they were trying to make up their minds just where they would go; then they continued east on Pine Street, walked up Pine up to Belmont, I believe it was, up one of those streets, and continued north until they got up to Thomas—John or Thomas, along there—it was dark and I did not pay much attention to the streets—over to Broadway and then north to Harrison and then east on Harrison to her residence, and I think that night he remained after he entered the residence—it was about, oh, it was after 11 p. m. considerably—I think he remained in there about 40 minutes after that; he left there sometime after 12 o'clock, at which time he walked home.

Q. Did you ever see Judge Hanford go into that house by daylight?—A. No; I have never seen him enter there in the daytime.

Q. Were those two occasions, now, the ones which you just spoken of, the only times when you have seen Judge Hanford and this woman in company outside of her residence?—A. No; there was one time, I remember now, that he left the Federal building about, I do not remember whether it was 2 or 3 o'clock, along in the afternoon somewhere; walked south on Second Avenue, went into Shaw's pharmacy, I think it was, or Stokes's candy parlors, bought some candy, and then he went south to Yesler Way and went into the interurban office at Yesler Way and Occidental and purchased some tickets, and as he went out to the car I saw him meet this woman. She was seemingly waiting for him at that point. They boarded the local train, the interurban train that runs between here and Tacoma, sat in the rear car, in the very end seat in the rear of the train, and they got off at Willow Junction, a little point down between here and Tacoma—it is just a few miles this side of Tacoma. They waited for quite a period, and that night I discontinued from the time the northbound interurban train went to Seattle, for there was a junction point there and no one there and I did not care to put myself in a position where I would be of no value on the work later, and I did not care to embarrass or humiliate the judge in any manner and I did not care to remain there any longer owing to the fact that I was the only one there besides them; but I heard the woman come in and inquire at the little station what time the car would go to Puyallup.

Q. To where?—A. To Puyallup.

Q. Where is that?—A. That is south from Willow Junction.

Q. Those three occasions are the only three on which you saw Judge Hanford and this woman in the society of each other outside of her house. Is that right?—A. That is correct. To my recollection now I do not think there were any other times that I saw them together outside of the residence.

The CHAIRMAN. Do you wish to ask the witness any further questions, Mr. Hughes?

Mr. HUGHES. Mr. Dorr will.

The CHAIRMAN. Proceed.

CROSS-EXAMINATION:

Mr. DORR. Mr. Nordskog, your initials are N. L., are they not?

A. A. A.

Q. Then your three initials would be A. A. N.?—A. That is correct.

Q. And this report [reading], "Private 60, operator A. A. N.," would be your report?—A. I think so; yes, sir.

Q. Other operators all have different initials?—A. Yes; so far as I know.

Q. If I understood you correctly, your employment on this case commenced immediately after the Dreamland Rink meeting. Do you remember that occasion; don't you?—A. I remember the occasion; but, as I stated, I believe it was about the 28th of August that I began.

Q. And you continued, I think, for two months you said?—A. That is, not continuously.

Q. Off and on?—A. Yes; during different times I was on——

Q. But the service was all performed within about two months?—A. Yes.

Q. And during that time that you were on this job, as you call it, shadowing Judge Hanford it was your daily custom and practice to keep track of him during the entire time?—A. Yes, sir.

Q. You would start in from the time in the morning that he left his home, and you would not leave him until he returned to his home in the evening?—A. Yes, sir.

Q. Or at night, whatever time it was?—A. Yes.

Q. That is correct, is it?—A. Yes.

Q. So that you practically had an opportunity and you did note his daily habits?—A. Yes.

Q. How much of those two months, Mr. Nordskog, were you actually engaged in this work?—A. I believe that the record there shows that I worked 36 days all told.

Q. Twenty-six days all told?—A. Thirty-six.

Q. Now, with reference to the last matter which you have been testifying about, I want to ask you a few questions along that line, and I will do that first; that is, the residence which you have given, I believe, as 1008 East Harrison Street?—A. Yes, sir.

Q. That is the residence where you took the flashlight picture and where you saw Judge Hanford enter on several occasions?—A. Yes, sir.

Q. Do you know who lives there?—A. I don't know of my own knowledge.

Q. You do not know—do you know whether this residence is in a respectable portion of the city?—A. I do.

Q. It is within the residential district?—A. Yes.

Q. Among the best residential districts in the city of Seattle?—A. Yes, sir.

Q. That is correct, is it not?—A. So far as I know.

Q. And you do not know that other persons live in this house except the lady, and were living there all those times?—A. Do you mean in that apartment?

Q. Yes.—A. I did not know it.

Q. Don't you know that the lady's sons were living with her, grown sons?—A. I do not.

Q. You don't know that—I believe you said, at least I so understood you, that you have seen this lady with Judge Hanford in public three times.—A Yes.

Q. Once on a Sunday afternoon?—A. Yes.

Q. Where they walked through Volunteer Park first?—A Yes.

Q. Now, I want you to explain to the committee, if you will, where Volunteer Park is situated and what kind of a place it is —A Volunteer Park is located in the northern—on the north end of what is called Capitol Hill, a residential district; it is almost directly east from the residence in which Judge Hanford lives; it is one of the city's finest parks, a respectable park

Q And is it not one of the parks that is most frequented?—A. Yes, sir.

Q It has a music stand there?—A. I do not know; I have not been there.

Q. Where band concerts are held every Sunday?—A. Yes; I believe so; I have not heard them.

Q. And it has a great many beautiful attractions, has it not?—A. Yes.

Q Including the standpipe which surmounts the highest portion of the city and affords the best view of the city?—A I believe it is; I do not know the fact.

Q. And it also has a great many beautiful flowers and other park improvements?—A. Yes, sir.

Q And it is frequented by a great many people on Sundays, especially, is it not?—A So far as I know.

Q It has been while you have been there?—A. Well, it is very seldom I have been there. I have, perhaps, been in Volunteer Park five times in six years.

Q What was the condition of the attendance this particular Sunday which you mentioned?—A There were not very many people in the south end of the park, at any rate.

Q. But there were some people there?—A There were some people there.

Q. What time of day was it?—A. A little after 2 o'clock in the afternoon.

Q. People coming and going?—A. Well, I saw more people coming than I did going at that time

Q. And that park is located in a portion of the best residential district in the city of Seattle, is it not?—A Yes.

Q. How large is it?—A I don't know how many acres it covers.

Q. A fairly good-sized park?—A. Yes, sir; by blocks I could tell more nearly, but I don't know that that is essential at all.

Q. Well, would you say that there is 100 acres or more or less?—A. I don't think it is 100 acres

Q. Forty acres?—A. Well, I should not care to state at all, because it is something I don't know. I don't know that I ever read it, even.

Q. It is all highly improved, is it not?—A. So far as I know.

Q. Now, on that day how much of the time did the judge and the lady spend in the park?—A. As I stated before, they just walked through the park; they did not stop there.

Q. Did they look at the flowers or any of the attractions in the park?—A. Presumably, in a passing manner; that is all I could note.

Q. It was just a casual Sunday afternoon walk?—A. Just a stroll through the park.

Q. For the gentleman and lady?—A. Yes.

Q. Did you see anything improper in that?—A. Nothing at all.

Q. That occurred, I believe, on the 26th day of September, 1911?—A. You refer to that date?

Q. Yes.—A. I can't say as to that; if you have the records there you will know it.

Q. When I am asking you the question I am looking at your report of that day and I take that to be the Sunday which you referred to; about that time?—A. Yes; if that is what the report states there, of course, it is no doubt true.

Q. Regardless of the date, after they had walked through the park they boarded the car and went down town?—A. No; they went—they walked after they left the Nineteenth Avenue car.

Q. And went out to the south part of town?—A. They walked out Twenty-third Avenue down to the southeast portion; down toward Mount Baker Park.

Q. They were taking a long walk?—A. Yes; it was a long walk.

Q. And then they went down to the business section and, I believe you stated, patronized a confectionary store?—A. She did.

Q. I understood you to say that the judge bought somethnig down there.—A. No; that was at the corner of Twenty-third and Cherry.

Q. Some refreshments?—A. It was a drug store; I believe he bought some candy there.

Q. After that she patronized a bakery or a place where they sold foodstuffs?—A. Yes; that was the Union Bakery.

Q. And then she went home?—A. Yes.

Q. And where did the judge go?—A. As to that I can not say definitely. Mr. Oleson at that time was with me and he went with the judge.

Q. And you saw and know nothing improper on that occasion, did you?—A. Nothing at all.

Q. Nothing to criticize?—A. Nothing at all.

Q. You were instructed to find any evidence you could against Judge Hanford, were you not?—A. Yes, sir.

Q. That was what you were sent out for?—A. Yes, sir.

Q. Now, I want to ask you about the theater part, or the occasion that they attended the theater; what theater was that?—A. The Moore Theater.

Q. How does the Moore Theater stand in this city, as to grade; is it a high-grade or a low-grade theater?—A. Well, according to my knowledge of it, it stands as second class now; it is one of the high-grade theaters.

Q. It is one of the leading theaters?—A. Yes.

Q. And until one or two others were opened here lately it was the leading theater?—A. I think so.

Q. It is regarded now as one of the leading theaters?—A. Yes.

Q. And is attended by respectable people?—A. Yes.

Q. What was the play, do you remember, that was put on at the theater?—A. Baby Mine.

Q. Is it an opera?—A. Yes.

Q. A comic opera?—A. Yes.

Q. And you say you saw the judge buy the tickets?—A. Yes.

Q. Before dinner?—A. Yes.

Q. And later you saw him go to 1008 East Harrison Street?—A. Yes.

Q. He went in and stayed there about five minutes?—A. Approximately.

Q. And he and his lady friend came out together and went to the theater?—A. Yes.

Q. And I believe you said that you saw them speak to each other at least twice during the performance?—A. Yes.

Q. In other words, they were interested in the play?—A. No doubt.

Q. Sir?—A. No doubt they were.

Q. Did the lady wear a veil at that time?—A. Well, I think she did; yes.

Q. A heavy black veil?—A. No; I think it was a light veil—a white veil.

Q. While she was in the theater?—A. No, sir; she took her hat off in the theater.

Q. She didn't have her hat on even?—A. No.

Q. Now, sir, did you see anything improper in this theater attendance?—A. None whatever.

Q. None whatever. Well, after the theater where did they go?—A. They walked home to her residence.

Q. Walked all the way up?—A. Yes.

Q. How far was that?—A. I should judge from the Moore Theater to her residence it is a little over a mile.

Q. Now, when was that with relation to the Sunday that they were together in the Volunteer Park?—A. This was later.

Q. How much later?—A. Oh, I can't say without referring to the records.

Q. Give your best recollection.—A. It might have been two or three weeks.

Q. Two or three weeks later?—A. If I am not mistaken, the night they went to the Moore Theater was the 12th of October.

Q. The 12th of October?—A. I believe so.

Q. Now, Mr. Nordskog, the other time related to a Sunday afternoon trip on the interurban street-car line?—A. Yes, sir.

Q. As I gathered if from what you said?—A. Yes, sir.

Q. Is that correct?—A. It is.

Q. Was that at some distant date from these other two occasions, or was it approximately near it?—A. I don't remember just what time that was, whether it was before or after the time they were seen at the theater together.

Q. It was not on the same day?—A. No; it was not.

Q. As either of the other occasions?—A. No; it was not.

Q. And it must have been on another Sunday than the Sunday on which they were together in Volunteer Park?—A. If I am not mistaken, yes; I am quite certain—I am basing my contention now on the fact that Mr. Oleson had discontinued operating with me at that time, and Mr. Staples was with me at the time that he went to Puyallup.

Q. On this occasion, when they took the street-car trip, did you go with them all the time?—A. I did as far as Willow Junction.

Q. You started that morning with the judge?—A. I don't remember what time I started in the morning with him.

Q. You were shadowing him before—before he went to 1008 East Harrison Street?—A. Well, on that day I don't remember—I don't think he went to that residence prior to going to Puyallup.

Q. That was on October 15, wasn't it, to refresh your recollection from your records?—A. I could not say unless I referred to them myself, because it is indefinite and I don't know. [Here the records are handed by Mr. Preston to the witness.]

Mr. PRESTON. He says that October 15 is the correct date of the Puyallup trip?

The WITNESS. Yes.

Mr. DORR. How did they come down from the residence on that day; by street car or otherwise?

A. I did not see them together until they—until he arrived at the interurban station at Occidental and Yesler Way.

Q. And that was where?—A. That was where I first saw her.

Q. He bought the car tickets and they went out on the interurban and you went along?—A. Yes.

Q. You went out, as I understand you, with them to the junction?—A. Yes, sir.

Q. And they were there until about the time the train left for Puyallup?—A. Yes, sir.

Q. Puyallup is quite a large place—it is betewen here and Tacoma, is it not?—A. I don't know as to the exact size—I have stopped off there between trains.

Q. It is quite a little town?—A. About five or six thousand people is what they told me at the time.

Q. It is a town of about five or six thousand people?—A. Yes.

Q. And they were apparently going to Puyallup?—A. Yes.

Q. Now, this was on the regular train that goes every hour or less from Seattle to Tacoma, was it not?—A. Yes.

Q. And how many people were on that train, or was there more than one car?—A. Yes, sir; on the Seattle and Tacoma local train there are two cars—the limited is only one car.

Q. This was the local train?—A. Yes.

Q. And stopped at the junction?—A. Yes.

Q. How many people were on the car with Judge Hanford?—A. As to the exact number it would be hard to tell, except just a rough estimate. There were perhaps 50 or 60 people on the car—that is, that might be more than there were. The car was full so far as the seats were concerned.

Q. And it was the regular Sunday afternoon train?—A. Yes.

Q. Nothing in that occasion which was improper in your judgment, was there?—A. Not so far as I could see.

Q. You know that Judge Hanford is a widower, don't you?—A. I have heard so.

Q. You knew that all the time?—A. Well, it was not clear in my mind until after the operations were over.

Q. Well, you know it now?—A. That is a matter of information.

Q. Well, that is your information?—A. Yes.

Q. Now, Mr. Nordskog, as far as you observed, and everything which you saw and know, are you prepared to testify that there was anything done or any act performed on the part of Judge Hanford that was improper with his relations to this lady?

The CHAIRMAN. I do not think we would care for his judgment in reference to that.

Mr. HIGGINS. I understood Mr. Dorr to ask him whether there was anything that he saw.

Mr. DORR. I asked him if there was anything that he saw that was improper on the part of Judge Hanford in his relations toward this lady.

The CHAIRMAN. Well, that implies his conclusion. I do not think the committee would care for his judgment. Let him tell any facts that he knows.

Mr. HIGGINS. He is asking anything that he saw. I think you misunderstood Mr. Dorr's question.

The CHAIRMAN. I don't think I do; I am inclined to think you do. His question implies the judgment of the witness, doesn't it?

Question is repeated.

The CHAIRMAN. Does not that require his judgment as to whether anything was improper? The Chair thinks it does very clearly.

Mr. HIGGINS. Let me ask him a question. Did you see anything improper in the relations between Judge Hanford and this lady?

Mr. MCCOY. I want to suggest now that this was the most disagreeable subject for the committee to have to touch upon. The committee has conferred about it several times and, perhaps, as you have observed, they conferred about it right here a few minutes ago, and the committee voted unanimously to go into it, and the disagreeable duty was put up to me of asking the questions as I had started with the witness. Personally I do not want to perform any more of the disagreeable duty. I only suggest to Mr. Dorr that this opens up a further line of questioning which I shall follow up if it is persisted in

Mr. DORR. I am willing to leave it as it is.

Mr. HIGGINS. I want an answer to the question that I asked, because I intended to ask it at some time, and it might as well be put in now.

Mr. DORR. I am not desiring to curtail any member of the committee who might desire to go into this matter, but I do not wish to pursue the subject any further in opposition to any member of the committee.

The CHAIRMAN. The Chair does not consider this witness's judgment as to what is proper or improper is of any particular value to this committee, but Mr. Higgins desires him to answer the question now and he can answer it.

The WITNESS. Will you please state the question.

Mr. DORR. Before leaving the subject I would like to ask the witness a question.

The CHAIRMAN. There is a question that was asked by Mr. Higgins which the witness has not yet answered.

Question repeated to the witness again as follows:

Mr. HIGGINS. Did you see anything improper in the relations between Judge Hanford and this lady?

A. I did not.

The CHAIRMAN. Mr. Dorr, you had not finished your examination.

Mr. DORR. No, I have not quite finished.

The CHAIRMAN. Are you going off on another branch?

Mr. DORR. As soon as I ask one more question on this branch then I want to go onto another branch.

The CHAIRMAN. Proceed.

Mr. DORR. I want to ask you, Mr. Witness, whether on the occasion that Judge Hanford and his lady friend took the interurban trip; if a young man was not with them; one of her sons.

A. I saw no one except the judge and the woman; I know positively that they had no one with them at Willow Junction.

Q. You did not see any young man with them?—A. I did not.

Q. Now, I want you first to fix another date; I want to ask you now if you are not able to fix the date of the Volunteer Park episode as of the 24th day of September, 1911 [showing document to witness].—A. Yes, sir; that was the date.

Q. That is correct?—A. Yes, sir.

Q. On Sunday?—A. Yes, sir.

Q. In examining those reports, or what purports to be copies of your reports, unless I am mistaken, the first mention of any drinking on the part of Judge Hanford occurs on the 22d day of September, 1910 [showing report to witness].—A. What is that, did you say?

Q. I say the first record that I find in examining these reports hurriedly, and I have only had time and opportunity to go over them very hurriedly, is where you mention anything concerning Judge Hanford's drinking liquor, it occurs on the 22d day of September, 1911. Now, I take it for granted, without questioning you at length on that subject, that you noted down in those reports all important items.

The CHAIRMAN. Just ask him the question, Mr. Dorr; don't take anything for granted.

Mr. DORR. I will ask you then whether you did note down in these daily reports all important facts and items which came to your attention concerning the judge.

A. Yes, sir.

Q. Now, if you had observed him visiting saloons at any time you would have noted it.—A. Yes, sir.

Q. And unless those occasions are noted in these reports, then, they did not occur under your observation?—A. That is right.

Q. Now will you turn back to the very first report you made [showing], what is the date of that?—A. August 28.

Q. That is the first day's report, isn't it?—A. I think it is, yes, sir.

Q. Now observe by this report—well, I would like to ask the witness to read that report.

The CHAIRMAN. No, the committee will object to that. We do not care to encumber the record with that report.

Mr. DORR. Very well—I will ask you, Mr. Witness, with respect to the memorandum which you have made here concerning a lady who wore a black hat with a large plume on it; do you know who that lady was?—A. I do not recall the occasion; if you would state on what occasion that was and where she was I might be able to state.

Mr. DORR. Well, that is stated in your report as follows—I am just reading enough to call the witness's attention to it—"The subject"—that means Judge Hanford, I suppose.

A. Yes.

Q. (Reading:)

with a tall, blond woman and a boy about six years old came out to the street 9.20 a. m. and boarded the car; lady wore a black hat with a large plume on it and blue water silk suit, and sat in the car with the subject—

Do you know who that lady was?—A. I do not.

The CHAIRMAN. What difference does it make; do you think there is anything discreditable in that, or that anybody would think there was?

Mr. DORR. I should not think there was, Mr. Chairman.

The CHAIRMAN. Then what is the use of asking him that?

Mr. DORR. I can not understand why a good deal of the evidence that went in was allowed to go in unless it is intended to in some way reflect on Judge Hanford.

The CHAIRMAN. That evidence is not in; it is not worth going in. You can rest assured, I think, that the Judiciary Committee of the House has a considerable amount of sense, and that circumstance is

not discreditable unless it is something of value and I hardly think it is worthy of putting it in the record, it seems to me.

Mr. DORR. Very well.

The CHAIRMAN. There is a great deal in that report that this committee thinks would not add anything to the value of the record. I suppose that this young man thought it his duty under his employer's instructions to note every little circumstance, such as that the judge went to church and occupied the front pew, it would be his duty to record that fact, but I do not see how it would help the record any.

Mr. DORR. But if he so considered it his duty and put it in there, in reading these reports it appears to us at least in connection with this case the object for which that evidence was introduced, that a statement of that kind, unexplained, might impute some motive——

The CHAIRMAN. That statement is not in the record at all, or at least it was not in it until you put it in.

Mr. DORR. And may I assume that it is not going in?

The CHAIRMAN. If you are willing to have it stricken the committee would have no objection.

Mr. DORR. I mean in regard to these reports——

The CHAIRMAN. Certainly; indeed you may.

Mr. DORR. That these reports are not to be in there?

The CHAIRMAN. Indeed you may safely assume that.

Mr. DORR. Then that changes the entire aspect; if these reports are not to be introduced.

The CHAIRMAN. Before they go in you will have notice of it.

Mr. DORR. I had been examining him on the theory that this was going in.

Mr. HIGGINS. They are not to be made a part of the record.

Mr. DORR. I did not so understand it; I assumed that they were to be from the way they were identified.

The CHAIRMAN. Mr. McCoy told you, at least I think so, that in examining the witness that he did not use the record for the very purpose of avoiding the necessity of putting it in our record. I am glad that you mentioned this now, though, in this way, if you had the thought of examining him with reference to everything that is in that report. I hope you will please confine yourself to the matters which Mr. McCoy brought out.

Mr. DORR. Your statement has now cleared the matter very materially for us.

The CHAIRMAN. Then, this interruption did some good?

Mr. DORR. Yes; I think so; and I thank you.

Q. How many times during this 36 days did you see Judge Hanford in any of these drinking places—what proportion of the days?—A. I beg your pardon?

Q. What proportion of the days?—A. The report will show exactly the number of days, but offhand I should say it was at any rate three-fourths of the time.

Q. Three-fourths of the days that you were engaged in shadowing him?—A. Yes, sir.

Q. Now, was his daily habits about the same when these occurred.—A. Yes, sir; just about.

Q. That is, starting from his home in the morning let us follow him down, if you will, and tell me what his daily habit was; what

time would he leave his home?—A. Generally left home about anywhere from 8 o'clock to 9.30; sometimes it might be a little later.

Q. Then, would he go directly to the Federal building?—A. As a rule.

Q. Did he walk or ride?—A. He would ride from the vicinity of his home to Third Avenue and Pike Street, where he would generally get off the Broadway car and walk down to the Federal building.

Q. Didn't he frequently walk the entire distance down?—A. I do not remember that he did at any time.

Q. Then he would go to his office, or his chambers, in the Federal building?—A. Yes, sir.

Q. And then at 10 o'clock open court.—A. I could not say as to that; I presume that he did.

Q. Didn't you attend the court session?—A. On two occasions I was in his court room.

Q. And what time would he leave the Federal building?—A. About 5 o'clock.

Q. And then where would he go?—A. To the Rainier Club.

Q. Then, it would be later in the evening that you saw him go to the Saratoga and those other bars?—A. Yes, sir.

Q. But didn't he habitually leave his office at a later hour than 5 o'clock, Mr. Nordskog; was it not nearer 6 than 5?—A. No; I can't say that it was; it might have been on some occasions, but I believe, from my recollection, it was nearer 5 than it was 6; it might have been between 5 and 5.30 as a rule; I think in some instances 5.35 or 5.37 and along about that hour.

Q. Half-past 5, or later, as a rule, wasn't it?—A. Yes, sir.

Q. You know that court was in session until 5 o'clock.—A. I presume it is sometimes.

Q. And then he would go down to the Rainier Club, and stay there how long?—A. Sometimes 20 minutes, sometimes half an hour, and sometimes an hour; it varied.

Q. And you did not go into the club?—A. No, sir.

Q. So you know nothing about what occurred there?—A. No, sir.

Q. When he left the club you say he would go down to Second Avenue?—A. Yes, sir.

Q. And on those various occasions when he did frequent the bar he would go to the Saratoga?—A. As a rule that is where he went first.

Q. And take a sherry and egg?—A. Yes, sir.

Q. That was his usual custom?—A. Yes, sir.

Q. And then you say on some occasions he also visited the Sutherland and the Butler?—A. Yes.

Q. The Butler is a café, is it not?—A. No, sir; I don't believe that bar is a café.

Q. It is back of the lobby in the Butler Hotel?—A. Yes, sir.

Q. In the hotel part?—A. Yes, sir.

Q. Connected with the café?—A. I don't know that it is.

Q. You don't know that—and then he would go home?—A. Yes, sir.

Q. Take the car at the corner of Second and Cherry Street?—A. Second and James.

Q. James Street?—A. Yes, sir.

Q. And go to his home, and then what would he do after dinner?—A. Well, as I have stated before, on several occasions he would leave home, sometimes he would go directly to the city, and sometimes to 1008 East Harrison Street.

Q. Didn't he usually go back to the Federal building?—A. I can't say as to that; I believe he went back to the Federal building on a couple of occasions.

Q. Is that all that you can remember?—A. That is all that I can recall now.

Q. He would go back there to work?—A. Presumably.

Q. And you knew that by the light being turned on in the office?—A. Yes.

Q. Now, what time would he leave the Federal building?—A. Oh, on one occasion I have reference to he left about 9 o'clock, the night he went to the Alhambra Theater, to the McCormack lecture.

Q. That is the night, I believe you stated, that he was in the worst condition you ever saw him.—A. That was one of the nights; yes, sir.

Q. And that was on the trip down from his residence down town.—A. Yes, sir.

Q. In the evening, if I understood you correctly, and he was in a worse condition when he came down, for sleepiness or drowsiness, than when he went out?—A. Yes.

Q. You were on the car with him coming down and going out also? A. Yes, sir.

Q. He went to his office and worked there a little while, or stayed there a little while?—A. Yes.

Q. And then about 9 o'clock he went to the Alhambra Theater?—A. Yes, sir.

Q. What was the occasion at the theater that evening?—A. That night?

Q. Yes.—A. I knew nothing of the meeting until I arrived there, but I learned that it was a meeting under the auspices of the medical association.

Q. The same meeting which Mr. Oleson testified about?—A. I think so.

Q. Mr. Oleson was with you this evening?—A. Yes, sir.

Q. That was the same occasion that he spoke of then?—A. Yes, sir.

Q. Now, can you tell us—can you tell this committee some of the prominent people that you referred to that were on the platform that night—on the stage?—A. I believe that Judge Albertson, if I am not mistaken, was the chairman of the meeting that night, and Dr. McCormack, whom I have known here for a number of years, he was there.

Q. A medical doctor?—A. Yes, sir.

Q. Judge Albertson, one of the judges of the superior court of this city?—A. So far as I know, yes.

Q. And who else?—A. And the Rev. Dr. Matthews was on the platform.

Q. He is one of the leading churchmen of the city of Seattle, is he not?—A. Yes.

Q. Now, go ahead.—A. And Judge Burke.

Q. Who is Judge Burke?—A. He is a retired judge, as I understand it, the one who ran for the senatorship last time.

Q. He is also one of the leading citizens of the city of Seattle, is he not?—A. Yes, sir.

Q. Please mention some more, if you can?—A. I can not recall any others at the present time. There were—I remember distinctly that there were quite a number that I knew on the platform, but I can not recall now who they were.

Q. Did any of them address the meeting except Judge Hanford; that is, aside from the principal speakers?—A. Dr. McCormack, he was the stranger.

Q. He was a stranger here?—A. Yes.

Q. The rest of the gentlemen were local men?—A. Yes.

Q. Did any of those other gentlemen address the meeting except Judge Hanford?—A. I believe Dr. Matthews addressed the audience while I was there; we came in after 9 o'clock.

Q. Did he precede Judge Hanford or did he follow him?—A. As to that I could not say.

Q. Who introduced the speakers that evening?—A. I believe it was Judge Albertson.

Q. How long did Judge Hanford speak?—A. I believe he spoke about five minutes.

Q. Was the house well filled or otherwise?—A. Yes, there was no standing room, hardly.

Q. What kind of an audience was it, as to character of the people that were there?—A. I would say that it was a very intelligent audience.

Q. Now, after the meeting adjourned Judge Burke and Judge Hanford walked together to the Washington Hotel.—A. No, sir.

Q. Where did they walk, or who was it then that went with Judge Hanford to the Washington Hotel?—A. As I stated I do not know positively who the young man was, it was a young man about 25 years old.

Q. Judge Burke and Judge Hanford left the Washington Hotel together after that.—A. Yes.

Q. Was this a banquet given to Dr. McCormack, the visitor?—A. I believe it was.

Q. How many were there, if you know?—A. Well, from what I saw down in the banquet room, I believe—it would be hard to come anywhere near a correct estimate—anywhere from one hundred to two hundred people; I could not say definitely, I might be away off on that figure.

Q. And all those were people who had come out of the theater.—A. Seemingly so.

Q. Who had attended the meeting?—A. Yes.

Q. They were all doctors, except a very few, were they not, medical men?—A. As to that I can not say—do you mean doctors of medicine?

Q. Yes, sir.—A. Well, I know there was one doctor of divinity.

Q. Who was that?—A. Matthews.

Q. He was at the banquet?—A. Yes, sir.

Q. But the most of them were medical doctors?—A. As to that I could not say, for I do not know very many doctors in the city.

Q. How long did the banquet last?—A. As to that I can not say; the judge left about 12 or 10 minutes past 12, according to my recollection.

Q. They were probably down there a couple of hours?—A. Yes, sir.

Q. Were you present?—A. No, sir, I was not invited to attend.

Q. Now, in regard to these other saloons which you mentioned that you said Judge Hanford attended on one or more occasions late in the evening; how many times did you see him in any one of those other places after dinner, or how many times did you see him at any place after dinner during those 36 days?—A. I believe there was on three occasions on which I saw him enter the Bronson and I will name all those bars now collectively; the Bronson, the Rathskeller, the Savoy, and the Mission Bay; I believe that constitutes the number that he visited on three different occasions, going to three each time.

Q. Three of the four each time?—A. Yes.

Q. Do you know what he drank?—A. I beg pardon?

Q. Did you see him drinking?—A. Yes.

Q. One of those occasions was the night that President Taft was here, wasn't it?—A. I think not.

Q. Was there any special occasion, anything that was unusual occurring on those nights in the city? —A. Not that I know of.

Q. Did he go to those places alone or was he accompanied by anyone?—A. He was alone.

Q. Now, that would be late at night?—A. About midnight.

Q. On his way home after he had left the Federal Building?—A. After he left the club.

Q. After he left the club?—A. Yes, sir.

Q. After he left the Federal Building the nights that he went there did he go to the club?—A. As a rule he would.

Q. And sometimes he walked home and sometimes he went home on the car?—A. Yes.

Q. Are you able to state whether this drowsiness that you observed on the part of Judge Hanford on the street cars was due to intoxication; are you able to state that positively?—A. I think I am pretty well qualified to state.

Q. You think it was or was not?—A. I think it was.

Q. Did you ever see him drowsy on the cars when you had not seen him drinking?—A. No, sir.

Q. Sir?—A. No, sir.

Q. You never did?—A. No, sir.

Q. Did you ever see him drowsy on the bench?—A. No, sir.

Q. When he was holding court?—A. No, sir.

Q. At any of those times that you were there?—A. No, sir.

Q. Have you ever taken the pains or made an effort to inquire as to that characteristic of the judge?—A. No, sir.

Q. Do you know that under his habits he does not have a long time to sleep at home?—A. Yes, sir.

Q. And don't you know, Mr. Nordskog, that as a general rule Judge Hanford works in his office evenings until late?—A. I can't say that I do.

Q. The Rathskeller which you mentioned is one of the leading cafés of the city?—A. Yes, sir; that is, there is a café in connection with the establishment.

Q. All of those bars are respectable places?—A. I beg pardon?

Q. All of those bars are respectable places so far as you know—high class?—A. Yes.

The CHAIRMAN. That has been proved more than once already by this witness. Please avoid needless repetition.

Mr. DORR. The Savoy is the Savoy Hotel on Second Avenue.

A. Yes, sir.

Mr. DORR. That is all.

The CHAIRMAN. Anything further?

Mr. HIGGINS. Yes, I would like to ask a question.

Mr. McCOY (interrupting). Have you seen any men at any time going into or coming out of this Harrison Street house?

A. I have not.

Q. How many hours, altogether, would you say you have stayed where you could see the front door of that house?—A. That would be hard to estimate without looking at the records to find out how many times he had been there.

Q. What were your instructions, if you can tell us, in regard to this particular case, from your superiors?—A. Regarding what portion of the work?

Q. Any of it—what were you told to do? In other words, repeat what your orders were that were given to you, if any special orders were given to you.—A. I was told to watch all of the actions of the Judge, to see where he went, with whom he associated, to take the name of the place, the number of the house, the general character of the place if we could, and so forth.

Q. Were you told, in other words, to find out what you could against Judge Hanford?—A. I don't remember that that was ever said.

Q. You were asked whether or not you had observed anything improper in the relations between Judge Hanford and this woman who resides at Harrison Street; now just give the committee your understanding of what you took the meaning of the word "improper" to be in connection with that question.—A. Well, that was in my mind at the time that Mr. Dorr propounded the question.

Q. Well, what was it?—A. The thing that I had in mind was this, that he might even try to get from me an answer as to whether or not I had——

Mr. HIGGINS. I asked you a question, Mr. Witness, a little while ago and it only called for your observation.

Mr. McCOY. I would like to have the witness answer my question.

The CHAIRMAN. I think he should answer the question asked by Mr. McCoy.

Mr. HIGGINS. It wanted to be correctly stated—I asked him whether he observed anything improper?

Mr. McCOY. Mr. Dorr asked him that question as to whether he observed anything improper—now, you can answer my question, please, as I asked it.

The CHAIRMAN. Will you repeat the question to him?

The WITNESS. I understand it, I think.

The CHAIRMAN. Go on with your answer then.

The WITNESS. That he was trying to find out from me whether or not I had seen any improper actions on the part of the lady and the judge while they were together, and then the second thought that

came to my mind was that he was trying to find out what my personal opinion was regarding the late hours that the judge practiced in going into that residence at night. So I was at a loss to come to any conclusion, but those were the two things I had in mind when he asked the question.

Mr. McCoy. What did your answer comprehend when you answered Mr. Higgins's question?

A. In that respect I gave the judge the benefit of the doubt, that I had not seen any improper actions between the two of them—none whatsoever.

Q. Now, what do you mean or did you mean in the negative answer to that question?—A. I don't know that I answered it in the negative, but I think I get what you want.

Q. You answered that you had not seen anything improper, didn't you?—A. Yes, sir.

Q. What was your use of the word "improper" at that time when you answered that question?—A. Just as I have stated, that that was my interpretation of the question.

Q. Well, you have put two interpretations on the word "improper," now, which did you use, or did you use both in answering that question?—A. Let me explain now, Mr. McCoy——

The Chairman. Be as brief as you can, Mr. Witness.

The Witness. I will. The second answer that I gave, or the answer, or the second thing that I had in my mind would be merely my opinion as to the form of etiquette that was used in his going and coming so late at night, was that it would merely have been my opinion, and not as to whether or not it was improper; I could not tell to this committee that it was improper because I do not know whether it would be improper in your minds, so as to that I do not care to say, but as to the other fact I could say definitely that I did not see anything improper between the two of them.

Mr. McCoy. You were not asked or expected to answer any question as to what was in the committee's mind; the question was what was in your mind when you answered the questions; did you have the first interpretation of the word "improper" which you have mentioned, or the second interpretation, or both, when you answered in the negative?

A. I had the first in my mind.

Q. Now, what was the impression made upon you by those late visits to this house; of a widower to the house of this woman, whoever she was?—A. Well, the late hours that he kept at that house made me believe at the time that it must have been something besides an ordinary visit, going in there as late as 11.15 p. m., and coming out of there at 2 o'clock a. m. I was at a loss to see why he should make any visit at that hour. Of course if he had any business he would know about that.

Q. What you mean is that you would consider the relations were improper because of the lateness of the hour and the conditions under which he went there?—A. Yes, sir; that has come to my opinion now; that is what I thought you didn't want—that was the reason I didn't care to tell it.

Q. Now, in Mr. Dorr's examination of you, he stated that the first date in these reports upon which there appears to be any memorandum of Judge Hanford's having gone into saloons to drink, and

drinking, was a certain date, as I remember, in September; now, what was the date, or is that the first time when those things appear in the reports?—A. I believe that is the 22d of September that he has reference to.

Q. Well, I do not remember what the date was; but Mr. Dorr may have overlooked some previous date. Now, are you certain that that was the first date when anything appeared in those reports to the effect that Judge Hanford had been drinking?—A. As to that, I could not say without looking at the reports.

Q. Take your reports and see whether the 22d is the first date [showing reports to witness].—A. I think that is the correct date. I had another operator with me at the time, and during the dinner hour he relieved me and shadowed the judge to the places I have mentioned, and the first date I have in the record of it is the 22d of September.

The CHAIRMAN. Is there anything, Mr. Higgins?

Mr. HIGGINS. Nothing.

The CHAIRMAN. You stated that you were in the judge's court while he was holding court on two occasions only?

A. Yes, sir.

Q. Do you know whether those occasions were occasions following some of the nights that he was out late?—A. As to that I can not remember now.

Q. Well, what was his condition during the time you were in his court, with reference to his being alert and wide-awake?

A. So far as I know, I think he was normal; that is, I mean that he was seemingly not under the influence of liquor, or anything like that, and that I did not see him sleepy or sleeping.

Q. I am not perfectly sure that your mind and mine met on this question of impropriety; since that has been gone into I want to know what your viewpoint is on that question; if I catch you rightly, you said that you meant by improper relations, sexual relations, is that right; is that what you mean to say?—A. Well, that is a thing that was harboring in my mind at the time that it was put to me.

Q. Well, it was on that theory you answered the questions that you saw nothing improper?—A. Yes.

Q. Your testimony tends to show that on a great many nights, always in the nighttime, running from perhaps 8 o'clock in the evening to 2 o'clock in the morning, you saw him going in or coming out of that house; your testimony also gave me the impression that you never saw any other person than this woman at the premises there?—A. Yes, sir.

Q. Now, did you mean to answer that the judge's going there sometimes in a partially intoxicated condition, to say the least of it, staying there until 2 o'clock in the morning with no one present, as you think, but the judge and the woman; did you mean to say that you thought that was not improper?—A. I stated that I thought that is, from my point of view, that that was the only improper point that I saw.

Q. Well, you answer me now that you think that was improper.—A. Yes, sir.

The CHAIRMAN. Well, I understand you better now.

Mr. HIGGINS. When the judge and this lady were on the street and in the theater and at any other time that you may have seen them

that you have testified about, did he treat her as any gentleman would treat a lady?

A. Well, as to that, we would have to take into consideration the custom of the judge, which I would be at a loss to say anything about, for I had not seen him with any other lady.

Q. Well, then let me ask you if you saw while they were together anything which would call to your mind that there was any impropriety in the relationship between them?—A. Nothing whatsoever.

Q. Either in the theater or at any other time that you saw them?—A. Yes.

Q. They walked the streets together?—A. Yes.

Q. They were well-frequented streets?—A. Yes; that is, I would say that Pine Street is.

Q. You did not shadow this house in the daytime, did you?—A. I do not remember having shadowed it in the daytime or having had any occasion to, except the time that I saw her go in there the first day that I knew that she lived there.

The CHAIRMAN. You stated that on some occasions at least the woman was heavily veiled—now, how many occasions when you saw her out with the judge was she veiled?

A. I do not remember ever seeing her without the veil.

Q. Now, the next question I want to ask you is this, is that usual for ladies accompanied by gentlemen in Seattle to wear veils on such occasions?—A. I think it is very rare.

The CHAIRMAN. Are there any further questions?

Mr. HIGGINS. If that is at all material or relevant, it would depend somewhat on the time of the year and the kind of weather and the condition of health that the woman is in and a great many other things.

A. I should think so.

The CHAIRMAN. I do not think he should be asked what is material or relevant.

Mr. HIGGINS. I stated that. I did not ask him whether it was material or relevant. I say if it is material or relevant that I would ask him that question.

The CHAIRMAN. I would not give a great deal for the witness's opinion about the materiality of questions.

Mr. HIGGINS. No; nor as to the custom of ladies in wearing veils, either.

Mr. MCCOY. I do not know whether when I made the statement here some time ago that I made it plain that it was the unanimous vote of the committee to go into the questions in connection with this person who lives up on Harrison Street, but I want to say now that it was unanimous.

Mr. HIGGINS. I would like in this connection to make a statement for the record. I think it appears already in the record that a certain affidavit was given to the committee; that affidavit was not introduced in the House and referred in the ordinary course of legislation. It is signed by John H. Perry. I think it has already been referred to in the record. It is dated the 22d day of May, A. D. 1912, and is attested before Irvin M. Clark, notary public in and for the State of Washington, and I assume for myself the responsibility for going into the inquiry because of this paragraph 5 of this affidavit, and I will ask the reporter to insert at this point paragraph 5 of this Perry

affidavit, which is to an extent the basis for this investigation, although not formally before the House of Representatives.

The CHAIRMAN. The Chair might add to what has been said that this whole branch of the subject, and, for that matter, the whole subject, is far from agreeable to the committee. The committee, after numerous discussions, the last of which occurred during this session this afternoon, came to the conclusion that as the whole Committee on the Judiciary gave us the affidavit referred to by Mr. Higgins with the statements in it and with a photograph which counsel, at least, have seen, however disagreeable it might be to us, it became our duty to produce such evidence as there was on this subject, and we were all of the same opinion in that regard. I think I can safely say that we do not do it because we wanted to or liked to. The section which Mr. Higgins refers to will be inserted in the record, as he requests.

Here the affidavit of John H. Perry, referred to by Mr. Higgins, is introduced into the record.

Whereupon further proceedings are adjourned until to-morrow morning, July 2, 1912, at the hour of 9.30 o'clock.

FIFTH DAY'S PROCEEDINGS.

TUESDAY, JULY 2, 1912—9.30 A. M.

Continuation of proceedings, pursant to adjournment. All present, as at former hearing.

C. M. White, being first duly sworn, testified as follows:

The CHAIRMAN. Give your full name to the committee.

A. C. M. White.

Q. Where do you reside?—A. 1624 Eleventh Avenue.

Q. Seattle?—A. Yes.

Q. What is your business?—A. I run the High School meat market.

Q. How long have you been in business in the city of Seattle?—A. Well, a little less than a year.

Q. Prior to that, where did you live?—A. I lived in the same place where I am now.

Q. How long have you lived in Seattle?—A. About 10 years.

Q. Before going into the meat-market business, what business were you in?—A. I was a bookkeeper and collector.

Q. For whom?—A. I was bookkeeper for the Fir meat market and collector for the Dodd grocery.

Q. Are you acquainted with Judge Hanford?—A. I know him by sight.

Q. How long have you known him that way?—A. Oh, probably six or eight years.

Q. How much have you seen of the judge during that time?—A. Oh, I have not seen him often; probably—oh, I could not say in regard to how many times I have seen him.

Q. Well, was there anything in the nature of your residence or your going home or coming from home to your business that brought you in contact with him?—A. Well, I have ridden on the street cars with him.

Q. Where were you going on those occasions?—A. Probably he was going home.

Q. Does your home lie in the same direction from the business center that his does?—A. We both went out on the Broadway-Pike line.

Q. If at any time during your acquaintance with him, either personally or by sight, you have seen the judge when he appeared to you to be more or less intoxicated, please tell the committee of it.—A. I could not say that he was intoxicated. I have seen him when I thought he was a little unsteady, but I could not say that it was from intoxication. It might be from age or other causes I do not know—I don't know.

Q. What was the first occasion when you saw him as you stated?—A. Well, I could not say in regard to that.

Q. About when was it?—A. Well, I imagine it was probably six years ago.

Q. Tell the committee the circumstances of that occasion.—A. Well, at that time I was working for the S. E. Co. as conductor and the judge used to ride out with me on my car, and I thought a time or two that the judge was a little unsteady, but he was always able to get up and leave the car.

Q. Tell what you noticed, as well as you can, anything which will aid the committee—anything which led you to the conclusion that he was a little unsteady.—A. Well, from the way he walked and conducted himself, probably.

Q Yes, I know; but tell us how he walked, as well as you can —A. Well, I don't know as I can describe how a man walked. I would not say that he staggered like a man that was drunk, at the same time he seemed to have that kind of an unsteadiness about him which might come from drink and might not; I don't know—I am not an expert in that line.

Q What else did you observe about him that attracted your attention that way?—A. I don't know of anything else.

Q How far did he ride with you then?—A Well, he generally rode and got off at his residence, 1503 Tenth Avenue north, I think it is.

Q Was there anything in his demeanor while he was in the seat which attracted your attention?—A. Not especially. Of course, he very often sat with his eyes closed, but I do that myself when my eyes are tired; I should not consider that as any indication. I do not know that he was sleeping or anything like that. A man might sit with his eyes closed from weariness as well as anything else.

Q. All those things we can think of ourselves —A. Yes.

Q. Did you observe him getting off and on the car?—A. Oh yes; I have seen him getting on and off the car.

Q. Did you at any time help him on or off?—A. No; I did not.

Q. How did he get on and off?—A. In the usual way.

Q. With reference to steadiness or unsteadiness?—A Oh, I don't know; I never noticed him getting on and off without he got off all right.

Q. How many times did you say you noticed him on the car, as you have stated?—A. That would be a guess; I would say half a dozen times, probably.

Q. And how many times would you say you noticed him on the car?—A. I don't know how many times. I have seen him on the car when I was not in charge—I don't know.

Q. Well, were the times which you have mentioned, were those the times when you were conductor on the car?—A. Yes; principally.

Q. And did you or did you not between times, when you were not working for the street car company and were riding home, observe him?—A. I don't know that I noticed him so much then.

Q. Well, if you noticed him at any other time?—A. I can't remember.

Q. (Continuing.) Either while you were conductor or otherwise—recall, if you can, some other occasions when you noticed anything peculiar in his conduct on the car.—A. I do not recall anything at this time; it has been several years since.

Q. When were you subpœnaed?—A. Yesterday.

Q. Now, has anybody talked with you about this matter since you were subpœnaed?—A. No, sir.

Q. Did anyone talk with you about it before you were subpœnaed?—A. No, sir. There was a gentleman came up there and wanted to know if I would come down and testify. I told him I did not know that I knew anything that would be of any advantage to anybody, but I was subpœnaed anyway.

Q. Who was that?—A. I don't know who it was sir.

Q. Are you under any fear of any kind in giving your testimony?—A. No, sir; not a bit.

Q. Have you fully and correctly told us all that you know on that subject?—A. I have; yes, sir.

Mr. McCoy. How do you suppose this man that talked with you knew that you had any knowledge of any kind?

A. He told me he had been sent to me by some friend of his; he thought I knew something about it.

Q. What do you suppose made anybody think that you knew anything about it?—A. I can not tell you anything about what they think.

Q. Did you ever tell anybody that you knew anything about it?

A. I do not recall that I ever did; I may have at some time said that I saw the judge unsteady on the street, or something like that—I may have made that remark; I do not recall it now, however.

The Chairman. Who was this person?

A. That called on me?

Q. Yes.—A. I don't know the gentleman; if he is in the room I don't recognize him.

Q. Does he live here in the city?—A. I could not say, sir; I never saw the gentleman that I know of before that time.

The Chairman. Examine him further, if you wish to, Mr. Hughes.

Mr. Hughes. I would like to ask just one or two questions on the latter subject.

Q. Did he tell you who it was that asked him to come there to see you?—A. No, sir; I think he said—he didn't tell me who it was that told him to come to see me, but he said he was a friend of the Dodds.

Q. A friend of Dodd's?—A. Yes.

Q. Who is Dodd?—A. Dodd runs a grocery up on Broadway and Thomas. He told me that he was a friend of theirs, and he didn't explain any further.

Q. Well, what did he say to you?—A. Well, he asked me what I knew about it and I told him I didn't know anything of any importance; that I didn't know anything for sure, and he said, I don't know—he made some remark about he wanted somebody to corroborate his testimony.

Q. Did he say what his testimony would be?—A. No, sir; he didn't say anything about that at all.

Q. Did he say that he expected to be a witness here?—A. No; but I would infer from the way he spoke that he was to be.

Q. Didn't intimate what his testimony would be?—A. No, sir; he never said a word about it.

Q. Do you know who gave your name to this committee?—A. I do not; unless it was the man that came to see me, I suppose.

Q. Had you been subpœnaed before that?—A. No, sir; I was subpœnaed yesterday evening.

Q. He came to see you before you were subpœnaed?—A. He came to see me Friday or Saturday, I guess it was, of last week.

The CHAIRMAN. You may stand aside.

Mr. HUGHES. Just a moment—how long were you conductor on the car on which Judge Hanford rode backward and forward?

A. I think I was conductor probably—on that particular line you mean, the Broadway and Pike?

Q. Yes; when you say that you saw Judge Hanford riding on the car with you.—A. I think I was on that particular line six or eight months.

Mr. MCCOY. How often did you see the judge during that time?

A. Oh, sometimes I would see him—well, I could not say in regard to that; sometimes for two or three weeks or a month I would not see him—there was sometimes he would not catch my car only occasionally.

The CHAIRMAN. That is all.

A. M. OLESON, recalled, testifies as follows:

The CHAIRMAN. Mr. Oleson, you were sworn and testified on Friday, I think?

A. I think so.

Q. On that day you stated that you had not had an opportunity to see the minutes which you turned into the office?—A. Yes, sir.

Q. Since then have you seen those minutes?—A. I just saw them now for the first time.

Q. After having seen those minutes and refreshing your recollection—by the way, did you recognize them as the minutes which you turned in?—A. In the main they are; yes, sir.

Q. Now, what do you mean by "in the main"?—A. Why, there are errors, typographical errors in the transcript, but they are immaterial so far as I was able to see—I just glanced over the reports and picked out the essential things.

Q. After consulting those minutes is there anything you wish to modify in what you testified the other day, or anything which you wish to add to it?—A. There is absolutely nothing which I wish to modify. If I am permitted I might say that I made a few memorandums here from the reports, and I know they are correct as to the dates. If it is proper I will——

Q. You may make any corrections you wish to add to your testimony.—A. Well, then, I will say that I started September 23, according to the records, if the dates as transcribed correspond with the original reports that I turned in—I do not recall the dates myself. And that day I know—I saw nothing of Judge Hanford all day.

Q. I will ask you to avoid repeating what you told us the other day as much as you can; just to add to it.—A. I discontinued at 7 p. m. on that evening, and saw nothing of the judge.

Mr. DORR. May I have the reports?

The CHAIRMAN. Yes [handing reports to Mr. Dorr].

The WITNESS. (Continuing). On September 24, which is Sunday, I saw the judge with the lady as referred to in yesterday's testimony by Mr. Nordskog, and what he said yesterday would be practically what I would have to say. There was absolutely nothing wrong or improper in the judge's meeting with the lady.

Q. Don't state your conclusions; just state what you saw—I don't care what you think about it.—A. Very well. I simply in my report made a note of the lady's appearance, wearing apparel, etc., and where they went to. That I then got off the car with the judge and took him over here to the building, and saw him enter the building, and later in the evening he went to the Rainier Club, and at that point, according to my report, I lost him, because I did not see him come out. I discontinued at 1.15 a. m., and the judge had not come out yet, but it is possible he might have got by me. On September 25 I followed the judge in the usual way; saw him go from the Federal Building to the Rainier Club, and also to the Saratoga bar, the Alaska bar, or Sutherland's, rather, and the Butler, where he took a drink at each place. I discontinued at 10 p. m. The judge did not come out—he went home at dinner time, and did not come out again. The 26th was a repetition of the day before so far as I remember now from the report; the judge did not leave his house. I left there at 9.40 p. m., according to my report. On the 27th——

Mr. HIGGINS. The 27th of what?

A. (Continuing.) Of September.

Q. 1911?—A. 1911; yes, sir. May I refer to that report again? I made a little notation here, but it is not clear.

The CHAIRMAN. You may do so.

A. (Referring to report.) The 27th was a repetition, with reference to the usual rounds that I spoke of, going to the Saratoga and Sutherland's and the Butler, and going home to dinner, with this exception, I think he went to dinner at his daughter's house that night; I think my report shows that, and came out again——

Mr. HUGHES. Does he mean Mrs. Haynes?

A. (Continuing). Mrs. Haynes; yes, sir; and then he went down in the evening and went to the Federal Building, where he worked until about 11 o'clock, I think, and then from there to the Rainier Club, and I failed to see him come out again.

Q. How long did you stay there?—A. 1.15 a. m., I think my report says, or something like that.

The CHAIRMAN. Is there anything further which you wish to add?

A. I will have a little more; but I believe the 25th—I believe I stated that I waited then until 1 a. m. at the Rainier Club, but I think I am a little confused about that. I just glanced over it so quickly this morning. I discontinued at 10 p. m., according to this

notation here. On the 28th, a repetition of the former day, except that the judge did not come down town. I discontinued at 9.40 p. m. in front of his housee. On the 29th was the meeting at the Alhambra about which I have already testified, with this—I will add this to it, that when the judge left the Alhambra I missed him, so I saw no more of him that night, and also that in coming from home down town I find that I make no reference to his actions in the car. I simply recorded the fact that he left the house at a certain time and went directly to the Federal building, and left there about 10.30, I think, or 9.30, and came to the Alhambra Theater. On the 30th, the usual rounds, and in the evening the judge went to the lady's house. Now, I do not recall what time he left.

Mr. HIGGINS. You mean in Harrison Street?

A. On Harrison; yes, sir. October 1 was Sunday, and I did not see him all day; he did not leave the house all day. October 2 was a repetition of the day before, or of the other days, with reference to his usual rounds, with the exception that this night he left in company with his clerk, Mr. Engle, for Bellingham. I followed him to Bellingham; was with him all the following day. He held court up there.

Q. Where is Bellingham?—A. Bellingham is about 98 miles north of here. He left Bellingham in the afternoon on the train and I came to Seattle with him. He arrived here about 7 p. m., and went directly to the Federal building.

The CHAIRMAN. I do not think the committee is interested in going into all these details. I will ask you if on those occasions you saw anything which showed to you, or tended to induce in your mind a belief that the judge was under the influence of intoxicants?

A. Absolutely nothing, so far as my reports go, except in the one instance that I have already testified about, in reference to the Alhambra meeting, which I qualified with the statement that it was possible that the judge might have been sleepy. I can not find in my reports, in looking over them, where I at any other time have made the use of the word "intoxicated"—that I thought he was intoxicated.

The CHAIRMAN. Anything further?

Mr. HUGHES. Just a question. Mr. Oleson, was it not known by yourself and the man who worked with you——

The CHAIRMAN. A little louder, Mr. Hughes, please.

Mr. HUGHES. Was it not known and believed by yourself and Mr. Nordskog that Judge Hanford knew that he was being watched and followed during that time?

A. No; I think not.

Q. Don't you know, and didn't you know, that he knew or believed he was being watched?—A. No; I did not.

ANTONE KOLAR, being first duly sworn, testified as follows:

The CHAIRMAN. Tell the committee your name.

A. Antone Kolar.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Four years off and on.

Q. What has been your business during that time?—A. Private detective.

Q. Have you any other business?—A. I have not.

Q. With what detective agency are you connected?—A. W. J. Burns.

Q. How long have you been connected with that concern?—A. I can not recall the date; it has been since W. J. Burns has taken over the American Bankers' Association from the Pinkerton people; that is some two years and a half ago, I should judge.

Q. If in the course of your employment you have been detailed to observe Judge Hanford, you may now state it.—A. My operation on subject Hanford has been four days.

Q. When?—A. From the 18th of October, the 19th of October, the 22d of October, and the 23d of October, 1911.

Q. That was in the city of Seattle, was it?—A. City of Seattle, yes, sir.

Q. As is the custom with the agency, I assume you made memoranda.—A. I did.

Q. And you turned them into the office?—A. I did.

Q. Have you seen those or copies of them recently?—A. I saw the copies that was in the committee's rooms up in the Washington Annex.

Q. A few evenings ago?—A. Yes.

Q. From your recollection of the events as refreshed by consulting your minutes, go on and tell the committee what you observed in the judge's conduct first with reference to the use of intoxicants.—A. On two of those occasions; on two of those operations, I just do not know what dates they were; they were between the 18th and 23d of October, I saw subject Hanford enter the Saratoga bar and being handed a sherry and egg; it seemed to me that the bartender knew already what his national drink was and what he drunk there, and he left there paying 10 cents for that drink—he left there and walked quite rapidly and entered the Sutherland bar, which is about a block and a quarter from the Saratoga bar.

Mr. HUGHES. Sutherland's?

A. The Sutherland, yes, sir. Before entering the Sutherland bar he passed it but his feet seemed to stop, and then he would look and walk inside and there he would drink a cordial which I found later was a benedictine. From there—well, I saw also that the bartender knew what his drink was. From there he would leave there and go across the street directly and enter the Butler Hotel and go up the stairway and he would be met there by the bartender at the bar, the bartender at the head would hand him a whisky cocktail; that was on two occasions, and it was repeated that way.

Q. How close together were those occasions?—A. I think within one day, I think—yes, sir; they were within one day, I think.

Q. What time of day did this take place?—A. After leaving the Federal building that is in the evening.

Q. At what hour?—A. Well, between 4 and 6.30, after leaving the Rainier Club.

Q. Well, after the last drink which you spoke of, the cocktail, where did the judge go?—A. Well, he walked across to the corner of James and Second Avenue and he would take the car, the Broadway car and go home; he lives on 1503 Tenth North.

Q. Did you on the first of these occasions—did you accompany him?—A. At first.

Q. What was his condition?—A. It seemed he went to run to the car; I would not say whether his sight is bad; he would run toward the car and see if it was his car—the Broadway car—and he would seem to then see that it was not and then, of course, he would go back to the curbstone, and then when he finally got on the car—when he was getting on the car—he would be unsteady.

Q. During the ride tell us what his condition was.—A. Well, probably he would sit, usually on the left side of the car and about the center of the car. The cars were not quite crowded at all; hardly any other people besides myself and himself and the Operative Staples, and he would sit there and doze off; whether it was through the liquor that he drank or whether it was overwork, I don't know.

Q. To what extent did he dose during the ride?—A. At several times.

Q. How long was the ride?—A. About 20 minutes.

Q. Did you see him get on?—A. Yes.

Q. What was his condition with reference to his ability to get on?—A. Well, quite slow; he would walk, getting on the step, quite slow.

Q. Did you see him get off?—A. Yes.

Q. How was he about getting off?—A. The same way.

Q. How was it in regard to his walking after he got off, so far as you saw him walk?—A. He would walk toward his home in a way that you would say drunk; a drunken man would stagger; that is, he would sway from the side, but not get off the walk.

Q. From what you observed of him on that occasion, what would you say to the committee as to his condition, whether or not he was under the influence of intoxicants?—A. Yes; I would say that he was.

Q. To what extent?—A. Oh, I could not judge whether he was paralyzed, but I think he had quite a snoot full, as we say.

Q. Did you see him again on that day, the first day you spoke of?—A. The first day—if I have my notes there.

Q. You may refresh your recollection, if you wish, by looking at your notes. [Here Mr. Dorr hands the notes to the witness.]—A. In looking over these notes I notice that after leaving his home he went to 1008 East Harrison; he stayed there a while—I think a few hours.

Mr. HUGHES. What date was that?

A. That was on the 18th. I think he stayed there a few hours; leaving there, he came downtown and went into the Rainier Club; stayed there, I think, about an hour, probably a half, and then came back to the Federal building, whether to sleep a little bit——

The CHAIRMAN. No matter; don't give any guesses about it.

A. I don't know.

Q. We can guess just as well as you can; tell us what you know.—A. And he left here again on that night, or in the morning, I think, about 1.30 or 35—I don't know exactly—and he walked down to Second Avenue and Union; stood there as he dozed or still under that same influence—that same day or night, drink—and stood there for some time as if waiting for a car; he did not know whether that the car has discontinued for the night; the last car left, I think, at 1.15, he missing it; he then asked the clerk in the Times there—

that is, at the cigar stand—he asked him about the car, I presume, and then he walks all the way home.

Q. How far was it?—A. It must be about, I think, about a mile and a half to his home.

Q. Did you follow him?—A. We shadowed him as far as Ninth and I guess Union or, let me see, Pike or Pine, either one. We saw him walk that same unsteady way and he, as I say, he would walk from the side; he would not quite in step—that is, keep right in one path; he would walk on one side—that is, of the walk—to the other. And we discontinued, because we, if we did walk all the way down with him to his house we could not have a way of getting back, and so we discontinued then; that was about 1.40 or 1.50 or 2 o'clock.

Q. That closed your observation for that day?—A. Yes.

Q. And then the next time which you can tell us of was how soon after that—I think you said the next day?—A. I think on the next day he left for Wenatchee—to the good roads——

Q. Did you observe him at all that day?—A. We did not see him at all that day.

Q. When did you next see him?

Mr. HIGGINS. Did you say that the judge went to Wenatchee, or that you did?

A. No; the judge went to Wenatchee. He left his house—left prior to our arrival to shadow the house; he left earlier than usual and then we did not know that he was out of town.

Q. You told us you did not see him that day?—A. But I visited several places looking for the man—we did not know——

The CHAIRMAN. I do not care about that. It is him, and not you, that we are inquiring about. If you did not see him the next day, we do not care to waste any more time on that day. Now, what was the next time?

A. I did not see him until the 22d.

Q. Now, then, at the next time you saw him, which you say was the 22d?—A. Yes.

Q. Tell us about that.—A. He arrived at 10 o'clock from Wenatchee. Arriving, he took the car; he came off with two grips; he checked one grip and took one grip with him on the car, taking the Broadway car. At Madison Street a woman got in, heavily veiled with a black veil. She got on and she looked at the subject, Hanford.

Q. Judge Hanford?—A. Judge Hanford, and she says, "Hello, there; just getting back?" He looked and he said something to her, but it was very low. Whatever he said, I could not hear it at all. She got off at East Harrison again, and he went all the way home. Now, whether or not he came out that evening—I think he has.

Q. Don't speculate—tell us only what you saw.—A. I would have to see my notes again on that.

Q. You may see them. Show us his notes. [Notes handed to the witness.]

Mr. HUGHES. I don't know whether the witness testified that this was in the morning or in the evening.

The WITNESS. Ten o'clock in the morning—he came from Wenatchee.

The CHAIRMAN. You may answer now.

A. After getting home, which was in the morning, he did not go out again until in the afternoon. Went to the Rainier Club, stayed there until about 8 o'clock, and took the car—the Broadway car—and got off, I think, at Harrison or Thomas—let me see—no, Thomas, and entered that house again. That was the second visit to that house.

Q. You mean 1008 Harrison?—A. Yes; he stayed there until about midnight or later; pretty near 1 o'clock.

Q. What time did you say he went in?—A. I think about 10 o'clock. My notes will show that. About 10 o'clock, and left there about 12.45 and went to his home and stayed there. That is as much as we saw of him that day.

Q. Who was with you on that occasion?—A. Operative Staples all this time; he was the operative that was with me.

Q. What have you to say as to his condition with reference to intoxication on that occasion?—A. Well, there was no—I did not see anything that day. Reported nothing that I thought it was worth while mentioning.

Q. Does that conclude your observations for that day?—A. For that day; yes. On the 23d——

Q. That was the next day?—A. Yes.

Q. What time did you first see him on the 23d?—A. On the 23d he came down—in the morning he came down town. We shadowed him from his house to the Federal Building and at noon he came out, if I am not mistaken, he came out at noon and went to the Rainier Club.

Q. You say, "If you are not mistaken." I suppose you mean that you are giving us your best recollection?—A. Yes.

Q. Now, if you wish to refresh your recollection on any of those matters, you have the right to do it by consulting the notes which you made at the time—so go on?—A. I would like to have them here. [Mr. Dorr hands notes to the witness.]

The CHAIRMAN. What is your answer?

A. He did not go to the Rainier Club at noon. He left here and went down, or walked down, to First Avenue and entered the Colman Building and got a package there out of one of the express companies, I think the Wells-Fargo. He took that with him and then went to the Rainier Club.

Q. About what time?—A. That was about 12.35 or 45.

Q. He remained there how long?—A. I think about an hour at the Rainier Club

Q. After that, if during the day you saw him drink any you may tell it.—A. Well, leaving the Federal building at 4.47 with a man that I do not know who he was, but I found out from Operative Staples that it was Sutcliffe Baxter—this man had white side whiskers.

The CHAIRMAN. That is immaterial.

A. I was just describing the man. I was told who he was by Operative Staples; and they went to Sullivan's bar here, across the way from here—that is, at 4.47 in the evening—that is, in the afternoon—and they each had a drink; Sutcliffe Baxter had a highball and Judge Hanford had a cocktail. Leaving there they separated, and Mr. or Judge Hanford went to the Rainier Club and stayed there about an hour, and made his usual rounds again to those bars. I should judge the time between—it would take him from the Saratoga bar

to walk to the Butler bar, taking in three saloons, would be, I think, about 10 minutes.

Q. Did he drink in each saloon?—A. In each one; yes; his same drink.

Q. The first one you say was the cocktail.—A. Well, that was the cocktail; that was a new saloon I never saw him enter before; that is across the way from the Federal building.

Q. Sullivan's?—A. That was at Sullivan's.

Q. And the next?—A. After leaving the Rainier Club, and being there about an hour, he went to the Saratoga and then to Sutherland's.

Q. Did he drink at the Saratoga?—A. A sherry and egg, and benedictine at the Sutherland bar, and a cocktail at the Butler bar.

Q. Within how long a space of time?—A. I think within 10 minutes; that is, from the first drink he took after leaving the Rainier Club, and that is within, I should judge, only about a block and a half. It seemed he could not pass those saloons without entering them.

Q. That is a conclusion of yours merely, and I do not care about that. He did not pass, as you stated—that is the point—is that right?—A. He did not pass.

Q. What he could do is a conclusion. Now, after that did you see him that day?—A. After that?

Q. After he went home.—A. After the last——

Q. After the last drink which you spoke of where did he go?—A. Well, he went and took the car.

Q. What was his condition as to sobriety after the last drink you saw him take?—A. Well, I say he just seemed kind of slow in walking, that's all.

Q. Did you accompany him on the car?—A. Yes.

Q. What did you observe on the car?—A. Well, he did not seem to sleep any, I should say; it seemed he could hold his own then.

Q. What time did he go home?—A. That must have been about, I think, about close to 7 o'clock.

Q. Did you see him again that day?—A. He did not come out that night from his home. We discontinued.

Q. Did you observe him after that any more?—A. That was the last day of my operation, as I left for Montana

Q. Have you any knowledge of his habits or his condition except as you observed while on duty?—A. Do you mean since then?

Q. Yes.—A. Or previous to that time?

Q. Previous or since.—A. I never knew him previous.

Q. Well, since that, when you did know him, have you at any time observed him?—A. I have met him at those bars accidentally while I was on other operations, probably about the times that he would be there accidentally.

Q. Since you were observing him during those days have you at any time seen him under the influence?—A. Well, I would see him drink those same drinks at either of those places, but I never paid much attention to it, because I might have been operating on something else, and I would not have any time to stay with him.

The CHAIRMAN. Do you wish to ask him anything further, Mr. Hughes?

Mr. HUGHES. Just a question.

Q. What street car did Judge Hanford take to take him to his home?—A. The Broadway car usually.

Q. And that passes along which of the main north and south thoroughfares?—A. It passes on Second Avenue.

Q. So that Judge Hanford in leaving the Rainier Club to get his car home would have to come down to Second Avenue?—A. Yes.

Q. Did you notice on either of the two occasions which you have spoken of his going into the Saratoga bar or the Sutherland's, whether his car passed by; in other words, wasn't he waiting for his car to come along?—A. Yes, sir; he would wait sometimes and run toward the car.

Q. No, no, but I mean—do you know how often that car passed by?—A. That same car, or other cars, do you mean?

Q. The car that runs past his house, how often does it go along Second Avenue?—A. I should judge about 10 minutes.

Q. On that evening do you know whether it is 10 or 15 minutes?—A. Do you mean what time of night, at 6 or 7 or at midnight?

Q. How frequently?—A. What do you mean?

Q. Say at 6 o'clock?—Well, at 6 o'clock, that is a busy time with the people and I think that they go quite often.

Q. How frequently does the Broadway car run past there?—A. Well, I should judge about 10 minutes.

Q. Did you observe or notice it particularly so that you would be able to state exactly?—A. No, I did not; no.

Q. So far as you know then no car went by after he left the Rainier Club and reached Second Avenue which he did not take?—A. That he didn't take—why, no.

Q. Mr. Kolar, are you the Burns operative of that name who was on the case of the dentist, Dr. Johnson, in Chehalis?—A. Yes.

Q. Who was tried for murder there?—A. Yes.

Q. You are the same operative?—A. Yes.

Mr. HUGHES. That is all.

The WITNESS. I want to say something more there, I think; I will tell you that I was not on the dentist—I was on the murderer himself, Clark, so I was not on the dentist.

Q. You were not the man who tried to induce the dentist to——

The CHAIRMAN. Wait a moment.

Mr. HUGHES. I thought you would object, but the witness was going on to make a statement.

The CHAIRMAN. I think the question last asked the witness strikes the chairman as bad.

Mr. HUGHES. I desisted at the suggestion of the chairman.

CHARLES REED, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name, please.

A. Charles Reed.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Three years and a half—three years and six months.

Q. Where did you live prior to that?—A. San Francisco.

Q. What is your business?—A. Barkeeper.

Q. Where?—A. The Saratoga bar.

Q. How long have you been in that business?—A. Three years and two months.

Q. Are you acquainted with Judge Hanford?—A. No, sir; I am not.

Q. Do you know him by sight?—A. I never knew him by sight until just about four months ago. When he entered this courtroom, I was told by parties that that was Mr. Hanford. Previous to that I had never known the gentleman.

Q. Have you seen the gentleman who you just learned to be Judge Hanford?—A. I never saw him to recognize him as Judge Hanford.

Q. Have you seen him—whether you recognized him as such?—A. I have.

The CHAIRMAN. Mr. Reed, we want explicit answers from you. How long since you first saw that gentleman whom you now know to be Judge Hanford?

A. Since last year, 1911, the latter part.

Q. Will you tell the committee why you seemed to evade my first question and gave me the impression that you did not know Judge Hanford and had not seen him?—A. No, sir; I had never known him.

Q. Has anyone been talking to you as to your testimony?—A. No, sir.

Q. Which you would give here?—A. No, sir.

Q. You realize, of course, that you are testifying under oath?—A. I do, sir.

Q. Now, how long is it since you first observed the gentleman whom you now know to be Judge Hanford?—A. Since last fall some time when I was working on the night shift at the Saratoga bar.

Q. What time did you go on duty?—A. 5.45 p. m.

Q. What time was it you saw him?—A. 6 or 6.30.

Q. Was he at the bar?—A. Yes, sir.

Q. Drinking?—A. He drank a glass of sherry and egg.

Q. When did you next see him?—A. I never remember seeing him until just to-day.

Q. Did you see him only the once?—A. That is only once now that I remember.

Q. Only once?—A. Yes, sir; that is, to the best of my knowledge.

Q. Do you say that while you were on duty there that he was in the saloon only once?—A. To the best of my knowledge, sir; yes.

Q. Is there any other bartender who is on duty at night but you yourself?—A. Yes.

Q. Who?—A. Well, there is four of us, and we work alternate, or vice versa; there is two of us always on shift and sometimes three.

Q. Who are the others?—A. Mr. Powell and Mr. Keyes—Mr. F. W. Powell, and some extra men—there was quite a few extra men. Three of us off and on in the nighttime.

Q. Who were the other two who have been there since you have?—A. Mr. Powell and Mr. Keyes.

Q. What is Mr. Powell's first name?—A. Fred.

Q. And how do you spell the other man's name?—A. K-e-y-e-s—he pronounces it Kies.

Q. And his first name?—A. William.

Q. Mr. Reed, how is it that if you saw this gentleman on only one occasion a long time ago and served him with sherry and egg that you remember him and the occasion and what he drank?—A. Well, sir, just by his appearance and the fact that shortly after that I was changed on the day shift, and I have never been on the evening shift

since, and since that I never saw the gentleman, and if he had not come into the court room to-day I would not have known him.

Q. How soon after that were you changed to the day shift?—A. The 1st day of January.

Q. Who took your place on the night shift?—A. Mr. Powell.

Q. Is he here now?—A. He is here.

Mr. McCoy. I did not get the month during which you were at this place on the night shift.

A. Well, sir, I was on the night shift two years previous to the 1st day of January, 1912.

Q. And is it a hotel?—A. No, sir; it is a wholesale and retail liquor house with a bar in the rear—what is called the Saratoga bar.

Q. Who owned it?—A. Charles Haskall.

Q. Does he live here in Seattle?—A. Yes.

Q. Is it a much frequented bar?—A. Yes, sir; it is a frequented place; we are always very busy all the time.

Q. A great many people coming in there?—A. Hundreds, day and night.

Q. What time was it you went on duty?—A. 5.45 p. m.

Q. Is it more frequented then than any other time?—A. That is the busy time, from 4 o'clock p. m. until 7 it is very, very busy.

Q. And so busy that it takes four bartenders to run it?—A. Three.

Q. I wish you would explain to the committee again why it was that, never having known Judge Hanford until this morning and the bar being so busy, and never having served him but the once, that you recognized him this morning?—A. Well, sir, the bar is very busy and we are allowed to talk to nobody; our rule is that we are not supposed to hold any conversation; and this evening I was working in the night shift and I worked at the middle of the bar, and the man at the end of the bar and the man at the other end of the bar fronting next to the street was very busy, and I remember this gentleman was waiting, and I asked him what he would ha e, and he said, "A sherry and egg," and I served him with a sherry and egg. I never knew who he was.

Q. When was that?—A. That was the latter part of last year; I could not say exactly the month, but I think it must have been October, or probably it might have been December; it was cool.

Q. How long have you lived in Seattle?—A. Three years and a half.

Q. Has anybody ever told you that Judge Hanford came into that bar frequently?—A. No, sir; I never heard his name mentioned really around there until just through the newspapers and people saying something about the matter.

Q. Has anybody recently had a talk with you about testifying here?—A. No, sir; no, sir; they have not.

Q. Nobody spoke to you at all?—A. Not a word; to the best of my knowledge nobody spoke a word.

Q. You say not to the best of your knowledge—if anybody spoke to you within a week you would know it?—A. Yes, sir; I would surely have remembered it; yes, I think I would have remembered it. No, sir, no one did.

Q. What was it that impressed it on your mind that he drank a sherry and egg?—A. Well, he asked me—I asked him what he would have, sir.

Q. Is that an unusual drink for people to take?—A. No, sir.
Q. You serve a good many of them, do you?—A. Yes, sir.
Q. And the fact that some one man in a city of 250,000 people asked you on one certain occasion for a sherry and egg, it impressed itself on your mind, did it?—A. Oh, no, sir; no, sir; no, sir.
Q. Well, you remembered that he did ask it?—A. I remember he did because I have a pretty clear memory of customers coming in there.
Q. Tell us some other men that came in there on that same evening and took a drink there.—A. I could not tell you their names, sir.
Q. Do you know the people that come into the bar?—A. No, sir; I do not know but very few; I am not acquainted personally with any of them.
Q. Are there any men in Seattle who made it a practice to go into the Saratoga bar?—A. Not that I know of; we have a great many customers; yes, we have a large trade.
Q. Are they people who come in there once and then never come there again?—A. I could not say; yes, I believe there is—we do have some transients there—we do some transient trade.
Q. There are some people who come there once and come again and again and again and again, are there not?—A. Yes.
Q. Now, tell us some one of those men who came there that night and took a drink and what he drank.—A. I could not do that, sir; I could not tell their names.
Q. Do you know anybody who did come in there that night?—A. I could point them out if I could see their faces.
Q. You mean that if you could see their faces here that you could remember whether they came in there that night?—A. No, sir.
Q. Is that what you mean?—A. No, sir.
Q. What do you mean?—A. Well, if I was down there at the saloon, if I was in the saloon and would see somebody of our regular customers in there then I might say that they were in there that night.
Q. What do you mean—if you saw them in the saloon you would be able to say whether they were there on that particular night; is that it?—A. No, sir; I could not say that.
Q. So you have not any recollection of any other man who was in there on that night?—A. Not personally, I have not, outside of the barkeepers.
Q. No other man that came in there and took a drink on that night?
The CHAIRMAN. Mr. Hughes, do you wish to ask any further questions?
Mr. HUGHES. No, sir.

LON TINDALL, being first duly sworn, testifies as follows:
The CHAIRMAN. Give your full name to the committee?
A. Lon Tindall.
Q. Where do you live, Mr. Tindall?—A. Seattle.
Q. How long have you lived in Seattle?—A. I have lived in Seattle since 1907, off and on——
Q. What is your present occupation?—A. I should have said since 1897 instead of 1907.
Q. That is about 15 years.—A. Off and on; I have been away a part of the time; the last trip I was gone five years in Alaska.

Q. How long have you been here since your return from Alaska?—A. Well, I came back from Alaska in 1904 and I went away in 1907 and I came back—it will be the 25th day of this month, three years ago.

Q. What is your business at the present time?—A. Barkeeper.

Q. How long have you followed that business?—A. All my life since I was 15 years old.

Q. Where are you now employed?—A. At Mr. Sutherland's, 612 Second Avenue.

Q. Known as the Sutherland bar?—A. Yes.

Q. How do you spell Sutherland?—A. S-u-t-h-e-r-l-a-n-d.

Q. Are you acquainted with Judge Hanford?—A. No, sir; I mean to say not personally acquainted with him.

Q. Do you know him?—A. Yes, I know him by sight.

Q. How long have you known him by sight?—A. I have known the judge for the last 10 years, I guess, by sight.

Q. What were you doing when you first knew him by sight?—A. I was tending bar.

Q. Where?—A. Billy Howard's, Occidental and Yesler Way.

Q. Was that here in Seattle, Mr. Tindall?—A. Yes, sir.

Q. Where did you get acquainted with him by sight then; in your place of business?—A. No, sir; I never got acquainted with him.

Q. Well, by sight, I said.—A. Yes.

Q. In your place of business?—A. He was pointed out to me, yes, sir.

Q. Since you have been in the Sutherland bar have you ever seen Judge Hanford drinking at that bar; if so, you may tell the committee.—A. There was only one time I ever saw him drinking at that bar and only one time that ever I waited on him at the bar.

Q. When was that?—A. That was about 7 or 8 months ago.

Q. Was that the only time?—A. On a Saturday evening.

Q. And was that the only time you saw him in the place?—A. Yes.

Q. What hours do you serve?—A. I open up in the morning and get through at a quarter to 4 in the afternoon.

Q. How long have those been your hours?—A. Ever since I worked for Mr. Sutherland.

Q. Who takes your place when you leave?—A. A man by the name of George Brucher.

Q. How do you spell that?—A. Well, I could not spell the last name—it is a French name—B-r-u-c-h-e-r, I think.

Q. And you pronounce it Bruche, do you?—A. I do, yes, sir; I always have.

Q. Well, that is what the people generally call him, is it?—A. Yes.

Q. What did the judge drink on the occasion you speak of?—A. A pony of benedictine.

Q. And what time of day was it?—A. This was Saturday evening; I come back on Saturday evening about half past 6; I get through at a quarter to 5 and I come back at half past 6 on Saturday evenings and work for two hours extra to relieve the other two barkeepers.

Q. And it was when you were on this extra time that you noticed him take that drink?—A. Yes, sir.

Q. And that was the only one you saw him take?—A. The only one I ever saw him take since I have been working for Mr. Sutherland.

Q. That would cover how long a period of time?—A. Well, the 25th day of this month it would be three years since I have been working there.

Q. Prior to that time, just before that time, where did you work?—A. I came back from Nevada; I was a year and a half in Nevada.

Q. Well, you went to work for Mr. Sutherland, and where did you work last before that in Seattle?—A. I never worked for no man in Seattle, except Mr. Sutherland, outside of Mr. Howard.

Q. How long since you worked for Mr. Howard?—A. Well, the last time I worked for him was 1900.

The CHAIRMAN. Do you gentlemen wish to ask him any questions?

Mr. HUGHES. Did you say you came back and——

The CHAIRMAN. One moment, Mr. Hughes, Mr. Higgins, or Mr. McCoy, do you wish to ask him any questions? Now, Mr. Hughes, you may interrogate him.

Mr. HUGHES. Did you come back on one Saturday evening only, or was that your regular custom?

A. It is my regular custom every Saturday evening at half past 6 to work until half past 8; two hours.

Mr. MCCOY. Did you ever see him drinking while you were working at Howard's?

A. No, sir; no, sir.

Q. You say you saw him in there in Howard's?—A. No, sir; I never saw him in Howard's saloon.

Q. Well, where was it you said you saw him?—A. On the sidewalk; he was pointed out to me on the street as Judge Hanford.

DANIEL O. PRESTON, being first duly sworn, testifies as follows:

The CHAIRMAN. Give your full name to the committee.

A. Daniel O. Preston.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Eight years.

Q. What is your present occupation?—A. The Butler bar.

Q. How long have you been tending bar?—A. Since I have been here; eight years.

Q. Speak up.—A. Since I have been here; eight years.

Q. Where are you now employed?—A. The Butler bar.

Q. How long have you been there?—A. Eight years.

Q. Then all of your services as bartender has been at Mr. Butler's place——A. Since I have been here.

Q. Were you bartender before coming to Seattle?—A. I was.

Q. Do you know Judge Hanford?—A. Yes.

Q. How long have you known him?—A. Well, not very long; I suppose about a year; not personally—I have seen him.

Q. Can't you speak a little louder?—A. My throat has been bothering me and I have a bad throat.

Q. Where did you get to know him by sight?—A. Why, I saw him on the street the first time that I ever knew who he was.

Q. Did you ever see him in your place of business?—A. Yes.

Q. How long since you first saw him in your place of business?—A. Well, this winter sometime, I do not recollect exactly.

Q. Give your best recollection.—A. Well, I should say since the holidays, I could not say exactly.

Q. What was he doing there?—A. Why, he came in there and had a drink.

Q. What did he take?—A. He took a cocktail.

Q. Who waited on him?—A. I did.

Q. After that did you see him again?—A. Well, I seen him maybe once or twice a week, sometimes not for three or four weeks, and sametimes for a week I would see him once or twice.

Q. Did he drink on those subsequent occasions?—A. As usual, the some thing, a light Martini was all.

Q. Did he ask for it, or do you know when you see him what he wants and prepare it for him?—A. Well, I always ask the question what he will have.

Q. How often during your watch does he come in?—A. I never saw him but the once.

Q. That is, you mean once during your watch?—A. Yes.

Q. About what hour of the day?—A. Well, somewheres around 6 o'clock, I don't know exactly; I don't go on watch until 5, and I saw him probably about 6.

Q. What is your rush hour?—A. About from 4 until 7 or 7.30.

Q. About how often each week would the judge come in during the time you speak of?—A. Well, once or twice; some weeks twice and some weeks maybe once, and sometimes I would not see him for a week.

Q. Do you mean by that that you can recall once or twice a week, or that that is all you noticed?—A. Well, we generally recognize a man when he comes in regularly at all.

Q. What I want to get at is, might he not come in there without your noticing him?—A. Not very well.

Q. Is there any other bartender on duty when you are?—A. One.

Q. How many people are there at the time between 4 and 7, during the rush hours?—A. Sometimes there is 20 or 25, and sometimes there is 5; they don't come in regularly.

Q. And only two of you to wait on them?—A. That is all.

The CHAIRMAN. Mr. Hughes, do you wish to ask any questions further?

Mr. HUGHES. Just a question or two.

Q. This bar which you speak of is in the Butler Hotel?—A. Yes, sir.

Q. The Butler Hotel is located at the corner of James Street and Second Avenue?—A. Yes, sir.

Q. That is one of the leading hotels of the city?—A. Supposed to be.

Q. The bar is a hotel bar and not an ordinary bar off the street?—A. No, sir.

Q. In other words, it is back——A. Away back.

Q. Back from the lobby of the hotel, in the back end of the house?—A. Of the house.

Q. At any of the times when you saw Judge Hanford at that bar did he appear to you to be under the influence of liquor?—A. No, sir.

Mr. HUGHES. That is all.

The CHAIRMAN. Did you see anybody in your place under the influence of liquor?—A. Sometimes.

Q. Do you recall who they were?
Mr. HIGGINS. Do you think that we want to put that into the record?
The CHAIRMAN. Yes; otherwise I would not have asked it.
The WITNESS. Am I obliged to mention the names of people that come in there?
The CHAIRMAN. Repeat the question to the witness.

(Question repeated to the witness.)

The WITNESS. I say, am I obliged to mention the names?
The CHAIRMAN. Repeat the question to the witness.

(Question repeated to the witness.)

The CHAIRMAN. What is your answer?
A. I am asking you whether I am obliged to mention the names.
The CHAIRMAN. We will come to that branch later on; now, you are not asked what the names were.
The WITNESS. You asked me who they were.
The CHAIRMAN. No; I did not. Now listen to the question, Do you recall who they were?
A. I said I did.
Q. You do recall who they were, do you?—A. Yes, sir; I do.
Q. Well, that is an answer to my question.—A. I didn't understand it that way, if I did I would not have hesitated.
Q. I thought you did not. Now, have you talked to anyone since you were subpœnæd as a witness?—A. No, sir; I did not get the subpœna until late last evening.
Q. Have you any instructions as to testifying about persons who patronize your bar?—A. No, sir.
Q. Or talking about persons who patronize your bar?—A. No, sir; I do not make it a rule to do it anyway.
Q. Sir?—A. I never make it a rule to do it anyway; I don't think it is right.

LEE A. COGHLAN, being first duly sworn, testified as follows:

The CHAIRMAN. State your full name to the committee.
A. Lee A. Coghlan.
Q. Spell your last name?—A. C-o-g-h-l-a-n.
Q. Where do you live?—A. 518 Marion Street.
Q. Seattle?—A. Yes, sir.
Q. How long have you lived in Seattle?—A. I have been here since 1898, about 13 years.
Q. What is your occupation?—A. I am a barkeeper.
Q. How long have you been in that business?—A. I have been in that business about 15 years.
Q. You are working for someone else?—A. Yes, sir.
Q. Who do you work for?—A. Now?
Q. Now.—A. A. A. Bronson, at 823 Second Avenue.
Q. Is that just a saloon, or is it in connection with a hotel?—A. Just a saloon.
Q. How long have you been with Mr. Bronson?—A. I have been about five years with Mr. Bronson—five years and seven months.
Q. What hours do you work?—A. Well, I have worked about seven or eight months on the day shift, but now I mostly work at night.

Q. Beginning what hour?—A. At 5 in the evening, and—well, I work a couple of hours in the middle of the day and from 5 in the evening until 1 o'clock at night.

Q. Is 5 o'clock the time when you change watch generally?—A. No; it is not a change; but then it is just another man that has been off—that has been on at the noon hour and then comes back to finish out his shift.

Q. Is that an exception, or has it been the usual time for making the change?—A. Well, it is the usual time for the men to come back—there is one man goes off at 6.30, that is the time that the change is made for the other man, but the change for the man that has been off to come back, is 5 o'clock.

Q. You work from five until about one?—A. Yes.

Q. For how long?—A. I have worked that way for over four years, or over five years, I should say.

Q. Are you acquainted with Judge Hanford?—A. I know him by sight.

Q. How long have you known him by sight?—A. Well, I have had him pointed out to me maybe seven or eight years ago on the street that that was the Federal judge.

Q. Has Judge Hanford patronized your bar?—A. Very seldom.

Q. When did you first see him there?—A. It is—maybe I noticed him first maybe about three years ago.

Q. About what hour of the day did he come in?—A. Well, it would be maybe about 11.30 at night.

Q. Did you wait on him?—A. Yes, sir.

Q. What did he drink?—A. Well, he only had, the only time I ever gave him a drink was a cocktail or a benedictine.

Q. Is that an intoxicating drink?—A. Well, benedictine is simply a cordial; you could not drink enough of it to make you intoxicated; it would make you sick, but it is a very sweet sirupy stuff; it is just an after-dinner cordial.

Q. When did you last see him there?—A. Well, I think it was about, maybe a week ago or maybe two weeks, I don't know, I could not keep track.

Q. What did he drink then; do you know?—A. Benedictine.

Q. Do you remember him drinking anything else at your bar than benedictine?—A. No, sir.

Q. Do you make a specialty of that drink?—A. No, sir; we generally give him a man what he orders.

Q. I know, but I just wanted to know if you made a special drive or run on benedictine; did the judge drink anything else at your bar than that drink which you know of?—A. Well, not at that time; no.

Q. At any time, to your knowledge?—A. Well, I have made him a cocktail, but he very seldom comes in there, very seldom.

Q. I am not asking you that question now; how often would you say do you recall waiting on him when he took a cocktail?—A. Maybe half a dozen times altogether.

Q. Is there anybody else on duty while you are there?—A. No; only on Saturday nights.

Q. What was the judge's usual time at your place?—A. About 11.30 at night.

Q. Did you see him there earlier than that at any time?—A. Very seldom, very seldom; I may have noticed him once or twice in all that space of time in the three or four years.

The CHAIRMAN. Anything further?

Mr. HUGHES. No.

JOHN J. COFFEY, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell your full name to the committee.

A. John J. Coffey.

Q. Where do you live?—A. 4403 Thirty-ninth Avenue southwest.

Q. In the city of Seattle?—A. Seattle.

Q. How long have you lived in Seattle?—A. Nearly five years.

Q. What is your occupation?—A. I am manager and steward of the Rainier Club.

Q. How long have you occupied that position?—A. Since the 1st of January two years ago; but I am engeged there for the whole five years—I mean, I have been managing it since the 1st of January.

Q. You have been there for five years, but you changed your job?—A. Yes, sir.

Q. During that time?—A. Quite so.

Q. What position did you have when you entered the club?—A. Head waiter of the various dining rooms.

Q. How long did you occupy that position?—A. For two years.

Q. What was your next promotion?—A. Manager and steward.

Q. Manager direct?—A. Yes.

Q. Been manager now how long?—A. Two years last January.

Q. How large is the membership of the club?—A. It is 650, I will say, resident and 150 nonresident, or thereabouts.

Q. Are you acquainted with Judge Hanford?—A. Yes, sir.

Q. He is a member of the club?—A. Yes, sir.

Q. Strangers are admitted to the club only as guests of members, I presume?—A. Quite so.

Q. Now, during your term—when did you get acquainted with the judge, either by sight or otherwise?—A. Well, by coming in daily contact with him since I have been an employee of the Rainier Club, which is every day; I have seen him practically every day.

Q. What hours?—A. During the noon period, and also the afternoon and evening.

Q. Have you served the judge drinks at any time, or have you seen others serve him with drinks there?—A. Well, I have seen others, very seldom, and always in the evening.

Q. What hours?—A. About, say, half past 5.

Q. About what time?—A. Well, I generally get away at half past 8, though quite frequently I am there at later periods—at 10 and 11 and 12 and 1 o'clock when various entertainments are taking place.

Q. What have you to do with noticing anything about the drinks that are served to the patrons of the club?—A. Why, you might say I am general supervisor, and I see most everything happening.

Q. Do you know all the drinks that are served to all those who attend the club?—A. No; not positively, only in a general way.

Q. Where is your location with reference to the place where the drinks are ordered and the place where they are drunk?—A. Well, that would be what you might say on the main floor; that is where they are most generally served.

Q. By "served" do you mean the preparation of them or the drinking of them?—A. Well, the bell boys serve them. We have a service bar, and they are taken from there and served at the various tables, wherever the various gentlemen may be seated.

Q. How is the record of them kept?—A. By check system.

Q. Is there any book entry made of those?—A. Yes, sir; it is a monthly account which is charged at the expiration of the month to the various members, according to the foods which they may have partaken of and the like.

Q. Would that entry show what the charge was for, whether for meals including drinks, or would it show the drinks separately?—A. Yes; it would be itemized. It would show the drinks separately, and also the food.

Q. What is the habit, generally speaking, as to whether the members of the club pay their own bills or are the guests of other members—are drinks served on one person's order for a number of persons; in other words, is there treating permitted in the club?—A. In most cases; yes, sir.

Q. The charge, then, would not show any name except the name of the purchaser?—A. No, sir; not as applying to a company of men.

Q. But when an individual ordered a drink, of course, it would be charged to him as an individual?—A. Yes; he would be presented with the tab to be signed.

Q. What has your observation been as to Judge Hanford's drinking at the club?—A. My observation is he has always impressed me as being a temperate man.

Q. I did not quite ask you that question; what has your observation been; what did you notice or see?—A. Nothing particularly, only that I could see invariably that I never saw the gentleman drinking in midday or early afternoon during the whole period of my career there.

Q. What hour did you see him take any drinks there?—A. About half past 5 I occasionally saw him take a bottle of beer.

Q. Did you see him take any other drink than beer?—A. No, sir; most generally it was beer.

Q. Was that with his meals or without?—A. No, sir; without.

Q. In company or alone?—A. Well, quite frequently alone and occasionally he has dined there with other gentlemen, not very frequently, and at that time he might have a cocktail and other times no.

Q. That is, if he took dinner there he would probably, or might, take a cocktail before eating, but when he did not take dinner you think he drank beer?—A. Yes; I never noticed him drink more than one bottle of beer.

Q. At one time?—A. That is, during the course of the afternoon.

Q. Do you mean one bottle of beer at one time, or one bottle of beer altogether?—A. One bottle of beer altogether.

Q. You say you never saw him drinking any beer but one time?—A. To the best of my knowledge.

Q. To the best of your recollection?—A. Yes, sir; to the best of my recollection.

Mr. HUGHES. Your last question was if he never saw him drink beer but once—I understood it so, but I don't think the witness did.

Whereupon the question and answer are read by the stenographer.

The CHAIRMAN. Do you wish to ask him any further questions, Mr. Hughes?

Mr. HUGHES. You refer to drinking beer—you refer to the room downstairs in which there are tables where the guests are served with drinks and where they chat and play dominoes?—A. Quite so.

Q. Or whist, as the case may be?—A. Yes.

Q. And you are not referring, when you speak of his drinking beer, to the dining room?—A. No; not applying to the dining room.

Q. During the five years that you have been connected with the Rainier Club have you ever seen Judge Hanford when he appeared to be under the influence of liquor or in any degree intoxicated?—A. Never, sir.

Mr. HUGHES. That is all.

Mr. MCCOY. Did you ever see Judge Hanford sitting around the table with other people, taking drinks?—A. Well, yes, sir; occasionally, not very often. It might be when some of his most intimate acquaintances would come, where he would have——

Q. (Interrupting.) Do you mean that usually when he comes in there he sits by himself?—A. Well, Judge Hanford likes to play pool; he plays pool by himself; that is, he plays pool as a pastime, and then he is reading most of the time—he retires to the sun room where he picks up a magazine or other periodical and maybe would read for an hour or two—I have noticed that from time to time.

Q. Have you ever seen him when he was sitting at the table with others, himself drinking and they drinking too?—A. Yes, sir; but the extent of, as I say, just one bottle of beer—it would not be of long duration.

Q. You are quite certain it was never more than one bottle of beer?—A. To the best of my recollection, sir.

Q. Did you pay particular attention to what the guests take there?—A. Well, I can't help but notice what the guests take, because I am constantly around there and I notice the gentlemen, the various gentlemen from time to time, and I know their habits from coming in daily contact with them.

Q. Is there anybody in the club who drinks more than one bottle of beer at a sitting?—A. No; because most generally it may be a cocktail they will take.

The CHAIRMAN. Any further questions? You may stand aside.

LOUIS P. FECHTER, being first duly sworn, testified as follows:

The CHAIRMAN. State your name to the committee.

A. Louis P. Fechter.

Q. Where do you reside?—A. The city of Seattle.

Q. How long have you lived in Seattle?—A. About six years or more.

Q. What is your business now?—A. I am not working at the present time.

Q. When did you last work?—A. About two months ago.

Q. What were you doing then?—A. Tending bar.

Q. For whom?—A. For Mr. Cooper, of the Stratford bar.

Q. Is that your regular occupation?—A. Yes.

Q. How long have you followed it?—A. About 15 years.

Q. How long were you with Mr. Cooper, at the Stratford bar?—A. Five or six years.

Q. Is that a saloon merely or is it a hotel bar?—A. Just a saloon with a cafe in the rear, a lunch counter.

Q. What hours were you on duty?—A. Well, the last shift I worked was half-past eleven to half-past eleven at night, with two hours off at noon.

Q. Do you know Judge Hanford?—A. Not personally; no, sir.

Q. Do you know him in any way?—A. I know him by sight, that is all.

Q. How long have you known him by sight?—A. About a year.

Q. How did you come to know him by sight?—A. Why, people saying that it was Judge Hanford, that is all.

Q. Where was he when you learned to know who he was?—A. On Second Avenue.

Q. Has he been at your place of business where you were engaged?—A. No, sir.

Q. Did you ever see him in the saloon?—A. I never did.

Q. Did you ever serve him with drinks anywhere?—A. No, sir.

Q. Was there anybody also employed at that saloon where you were on the same watch?—A. Yes, sir; five of us working there.

Q. At the same time?—A. Oh, no; different shifts.

Q. How many on the watch?—A. Generally two or three at different times of the day.

Q. How many worked at one time?—A. Between the hours of 4 and 7 there is generally three.

Q. And you never at any time served him with liquors?—A. I never did.

Q. Did you ever see anyone else serve him with liquors at any time?—A. No, sir.

The CHAIRMAN. That is all; you may stand aside.

Mr. MCCOY. Just a minute. When was it he was pointed out to you on the street?

A. Well, sir, I could not recall.

Q. Was it a year ago?—A. About a year ago.

Q. What was the occasion of his being pointed out to you?—A. He just happened to pass and some one remarked to me—he said "There goes Judge Hanford."

A. Who was it that called your attention to it?—A. I can not say.

Q. Was it in front of your business place?—A. No, sir; we were walking up the street at the time.

Q. Was he walking toward you?—A. He passed us, I believe.

Q. And so as he passed some one said "There goes Judge Hanford."—A. Yes.

Q. How often did that sort of thing happen?—A. That was the only time.

Q. That was the only time you ever saw him?—A. No; not the only time I ever saw him, but that was the first time I ever knew him.

Q. How often have you seen him since then?—A. Well, sir, two or three different times, I believe.

Q. Where were those times?—A. On the street.

Q. Second Avenue?—A. Yes, sir.

Q. What time of day?—A. Well, sir, I can't tell you that. I don't know just exactly what time of day.

Q. What time of day was it when you first saw him?—A. In the evening.

Q. What hour?—A. About between 6 and 7, I think it was.

Q. In the afternoon?—A. In the evening.

Q. What time of day was it when you saw him on the other occasions?—A. Well, sir, I don't remember just exactly; it was in the afternoon I believe, if I am not mistaken, I could not be positive about that.

Q. Could he come into the bar where you worked without your seeing him?—A. Well, sir, yes; he might have got to come into the bar. They do a big business there, and he might have got in there, and I would not have got a chance to see him if he came when we were busy. Sometimes we don't get a chance to see people that are standing at the bar near us, on account of the crowd.

Q. Do a great many people come in there whom you do not see and whom you do not notice?—A. Well, no; I guess not. Only if a person is busy you don't notice him if he comes in and takes a drink and goes out.

Q. Unless you happened to serve him you would not notice him?—A. You would not pay a great deal of attention to him.

Q. You would not notice him at all?—A. Unless you looked up and glanced at him or something like that you would not pay any attention, because you are busy.

Q. What do you mean—do you mean that you would look or take a glance at everybody that comes in there?—A. Yes.

Q. If you were not busy?—A. Yes.

Q. I did not have in mind just what hours of the day you worked there.—A. Well, I worked there—I used to go to work at half past 11 in the morning and work until 5 and go on at 7 in the evening until half past 11 in the evening, a 10-hour shift.

Q. On this occasion when you first saw Judge Hanford, he passed you, as you say—was he walking in the same direction you were walking in?—A. No, sir; he passed us—I believe we were going the other way, and he passed us.

Q. That is, you were going in opposite directions?—A. Yes, sir.

Q. I understood you to say he passed you in the same direction.—A. No, sir.

Q. Did this person who was with you say anything particular about him?—A. That was all that was said.

Q. Just what did he say?—A. He said, "There goes Judge Hanford." I didn't know who he was; he happened to be passing by.

Q. And was that all he said?—A. Yes, sir.

Q. And when he said "There goes Judge Hanford" did you ask him any questions?—A. No, sir.

Q. Did you ask him why he called your attention to the fact?—A. No, sir; I did not.

Q. Did you know that somebody named Judge Hanford was the Federal judge here?—A. I did; yes, sir; I read it in the papers, but that was the first time that I saw him to know him.

Q. When did you read it in the papers?—A. From time to time.

Q. Well, had you read it in the papers before this occasion when you saw him first?—A. Well, yes; some years ago I would see little cases—I would read a thing or something that he was the judge; that is all.

The CHAIRMAN. You are excused.

ELMER ANDERSON, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell your full name to the committee.

A. Elmer Anderson.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Two years and nine months.

Q. Where did you live prior to that?—A. Los Angeles.

Q. What is your business?—A. Bartender.

Q. How long have you been following that business?—A. Twelve years.

Q. Where are you now employed?—A. Sutherland Liquor Co.

Q. How long have you been with them?—A. Two years and eight months and a half.

Q. They have a general wholesale and retail liquor business?—A. No, sir; retail.

Q. Only retail?—A. Yes, sir.

Q. How many persons are employed there?—A. Three bartenders and two Japs.

Q. Three at one time?—A. No, sir; two.

Q. Two on service always?—A. No, sir; not always—always up until a quarter to 8.

Q. In the evening?—A. Yes, sir.

Q. What were your hours of service?—A. Quarter of 10 to a quarter to 8 and an hour off for lunch.

Q. A quarter to 10 in the morning to a quarter to 8 in the evening?—A. Yes, sir.

Q. And what is your hour off?—A. A quarter to 2 to a quarter to 3.

Q. Are you acquainted with Judge Hanford?—A. No, sir; I know him by sight.

Q. How long have you known him by sight?—A. About a year.

Q. Where did you first see him?—A. In the Sutherland bar.

Q. What was he doing?—A. He walked through there to use the toilet.

Q. Anything else?—A. No, sir; he walked out again. That was the first time I met him to know who he was.

Q. Have you seen him drink at the bar there?—A. Yes.

Q. What drink did he take?—A. Benedictine.

Q. When did you first notice him taking that drink?—A. About a year ago.

Q. About what hour of the day?—A. About 7 o'clock.

Q. In the evening?—A. Yes, sir.

Q. Just one drink?—A. One drink; that was all.

Q. Have you seen him drink anything else than benedictine?—A. I never did.

Q. You waited on him, did you?—A. I waited on him four times since I have been in the house.

Q. What would you give him each time?—A. Benedictine.

Q. Have you ever seen anyone else waiting on him?—A. No; about 7 o'clock—he used to come in about 7 o'clock in the evening and I would get through at a quarter to 8.

Q. What is his usual hour to come in there?—A. About 7 o'clock.

Q. What are your rush hours?—A. From 4 to half-past 6.

Q. During that time what opportunities have you had to notice customers that you are not waiting on?—A. Not any, Judge.

Q. What opportunity have you to take any note of the customers you do wait on?—A. Not any at all; I paid attention to nobody.

Q. Give us some idea as to how busy you are during those hours.—A. Well, if you come down there, it is a case of grab everything and put it out and set them up and take them off.

Q. Do you set them up about just as fast as you can put them up?—A. You set them up about as fast as you can; you don't notice anybody.

Mr. McCoy. Were you served with a subpœna?

A. Yes, sir.

Q. Have you any objection to coming here and testifying?—A. Not at all.

Q. Have you said to anybody that you objected to being subpœnaed?—A. No, sir.

Q. Do you know a detective by the name of Kolar?—A. Is it that stool pigeon that sat here, for Burns?

Q. Yes, whatever you call him.—A. Yes, I know him.

Q. What was it you said to him?—A. Sir?

Q. What was it you said to him?—A. I didn't say anything at all.

Q. You didn't say anything to him?—A. No, sir; except I said, "What do you want to bother me for, I have to work." I said, "I can't go up here—I don't know anything—I have to work," that is what I said.

Q. Is that all you said?—A. Yes, I told him that last night.

Q. You are positive that is all you said?—A. I am positive of it, I told him last night, "What do you want to bother me for, I have to work."

Q. Didn't you say, "I will get you into trouble," or something of the kind?—A. I never did.

Q. And didn't you call him by any foul name?—A. No, sir.

Whereupon a recess is taken until 2 p. m.

AFTERNOON PROCEEDINGS.

Continuation of proceedings pursuant to recess.

All parties present as at former hearings, except Judge Hanford.

J. O. Taft, having been first duly sworn, testified as follows:

The Chairman. Tell the committee your name.

A. J. O. Taft.

Q. Where do you live, Mr. Taft?—A. Seattle.

Q. How long have you lived in Seattle?—A. A little over 14 years.

Q. What is your present occupation?—A. Architect.

Q. How long have you practiced your profession?—A. Oh, off and on for close to 40 years.

Q. And all the time you have lived here?—A. No; I have lived here for about 14 years, a little over.

Q. Well, I say you have practiced it all the time you have lived here?—A. No, not all the time, not all the time.

Q. Mr. Taft, do you know Judge Hanford?—A. Yes, sir.

Q. How long have you known him?—A. Oh, I presume close to seven years.

Q. Is that a personal acquaintance or a sight acquaintance?—A. Just a sight acquaintance.

Q. If at any time you have seen Judge Hanford when you thought he was under the influence of some intoxicant, please tell the committee of it.—A. Well, I could not name the times, but it has been quite a number of times, so far as that is concerned.

Q. When first, as far as you can recall?—A. Oh, it would be hard to tell, but I should judge probably the first time was some five or six years ago.

Q. Do you remember the circumstances?—A. No, not particularly. The only way I recollect it is his having been on the car with me going out on the street car. I live on the same car line that he does, and I often saw him in that condition on the car.

Q. Tell us, if you please, his appearance or actions or demeanor which lead you—tell us as well as you can what it was that led you to the conclusion you reached.—A. Well, the times that I saw him in the shape that I considered he was intoxicated were all of them practically the same condition; that is, he was in about the same condition; that was, that he was on the cars usually when I got on; it would be along anywhere from 11 to 12 o'clock at night, and I would notice him in the car often sitting just in front of me where he would begin to nod and pretty soon he would go to sleep. There was a number of times that I have seen him in that shape until the conductor would come to him and shake him and want to know if he didn't get off here; that would be on Galer Street, and he would kind of rouse up and look around and thought he was; he would get up and stagger off out of the car. I am not saying that he walked out, but he staggered out through the aisle, and I have heard comments by women on the car that it was a shame to see a man in such a shape. They didn't know who he was, I suppose, and possibly they might have known; I don't know as to that. That is the condition I have always seen him when I thought he was intoxicated.

Mr. HUGHES. Does the committee desire to take hearsay testimony, purely hearsay testimony?

The CHAIRMAN. Yes.

Mr. HUGHES. It does not seem to me that that would be competent.

The CHAIRMAN. Yes. Of course, you know, Mr. Hughes, that this is not a lawsuit; it is much more in the nature of a grand-jury proceeding than a court proceeding. It is purely preliminary, and in any event the fact that those who were present made remarks about him would be competent in any court. What they said might not be, but the fact of their noticing him and commenting on his condition would be competent anywhere in any court.

Q. Can you specify any individual times or places other than you have stated?—A. No, I could not.

Q. For how long a time did you see the judge pass or repass on the street car under the circumstances you have mentioned?—A. How often, sir?

Q. No, for how long a period of time did you continue to ride on the car on which he rode under those conditions?—A. Well, I usually get on a car at—on Pine Street, anywhere from Second Avenue to Westlake, and—well, it is close to 2½ miles from there to where—well, about 2 miles to where he gets off, so I would be on the car riding about 2 miles; it would be close to—oh, probably a 15-minute ride.

Q. That began about five or six years ago you stated?—A. To the best of my recollection it did.

Q. And continued until when?—A. Well, I have not seen the judge in that condition now for probably—oh, I would say a couple of months, possibly a little more than that; I don't call to mind just when the last time I did see him in that condition, but to my best recollection it was about two months or two months and a half ago.

Q. Have you seen him on the car since that time?—A. I have not seen him on the car for a long time. I don't know when I did last.

Q. Could you in some way give the committee an idea of how frequently you saw him during the period of five years or so in which you did observe him in that condition?—A. No; it would be pretty hard to tell.

Q. By the week or month or in any way you can, can you give us some idea of the number of times?—A. No, it would be hard to tell that, because I would generally—when I was out it was on lodge nights that I went, and of course I would catch him going on the car; he might go home, don't you see, before or might go home after I did, but usually it was anywhere from 11 to 12 o'clock; so it would be pretty hard to tell; it might be an average of once a month, might not be that much, you see.

Q. How frequently did you see him going home at that hour when he was not, in your judgment, under the influence of any intoxicant?—A. Oh, I have seen him a few times, more particularly here—I don't call to mind just how long ago it was—there was some disturbance on the Seattle, Renton & Southern car line, and I am just mentioning this to refresh my memory with reference to the fact that I saw him less under that condition after that time than I did before. Now, I don't call to mind just how long ago that was.

Q. Was it this year?—A. How?

Q. Was it 1912 when the excitement to which you refer too place?—A. Well, I don't remember now. It seems to me it was last year; it seems to me it was about a year ago, or something like that.

Q. Well, on the times that you did observe him on the car, will you give the committee some idea as to the per cents, that is, the number of times that in your judgment he was or more or less intoxicated, as compared with the number of times that in your judgment he was not?—A. Well, no; it would be pretty hard to do it.

Q. Did you get my question?—A. Yes, I get it. It would be a pretty hard matter to do that, because I think I would have to say that it was pretty nearly every time that I saw him that he was more or less under that condition.

Q. Mr. Taft, have you ever had any litigation in his court or before him?—A. No, sir.

Q. Have you any personal feeling against him?—A. No, sir.

Q. Have you seen him elsewhere than on the street car?—A. Oh, I have seen him at different places; I didn't pay particular attention.

Q. If at any time you saw him elsewhere than on the street car, when in your judgment he was under the influence of intoxicants, tell us of that.—A. Well, I don't know that I could say that I ever did; at least, I don't call to mind now.

Q. Is there any other matter connected with this inquiry which you think you ought to tell the committee, that is within your knowl-

edge?—A. Nothing that I know of. I didn't know that I had got to tell this.

The CHAIRMAN. Do you wish to ask further, Mr. Hughes?

Mr. HUGHES. I would like to ask a few questions.

By Mr. HUGHES:

Q. Mr. Taft, do you know how the committee obtained your name as a witness? Did you communicate the matter to any one?—A. No. There was a gentleman came to me yesterday, and said that I had been reported to him. I didn't know—that is the first I knew anything about it.

Q. Who was that?—A. I think it was Mr. Allen—isn't it?

Q. I don't know, I am sure.—A. Well, I think that is who it was; a man by the name of Allen.

Q. Do you know what his first name was?—A. I don't know; no. He said that I had been suggested to him.

Q. Do you know the conductors of the cars, or any of them, on the road on which you and Judge Hanford travel?—A. Yes, I know nearly all of them but not by name.

Q. You don't know them by name?—A. No, I don't know them by name.

Q. They are still here in the city, I suppose?—A. Yes.

Q. You say Judge Hanford would nod, apparently dose, in the car?—A. Just state that question, will you please?

Question read.

A. That he would not?

The STENOGRAPHER. "Nod."

A. Oh, nod. He went to sleep.

Q. Then he actually went to sleep; you know that?—A. Yes, sir.

Q. He was not apparently dozing, but you testify that he actually went to sleep?—A. Well, he must have been asleep, or something else, because the conductor had to go and wake him up to get him off the car.

Q. You never saw anybody nod except Judge Hanford, on a street car, I suppose, in riding?—A. Oh, yes; I have done that myself.

Q. Oh, you have?—A. Yes, sir.

Q. It is customary for a person to get up before the car comes to a stop?—A. Well, it is with a good many. I know I nearly always do myself.

Q. You state, I believe, that he seemed to stagger in going through the aisle; not walk straight?—A. Yes, sir.

Q. Did you ever see anybody going through the aisle while the car was stopping who did not stagger and who did not walk unsteady?—A. Well, yes; I have seen them where they would walk pretty steady, but I never saw one when he would get off the car that he would come pretty near what we call taking a heeler. I have seen him not only once, but I have seen him time and again when he would get off the car, he would hardly hold his equilibrium.

Q. Dark nights, sometimes it is very slippery there, isn't it?—A. Slippery? Not very often, not on the pavement—not unless it has been raining.

Q. What?—A. Not unless it has been raining.

Q. But it rains very commonly during a large part of the year here, doesn't it?—A. Well, it rains once in a while in Seattle; yes, sir.

Q. You never saw anybody else slip or take a "heeler" in getting off of cars, I suppose?—A. I don't think I ever did, not unless they were full as——

Q. (Interrupting.) Do you know how old a man Judge Hanford is?—A. Yes, sir; I know pretty nearly. I don't know, of course, how old he is, but I should judge he is——

Q. (Interrupting.) You know him to be 64 years old, or about that age?—A. How old?

Q. Sixty-four.—A. Well, I took him to be about 70. I don't know; I thought I was a pretty close guesser.

The CHAIRMAN. At this point, Mr. Hughes, would you mind putting in the record just what the judge's age is?

Mr. HUGHES. Sixty-four. Sixty-four at his next birthday, I think; approximately 64 years of age.

Mr. HIGGINS. When was he appointed judge?

Mr. HUGHES. He was appointed with the admission of the State into the Union, the first United States district judge, in 1889. We were admitted in November, 1889, and he was appointed, I think, in December.

Mr. DORR. He came in about the first of the year.

The CHAIRMAN. Are you through with the witness?

Mr. HUGHES. Yes.

Witness excused.

Mr. HUGHES. Mr. Chairman, I would like to make the statement that under the law it is incumbent upon the Federal court to open the session at Tacoma the first day, which is fixed in the statute. To-day is that day in the city of Tacoma. Judge Cushman has not yet arrived, and Judge Hanford has been compelled to go to Tacoma for that purpose this afternoon.

The CHAIRMAN. Very well.

Dr. E. J. BROWN, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell the committee your name.

A. Edwin J. Brown.

Q. You live in Seattle?—A. I do.

Q. And you have been living here how long?—A. Since February, 1901.

Q. What is your profession?—A. At this time I am practicing law. However, I am also a dentist, and have dental offices here, but I do not practice the profession of dentistry, other than general supervision of them.

Q. When were you admitted to the bar?—A. I was admitted to the bar in Missouri in 1899, and Washington January, 1905.

Q. And when did you graduate in dentistry?—A. 1897, April 2.

Q. Have you practiced the profession of dentistry?—A. Yes, sir; I have.

Q. And practiced law in Missouri and also in Washington?—A. Yes, sir.

Q. Doctor, do you know Judge Hanford?—A. I do.

Q. How long have you known him?—A. I said January, 1905, I believe it was January, 1904, that I was admitted to the bar—enrolled in the State of Washington, and I became acquainted with Judge Hanford in 1904.

Q. How much have you seen of the judge since?—A. I have seen the judge a great deal since 1905. I moved out in the Capitol Hill district in 1905.

Q. That would be in the same neighborhood in which he lives?—A. Not in the same neighborhood exactly, but we use the same car.

Q. All the way or part of it?—A. Very nearly. I live about—he goes out about four or five blocks farther than I do; maybe three or four blocks.

Q. Have you had any business before him or in his court?—A Yes; I have from time to time.

Q. During the time you have known him, beginning as far back as you can, if you have seen him when in your judgment he was under the influence of intoxicants, please tell the committee of it—A. The first time I noticed Judge Hanford under the influence of liquor was in 1904, in his court room, in the old court building, in the old court room

Q. Tell the committee the circumstances.—A. Well, we were—there was a—I believe we were engaged in a habeas corpus procedure before the court. I noticed Judge Hanford was almost unable to preside over his court, but I did not pay much attention at that time, because I had not known the judge prior to that time; but it was spoken of by other attorneys—other people in the court—that the judge had been drinking. But I did not pay any attention to that so much until I moved out in that district; in the district in which we traveled on the same car.

Q. Well, before leaving that incident, was a proceeding actually going on at the time you speak of, and was Judge Hanford on the bench?—A. Yes.

Q. In connection with that proceeding?—A. Yes.

Q. Well, what was there in his actions that led you to believe that he had been drinking excessively?—A Well, the judge acted the same as any man would act when he was either entirely exhausted from fatigue or under the influence of liquor, was all; just the way any man would act; he continually nodded, you know; he was not able to establish his equilibrium—keep himself awake and alive to what was going on there.

Q. Do you recall whether the hearing or proceeding was pushed to a conclusion at that time?—A. Yes, it was.

Q. Did he give a judgment or decision?—A He handed down his decision in writing about a week afterwards.

Q. Who were the attorneys participating?—A. I believe Samuel R. Stern and Mr. Gleason, of this city, were for the State, and Mr. John R. Parker and myself were, I think, were for the applicant.

Q. The petitioner?—A. The petitioner.

Q. Was it in the State court?—A In the United States court.

Q. In the United States court. Well, passing from that incident, when was the next time, so far as you can recall, when you saw him under the influence of liquor?—A It was along in the fall, I believe, of 1905, on the car, on the Broadway and Pike car The first time that I witnessed the judge on the car I was rather astonished to see a judge in that condition, and it made an impression upon me It was just after I moved out there, or it was sometime after I moved out there.

Q. Tell the circumstances on that occasion —A. Well, the judge boarded the car. It was easily to see that he was under the influence of liquor It was along about 11 or half past 11 o'clock in the evening, I think.

Q. Did you notice him as he got on?—A. Yes; I noticed him as he boarded the car at the corner of Second and Madison.

Q. Well, how was his gait with reference to steadiness or unsteadiness?—A. Well, the judge was unsteady. That night he walked up to the front of the car and sat on the side seat and faced the rear of the car, but of course he held onto his seat all right, but it was easily to see that the judge was under the influence of liquor. People in the car were winking at each other; that is what called my attention—really one of the things that called my attention to it so that I really kept watch of him

Q. Were there many on the car?—A. I would judge probably—oh, I don't just remember about that; probably 6 to 12 or 15 people—I don't know how many.

Q. Well, without asking what they said, did the people there make observations about his condition?—A. Well, nothing more than the usual observations in a case of that kind. It was easily to see that the judge was under the influence of liquor, and they recognized it. I remember that the conductor made a remark about the judge needing a bodyguard when I got off of the car.

Q. Which of you got off first?—A. I did.

Q. Were you near enough to him to observe whether there was any odor from his breath?—A. No.

Q. After that, do you recall some particular instances?—A. Why, I recall the instance—the instances, rather, but I could not say definitely as to the time; but I will say that it is a common thing to see Judge Hanford going out on the car in that condition

Q. During the time that you rode back and forth on that line, how often would you say that you saw him, by the month?—A. Well, I would not—of course, that would be—I would be willing to say that I saw the judge in that condition once a month, probably oftener than that, but I would not want to——

Q. (Interrupting.) And how often during that time would you see him, a month, when in your opinion he was not under the influence of intoxicants?—A. Oh, I have seen him—I have seen the judge very often when he was not under the influence of liquor.

Q. What was the difference in his demeanor when he was not under the influence and when he was under the influence as he rode on the car?—A. Well, Judge Hanford is rather an observing man, although a reserved man, but it is very easy to tell whether he is drinking or not, because when under the influence of liquor, the judge's head always tilts over and he is addicted to the habit of blowing [witness illustrating]. It seems his breath burns him. I have noticed it time and again.

Q. Has he that habit when duly sober or when not intoxicated?—A. I don't think so, and the judge's face flushes when he is drinking, too.

Q. How did he sit and how did he act with reference to going to sleep when you thought he was sober?—A. Well, I never seen—I never witnessed the judge asleep when he was sober.

Q. And how about his head lolling to one side and the other—— A. (Interrupting.) No.

Q. (Continuing.) When sober?—A. No. In observing Judge Hanford, if he is meditating about something or studying, why, he may move, but when Judge Hanford is sober he acts entirely different than he does when he is drinking. He constantly nods when he is drinking, and goes sound asleep. I have seen him pretty near fall off of his seat in the car.

Q. Was it at about the same hour you saw him on each occasion?—A. Anywhere from 11 o'clock until 1, but usually when the judge is drinking he gets in at the later hour, but I went home on the car with him anywhere from 11 o'clock until 1 in the morning.

Q. And that you say would cover a period from five to seven years?—A. Yes.

Q. During that time, doctor, how many times a year would you think you had seen him when you thought he was intoxicated?—A. I have seen the judge in that condition twice in one week, and again I could not say but what maybe two months would pass when I had not seen him in that condition; but I could safely say that I have seen him intoxicated, oh, once every 30 days.

Q. Did you go home every night at the hour or hours mentioned, or was it only occasionally?—A. Why, I leave my office between 11 and 12 every night. I generally try to leave about 11.30, from 11 to 11.30; sometimes as late at 1 o'clock. That is my law offices.

Q. Yes. Did you at any time see the judge elsewhere than on the street car when you thought he was under the influence of liquor?—A. On the street, on the street, waiting for the car, or on the street cars, is the only places that I have ever seen him.

Q. Do you recall any instances on the street when you thought he was intoxicated?—A. Yes; I saw the judge about 18 months ago, I think it was—let me see—no; it is not that long—within a year—get on a street car up on Pike Street; that is, he was on the street waiting for the car; he was in that condition.

Q. What were the facts which led you to that conclusion?—A. Because I was on the car myself at that time and saw the judge getting on the car—waiting for the car and getting on the car.

Q. Well, while he was waiting, what was it, if anything, that attracted your attention to him?—A. Nothing further than when he stepped off of the sidewalk to come and get on the car it was easy to see that he had been drinking.

Q. What happened?—A. Well, he got on the car and he came——

Q. (Interrupting.) I know, but when he stepped off the sidewalk what was there peculiar in the way he did it?—A. His gait was unsteady; he didn't have his equilibrium like a man would step with a firm step, with a safe step, if he were not drinking.

Q. Did you, after he got on the car, observe him further?—A. Well, just as you would ordinarily. Of course it was—I was accustomed—had become accustomed to seeing the judge in that condition, and I don't know as I paid any more attention than I would—I had prior to that time.

Q. Well, did you see him under any other circumstances than getting on or getting off the street car, when you thought he was intoxicated?—A. No.

Q. Have you had any kind of personal trouble with the judge?—A. No, no, indeed; no.

Q. Have you any prejudice or feeling of any kind against him?—A. No; no feeling or no prejudice against him, other than that I believe that he should retire on account of his drinking. I don't think he is a fit man to be on the bench, but I have no prejudice.

Q. Well, I should have said personal feeling against him.—A. No; none whatever; absolutely no personal feeling. I think—I have tried cases before the judge. I think he is as fair a man on the bench as any I ever appeared before, when he was sober.

The CHAIRMAN. That is all I care to ask.

Mr. HIGGINS. What was the title of the case, Mr. Brown, in which you said——

A. (Interrupting.) An application for a writ of habeas corpus. Littooy—I think it is H. C.—Henry Clay Littooy versus—against Cudahy, I believe. It seems to me Cudahy was sheriff at that time.

Mr. HIGGINS. That was a proceeding in habeas corpus?

A. Yes.

Mr. HIGGINS. How long ago?

A. I believe that was in 1904.

Mr. HIGGINS. Now, won't you state to the committee during the progress of that case when you first thought that the judge was under the influence of liquor?

A. Why, when counsel were making their argument in the case—in a prior case. I think it was a case in which the Match company at Tacoma had a matter up in which a receiver was before the court, and while counsel were arguing their cases or presenting their argument to the court, the judge sat as though he was in a stupor all the time there.

Mr. HIGGINS. Well, was it during the argument of the motion in the Match case that you thought he was intoxicated?

A. Yes; and the argument in the habeas corpus case as well.

Mr. HIGGINS. But the Match case preceded the habeas corpus case?

A. It did.

Mr. HIGGINS. And during the trial of the Match case you thought he was under the influence of liquor?—A. I did.

Mr. HIGGINS. And the habeas corpus case immediately followed that?

A. Yes.

Mr. HIGGINS. Did you appear as attorney in that case?

A. Yes; but Mr. Parker presented the argument in that case.

Mr. HIGGINS. What is his full name?

A. John R. Parker.

The CHAIRMAN. Do you desire to ask the witness further?

By Mr. HUGHES:

Q. Dr. Brown, the case that you refer to, the habeas corpus case, was that of Dr. Littooy, a dentist, who was arrested for violating the dental law?—A. Yes; Dr. Littooy was in—up in jail, and the idea was to have the law passed upon by the court.

Q. Dr. Littooy was a partner of yours, wasn't he?—A. No.

Q. Or associated in some way with you in dentistry?—A. No, sir.

Q. At least engaged in the same fight on the law that you were in this matter?—A. Well, we were defending Littooy in the matter.

Q. Did you participate as a lawyer or because of your attempt to contest the law in Littooy's case, as you had in your own?—A. I participated in that case as a lawyer for a fee. Dr. Littooy paid us for our work.

Q. How long did it take to introduce the testimony?—A. There was no—I don't think it—there was any testimony introduced other than that he was held in jail by the sheriff of King County.

Q. Do you recall upon what the question was submitted to Judge Hanford for decision?—A. It was upon the constitutional question presented.

Q. Upon an agreed statement of facts?—A. The question revolved upon the constitutionality of the law.

Q. Was it upon a demurrer to your petition for the writ of habeas corpus?—A. No.

Q. Do you know how the question arose? I am trying to get at the question of whether evidence was introduced.—A. No.

Q. Then it must have——A. (Interrupting.) I believe that there was no evidence introduced.

Q. (Continuing.) Been purely, then, an argument upon the law?—A. An argument upon the law.

Q. Do you recall whether that arose in the way of a demurrer to your petition?—A. No; we sought his release——

Q. (Interrupting.) The facts were set forth in your petition?—A. Yes.

Q. And challenged by demurrer—do you remember?—A. We sought his release from the sheriff of King County—the King County jail—on a writ of habeas corpus.

Q. I understand.—A. And the——

Q. (Interrupting.) You either had a trial of fact or of law?—A. A trial of law upon the constitutionality of the dental law of this State.

Mr. McCoy. Was not the case tried on a petition and a return?

A. On a petition; yes.

Mr. McCoy. And on the return of the sheriff to the writ of habeas corpus?

A. Yes.

Mr. Hughes. Was there a return of the sheriff then?

A. Yes, sir.

Q. Then the question was raised upon the return of the sheriff?—A. That is my recollection.

Q. It would not follow necessarily that the return would be admitted. You are satisfied there was no evidence introduced?—A. No.

Q. And simply an argument of the law?—A. A constitutional question was all that was presented before the court.

Q. What time of day was that?—A. My recollection of that, it seems to me it was—I believe the Match case occupied the forenoon. I think the Littooy case came on immediately after noon.

Q. Do you recall who were the attorneys in the Match case?—A. There were some gentlemen from Tacoma; I don't remember who they were now.

Q. You say that S. R. Stern and Mr. Gleason appeared for the sheriff?—A. I know that Stern appeared.

Q. S. R. Stern, of Spokane?—A. Sam Stern; yes, sir.

Q. Of Spokane?—A. Yes.

Q. Do you know as to whether or not Gleason appeared?—A. I am not positive of that, whether Gleason appeared there or not. Gleason was assistant prosecuting attorney, and whether he appeared or not I don't know.

Q. Was there any announcement by Judge Hanford upon the close of the argument?—A. No.

Q. He simply stated that he would take it under advisement, did he?—A. Yes.

Q. And do you recall how much time was consumed in the argument?—A. I think probably an hour or an hour and a half a side. I believe—whether we were requested to present a brief or not I don't remember about that.

Q. All you observed was that often he closed his eyes and dropped his head?—A. Yes.

Q. And that was the only thing that you observed that was unusual, wasn't it?—A. Yes; at that time.

Q. And as a matter of fact when sessions of court were held in the afternoons, that was a very common thing, a habitual thing with Judge Hanford, when he was engaged right along in the continuous trial of cases, that often he would relax, close his eyes, and drop his head, and sometimes nodding; isn't that true?—A. Yes; but when he was——

Q. (Interrupting.) Isn't that true?

Mr. McCoy. Wait, let him answer.

Mr. Hughes. I beg your pardon. If you haven't answered the question, go ahead.

A. When the judge—the difference I observed was that when the judge's head would go over he would blow like and wake up quick and then observe the trial was going on again, and I thought then that he was drinking, and that is what I based my conclusion on.

Q. I thought so.—A. That he had been drinking.

Q. As a matter of fact you have always noticed him do that in the afternoons when he was engaged in a trial for considerable periods of time and working hard, have you not?—A. No, Mr. Hughes; I have seen the judge try cases when he did not do that at all.

Q. In forenoons, that is true.—A. In the afternoon as well. The last case I tried——

Q. (Interrupting.) Are you sure about that?

Mr. McCoy. Let him finish his answer.

A. The last case I tried before the judge was the case of Osborn against the city, and he didn't—Judge Hanford didn't sleep any that time.

Mr. McCoy. Was that in the afternoon?

A. Afternoon and forenoon, the entire day. I think we were two days trying the case. Judge Hanford didn't sleep any that time.

Mr. Hughes. You don't know what his condition of health was or what work he had been doing prior to that time?

A. No. No, I don't.

Q. I want to ask you one other question in that connection: When you have noticed him close his eyes and nod, have you ever observed that an attorney made an objection when the judge did not immediately rule and rule clearly upon that objection?—A. I have noticed Judge Hanford do that, have his eyes closed and when an objection was interposed the judge would rule immediately.

Q. And rule clearly?—A. Yes; when you would think he was asleep. When you would think he was asleep I have seen him raise his head and open his eyes and rule immediately.

Q. You have stated that he did certain things when he was drinking. Did you ever see him drink in your life?—A. No; because I don't go—I don't drink, and I seldom go where they do drink.

Q. Then, as a matter of fact, Dr. Brown, all you wish to say to this committee is that you have seen certain manifestations; so far as you know you don't have any information, that is, personal knowledge, as to whether he had actually been drinking or not; you are simply describing the appearances that you saw?—A. I wish to say to the committee that I have never seen Judge Hanford take a drink, but my experience for the past 38 years has learned me to know when a man is intoxicated and when he is not, and I have seen Judge Hanford intoxicated many times.

Q. When you believed he was intoxicated?—A. I didn't believe it; I know it. I believed it because I knew it; yes, that is right.

Q. You are willing to testify to that?—A. Sure, certain.

Q. That is to say, when you haven't seen a man drinking and you do see him nodding, you are willing to testify that you can tell whether that is due to intoxicating liquors, to sickness, to overwork, or to age, you can always distinguish—is that what you mean to say?—A. No.

The CHAIRMAN. If the witness was not a lawyer, I would come to his rescue. The question is not fair. You pretend to state the hypothesis but only state one that was related by the witness. But as he is a lawyer, I take it that he will be able to distinguish.

A. Why, I take cognizance of a man's general demeanor, and in one instance he might not be drinking at all, if he were nodding from fatigue, or even from old age, but a man under the influence of liquor is very easily detected. The effects of liquor is different than anything else.

Mr. HUGHES. Your title of "doctor" is due to your being a doctor of dentistry and not of medicine?

A. That is correct.

Q. And you are the Dr. Brown who is at the head of the dental society or company which advertises with your picture at the head of it, are you?—A. Yes, sir.

Q. Dr. Brown——A. (Interrupting.) The Brown Dental Offices, that is.

Q. How?—A. We don't go under the style of a company. The "Brown Dental Offices."

Q. You have said that you have no prejudice, Dr. Brown. Is it not true that you are one of the leaders of the Socialist organizations——

The CHAIRMAN (interrupting). A little louder, Mr. Hughes.

Mr. HUGHES. (Continuing.) That you are one of the leaders of the Socialist organizations here, and, as such, have some prejudice and opposition to Judge Hanford since the Dreamland Rink controversy?

A. It is not true that I am a leader of the Socialists. It is true that on various occasions they have seen fit to nominate me, to tender me nominations for public office. But it is true that I am a Socialist, but I have no prejudice against Judge Hanford because of his ruling in the Olsson case, or, rather——

Q. (Interrupting.) Or in the Seattle, Renton & Southern?—A. No. As a Socialist I would say that I have no prejudice on that score, because I believe that the more of those rulings we have the more we will flourish as a political movement.

Mr. HUGHES. That is all.

The CHAIRMAN. Are there any further questions?

Mr. MCCOY. Yes, I will ask him.

Mr. HUGHES. Just a moment. Judge Hanford decided against you in the Littooy case, didn't he?

A. He decided against—I could not say that he decided against us; he simply held that the law was not so bad that he would care to nullify it.

Q. His opinion would speak for itself. He denied the writ?—A. He denied the writ.

Q. I see by the papers that I have here that Charles R. Gleason appears. He is an attorney of this city?—A. Yes.

Q. And he was present at that hearing, was he not?—A. I am not positive as to that. I remember very distinctly that Samuel R. Stern presented the argument in the case.

Q. He was representing the State medical society, wasn't he?—A. The dental board.

Q. The dental board?—A. The dental society. He was, strictly speaking, the dental society's lawyer and special prosecuting attorney.

Q. I see that W. T. Scott, who was then prosecuting attorney—I think he is since dead——A. (Interrupting.) Yes, he died up in Alaska.

Q. (Continuing.) And Samuel R. Stern appeared for the defendant, or the sheriff?—A. That is correct.

Mr. HUGHES. That is all.

By Mr. MCCOY:

Q. What was the question involved; something to do with practice regulations under the laws of the State of Washington?—A. Yes; we sought to annul the law by a writ of habeas corpus; that is to say, Littooy had been arrested for practicing dentistry without a license, and we wished the court to pass upon the constitutionality of the law, and that question could be presented upon habeas corpus, in habeas corpus proceedings.

Q. Have you ever been in court when applicants for citizenship have appeared before Judge Hanford for qualification?—A. No. No; I never have.

Q. You have been asked whether you have seen Judge Hanford in the afternoon place his head on his hand and act as though he were asleep, or sit with his eyes closed?—A. Yes.

Q. You have observed that?—A. Oh, yes.

Q. And——A. (Interrupting.) It was quite a common thing for the judge to do that.

Q. On the occasion of which you speak, when these habeas corpus proceedings were pending or being discussed, was his demeanor similar to that which you have observed while you have seen him on the street cars in the condition which you have described as one of drunkenness?—A. Exactly. Only I would say not to the extent—not to the extent that I have seen him under the influence on the cars.

Q. But the same sort of thing that gave you the opinion that he was intoxicated when he was on the cars at these various times is what happened when you were arguing that habeas corpus case here?—A. Yes; that is what reminded me of it.

By the CHAIRMAN:

Q. At what hour in the day did the judge take the bench that day?—A. I don't remember other than that it was at the usual court hour; that is——

Q. (Interrupting.) And how long did he sit on the bench continuously?—A. Well, we adjourned—they adjourned court at 12 o'clock noon, and took up at the usual hour in the afternoon; I know it was their usual court hour.

Q. And was it both before lunch and after lunch you saw him in this condition, or only after lunch?—A. No; just the same condition in the morning as he was in the afternoon. There was no difference.

Q. Well——A. (Continuing.) As far as I could see, I——

Q. (Interrupting.) How long did he continue, or did he hold court that day long enough to have time to get sober, that is what I want to get at. What is your opinion about that?—A. My recollection is that the court—my recollection is not very—not so distinct on that. It occurs to me that in the afternoon—it seems to me that in the afternoon the judge was much—was heavier than he was in the morning, but I noticed in the morning, while the argument was presented in the match case—it was an argument of some length—I noticed that he seemed to be in bad shape in the morning, but in the afternoon it seems as though he was heavier.

Q. Taking into consideration the questions asked you by Mr. Hughes and the conditions described by him, do you modify your conclusion any as to the judge's condition that day?—A. No. No. Other attorneys spoke of Judge Hanford's condition at that time.

Mr. MCCOY. Who are they?

A. And many times. I don't—I remember one young attorney, a young attorney—Mr. Daly, referred to Judge Hanford's condition.

Mr. MCCOY. What is his first name?

A. W. J. Daly. He has been in our offices for some eight years. He did not refer to him as being intoxicated, but he referred to his general condition as being in the last stages of anesthesia or something.

The CHAIRMAN. There is a scientific difference between anesthesia and intoxication.

A. That would, of course, mean that he was asleep.

Q. Well, it would mean more than that, wouldn't it?—A. That he had had an anesthetic, I suppose.

Q. It would mean that he was asleep from the influence of something that he had taken into his stomach——A. (Interrupting.) I suppose.

Q. (Continuing.) Or body.—A. The conversation, however, was not followed up; but I recall Mr. Daly making that remark.

By Mr. MCCOY:

Q. Do you remember any other attorney who was in court that day and who mentioned the circumstance?—A. Well, I don't remember the names.

Q. But you think that others did?—A. Yes. Been many attorneys has remarked about the judge.

Q. I didn't hear that.—A. Many attorneys have remarked about the judge's condition and felt sorry for him.

By Mr. HIGGINS:

Q. While he was on the bench?—A. Yes, while he was on the bench.

Q. Won't you give us the names of the attorneys?—A. Well, it is pretty hard to remember these names. Different ones, in the term of years as years go by.

Q. Can't you recall the names of any other than Mr. Daly?—A. No, I don't. I suppose I might have been able to if I had known that I was going to testify, possibly. If I had known it a year or two ago I am positive that I could have brought up the names of a good many.

Q. Well then, Dr. Brown, I will ask you after you leave the stand and sometime in the next two or three days to get to thinking about that and give us the list of names of attorneys that you can remember, if you are able to.—A. Well, if I am able to, I would not hesitate to.

Q. Do you know where the committee is living?—A. No, I don't.

Q. At the Hotel Washington Annex.—A. Yes.

Mr. HUGHES. May I ask now a further question or two?

The CHAIRMAN. Yes.

By Mr. HUGHES:

Q. Judge Hanford was engaged the entire forenoon in the match case, was he not?—A. It occurs to me that the entire forenoon was taken up, and I think——

Q. (Interrupting.) And a part of the afternoon too, wasn't it?—A. I think so.

Q. And the rest of the day was taken up with your case, wasn't it?—A. Yes.

Q. So that his entire day was occupied?—A. Yes.

Q. He did not take any recesses, did he; leave the court room?—A. I don't recollect as to that.

Q. Except, of course, during noon hour?—A. Yes, except the noon hour. If I was going to answer that question, I would rather think he did not take any recess that day. It occurs to me that he did not.

Q. And do you remember more definitely the title of the match case?—A. I don't. It was a match company that Mr. Lewis—J. H.——.

Q. (Interrupting.) James Hamilton Lewis?—A. James Hamilton Lewis. I think it was the company that he represented.

Q. He was one who made an argument?—A. No.

Q. He did not make any argument?—A. No, he was not there.

Q. He was not?—A. No.

Q. And you don't recall who the attorneys were?—A. No, I don't. I don't remember.

Q. Perhaps we can find from the record. That is all.

Mr. MCCOY. Just a minute.

By Mr. MCCOY:

Q. Reference has been made, I think, to this meeting arising out of the injunction in the Seattle, Renton & Southern Railroad matter. Was that meeting gotten up or attended principally by Socialists?—A. No, the Socialists had nothing to do with that meeting whatever.

The Socialists not only had nothing to do with the meeting, but the Socialists had no speakers there. The Republican representative who is now running for Congress, Mr. W. J. Bryan, from Bremerton, was one of the speakers, I believe. That was one large meeting that the Socialists were ruled out of, so far as participating.

Q. You refer to what has been called the Rink meeting?—A. Yes, that is the Dreamland Pavilion meeting, and the Socialists had nothing—as I recollect it the Socialists had nothing to do with that meeting, other than attend; they possibly attended as citizens, individuals.

Q. They were not the prime movers in it?—A. Oh, no. No; they had nothing to do with it. If I recollect correctly, the Seattle Star, it seems to me, and some of the citizens here were the prime movers in that meeting; I think the editor of the Star and some of the other citizens; I don't know.

Witness excused.

MAGNUS SANDO, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell your full name to the committee.

A. Magnus Sando.

Q. Where do you live?—A. I live out in North Broadway.

Q. In Seattle?—A. Yes.

Q. How long have you lived in Seattle?—A. About 11 years.

Q. How long in that neighborhood where you now live?—A. About four years, not quite.

Q. What is your business?—A. Building contractor.

Q. And how long have you followed that business?—A. I have been following it ever since I came to Seattle and some time before, about 18 or 20 years, probably.

Q. Do you know Judge Hanford?—A. Just by sight, that is all.

Q. How long have you known him by sight?—A. Oh, probably seven or eight years.

Q. Do you and he live in the same direction from the business part of the city?—A. We do now; yes.

Q. And have for how long?—A. For the last three years and a half.

Q. And how long do you say you have known him by sight?—A. For about seven or eight years, I think it is; since he built his home out there.

Q. Have you seen the judge when you thought he was under the influence of intoxicants?—A. Well, that is hard to say. I might have seen him and I might not, because—I could not say positive one way or another.

Q. Well, have you seen the judge at any time when he acted to you in a condition indicating that he was not his normal self?—A. Well, I might; I think I have seen him probably once or twice that might look as though—I been out late that night.

Q. Take the first time you saw him, where was that?—A. That is the only time; it would be perhaps on the street car going home in the evening.

Q. About what hour?—A. About 11 or 12, or something like that.

Q. At night?—A. Yes, sir.

Q. How long ago was that when you first saw him that way?—A. Well, I could not say exactly.

Q. Approximately?—A. About three or four years ago, three years ago, not over.

Q. Where was he when you first noticed that there was something the matter?—A. Oh, I haven't paid any attention to it much except——

Q. (Interrupting.) Was it on the street car?—A. It was on the street car.

Q. Before he got on——A. (Interrupting.) On the street car.

Q. (Continuing.) That you first had your attention called to him?—A. It was right on the street car.

Q. What was it that called your attention to him?—A. Well, nothing especially only I could not say positive if he was under the influence of liquor or not, but he looked that way; but at the same time I was not close enough so that I could smell the breath or anything.

Q. What did you think at the time as to his condition?—A. Oh, I thought at the time probably he was under the influence of liquor.

Q. Well, how far would you say, would you say he was drunk?—A. No; I would not say that.

Q. What would you say, how would you describe it?—A. Describe it that—probably that he was not sober, or was not drunk, he had a few—probably a few drinks more than he ought to have.

Q. How did he act?—A. He acted as though he was drowsy, sleepy.

Q. Have you seen him often?—A. Not so very often; no.

Q. Well, did he act differently this time from other times that you saw him?—A. Not so very great deal different, because I haven't traveled home on the car very often together with him; it is only a few times.

Q. What is your usual time for going home?—A. My usual time going home, about half past 6 or so in the evening; but I go down town again sometimes for some meeting or something, and then I went out according to the length of the time I might go to some meetings or some lodges and so forth.

Q. Do you remember what it was, what you were doing, why you were down town that night; was it a lodge meeting?—A. Well, I think——

Q. Or do you remember?—A. Some lodge meeting down—or in what we call the Master Builders' Association.

Q. How do you fix the time you went home that night?—A. I could not fix the time exactly, except I know it was about—it was after 10 o'clock, 10 or 11 o'clock, or something like that.

Q. What is your best recollection as to the time it was?—A. Oh, about 11 I would—as near as I can place it.

Q. Which of you get off the car first?—A. The judge.

Q. Did you notice him as he got off?—A. Yes.

Q. How did he manage in getting off?—A. Oh, he walked off alone. He didn't have no help or anything of that sort.

Q. Did you notice him after he got off?—A. No, sir. It was dark, at night, so I could not tell.

Q. Was his condition such that you kept your eye on him to see how he would get off?—A. No; because——

Q. (Interrupting.) Why did you happen to notice him as he got off?—A. Well, as a rule he sit probably in the front part of the car

and he goes out the back part of the car, you know, and I go further along, it would be 10 or 15 blocks further out.

Q. After that when did you see him? By the way, did you tell me as near as you could when that was?—A. Well, it is only in the evening.

Q. I know, but how many years ago did you say it was?—A. Well, I think this last winter or last fall.

Q. You spoke of another time when you saw him. I want to get to that. When was it?—A. Oh, about three years ago.

Q. Which time have you been describing, the one that happened last fall or winter or the one that happened three years ago?—A. Well, the last time.

Q. Well, now, take the other time about three years ago, where was he when you saw him then?—A. It was on the street car on the same road home; it is about the same time of the evening.

Q. And what were the circumstances?—A. Well, I never paid any attention to it, except what come into my mind now. In fact, I didn't know I was going to come up here, I didn't know what I was going to testify for or anything when I came up here, so I didn't know anything about it.

Q. Very well.—A. So I—it is pretty hard to—I never thought of it in fact, I never knew I was going to be here as a witness.

Q. On this occasion some three years ago, did you notice him before he got on the car, or after?—A. After.

Q. Which of you got on first, he or you?—A. Well, no; this last time he got on after I did.

Q. No, the last time; it is the last so far as we are concerned——A. Yes.

Q. (Continuing.) But it was the first so far as he was concerned. Three years ago.—A. I can't say positive if he was on the car before me or I was on the car before him.

Q. What was it that attracted your attention to him that time?—A. Well, one reason, he went to sleep; that is what—the main thing that called my attention.

Q. Where did he sit from you?—A. He was sitting right in the front of me.

Q. The next seat?—A. No; but two or three seats in front of me—about a couple of seats.

Q. What impressions did his actions and conduct that night make on you at the time; what did you think then and there with reference to his condition?—A. Well, I thought at the time he was under the influence of liquor.

Q. Well, have you ever had any occasion to change that opinion?—A. No; I never——

Q. (Interrupting.) Do you think so now?—A. Well, I am not positive now.

Q. What?—A. I am not positive now that he was under the influence of liquor.

Q. I didn't catch it.—A. I am not positive now.

Q. Well, did anything happen since then to make you change the opinion you formed then?—A. No; nothing particular; no.

Q. Do you think of any other time than those two when you saw him in that condition?—A. Not at present; I can't tell.

The CHAIRMAN. Mr. Hughes, do you desire to ask the witness further?

Mr. HUGHES. Just a question or two.

Mr. HUGHES. On the two occasions you have referred to, Judge Hanford's appearance and his demeanor and his deportment were entirely dignified?

A. Yes, sir.

Mr. HUGHES. All you observed was that he nodded or appeared to be drowsy?

A. Yes, sir.

Q. How?—A. Yes, sir; that is——

Q. That is all, sir.

Witness excused.

Mrs. HATTIE W. TITUS, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell the committee your full name, please.

A. Hattie W. Titus.

Q. Where do you live—it is Mrs. Titus, isn't it?—A. Yes.

Q. Where do you live?—A. 211 East Thomas.

Q. In the city?—A. In Seattle; yes.

Q. How long have you lived in Seattle?—A. Eighteen years.

Q. What is your husband's occupation, Mrs. Titus?—A. He is a physician.

Q. Do you know Judge Hanford?—A. Yes; I know him—that is, I know him by sight. I don't know whether I have had an introduction to him or not.

Q. Well, I mean more particularly, do you know him when you see him?—A. I do; yes, sir.

Q. How long have you known him that way?—A. Why, I am not sure; but for a number of years. I could not tell just when I first learned who he was.

Q. Five years or more?—A. Oh, yes; more.

Q. As many as 10?—A. Why, I should say so; yes, sir.

Q. Mrs. Titus, have you ever seen the judge when you thought he was under the influence of liquor?—A. Yes.

Q. How long since you first saw him in that condition?—A. Why, I only seen him once when I thought he was in that condition, and that was about four or five months ago.

Q. Where was it?—A. He was on the Bellevue-Summit car.

Q. Is that the car that leads from the city toward his home, do you know?—A. Why, I don't know where the judge lives. I understood, though, that he did not live on that line.

Q. What direction was the car going at that time?—A. The car goes up Pike to Mellrose and from there onto Pine and from there onto Summit.

Q. If you can, tell me the directions by north and south, east or west; I would understand better.—A. Well, the car goes east and then north and then east again, and Judge Hanford was on the car all of the trip; that is, from down town.

Q. As far as you went?—A. As far as I went; yes, sir.

Q. Was there anyone with you at the time whom you knew?—A. Yes.

Q. Who?—A. My husband.

Q. Dr. Titus?—A. Yes.

Q. What first attracted your attention to Judge Hanford's condition?—A. Why, the fact that he was not sitting up straight in the car, that he had difficulty in holding his head up, and that he was trying to look at some one across the car and seemed to have difficulty in keeping his eyes fixed; his eyes would sort of partially close, and then his head would nod, and he would try to recover himself, but did not seem to be able to.

Q. Where did he sit from you, Mrs. Titus?—A. Directly opposite.

Q. Across the aisle—— A. Yes.

Q. (Continuing.) From you—quite close to you?—A. Yes.

Q. Did you notice any odor of liquor?—A. I don't recall that I did.

Q. Did he sit alone?—A. Yes.

Q. How far did you ride with him?—A. Why, he was on that car, I think, when we got on the car; I am quite sure that he was; and we had been at the theater, at the Moore Theater, and took the car at the corner of Second and Pike.

Q. And which of you got off first?—A. My husband and I got off first.

Q. How long a time would you say you were on the car with him?—A. Oh, about 15 minutes.

Q. And what time in the night was it?—A. Well, it was a little after 11; it was along—it was an opera and it was late when we——

Q. (Interrupting.) What time of the evening did the theater or the play cease?—A. Well, about 11. It might have been a few minutes before 11. I think it was about from 11 to a quarter past when we got home.

Q. Can you state whether others on the car seemed to notice his condition?—A. Why, there was one young lady who seemed to. She was sitting not far from us. She was very much annoyed at his—at the way he looked at her.

Q. At what?—A. She was very much annoyed at the way he looked at her; that is why my attention was attracted.

Q. From what you observed of the condition, I will ask you to tell the committee, Mrs. Titus, whether in your judgment the Judge was intoxicated?—A. Why, in my judgment he was intoxicated; yes.

Q. Did you ever see him on any other occasion—— A. (Interrupting.) Oh, yes.

Q. (Continuing.) In that condition?—A. Not in a state of intoxication; no, sir.

Q. Did you ever see him when you thought he was partially intoxicated, except that time?—A. No.

Q. Did you see him frequently when you thought he was not in any degree intoxicated?—A. I have not seen Judge Hanford as much as many people have. I don't know—I have seen him two or three times on the street and I have attended two or three sessions of court when he was on the bench.

Q. Well, have you see him often enough to compare him on this occasion and at other times?—A. Oh, yes.

Q. Was there any marked difference in him this night from his condition at other times when you saw him?—A. Quite a marked difference; yes.

Q. To what did you attribute that difference?—A. I believed he was intoxicated.

The CHAIRMAN. Do you gentlemen desire to ask the lady any questions?

By Mr. HUGHES:

Q. Did you say that Judge Hanford was on the car when you and your husband got on the car?—A. I think he was. I am not certain, absolutely; I would not swear to that?

Q. Your husband is Dr. Herman W. Titus?—A. Herman F.

Q. Herman F. Titus?—A. Yes.

Q. Mrs. Titus, you say you have lived here continuously for 18 years?—A. Why, with the exception of going to Idaho for three months in 1906 and for about three months in 1907.

Q. I thought that Dr. Titus had been away a great deal of the time?—A. No.

Q. Did he run the Socialist paper in Idaho for some years?—A. No, sir.

Q. He did sometime, didn't he?—A. Why, during the trial of Moyer, Hayward, and Pettibone, in Idaho, which lasted about three months; that was all. He went to Toledo and was there about three months preceding—that was in 1906—preceding the time that he went to Caldwell, Idaho, and took the paper there.

Q. Well, was he there only during the trials in Idaho?—A. Why——

Q. (Continuing.) Hayward and Pettibone trials, running that paper only during that time?—A. We supposed the trial was to be held in 1906, but instead of that it was postponed and was not held until 1907, so we went in Idaho together for about three months in 1906, then returned to Seattle, and went back to Idaho in May or June of 1907, and was there until August and returned to Seattle.

Q. Was he there taking any part in those trials or in the running the paper?

The CHAIRMAN. What is the materiality of that, Mr. Hughes? If there is any point, if you will come to it directly we will see. What is the point?

Mr. HUGHES. To show her association with him and as to how much she has been away from here.

The CHAIRMAN. Well, ask her that directly. She can tell.

Mr. HUGHES. That is what I thought I was doing.

The CHAIRMAN. I do not think it is worth while going into the question that her husband is a Socialist. We don't care about that. I take it that is the real purpose——

Mr. HUGHES. That is one of the purposes.

The CHAIRMAN. (Continuing.) Just go ahead——

Mr. HUGHES. I am through.

The CHAIRMAN. (Continuing.) We will see whether it is proper.

Mr. HUGHES. That is all. That is all. I don't want to say anything or take any time that the chairman thinks would be wasted. That is all.

By Mr. MCCOY:

Q. Who was this young lady, Mrs. Titus, do you know, who appeared to be annoyed that evening in the car?—A. Why, she was a friend of mine and was with us at the time.

Q. Would you care to give her name?—A. Her name was Miss Newman.

Q. What is her full name?—A. Miss M. Newman.

Q. Where does she live?—A. M. L. Newman. Why, she is not in Seattle now, she is in Portland, Oreg.

Q. Do you know her address there?—A. She was visiting us at the time. Why, no; I don't know.

Q. Can you furnish it to the committee?—A. Well, I am not sure whether I can or not. I have not seen her for some time.

Q. I wish you would if you could later on.—A. I will try and see if I can do that.

The CHAIRMAN. We thank you, lady. That is all.

Is Dr. Titus here?

Mrs. TITUS. I don't think he has been subpœnaed; I don't think that he knows about it.

Mr. MCCOY. You were subpœnaed, weren't you?

A. I was; yes; but my husband was not with me at the time, and I informed the young man that I didn't know just when he would be in, but he would be back some time in the afternoon.

The CHAIRMAN. Very well. Thank you.

Are there any other persons present in the court room who have been subpœnaed or directed to come here by telephone or otherwise?

There being no response, the chairman stated that the committee would be in recess until 4 o'clock p. m.

AFTER RECESS.

The CHAIRMAN. The chairman wishes to announce that for the rest of the afternoon we will not have any oral testimony. There are some court records before us that the committee will spend time in the consideration of. So far as oral evidence is concerned the committee will be in recess until to-morrow at 9.30 o'clock. If there are any witnesses present now, let them be sure to be here in the morning at 9.30.

SIXTH DAY'S PROCEEDINGS.

JULY 3, 1912—9.30 a. m.

Continuation of proceedings pursuant to adjournment. All present as at former hearing.

EDWIN J. BROWN, recalled, testified as follows:

Mr. MCCOY. Mr. Brown, you were asked yesterday whether you ran as a candidate on the Socialist ticket at the last election; do you remember that?

A. Yes.

Q. And you answered that you did?—A. Yes.

Q. What was the office that you were running for?—A. Why, I ran for corporation counsel last.

Q. Of the city of Seattle?—A. Of the city of Seattle.

Q. And do you know what the vote was at that election?—A. Twenty-seven thousand five hundred.

Q. For you?—A. Yes.

Q. What was the vote for the successful candidate?—A. I think 32,000.

Q. Approximately, how many Socialist voters are there in the city of Seattle?—A. Why, the candidate for mayor got something between

10,000 and 11,000, it seems to me—I am not just clear on that—I think between 10,000 and 11,000, the candidate for mayor in the last municipal election in the primaries.

Q. In the primaries?—A. Yes.

Q. I mean in the election; you are speaking now in your primary the Socialist candidate for mayor got between 10,000 and 11,000 votes?—A. I think between 10,000 and 11,000.

Q. What is the total voting population of Seattle, if you know?—A. About 60,000.

Q. And what was the total vote cast at the election in which you ran for the office of corporation counsel?—A. I think for corporation counsel there were approximately 60,000 votes cast.

Q. What is the normal vote of the Republican and Democratic Parties, the percentages in this city?—A. I never computed that; I don't know.

Q. I will ask you more directly, according to your best belief and knowledge about the Socialist vote in this city, of the 27,000 votes or thereabouts which you received when you ran for corporation counsel, something like 15,000 of them must have been drawn from some other party than the Socialist Party?—A. I believe so.

Mr. McCoy. That is all.

The Chairman. Any further questions?

Mr. Hughes. Certainly not.

M. C. Bennett, being first duly sworn, testified as follows:

The Chairman. Tell your full name to the committee.

A. M. C. Bennett.

Q. What is your full name?—A. Merton C. Bennett.

Q. Where do you live?—A. Salt Lake City.

Q. What is your occupation?—A. Traveling salesman.

Q. Is Seattle part of the territory you make?—A. Yes.

Q. How much of the time are you in Seattle?—A. About three days twice a year.

Q. How long has that been true?—A. For about 25 years.

Q. Are you acquainted here?—A. Not very much; only with a few of my customers that I have here for the last five or six years.

Q. Do you know United States Judge Cornelius H. Hanford when you see him?—A. I do not.

Q. Do you know whether you have seen him?—A. I have not seen him.

Q. How do you know?—A. Well, I don't know as I have.

Q. Well, that is different.—A. Yes; I don't know whether I have or not.

The Chairman. Well, we will have to wait until he comes in to see whether you can identify him by sight; you may stand aside.

Norman C. Wesley, being first duly sworn, testifies as follows:

The Chairman. State your full name to the committee.

A. Norman C. Wesley.

Q. Where do you live, Mr. Wesley?—A. 1118 Thirty-seventh avenue, Seattle.

Q. How long have you lived in Seattle?—A. About 13 years.

Q. What is your business?—A. Painting contractor.

Q. What?—A. Contracting painter.

Q. Do you know Judge Hanford?—A. Yes, sir; although it has been nearly four years since I saw him.

Q. At any time prior to that—that is, prior to the last time that you saw him—had you any occasion to be where he was?—A. Yes, sir.

Q. What was it?—A. I attended a trial of a fellow by the name of Frank Chase that lived across the street from us; that is, when we resided at Thirtieth Avenue. It was a case where he was up for counterfeiting, and I attended the trial, and that was the first time that I ever saw him.

Q. Did you attend the trial merely as a spectator?—A. Yes; as a spectator.

Q. Or for some other reason?—A. A spectator.

Q. How long did you attend?—A. One day; the last day of the trial.

Q. If you saw him on other occasions you may tell the committee.—A. Yes, sir; I saw him once more on Third Avenue. I don't think I saw him since.

Q. You mean you saw him only on two occasions altogether?—A. On two occasions. That was the only time I ever remember seeing him was those two occasions.

Q. If at any time that you saw him you thought he was under the influence of intoxicants, you may tell the committee.—A. Well, I did.

Q. When?—A. On Third Avenue, in this block between Union and University.

Q. When was that?—A. I could not say. It was right—I suppose about three or four weeks, or it might have been two months, I don't remember, after the trial, on Third Avenue. I don't know as he was under the influence of liquor, but that was my impression of it.

Q. About how long ago is that?—A. Well, that was right close to four years—it was before the last presidential election, in the fall before that. That is all I can remember.

Q. What time of day was it when you saw him?—A. It was in the night.

Q. What hour?—A. It was between—I should say between 11 and 1 o'clock.

Q. Where was he when you first noticed him?—A. I met him on the corner of Union and Second, and I thought I recognized him at first, and at first I knew I had seen him, but I could not place him, who he was, and I turned around and walked back—I just thought who it was, and I walked a quarter of a block, I guess, until I overtook him, to see if it was really him, and then I walked on.

Q. Was it really him?—A. Yes, sir.

Q. How close to him did you go?—A. Oh, I don't know; 5 or 6 feet.

Q. Do you know where he was coming from?—A. No.

Q. He was on the street when you saw him?—A. Yes, sir; on the street—on this side of the street.

Q. How far away would you say you were when you first noticed him?—A. I was almost opposite him, probably 10 or 15 feet—no, I was on the same sidewalk with him.

Q. Were you approaching him or following him?—A. I was coming this way and he was crossing this way [illustrating].

Q. This way and this way does not mean much in our record.—A. Well, north, I suppose.

Q. You were going——A. I was going north and he was going south; I was almost opposite him when I noticed him. I don't know whether he was under the influence of liquor; I could not say.

Q. What was it you noticed?—A. I noticed about him that he was staggering and going in a sleepy look with his eyes.

Q. To what extent did he stagger?—A. Well, he walked like a real feeble old man.

Q. I mean in staggering.—A. Well, he was staggering; he was going very slow and staggering sideways.

Q. Do you know what is meant by waving when you walk?—A. Yes.

Q. Going "S" fashion?—A. Yes.

Q. Was it anything like that?—A. No; not that bad, I don't think; I noticed he was walking very slowly and he would stagger. He would stop every once in a while to steady himself.

Q. And then you spoke about getting farther away from him and coming back?—A. Yes, sir; and I remember——

Q. I wish you would explain that clearly.—A. Well, I placed him—I could not place him at first; I knew I had seen him and then I thought it was Judge Hanford, and then I turned around through curiosity to see if it was, and I walked down and met him again.

Q. How long was he under your observation then?—A. Oh, I could not say; for about 5 minutes; I never thought no more about it until after this, when some trouble came up last year with him over that Renton line decision, and then I just called to him and I spoke about it, and that was the reason I am up here, I guess.

Q. Did you notice where he went that evening?—A. No, sir; I never paid no attention to it.

Q. How far did he go altogether while you were observing him?—A. I suppose about a quarter of a block.

Q. What would you say, Mr. Wesley, as to whether at that time the judge was intoxicated?—A. Well, I thought he was, but I would not say that he was; he might have been sleepy or tired; it was late.

Q. You say it was on Second Avenue?—A. Third Avenue.

Q. That is the street that passes the courthouse here?—A. Yes, sir.

Q. How near to the courthouse was this?—A. Well, as I said, I was coming across the street, across Union Street on Third Avenue, where I overtook him.

Q. We don't know the names of the streets; how near is Union Street to the courthouse?—A. This is on the corner of Union Street, and then University is the next.

Mr. HUGHES. Union Street runs east and west in front of the building and University Street is the next street south, and the one on the west side of the building is Third Avenue. The building is on the corner of Third Avenue and Union Street.

The CHAIRMAN. This is Union and Third.

Mr. HUGHES. Yes; on the southeast corner of Third Avenue and Union.

The CHAIRMAN. Is that the only occasion on which you saw the judge when you thought he was under the influence of liquor or of intoxicants?

A. Yes, sir.

Q. Have you ever had any case in his court yourself?—A. No, sir.

Q. Have you any personal feeling or prejudice or ill-will against him?—A. No, sir; I have not.

The CHAIRMAN. Any further questions?

Mr. HUGHES. What part of the city do you live in?

A. Thirty-seventh Avenue; on Thirty-seventh between Union and Spring, in the Madrona district.

Q. Have you entertained any feeling of bias or opposition to any decision of Judge Hanford's?—A. No; only I formed an opinion over that Renton line decision out there; I knew it was rectified afterwards some way at that time.

Q. At the time you were amongst those who were hostile?—A. Well, in a way, yes; I didn't think it was right.

Q. Did you attend the Dreamland Rink meeting?—A. No, sir.

Mr. HUGHES. That is all.

EARL YOUNG, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee.

A. Earl Young.

Q. Where do you live, Mr. Young?—A. 1119 Tenth Avenue North.

Q. In Seattle?—A. In Seattle.

Q. How long have you lived in Seattle?—A. Twenty-five years.

Q. You are about the oldest resident of Seattle that we have had yet upon the stand. How big was Seattle at that time?—A. About 12,000.

Q. What is your business, Mr. Young?—A. I am in the real-estate business at the present time, I used to be in the cigar and tobacco business years ago.

Q. How long have you been in the real-estate business?—A. Ten years.

Q. Are you acquainted with Judge Hanford?—A. Yes, sir.

Q. How long have you known the judge?—A. Twenty-five years.

Q. How near him have you lived in all that time?—A. Well, within a few blocks, years ago, and then for the last eight or nine years within about two blocks.

Q. Does the same street car lead from the business part of the town to your residence as to his?—A. Yes, sir; he lives about a block and a half or two blocks north of my residence.

Q. Mr. Young, if you have at any time since you have known him, noticed Judge Hanford when you thought he was under the influence of some intoxicant——A. I have not.

Q. (Continuing.) Tell the committee.—A. I have not. I never saw him under the influence of liquor in all the years I have known him, and I saw him almost every day whenever he is in town, and sometimes three or four times a day.

Q. What time of the day—in the morning?—A. No, generally in the evening between 6 and 7, from then to 8 o'clock and then 11 or 12 or later in the evening.

Q. Have you noticed him at any time when you thought there was anything the matter with him?—A. Why, he is a man that is always stooping with his head down and his eyes closed unless he is conversing with someone, and if he sits listening to you, unless you are talking on something in a very earnest way he will kind of doze with his eyes closed apparently, or nearly so; that is a habit he has had for years, and when he walks his head is bowed down and his eyes are half closed.

Q. How long has that been true of him?—A. Well, for 9 or 10 years, I should say.

Q. State so far as you know of any occasion, on any time when you remember not seeing him, in this condition, as you say, when he was not under the influence of any intoxicant?—A. I have never seen him under the influence of liquor. A person that did not know him would think he was, but when you speak to him he gets right up as bright as anybody immediately. When you are not conversing with him he is liable to be dozing, in his appearance at least.

Mr. HIGGINS. How frequently have you seen him in the last six or seven years?

A. Probably six or seven times a week; I would see him every day when he is in town, sometimes half a dozen times a day.

Q. Have you ever met him on the street car?—A. I have met him on the street car, and he most always walks by my house to take the car at my corner to come downtown.

Q. You have been on the street car with him?—A. Yes, sir; and I have been at his house and in his office and in his court.

Q. You were subpœnaed here, Mr. Young, were you not?—A. Yes, sir; just a few moments ago.

The CHAIRMAN. Any questions, Mr. Hughes?

Mr. HUGHES. Just a question or two.

Q. You spoke of his closing his eyes and apparently relaxing; I want to ask you now if notwithstanding that habit, whenever he is addressed, although his eyes may be partly closed, when you address him, whether he does not fully comprehend your question and answer with the utmost clearness?—A. Yes, sir; his mind is always clear and active.

Q. Is there anything about that except the fact that he relaxes himself and his body apparently relaxes as one who is old and fatigued and resting himself?—A. That is all that it ever appeared to me.

Q. Have you ever seen any evidence in connection with that appearance of any mental failure at all?—A. None whatever; I always attributed it to the troubles he was having and the weight of age, and things of that kind.

Mr. MCCOY. Did you ever say to anyone that you have seen Judge Hanford when you thought he was under the influence of intoxicants?

A. I have not; no, sir; no one ever asked me that I know of. I was surprised when I got the subpœna this morning.

Q. Is there any other person of your name in the city—of the same name?—A. Yes, sir; there is some one living down in the Rainier Valley of that name, and I think that he has a middle initial, but I think it is Earl E. Young; he lives down in the Rainier Valley somewhere along the old Renton Road.

Mr. MCCOY. Did you say that you thought that any of the things you noticed about Judge Hanford were due to age?

A. I thought possibly that he might be physically tired or mentally worn out.

Q. Do you know that Judge Hanford is 63 years of age?—A. Somewhere along there.

Mr. HIGGINS. Sixty-four, it was stated yesterday.

Mr. MCCOY. It was stated that he would be 64 at his next birthday.

Mr. HUGHES. I understand he is nearly 64.

Mr. McCoy. Well, we will say 64; do you consider that 64 years of age makes a man old?

A. Some men go through enough at 64 to make them very old, while others are not.

The Chairman. Are there any further questions of Mr. Young?

Mr. Hughes. I have none.

Fred Hildebrand, being first duly sworn, testifies as follows:

The Chairman. State your full name to the committee.

A. Fred Hildebrand.

Q. Where do you live, Mr. Hildebrand?—A. 1801 Tenth Avenue north, Seattle.

Q. How long have you lived in Seattle?—A. Since 1902.

Q. What is your business?—A. Foreman of the Washington Shoe Manufacturing Co.

Q. What has been your business for the time that you have been here?—A. The same position ever since I came to Seattle.

Q. That is a manufacturing concern, is it?—A. Yes, sir; boots and shoes.

Q. You are not in the retail business?—A. No, sir.

Q. Do you know Judge Hanford?—A. By sight; yes, sir.

Q. How did you get to know him by sight?—A. I met him on the street car—that is, I seen him on the street car. About three years after we had built he started to build his own home.

Mr. Hughes. I can't hear the witness, and I should like to suggest to the committee that he turn part ways toward us, so that we may hear him.

The Chairman. Divide your attention between us so that all those interested may hear you. Now you may conclude your answer.

A. Several years after I found out that it was Judge Hanford. Of course, I never met the gentleman, although afterwards I noticed his picture in the newspapers off and on, and I seen him on the street car and I found out through the newspapers that this was Judge Hanford, and that is all I knew.

Q. If at any time you saw him when you considered him under the influence of intoxicants, please tell the committee.—A. Well, it looked to me as if it was, although I could not just prove it in any particular way.

Q. When did you first notice him in such condition that you came to that conclusion?—A. Well, that I could not say; it may be a couple of years ago.

Q. Where was he at that time?—A. On the street car.

Q. What time of the day or night was it?—A. In the evening, after 7 or 8 or 9 o'clock; something like that.

Q. Did that occur more than once?—A. Well, I believed it to be, as well as I know about it, perhaps a half a dozen times.

Q. Can you single out the first time when you noticed him, without giving the day or the hour; can you recall the first time that you noticed that?—A. Well, as I say, perhaps about three years ago, or something like that; I could not tell for sure.

Q. Do you recall whereabouts he and you were when you first noticed him so that he attracted your attention?—A. On the Broadway car.

Q. Where was the car going?—A. Up toward his home and my home.

Q. Do you remember which of you was on the car first?—A. Sir?

Q. Do you remember which one of you was on the car first?—A. I was on the car first.

Q. What was it that attracted your attention to the judge?—A. By sitting in the seat, that he either felt kind of sleepy or somehow that it looked to me as if he could be under the influence of liquor, or something.

Q. Well, were there many on the car?—A. He was talking to two gentlemen back of his seat and I was sitting right across on the other side seat, and I noticed that they were speaking.

Q. Did you know them?—A. No, sir; I did not.

Q. Can you tell us what was his manner that led you to think that he was intoxicated?—A. Of course, as I say, he felt kind of sleepy; it appeared to me either the gentleman must have been sickly, or something wrong with him, of course, and I had heard before that they saw him in those conditions.

Q. Did what you had heard before have any influence on you in the conclusion which you reached, or did you form your conclusion from what you saw?—A. What I saw; of course, after I saw this I really knew the judge, and, being a neighbor, he always got off the car a block before I did.

Q. Did you notice him, on this first occasion of which you speak, when he was getting off?—A. That I could not just say.

Q. What I want to get at is this: Did you notice the manner in which he got off the car?—A. Well, as it looked to me, he is an old gentleman, and the first few times when I saw him, of course, I thought he was an elderly man, perhaps kind of tired, but later on, after I heard that he would take liquors and so on, then I thought it must be the trouble.

Q. What experience have you had in observing men who are under the influence of liquor?—A. Not very much, only that I see them tumbling around the street.

Q. What is your age?—A. My age is 44.

Q. Now, from your observation and from your knowledge of things generally, and what you saw of him that night, what would you say as to whether or not he was intoxicated?—A. Well, what I heard—the two gentlemen across the aisle from me, they were talking about—they were talking about the Saratoga bar—that is a saloon on Second Avenue. Of course, I could not hear on account of the noise from the car, what they were talking about. The judge was sitting in front of them and just in a peculiar position, the way he acted it appeared to me as if either he must have been sick or something must have been wrong with him.

Q. Well, the question is as to what is your best judgment as to whether or not he was intoxicated or under the influence of intoxicants that night?—A. Well, just as I said, he looked to me that way.

Q. Did he show any evidences of pain?—A. No; I didn't think so; no.

Q. Well, if he were ill or sick to such an extent as to make him act the way he did act, what would you think as to whether he would not have shown some evidence of suffering and pain?—A. No; it didn't appear to me that way; it certainly appeared more as if he had been under the influence of liquor as anything else, of course.

Q. In passing you——A. Excuse me.

Q. Go on.—A. Of course he got up from the seat and walked to the back, so that he could not have been so bad?

Q. Could not have been so bad?—A. Could not have been so bad.

Q. Passing from that occasion, can you recall the next time?—A. That was the last time I ever saw him.

Q. Before that did you see him?—A. Not any worse than this.

Q. How often would you say you saw him in that condition or about the same condition?—A. Well, say, about half a dozen times; I could not say for sure.

Q. Was it always on the street car?—A. Always on the street car; yes.

Q. Did you ever see him anywhere else?—A. No, sir.

Q. Either in that condition or any other way?—A. No, sir.

Q. Intoxicated or not?—A. No, sir; I never seen the judge to recognize him.

Q. You only saw him on the street car?—A. I only saw him on the street car; that was the only time I ever saw the judge.

The CHAIRMAN. Any further questions?

Mr. MCCOY. Did you ever see him on the street car when he was not in that condition?

A. I could not say. Of course you can't tell; he may have been on the car and sitting in the back seat. As a rule, I always took the front seat, because I go out a good ways from the city.

Q. I say did you ever see him?—A. No, sir.

Q. Did you ever notice how he walked on any of those occasions?—A. No; I can't say. Of course he gets off the car and walks toward the back, and, as I say, I get on the front seat and I never watched him go out—that is all.

Q. You say those two men who were talking with him on one occasion sat back of him?—A. Back of him, in the next seat.

Q. And who was it that said something about the Saratoga bar?—A. That I could not say who.

Q. Was it Judge Hanford?—A. No, sir.

Q. Or one of those men?—A. One of those men.

Q. You did not hear what they said about it?—A. No; I could not hear it from the noise of the car.

Q. And you do not know what they were talking about except that you heard the words "Saratoga bar?"—A. Saratoga bar, that was all.

Q. Now, did you see anything else about the judge except the drowsiness which made you entertain the opinion which you have expressed?—A. No, no.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Just a question or two.

Q. I am not sure whether I correctly understood you, but if I did then Mr. McCoy did not, and I want to ask a question about that subject. You spoke of two men sitting back of Judge Hanford?—A. Yes, sir.

Q. And of being in conversation?—A. Yes, sir.

Q. Were they in conversation with each other or with Judge Hanford?—A. With each other and the judge.

Q. They spoke to the judge, did they?—A. Yes, sir.

Q. Did they carry on a conversation with the judge during any considerable part of that trip?—A. They were talking together; yes, sir.

Q. He turned back then and was speaking to them and they to him?—A. Yes, sir.

Q. They were apparently persons who knew him?—A. Yes, sir.

Q. There was not anything about that conversation that would indicate that Judge Hanford was under the influence of liquor, was there?—A. No. When I heard them mention "Saratoga bar," then of course I thought they must have been in there.

Q. Now, do you know who mentioned it or what was said about it?—A. No. I could not hear on account of the noise of the car.

Q. You did not observe or note which one of them mentioned something about the Saratoga bar?—A. No, sir.

Q. Nor what was said about it?—A. No, sir; I could not say.

Q. It was after the conversation, was it, or was it before, that you noticed Judge Hanford close his eyes and nod, apparently being sleepy?—A. Well, on the way going up there from the city.

Q. Not during the time of this conversation, though?—A. I don't clearly understand.

Q. I say, you did not notice him nod and close his eyes during the conversation?—A. Well, more or less. Of course the judge acts kind of—of course he is an elderly man and I could not say really in particular what it may have been—the cause.

Q. I think you misunderstood me; I say, when you noticed him apparently drowsy, it was not during the conversation, but afterwards, when he was sitting quietly in his seat.—A. Yes, sir.

Q. Then he relaxed and closed his eyes?—A. Yes.

Q. And seemed tired and sleepy?—A. Yes.

Q. And that is all you observed?—A. Yes.

Mr. McCoy. A minute ago you said he did that at intervals during the conversation; now, which is it; did he first have the conversation, and then begin to nod, or did he nod during the conversation?

A. Well, occasionally while they were talking I turned around—they were talking all the time.

The Chairman. Anything further?

Mr. Hughes. I don't know that the witness fixed the time of day.

Q. What time of day was it that you went home on the car when you would see him?—A. About 7 or 8 o'clock, or something like that.

Q. And you only recall traveling with him, when you noticed him on the car, probably half a dozen times?—A. Yes, sir; that is about all.

Q. Whenever you saw him on the car he appeared fatigued and sleepy?—A. Yes, sir.

Mr. Hughes. That is all.

Mr. C. Bennett, recalled, testified as follows:

The Chairman. Mr. Bennett, Judge Hanford has just come in—this is Judge Hanford, Mr. Bennett [pointing]—did you notice the judge; tell us whether you have ever seen that gentleman before.

A. Not that I remember; I don't think I ever have; I don't know but what I have passed him on the street, but I can not place him.

Q. Have you any recollection of seeing Judge Hanford before?—A. No, sir.

The CHAIRMAN. You are excused.

Mr. HIGGINS. How did you happen to be summoned here?

A. I don't know, unless it is a case of a traveling man's talk—a case of too much parrot with a traveling man.

Mr. MCCOY. What do you mean by that?

A. Too much talk, I guess.

Q. Who have you been talking to?—A. I was sitting up there in the Washington Annex Hotel last night and a lot of traveling men were there talking about Judge Hanford, and the question came up about his drinking, and I said "I guess a man has a right to take a drink if he wants to," and I said "Sometimes I do it myself" and a customer of mine was with me and he says, "Did you ever see him?" and I said "I don't know but I have," and two or three others spoke and said that they had seen him taking a drink, and I said "I may have seen him, possibly, I don't know. I guess if a man drinks he has a right to drink if he wants to," and the next thing I knew I was subpœnaed.

Mr. MCCOY. I hope you have had a good time.

The WITNESS. Yes, I have indeed. I am glad to meet the judge; I want to see him and congratulate him, because I think he is a good man.

The CHAIRMAN. Never mind; that is not in response to any question and it may be stricken from the record. Is there anything further relative to the matter?

Q. Didn't you state in the conversation to which you have referred that you thought you had seen him under the influence of intoxicants?—A. It may have been that I did; I would not deny it, but if I did it was just a josh.

Mr. HUGHES. Do you know whether Mr. John H. Perry was present and heard your conversation?

A. I do not.

The CHAIRMAN. Just a moment; why that? It does not go to the credibility of this witness; the question is ruled out.

Mr. MCCOY. Who was it you were talking to?

A. Why, I don't know. One of them was a traveling man that left yesterday morning for the East; for Butte; a man by the name of George Clark.

Q. Was he the customer you referred to?—A. No.

Q. Who was the customer?—A. Mr. Hitchcraft.

Q. Somebody who lives here in Seattle?—A. He lives here in Seattle; yes, sir.

Q. Hitchcraft?—A. Yes, sir.

Q. What is his first name?—A. Samuel Hitchcraft.

The CHAIRMAN. Are there any further questions of Mr. Bennett?

Mr. HUGHES. I have none.

SAMUEL TATE, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell the committee your full name.

A. Samuel Tate.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in the city?—A. Twenty-two years this coming month.

Q. What is your present occupation which you are now following?—A. General broker and loan agent, except one year that I was up in Alaska.

Q. Broker, you say, and in the loan business?—A. Yes, sir; and in the real-estate business.

Q. What particular kind; real estate?—A. Yes, sir; dealing in all kinds of property.

Q. Dealing in real-estate mortgages and loans?—A. Yes, sir.

Q. And such securities as that?—A. Yes, sir.

Q. And you have been for 22 years?—A. Twenty years this coming month.

Q. Except when you have been out of Seattle?—A. One season in Alaska.

Q. Are you acquainted with Judge Hanford?—A. Yes, sir.

Q. How long have you known him?—A. Well, 10 years or more.

Q. Have you any personal acquaintance with him, or merely a sight acquaintance?—A. No; I have had some personal acquaintance with him.

Q. Did you have any business in the judge's court?—A. No; I never had no business in his court.

Q. Did you ever have any personal business with him of any kind?—A. Well, I called on him in his office in reference to a deal—a real-estate deal.

Q. State if at any time you have noticed the judge when you thought he was under the influence of intoxicants; and if so, please tell the committee about it.—A. Well, I called on him in the New York Block in reference to a real-estate deal, and he was busy that day, and he told me to come in the next day or some other day as soon as I could, and I met him the next day or so and he seemed to me that he didn't care whether he did any business or not; he didn't seem to be in any mood to do any business. I put my proposition up to him, what I had in real estate.

Q. Speak a little louder.—A. I say I put my proposition up to him that I had in the real-estate deal, and he didn't seem as though that he wanted to particularly care whether he done anything or not. This was the second time I called on him.

Q. Well, if you know any reason for his attitude of mind, please state it.—A. Well, he didn't seem to be in the mood of mind like he did when I called on him the first time; he seemed to be in a kind of stupid condition.

Q. In your judgment, what was the matter at that time?—A. Well, it looked like—it looked like that he must have been intoxicated a little some way, or something of that kind, or had some stupidity about him in some way.

Q. What was the difference in his condition that time and the other time when you called?—A. Well, there was quite a difference; it seemed he was changed since the first time I called on him.

Q. In what way?—A. Why, that he was more indolent and careless and indifferent and more stupid. He didn't seem to care whether he talked business or not.

Q. What was his physical condition?—A. Well, I could see some little depression apparently on him different from what he was the first time I called on him, and when I got up to go out he got up on the floor and talked a few words, and he didn't seem to—he threw his head—he didn't seem to want to do anything in particular—threw his head one way and the other.

Q. What did you say about his head? You said something about his head.—A. He kind of rolled his head around a little that way like he was in a stupid condition and didn't seem to care whether he wanted to do anything or not. He didn't seem as he did when I first called on him.

Q. Well, what is your opinion as to whether at that time he was under the influence of some intoxicant?—A. Well, he was under the influence of something. I couldn't tell what it was, whether it was whisky or anything else. It might have been something else. I could not say.

Q. Did you notice any odor or smell?—A. Well, I didn't get right close up to his face.

Q. When you were talking with him on this business proposition how did his mind act, after that first time you called?—A. Well, the second time it seemed to be a little off—a little different from what it was from the first.

Q. What time of day was it?—A. Along in the afternoon.

Q. Can you fix the time more definitely than that?—A. Well, it was somewhere between 4 and 5 o'clock, or somewhere along there.

Q. Did you notice the judge on any other occasions than those two?—A. Well, I saw him very frequently on the street and around different places, and I have seen him a few times in the court room.

Q. On any of the other occasions when you saw him what was his condition?—A. Well, it was different from what it was when I saw him in his office.

Q. On the second visit you made to his office, the only time you saw him when you thought he was intoxicated from some cause or other?—A. Yes.

Mr. McCoy. You say it was some place in the New York Building?

A. Yes, sir.

Q. What is that, a business building?—A. Yes, sir; down on Second Avenue on the corner of Second and Cherry.

Q. Has Judge Hanford an office there?—A. Yes, sir.

Q. He has an office there?—A. Yes, sir; he had an office there.

Q. How long ago was this?—A. Oh, he had an office there in the front part of the building—it was built right after the fire—and then he moved over onto the other side.

Q. I mean how long ago was it that you were at the building?—A. That has been some 10 or 12 years ago that I had this conversation.

The Chairman. Any further questions of this witness?

Mr. Hughes. I would like to ask the witness a few questions.

Q. Can you give us any more definite statement as to the time when this occurrence which you have been testifying about took place?—A. Well, nothing more than what I have stated about.

Q. You can't come nearer to it than saying that it was 10 or 12 years ago?—A. Somewhere along about that time, because at that time I paid no attention to what the matter was, because it didn't interest me at that time and I didn't pay any more attention to it.

Q. You do not even recall what the transaction was which you were to see him about?—A. Yes, sir; it was a real estate deal.

Q. Do you remember what real estate deal or what sort of a real estate deal it was?—A. Yes, sir; it was some lots here in town—property in town.

Q. You were trying to induce him to buy some lots in the city of Seattle?—A. Yes, sir.

Q. Do you recall now—I do not consider what lots they were important, but for the purpose of fixing the time and circumstances—do you recall now what lots they were?—A. Well, they were some that I had on my list in my office.

Q. Well, that is not very definite.—A. Well, I had a various number of them listed all over the city. I can't call to mind what particular one it was now.

Q. You have no recollection what the particular transaction was?—A. Well, the transaction was simply as I before stated; I called on him for the purpose of talking over this real estate deal, to see whether he wanted it—to see what he said, as I was looking up business all the time.

Q. And he would not buy it?—A. Well, we didn't make no deal.

Q. And because he didn't seem interested in it you thought he was intoxicated, is that it?—A. Well, he seemed different the second time I saw him than he did the first; he didn't seem to be in the same mood or condition that he was the first time.

Q. Where did you see him the first time?—A. Just as I told you before, in the same place.

Q. What time of day?—A. Well, I called in one time in the forenoon and he told me to come in later on, that he was busy and I went in again in the afternoon the next time.

Q. Did you have any conversation with him in the forenoon of the first day when you saw him?—A. Just merely spoke to him.

Q. And at that time he said he was busy?—A. He was busy and to call in again.

Q. He told you to call again?—A. Yes, sir.

Q. And you had no other conversation with him the first time than you have stated?—A. No more, just to make my business known to him, and he told me he was busy and to call again.

Q. The next time you called about 4 o'clock in the afternoon?—A. Somewhere along about that time.

Q. How long did you talk with him?—A. I could not say, possibly 25 or 30 minutes, or so; it might have been a little longer or a little less.

Q. You described to him what you had to sell. A. Yes, sir; I mentioned it.

Q. And you argued the advantage of the bargain to him.—A. Yes, sir.

Q. And he did not seem to be interested?—A. Well, he didn't appear as he did the first day I called on him.

Q. What was the difference, was it in his manner of speaking to you—he spoke to you, didn't he?—A. Well, he was more in a stupified condition and seemed to be more unconcerned about it.

Q. Well, the fact that he was unconcerned about this trade was not an evidence that he was intoxicated, because you find a good many people that are unconcerned about deals which you try to have them make.—A. That may be true, but sometimes you find people who are in a stupified condition many times when there is something the cause of it, though.

Q. You do not mean to say that the fact that he did not want to buy was any more evidence of intoxication on his part than the fact

of other people not wanting to buy would be evidence of intoxication on their part?—A. No; it seemed he was in a mood that didn't seem to be one of wanting to do any business, and he was different from the first time.

Q. The first time he told you he was busy and he did not want to entertain your proposition?—A. He told me I could call again, and I did so.

Q. I am trying to ask you to explain now what you claim to be the difference between the two times when you saw him. Did he say anything that was unusual the first time except that he did not want to entertain your proposition?—A. Well, he merely muttered out something in a careless or indifferent way, and it seemed like he was kind of stupid or something; he didn't feel right some way.

Mr. HIGGINS. Can't you tell the committee what it was that he muttered?

A. Well, he said he didn't care to do any particular business to-day, and I stood up, and he got up and kind of stepped around a time or two, and I just bade him good day and walked out.

Mr. HUGHES. And it took you 25 or 30 minutes to do that, did it?

A. No; it may have been that much, and it might have been a little less.

Q. You never tried to sell it again to him?—A. No; not at that time.

Q. You knew at that time that he declined to buy, and you never renewed the negotiations?—A. Well, he didn't particularly decline; he didn't seem like he cared to do any business that day.

Q. And you never tried again to sell him the lots, did you?—A. No; I don't think I called on him any more.

Q. Where did this occur?—A. In the New York Block.

Q. What office in the New York Block?—A. Well, he was up, I think, on the seventh floor.

Q. Whereabouts on the seventh floor?—A. Well, he was up on the east side, and then he was over on the west side; I think he changed a couple of times.

Q. Well, did you call on him in both places, in both offices?—A. I called on him in both offices, and I called on him when Mr. H. P. McGuire had the office opposite to him in the same building at the same time.

Q. Mr. H. P. McGuire?—A. Yes.

Q. Is H. P. McGuire in the city now?—A. Yes.

Q. Where is he?—A. Well, he has charge of the Marion Building, on the corner of Second Avenue and Marion Street.

Q. Now, the man you tried to deal with——

The CHAIRMAN. Push the matter along, Mr. Hughes.

Mr. HUGHES. The man you tried to deal with on that occasion was a man who had an office in the New York Building—in which side of the New York Building?

A. I said he had an office first on the east part of the building and then on the west part.

Q. He didn't change between those two days that you were there?—A. No, sir.

Q. Well, which office was it that you saw him in?—A. He was first in the new part after the fire, and then the other part that was built first, and then the old part—the new part was built west after that.

Q. Well, where was it that you saw him—you say he was in the old building when you first knew him to have offices there?—A. No; he was in the other side.

Q. He was not in the other side until it was built, was he?

The CHAIRMAN. What interest have we in the fire, or in what particular floor of a building it was, anyway?

Mr. HUGHES. I am talking about Judge Hanford's office; you say his office was first in which building?

A. I said on the east building.

Q. What is it, the old building?—A. No; that is the old building.

Q. His office was first there?—A. Yes.

Q. Were you ever in his offices there?—A. Yes.

Q. Now, that was sometime prior to this occasion?—A. Yes; not at that time.

Q. How long had he had an office there?—A. Well, I could not say just how many years.

Q. How many times have you been in his office in the New York Block, in the building on Third Avenue which is the old part of what is now known as the New York Block?—A. How many times I had been in there?

Q. Yes.—A. I have dropped in there several times.

Q. And found him in the office, have you?—A. Part of the time I did and a part of the time I did not.

Q. But you knew he had an office there?—A. I certainly do, or I could not have gone there.

Q. Now, you say he afterwards changed to the new building and that was where you visited him at this time?—A. At the time that I offered the deal to him.

Q. And that was on the seventh floor?—A. I think it was.

Q. You think so—and it was an office facing on Second Avenue, did you say?—A. Yes, sir.

Q. Now, I want to ask one other question, Mr. Tate. Have you ever investigated to know whether, or are you able to say that Judge Hanford ever had an office, ever occupied an office of any kind at any time in the New York Building?—A. Why, certainly he did, because that is where I found him and talked with him.

Q. And the man you found and the man about whom you have been talking, is a man who had an office in that building as you have described?—A. That is where I met him, and he was with H. P. McGuire and he had rooms there together.

Q. And he and H. P. McGuire had rooms together on that floor—well, that's all.

Mr. McCOY. Do you mean that they occupied the same offices—Judge Hanford and this Mr. McGuire—do you mean that they occupied the same room?

A. No, no; separate, separate, separate.

Q. Separate offices in the same building?—A. Yes.

Mr. HUGHES. Were they adjoining offices?—A. Right in rotation.

Q. Adjoining them?—A. Yes; rotation.

Q. One was side by side with the other, do you mean?—A. Just one right in rotation, one after the other.

Q. Doors opening between them?—A. Yes, but the doors were closed—they could open.

Q. There were connection doors between them?—A. Yes.

Q. What office do you occupy—where are you officing?—A. I was in the Burke Building at that time.

Q. Did you have an office in the Burke Building?—A. Yes.

Q. Where is your office now?—A. On Third and Pike Street—1504.

The CHAIRMAN. You are pursuing this matter with as much particularity as if we were trying a lawsuit.

Mr. HUGHES. I want to be sure that this witness has been fully examined on the subject because if this commission will call the manager of the New York Block—I do not know Mr. McGuire—or will call Mr. McGuire if he knows—they will find that Judge Hanford never had an office and never occupied one at any time in the New York Block, and that was the reason why I have been particularly inquiring as to that matter.

The CHAIRMAN. That is not very material.

Mr. HUGHES. I hope I have not seemed to cross-examine the witness with any asperity; I did not mean to do that, but I meant to be particular.

The CHAIRMAN. It is the particularity that I am complaining about; I do not think it would be very material whether he had an office there or not, if in fact he was there.

Mr. HUGHES. And that is why I was particular in my examination of this witness.

The CHAIRMAN. Your examination went rather to the office than to the presence of the judge there.

Mr. HUGHES. I did not mean to do that; I meant to have this witness identify with certainty this man who had the office there; that he went to him in his office; that he had been in the old part of the building and afterwards moved to the new part.

The CHAIRMAN. I understand all that, but the main part of our objection is that I do not think the committee would care whether he had a rented office there or not, if in fact he was there, and I want to emphasize it now, because I think we can hardly permit to have you go into absolute details in all these matters.

Mr. HUGHES. I would like to ask one other question, if I have the permission of the commission to do so.

Q. Was there anybody else associated with Judge Hanford in those offices?—A. Not in the one where I was in with him; he was there alone; it was his own department, but there was other people in the other adjoining rooms all through the building.

Q. Do you know who they were?—A. Mr. McGuire was one man.

Q. Did he have his name on the door?—A. Well, I think he did, if I remember.

Q. What you mean to testify to this committee is that the man you saw was the man who had an office which he regularly occupied in the New York Building; isn't that true?—A. He was on the seventh floor of the new, or the old building first, years ago.

Q. And afterwards in the new building?—A. Yes, sir; and all you have to do to prove it is to ask the janitor and he will tell you the same thing—the janitor in the building.

Mr. MCCOY. You are not mistaken in your identification of Judge Hanford, are you?

A. I should say not; I ought not to be when we were such very near comrades in the Army, or close to it; I don't think I would be mistaken.

R. T. NOYES, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell your full name to the committee.

A. R. T. Noyes—Russell T. Noyes.

Q. Where do you live; give your street address.—A. My residence, do you mean?

Q. Or place of business, so that we can communicate with you later.—A. At the present time I am living at 1815 Eleventh Avenue north, and my business place is the Colman Baths in the Colman Building.

Q. What is your business?—A. I have a barber shop there.

Q. Are you the proprietor?—A. Yes, sir.

Q. How long have you lived in Seattle?—A. Something like since 1889.

Q. How long have you been in your present business?—A. All the time that I have been here, but not in that location.

Q. Do you know Judge Hanford?—A. I know him by sight; yes, sir.

Q. For how long a time?—A. I could not say; I should think 16 or 17 years, or something like that.

Q. Have you any acquaintance other than a sight acquaintance with him?—A. I have seen him in my place of business frequently and spoken to him. I have no particular acquaintance with him.

Q. Is he a patron of your shop?—A. He patronizes it sometimes; yes, sir.

Q. At this time?—A. Yes, sir; he frequently comes in there.

Q. Mr. Noyes, if at any time you have seen the judge when you thought he was under the influence of any intoxicant, please tell the jury.—A. I never saw him when I could say positively whether he was or not; I have seen him when he nodded a little, something like that, but I could not say whether it was an intoxicant or not.

Q. A little louder, please.—A. I say I never saw him when I could say that he was intoxicated; I have seen him nod, but then that would not be positive evidence to me that he was intoxicated.

Q. Did you ever see him anywhere other than in your shop?—A. Oh, yes.

Q. What time does he visit the shop generally?—A. There is no regular time.

Q. Well, what times?—A. Oh, occasionally; he does not come regularly all the time; he comes in occasionally, say once in a week.

Q. What hours, I mean?—A. I could not tell you; I don't think he comes at any regular hours; at different hours.

Q. Well, what hours, as near as you can tell, if he has any habit about it?—A. Well, I could not tell.

Q. Does he ever come there at 8 o'clock in the morning?—A. Well, I would not be there and I could not see him if he was.

Q. Well, what time do you get there?—A. I get there about 9 o'clock.

Q. Does he ever come there at that hour?—A. Not when I have been there.

Q. Ten?—A. No.

Q. Eleven?—A. He generally comes in the afternoon.

Q. Well, now, you might have stated that in the beginning and we would have saved time—what hour in the afternoon generally?—A. Well, I could not say.

Q. How late have you seen him there at any time?—A. Well, I don't think I ever saw him very late; perhaps, possibly, 5 or 6 o'clock or somewhere along there; the fact of the matter is I could not be definite about that at all.

Q. Does he get shaved at your shop; is that the business for which he comes there?—A. He generally comes in and has work done, not just particularly shaving; but he generally has more work than that done.

Q. Well, I asked you about shaving; does he have that done there?—A. Yes, sir; he has shaving done.

Q. Do you yourself take care of the judge?—A. No, sir.

Q. Or some of the other boys in the shop?—A. No; I have not worked on a chair for some years.

Q. On the occasions which, by your answers I infer, there was something unusual the matter with the judge—explain what you mean.—A. Well, I never saw anything in the shop to indicate anything.

Q. Did you ever see any difference in him while in the shop; is he always about in the same condition?—A. No—well, I could state just what I have seen and that will probably cover what you want.

Q. Do so.—A. All that I have seen which might question his condition would be when he was going home on the car late at night; Saturday nights generally would be the time when I would see him, because that would be the time when I was on the car with him, and he would nod. Now, I could not tell whether he was sleepy from being up late or not; I could not say that he was intoxicated or anything of the kind; that is the only thing that I ever saw out of the ordinary.

Q. How frequently did you see that?—A. Well, a number of years; I probably saw him on the car when I went home on Saturday nights quite a number of times, I could not tell—quite a good number of times.

Q. Was the nodding when you spoke of habitual or occasional?—A. Generally—generally just about the same.

Q. About what hour would it be on Saturday nights?—A. Well, it would be 12 o'clock or after.

Q. For how long a period of years has that been true?—A. That I could not tell. I could not tell. He has not lived out in my district not so awful long; I should judge something like seven or eight years.

Q. Seven or eight years?—A. I could not say—yes, sir; I should judge so—I could not tell positively.

Q. Up to what time is that true—how recently have you seen him as you have stated?—A. Well, I could not say about that; I would not mark those things particularly.

Q. I understand that, and I mean approximately; I don't expect you to be accurate.—A. Oh, it might be two or three months or it might be less or it might be more.

The CHAIRMAN. Any further questions, Mr. Hughes?

Mr. HUGHES. Mr. Noyes, your barber shop closes at 8 o'clock in the evenings except Saturday evening?

A. No; the main shift goes off at 8 o'clock, and there is two men works late, until 10 o'clock.

Q. Until 10, except Saturday evenings?—A. Except Saturday evenings.

Q. How late do you stay except on Saturday evenings?—A. I stay—well, for some little time I have been going at 6 o'clock—going away at 6 o'clock.

Q. But for several years back, except on Saturday evenings, you would not take a car later than 8 or 9 o'clock going home?—A. Yes.

Q. So that you never traveled on the cars going home at night at the time when Judge Hanford would go home, at his dinner hour, and the only opportunities you had of seeing him on the street car were when you would happen to be on the same car with him on Saturday night when you were going home along about midnight?—A. Yes, sir; and not always then.

Q. You would not always happen to be on the car that he was on, and he would not always, so far as you know, be out at that time of the evening, but what I mean is when you did see him at all on the car it was on Saturday nights and along about half past 11 or 12, or half past 12 o'clock at night?—A. Well, I can't say that that would be the only time that I would ever see him. I think I have seen him sometimes, a half a dozen times, perhaps at other times.

Q. If you saw him it would be in the evening when you were going home to dinner?—A. It might be when I was going home at some different hour than what I generally went.

Q. If you saw him going home late in the evening or late at night I will ask you if it is not true that he always appeared the same as you have described, relaxed more or less, drooping his head, and closing his eyes?—A. There was very little difference.

Q. And you never on any of those occasions saw anything or smelt anything to indicate that he was under the influence of liquor other than what you might determine from the appearances you have described?—A. No, no, sir; I am quite sure.

Q. Would you speak to him if you met him?—A. No; I do not have sufficient acquaintance with him so that we generally recognize one another.

Q. As a matter of fact, Mr. Noyes, is it not true that what you have described was a well-known characteristic of Judge Hanford's?

The CHAIRMAN. Wait a minute; do you think that is proper?

Mr. HUGHES. I certainly think it is.

The CHAIRMAN. You are asking the witness for his conclusion as to that—wouldn't it be his conclusion as to what was well known?

Mr. HUGHES. I can't say that it is; I am asking him if he knows.

The CHAIRMAN. Do you think we ought to go into general reputation?

Mr. HUGHES. I don't consider that is general reputation. Judge Hanford was a well-known character in this community, and I think this man is an honest and impartial witness—I say that because I know him, and I think it is proper to ask this witness whether what he saw of Judge Hanford, in the light of what he knew of him, indicated to him that it was a natural characteristic of the man or whether it was due to intoxication.

The CHAIRMAN. A well-known characteristic involves the community knowledge, doesn't it?

Mr. HUGHES. Well, it involves a general knowledge of Judge Hanford as known by those who know his traits of character and characteristics.

The CHAIRMAN. The Chair is convinced that the question is not a proper one, but you may answer it.

A. I do not know what the general reputation was regarding that; I know that I generally observed the same condition when I saw him on the car.

Mr. HUGHES. Now, from your knowledge of Judge Hanford then, as you have seen him since your residence in the city, I want to ask you whether you attributed what you saw to physical characteristics, to weariness, to the habits of the man, or to intoxication?

The CHAIRMAN. You may answer that.

A. Why, I had no definite opinion in regard to that.

ROBERT E. JONES, being first duly sworn, testifies as follows:

The CHAIRMAN. You may state your full name to the committee.

A. Robert E. Jones.

Q. Where do you live, Mr. Jones?—A. Seattle.

Q. How long has Seattle been your home?—A. Six years.

Q. What is your age?—A. Thirty-five.

Q. What is your business?—A. Publishing.

Q. What?—A. Engraving, printing, and publishing.

Q. Are you the proprietor of a business?—A. Yes, sir.

Q. Are you acquainted with Judge Hanford?—A. No, sir; not personally.

Q. Do you know him by sight?—A. Yes, sir.

Q. For how long?—A. Four years.

Q. During that time give the committee an idea of how frequently you have seen him.—A. Well, I have seen him a good many times; it is pretty hard to tell the number of times I have seen him.

Q. Every day?—A. For a time I saw him nearly every day during the sessions of his court.

Q. And at other times?—A. At intervals I met him occasionally; I seen him at different places about the city.

Q. Where would you see him, mostly?—A. In his court room. I have seen him mostly in his court room.

Q. Had you business in his court room frequently?—A. Yes.

Q. What was the nature of it?—A. I was with the Post-Intelligencer—a reporter.

Q. Were you in the court as court reporter?—A. Reporter.

Q. For how long?—A. Well, at intervals, for a year or so; a little over a year.

Q. What year was that?—A. Three years ago.

Q. And where else did you see him frequently?—A. Well, as I would see any citizen on the street and at other places.

Q. At what hours of the day or night?—A. All hours of the day and all hours of the night.

Q. Up to what time of the night—do you mean literally all hours of the night?—A. I believe I have seen him, not every hour of the 24, at different times; hardly that; no; but I have seen him, though, practically at all hours of the night, from time to time, at other times.

Q. If at any of those times you saw him when you thought he was under the influence of some intoxicant, please tell the committee.—A. I have seen him when I thought he was, but that was all.

Q. When did you first see him when you thought he was?—A. Do you mean the first date?

Q. Well, as nearly as you can fix the time; fix it the best way you can.—A. Well, I have thought that I have seen him intoxicated on the bench.

Q. When was that, Mr. Jones?—A. During the trial—I don't remember the date—but it was down there in the other building.

Mr. McCoy. What other building?

A. In the old Federal building.

Q. What year?—A. I don't remember the year nor the date, but I know the trial.

The Chairman. What was the trial?

A. It was at the trial of a soldier for murder, by the name of Holt.

Q. Colt?—A. Holt.

Q. How long did the trial last?—A. A week or 10 days, as nearly as I can remember.

Q. During what part of the trial was it that you thought he was intoxicated on the bench?—A. Why, at the time that some attorney—I forget whether it was the defense or the prosecution—entered an objection in the case and it was quite apparent that the judge did not hear it, and it was repeated and repeated, and finally he was aroused, and overruled or sustained it, I do not remember which—the objection.

Q. Who was the attorney?—A. I do not remember; I believe it was a man by the name of Caldwell—of Caldwell & Riddell.

Q. How was he finally aroused?—A. There was no effort made, apparently, to arouse him; it seemed as though the incident occasioned a little merriment or amusement in the court room.

Q. How long a time elapsed from the time the objection was made until the judge came around?—A. Oh, a moment—a minute—less than—oh, well, abut 15 or 20 seconds, I should judge.

Q. In what tone of voice was the objection made?—A. Well, it was not loud; it was made in the ordinary tone—in the ordinary tone of an attorney.

Q. Was it repeated?—A. It was repeated, I believe. Yes; it was repeated eventually, but I do not remember whether it was twice or three times.

Q. Well, in ruling on the objection, was there any statement of the point made by the attorney?—A I don't remember; I just recall the incident—I remembered it; I do not say that his lethargy or sleepiness was due to incoxication, but I presumed, or thought, that it was—I didn't examine him or——

Q. After he became aroused what was his appearance and demeanor?—A. As it always apparently is.

Q. Make a more specific answer than that if you can. Was it bright and exhibiting mental activity, or was it drowsy, or how was it?—A. Well, he was active enough in his tones and in his answer or in his stating the——

Q. At that time had you any impression or opinion about the judge's habits?—A. Yes, sir.

Q. Was your conclusion due to what you saw and noticed in the court room, or was it in part due to something that you had heard before or knew before? A. Due to my impression—my impression

was due to what I knew and what I had seen from my own observations.

Q. Now, was that occasion which you have referred to in the court room the first time when you noticed him when you thought he was under the influence of some intoxicant?—A. Yes, sir; I believe it was—it was.

Q. That is, was it the first either in court or out of court, or anywhere, that you yourself had observed?—A. Yes, sir; that was the first time that I had.

Q. I can't hear you.—A. Yes, sir; that was the first time that I thought or believed that I had ever seen him under the influence of intoxicants or the influence—some influence—I don't know what—apparently not natural anyway.

Q. After that time, tell us if you can, the next time after that when you noticed him in a similar condition; tell us of it.—A. One evening, or morning, rather, or sometime between 12 and 1 o'clock, I think it was, on the street.

Q. Do you mean at midnight?—A. Yes.

Q. Can you fix that time by the year, or the season, or the month?—A. It was the winter season, but I do not remember—I do not remember even—let me see—I know that it was the time that I had occasion to be in the office very late.

Q. In the newspaper office?—A. No; it was since then.

Q. In your own office?—A. In my own office. Yes, this was within a year.

Q. Within the present year? A. No; within 12 months—within the last 12 months.

Q. Well, what hour would you say that was?—A. It was after 12 o'clock, and I think before 1; it might have been between 1 and 2, but it was after 12.

Q. And where was he?—A. On Second Avenue, between Madison and the street this side of Madison—Seneca or Spring.

Q. Is that a very public place in the city?—A. No; there are no buildings at all on the side of the street that I passed him.

Q. It is not in the outskirts of the city, though.—A. No; it is right in the center of the city practically, within two or three blocks from here.

Q. But at that particular corner there are no buildings?—A. No buildings in that block.

Q. Well, what did you observe there?—A. Well, I observed that he took about the whole sidewalk for him to navigate in—he walked from one side to the other.

Q. Where was he?—A. He was perfectly erect——

Q. Where was he when you first noticed him?—A. Well, as you would observe anyone, probably 20 or 30 feet ahead of me.

Q. Walking on the sidewalk?—A. Walking on the sidewalk.

Q. In what direction?—A. He was walking south.

Q. Have you any knowledge as to where he came from?—A No, sir. I remembered at the time I wondered to myself something—I wondered where he was coming from, but I could not fix any particular occasion that——

Q. How far behind him were you?—A. I was in front of him; I did not turn to look at him at all—I just passed him and went on.

Q. Tell us more particularly the way he walked.—A. Well, he walked very much as though he were intoxicated, or very dizzy or ill.

Q. You say he went from side to side of the walk?—A. It was peculiar; he didn't reel; his equilibrium was perfect, apparently, but he just was walking from one side to the other, sort of unsteadily.

Mr. McCoy. I thought you said something about his feet also; what about them?

A. His feet were widespread, sort of sprawled out, to get a larger base.

The Chairman. How wide was the sidewalk?

A. I don't know; I think about 14 or 15 feet.

Q. Well, in going from side to side, tell us what you mean by that, as to whether he actually went from the building out to the curbstone, or what do you mean?—A. There are no buildings there.

Q. I mean from the building line.—A. Well, instead of walking in a straight line as a pedestrian does, when he is bound for a place, he was just walking backward and——

Mr. McCoy. Zigzig, you mean?—A. Zigzag.

The Chairman. How well did you know the judge at that time?

A. Perfectly well.

Q. Have you any doubt as to the identity of the person you saw?—A. None whatever.

Q. Were there others on the street in sight?—A. I think there were—that is, not in the block that I know of. There were some people down below in the block. Perhaps there may have been one or two others, but I noticed none there.

Q. Did you know where his home was in the city?—A. Yes, sir.

Q. Was he going in the direction of his home or toward the car which would take him home?—A. No, sir.

Q. What time in the winter was it, if you know?—A. I could not say.

Q. How was the weather?—A. It was not raining.

The Chairman. That is strange——

Q. If you saw him on any other occasions in the condition which you thought indicated intoxication.—A. No; I did not.

Q. Were those two the only occasions which you recall when in your judgment he was under the influence of intoxicants?—A. That is all.

Q. You spoke about seeing him at all hours of the day and night. Now, I want you to explain more fully about that. Did you see him after 1 o'clock on the streets?—A. Yes; I have.

Q. 1 a. m.?—A. Yes; I have seen him after 1.

Q. Where?—A. On Second Avenue or First—Second or Third—I have forgotten which.

Q. Under what circumstances?—A. Passing as any person would—walking along the street.

Q. How frequently?—A. Well, it would not be frequent. I might have met other persons just as often and not noticed having met them.

Q. Well, have you seen him on the street at 2 o'clock a. m.?—A. No; I have not.

Q. Or 3?—A. No.

Q. Or any hour after 1 a. m.?—A. Well, I have seen him occasionally after 1; yes.

Q. About what time?—A. Between 1 and half past 1.

Q. Do you know, of your own knowledge, whether at that time he was holding court——A. No.

Q. (Continuing.) Daily?—A. No, sir; I do not.

Q. Have you ever ridden on the same street car with him?—A. No, sir; not that I know of.

Q. Have you told us all you know with reference to the particular subject of the inquiry?—A. Yes; I think I have.

The CHAIRMAN. Any further questions?

Mr. MCCOY. Did you ever have any outside duties for the Post-Intelligencer as a reporter?

A. Outside of the court, you mean?

Q. Yes.—A. Yes, sir.

Q. Did you ever make any report to the paper on Judge Hanford at all?—A. No, sir.

Q. Did you ever make any observation—ever see him when you were acting as reporter on outside work, outside of the court room, I mean?—A. Well, no, sir.

Q. Street work, or whatever you call it?—A. No, sir.

The CHAIRMAN. Any further questions, Mr. Hughes?

Mr. HUGHES. This case of United States against Holt was, you say, a trial for murder?

A. Yes.

Q. The defendant being a soldier?—A. Yes, sir.

Q. And the crime was alleged to have been committed on the reservation. I mean on the——A. On the fort—at the fort.

Q. (Continuing.) The Government reservation. In that case Elmer E. Todd was the district attorney representing the Government, prosecuting the case, wasn't he?—A. I believe he was.

Q. And Mr. Hugh M. Caldwell, now one of the deputy county attorneys, and Mr. C. F. Riddell represented the defendant?—A. I believe they did.

Q. This gentleman here. Will you stand up, Mr. Riddell? [Whereupon Mr. Riddell stands up in the body of the court room.] And that gentleman was one of the attorneys for the defendant?—A. Yes; he was.

Q. They were present, those gentlemen I have named, in court during the entire trial, including the incident which you have mentioned?—A. One or both of them were.

Q. You are not a lawyer?—A. No, sir.

Q. You would not undertake to say whether Judge Hanford comprehended and clearly understood and rightly determined the question that arose at that time, or any other questions?—A. I have every reason to presume that he did.

Q. That case you followed sufficiently to know that it went to the Supreme Court of the United States?—A. No, sir; I did not.

Mr. HUGHES. I will call the attention of the commission to the fact that the case is reported in 218 U. S., at page 245, where the committee can ascertain what disposition was made of it.

Mr. MCCOY. Do you consider, Mr. Hughes, that the decisions on the appeals from Judge Hanford's decisions have any significance?

Mr. HUGHES. You have asked me a question and I will make this answer. I called the attention of the committee to that, not to the question of the decisions on appeals from Judge Hanford's court,

but simply for the purpose of enabling this committee to ascertain the nature of that case, the importance of the case and the character of the rulings made by the court in the case; not as specially important at this time, but for further information in connection with the testimony. I take it for granted that the committee will want to obtain the testimony of the attorneys who tried that case—that is all.

Mr. McCoy. You cited the decision on the appeal, from the Supreme Court; was that decision affirmed?

Mr. Hughes. Yes, sir; it was affirmed.

Mr. McCoy. Was the prisoner convicted or acquitted?

Mr. Hughes. He was convicted and there was certain very nice questions of law involved in the case. The only significance of that—I merely called the attention of the committee to the fact that you can find the case referred to, and further that you will find that it was an important and interesting case.

Mr. McCoy. My only question is, do you consider the fact that the Supreme Court affirmed it as of any significance?

Mr. Hughes. No. I am only calling the attention of the committee to the fact that you will get at the character of the case and the importance of the case and of the questions involved, simply for the purpose of interpreting the testimony of the attorneys whom I assume you will want to call in this case, and as bearing upon the attention of the court, that is all. I have not referred to it for the purpose of introducing it in evidence, but simply for the guidance of the committee in taking further testimony.

The Chairman. You were not professionally connected with the case?

Mr. Hughes. No.

The Chairman. And of course you do not know whether the point referred to by the witness was preserved by an exception in the record?

Mr. Hughes. I will state the reason I called the attention of the committee to this decision of the Supreme Court is if you will look at the case and take it in connection with the examination you want to make the attorneys you will see that it was a very closely contested case and every question which could be raised for the defendant apparently was raised, and that will be of importance to this committee in determining whether the attorneys in trying the case would have taken an exception or overlooked any act of Judge Hanford's which might prejudice the rights of their client, and I say now I have not talked with these attorneys and I do not know about them—that is, I do not know what they would say—I know what the men are, and I merely suggest that the circumstance is important, if important at all, only as it may be important in the light of the fact that this was a murder case contested, as the court will see from an examination of this opinion, bitterly and closely in all matters and represented by able counsel on both sides, and that those counsel ought to be the best witnesses.

The Chairman. All counsel are able.

Mr. Hughes. Not all.

Mr. McCoy. Do you remember who made the objection which called for the ruling which was made at the time you have testified about?

The WITNESS. No; I do not.

Q. Do you remember whether the Government's attorney or the defendant's attorney made the objection?—A. No; I just remember the incident and that is all.

Mr. HIGGINS. Had you ever been in Judge Hanford's court before that day?—A. On that particular day?

Q. No; at any time before this incident occurred which attracted your attention?—A. Yes, sir.

Q. And since that time?—A. And since.

Q. I want you to state again what led you to believe that he was under some improper influence.—A. I did not say "improper influence"—some influence, at the time of this—at the time of this Holt trial, you mean?

Q. Yes. Describe how he looked and what he did—just what he did?—A. Well, he was bent over this way, with his hands folded and his head down like that [illustrating].

Mr. MCCOY. Now, the witness puts his head nearly at a right angle to his body.

Mr. HUGHES. If the court please——

Mr. MCCOY. Well, did he have his arms on the bench?

Mr. HUGHES. If the court please, I do not profess to be a great mathematician, but I have given some attention to mathematics, and I hope that the record should not be made, assuming that the witness says that he put his head at right angles to his body.

Mr. MCCOY. Well, I think the record should show, and I think now that Mr. Hughes and I will agree, when we get through, that it was a right angle—will you put your head again about at the angle to your body which you recollect Judge Hanford's was, or took at that time. [Witness does so.]

Mr. MCCOY. Now, Mr. Hughes, how much out of a right angle is it?

Mr. HUHES. If you will put the instruments to the witness and then take a measurement, I will place my estimate that the angle is not to exceed 25 to 30 degrees. Now, I challenge the committeemen to get the instruments—we can get them here in a minute—I don't think it is very imporant, but a right angle would be this way—prone.

The CHAIRMAN. Prone?

Mr. HUGHES. Prone to the perpendicular of his body.

The CHAIRMAN. Will you agree that the witness's chin rested on his chest as he gave the illustration?

Mr. HUGHES. I think this witness ought to testify and explain it and let it get into the record.

The CHAIRMAN. Mr. Witness, is the fact that I have asked you about now, true? Was your chin on your chest when you gave the illustration?

A. I don't believe it was.

Q. How near it was it?—A. Well, I don't know—well, it is quite a little ways.

Mr. MCCOY. It touches your necktie, doesn't it?

A. Oh, yes.

Mr. MCCOY. Then we can dispense with the instruments?

The CHAIRMAN. Proceed; are there any further questions?

Mr. HUGHES. There was a desk before him?

The WITNESS. Yes.

Q. And his arms rested upon the desk?—A. No, I think his arms were under the desk; of course I don't remember, but I don't remember his arms being on the top of the desk.

Q. You could not be certain as to that?—A. No, sir.

Q. The room was rather a badly ventilated room?—A. Yes, it was.

Q. And this occurrence, I think you have stated, was in the afternoon sometime?—A. In the afternoon.

Q. Some one of those days during the trial?—A. Yes, sir.

Q. Do you remember how long the trial had been in progress?—A. It was along toward the end of the trial.

Mr. MCCOY. What was the name of the gentleman who stood up here, the lawyer?

Mr. HUGHES. Riddell, he was pointed out.

The WITNESS. His name is Riddell.

Mr. HUGHES. C. F. Riddell.

The WITNESS. Yes.

W. A. STEELE, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee?

A. W. A. Steele.

Q. Where do you live, Mr. Steele?—A. Seattle and Alaska.

Q. Have you two residences, or is one of those your residence and the other a resort?—A. Well, I have a business in Alaska and I spend—I have just returned from spending four months there.

Q. Well, what you mean, then, is that your home is in Seattle, but you are in Alaska on business a good deal of the time.—A. Well, my home in a way is in Alaska.

Q. Where in Alaska?—A. Cordova; I have a newspaper business there.

Q. Are you a family man?—A. No, sir.

Q. You have no permanent residence of your own?—A. Well, I have lived—I came to Seattle 18 or 19 years ago, and I have been there other than such times that I may have been in various parts of Alaska.

Q. Have you any other interest there than the newspaper business?—A. Mining interests.

Q. For yourself or someone else?—A. Well, I am in the Copper River country, and I am trustee or treasurer of the mining company that is operating various properties up there in the Copper River country; it is in the interior back from Cordova.

Q. In the mines known as the Guggenheim syndicate property?—A. No; I am not connected with that property; there are various properties in that same section of the country; it is in the neighborhood of the Guggenheim properties.

Q. Have you any other profession than the newspaper business?—A. No, sir.

Q. Mr. Steele, are you acquainted with Judge Hanford?—A. Yes, sir; I know Judge Hanford, but not very well.

Q. How long have you known him?—A. I have known him from—I should say, about 18 years.

Q. Personally acquainted with him or only a sight acquaintance?—A. Well, shortly after I first came to town I saw Judge Hanford quite often, but recently I have not seen him very frequently.

Q. Under what circumstances did you see him then? That is, what was he doing when you saw him?—A. Well, he was presiding on the Federal bench, and at that time I was city editor of a morning paper called the Morning Telegraph, and I covered that detail myself.

Q. For how long?—A. Well, I presume that was for about a year.

Q. Did you know the judge elsewhere than on the Federal bench during that time, or any time?—A. Oh, I have frequently seen him, yes, about the city.

Q. At what hours?—A. Well, various hours; I suppose I have at times, seen him at various hours during the day and evening.

Q. How late in the evening?—A. Well, I do not recall any particular hours that I may have seen him; it may have been 10 or 11 o'clock. I think one evening I saw him coming from the Rainer Club about 12 o'clock.

Q. Did you on any other occasion see him in town on the streets as late as or later than 12 o'clock, midnight?—A. No, sir; I think not.

Q. Coming back to your court-reporting work; that is, reporting the court news for the newspaper?—A. For the newspaper; yes, sir.

Q. If at any time you saw him in court when you thought he was under the influence of any intoxicant, please tell the committee.—A. No, sir; I never did.

Q. And if at any time on the street you saw him when you thought he was under the influence of any intoxicant, tell the committee of that.—A. Well, I could not say that I ever have; that is, I could not state positively that I ever did.

Q. Give us the opinion that you have, whether positive or otherwise.—A. Well, I have seen Judge Hanford frequently on the street; his manner is such that one might say that he was intoxicated, but people who would know him better would not think so.

Q. Quite so, now, leave the other people out of it and give us your impression.—A. Well——

Q. What do you think from what you saw?—A. Well, I would say not, because I have seen Judge Hanford so often going along the street with his head bent and apparently absorbed and with something other than mere passing events——

Q. Now, pick out one of those occasions when you saw him and tell us where it was that you saw him.—A. Well, I have seen him going up Marion Street; I have seen him on Third Avenue.

Q. Where is that from the courthouse?—A. Well, Marion Street, that is several blocks south of this street.

Q. Is it in the business portion of the city?—A. It is in the business portion of the city; yes, sir.

Q. Well, at what time was it you saw him on the occasion now in your mind?—A. Well, I remember one occasion, I think it was possibly half past 12 o'clock, I saw him coming up toward the hill, presumably at least going in the direction of the Rainier Club.

Q. Now, tell us what you noticed about him on that occasion?—A. Well, he did not appear to be very different then from what I have seen him at other times.

Q. Well, tell us rather how he did appear?—A. Well, I remember I passed him; on that particular occasion I was coming down the street and he had his head bent and he went by and he did not speak to me, which alone was peculiar enough to attract my attention as oftentimes he would give me a nod—I did not know him very well—

and at other times he would pass and does not pay any attention to me.

Q. Now, this time he was going on with his head down, what else was there, if anything, peculiar in his attitude or movements?—A. Other than that he did not seem to be paying any attention to anything that was going on about him. In walking down I generally look around myself, and his attitude appeared different, which caused me to observe him.

Q. At that time you say it did appear different from normal.—A. Well, not from normal with the judge, because he appears to me most of the time to be that way; or that is, many of the times.

Q. Well, was there anything else that attracted your attention then and which made you recall it now?—A. No, I don't think so.

Q. What was there in it which caused you to recall it and mention it now as one of the occasions?—A. Because you asked me if I could recall any particular occasion. I can recall several occasions when I have passed him.

Q. Well, let me add to that question—that you have passed him when, in your judgment, he seemed to be under some influence such as intoxication.—A. Well, I would not say that; I would not say that because I think Judge Hanford is a rather peculiar man, and what might appear to be intoxication in another man would not, to me, indicate that to me about him—I would not be impressed with that fact with regard to the judge.

Q. Do you recall any other occasion when you met him under circumstances to attract your attention to him?—A. Well, I remember, I think it was about two years ago, I was coming down Fourth Avenue and I was on my way down to the Colman Building, which was on First Avenue and Marion, and while near the Rainier Club, I think it was a block this side of the Rainier Club, I passed the judge. At that time it was about, I think about half past 9 o'clock. I remember the particular occasion because I had an office in the Colman Building and I was going there and it was on Sunday evening, because I had to walk upstairs, the elevator was not running. And at that time the judge passed me; he was coming north up in this direction and seemed to be at that time—he had his head bowed.

Q. How much was it bowed?—A. Well, I should say about that way [illustrating].

Q. That would bring his chin how near to his chest—give us some idea that will go into the record as to the extent to which his head was bowed?—A. I would say about that—his head was bowed and it might be——

The CHAIRMAN. If we had a photograph——

A. I am trying to figure out about how far my chin is from my chest.

Q. Well, go ahead.—A. I don't know, it seemed to me about 4 or 5 inches.

Q. From your chest?—A. Yes. I can not just see it, of course. But he had the attitude; he was seemingly engrossed in some deep thought.

Mr. MCCOY. Walking up or down, was he?

A. Well, I think there was a little incline toward the uphill.

The CHAIRMAN. Was his head bowed to such an extent that he could see but a step or so in front of his feet?

A. Oh, yes; yes, sir; he could.

Q. How far ahead could he see what was in front of him?—A. With my head bowed now I can see possibly 8 or 10 feet in front of me and I presume that he could see that distance.

Q. With your head bowed now you mean as his was then?—A. Yes.

Q. But you are elevated quite a bit now.—A. Yes.

Q. And what was it on that occasion which attracted your attention to him?—A. Well, his attitude, as I say, is different from the average man ordinarily.

Q. But you knew that at the time, didn't you?—A. Yes, sir.

Q. Well, what was it that attracted your attention to him particularly in his conduct or demeanor that night?—A. Well, as I say, he walked by me and seemingly did not pay any attention to anyone who was on the sidewalk.

Q. Do you recall any other occasion when you met him when his conduct or demeanor attracted your attention?—A. Well, I have in the course of the years, I can not recall the particular occasion, but I have passed the judge as well when those peculiarities of his have attracted my attention, and at other times I have passed him when he bowed and observed me.

Q. Which of those things occurred more frequently, when he would pass you without noticing you or pass you and notice you?—A. Well, I think he would more frequently pass me without noticing me.

Q. When he did notice you what was the form of his recognition?—A. Well, he would give me a little nod.

Q. Any words spoken?—A. Possibly; usually I think it was just a little nod.

Q. You have met him both day and night time when he would notice you and give the nod?—A. Yes, sir; I have seen him at night time.

Q. When did you do that—do you recall any other particular occasion when his conduct was such as to fix itself on your recollection?—A. No; I do not think that I do.

Q. Have you ever ridden on a street car with him?—A. I don't think so; I don't think I ever have.

Q. Have you stated to anyone here in the city recently that you had seen Judge Hanford when he was intoxicated?—A. I had a conversation with a gentleman on Sunday; I think that is the only time that I have ever discussed that phase of Judge Hanford with anyone, and that was in an incidental way. It was more in comparison——

Q. Did you, in that conversation, state that you had seen the judge when he was intoxicated?—A. Well, I said that I had seen the judge when some people might consider that he was intoxicated. We were discussing him at that time—we were discussing more particularly the judge's attitude in the Olsson matter.

Q. You do not quite understand my question. My question was, Did you state in this conversation that you have seen him when you thought he was intoxicated?—A. Well, I think the party understood me to say that, because he said to me——

Q. I do not care about that.—A. Well, no; I do not think I said it; no, not in that way.

Q. Did you say something to the party which justified him in believing that you intended to convey that idea?—A. Evidently, because he then in turn asked me if I could swear that I had seen him drunk, and I said, "No," that I could not.

Q. What do you mean by "intoxicated?" What does that word convey to your mind?—A. Well, when a man has not got command of things—well, that he does not know just what he is doing; a little uncertain of himself and not clear in his mind, making him uneasy on his feet and legs. There are various symptoms to be observed in different kinds of men.

The CHAIRMAN. Any further questions of the witness by the committee?

Mr. HUGHES. With whom did you have that conversation?

A. Mr. Perry.

Q. What Perry?—A. John H. Perry, the attorney.

Whereupon the committee takes a recess until 1.30 p. m.

AFTERNOON PROCEEDINGS.

Continuation of proceedings pursuant to recess.
All parties present as at former hearing.

C. F. RIDDELL, having been first duly sworn, testified as follows:

The CHAIRMAN. State your full name.

A. C. F. Riddell.

Q. Do you live here in the city, Mr. Riddell?—A. I do.

Q. Have for how long?—A. For a little over four years.

Q. You are a professional man?—A. I am.

Q. What is your profession?—A. I am a lawyer.

Q. How long have you been a lawyer?—A. Since 1903.

Q. Where have you practiced your profession?—A. Well practiced practically no place but here. I was admitted back in the District of Columbia, but had very little practice.

Q. And since 1903 you have been practicing here?—A. No; I have only been practicing—I came out here on December 31, 1907, and have been practicing here ever since.

Q. Do you at present hold any official position?—A. Yes; I am assistant United States attorney for the western district of Washington.

Q. Located in Seattle?—A. Located in Seattle.

Q. That is an appointive position?—A. It is.

Q. Through whom did you receive your appointment?—A. Through Mr. McLaren, the United States attorney.

Q. Did you have any indorsements?—A. I did not. He just appointed me without my knowledge.

Q. How long have you been acting in that capacity?—A. I was sworn in on the 7th of last May.

Q. Was the appointment for a specific time or not?—A. I don't know; I don't think it is. I think it is just a temporary appointment.

Q. And to be determined by whom?—A. By Mr. McLaren, I presume.

Mr. McCoy. By temporary you mean without any fixed limit?

A. Yes. Mr. McLaren, as you gentlemen, I suppose, know, has been temporarily appointed United States attorney, and then he appointed me to hold during his pleasure.

The Chairman. Well, what do you mean when you say he has a temporary appointment?

A. His appointment has not been made permanent. Mr. Todd resigned, and no permanent appointment to fill the vacancy has been made, and he is temporarily United States attorney.

Q. Filling a vacancy here?—A. Filling a vacancy.

Q. Is there any understanding that if he is made the permanent appointee you remain a permanent assistant?—A. None whatever.

Q. Mr. Riddell, you were present in court this morning when one witness testified about a case which, I think, he called the Holt case?—A. Yes.

Q. Were you one of the attorneys in that case?—A. I was.

Q. It is your recollection, as the witness stated, that the defendant Holt was indicted for homicide?—A. He was.

Q. Who, if anyone, assisted you in the defense?—A. Why, my partner, Hugh M. Caldwell, and I defended the case.

Q. Where is Mr. Caldwell now?—A. Mr. Caldwell is first assistant prosecuting attorney of King County, in Seattle here.

Q. Do you recall the trial?—A. I do.

Q. When was it?—A. It started, I think, on the 10th of December, 1908. It was set, I know, for the 8th and there was a smuggling case ahead of it, and it is my recollection that the smuggling case went over to the 9th, though we might possibly have started on the 9th. It was either the 9th or the 10th.

Q. So the case lasted during a period of 12 days?—A. It did.

Q. How much of that time was occupied in the production of evidence?—A. I think we started one noon and we got the jury by the following evening. The next morning we presented a motion, which lasted possibly an hour, and the jury was then sworn and the trial of the case commenced. It lasted from probably the 11th or 12th until the 22d.

Q. How many days were actually consumed in the production of evidence, as you recall?—A. The jury went out on the morning of the 22d. That was Monday. Sunday and Saturday there had been no trial. It was Tuesday, Wednesday, Thursday, and Friday of that week. Let's see, that would—if I may refer to a calendar I think I can——

Q. You may.—A. (After referring to calendar.) I think the production of evidence, by referring to the calendar for 1908, started on the 11th of December, and—15th, 16th, 17th, and 18th—the 22d, I see by reference to the calendar, was Tuesday. I remember now Monday is motion day in the court here, and I think that the case was adjourned from Friday evening—Friday or Saturday evening—until the next Tuesday morning, when the arguments were had. There was no testimony introduced on the 22d. About five days.

Q. So that the 15th, 16th, 17th, and 18th were the days during which testimony were produced?—A. Yes, sir; and I think also some on the 11th. I might be mistaken on that, though.

Q. Were you present before lunch when the witness Robert E. Jones testified?—A. I was.

Q. Did you hear him testify, in substance, that at one time during the production of the evidence one of the attorneys objected to some question asked of a witness, but the judge—Judge Hanford being on on the bench—did not apparently hear the objection or notice it; that it was probably repeated and that those present noticed that the judge did not notice, and manifested by their actions that they noticed the judge was not conscious, apparently, of what was going on, and that after a space of from 20 seconds to a minute the judge suddenly aroused himself and made a ruling? Did you hear that testimony?—A. I heard the testimony.

Q. Did you hear it in substance as I have related it?—A. Yes, sir; I did.

Q. Have you any recollection of that occuring?—A. I have no recollection of there being any such incident in the course of the trial of the Holt case.

Q. What do you say; have you sufficient recollection to enable you to say whether or not such a thing did occur?—A. I recall the whole case very well. I don't believe any such incident occurred.

Q. Did that incident, or any incident similar to it, occur in any trial in which you participated before Judge Hanford?—A. Not that I recollect of. I only remember one incident, and I am satisfied if there had been any other I would have recollected it. The judge was busy, either signing an order or something of that kind, while a witness was testifying in the case—that occurred since I have been in office this spring, and he, the witness, testifying, and he thought that I was leading the witness, and he looked up from signing his paper to say that I was, and I remember that incident very clearly, and I am satisfied in my own mind that that is the only incident that ever occurred in any trial that I was ever engaged in before Judge Hanford.

Q. Do you think that was an incident of the same kind as the other?—A. Well, it was simply an incident where the judge was engaged in another matter, where he didn't have his eye right on the witness. That is all.

Q. But the one incident, as related by the witness Jones, was where he was entirely inattentive, apparently, to everything, and the one you relate as an incident is where he was giving his attention to another matter and ceased that to notice what you were doing. Was there any sort of correlation between those two things, in your judgment?—A. The only correlation is this: That is the only instance that I ever recall in any trial before Judge Hanford that he did not rule directly on the question on everything that was ever put up to him.

Q. Well, in the last case that you mention, was there any objection made that would call for a ruling of the court?—A. No; it was the court's own objection, the last instance I mentioned.

Q. Well, it is your purpose, in mentioning the last instance, in showing the mental alertness of the judge?—A. Yes; that for one reason, and also I believe that in any instance where he had not been paying attention to the course of the trial, either from inattention or from attention to something else, I would have remembered it, and that is the only incident that I do remember. and I mention it for both purposes.

The CHAIRMAN. Do you wish to ask Mr. Riddell any further questions, Mr. McCoy, Mr. Higgins, or Mr. Hughes?

Mr. HUGHES. No.

Witness excused.

C. V. DAVIS, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell the committee your name.

A. My name is C. V. Davis.

Q. Where do you live, Mr. Davis?—A. 284 Twelfth Avenue, north, this city.

Q. How long have you lived here?—A. Twenty-three years.

Q. What is your present occupation?—A. Dentist.

Q. How long have you practiced your profession?—A. Twelve years and two months.

Q. That would be practically all of your adult life, wouldn't it?—A. Yes, sir; very near.

Q. Are you acquainted with Judge Hanford?—A. I only know him by sight.

Q. How long have you known him that way?—A. I could not state, possibly 14 or 15 years.

Q. During that time, if you have had any occasion or opportunity to observe him when he appeared to be to you under the influence of an intoxicant, you may tell of it.—A. Simply riding on the same car, going out on the Broadway line. I take the same car going home as——

Q. (Interrupting.) How long has that been true; how long have you rode out on the same car?—A. Six years next month; six years in August.

Q. Well, if at any time you observed him when you thought he was under the influence of some intoxicant, please tell us when you first so observed him.—A. I could not name a definite date.

Q. I don't expect that. The year, the approximate time; in any way.—A. Shortly after I had moved out in the North Broadway district; that is some six years ago.

Q. Very well. Now, tell us the circumstances.—A. Simply going on the car, as I do each day, going to and from home. I simply noticed his condition.

Q. Do you recall any particular occasion now?—A. No, sir.

Q. Do you recall the first occasion when you so noticed?—A. I could not say; I could not mention even any definite occasion, because——

Q. (Interrupting.) Without giving the date, have you in your mind some particular time when you noticed him and thought he was under the influence of an intoxicant?—A. To my knowledge the most noticeable case, I will say, was about 14 months ago.

Q. Well, tell us that one.—A. Simply going home on the car, I noticed the condition of the judge when he got on the car and noticed him taking a seat in the front of the car just opposite where I was sitting and just simply—of course it was—simply to me it was a condition that I had suspicioned or suspected or apparently noticed or thought that that was the condition that he was in a number of times before. I paid no particular attention.

Q. Well, what was his condition?—A. Well, I should say it was a state of intoxication.

Q. Were you on the car when he got on?—A. Yes, sir.

Q. Did you notice him getting on?—A. Yes, sir.

Q. I mean by that, did you notice him getting up the steps of the car?—A. No, sir. I noticed him coming forward in the aisle.

Q. Now, was there anything in his walk or appearance or demeanor as he walked from the rear end to the front end which attracted your attention?—A. Just being in that condition, I of course, took notice of it, as I think most anybody else would.

Q. Well, tell me what it was first caused you to notice him particularly; that is, what there was in his conduct that caused you to notice him?—A. Well, any man that has the appearance of being intoxicated I think usually attracts attention—not of admiration.

Q. Can't you describe, for instance, to one who never saw a man in such a condition how he appeared to you then?—A. It is one of those common conditions that I think is hard to express

Q. What did he do when he came in?—A. Walked up the aisle and took a seat, as I say, just opposite me on the car.

Q. And when he sat down what was noticeable in his conduct, if anything?—A. Well, the appearance of a man that was having an effort to keep awake or sit steadily on his seat.

Q. Was there anyone near him at the time; that is, on that seat?—A. No; not on that seat.

Q. Was his side or his face fronting in the direction the car was going?—A. His face was fronting.

Q. There are some seats——A. He was in the first seat next to the side seat.

Q. (Continuing.) On the side of the car, but he was in the first seat which fronted in the direction in which the car was going?—A. Yes, sir.

Q. And you were across the aisle?—A. I was just opposite.

Q. In the corresponding seat?—A. Yes, sir.

Q. How long did you ride with the judge?—A. It takes me 15 minutes to reach my place.

Q. Which of you got off first?—A. I got off first.

Q. How near to where he gets off did you go?—A. Well, about nine blocks.

Q. Well, while you remained on the car, did you notice anything else in his condition which helped to lead you to conclude that he was intoxicated?—A. Just the general actions of any man or any person in that condition. Of course, nothing unusual; no unusual conditions to attract attention.

Q. At any other time did you notice the judge when you thought he was under the influence of an intoxicant?—A. Well, there were times when I suspicioned it, of course. I would not swear to it.

Q. What do you mean by "suspicioned"? What was there in his conduct, if you know, which lead you to suspicion, as you put it, that he was in that condition?—A. By his actions—by his actions and the appearance of the man.

Q. Mention some of those actions.—A. Well, as a man sits on the seat, if he is in an intoxicated condition, why, usually he is a little bit unsteady or he is drowsy, apparently sleeping, something in that condition.

Q. Was the judge in those conditions at the times you refer to?—A. Several times I have seen the same thing.

Q. How many times could you say?—A. I could not say, because we ride on the same car every few days.

Q. Well, approximate by some unit of time, weeks, months, years, or some other way; how often or frequently you saw the judge in the condition you have described?—A. Well, it was occasionally. I could not say. I would not say how often.

Q. As often as once a month?—A. Possibly so.

Q. Well, would that be your recollection of it?—A. Yes, sir; I would say that, at least that.

Q. For how long a time?—A. Well, as I say, I have lived in that district six years, and it has been occasionally that I have seen that condition.

Q. Do you mean for all of the six years?—A. Yes, sir.

Q. Have you ever observed the judge anywhere else than on the street cars?—A. Once in the courtroom, the only time I was ever in the court room.

Q. Well, do you mean to say that on that occasion you thought he was under the influence of some intoxicant?—A. No, sir.

Q. In the court room?—A. No, sir.

Q. Oh, you observed him there only?—A. Yes, sir.

Q. And you observed him on the car at times when in your judgment he was not under the influence of an intoxicant?—A. Yes, sir.

Q. What is the difference between him at the times when you thought he was and when you thought he was not intoxicated?—A. Well, the difference would be that the man appeared in a normal condition, I would say. I think that would express it.

Q. Well, when you thought he was not under the influence of some intoxicant, how did he sit on the seat with reference to the way he sat when you thought he was intoxicated?—A. Usually taking notice of the things around, people coming and going on the car, and things we were passing on the street.

Q. What experience have you had, Doctor, in noticing the effects of intoxication, or partial intoxication on people?—A. What experience have I had in noticing it, you say?

Q. In observing, yes.—A. Well, it is a condition that we have all seen. I have seen other people, I have observed it all my life, as near as I can remember. Just see the effects that it has on one.

Q. I would like to get more accurately at the state of your mind.—A. All right, sir.

Q. Do I understand you to say that on the occasions when you thought he was not normal, as you put it, that in your opinion he was intoxicated?—A. There were things that indicated that he was.

Q. Well, what I want to get at——A. (Interrupting.) As we look at a thing, you think of symptoms and—signs or symptoms of a condition, and that is the way I drew my conclusions.

Q. On any of the occasions to which you refer when you saw him on the street car, do you know whether others on the car noticed anything in his condition?—A. Yes, sir. I have heard them remark about it.

Q. How frequently?—A. Well, at least—I could say at least as many as three or four times that I have taken notice of people remarking about it, and that was within the last 18 months.

Q. Can you tell to what extent his condition and demeanor attracted the attention of those who might be on the car at the time—

that is, of those who were on the car at the time?—A. Well, on one occasion I simply heard the man remark, "That is Judge Hanford," and in a jesting way spoke of his condition.

Q. That is not quite in answer to the question. That is one man. But was his condition such as to attract the attention of any observing person——A. (Interrupting.) Yes, sir.

Q. (Continuing.) On the car?—A. Yes, sir.

Q. Did it do so?—A. Yes, sir; I would say that it did that.

Q. At what time of day or night did you usually ride with him on the car when these things occurred?—A. Between the hour of 6.30 and 7.30.

Q. How late was the latest you ever saw him on the car going home or toward home or——A. (Interrupting.) I can't recall any other hour than that, because that is the time I am usually riding out; not later than 8 o'clock.

The CHAIRMAN. Have you any questions to ask the witness?

By Mr. McCOY:

Q. Have you seen him walk down the aisle of the car on any of these occasions?—A. Yes, sir.

Q. Did you notice anything peculiar about his gait?—A. That is the thing that attracted my attention to his condition.

Q. What was it exactly?—A. The gait of a man that was not—well, it was the gait of a man that, as I would say, would be intoxicated.

Q. That is, stagger?—A. Stagger; a man—certainly a man that was intoxicated would stagger.

Q. Well, did he, as a matter of fact?—A. Yes, sir; holding to the seats as he walked along.

Q. How soon after he took his seat, on these occasions that you have spoken of, when to you he appeared to be under the influence of an intoxicant, did he show signs of drowsiness?—A. Within a matter of 5 or 10 minutes; say 5 minutes, or sometimes less.

Q. You say he was unsteady in his seat?—A. Yes, sir.

Q. You mean merely that his head was unsteady or his whole body seemed to be unsteady?—A. I have seen him drop forward the entire body.

Q. Do you mean dropped forward to the back of the seat in front of him?—A. No, sir; dropped forward this way; the entire body would incline forward.

The CHAIRMAN. Do you wish to ask any questions, Mr. Hughes?

Mr. HUGHES. Just one or two questions.

The WITNESS. Yes, sir.

By Mr. HUGHES:

Q. In walking in or out of the car the most of the journey through the aisle would be when the car was just starting or just stopping, wouldn't it?—A. I have noticed it in different—on different occasions, at different times.

Q. But I say the cars only stop for an instant, and as soon as people are on they start up, and they are moving forward in the aisle. The same thing is true in stopping, isn't it?—A. Sometimes it is.

Q. And most people you see going in and out of the cars through the aisles take hold of the seats as they walk along, don't they—steady

themselves?—A. But even at that I consider there is a difference in the way people take hold of the seat and the condition in which they appear at the time; the necessity or a matter of habit in walking along touching the seats, taking hold of them.

Q. On any of the occasions that you have spoken of did Judge Hanford engage in conversation with anyone?—A. I have seen him engaged in conversation; yes, sir.

Q. And at the times when you observed him apparently asleep?—A. As I stated, in what I would call a normal condition.

Q. I am speaking of the times that you have referred to here when you have spoken of what you call conditions other than normal. Did you see him at those times engaged in conversation with anyone?—A. I have seen him answer. People would speak to him. I have observed him on the car with people that apparently knew him. He would make replies to inquiries or questions asked or some remarks made, but he never engaged in any conversation as he did when he appeared, as I say, in normal condition.

Q. What I am trying to get at is whether there was anything that you observed that indicated misbehavior or impropriety of conduct or anything other than the drowsiness or the tendency to lean forward and what you have described as unsteadiness?—A. No; there was apparently not anything improper; there was nothing improper in his conduct.

Q. Well, was there anything other than you have described specifically? The chairman has asked you a great many questions and I have not heard that you gave any other description. You did not observe anything but drowsiness, what you have described as unsteadiness, a tendency to lean forward—no other things that you observed, were there?—A. Well, there was—I don't know—I would not know how to answer your question, because it is a thing that is so common. You can't explain the condition of a drunken man, can you? I can't, other than the conditions that we meet and see. It is so common to us.

Q. I think what the committee has wanted to know was a description of the things that you saw, not your impressions. I am asking you if you saw anything else than you have described, what you have said to be unsteadiness, the drowsiness, and the leaning forward or a dropping of the head?—A. Just simply a general indication of intoxication.

Q. But that does not convey anything to anybody. I think that is all, with one exception, if you can't answer more distinctly to me.—A. All right.

Q. I probably can't get at it more definitely than the chairman has done. What is your dental office?—A. Where is it?

Q. Where is it?—A. It is in the Leary Building—504 Leary Building.

Q. What office is it?—A. It is in my own name—C. V. Davis, dentist.

Q. Are you with Dr. Brown?—A. No, sir; I am not. I have always conducted my own practice ever since graduating.

Witness excused.

CHARLES F. ZIMMERMAN, having been first duly sworn, testified as follows:

By the CHAIRMAN:

Q. What is your full name?—A. Charles F. Zimmerman.
Q. Z-i-m-m-e-r-m-a-n?—A. Yes, sir.
Q. Where do you live, Mr. Zimmerman?—A. 1205 Olympia Way.
Q. How long have you lived in Seattle?—A. About eight years.
Q. What is your present occupation?—A. Bartender.
Q. How long have you followed that business, Mr. Zimmerman?—A. Twenty-five years.
Q. Where do you work now?—A. Nowhere at present.
Q. Where was your last employment?—A. Savoy.
Q. When was that?—A. About two weeks ago.
Q. And for how long did you work at the Savoy?—A. Oh, close to two years, I should say—a little less than two years.
Q. Where did you work prior to that?—A. At Grant's café, on Third Avenue.
Q. How far north or south of this building is it?—A. Why, it is in this next block here.
Q. That would be——A. (Interrupting.) North.
Q. North?—A. Yes.
Q. How long did you serve there?—A. About four years.
Q. Do you know Judge Hanford?—A. I have known him by sight for several years; I should say six or seven years—eight years.
Q. Did you know him before you went to work in Grant's?—A. Just by sight.
Q. I mean that.—A. Yes.
Q. If at any time you have seen the Judge drinking at a bar, please tell us.—A. Yes.
Q. Where?—A. Savoy.
Q. When did you first notice him there?—A. Oh, for the last five or six months.
Q. Was he a regular customer while you were on duty?—A. About three times a week.
Q. What time in the day?—A. Mostly at night.
Q. What hour in the night?—A. Between 12 and 1.
Q. That is about midnight?—A. Midnight.
Q. Or a little after?—A. A little after midnight; yes.
Q. What did he drink?—A. Sometimes a cordial, sometimes a cocktail.
Q. What is the cordial you speak of?—A. Benedictine.
Q. What is the other drink?—A. Well, sometimes Manhattan Martini.
Q. Cocktails?—A. Yes, sir.
Q. Did he confine his drinking at that bar to those two drinks?—A. Yes, sir.
Q. Have you noticed him there at any other hour than 12 to 1?—A. No; never.
Q. What times were you on duty?—A. Well, I was there from 12 at noon until close up most of the time, because I had the management of the place.
Q. One is the closing hour here, is it?—A. Yes.

Q. Well, how often would you say that the Judge came in during the hour that you mentioned each week?—A. Well, not more than four times, I would say three or four times a week.

Q. Did he generally come during that hour?—A. That is the only time I have seen him; yes, sir.

Q. Have you ever seen him drink at any other time than the time you mentioned—four or five months, was it, you mentioned?—A. No, I never did.

Q. Sir?—A. I never did.

Q. When you were at Grant's, did you ever see him drink there?—A. No.

Q. Now, on any of the occasions when you saw him there, state, if you can, what his condition was with reference to being intoxicated.—A. I have never seen him when he was intoxicated in my life; took a drink and went out.

Q. Have you ever seen him anywhere else than at the bar there?—A. I have seen him on the street.

Q. Under what circumstances?—A. Just walking along.

Q. In the daytime or nighttime?—A. Daytime.

Q. Well, did you on the street ever observe him when he appeared to you to be under the influence of liquor?—A. Never.

The CHAIRMAN. Any further questions, gentlemen?

Mr. HUGHES. Just one question.

By Mr. HUGHES:

Q. The bar you speak of, the Savoy, is in the Savoy Hotel?—A. Yes.

Q. And that is one of the leading hotels of the city?—A. Yes.

Witness excused.

A. C. STAPLES, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell the committee your name?

A. A. C. Staples.

Q. Where do you live?—A. I live at 4018 Fourth Avenue northeast, Seattle.

By Mr. McCOY:

Q. What is your occupation, Mr. Staples?—A. I am with the Burns Detective Agency.

Q. How long have you lived in Seattle?—A. I have lived here a year and a half.

Q. How long have you been in that employment?—A. I have been with them about two years.

Q. Were you ever assigned by the one who gives you orders in the Burns Detective Agency to observe Judge Hanford?—A. Yes, sir.

Q. And when was that?—A. That was about the 5th day of September, 1911, the first time.

Q. Did you act on the assignment?—A. Yes, sir.

Q. How many days were you on it?—A. During September I was only on a short time, about perhaps three days and a half in September, and then the next time was about the 5th of October, I think, if I remember right, and I was on several days then, perhaps 14 days, maybe. I don't just remember exactly how many days, but perhaps about two weeks; something like that.

Q. Well, state to the committee anything special, if there was anything that you noticed about Judge Hanford's actions while you had him under observation.—A. Well, the——

Q. Beginning at the beginning and following it as nearly chronologically as you are able to.—A. As near as I can remember his daily life while I was upon the case was going from the Federal Building at night about anywhere from 5 to 6 o'clock, in there somewhere——

Q. (Interrupting.) In the afternoon?—A. In the aternoon. From there to the Rainier Club, perhaps remaining there about one hour usually, sometimes longer; then coming out of there and going down Marion Street to Second Avenue. He would usually enter the Saratoga bar first, and his usual drink in there was a sherry and egg; then he would go to Sutherland's bar and drink a cordial—I think they called it a cordial—it is a very small glass; it might have been a pony of brandy, I don't know sure. Then crossing over to the Butler Hotel bar, his usual drink in there was a whisky cocktail, they called it. Then he would board the car and go to his residence on Tenth Avenue north. And during the month of October, when I was on, he usually came out every evening and sometimes he would go to 1008 East Harrison Street and sometimes he would go directly to the Rainier Club again after the dinner hour. Then, especially on the 9th of October and the 14th of October, are the only times that I would say that he was intoxicated. On the 19th of October—on the 9th of October, rather, he came out of the Rainier Club. This was about around 6 o'clock—6 p. m.—I can't remember just exactly what time it was—he went to the Saratoga and had his sherry and egg, but he did not go to Sutherland's this time, he went to the Butler then, and then instead of boarding the car as usual he walked up to—I think it was Bronson's saloon, if I remember right, across from the Saratoga, and he had a glass of whisky in there, and he walked on to the Rathskeller; he entered the barroom, but I could not say whether he took a drink or not, because I met him coming out when I was on my way in. And he went from there I think to the Mission bar and had a mixed drink in there, I think it was a cocktail, and from there he went home, and I think that evening that he came out and went to 1008 East Harrison again.

Q. What time?—A. He came out about in the neighborhood of 8 o'clock, and I think he left there about 9.25. It is quite hard at this late date to state exactly just what time it was. Then he came down to the Rainier Club, and I think he remained until about 12.30 in the morning. He came down to Second Avenue, and I think he went to the Savoy bar this time, I know he walked out Second Avenue—I think he stopped at the Savoy bar—and he walked to Union Street and out Union to Ninth Avenue, across to Pike, in fact he walked clear to his residence. The only stop he made was at the Winehard Hotel—he was perhaps waiting for a car there—for about 15 minutes, and it didn't come along and so he walked the rest of the way home. This is the night that he arrived home about 2 o'clock in the morning. He staggered both from side to side and there were several times that he staggered forward and would put out one foot and stop and then start on again. It appeared to me as if he was in an intoxicated condition. He did not make any figure 8's or S's or anything like that, but he would just start to fall sidewise and then catch himself just in time to keep from falling entirely.

Q. He started walking on that walk at about half past 12, you say?—A. It was just about half past 12, I think it was.

Q. And what time was it when he arrived home?—A. He arrived home at 2 o'clock in the morning.

Q. And how long is the distance between the starting point, about—A. Oh, I suppose it would be about 3 miles. I don't know whether it is quite that far or not. I should say it was about a 3-mile walk, perhaps not quite that much.

Q. Well, go on with your story about that day.—A. Well, that is all that day. And the one other time that I saw him when I thought he was intoxicated was on the 14th of October.

Q. 1911?—A. 1911; yes.

Q. Describe what you saw on that day.—A. Well, this day I only saw him take three drinks, and that was the usual—at the usual places, at the Saratoga, Southerland's, and the Butler bar; but he came down at night and went to the Rainier Club, and I think this was the night that he came out at 12.40. And he didn't go down Second Avenue at all; he started out of the club and walked north on Fourth Avenue to Madison Street, to the cable car line, and he stood there as if he was going to take the cable car, but instead of that he started down off of the sidewalk and started across the street toward the Lincoln Hotel, and when he got to the center of the street he turned around as if he was dazed and started toward the Lincoln again, and then whirled and went right back to the same side of the street where he started from. He walked on out Fourth Avenue, going north until he got to—well, I can't say whether he went to Union or Pike this time, but he usually walked out Union Street when he went home; but I remember one night that he walked out Pike instead of Union; but anyway he walked home this night the same as he did on the 9th, and he was intoxicated; that is all there is to it.

Q. What time did he get home that evening?—A. He got home this night at—well, I don't remember; it was perhaps 1.45 or along about the same time as he did on the 9th. Now, there is another thing; I may have this a little mixed about the 9th and the 14th, about the Winehard Hotel: I don't remember sure which night it was that he stopped at the Winehard, but——

Q. (Interrupting.) Did you make any notes of the occurrences that you observed while you were on that case?—A. Yes; I made notes every day, and I made up my report from it, from the notes.

Q. And what did you do with your report?—A. The reports I sent in at the Burns Agency, at 308 Hinckley Block.

Q. Did you see anything of those reports at any time after you handed them in?—A. Well, not until to-day.

Q. Well, have you seen to-day any of the actual reports which you handed in?—A. No; I haven't.

Q. What is it you have seen to-day?—A. I saw what was supposed to be copies of these reports.

Q. Would a reference to those copies give any assistance to you in fixing any of these matters more definitely?—A. Well, it would just simply establish the two dates which I saw him intoxicated. I don't remember which dates those were, the 9th and 14th.

Q. Well, if you will take those copies and identify the dates to your own satisfaction; Mr. Dorr has them. [Mr. Dorr handed papers to

witness.]—A. [After referring to papers.] The 9th and the 14th, that is the two reports that the——

Q. (Interrupting.) A little louder. Mr. Hughes can't hear you.—A. It is the 9th and 14th of October that I saw Judge Hanford intoxicated, out of the perhaps 18 days when I was on the case.

Q. Is there anything further you want to add to your testimony, I mean by virtue of the fact that you have now looked at these typewritten copies?—A. Well, by going through these copies I would probably—be lots of reminders in there that would make me think of different things that happened. Of course——

Q. (Interrupting.) Well, we want you to tell everything without actually reading all those notes, if what is in the notes is important one way or the other.—A. Well, I would like to mention this: One day about—it was in the afternoon, perhaps 2 o'clock, that Judge Hanford came out of his chambers here in the Federal building with Sutcliffe Baxter—I didn't know who the gentleman was at the time, but I found out afterwards it was Sutcliffe Baxter. He went with him to—no, that is wrong, I will change that. He came out of the Federal building alone, I remember now, and walked to the Arcade building on Second Avenue and went to the third floor in the Arcade annex and entered Sutcliffe Baxter's office, and he came out about, perhaps, 10 minutes or 20 minutes after that, and they both went to the Mission saloon across the street. This was about between 2 and 3 o'clock that they entered the Mission saloon.

Q. In the afternoon?—A. In the afternoon; yes, sir. Sutcliffe Baxter drank a glass of beer and Judge Hanford had some kind of a mixed drink that looked like a cocktail to me; then they walked to the Federal building together and entered, and I saw them both up in Judge Hanford's office together. They came out again about 3 p. m. and went across to Sullivan's saloon, just across from this building, across from the Federal building, and I walked through there and they were drinking; I didn't stop, for this reason, they were alone; there was not another party in there except the bartender, and I didn't want to become conspicuous, so I walked out, and I could not say what they were drinking, I didn't stop long enough to see.

Q. You say you walked through there?—A. Yes.

Q. Is that a place where you enter in one end and go out the other?—A. Yes, sir.

Q. Did either of them pay any attention to you while you walked through?—A. Sutcliffe Baxter just glanced at me; but probably he just naturally looked up, was all. Well, then they returned to the Federal building and Mr. Baxter left alone; I don't think—I didn't see them together again that day, but I heard the next day, I think it was, or I read it in the paper, that he had appointed Sutcliffe Baxter receiver for some company, I don't know——

Q. (Interrupting.) I don't think that is particularly material.—A. Well, I just wanted you to know the way exactly how it was, that is all. As I say, that just seeing him with him brought this to my mind is all, and I happened to see this in the paper; I don't know as there was anything wrong about it, but——

Q. (Interrupting.) Well, now, demeanor of Judge Hanford on occasions when you did not suspect that he was under the influence of some intoxicant?—A. What is that, please, again?

Question read.

A. (Continuing.) Well, on those days that I have not mentioned, of course most every day that I was on the case in October he would invariably take his three drinks before going home at these places I have mentioned, and then if he came down again in the evening he would usually make the rounds again before he went home, but——

Q. (Interrupting.) Well, were your observations of him confined during all this time to the hours between about 4 in the afternoon and the rest of the day?—A. No, sir.

Q. Well, did you see him at any time in the morning——A. (Interrupting.) Yes.

Q. (Continuing.) Or early afternoon on other occasions? Now, I say, on any of these times——A. (Interrupting.) Yes.

Q. (Continuing.) When you had not any reason to suspect or did not suspect that he was under the influence of intoxicants, what was his demeanor; how did he walk; how did he look?—A. From 9 o'clock in the morning, or when he would leave home, until 5 o'clock in the afternoon, or just before he went home—at those times when I was with him, his—he walked with a quick step, always did, except when I saw him intoxicated. I didn't see anything wrong during the day with him; I didn't see anything out of the ordinary.

Q. You say when you were with him. You mean when you had him under observation?—A. Under surveillance; yes, sir.

Q. You never were with him as we ordinarily understand the word?—A. Yes, sir; that is right.

Q. Did you ever see him come into the Federal building in the evenings?—A. Yes, sir.

Q. How often?—A. I saw him in there perhaps three different times in the evening. Sometimes when he would come down from home he would stop there before he went to the club; sometimes after he had been at the club he would stop there just before he went home.

Mr. McCoy. That is all I have to ask him, Mr. Chairman.

The Chairman. Mr. Hughes, do you wish to ask the witness further?

Mr. Hughes. Just two or three questions.

By Mr. Hughes:

Q. How long have you been a detective?—A. About two years and a half.

Q. What was your business before that?—A. I was in the real-estate business for about two years; a year and a half, perhaps.

Q. Where?—A. Portland, Oreg.

Q. Portland, Oreg.?—A. Yes, sir.

Q. That is, prior to two years and a half ago?—A. No. I worked for this agency about two years and then——

Q. (Interrupting.) Where?—A. In Seattle, a year an a half, and in Portland—just about six months.

Q. When was that?—A. That was just before I came to Seattle.

Q. Two years' period of service. What I am trying to get at is, how long has it been since you first entered into detective service?—A. Well, it was about four years ago when I first entered into it.

Q. Did you help Burns in those Portland cases about which so much has been said recently?—A. No, sir; I never had anything to

do with those cases at all, that is, the timber cases, if that is what you refer to.

Q. Have you ever been in the detective business except in the service of Burns?—A. Yes, I have worked for the Pinkerton Agency.

Q. When and where?—A. Portland, Oreg.

Q. How long ago?—A. About four years ago, I think it was.

Q. How long?—A. I worked seven months for them.

Q. Prior to that did you ever do any of that service?—A. No, sir; never did.

Q. What business were you engaged in prior to four years ago?—A. Well, I am a mechanical draftsman. That is my trade. I worked——

Q. (Interrupting.) Were you engaged in that business before you——A. (Interrupting.) Yes, I worked for——

Q. (Continuing.) —became a detective?—A. I worked for the Great Northern Railroad.

Q. Where?—A. St. Paul, Minn.

Q. How long ago?—A. That has been about—it is about 12 years ago.

Q. And for how long a time?—A. I worked there perhaps—almost two years, I think it was.

Q. You are still in the Burns service?—A. Yes, sir.

Q. Regularly?—A. Yes, sir.

Q. Or only as a special man?—A. No; I am working as a regular man there.

Q. As a regular man?—A. Yes, sir.

Q. Have been ever since prior to your engagement in the investigation of Judge Hanford?—A. Yes, sir; every day.

Q. You said in the course of your examination that Mr. Baxter and Judge Hanford went up to Judge Hanford's office and you saw them together in that office, did you not?—A. Yes, sir.

Q. Did you go in the office?—A. No, sir.

Q. Will you explain to the committee how you saw them and how it was possible for you to see them and what——

Mr. McCoy. (Interrupting.) I think you are mistaking the witness's testimony, Mr. Hughes.

Mr. Hughes. How?

Mr. McCoy. I think you have made a mistake in what the witness testified to. I think he said——

Mr. Hughes. The witness says I didn't.

The Witness. I said that I saw them in the office, and I can explain it very easily.

Mr. Hughes. I think he can, and that is just what I want.

A. That is, I was not in the office, understand; I was outside of the building. I was in the Alix Hotel, just across the street, in the corner room, about on a level with this floor, and they were standing by the window—Mr. Baxter and Judge Hanford—we could see them very plainly.

Mr. McCoy. What office do you refer to?

A. His private—it is the corner—in the corner of this building.

Mr. McCoy. You refer to Judge Hanford's office, don't you?

A. Yes, sir.

Mr. McCoy. That is what I thought. Didn't you think he said in Mr. Baxter's office?

Mr. HUGHES. Not at all.

Mr. McCOY. I beg your pardon.

Mr. HUGHES. He has testified exactly as I assumed he would.

Mr. McCOY. Well.

Mr. HUGHES. You had reference to Judge Hanford being in his office as district judge in the northwest corner of this Federal building?

A. Yes, sir; that is the place.

Q. And you saw him from a room in the Alix Hotel, just diagonally across, on the opposite corner of Union and Third Avenue?—A. Yes, sir.

Q. You went there for the purpose of having an opportunity to keep espionage upon the rooms of Judge Hanford?—A. Yes, sir.

Q. The room that you have described was one that was occupied by the several men assigned to this espionage?—A. Yes, sir.

Q. And was there more than one room there that was occupied by you?—A. We had two different rooms.

Q. Two different rooms?—A. Yes, sir

Q. Those rooms were the headquarters of the men who were assigned to this service?—A. It was; yes, sir.

Q. And whenever Judge Hanford was not on the street you were watching him from those rooms?—A. Well, we were keeping him under surveillance. That was a good place to see him when he went away and when he—of course, when he went away he was kept under surveillance during that time.

Q. How many men occupied those rooms or were engaged in this service altogether?—A. I don't know, except myself and Mr. Nordskog; perhaps——

Mr. McCOY. Mr. Hughes, I dislike to head off any examination which you are convinced is proper now. If you are simply trying to find out about the operations of these detectives for your own information, I don't think it will help the committee any.

Mr. HUGHES. I have no concern in it for my information at all.

Mr. McCOY. Well, if you are seeking for some other purpose, which I do not perhaps comprehend, go ahead, but if it is simply to get the information, why, let's cut it out.

Mr. HUGHES. I do not want to pursue any question or line of questions the committee or any member of it objects to. Is there an objection to the question?

Mr. McCOY. Why, it is only that objection, Mr. Hughes. I don't object. If you want to prove that Judge Hanford knew that these people were watching him, put Judge Hanford on the stand; we would be glad to give him an opportunity to testify; otherwise, the committee will assume that these detectives did what detectives do under all circumstances; they go about it in the very best way they can to keep a man under watch. If there are any other purposes, why go ahead, I won't say anything.

Mr. HUGHES. My observation and experience with detectives may not be quite the same as that of the committee, but that was not my purpose.

Mr. McCOY. All right; I won't say anything more. Go ahead, please.

Mr. HUGHES. I think he has answered the question, however, hasn't he?

Mr. McCOY. I am sure I don't know.

Mr. HUGHES. Did you have any reason to think that Judge Hanford knew that you were keeping surveillance of him from your rooms across the corner?

A. No; I didn't see anything that would lead me to believe that.

Q. Did you ever notice him stop, apparently for the purpose of seeing whether you were following him?—A. Yes; I did once, I remember of. I don't know whether it was that—for that purpose.

Q. Did he ever——

Mr. MCCOY. (Interrupting.) Wait; let him answer.

Mr. HUGHES. I beg pardon.

Mr. MCCOY. You didn't know what?

The WITNESS. I say I didn't know whether—what his purpose was in stopping, but he often stopped, as far as that is concerned, but he never saw me, because he was not looking in the direction that I was in at all; he never looked that way.

Mr. HUGHES. You aimed to keep out of sight?

A. Why, certainly, naturally.

Q. Did you not notice also that his son often walked, following him or somewhere in the vicinity of him?—A. No, sir.

Q. You did not?—A. I never did.

Q. Did you ever notice him depart from his course and stop and have it occur to you that he was doing that for the purpose of ascertaining whether you were following him, or ascertaining your own acts and movements?—A. Oh, yes; I have seen him stop and turn around and stagger. I didn't know what purpose it was for, though.

Mr. HUGHES. I think that is all, sir.

The WITNESS. Is that all?

Mr. HUGHES. Yes, sir.

By Mr. MCCOY:

Q. Do you know Judge Hanford's son?—A. I have seen his son—whom I supposed to be his son—several times there at the house, or coming out of the house. I don't know for sure whether it was him or not.

Q. Was it any part of your business as a detective to observe whether you were being observed or not?—A. Certainly. We laid plans every day in the week for that.

Q. And did you ever——A. (Interrupting.) And we not only had that done, but we had others watch me to see whether I was being shadowed or not.

Q. And was it ever reported by those people that you were being shadowed?—A. No, sir.

Q. Did you ever see Judge Hanford's son on any of these occasions?—A. I never saw his son on any occasion at all except near the house, that is all, and then I am not positive whether it was his son or not; but, whoever it was, we were watching to see whether he was coming out to look around the house to see if there was anyone there or not, but we didn't know what his purpose was in coming out; but I don't think that that was his purpose at that time.

Q. Why don't you think it was his purpose?—A. Because he walked straight on down the street and never went a block on either side, and he was followed down about eight blocks and he didn't show any maneuvers of circling around and coming back or watching anyone. But I am not saying sure that that was his son; I don't know.

Q. Is this the gentleman sitting at the table with the brown suit, to whom you refer?—A. Well, I could not say. The only time I saw him at the house it was dark and I could not tell to-day whether it was him or not—whether this was the party.

The CHAIRMAN. Are there any further questions with this witness?

Mr. HUGHES. Just a question.

By Mr. HUGHES:

Q. You did not mean to testify, did you, in answer to a member of the committee, that you were shadowed, while engaged in watching Judge Hanford, by somebody else of your own association for the purpose of seeing whether anybody was shadowing you who was hostile to you; you didn't mean to say that, did you?—A. No; I didn't——

Q. (Interrupting.) You testified that you had been shadowed before now, but you did not mean in this case? I mean, shadowed by your own people for the purpose of seeing whether you were watched; you didn't mean that applied in this case, did you?—A. No; what I mean is this: There were usually two of us together, sometimes three.

Mr. MCCOY. Now, excuse me just a minute. To get down to Mr. Hughes's question; you are talking about this case now?

A. Yes; this case. I suppose that is what—and sometimes one of the boys would watch the other operative that was keeping Judge Hanford under surveillance, to see whether this operative was being shadowed by anyone or not, you see.

Mr. HUGHES. Yes. Now, what I asked you was whether you had any reason to believe that Judge Hanford or his son ever saw you or watched you or knew that you were surveilling Judge Hanford?

A. No; I would not think so for one moment, under the circumstances, from what I saw; I would not——

Q. (Interrupting.) You certainly had—pardon me—no reason to infer that any other detectives were being employed to keep surveillance upon you, did you?—A. They do that sometimes.

Q. I am asking you the question.

Mr. HUGHES (addressing the reporter). Will you read it to him, please?

(Question read.)

The CHAIRMAN. Isn't his answer responsive to that question?

Mr. HUGHES. I don't think it is.

The CHAIRMAN. That they sometimes do. He would have reasons to suspect it, that they might do it if they sometimes do. But go on in your own way.

Mr. HUGHES. The only reason I asked it was, I thought there might be an inference left in the record that Judge Hanford had undertaken any such method; and I wanted to rebut that inference, even by this witness.

The CHAIRMAN. Develop it your own way.

(Question read.)

Mr. HUGHES. I mean in this case. You had no evidence at any time to lead you to think that any other detectives were watching you while you were engaged in this service that you have testified respecting Judge Hanford?

A. No; I didn't have anything to——

Mr. HUGHES. That is all.
The CHAIRMAN. That is all, Mr. Staples.
The WITNESS. All right.
The CHAIRMAN. You may stand aside.

Witness excused.

Dr. H. T. TITUS, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell your full name to the committee, Doctor.
A. Herman F. Titus.
Q. Where do you live?—A. Seattle.
Q. How long has Seattle been your home?—A. Twenty years.
Q. Are you a regular physician and surgeon?—A. Yes, sir.
Q. Or dentist?—A. Graduate of——
Q. (Interrupting). You are a physician and surgeon?—A. A graduate of Harvard Medical School.
Q. How long have you practiced your profession?—A. Twenty-one years.
Q. Still in the active practice of it?—A. No, sir.
Q. Have you retired from the practice?—A. Yes, sir; mostly.
Q. Are you acquainted with Judge Hanford?—A. Yes, sir.
Q. How long have you known the judge?—A. Why, nearly as long as I have lived here, 18 or 20 years.
Q. By the way, the lady, Mrs. Titus, who testified here yesterday, I think, is your wife?—A. Yes, sir.
Q. Do you recall at any time during your acquaintance with Judge Hanford seeing him when you thought he was under the influence of some intoxicant?—A. Before answering any question, I would like to say that I am not here voluntarily nor willingly, I don't like to testify against Judge Hanford in any way whatever, as he is a personal friend.
Q. You were subpœnaed to be here?—A. Yes, sir; and that is the only reason I am here.
Q. Very well.—A. I will say yes to your question.
Q. When was it?—A. Why, the early portion of this year, probably January.
Q. Where was it?—A. On the car going to my home, which was then at Mercer Street; the Bellevue-Summit car.
Q. Where did you board that car?—A. Why, I am not sure exactly; somewhere down town; I was just coming from the theater.
Q. Who was with you, if anyone was?—A. My wife, and a young lady who was attending my wife as a nurse.
Q. Did you observe Judge Hanford getting on the car, or was he on when you got on?—A. I think he must have been on the car. I don't recall his getting on at all.
Q. Whereabouts in the car did you sit?—A. That is a dummy car, as we call it, with seats facing each other. I was sitting, as I recall it, on the rear side seat, the west side.
Q. Where did the judge sit from you?—A. Why, he sat directly opposite. He was on the east side, and I was on the west side, facing him directly; I remember that.
Q. The width of the car, or so much of it that you did not occupy, between you?—A. Yes, sir.

Q. That would be a distance of——A. Perhaps 6 feet.

Q. What was the first thing that caused you to observe him that night?—A. Why, I have known him many years and I expected he would speak to me. I looked across and he did not; in fact, he was looking at the floor, or his eyes closed most of the time.

Q. Had you often met him?——A. Oh, yes.

Q. (Continuing.) On the car or elsewhere?—A. Yes, sir.

Q. Was it usual for him to speak to you and you to him?—A. Yes; although I have met him when he seemed distracted and did not speak.

Q. Well, was there any personal trouble of any kind or any personal reason why he and you would not speak to each other?—A. None at all.

Q. Well, go on, Doctor, and in your own way tell the committee what you observed and the conclusion you came to from your observation?—A. Why, I thought him unnatural in his demeanor; he looked stupid, in fact; the lines of his face were not flexible, and rather flabby, and his head fell over one side and the other, and I noticed rather persistently, when he looked up at all, at the young lady with me; in fact, he acted like a drunken man, and I made the observation, after we got off, that I guessed the judge had been taking too much.

Q. What is your judgment about it now as to what his condition was then with referennce to being drunk or sober?—A. Why, my judgment was then, and has always been, that he was drunk.

Q. How long were you with him that night?—A. Maybe 10 minutes, so long as the car was getting to Mercer Street.

Q. Do you recall whether you spoke to him?—A, No. I didn't. His attitude was such as to repel address. I was sorry for his condition and I wanted him to be as unobserved as possible. I thought he wanted the same.

Q. To what extent, do you know, was he observed by others who were on the car?—A. There were very few on the car, I think not more than—I should think not more than two or three besides ourselves. He was alone on his side and we were, three of us, seated directly opposite.

Q. Well, apart from you three, are you able to say whether others there did observe him?—A. I don't know.

Q. Did you notice him in the act of getting off the car or going from his seat to the door to get off?—A. No; we left him there.

Q. He was on the car when you got off, was he?—A. Yes, sir.

Q. State again, if you please, Doctor, when that was, as nearly as you can?—A. I should think it was some time in January of this year. We moved from that house the 1st of February and I know the nurse was there during the month of January.

Q. Is the nurse still at your home?—A. No, sir; she is—I don't know where she is; she has left town.

Q. Since that time, did you on any occasion observe Judge Hanford when you thought he was under the influence of some intoxicant?—A. No, sir.

Q. Did you before that time?—A. No, sir.

Q. Did anything you might have heard before that enter into your opinion or judgment as to his condition that night, or did you form it from what you saw altogether?—A. From what I saw, although I had heard.

Q. Well, what I mean to get at is, without assuming that you did or did not hear, if you heard anything, did what you might have heard in any degree enter into your judgment as to his present condition then?—A. I should say not.

Q. Or did you form that opinion on what you saw yourself?—A. Yes.

Q. Is there any kind of feeling between you and Judge Hanford?—A. None personal at all. In fact, I have had a great deal of sympathy for his personal afflictions and——

Q. (Interrupting.) That we don't care to enter into.—A. That is the personal side of it, and only personal.

The CHAIRMAN. Do you wish to ask the Doctor further, anything?

By Mr. HIGGINS:

Q. What is your business, now, Doctor?—A. I am two or three things.

Q. What are they?—A. Engaged in the printing business—Trustee Printing Co. I am interested in that; my wife is manager.

Q. You mean you publish a newspaper?—A. No, sir. We do general printing, and I have several books that are published by that concern. I am at work, when I do anything outside of that, mostly for the labor unions. My last work was to help win a strike in the Grays Harbor country.

Q. Win a strike where?—A. In the Grays Harbor country, as we call it—Hoquiam, Aberdeen—the southwest of this State.

Q. So you have not been continuously a resident of Seattle?—A. Yes, sir; with intervals of two or three months. It has always been my home, to which I have returned.

Q. Are you affiliated with the Industrial Workers of the World?—A. No, sir.

Mr. HUGHES. May I now ask a question or two?

The CHAIRMAN. Proceed, Mr. Hughes.

By Mr. HUGHES:

Q. You have known a good deal of Judge Hanford's work and life and experiences in this community in the last 20 years?—A. Yes, sir.

Q. You have known a good deal of the burdens he has had to bear and the labor he has had to perform?—A. Yes, sir.

Q. You have known something of his industry?—A. Yes, sir.

Q. Do you know, approximately, his age and general condition of health?—A. Yes, sir.

Q. I want to ask you, Doctor, if, in the light of your knowledge of these things, the conditions you saw that night may not have been caused or largely induced, at least, by the mental and physical conditions induced by causes other than the use of intoxicating liquors, such as you know might exist in his case, or at least so largely contributed to by them that there may not have been enough—he may not have drunk more than one or two drinks or a limited quantity which would not otherwise have produced that condition that you describe?—A. Why, Mr. Hughes, I could imagine a man under extreme grief might act as he did, although the heavy aspect of his countenance was against it. He was on the wrong car, too.

Q. Well, that of course you don't know, unless you know what took him there.—A. No.

Q. What occasion he may have had.—A. It was late at night. A man under extreme shock of grief or other emotion at his age might possibly act in that way; it almost, however, would be a mark of mania.

Q. You know he has had occasion to bear a great deal of care—— A. Yes; that is what I know.

Q. (Continuing.)—and responsibility himself?—A. Personally.

By Mr. McCoy:

Q. When you speak of extreme shock of grief, do you mean trouble that has continued over a long time, or an extreme shock at about the time when the patient was under observation?—A. I meant an acute shock.

The Chairman. How would any acute shock, however acute, cause him to act toward the young lady who was with you, as you stated he did?—A. Well, he merely stared at her persistently. A man when he is under great grief or mental shock is practically in a state of acute mania. He may weep; he may go off by himself; do unheard-of things.

The Chairman. Well, was there any immediate cause for such condition as that in Judge Hanford at that time?

A. None that I know of.

The committee here took a short recess.

The Chairman. Has Dr. Titus remained in the room? Doctor, would you kindly come forward to the witness stand a moment?

Dr. H. F. Titus resumed the stand.

Mr. McCoy. Doctor, when Mrs. Titus was on the stand yesterday some questions were asked and answered in such a way as to leave the impression on me that you were a member of the Socialist Party. Is that a fact, or not?

A. It is not a fact.

Mr. McCoy. That is all.

The Chairman. Mr. Higgins is of the recollection that when that question was asked it was stricken out of the record as improper. Mr. Reporter, have you a recollection on that point?

The Reporter. I think it was, Mr. Chairman. My recollection is that it was.

Mr. Hughes. I think the only question was relative to publications, papers published by the Doctor, publications in the paper by the Doctor. It related to the work in which the Doctor had been engaged.

Mr. McCoy. If the testimony along that line was stricken out, then I am perfectly willing that this shall be, later on, but it had better stay where it is until we ascertain the facts, I think.

By Mr. Higgins:

Q. What are the publications, Doctor, that you speak of having published?—A. Why, for 10 years I issued what was known as the Seattle Socialist, and since then in connection with a number of pamphlets and small books on labor subjects.

Q. Would you indicate the names?—A. Why, one entitled "The Significance of Roosevelt."

Mr. McCoy. That must be interesting, if you have anything to say.

The Witness. Well, I will submit it to the committee, to their judgment.

Mr. Higgins. Will you name the other, Doctor?

A. "Insurgency" is another, along the same line. Another, just coming out to-day, is "The Four-Day, or the Workingman's Magazine."

Q. Is that a book or a magazine?—A. Why, it is in magazine form, about the same as the usual magazine. It may be issued again; it may not.

Q. In what capacity, Doctor, did you leave Seattle to win this strike, which you have testified about?—A. I was employed by the International Shingle Weavers' Union to report for The Shingle Weaver, their paper, and to do everything possible to secure better wages, shorter hours, and better conditions generally in Hoquiam.

Q. Were you also in Idaho at the time of the Hayward trial?—A. I was.

Q. In what capacity then?—A. I was then reporter for several eastern papers and for my own paper, and organizer for the Socialist Party in the State of Idaho.

Q. How long did you remain in Idaho at that time?—A. Why, I removed my paper, The Socialist, to Caldwell, where we expected the trial to occur, and was there from three to six months. Went back again the following year for about three months.

Q. During the trial?—A. During the trial.

Q. And remained there during the trial?—A. All through the trial.

Q. And published your Socialist paper from there?—A. We brought it back here; it was here during the trial. Since the trial occurred in Boise and not in Caldwell, the paper was brought back to Seattle.

Mr. Higgins. That is all.

Mr. McCoy. Now, my offer to withdraw my question is withdrawn. My question I prefer to have stand.

Witness excused.

Walter A. Hall, having been first duly sworn, testified as follows:

The Chairman. What is your full name?

A. Walter A. Hall.

Q. Where do you live, Mr. Hall?—A. Seattle.

Q. How long have you lived in Seattle?—A. Forty years.

Q. You are entitled to the persimmon for long residence in Seattle?—A. Yes, sir.

Q. How big was it as far back as you can remember?—A. Oh, about 800 population.

Q. You have seen it grow to its present dimensions?—A. Yes, sir.

Q. What is your occupation?—A. Well, it is clerical, in a way. I have been working for the city for five or six years, but practically retired.

Q. In what line are you employed by the city?—A. In the city of Seattle?

Q. Yes.—A. Well, as a clerical position in the comptroller's office.

Q. What has your business been, Mr. Hall, when you were active?—A. Well, the newspaper business, started in the newspaper business.

Q. As editor, or in what capacity?—A. Oh, as a compositor, and editor, and newspaper proprietor.

Q. Are you acquainted with Judge Hanford?—A. Very well.

Q. How long have you been acquainted with him?—A. About 37 years.

Q. What has the nature of your acquaintance been—intimate or casual?—A. Oh, it has been general in its way, a passing acquaintanceship, a——

Q. (Interrupting.) Did you ever have any business or professional connection with him?—A. Well, only in the court here as a juror, in the United States court.

Q. To what extent have you been a juror?—A. I think on two different occasions.

Q. For a term of just for the trial of a single case?—A. No; during a term—three-months term, I think, at the last time.

Q. When was that?—A. I just can't recall; I would have to cite the cases.

Q. Oh, I know, but some time within a year of it, for instance?—A. Well, let's see——

Q. If you can't, we will pass on, but I would like for you to fix it as well as you can, in time.—A. What is that?

Q. I would like if you would fix the time as well as you can?—A. Oh.

Q. Was it more than a year ago?—A. Oh, a good deal more than a year ago.

Q. More than five years ago?—A. Yes; about 10 years ago.

Q. Well, that is enough.—A. Yes.

Q. To what extent have you had an opportunity to observe Judge Hanford outside of court?—A. Oh, I have seen him on the street and talked with him on the street quite frequently.

Q. If at any time you have observed the judge when you thought he was under the influence of any intoxicant, please tell us of that.—A. To what extent, what degree?

Q. Well, first answer the question, Mr. Hall, and then we will get to that later.—A. Well, I could not state definitely as to that. Sometimes I thought he was and sometimes I thought he was not.

Q. Now, if you tell us one of the times when you thought he was, as near as you can, we can soon find out about it.—A. Well, that is pretty hard to say, because I am not certain. It was twice I was juror in the United States court here.

Q. Was it only on these occasions that you thought so, that is, that you were in doubt?—A. At that time he appeared to be sleepy or drowsy, but then I could not say whether the man was under the influence of liquor or anything of the kind.

Q. Well, did you anywhere else than in court see him when you were in doubt as to whether he was or not?—A. (Interrupting.) I never saw him outside of the court room when there was any question in my mind with reference to it.

Q. And when he was holding court, what were the conditions which led you to be in doubt as to his condition?—A. Well, some lawyer would get up, you know, and read precedents here for three or four hours or a half an hour, an hour, and I didn't blame the judge for going to sleep.

Q. Especially if he was a bad reader?—A. Yes.

Q. Now, Mr. Hall, will you please answer the question?—A. All right, sir.

The CHAIRMAN (addressing the reporter). Read it to him.

Q. [Question read, as follows:] "Well, did you anywhere else than in court see him when you were in doubt as to whether he was or not?"—A. Never in my life.

Q. That is not quite the last question, but I will repeat it. What was it that led you to be in doubt as to his condition when you saw him on the bench?—A. Simply a drowsy condition.

Q. Would it extend to napping or sleeping?—A. Well, I hardly think so, but simply he would wake up once in a while, arouse himself.

Q. Were there any circumstances which at the time led you to think it was due to drinking or something which he had taken?—A. I hardly think so at that time.

Q. To what extent did it occur during your service as a juror?—A. What is that? I didn't understand you.

Q. To what extent did that napping occur during your service as a juror?—A. Oh, perhaps a few seconds at a time.

Q. And how frequently?—A. Well, that is going back a long time. I don't think it occurred many times.

Q. Yes, a good while ago. To what extent have you noticed the judge during the last five years, either in court or out of it?—A. Oh, I have met him on the street in casual conversation with Judge Burke and with other old time acquaintances.

Q. At what hour of the day?—A. All during the day.

Q. Or night?—A. During the daytime.

Q. Sir?—A. During the daytime.

Q. Have you seen him here in the city at night during that length of time?—A. No; I don't think I have, not to my recollection.

Q. Have you seen the judge at any time, Mr. Hall, when in your opinion he was intoxicated or under the influence of some intoxicant?—A. I never have.

Q. Have you stated to anyone that you had?—A. No, sir; I have not.

The CHAIRMAN. Do you gentlemen wish to ask Mr. Hall any questions?

By Mr. GRAHAM:

Q. During your service as a juror, do you remember any occasions when jurors or a juror wanted permission to leave the jury box temporarily and could not get the attention of the judge because of his condition?—A. I do not.

Q. You recall no such instance?—A. No, sir.

The CHAIRMAN. Any further questions with this witness?

Mr. HUGHES. Just a question or two.

By Mr. HUGHES:

Q. The court room in which you sat as a juror was in what building, do you remember?—A. It was in the Colman Building.

Q. Was that a well-ventilated court room?—A. Well, fairly well, fairly well.

Q. You speak of seeing Judge Hanford occasionally drowsy. Did you ever observe any instance when Judge Hanford's rulings were not perfectly clear and prompt?

The CHAIRMAN. Just a minute. It does not appear he is a lawyer. What would his judgment as to the clearness of rulings be worth?

Mr. HIGGINS. He might state as to the promptness, if not the clearness.

The CHAIRMAN. Well, if he will qualify the question to that extent it would be more applicable.

Mr. HUGHES. I think the chairman misunderstands me. I have not asked him as to the legal accuracy. This man——

The CHAIRMAN. (Interrupting.) The clearness, I should think, would involve the legal accuracy.

Mr. HUGHES. Not necessarily.

The CHAIRMAN. Well, I think it would; at least, it might.

Mr. HIGGINS. If you will confine it to the promptness, Mr. Hughes, I think there would be no objection.

Mr. HUGHES. Well, let me confine it to that question, then. Were his rulings always prompt when questions were raised and objections were made?

A. To the best of my recollection they were.

Q. Did you ever study law?—A. Yes, sir.

Q. Were you ever admitted to the bar?—A. No, sir.

Q. How long did you study law?—A. Oh, about 18 months.

Q. Now, without meaning to call for your opinion as to the legal correctness of his decisions, but as a well-informed man, I will ask you merely to state whether his decisions were lucid, were clear and well stated or not, when he announced them?—A. I have always had the most profound respect for his decisions from the bench at all times that I have listened to them.

Mr. HIGGINS. Can't you answer Mr. Hughes's question?

A. What is that?

Mr. HIGGINS. Can't you answer Mr. Hughes's question directly.

Mr. HUGHES. Follow the question.

(Question read.)

A. They were.

Mr. HUGHES. That is all.

By Mr. MCCOY:

Q. When were you subpœnaed?—A. What is that?

Q. When were you subpœnaed to attend here?—A. I got the notice in the mail box last evening.

Q. Been talking with anybody about this case since you were subpœnaed?—A. No, sir.

Q. Or before?—A. No, sir; the first—I questioned the subpœna, I came down with it to Mr. Graham this forenoon. Talked to no one.

Q. Been reading in the newspapers about this matter at all?—A. Oh, in a way—general way.

Mr. HIGGINS. What you said to Mr. Graham, Mr. Hall, was simply with reference as to the time when you could take the stand?

A. That is what I said to Mr. Graham this forenoon, was in the nature of the subpœna; there is no date on it.

Mr. HIGGINS. You were questioning the legality of the subpœna and trying to arrange for a time when you would be called that would be the most convenient for you?

A. Yes, sir.

The CHAIRMAN. Mr. Hall simply arranged with me that for his convenience we would call him by phone a little while before we would need him, and I believe we both kept that agreement.

A. Yes, sir.

The CHAIRMAN. Fully.

A. Satisfactorily.

The CHAIRMAN. That is all, Mr. Hall.

The WITNESS. All right; thank you.

Witness excused.

Dr. E. B. EDGARS, having been first duly sworn, testified as follows:

By the CHAIRMAN.

Q. State your full name.—A. E. B. Edgars.

Q. You live in Seattle?—A. Yes, sir.

Q. And have lived here how long?—A. About 14 years.

Q. What is your profession?—A. Dentist.

Q. How long have you practiced your profession?—A. About 18 years.

Q. Where did you make your study, Doctor?—A. At the University of Maryland, in Baltimore.

Q. Did you practice all of those years in Seattle?—A. No, sir.

Q. Somewhere else?—A. I have practiced in Vermont and Iowa and in Washington.

Q. You mean Washington State?—A. Washington State.

Q. Or Washington, D. C.?—A. Washington State. I have also practiced a little while in Baltimore, just after——

Q. (Interrupting.) Do you know Judge Hanford?—A. By sight only.

Q. How long have you known him by sight?—A. Well, that is a pretty hard—probably eight or nine years.

Q. If you have had an opportunity to observe Judge Hanford during that time, please tell the committee where you have seen him.—A. I have seen him occasionally on the street car; he lives out in the same neighborhood; he lives a few blocks north of me, that is all. Occasionally on the street car.

Q. Have you been in his court while it was in session?—A. No, sir.

Q. Have you seen him anywhere else during that time than on the street cars?—A. I have seen him occasionally on the street.

Q. And what hours have you generally seen him on the street cars?—A. Oh, I have seen him at different hours along—usually in the evening some time, from 6 o'clock I should say to 10 o'clock, half-past 10, along in there.

Q. And covering how long a period of time?—A. Well, that would be, I should judge, about seven years, seven or eight years. As long as he has lived out in that neighborhood, about——

Q. (Interrupting.) Now, how frequently would you see the judge in the evening on the street car; give us some idea, taking a unit of time for starting.—A. Oh, I should say probably once or twice a month, I should say.

Q. If at any time during the period mentioned, six or seven years. you have seen this judge when in your opinion he was under the influence of some intoxicant, please tell us about that.—A. I could

not say as to that, I would not say that I have; I have seen him napping on the car, like I have seen hundreds of others, as I have done myself on the car, coming home tired.

Q. Just the same as the others nap?—A. Yes, I should say.

Q. Well, what do you say as to whether you have seen him at any time when in your opinion he was under the influence of an intoxicant?—A. Well, I could not say as to that. I have never seen him that I would say that he was intoxicated.

Q. Have you seen him at times when he appeared different to you from what he appeared at other times?—A. No, sir.

Q. When you saw him he always appeared the same to you, did he?—A. Yes,

Q. What was his manner?—A. I never had any conversation with him. His manner was the same as anybody else's would be, a gentleman.

Q. Well, now, you state that you have yourself napped on the car. How frequently do you do it?—A. Well——

Q. On your way home?—A. Well, at night, for instance, late at night, if I would be going home, if I would happen to work in the office and be tired, drowsy, I would nap, like a physical exhaustion.

Q. Is that a common thing with you?—A. To sleep on the car?

Q. Yes?—A. Well, if I happen to be tired and feel like it, and nothing else to do, I would take a nap.

Q. I know, but take all those conditions, are they usual with you?—A. Yes; physical exhaustion.

Q. Then somebody else might be on the car and you would not notice their condition?—A. Well, that is true; that might happen, too. I don't say that I have seen him every time that he has been on the car.

Q. You have stated that the judge acted about as other folks did on the car?—A. Yes; I should say so.

Q. Is it a common thing for folks on the street cars here to nap?

The CHAIRMAN. I want to get the doctor's idea of it.

A. Well, I have seen a number of people napping on the car.

Q. Would you fix a per cent?—A. No; I could not fix the exact per cent. I have not thought anything about it.

The CHAIRMAN. Do the gentlemen wish to ask the doctor any questions?

Mr. HUGHES. Are you at the present time the president of the State Dental Association?

A. Yes, sir. Not the dental association, the dental board.

Q. The dental board; yes, the State dental board; that is a board created by law?—A Yes.

Q Of the State?—A Yes.

Mr HUGHES That is all.

Witness excused

There being no witnesses present the committee took a short recess.

AFTER RECESS.

Dr. PARK WEED WILLIS, being first duly sworn, testifies as follows:

The CHAIRMAN. Give your full name to the committee.

A. Park Weed Willis.

Q. You are a physician and surgeon?—A I am a physician and surgeon.

Q. Practicing your profession?—A. Yes, sir.

Q. How long have you lived in Seattle?—A. Twenty years.

Q. Doctor, you are acquainted with Judge Hanford of the Federal court here, I assume?—A. Yes, sir.

Q. And you have known him how long?—A A little over 19 years.

Q. Do you remember an occasion last fall, about September or October, I believe, when one Dr McCormack lectured at the Alhambra Theater here on the occasion of some medical association meeting in the city?—A Yes, sir

Q. Were you present then?—A. Yes, sir.

Q. Did you participate in that meeting?—A Well, I did to this extent, I was on the committee of arrangements for the meeting and I was on the stage at the time of the meeting and was very much interested in it.

Q Do you remember seeing Judge Hanford at the meeting?—A. Yes, sir

Q Have you a clear recollection of it?—A. Yes, sir; I saw Judge Hanford and I heard him speak

Q. At what time during the proceedings did he come upon the stage?—A. Well, I do not remember just when he came on the stage; I remember of his talking, and I also remember of talking with Judge Hanford about the meeting as we left the stage—as we left the theater.

Q. Have you any other recollection of noticing him particularly there except while he talked and when you talked with him?—A. Not particularly; I saw him, however.

Q. What hour was it when you conversed with him?—A. It was immediately after the lecture was over—after it was over.

Q. About when was that?—A. I could not tell you—well, wait—I think I can tell you about it, too—I think it was very close to 11 o'clock, I think; it was somewhere between 10 and 11.

Q. What was the judge's condition at that time with reference to his being under the influence of any intoxicant?—A. Well, he was perfectly normal; he was not affected in any way by any intoxicant; he talked with me about the lecture and the subject of it, and so forth, afterwards, and the effect of it and the general purport of it, in a perfectly normal manner.

Q. What are your associations with him, Doctor, in a social or business way?—A. Well, both, more or less; I am a member of the board of overseers of the Whitman County College, and we meet twice a year, and usually travel on the train with him, and associated with him there.

Q. What is his connection with that college?—A. He is overseer. And I took care of his daughter with a broken leg 19 years ago, and I attended a son of his that died later; I attended different members of the family.

Q. That hardly meets my question; you might do all that and never see him at all. My question was only about your association with him.—A. Well, I saw Judge Hanford, of course, frequently; I saw him at his home frequently at all times of the day and night, and I have seen him at the Rainier Club very frequently. I saw him almost every time that I go there.

Q. You are both members of the club?—A. Yes.

Q. I will ask you whether at any time you have seen Judge Hanford under the influence of intoxicants?—A. No, sir; I never in my life have seen Judge Hanford when he was in any way affected in mind by intoxicants.

Q. Or body?—A. Mind or body.

Q. Did you see him drinking?—A. Yes.

Q. What intoxicating drinks have you seen him partake of?—A. I don't know. When I say I have seen him drink, I don't think I have seen him drink more than once or twice, possibly, at the club; I never go into a bar myself, and have only seen him drink, I think, once or twice at the club. I know that he occasionally takes a drink. I have smelled liquor on his breath, but I have never seen him in any way affected by it.

The CHAIRMAN. Do you wish to ask the doctor any questions?

Mr. HIGGINS. Are you associated with him in any other board except the board of overseers of Whitman County College?

A. That is all, of course, I have seen him in court a number of times; I have been up on various damage cases as an expert witness, and such instances as that I have been associated with him here, but I do not remember that I have any other association that has brought us together, than these.

Q. How frequently have you been called into court as a witness in the last 10 years as a witness in damage cases in this court?—A. In his court?

Q. Yes.—A. Oh, I suppose I have been in his court half a dozen times.

Q. In what period of time?—A. In that 10 years which you asked.

Mr. MCCOY. Witness for the plaintiff or defendant?

A. Well, either one, or both. I was once up as a—appointed as an expert by the court. I have been up usually for the defendant—I am surgeon for some of the various companies and they have called me more often than for the defendant. I am not sure—yes, I was up as a witness, I think, for the other side, too, not a great while ago, I have forgotten the details, though.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Have you ever been physician for Judge Hanford himself?

A. Yes, sir; I took care of him at one time when he had a broken collar bone, and I saw him practically every day for a month.

Q. Are you familiar with the general condition of his health and strength and his personal appearance and actions?—A. Yes, sir, I have been; yes sir, I know about him.

Q. Have you observed him when he relaxed and closed his eyes?—A. Yes, sir.

Q. And appeared to nod?—A. Yes, sir; I have.

Q. From your knowledge of him as a physician and acquaintance as described here by you, have you ever attached to that appearance the inference or conclusion that it was caused or in any way occasioned by the use of intoxicating liquors?—A. No, sir; I never have.

Q. To what have you ascribed it? A. Oh, I thought it was just on account of his, perhaps, being tired, and more or less a habit with him. There are some people who drop off to sleep for a second very easily and I just took it for granted it was more or less a habit, and

his age and his very close attention to business and all those things would tend to make him sleep that way.

The CHAIRMAN. Doctor, what would you say the judge's apparent age is?

A. I should say the judge is between 60 and 65.

Q. Do you judge that from his appearance?—A. I should say from his appearance; I have forgotten what his age is—I have known it.

The CHAIRMAN. What would you judge Mr. Hughes's apparent age to be?

A. I should say he is between 50 and 55, perhaps nearer 50.

Mr. MCCOY. How good a guess is that, Mr. Hughes?

Mr. HUGHES. I shall be 57 in August.

The WITNESS. The guessing of an age is a very uncertain thing.

The CHAIRMAN. I did not ask you to guess his age; I asked you to give us his apparent age; from his appearance what would you judge?

A. That is a guess always; it is never anything else. I can show you men of 80 that do not look to be over 65.

Q. Then the answer to my question would be that that man's apparent age is 65.—A. I see.

The CHAIRMAN. I would say that Judge Hanford, in my opinion, has an apparent age of 75—what would you say to that?

A. Well, I do not believe so with the average man. The average man of 75—if you just take the appearance alone—I should think nearer 65 would be my own judgment.

Q. It is your judgment I asked for.—A. Yes, sir.

The CHAIRMAN. That is all, Doctor. You are excused.

Mr. HUGHES. Just one moment.

Q. Doctor, you invited Judge Hanford to go to this meeting?—A. Dr. McCormack's meeting?

Q. Yes.—A. I did; yes, sir.

Q. And you invited him to make a talk at that meeting?—A. Yes, sir; and I invited him very late for it, too; I think it was the same day of the meeting.

Q. Do you remember what, if anything, was said about his being too busy?—A. He told me, I think—I forget just what it was, but I remember that I was disappointed in some of my speakers, and I think I asked Judge Hanford, and I told him it was a very important matter, an important occasion, and I wanted him to come anyway; he did not feel well, or was busy, or something, I have forgotten the details as to what the exact thing was, but there was some excuse, and I asked him to overrule that and come along anyway.

The CHAIRMAN. That is all, Doctor.

Mr. HUGHES. I think there was one other matter which should have been asked of Dr. Willis, and that is what occurred after the meeting, going to supper at the Washington Hotel; that was overlooked by me, and, of course, you knew nothing about it. I can ask him from the floor.

Q. Dr. Willis, what took place after this lecture?—A. Oh, after the lecture we went over to the Washington Hotel. This was a lecture by Dr. McCormack before the laity, a sort of mass meeting, and after the lecture the doctors met in the Washington Hotel; some of them came from out of the city, Tacoma and Everett, and various cities besides Seattle, and we asked those who were on the platform, I think, to come along with us, and some of them went with us, that is, some of

the speakers, and I think Judge Hanford did, I am not sure. We went to the Washington Hotel and we were there, perhaps, until, I don't know, at least 1 o'clock in the morning—I don't know how late—my ideas as to the exact time are not certain.

Mr. HUGHES. We are not going to hold you down to the exact time. You do not know whether Judge Hanford accompanied you or not; but if he did, you stayed there until late, that is what you mean to convey.

A. Yes, sir; we went over there and had a meeting and had some—I think some little speeches; I think Dr. McCormack talked to the doctors then after this, and I think we had with us—I think Judge Albertson and Judge Burke and Judge Hanford, and I think Dr. Matthews. I think those men all went with us over there, and it was a little supper.

Q. That was just to inject a little of the leaven of law into the gathering of doctors.—A. Well, we asked them along. I think it was for Dr. McCormack to confer more definitely with the doctors themselves as to continuing the campaign which was begun in his address that evening, and a committee was appointed over there at the Washington Hotel, and Judge Albertson was chairman—at least Judge Albertson at that time was authorized by the committee to take up this matter—and there is still a committee at work, and I believe Dr. Matthews is chairman, as the result of the meeting with Dr. McCormack at that time, and the business part of it was formulated at that meeting at the Washington Hotel, where the little supper was served.

Q. Briefly, what was that work, if you can state it in a few words?—A. It was—the work of this committee in a general way is as to the taking up of various matters that have to do with the public welfare in reference to health and sanitation and the welfare of the public generally in reference to doctors. For instance, the committee recently has taken up the question of an exhibit at Washington at the international exhibition which is to be held there in September.

The CHAIRMAN. I think that has gone far enough.

Mr. HIGGINS. About how long a time did Judge Hanford's speech occupy in the theater?

A. I don't know; I have forgotten. They were intended to be just short speeches, following Dr. McCormack. Dr. McCormack, I think, took nearly two hours for his address, and then these gentlemen each took anywhere from 5 to 10 minutes for theirs, following him. I am sure it was just a short speech, following Dr. McCormack, rather indorsing what had been said in a general way.

THOMAS BURKE, being first duly sworn, testifies as follows:

The CHAIRMAN. Will you please state your full name to the committee?

A. Thomas Burke.

Q. You reside in Seattle?—A. Yes, sir.

Q. What is your present occupation, if you have any?—A. Well, I do not know that I have any at present, though I am kept pretty busy.

Q. You belong to the profession of the law?—A. Yes, sir.

Q. And you have been a judge?—A. Yes; I was chief justice.

Q. Are you now on the bench?—A. No, sir.

Q. What bench were you on?—A. I was chief justice of the Supreme Court of the State of Washington.

Q. How long ago was that, Judge?—A. That was—I was appointed 24 years ago; it will be 24 years ago next December.

Q. You know Judge Hanford, of course?—A. I know Judge Hanford.

Q. How long have you known him?—A. I have known him more than 37 years.

Q. Do you recall the meeting at the Alhambra Theater of which Dr. Willis testified a moment ago?—A. I do; very well.

Q. Were you present at that meeting?—A. I was.

Q. Did you take any personal part in the meeting?—A. I think I was called upon to make a brief—a short speech.

Q. Did you see Judge Hanford at the meeting?—A. I did.

Q. Did you notice when the judge came in, or at what part of the proceedings he came in?—A. My recollection is that he came a little late, though I am not sure about that.

Q. Did you sit near him on the platform?—A. There were several persons between me and him.

Q. Were you present when he spoke?—A. I was.

Q. Did you have any conversation with him during the evening?—A. Oh, yes; I did.

Q. From what you heard him say and from what you observed of him and what he said to you, in your opinion was the judge that evening in any degree under the influence of an intoxicant?—A. Not the slightest; not the slightest.

The CHAIRMAN. Do you wish to ask any further questions, gentlemen?

The WITNESS. I may add, if I may, that after the meeting I accompanied Judge Hanford and others to the Washington Hotel, where we went to supper and listened to a further address by Dr. McCormack; after that, when the meeting broke up, which must have been nearly 1 o'clock, one of the doctors offered to take Judge Hanford and me home in his automobile, and we both said no, we would prefer to walk, and I walked home with him as far as my own house. We talked; we discussed the lecture and the views of the doctor, and it was impossible that I could be mistaken in regard to his condition. He was not under the influence of liquor in the slightest degree.

Q. He and you are personal friends.—A. Personal friends, and have been for a great many years.

Q. Are you a member of the Rainier Club?—A. Yes, sir; one of the charter members.

Q. Have you at any time observed Judge Hanford when, in your opinion, he was under the influence of an intoxicant of any kind?—A. Never in my life, and except when I have been absent from town or he was absent, I have seen him during my residence here weekly, and almost daily, and I never saw him under the influence of liquor of any kind in any way. I have gone fishing with him; I have traveled the circuit with him—not in the old-fashioned way on horseback, but here we had to go the circuit by steamboat.

Q. When was that?—A. That was beginning with 1876 and continuing down until 1888. He succeeded me on the supreme bench of the Territory. I retired in March, 1889, or April, 1889, and he

was appointed in succession to me. I think I may safely say, and I think I owe it to the commission and to Judge Hanford also, that my acquaintance with him has covered so long a period and has been so intimate that it is impossible that he could have been either an habitual drunkard, an occasional drunkard, or a drunkard at all without my knowing it.

Q. Have you ever been out with the judge after 12 o'clock at night?—A. Yes; yes, sir.

Q. Where?—A. Why, at meetings time and again. This particular night it was 1 o'clock, I think, when we left the Washington Hotel.

Q. Have you ever ridden home on the car with him after midnight or about midnight?—A. I don't think I have ridden home with him on the car. No. Generally when we were together we would walk. His only exercise is in walking; that is since he had to give up the bicycle; and he usually, in order to take that exercise which is almost necessary to his health, in fact I think it is, walks home, although his home is a good distance.

Q. Except on the occasion of public gatherings such as the one at the Alhambra Theater, have you ever been with him late at night in the downtown part of the city?—A. Yes, sir; I have.

Q. What was the nature of the occasion?—A. Well, in the days when he was practicing at the bar——

Q. How long ago?—A. That was 23 years ago.

Q. Let me limit my question to the last ten years, and what is your answer to it? Let me repeat it to you—have you during the last 10 years been downtown with him at midnight or later, except on the occasion of some public gathering?—A. I don't think I have, except on the occasion of some public gathering, but those occasions have been pretty frequent.

The CHAIRMAN. Any other questions, gentlemen?

Mr. HIGGINS. You spoke, Judge Burke, of his having ridden the bicycle; how long ago was that?

A. Why, he continued to ride the bicycle until this building was opened.

Q. When was that?—A. That was; that must have been, let me see, not over four or five years ago, I think.

Mr. DORR. Three years ago.

The WITNESS. (Continuing.) And the reason he stopped riding the bicycle then was because—it gave him exercise that was very good for him—was that he could not store the bicycle here. I remember talking about that and asking him how it came to pass that he abandoned riding the bicycle; well, he said "They have got those revolving doors so that I can't take the bicycle into the building, and there is no place near by where I can store it," and so he reluctantly gave up riding the bicycle, but it was a daily practice of his to ride the bicycle to his house or from his home up to the time, I think, he began to hold court in this building.

Q. Have you, after dinner in the nighttime, been with Judge Hanford in his office?—A. After dinner? I recall one or two occasions when I have called at his office after dinner, but not frequently.

Q. Do you know anything about what his habit is in that regard?—A. Yes.

Q. As to his time of doing work.—A. Yes, sir; I know his habits of work are peculiar in this; that his work is chiefly done, and was

even as a lawyer, but especially so as a judge, from 9 until 2 at night.

Q. How do you know that?—A. On account of the fact that I have frequently seen him both when he was practicing law and since he has become a judge—I have not seen him at 2 o'clock to be sure, but I have seen him when I had more than once occasion to drop in as I went up home, especially if I were at the Rainier Club in the evening after my office hours, because the courthouse was then directly across the street from the Rainier Club and I would see the light in the building, and sometimes I would walk in if I thought I would not be interrupting him. His habits of study at night were brought on because he has had a great deal of work to do and he can work more successfully when he is not interrupted, as most men can, but it is perfectly well known in this town that the light in his window, in his window in this building and in the old building, would be going until 2 o'clock at night; until 1 and 2 o'clock. His habits of study in that regard are perfectly well known.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Judge Burke, have you had occasion to drop into the Rainier Club or to be there at the Rainier Club at mindight or after it, occasionally?

A. Sometimes I have; yes, sir.

Q. And met Judge Hanford there?—A. Sometimes he would be there.

Q. On many of such occasions can you state whether or not Judge Hanford and you walked home together?—A. Almost invariably on such occasions, because he would be glad to have some one to walk home with.

Q. Some testimony has been offered in this case to the effect that Judge Hanford's manner of walking on the street sometimes indicated that he was unsteady or was intoxicated. Can you enlighten the committee in any way upon that subject?—A. Well, he is peculiar in that respect. I have walked with Judge Hanford for half an hour at a time when he would not utter a single word, but sometimes his head would be down; he would drop his head a little, walking on steadily all right, but he evidently was engaged in a train of thought, and until that had been finished he would not utter a word, and when, presumably, he would have finished his work, whatever it was going in his mind, he would talk freely. He has a habit, and has had it from boyhood, ever since I knew him, of walking along apparently deeply absorbed in thought on some subject, and when in that mood he is not talking to anybody and never is. That has so impressed me that at times in walking with him I would resolve, although it is pretty hard for me to restrain myself in that particular I suppose, not to say a word, in order to determine how long he would continue in that silent mood, and I have known him to go as long as half an hour.

Q. Some testimony has been offered before the committee to the effect that Judge Hanford has been in court occasionally nodding, closing his eyes, apparently sleeping, and some witnesses have ascribed it to the effect of intoxicants. Can you enlighten the committee any from your own personal knowledge of the man and of his actions in court on that subject?—A. That is characteristic of Judge Hanford. He will close his eyes and apparently be asleep, to all appearances sleeping, but he is really wide awake, and I recall only last

year I was in court—I have not practiced for seven or eight years, but I had a case before him and I argued it, and to my mortification I thought he was paying no attention to my argument, but sleeping. I found by his ruling, which was against me, that he seemed to be awake all the time, and I remember after that saying to him that he illustrates the old saying of the great Justice Shaw, of Massachusetts, that it was no small accomplishment in a judge to be able while an argument was going on to keep one eye on the dull, prosy lawyer while he took a refreshing nap with the other. If anyone ever could do that, I think Judge Hanford could.

Q. Well, you have seen the same sort of thing in court, haven't you?—A. Time and time and time again.

Q. Have you ever observed any occasion when Judge Hanford's rulings, when the occasion arose to make a ruling, disclosed that he had not fully comprehended all that had transpired or that he did not fully understand the question involved before him for decision?—A. No. I think his mind is clearer and he has a clearer comprehension when he gets in that way.

Q. Some testimony has been offered in this proceeding to the effect that Judge Hanford has been seen on the street cars apparently napping, his eyes closed, his head nodding. Have you ever seen any indications of that kind from Judge Hanford, or have you any suggestions or statements to offer to this committee that may enlighten them in respect to that?—A. I do not know about the street cars—I do not know about seeing him on the street car—we walked most of the time; but his habits of study would naturally lead him to take a nap that way. I think it is observed of others; of all lawyers, and it is the experience of most judges, that in coming in out of the cold open air into a close room, and court rooms are never well ventilated, the tendency to drowsiness is very strong. I know that when I was on the bench I would have to walk up and down the platform at times. The majority of men going into an illy ventilated room out of an open space and there sitting for some time listening to arguments are apt to get drowsy; the majority will get drowsy, and it acts with overwhelming power on some men. There are times when I can not possibly keep awake, but let me have three minutes and I am all right. I have slept in an automobile three minutes.

The CHAIRMAN. Do you think that reasoning would apply to a street car?

A. I think it would, for the ventilation of a street car is often very poor.

Q. Did you ever while engaged in the active practice of the law have much practice before Judge Hanford?—A. No, not a great deal; not a great deal; I had considerable, I had a good many cases—I had a fair number of cases before him. I practiced in the State court mostly.

Mr. HUGHES. From your experience and knowledge while at the bar and from your acquaintance with the work of the district and the work of the Federal bench, or the Federal judge in this district, are you able to inform the committee as to the amount of work that Judge Hanford has had to discharge?

A. I think I can reasonably. I think it is in the record. The 150 volumes of the Federal Reporter issued since he became judge contains the conclusive proof—contains a conclusive proof of the enor-

mous amount of work he has done in quality and in quantity. I believe that that volume of work has not been surpassed by any Federal, district, or circuit judge in the United States in any period of our history.

Q. Judge Burke, do you know as to whether it is a fact that Judge Hanford has never submitted his opinions for publication to the publishers except where they were cases or opinions of general public interest?—A. I know I have sometimes asked him why it was that he did not publish opinions that seemed to me important, in cases cases that were important, and learned from him at that time that he only gave out certain cases that seemed to require the publication of the opinion.

Q. That is to say, where the case depended largely on the facts and would not be important as a precedent in the law, he has not caused them to be published?—A. No.

Q. My purpose in asking that, Judge Burke, is that because I do not think the former question that I asked you has been fully answered. A reference to the published reports would not give any adequate idea, would it, of the volume of business that Judge Hanford has had to transact.—A. It would not give the whole of it, of course, or anything like the whole of it.

Q. What I asked you was whether his work was extraordinarily or unusually onerous and extensive in its amount and character, or not.—A. He had to organize this court. Like all new communities, and particularly like all lumber communities, it may be said to have been a litigious community and the volume of business has always been very large, and since we became a State it has increased very rapidly. For years there was but one Federal judge in this State. He not only discharged the duties of the office of Federal judge in the State, hearing cases and deciding them, rendering his opinions, but he was frequently called in the meantime to San Francisco to take the place of the Federal judge there, as he has been in more recent years called to discharge the duties of a judge in circuit court of appeals. He held court here; he held court in Spokane; he held court in Tacoma and held court in Bellingham.

Q. And Walla Walla also?—A. And in Walla Walla, and especi lly from 1893 to 1896 were the duties of the judge of the Federal court very onerous. Those were times of trial, sometimes of turbulence, and he had railways that were in the hands of receivers and he had the duties arising from cases of that kind in addition to all the ordinary work coming into his court.

Q. In that connection I want to ask you another question. Considering the location of this district, I will ask you if the work is distinct from that of many of the old districts, and was d ring his entire term, and is yet?—A. Why, certainly.

Q. That is to say, as involving every variety of questions that arise in the court, instead of only certain lines of litigation?—A. He was a pioneer as the judge in the Federal court in this northwestern country. Here we have a seaport city, we have a seaport State; he had admiralty business; he had the business arising in relation to patents; he had the business in relation to or arising out of litigation coming from foreign corporations. In this State the capital we get for the development of this State we get largely from the East, and when any question should arise or any controversy should arise in regard to that

capital it had to be settled in the Federal court, or they sought the Federal court. We had, as I said before——

Mr. McCoy. (Interrupting.) Why does it have to be settled in the Federal court?

A. Because the eastern capitalist who had invested his money here naturally would bring his suit, if he had to bring one, in the Federal court.

Q. Why?—A. I don't know any particular reason why, except that it is the common practice to do it; they are familiar with it. I think there is one reason, and that is that the high character of the judges of the Federal bench would naturally draw the business of that kind to them.

Q. Do you mean, by comparison, that the reputation of the judges of the State bench is not as high?—A. I mean by the experience which the judges of the State bench have in comparison with the judges of the Federal bench, that they would not be as well qualified for the business; they would not be considered such. Men that are appointed to the Federal bench are generally older; they are generally men who have had a larger experience in the law.

The Chairman. Judge Burke, do you recall any of the cases where a nonresident poor man brought a case from the State to the Federal court here?

A. I do not recall them, and I do not know that I could name others, but many resident poor men have brought cases in Federal courts here.

Q. You are not unaware of the charge generally made that big interests who are nonresident bring cases to the Federal courts because they think their interests will be better cared for there than in the State courts?—A. I never heard that charged——

Q. Have you never heard it before?—A. I never heard that charge made by any responsible person. I might say on that head——

Q. (Interrupting.) So far as your observation and recollection goes, it was the large financial interests who were nonresidents who usually brought litigation from the State to the Federal court, was it not?—A. I suppose so.

Q. Or started it in the Federal court in the first instance?—A. Started it in the Federal court—I suppose it was largely; but the litigation of the Federal court was far more largely; that is, only taking it in regard to those cases originally started in the Federal court; those cases which arose right in this State.

Mr. McCoy. What railroad receivership did Judge Hanford have anything to do with in your recollection?

A. The receivership of the Northern Pacific Railroad Co.; the receivership of the Washington Central Railroad.

Q. Now, take the Northern Pacific Railroad case; where were the first set of receivers in that case appointed?—A. The first set of receivers were appointed in Milwaukee; outside of the State, I think.

Q. And those same receivers who were appointed in Milwaukee were subsequently appointed in each of the States through which the road passed, were they not, including the State of Washington?—A. No; I think not in the State of Washington.

Q. Are you sure of that?—A. I feel sure they were not appointed in the State of Washington.

Q. Is it not a fact that the same receivers were appointed all the way through and then they were discharged here in this State and other receivers appointed in this State?—A. They were appointed in some other States, but I do not think they were ever appointed in this State. Now, I may be wrong in this. I know that Judge Gilbert and Judge Hanford appointed—heard a case here on the appointment of the receivers, and the result of that case was that the receivers were appointed in the State where the railroad was.

Q. They heard an application here for the original appointment of receivers or for ancillary receiverships?—A. Ancillary receivership.

Q. And they were appointed then residents of the State of Washington by Judge Hanford?—A. Judge Hanford's view at that time was that the place to appoint the receivers was where the property was and not in a State in which there was no property belonging to the company.

Q. In other words, a railroad company running through several States, he believed in each of them there should be a receivership, so that in each State where the road ran there would be a different set of receivers?—A. I don't think that was it, but the original receivership was appointed in the State in which there was practically no part of the Northern Pacific Railroad.

Q. What was the other railroad company?—A. The Washington Central.

Q. And what was that railroad, a steam railroad?—A. That was a steam railroad that ran from Spokane for about 40 miles——

Q. Where to?—A. To a little town in the interior of this State.

Q. That was not an interstate railroad?—A. No.

Q. It was wholly within the State of Washington?—A. It was wholly within the State of Washington. And the Seattle, Lake Shore & Eastern was another railroad for which he appointed receivers; that railroad ran from here up to Snoqualmie and up to the British boundary.

Mr. McCoy. What is the fact about the Northern Pacific Railroad Co. receivers, Mr. Hughes?

Mr. Hughes. Mr. Preston may be able to answer that question.

Mr. Preston. Without checking up my memory particularly, I will give it to you as it lodges in my mind at this moment. Judge Hanford appointed one or more local receivers; that is, local men receivers for the railroad in the State of Washington. The receivers appointed in Milwaukee then came out here and interposed a motion to do away with that appointment and have themselves substituted, making themselves ancillary to that. That motion was heard before Judge Gilbert, the circuit judge who lives in Portland, and Judge Hanford sitting in banc, and was denied.

The Chairman. That is, the motion made by the Milwaukee receivers in opposition to the appointment here?

Mr. Preston. No; not in opposition to the appointment, but to set it aside and have themselves substituted. They questioned the jurisdiction. I was in the case as one of the attorneys.

Mr. McCoy. Where was the original or first appointment of receivers made?

Mr. Preston. I think in Milwaukee, sir; in Wisconsin, I could not say Milwaukee.

Mr. McCoy. And were those same receivers appointed in all the other States through which the Northern Pacific ran except the State of Washington?

Mr. Preston. I think Montana was an exception. [Here Mr. Preston consults with Judge Hanford.] I see my memory was at fault. Judge Hanford has corrected me. It was this. The Milwaukee receivers were originally appointed here also and refused to account here, claiming the right to account only to Milwaukee and refusing to account. The matter came up and the hearing was had before Judge Gilbert, and as the result of that hearing the ruling was made that they were discharged from this jurisdiction and one or more receivers were appointed instead of them.

Mr. McCoy. Judge Gilbert?

Mr. Preston. Judge Gilbert and Judge Hanford sitting in banc heard the case. I took part in the argument myself. Mr. Hughes just suggests to me that I am speaking feelingly because I was unsuccessful. No, I was not. I was successful—I do not say that I was—I was only one of the number.

Mr. McCoy. How long after the appointment of the Milwaukee receivers, as we will call them, to be short, in the State of Washington, was it when they refused to account?

Mr. Preston. I could not answer. Judge Hanford says two years.

Mr. McCoy. Were they called upon to account in any other State?

Mr. Preston. Well, I know from memory that there was something in Montana, if I am not mistaken, along the same line, but my memory is so poor I would rather not undertake to testify to it. If you want to know the exact fact I would rather find it out for you.

Mr. Higgins. You can get the fact, can't you?

Mr. Preston. [After consultation.] Oregon, Washington, Montana, and Idaho, I am now informed here, were all in this ninth circuit and treated it the same way and the same receivers were appointed.

The Chairman. You mean by that the portion of the road in those States was included in the ancillary receivership?

Mr. Preston. No; what I mean is this, as I understand it, that all the States in this circuit asserted their right to manage the road in their district through their own receivers, since the others would not account here. Now you see how untrustworthy one's memory may become on those matters—I remembered Montana and I did not remember Idaho and——

The Chairman. I understand very well in speaking of an old matter like that from recollection you and anybody else is liable to err without intending it. Are there any further questions of the witness?

Mr. Hughes. I wanted to interrogate the witness a little further. I want to call his attention to this and, if I may be permitted, I would ask the question as a leading question, and when it is asked, if it is objectionable, please say so.

The Chairman. We have given you a great deal of latitude.

Mr. Hughes. For the purpose of curtailing the examination, let me ask you, Judge Burke, if in Judge Hanford's service in this district he has not been required to pass upon cases involving not only the ordinary matters that come before the Federal courts, such as you have already described, including the admiralty jurisdiction, and

foreign and domestic cases arising out of foreign and domestic commerce and foreign and domestic negotiable instruments, but mining litigation, mining laws, public land laws of all kinds, the Indian laws and the questions growing out of them, the immigration laws, the white-slave laws, and all other questions and legal questions or questions involving any litigation and laws of the United States on account of the peculiar geographical situation of this district?

A. He has undoubtedly.

Q. Now, turning aside from that question, from the question of Judge Hanford's judicial work and services, I want to ask you to state briefly what have been the services of Judge Hanford as a civilian during the same period of time that he was on the bench, as to the demand upon his mental and physical energies?—A. His services have been many and important.

Q. Describe very briefly, if you can, please, what they were.—A. Not naming the services in chronological order, I may first mention his services on the relief committee following the San Francisco earthquake and fire.

Q. Did that continue for some months?—A. That continued for some months; at times it was almost a 24-hour job. The demand was pressing; the demand for relief was pressing and the food and clothing and the like that had to be supplied to the people in San Francisco had to be sent 800 miles; steamships had to be chartered, money had to be collected, and I think Judge Hanford was chairman of that committee.

Q. Was the work of that committee under his constant personal supervision?—A. It was under his constant personal supervision.

Q. Has he in like manner been identified with all public, or most of the public and charitable undertakings carried on in this community?—A. I do not at the moment recall a single important affair of that kind that he has not been identified with as a working member.

Q. Has he been called upon to participate in public affairs, that is, in matters of public interest and importance, as speaker as well as worker in promoting and advocating them?—A. Yes, sir; constantly almost. I have often wondered how he got time from his judicial duties to attend to meetings and making speeches and preparing papers.

Q. Has he been connected with historical associations, devoting much time to the preservation of the history of this northwestern country?—A. Yes, sir; he has.

Q. I mean preserving the historical facts for the purpose of recording the history of this country?—A. Yes, sir; he has performed many important duties in connection with that, because it is recognized by all in this State who know him that he has a more accurate memory of the early events in the history of the territory in the State of Washington than probably any other man in the State. He has lived here since he was a child, and he has a very retentive memory; and when Mr. Snowden, of Tacoma, was preparing his history of the State of Washington, which he subsequently published in four volumes, perhaps the most important history of the State we ever had, he got Judge Hanford, and would not take no for an answer, to read the proofs of that history. I thought that was a task that ought to be given to somebody else in view of what Judge Hanford was then doing. But that is an illustration of the work that, outside of

his judicial labors, that he has been constantly called upon to do; and he has never spared himself.

The CHAIRMAN. When was that history published?

A. About four or five years ago.

Mr. HUGHES. You spoke of the Central Washington receivership. Can you briefly give some information to the committee about that?

A. That was a railway that was built from Spokane westward in the early nineties. It has been managed and conducted by the Northern Pacific Railroad, and the Northern Pacific Railroad went into the hands of a receiver. The bondholders of the Washington Central Railroad were compelled, in order to protect their interest, to foreclose the mortgage. Their attorney was Senator Root. The firm was then Root & Clark, and the present Secretary of War, Mr. Stimson, was a member of that firm. Mr. Stimson came out here and retained me to foreclose the mortgage, and proceedings were instituted to foreclose the mortgage and receivers were appointed in the State. The eastern people wanted the appointment of a receiver, wanted the appointment of a man as receiver whom they sent out, but Judge Hanford's policy in appointing receivers always has been this: "I will not appoint a man whom I do not know well enough to trust. Your man in this case is a stranger. The receiver is an officer of this court, and this court is in a measure responsible for the conduct of the receiverships, and I will not appoint a man whom I do not know." He refused, although I appealed as strongly as I could to get this man appointed receiver. He refused to appoint him receiver alone. He appointed a man whom he knew well, and appointed this man at their instance, as coreceiver, and they conducted the affairs of the company, I think, for two years.

The CHAIRMAN. Whom did he appoint?

A. He appointed Charles Chamberlain, and the man recommended by the eastern people was Mr. Miller. He was the son of a very prominent lawyer in New York. I do not remember the name of the firm. Probably the chairman or the other members of the committee would know.

Mr. MCCOY. Miller, Peckham & Dixon.

The WITNESS. Very likely. This was Alfred Miller that was appointed in connection with Charles Chamberlain. The receivers conducted the matter very satisfactorily to the eastern bondholders, especially to Mr. Root—or to Senator Root now—and to Mr. Stimson, his partner, and turned in, I think, something like $150,000, which was more money than they had ever received from the road before from the old management.

Mr. HUGHES. You mean profits in the operation?

A. I think so. Now, I may not be perfectly accurate in the figures, but it was a very large amount of money. It was a good deal over $100,000, as I now recall it. And in connection with the question which Mr. McCoy put, I may say that when that company was reorganized it was recognized not under the laws of another State, but under the laws of the State of Washington, and Mr. Root made this remark at the time—it was finally left to him—I shall never forget it—the question was put to him whether the company should be one organized under the laws of some other State or under the laws of the State of Washington, and he said, "Where is our property? It is in the State of Washington. Well, if the State of Washington is a good

enough jurisdiction to own property in, it is a good enough jurisdiction to submit our rights to the courts of that State. Let us organize the company in the State of Washington."

The CHAIRMAN. Any further questions?

Mr. HUGHES. Nothing further.

The CHAIRMAN. Judge Burke, what is your address?

A. 408 Burke Building is my office address, and my residence is at 1004 Boylston Avenue.

M. A. MATTHEWS, being first duly sworn, testifies as follows:

The CHAIRMAN. Give your full name to the committee, please?

A. M. A. Matthews.

Q. You are a resident of Seattle?—A. I am.

Q. And a clergyman?—A. I am.

Q. Of what denomination?—A. Presbyterian.

Q. How long have you lived in Seattle, Doctor?—A. Since January, 1902.

Q. How long have you been in the ministry?—A. Twenty-five years the 1st day of October.

Q. Are you acquainted with Judge Hanford?—A. I am.

Q. How long have you known him?—A. Since I have been a resident of this city.

Q. Doctor, do you recall an occasion last fall, in September or October, when the medical doctors had a meeting at the Alhambra Theater?—A. I do.

Q. At which one Dr. McCormack made an address?—A. Yes, sir.

Q. Were you present?—A. I was.

Q. Do you recall seeing Judge Hanford at that meeting?—A. I do.

Q. Do you remember now whether you noticed him coming in or not?—A. I could not answer that question because I was a little late myself, and I do not remember that.

Q. Was he there when you came?—A. I think he was, but——

Q. Or did he come afterwards?—A. Well, I am uncertain, but I think he came after I did, sir.

Q. Were you present when he made a short address there?—A. I was.

Q. Did you listen to his address?—A. I did.

Q. Did you follow him in the making of it?—A. I did.

Q. About how long did he take?—A. Well, that is hard for me to say; perhaps 10 minutes, sir—5 or 10 minutes.

Q. There was one long address and several short speeches.—A. Dr. McCormack talked for an hour, if I remember correctly.

Q. Did you have any personal conversation with Judge Hanford at that time and place?—A. I did; I spoke to him after the meeting when we were going over to the banquet, or refreshments, served afterwards at the Washington Hotel.

Q. Are you able to give an opinion as to whether on that occasion Judge Hanford was under the influence of any intoxicant?—A. I did not notice it, sir; I did not think of it at that time; he did not appear to me to be a man under the influence of intoxicants.

The CHAIRMAN. Do you wish to ask him any questions?

Mr. HUGHES. You went over to the Washington Hotel also?

A. Yes, sir.

Q. And were there until the close of the meeting?—A. Yes, sir.

Q. (Continuing.) And the serving of the refreshments that occurred at the Washington Hotel?—A. Yes, sir.

Q. Judge Hanford was with you all the time?—A. Yes; he went over to the refreshments with us.

The CHAIRMAN. I did not get your street address, Doctor.

A. 1209 Marion Street.

Mr. CHAIRMAN. I am not through with this witness; I would like to examine him further about some other matters that have been involved in the general investigation, if I may do so at this time; it will not cover a very long time.

The CHAIRMAN. How long?

Mr. HUGHES. I should say not over 10 minutes.

The CHAIRMAN. Go ahead.

Mr. HIGGINS. Are you moderator of the Presbyterian assembly?

A. Yes.

Q. Which includes—— A. Which includes the Presbyterian Church of the United States of America and all the foreign stations in foreign countries.

Q. How long a time have you been moderator?—A. I was elected in May, on the 16th of this May, sir. My term expires at the next assembly, which convenes in Atlanta, Ga., in May—May of next year.

Mr. HUGHES. Doctor, how long have you resided in the city of Seattle?

A. I came here; I arrived here on Friday afternoon, if I remember correctly, on the 31st day of January, 1902. My administration commenced on the 1st day of January, 1902, but I did not arrive on that day.

Q. Since your residence here you have been intimately acquainted with Judge Hanford?—A. Yes, sir; I meet him frequently; he was one of the first public men that I met after I came here, if I remember correctly.

Q. Have you participated in all matters of general public interest, charitable or beneficial to the general welfare of the community?—A. Well, I don't know whether I have participated in all of them or not; I have been connected with a large part of them.

Q. To what extent in such services have you found yourself associated with Judge Hanford?—A. Well, I think, sir, the first—if you want me to detail them——

Q. Please do so, but very briefly.—A. Well, one of the first was the Asiatic Society looking to closer relationship between China, Japan, and the United States——

Q. I will ask you if in that connection——A. (Continuing.) In that connection Judge Hanford was one of the officers, if I am not mistaken—he was one of the members.

Q. I will ask you if in that connection there was not, either connected with the society or some other, an organization looking to the prevention of the diseases that are likely to spread in Asia and to be extended to this city and other cities on the Pacific coast, such as bubonic plague and other diseases?—A. Yes; that came out of it, and there was another organization dealing entirely with that question of which Judge Hanford was a more active member than myself. Whether I became a member of the society for the prevention of disease I do not remember, but it came out of this other one in which I was interested, as I understand it.

Q. Well, go on and be as brief as you can, but detail what you know in this connection.—A. I think we were connected with one of the first peace societies organized in the State. Judge Hanford, I think, if I am not mistaken Judge Hanford and Judge Burke and some more asked me to join it—I know I was solicited by some one, and I know that I afterwards found them there—I am speaking now of another organization which I am about to refer to—I think by lineage or history I am entitled to be a Son of the American Revolution, and I remember Judge Hanford, at the time I was entitled to join it, I think he furnished me the papers. He was one of the prominent workers in that, if I remember correctly. I did not have time to fill out the papers, I don't think I have filled them out yet, but Judge Hanford was prominent in that. That was one of the first. I think I was invited to join, and maybe did take part in some historical society of this State and city, and Judge Hanford had something to do with that; I didn't have much to do with it. And then I think some scholastic work; I think Judge Hanford was on the committee awarding medals, and you were on it with me, and we had to pass on the publications of some book-publishing house in the United States, and I remember we had to examine a number of articles—essays written all over this city, or over the State, I have forgotten.

Q. You mean articles written by students?—A. Yes, sir; and I should say I threw the greater burden of that work—I think you and I did, sir—on Judge Hanford. I do not know that I can detail them.

Q. Were you a member of the San Francisco relief committee?—A. Yes, sir.

Q. He was the chairman of that committee?—A. Yes, sir.

Q. Were his labors arduous in the public welfare in that connection?—A. Well, sir, we worked, some of us, nearly all night.

The CHAIRMAN. Judge Burke told us all about that. I do not think that there will be any contradiction of it. I do not think it is really very material, and I would ask that you make this feature of it as brief as you can. Those were all gone into in detail, you know, and a repetition is really hardly necessary.

Mr. HUGHES. Except to show his services—that might be of interest to the committee to know what kind of whisky can enable a man to do this kind of work—I do not know whether they might be interested somewhat in that.

The WITNESS. (Continuing.) If you will pardon me for reverting to the question you asked me. I did not hear and I never heard Judge Hanford's intoxication or sobriety being questioned on the occasion you mentioned, sir.

The CHAIRMAN. I do not remember asking you that question.

The WITNESS. You asked me about his condition on the night we spoke at this meeting.

The CHAIRMAN. But I did not ask you what anybody said about it.

The WITNESS. I mean it was not raised in my mind until you asked me the question—until I heard it raised since. He was on the stand that night, I think made a speech of some 10 minutes, and several of us spoke, and it was perfectly satisfactory so far as anyone I heard say.

Mr. HUGHES. I do not want to take the time of the committee, but I want to ask another question.

Q. Are there any other matters of public interest, such as the exposition, the Chamber of Commerce, or other matters of public services

in which you have been associated with Judge Hanford?—A. I have been a member with him on the committee on national affairs in the Chamber of Commerce seven or eight years, and he has been one of the hard workers on the committee, and Judge Burke was chairman of it.

Q. I want to ask you this question, in all your association with Judge Hanford ever since you have known him, have you ever seen him under the influence of liquor?—A. Well, I did not detect it, sir; if he was.

Mr. HUGHES. That is all.

The CHAIRMAN. Have you any personal knowledge as to whether he drinks any liquor?

A. I do not know, sir. I have never seen Judge Hanford drink except at a banquet on one occasion, where some wine was served. I think a number of the gentlemen had what they call a cocktail, an appetizer, or something which they drink first, a little bit of a glass, and I think that Judge Hanford took that cocktail, or whatever you call it.

Q. As far as you know, that is all you know of his drinking?—A. I am talking about what I saw him drink. That was all I ever saw him drink. At a banquet or something like that, I have seen Judge Hanford take what was served at the first of the meal, but he was not under the influence of liquor at the banquet.

Mr. HUGHES. In addition to those other services, has not Judge Hanford made addresses in your church?

A. He has made addresses there on two or three occasions; I think at the memorial on the death of the King of England he made an address; at the memorial on the death of Gov. McGraw he made an address, and on two or more peace occasions, celebrations, Judge Hanford spoke. He has spoken several times from the platform. I do not know the number.

The CHAIRMAN. To-morrow being the great national holiday, the committee will not sit. The committee will now be in recess until 9.30 on Friday morning.

Further hearing is continued until Friday, July 5, 1912, at the hour of 9.30 a. m.

SEVENTH DAY'S PROCEEDINGS.

FRIDAY, JULY 5, 1912—9.30 A. M.

Continuation of proceedings pursuant to adjournment. All parties present.

JOHN J. WARD, being first duly sworn, testifies as follows:

The CHAIRMAN. What is your name?

A. John J. Ward.

Q. Where do you live, Mr. Ward?—A. 615 Federal Avenue, Seattle.

Q. How long have you lived in Seattle?—A. About 10 years.

Q. What is your present business?—A. I am engaged in the contracting business—general contracting.

Q. Along what line—the building line?—A. The building line, yes, sir; and sewers and street paving; and heating and plumbing, and so forth.

Q. How long have you followed that business?—A. About—I have been engaged in the plumbing and heating business about 37 years; I have been in business for myself since 1880.

Q. Are you acquainted with Judge Hanford?—A. Nothing more than to meet him on the street, and seeing him riding to and from his home on the street cars.

Q. How long have you known him that way?—A. About six years, I think.

Q. You and he live in the same direction from the business part of the city?—A. Yes.

Q. If at any time on the street cars you saw Judge Hanford when he appeared to you to be under the influence of any intoxicant you may tell the committee.—A. No, sir.

Q. Please tell the committee if——A. No, sir; I never did.

Q. If you have ever seen the judge at any time when he acted in a peculiar way on the street car.—A. Yes, sir.

Q. What was the peculiarity?—A. A sort of drowsy condition.

Q. How did it affect him?—A. Why, he would throw his arm over the top of the back of the seat, and his head would kind of lean forward like that [showing], and once in a while he would raise his hand up and pull his beard. That has perhaps happened three or four times in the length of a block—while the car would be traveling the length of a block. He would seem drowsy, but he did not have the appearance of a man under the influence of liquor to me. He did not have that bleary glare in the eye that usually accompanies a man that is under the influence of liquor—it did not appear to me that he was drunk.

Q. How often did you notice him on the cars, as you have stated?—A. Oh, perhaps two or three times a week, in the evenings; sometimes once or twice a week in the morning.

Q. What hour in the evening?—A. I should judge it would be between 6 and 8 o'clock, and sometimes between 10 and 12 o'clock, when I would be going home late myself, and then in the mornings between 8 o'clock and 10 o'clock.

Q. Did his appearance or demeanor on the car at any time attract your attention particularly on those occasions?—A. Not only in the manner in which he kind of bobbed his head up that way, in a kind of a drowsy condition that he seemed to be in.

Q. How frequently did that attract your attention?—A. Well, that was the only time, as I say, as I would see him on the car going home, or in the morning coming down to the office he appeared the same way.

Q. On those occasions you mean he acted as if he were about to go to sleep?—A. Yes, sir; it appeared to me he was drowsy; his eyes were closed, and suddenly he would lift his head up and look around the car.

Q. Do I understand you to say that that condition was present and equally apparent in the morning as at night?—A. Yes, sir; in the mornings I noticed it particularly.

Q. And did you notice it at all times when you saw him?—A. When I saw him on the car; yes.

Q. You have seen him on the street at any time, have you?—A. Yes, sir; I have.

Q. Was that condition present on the street to any extent?—A. He walked with his head in a peculiar way, pushed out in front, his shoulders kind of drooping, and sometimes he would have hold of his coat collar in this manner [illustrating] going along the street. I noticed it in particular on account of remarks made, you know—I took particular care to notice whether he was under the influence of liquor or not, and I came to the conclusion that he was not.

Q. What was the nature of the remarks made, without telling what they were?—A. Well, in relation to the judge's condition.

Q. Well, were they in the way of suggesting that he was intoxicated?—A. Yes.

Q. To what extent did you hear those remarks?—A. One gentleman said to me one time that he thought the judge was under the influence of liquor, and I told him I thought he was mistaken; that it was more the result of habit than anything else.

Q. Who was that gentleman?—A. Mr. Erickson, the city councilman.

Q. Well, in your opinion, was his demeanor such as to lead a stranger to think that he was under the influence of liquor.

A. A man who never seen him before—who had no opportunity to observe him, might take it for granted, without thought, that he might be under the influence of liquor.

Q. When did you first notice that condition in him?—A. Perhaps the first evening I saw him on the car.

Q. That would be about how long ago?—A. Probably about six years ago.

Q. And from that time you have stated that you saw him perhaps three or four——A. (Interrupting.) Two or three times, maybe, and sometimes four times a week, or four or five times.

Q. Varying from 8 o'clock in the evening until 12 at night?—A. Yes, sir.

Q. But mostly, I suppose, in the evening or at night?—A. In the evening between the hours of 6 and 8 o'clock; and I have seen him most of the time between the hours of 6 and 8 o'clock and occasionally from 10 to 12 o'clock.

Q. Never later that that?—A. No, sir; I never did.

Q. Was there any noticeable difference as you saw him in his condition in the morning, the evening, or night?—A. No; there was not. It seemed to me that he did not appear any worse in the evening than he did in the morning, coming down.

Q. Did the condition which you speak of reach actual sleep at times?—A. Well, you could not tell—I could not tell very well; he would close his eyes and hold his arm out like that [showing], look around a while, and constantly did the same, perhaps three or four times in the length of a block.

Q. Would that be repeated in every block?—A. It appeared to me——

Q. You mean three or four times in each block?—A. In each block; yes, sir.

Q. Well, did you form an opinion as to whether in fact the judge went to sleep or not?—A. I can not say it was sleep—I can not say that he was sleeping. It seemed to me to be a sort of drowsy feeling.

Q. How would you account for it in the morning?—A. I can not account for it; but it convinced me that it was not the result of

intoxication; I came to the result that it was the result of habit more than anything else.

Q. Was it such as to attract the attention of anyone within view of the judge?—A. I suppose the other passengers on the car saw it just the same as I did.

Q. Well, was it so unusual on a street car as to probably attract the attention of those who might be on the car and within range of vision?—A. Why, it was, yes, I think; although I have seen others—a young lady, for instance, that lived down in that direction who sometimes does the same thing.

Q. Habitually?—A. Yes, sir; I have seen her on half dozen occasions at least nodding asleep going home in the evening, and then I have seen a man, roughly dressed, who seemed to be a hard-working man—who seemed to be a man engaged in rough work—who did the same thing once or twice.

Q. But it was not usual?—A. No, sir.

Q. It is unusual?—A. Yes.

Q. While there might be special reasons in the case of a working man as you spoke of, can you give any special reason for that condition habitually?—A. No; I can not.

Q. Well, have you seen the judge at other places than on the street car, along the street when he showed any indications along that line?—A. No, sir; I have not.

Q. Have you any knowledge as to whether the judge drinks intoxicants or not?—A. No, sir; I have not.

Q. If you saw a person whom you knew drank act as you saw the judge did, what inference would you draw from it?—A. I suppose it would lead me to believe that he was under the influence of liquor unless I made a close investigation; unless I took particular care to observe his eyes and searched for that particular sluggish glare which is in the eyes of a drunken man.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Just one or two questions.

Q. Mr. Ward, in going to and from your home you travel upon the same street car; that is to say, your home is upon the same particular line as that of Judge Hanford?—A. Yes, sir.

Q. And that was the occasion of your traveling so many times with him on the street car?—A. Yes.

Q. You spoke of a conversation with a councilman, Councilman Erickson, who was a witness here. Were you with him on the car at the time of this conversation?—A. Yes, sir.

Q. When he called your attention to Judge Hanford?—A. Yes, sir.

Q. And that was when your conversation which you have detailed with him took place, was it?—A. Yes, sir.

ELMER E. TODD, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name.

A. Elmer E. Todd.

Q. Where do you live, Mr. Todd?—A. Seattle.

Q. How long has Seattle been your residence?—A. Since May, 1899.

Q. You hold some official position now?—A. No, I do not.

Q. What is your present business?—A. I am in the general practice of the law.

Q. Have you held any official position in Seattle?—A. I was United States attorney for this district from November, 1907, to May 1, 1912.

Q. Of what is this district composed?—A. That part of the State of Washington west of the summit of the Cascade Mountains.

Q. Did you live at Seattle prior to that time?—A. Yes, sir.

Q. How long?—A. I lived at Seattle from May, 1899, except for about one year when I was in Alaska.

Q. And during all that time you were engaged in the practice of your profession?—A. I was.

Q. Of course you are acquainted with Judge Hanford?—A. I was not acquainted with Judge Hanford before I became United States attorney, except as I appeared in his court from time to time.

Q. How long have you known him?—A. I think I have known him by sight ever since I have been in Seattle, but I had not a speaking acquaintance with him before I became United States attorney.

Q. During the time you were United States attorney you were frequently in his court?—A. I was.

Q. And of course you frequently had business conferences with him?—A. I did.

Q. Was your office in this building?—A. My office was in this building after the building was occupied; prior to the time this building was occupied I occupied my own private offices in the Lowman Building.

Q. To what extent were you with Judge Hanford or did you have an opportunity of noticing him outside of the court or business hours?—A. The only place that I had an opportunity of noticing him was at the Rainier Club, of which I am a member; I saw him there frequently.

Q. How long have you been a member of the club?—A. I should say during the last four years.

Q. Mr. Todd, if at any time during your acquaintance with the judge you have seen him under the influence of an intoxicant, please tell the committee of it.—A. I have never seen him under the influence of liquor.

Q. Have you ever seen him when you thought he was influenced by liquor which he had drunk?—A. I never have.

Q. Have you ever seen him drinking any liquor?—A. I have.

Q. Where?—A. At the Rainier Club.

Q. Frequently or seldom?—A. Well, I should say—I would have to state the facts and let the committee draw its conclusion. Nearly every evening when I am in there between 5 and 6 before dinner, if Judge Hanford is in there he would probably take a drink, but some nights he is not there and some nights I am not there.

Q. What does he drink on those occasions?—A. Sometimes he would take a bottle of beer, but more frequently, I think, he takes a cocktail.

Q. How many evenings a week would you average in there when the judge was there and you saw him drinking?—A. Well, I am not there—I am only there—I am not in the Rainier Club at that hour—I have not been there during the past four years—I have not averaged two afternoons a week. I suppose nearly every time I was in there he was in there.

Q. Prior to that time you were not a member?—A. Prior to that time I was not a member.

Q. Have you any recollection as to whether you saw him drinking the cocktail or the beer oftener?—A. He drank the cocktail oftener.

Q. Did you ever see him there later in the evening, or were you ever there to see him?—A. Occasionally when I have been there late in the evening I would go in there from 9 to 10 o'clock and stay there until about 11 or 12.

Q. Have you on those occasions seen him drink?—A. I have.

Q. What?—A. He always, to my recollection, drank beer in the evening at that time.

Q. At the later hour?—A. At the later hour. He would sit down to a game of dominoes, or something like that, and take a bottle of beer.

Q. How frequently did that occur?—A. Why, every evening I saw him there I think that would occur. But I have not been there at that hour once a week on an average.

Q. Have you observed his appearance and condition while on the bench?—A. I have.

Q. Have you at any time when you saw him on the bench noticed him in a condition that bordered on sleep?—A. Yes; I have.

Q. What was the condition on those occasions, in your opinion?—A. His head would be forward and he would close his eyes.

Q. I mean in fact what was his condition—was he nodding?—A. When I first noticed that, I thought he was asleep. As a matter of fact, from subsequent observation of him, I found out that he was not.

Q. What would the ordinary person not acquainted with him conclude from those facts?—A. They would think he was asleep.

Q. How much of the time while on the bench was that his condition?—A. Why, it seemed to me, Mr. Graham, that it used to occur more frequently in the old Federal building, more than it does in the new; but it occurs in the new Federal building, I noticed particularly, when I would be addressing him in argument or when somebody else would be addressing him in a long argument.

The CHAIRMAN. I would not blame him much for that, would you?

A. Not at all.

Q. Was there any difference as to the time of day?—A. My recollection is that it occurred more often in the early part of the afternoon, after the court convened at 2 o'clock. It would be the early part of the afternoon session. It was his habit to take a recess at 4 o'clock, and after that time I did not observe it.

Q. What were and are the court hours?—A. Ten to twelve in the morning and two to five in the afternoon.

Q. Have you seen the judge elsewhere than at the club and in the courthouse during those years?—A. Only on two occasions that I can recall at the present time; that is, except to pass him on the street.

Q Where were those?—A. I met him one night on Second Avenue in front of the Hotel Butler. The second time I was down at the circuit court of appeals at San Francisco, and I think it was a year ago this last May when he was sitting on the circuit court of appeals, and that day we took dinner together and went to the theater together.

Q. What was the occasion at the Butler?—A. He was just going by and I said good evening to the judge. He usually did not speak to me as I passed, but I spoke to him and talked to him there, and that was the only time I ever talked to him outside of his chambers or the court room or the Rainier Club.

The CHAIRMAN. Any further questions?

Mr. DORR. Mr. Todd, how much of the time of the court sessions were you in court?

A. Why, I usually was in court at the opening of the court in the morning and frequently at the beginning of the afternoon session. At other times only when I had some matters to present or was engaged in the trial of some case.

Q. Did you conduct or participate in many of the court trials?—A. No; I did not try many of the cases. Mr. Hutson, my first assistant, tried most of the cases during the time I was in office.

Q. Did you conduct some of the court trials yourself?—A. I conducted what I considered the more important trials.

Q. And in those cases was any considerable time consumed?—A. Yes, sir; there was.

Q. How many days or weeks in any that you remember?—A. Do you mean the different cases?

Q. Yes.—A. I think the Holt murder trial, for instance, took two weeks; the Parkhurst, the bank embezzlement case, took about two weeks, and I tried a good many civil cases—a number of civil cases before him, most of which did not take much more than a day or two days. The two cases of importance, the Parkhurst and the Holt case, was the longest cases I tried before Judge Hanford.

Q. You also tried some other important criminal cases, didn't you?—A. The other important criminal cases in the office were mostly white-slave cases, and I never tried a white-slave case before Judge Hanford; I only tried one white-slave case and that was before Judge Donworth. Mr. Hutson tried a great many white-slave cases before Judge Hanford.

Q. Well, you tried the Hillman case?—A. That was not tried before Judge Hanford.

Q. You speak of white-slave cases; what are those?—A. Those are cases where persons are prosecuted for taking persons from the United States or into the United States from foreign territory under interstate commerce for purposes of prostitution or other immoral purposes.

Q. Did your department have many of those cases?—A. We had a great many of them.

Q. How many in the last year, about?—A. I would have to refer you to Mr. Hutson for that, because he had charge of those cases; he handled those cases both on preliminary hearing before the grand jury and on the trial, except the one I have mentioned which was tried before Judge Donworth.

Q. In the experience that you had in court in the trial of cases in which you were engaged did you ever observe Judge Hanford in any condition caused by anything where he was not prompt at ruling or where he appeared not to know what was being said or going on?—A. Well, the times I have described where he appeared to be asleep he never failed to hear an objection to the evidence and to make a ruling when necessary.

Q. How did he make those rulings; were they clear or otherwise?—A. Clearly.

Q. So that as to indicate that he was fully advised of the proceedings that were being had?—A. I thought so.

Q. Did you yourself conduct the Holt case?—A. I did.

Q. When was that tried, Mr. Todd?—A. It was tried during the month of December, 1908.

Q. And occupied about two weeks?—A. That is my recollection.

Q. Do you recall any instance or incident during the trial of the Holt case where Judge Hanford appeared to be intoxicated on the bench?—A. No; I did not—I do not.

Q. You were there all the time?—A. I was there; I was the only attorney for the Government side of the case.

Q. And Mr. Riddell and Mr.——A. Mr. Caldwell and Mr. Riddell defended.

Mr. DORR. That is all.

The CHAIRMAN. Just a moment. Do you recall any occasion during that trial when an objection was made by one of the attorneys for the defense to a question asked or, rather, to the answer to a question asked of Holt, when the judge did not seem to notice the objection and there was a pause of a short duration, during which everybody waited for the judge to take notice of the objection?

A. No; I do not recollect any such occasion.

Q. I would like to get the strength of your recollection on that. Do you mean to say that you do not recall it or is your recollection vivid enough to say whether it occurred?—A. I should say that it did not occur. If it had occurred, I should certainly have recollected it. I do not recollect of any such occasion during my four years and a half experience here as United States attorney.

The CHAIRMAN. That is all.

Mr. DORR. I would like to ask one more question.

Q. Do you remember, Mr. Todd, who was the reporter of the Post-Intelligencer that attended the court work at the time the Holt case was on trial?—A. Mr. Hunt.

Q. How do you remember that?—A. Because he was reprimanded by Judge Hanford during the progress of the trial.

Mr. MCCOY. For what?

A. After the evidence was closed the case went over until the following Monday afternoon for argument to the jury, and during that interim the jury was at liberty. Mr. Hunt published some facts—or some facts were published in the Post-Intelligencer about the case which were inaccurate and incorrect. The attorneys for the defense brought that matter up before Judge Hanford on Monday morning and Judge Hanford called for this reporter and reprimanded him in the presence of the jury for publishing those facts, and admonished the jury to pay no attention to them, and the report of the case in the Supreme Court of the United States shows these matters.

Mr. MCCOY. What was the reporter's name?

A. Hunt.

C. T. HUTSON, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell your full name to the committee.

A. Charles T. Hutson.

Q. Where do you live, Mr. Hutson?—A. Seattle.
Q. How long have you lived in Seattle?—A. Since August 1, 1906.
Q. What is your present business?—A. Attorney at law.
Q. How long have you been practicing law?—A. Since November, 1901.
Q. Do you hold any official position?—A. I do not.
Q. Have you held any here in Seattle?—A. Yes, sir; as second and then first assistant United States attorney for the western district of Washington.
Q. Who was the district attorney during the time of your service?—A. The first was Potter Charles Sullivan and then from December, 1907, Elmer E. Todd.
Q. As his assistant district attorney did you have any special line of duty?—A. During the last few years I tried the majority of the criminal cases—the minor cases, and a few of the important cases.
Q. Were they all tried before Judge Hanford?—A. Not during the last three years. We tried quite a number before Judge Donworth and Judge Rudkin in the western division of the western district of Washington.
Q. How much of the trial work did you have to perform during the year, or how many weeks trial work is there in the year?—A. Probably 10 weeks; that is an estimate.
Q. Do you mean the office or yourself would try that number of cases?—A. Myself.
Q. And of them how much before Judge Hanford?—A. Up to three years ago it was all before him—all before Judge Hanford and since then probably three-quarters of it.
Mr. HIGGINS. When was the western district divided?
A. When was the western district divided?
Q. Yes; when did you get the additional Federal judge in the district?—A. I am not clear on that, but I think Judge Donworth was appointed about three years ago.
Q. 1909?—A. About that.
The CHAIRMAN. Were you in Judge Hanford's court on many or on any other occasions than when engaged in the trial work? And if so, state.
A. Yes, sir; nearly every motion day, which was Monday, I was in court, sometimes several hours and sometimes just for a few minutes.
Q. Have you duties to attend to anywhere else than in Seattle?—A. I did, anywhere throughout the district—anywhere in the district.
Q. And that includes 10 weeks of trial work, does it?—A. No, sir; there were occasionally criminal hearings before commissioners and investigations, and things of that kind.
Q. What I want to get at, was all of the trial work which you had before Judge Hanford here in Seattle, or did you appear before him at some other point?—A. I had practically all of the immigration work, which included lots of matters of a sort of semicivil nature, and they would be presented on motion days, which would be on Monday, or some other day; that was in addition to the 10 weeks I spoke of, which was only an estimate. And then for a time I took care of the naturalization cases at intervals, which would be on Saturday; there were not many of those instances, but maybe a half a dozen times during the year.

Q. When you were engaged in court before Judge Hanford, tell the committee what his manner and demeanor was on the bench.—A. His manner and demeanor was that of a careful, attentive judge.

Q. To what extent, if at all, did he appear to nap, or slumber, while you were practicing before him?—A. I have noticed that, but I would not say that that was usual; it was rather a rare thing with him.

Q. An exceptional thing with him?—A. An exceptional thing with him.

Q. Well, would it occur every day?—A. No, sir.

Q. When it occurred, at what time of the day did it occur?—A. If my memory serves me right, I would say along in the early part of the afternoon.

Q. Lasting how long?—A. Just a few minutes; I think 20 minutes would cover it, although it might pass over that; I do not mean by that that he was nodding that long, but it would be just an occasional nod.

Q. Did you ever see him act in that way elsewhere than in the court?—A. I have not.

Q. What opportunity have you had of noticing him elsewhere than in the court room?—A. In the court room or around the court building or in his chambers was the extent of my acquaintance with the judge.

Q. Were you ever with him or did you ever see him anywhere else?—A. No, sir.

Q. Are you a member of the Rainier Club?—A. I am not.

Q. Have you ever seen the judge drinking?—A. I have not.

Q. Have you any personal knowledge as to whether the judge does drink?—A. I have no personal knowledge.

Q. Did his appearance on the bench ever suggest to you the thought that it might be caused by drink?—A. No, sir.

Q. You did not make any observation with that thought in your mind?—A. No; none whatever.

The CHAIRMAN. Any further questions, gentlemen?

Mr. DORR. Mr. Hutson, will you state a little more specifically about the volume of business that you were concerned in before Judge Hanford?

A. As a rule during the time that I was first assistant, which covered from December, 1907, until February 1 of this year, 1912, I had charge of the grand jury work, which brought me more or less in contact with the judge at all times during the existence of the grand jury, which would be from a week to a month; some grand juries lasted even longer than that—five weeks. I then would be in the court room every morning when the grand jury was called to report, and we usually had violations of the postal laws, violations of the statute relating to crime on the high seas, customs violations, immigration violations, and violations of the Treasury laws, which would result in 10 or 15 or more indictments every grand jury, that I had to handle. Sometimes we have had as high as thirty-odd indictments returned, and probably the greater majority of them would fall to me. A number would plead guilty and a trial would thus be avoided, but at each time that a plea was taken I was in the court room. Then I had, in addition to that, the violations of the immigration laws—cases which came up by way of habeas corpus.

Q. And did that include the deportation cases?—A. Those were the deportation cases.

Q. Those were deportation cases?—A. There would be writs of habeas corpus to inquire into their detention.

Q. About how many criminal cases—give the committee an approximate idea—would be tried during a single term in which you would participate?—A. I can only estimate that. Probably 10 at a term; two terms a year.

Q. Sir?—A. I say 10 at a term; two terms a year.

Q. That is as distinguished from the other work which you mentioned.—A. That would be trial work.

Q. And how long a time have you been engaged in any single case before the court?—A. Well, I was engaged with Mr. Todd in the Parkhurst case; that took two weeks; that was the longest time that I was engaged in any one case before Judge Hanford.

Q. The Parkhurst case?—A. The Parkhurst case.

Q. How many of those so-called white-slave cases, approximately, were before the court for the last two years, if you know, Mr. Hutson?—A. I can only estimate that; I would say possibly 15 or 20.

Q. Per year or term, or for the two years?—A. During the last two years.

Q. Fifteen or twenty?—A. Yes, sir; there were a great number in the district that perhaps would arise from grand juries which Judge Hanford had called, but they were disposed of by other judges.

Q. But some 15 or 20 of them were actually tried, you think?—A. No; were disposed of either by pleading guilty or trial.

Q. A plea of guilty or trial; how many were actually tried, if you have any recollection on that subject?—A. I have not any distinct recollection on that, Mr. Dorr; I can ascertain that for you.

Q. I want to hand you a trial calendar, Mr. Hutson [handing document to witness], and I will ask you if that contains your name?—A. Yes, sir.

Q. You are the same Mr. Hutson that appears on the printed calendar?—A. Yes, sir.

Q. That is for the November session of 1911, or the November term of 1911?—A. The November term, 1911.

Q. You say there were two terms a year?—A. There were two terms a year, May and November.

Q. In Seattle?—A. In Seattle.

Q. About how long would the court business continue during a term; how many months?—A. Prior to the appointment of Judge Donworth the court was almost continuously in session, except perhaps a little time in August.

Q. During the entire year?—A. During the entire year.

Q. How was it after the appointment of Judge Donworth?—A. Then, if I recollect, Judge Hanford took some time off in August of each year from actual court work; but I know that all during that time he had matters under advisement.

Q. Do you know anything about the judge's habits of work in the evenings?—A. I do not recall so much about the time spent in this building here, but in the old building on Fourth and Marion I had occasion then to know that he was there nearly every evening.

Q. How late?—A. The only way that I can gauge that would be when the juries were out that were considering criminal cases, that he

would stay as late as 11 or 12 o'clock to receive their verdict, and sometimes later. I would like to say here—you asked me the longest time I had been in court in any one case. I had a term in which three cases running were tried beginning, I think, July 14, 1908, in the old building, which took up about three weeks constantly.

Q. Where was the old building located which you have spoken of?—A. Fourth and Marion.

Q. With reference to the location of the Rainier Club, where is that?—A. Across the street.

Q. During all this time, Mr. Hutson, have you ever seen Judge Hanford on the bench when he appeared to you to be under the influence of any intoxicant?—A. I have not.

Q. Have you ever seen him where he appeared to be inattentive to the court's business?—A. No, sir.

Q. What was his manner in ruling when objections were made to the introduction of testimony and matters of that kind?—A. Clearly, I always thought.

Q How a to promptness?—A. Very prompt.

Q. What was his custom and habit of instructing juries at the close of the evidence?—A. He always instructed them clearly and in such a way as would indicate that he had heard and understood the evidence offered.

Q. Were the instructions given orally or from prepared written instructions?—A. He very often gave oral instructions; sometimes he read instructions that were handed him by the attorneys, but more often oral instructions.

Q. Have you ever known of an occasion where he was not ready and prepared to give the oral instructions immediately upon the close of the testimony?—A. I have not, Mr. Dorr.

Q. From the experience which you have had in Judge Hanford's court practicing before him, what do you say as to his judicial temperament?—A. I would say that he had an even judicial temperament and was a careful and attentive judge.

Q. Is the bar docket which I have handed you, being for the November term of 1911, a fair illustration of the usual bar dockets in Judge Hanford's court, as to the number of cases, and so forth?—A. Yes, sir.

Q. Will you tell the committee how many cases are docketed there?—A. Fifty-one.

The CHAIRMAN. How many?

A. Fifty-one.

Mr. DORR. Do you know of Judge Hanford presiding in other courts during this time that you were assistant United States attorney?

A. I know that prior to the appointment of Judge Donworth he had the entire district, and even after the appointment of Judge Donworth he occasionally held court in Tacoma, and that during the last year or so—during the year 1911—he was called to the circuit court of appeals at San Francisco for a period.

Q. And was not that true as to the prior years? Has he not always attended the circuit court of appeals since it was organized, at stated periods?—A. I so understand; I do not know the dates, however.

Mr. DORR. That is all.

Mr. MCCOY. Do you belong to any firm, Mr. Hutson.

A. Yes, sir.

Q. What is the name of the firm?—A. Reynolds, Ballinger & Hutson.

Mr. DORR. When did you become a member of this firm?

A. I became a member of this firm in April, 1907.

Q. What are the other names—what are the names of the other members of your firm?—A. Charles A. Reynolds and Harry Ballinger.

Q. Harry Ballinger?—A. Harry Ballinger.

The CHAIRMAN. When you answered that there were 51 cases on the trial calendar, did that include criminal and civil cases?

A. That is the number I see there, and it seems to include both.

Q. Can you tell us how many of those cases were disposed of by trial at that term of court?—A. I can not from memory; no, sir; only approximately.

Q. Will your approximation be reasonably close?—A. Well, I would say this by way of explanation first. They would be all disposed of in one way or another—the calendar would be cleared—they might be continued to another term.

Q. That is hardly an answer to my questoin, however.—A. I could not give you an answer which would be clear on that.

Q. The point I want to get at is——A. I can tell you in regard to the criminal cases, Mr. Chairman.

Q. The calendar may have a thousand cases on it without giving any clear idea of the amount of work that was actually done. Now, if you can tell how many trial cases there were—how many of them were disposed of by trial?—A. I could; those that were Government cases.

Q. How many of them were disposed of by trial?

Here witness examines the docket.

Mr. HIGGINS. Would you not be able, gentlemen, to furnish the committee with that information for a period of years?

Mr. DORR. Yes, sir.

Mr. HUGHES. We expect to be prepared to show the actual court days for a long period.

The CHAIRMAN. Very well; the question is withdrawn.

C. O. BATES, being first duly sworn, testifies as follows:

The CHAIRMAN. Give your full name.

A. Charles O. Bates.

Q. Where do you live, Mr. Bates?—A. Tacoma.

Q. How long have you lived there?—A. Since June, 1892.

Q. What is your profession?—A. Attorney.

Q. How long have you practiced your profession?—A. Thirty-two or thirty-three years.

Q. Are you in the active profession of the law or practice of the law now?—A. Yes, sir.

Q. I assume that you know Judge Hanford?—A. Yes, sir.

Q. How long have you known him?—A. I became acquainted with him some time in 1892, when I first came.

Q. What was he then doing?—A. He was United States district judge of this district.

Q. Tacoma is in this district?—A. Yes, sir.

Q. Was he them and is he still presiding at your court?—A. Yes; but since Judge Donworth's appointment he has not presided as much as he did before, although he is over there very frequently.

Q. Is he there, as he was last week when he opened court. Is he there to hold court since Judge Donworth's appointment?—A. I think since Judge Donworth's appointment my recollection is that he has been over there to hear some preliminary matters and motions and demurrers, and I think one or two hearings.

Mr. HUGHES. Trials, you mean?

The WITNESS. Yes.

The CHAIRMAN. How many years since Judge Donworth's appointment?

A. It was in the neighborhood of three years, I think.

Q. Before that time was your practice in the Federal court, Judge Hanford's court, extensive or limited?—A. I went into a firm when I first went to Tacoma that had a good deal of business and there has been scarcely a term of court since then that I have not had some business before Judge Hanford.

Q. When did that condition begin?—A. It was either the fall of 1892 or the spring of 1893.

Q. Was most of that practice here at Seattle or at Tacoma?—A. Most of it at Tacoma.

Q. To what extent were you in court before him at Seattle?—A. Of course I won't be sure about this; I remember trying one criminal case before him and, I think, two or three civil cases in Seattle.

Q. When was that?—A. The criminal case was before they moved into this building. How long that has been I do not know; it was just a little while before that.

The CHAIRMAN. How long ago is that, Mr. Hughes?

Mr. DORR. About three years.

The CHAIRMAN. And as to civil cases——

Mr. HUGHES. Mr. Hutson informs me that they moved into this building in April, 1909.

The CHAIRMAN. Three years ago—and when did you try the civil cases before him?

A. I never have had any trial—any civil trial since they moved into this building. I have been here too on motion days since they moved into this building and presented matters to him four or five times, but never any trials.

Q. Apart from your professional work, that is, from the work in court before Judge Hanford, to what extent have you associated with him or had an opportunity to observe him?—A. Well, I have met Judge Hanford at the meetings of the State bar association in this State at every meeting that I have attended. I have met him at different times at public meetings, different times at banquets that were held for the purpose of entertaining public people, and probably I have met him a dozen times either at Tacoma or Seattle when he would be off the bench at the hotel or at the club.

Q. Casual meetings?—A. Yes.

Q. At the Tacoma Club?—A. No, I never met him at the Tacoma Club.

Q. Which club?—A. The Rainier Club.

Q. Are you a member of it?—A. No, sir.

Q. You were a guest?—A. Yes, sir.

Q. His guest?—A. No, sir.

Q. I will ask you first as to court work; if you have at any time seen Judge Hanford when on the bench in what appeared to be a condition of drowsiness or napping?—A. Yes.

Q. Or sleep?—A. Yes.

Q. Just tell the committee in your own way what you saw.—A. Well, I remember the first time that I saw Judge Hanford in that condition was soon after I came here and I was making an argument before him on a matter that I thought was of a good deal of importance and I was a good deal put out and annoyed because I thought that he was asleep during the argument; he had all the appearances of that, but after the argument was completed and he rendered his decision, I found out that I was mistaken, because he had a very complete grasp on the proposition that had been submitted to him, and he decided it only as a man could have decided it that had heard the argument on it. My experience with him afterwards was—I noticed that same condition a good many times, and we who have known him here on the bench have discovered that it was a peculiarity and a habit of his that he appears to be asleep when he is not.

Q. Is his condition on those occasions such as would lead any ordinary observer to think that he was intoxicated?—A. No, not intoxicated; they would think that he was asleep.

Q. How much of the time does he continue in that condition while on the bench?—A. Oh, not long, not any length of time at all—do you mean how much of the time at one time?

Q. Well, not only at one time, but in one sitting—of course I do not now refer to the length of each apparent nap, but to the frequency of them as well as the length of them?—A. It would be for a short time and——

Q. When is that condition most observable?—A. Well, I have observed it usually shortly after the convening of court in the afternoon, the court convenes at 2 o'clock.

Q. During the afternoon, during the three-hours' session, how much of the three hours would he seem to be napping or drowsy, or apparently inattentive?—A. Well, it would be a short time, it would not be continual at all.

Q. Is it your observation that that is a daily occurrence?—A. No, I would not say it was a daily occurence.

Q. How frequently in the course of a week or a court session, how frequently would that happen?—A. Well, that is hard to tell. I remember a series of cases that I tried before Judge Hanford at Tacoma that lasted two weeks, and probably during that time there would be—that would occur on four or five days.

Q. Have you ever noticed any attorney in addressing the court suspend his remarks on account of the judge's apparent condition?—A. No, sir.

Q. Well, what would be the impression created in the mind of a stranger to the judge, what would it probably be on those occasions; would it be that he was asleep?—A I think so; yes. I know the first time I saw him I thought that.

Q. And you continued firing logic at him, did you, while he was asleep?—A. I don't know whether you would call it logic or not. I continued talking.

Q. I assumed that it was logic, you being a lawyer that is a reasonable presumption. Have you seen him at any time when he was not on the bench when he was in that condition?—A. Do you mean in the condition of——

Q. Nodding, drowsiness, and apparently asleep.—A. Yes, sir. I remember one time coming over on the interurban from Tacoma with Judge Hanford; in fact I was in the same car, sitting across the aisle, when he appeared to be the same way.

Q. I understand that it is about an hour's ride.—A. In those days it was an hour and a half.

Q Well, how much of that time did he appear to be asleep or napping?—A. Well, I could not say. I went to sleep myself after we got out of Tacoma, and I did not notice him. I know this, that I was going to talk with him and I thought I would, and then knowing his peculiarity I did not, and I noticed him drop off to sleep and I supposed he was asleep, and I did the same thing.

Q. Have you ever seen the judge drinking?—A. Yes.

Q. Frequently?—A. Well, when I have met him at those banquets and so forth I have seen him drink.

Q. Have you drunk with him?—A. Yes, sir.

Q. Well, this day, before he and you started on this car ride, did he and you have a drink?—A. I could not answer for him. I can not remember now myself, but the probability is that I did. He took the car after the adjournment of court I might say to the committee——

Q. What have you seen him drink—what drink have you seen him take?—A. Well, the drinks they usually have at those banquets—cocktails, wine.

Q. Have you seen him drink on other occasions than at banquets?—A. Oh, I think this time I met him at the club, probably.

Q. Do you recall what he drank?—A. No; I would not recall it.

Q. Well, do you know what his usual or favorite drink is?—A. No, sir.

Q. Now, you told us all the occasions so far as you recall them on which you have seen the judge—that is, in reference to those times at the banquets and on the car, and at the Rainier Club?—A. I have met him—I mentioned that also that he used to stop at the Tacoma Hotel when he would go over to Tacoma to hold court, and I have met him there, probably four or five times, and aside from that I think I have never met him——

Q. (Interrupting.) Have you at any time seen him when you thought he was more or less under the influence of intoxicants?—A. I never have.

Q. Did you at any time have any appointment of any sort from him?—A. No, sir.

Q. Have you been attorneys in any cases where the court fixed the fee?—A. No, sir.

The CHAIRMAN. Any further questions—what is your firm name?

A. At the present time?

Q. Yes.—A. Bates, Pier & Peterson.

Mr. MCCOY. What is your general line of practice? If you have any general line?

A. Well, it is—the practice is a general practice, although of late years the practice has been largely personal injury cases.

Q. For the plaintiff or for the defendant?—A. For both.

Q. Do you mean that your firm's practice has been that?—A. Well, ours, and generally the practice here. Our firm's practice; yes, sir. I stated that generally the practice here has been personal injury cases for the last number of years, and that includes our firm.

Q. I do not know whether I quite understand you; do you mean that there has been more of that class of cases than any other?—A. Yes.

Q. The defendants being generally railroad corporations or no particular class of corporations for defendants?—A. No; the defendants would be railroad corporations, street car corporations, and a great many of the mills.

Q. Lumber mills?—A. Lumber mills and other mills—manufacturers.

Q. Tacoma is quite a manufacturing town; is that right?—A. Yes, sir.

The CHAIRMAN. Better than Seattle in your judgment?

A. In my judgment, yes.

Mr. McCOY. Have you any business association with Judge Hanford?

A. None at all.

Q. Or any particular social acquaintance?—A. Nothing, any more than I have mentioned; that is the extent of it.

Q. Are you regularly retained by any of those corporations, street or steam, or otherwise, as attorney? A. No, sir.

Q Do most of those cases get into the United States court here in Washington?—A. No, sir; not most of them.

Q If there is any way that you can estimate what percentage of them does, I wish you would.—A. Well, I could not give you the percentage, but the dockets of the courts here and at Seattle will show.

Mr. HUGHES. You mean here and in Tacoma

A. Yes; I mean here and in Tacoma The dockets will show the committee that a large majority of the contested civil cases are personal-injury cases.

Mr. McCOY. My question was this, Mr Bates: What percentage of those cases goes into the State court and what into the United States either by original proceeding in the United States court or by removal from the State court?

A. I could not give the percentage A large majority of them are in the State court

Q Can you tell from general observation, and without getting down to any particular figure, whether the corporations doing business in this State, generally speaking, are likely to be foreign corporations, or do they apply to the State of Washington for their certificates?—A The majority of them, I think, are Washington corporations, although there are a good many foreign corporations I think the street car companies are all foreign corporations and many of the mills, but the majority of them are domestic corporations.

The CHAIRMAN. One question in the line of Mr. McCoy's questioning: I suppose the bulk of the personal-injury cases are brought in the State court?

A Yes, sir; the bulk of them.

Q And what are the principal causes for removal to the Federal court? Is there any other cause than the nonresidence of the

defendants?—A. I never knew from my own experience here of a case being removed to the Federal court for any other reason.

Q. Is there any practice in the Federal court with reference to fixing the amount of fees in those cases which the plaintiff's attorney may receive?—A. No, sir; none that I know of.

Q. In many jurisdictions, where a case is brought on a contract for a contingent fee, the court interferes and regulates the size of the fee —A. There is no such practice here.

Q. Is there any practice here of that kind?—A. No, sir.

Q. Whatever contract the plaintiff's attorney makes with the plaintiff would be permitted by the court to stand?—A. I never knew of the matter being put up to the court. I presume in a particular case, if it was shown to the court that the fee was unconscionable, the court might take some action; but there is no such practice, though.

Q. I am not trying to get at what they might or could or would or should do, or should be done, but I am asking you what the practice is or has been.—A. There is no such practice.

Mr. HIGGINS. There has been some suggestion of it being the law, or there being something in the law, of the State of Washington forbidding an attorney from advancing moneys to pay the costs of litigation. Does that apply to contingent fees?

A. Well, I do not recall just what that law is. I know there is some such law on the statute books, but it does not, in my opinion, apply to preventing attorneys from making a contract with a person who has not the money to conduct the litigation himself or herself, to advancing the necessary costs and receiving a percentage of the—receiving compensation to be based upon a percentage of the amount recovered.

Mr. HIGGINS. I recollect that Mr. Brown in his testimony stated that the law would not permit it.

The WITNESS. I do not so understand it.

The CHAIRMAN. Is it your understanding that a lawyer may advance the court costs for his client?

A. It is my understanding that if a client has no money and no means for conducting a litigation—that is, a righteous litigation—that the attorney has a right to loan him the money.

Q. Would that be by leave of court first had and obtained, or would the attorney himself be himself the judge as to what was right in the case?—A. I do not know of any matter——

Q. (Interrupting.) Would it not come in under the law covering the offenses of barratry and champerty?—A. I don't think so.

Mr. MCCOY. Does not your code cover that, Mr. Hughes——

Mr. HUGHES We have a statute which covers more particularly one branch of champerty—that is, solicitation by the attorney or any agent or representative of his, forbidding it and making it a misdemeanor; and in those cases—that is, that class of cases, the act is an offense. But as I recall the statute now, it is silent and we have nothing but the common law on the subject of champerty and barratry, aside from that statute which more particularly relates to solicitation.

Mr. MCCOY. As I remember it, at common law, the advancement of expenses of litigation even to an impecunious client, would constitute one of those offenses. Have not you got a section in your code

which provides that the compensation of an attorney depends on the agreement made between him and his client?

Mr. HUGHES. We have no statute in this State forbidding the making of contingent agreements.

Mr. MCCOY. Is there not a section in your code which specifically says that the compensation of an attorney depends on the agreement made bewteen him and his client? I notice that your code is something like the New York code. In looking at a section we had here the other day I notice that it was almost identical and I took it for granted that was in there, because it was in the New York code.

Mr. DORR. We will furnish the committee with the section which is involved in this question.

Mr. HUGHES. The statute fixes certain very small attorney's fees and permits additional fees as agreed upon between the client and the attorney; that is to say, the attorney is not limited to the fee fixed by the statute which is taxable as costs, but in addition to that, he may, by agreement with his client, charge an additional sum, but that has no reference to contingent contracts.

Mr. MCCOY. That is construed in New York to cover contingent fees.

Mr. HUGHES. Our courts have always recognized that a contingent fee which is not unconscionable would be enforced. The question sometimes is raised as to what is a conscionable fee.

Mr. HIGGINS. I understood Mr. R. D. Brown to bring out or testify that he was unable to pursue his case on behalf of his client because he could not make a contract with his client, and he indicated that it was forbidden by the law of the State of Washington.

The CHAIRMAN. Is that the fact; have you a statute which forbids it?

Mr. HUGHES. We will submit the statute to the committee. I would not want totake issue with an attorney who has been a witness in the case, and I merely suggest that the value of his opinion on the law can better be determined by you by an examination of the statute. I would not want to appear to be commenting on his testimony.

The CHAIRMAN. Is there anything further?

Mr. HUGHES. Mr. Bates, you have had a great many cases in which you have represented plaintiffs in personal-injury and damage litigation.

A. Yes, sir.

Mr. HUGHES. Now, if this line of testimony is valuable at all it is as bearing upon Judge Hanford's attitude toward that class of cases, and I wish you would inform this committee what you know in respect to that, from your own experience and from your observation in his court room.

A. As I have stated, of late years the bulk of the civil business has been personal-injury cases and as I stated before I have represented about equally, about an equal amount for the defendant and for the plaintiff, a great many cases for the plaintiff, and Judge Hanford's attitude in those cases is, in my opinion, what a judge's attitude ought to be. He has given to both the plaintiff and the defendant, in my experience, a square deal.

The CHAIRMAN. Are there any further questions?

Mr. MCCOY. I want to ask one or two more questions.

Q. Mr. Bates, what would you say of the attitude of a judge who in a case where the plaintiff had presented his facts to the court showing that he had had his arm torn out in an accident and to whom the jury had awarded the sum of $12,000 damages after a trial, who should remark that that was three or four times what—or five times what he ought to have? I put that as a hypothetical question.—A. It would depend upon—the answer to that would depend upon all the circumstances and the testimony and everything surrounding the case.

Q. I assume that the testimony was sufficient to warrant the judge in allowing the case to go to the jury and that the only other question involved at the time was as to the amount of the verdict, and I will assume all the other things which go—on the question of damages which would go with an accident which would deprive a man of either of his arms from the shoulder down.—A. Well, I do not think that that is five times too much to allow a man for that injury.

Q. My question is what would you think of the judge's attitude toward that kind of a case who makes that sort of a remark?—A. Well, I think his attitude was that he thought the verdict was too large.

Q. And that is all you will say about a remark of that kind?—A. Well, I don't think—I don't know as I gather just exactly what you are getting at, but I think that the judge who would say that has the impression from all the circumstances surrounding the case, who heard the witnesses and had seen everything, that that verdict was too much, and he so expressed himself. There may have been things in the case that came up that would cause him to put it stronger than I would want to put it myself.

Q. Assuming that the man had a right, under the facts and the law, to recover a verdict against the defendant for an injury of that kind, what, in your judgment, else could there be in the case which would warrant that sort of remark?—A. I don't know anything.

Q. Well, you say it depends on what else there might have been in the case; that there might have been something else in the case; now assuming that he was entitled to recover damages, what sort of a thing else could there have been in the case which would warrant that kind of remark?—A. Oh, I don't know; if the only question that was left was the question of the amount I do not know that there would be anything else in the case that could warrant him.

Q. Now, I made that same assumption myself, that having recovered a verdict and there being no complaint about it because of the amount of it, that there could not be anything else in the case that could have any bearing but that one question as to the amount. Now, assuming these things as being the status of the matter at that time, what would you say of the attitude of the judge toward that kind of a case, or the plaintiff in that situation, who should remark that the verdict was three or four or five times too large, taking any one or all three of those figures?—A. Well, I would not think that his attitude was right.

The CHAIRMAN. The practice in that regard here, I assume, is for the attorneys on each side to submit propositions of law to the court as suggestions for instructions.

A. Yes.

Q. What is Judge Hanford's practice in that regard? Does he adopt the instructions submitted, either as submitted or as he modifies them, or does he give oral instructions of his own framing?—A. My observation has been that he takes the written instructions that are submitted by the attorneys, has them on the desk before him, instructs the jury orally, and then takes up these written instructions, parts of them, and reads them to the jury, or inlcudes in his oral instructions parts of the written instructions.

Q. Has the judge adopted the practice now common to the bar as I understand in the Federal court of requiring the attorneys to make exceptions then and there to such instructions or parts of instructions as they deem not to be the law or not applicable to the facts of the case?—A. That has been the practice, unless there is a stipulation by the attorneys, as there is sometimes, that they can be taken afterward.

Q. When there is no stipulation and no exception is taken to the instructions as given, is it usual for a court in passing on a motion for a new trial to pick out and make a basis for the granting of the new trial some error in the instructions to which exception was not taken?—A. No; it is not customary.

Q. Did you ever know it to be done?—A. I don't think I ever did.

Mr. McCoy. Mr. Bates, I would like to ask you is the supreme court of the State your highest court of appeal?—A. Yes.

Q. From the trial court?—A. Yes.

Q. Is there any other intermediate appellate court?—A. No, sir.

Q. You go right from the trial court to the supreme court?—A. Yes, sir.

Q. That is final?—A. Yes.

Q. In considering exceptions to a charge, does your supreme court take into consideration the charge as a whole and determine whether or not error has been committed on the whole charge, or does it pick out just a single slip in a charge and make the whole thing turn on that, although the slip is with reference to something that has previously been charged and charged correctly upon?—A. They take the instructions as a whole.

Q. And interpret them as a whole?—A. Yes.

Q. And do not they say that if on the whole the instructions fairly stated the law, there will be no reversal unless there is some error which has been what you might call a gross error and was almost bound to have affected the mind of the jury in some way?—A. That is the general attitude of the supreme court.

Q. That is the law of Washington, is it?—A. That is the general attitude of the supreme court of this State.

Mr. Hughes. Your reference to the practice before the supreme court has to do only with the reviews upon appeal after motions for new trial have been denied?

A. Yes, sir.

Q. They have, however, indicated that it is the duty of the trial court when considering a motion for a new trial to exercise its sound discretion in respect to all of those matters which they themselves would not review on appeal or a writ of error?—A. Oh, sure.

Mr. McCoy. Let me ask you about that. Do I understand you rightly that you say that the law as administered with reference to legal error in rulings by the trial court is a different law, having a

different standard from that administered by the supreme court in the same case?

A. The trial court has a greater discretion. If the trial court has discovered that an error has been committed, the trial court, in my opinion, even if an exception had not been properly taken, could correct that error before it got to the supreme court, but after once the trial court has ruled and no exception has been taken to the ruling of the trial court the supreme court would not interfere—would not reverse——

Mr. McCoy (interrupting). Perhaps I did not understand Mr. Hughes's question, but if I understood it rightly and your answer rightly, it was that where legal error in a charge is claimed by either side, it is viewed, or may be viewed, by the trial judge in one way for the purpose of a ruling, but after his ruling is made it would be viewed in a different way by the supreme court; or, in other words, that the trial court has more latitude in determining whether his charge is erroneous than the supreme court has; now, is that the case?

A. I think the trial court has got more latitude in this way; for instance, I can better illustrate that this way: In the superior court of Pierce County under our new practice act in regard to taking exceptions to the instructions the exceptions can be made at any time before the hearing of a motion for a new trial.

Mr. Higgins. Now, then——

The Witness. Now, let me come to that [continuing]. And they must be in writing and presented to the court before the hearing of the motion for the new trial. The superior judge there, after the motion for the new trial is made, or while it is being submitted, and an exception had not been taken to an instruction in writing in conformity with the statute, but the court held that that was proper, that he would give leave rather to the attorney to at that time file his written exceptions to the instructions.

Mr. McCoy. Surely, and that was a wise judge who would do that, but that is not the point at all——

The Witness. Now, then——

Mr. McCoy. I am assuming——

The Witness (continuing). Now, let me finish that, please. If that case then goes to the supreme court and this exception had not been taken, I do not think the supreme court would have any power, or would give the attorneys then leave to then take an exception to that instruction.

Q. I am assuming a case where the practice has been followed in the very strictest manner, where exceptions have been taken where they are usually taken, at the stage where they are usually taken.—A. Yes.

Q. I am taking a case where all exceptions have been taken and a motion for a new trial is made before the trial court.—A. Yes.

Q. Now, he rules on that motion one way or the other?—A. Yes.

Q. It goes to the supreme court; taken there by the defeated party. Now, would the supreme court apply the law from any different angle when it gets before the supreme court from the angle in which it was applied by the trial court? In other words, has the trial court any discretion in the matter which the supreme court has not got? In

other words, would not they apply the law in just the same way as the trial court when an objection to the ruling is made?—A. They certainly would apply the law in the same way, but they have not got the discretion that the lower court has. The lower court has a discretion to correct the errors which would not be corrected in the supreme court had not the exception been taken in the lower court.

Q. I do not think that we get together. I guess that I do not make myself clear. Neither court can correct any error of the kind that I speak of. If the case has been submitted to a jury on instructions and the jury has brought in its verdict, who can correct an error in the charge? Nobody, except the supreme court or the trial court, by setting aside the verdict.—A. That is what I mean by correcting the error.

Q. Well, I did not. Do you mean correcting an error in the charge after the verdict is brought in?—A. You do not understand me. The matter submitted to the lower court on motion for new trial, which includes errors in instructions and errors occurring at the trial which have been excepted to—now, if the lower court should discover an instruction which had been given which was plainly erroneous, but no exception had been taken to it, I think the lower court has a right to give that party the benefit of taking an exception then and setting aside the verdict because of an erroneous instruction.

Mr. McCoy. We agree absolutely on that, but I was assuming a case where every exception possible was taken at the right time and there was no question of not taking an exception.

A. Yes.

Q. Now, nobody says he did not except.—A. No.

Q. Now, nobody wants to claim he did not except—he did except to everything.—A. Yes.

Q. Now, a motion comes up for a new trial, and the trial court denies it.—A. Yes.

Q. And you take an appeal to the supreme court?—A. Yes.

Q. Would the supreme court decide it exactly from the same point of view—that is, the question as to whether there should have been a new trial—as the trial judge?—A. Why, sure.

Q. That is what I wanted to find out.—A. Sure. They usually would say that the lower court, having heard the witnesses and seen them on the witness stand and matters of that kind, were better able to judge of the matter than they were.

Q. That is, as to the credibility of the witnesses?—A. Yes.

Q. I am not taking it on any of those aspects of the case, but simply on exceptions to the charges; that was all.—A. You say the exceptions had all been taken?

Q. Everything was taken.—A. I say they would pass on it in the same way.

Q. The supreme court always says that, so far as the credibility of the witness is concerned, the trial judge has a better chance to determine it than the supreme court.—A. Sure.

The Chairman. Under your practice and the law in this State, is the order of the trial court granting a new trial reviewable?

A. Yes.

Mr. McCoy. That is the way you have to finally dispose of the case and determine whether to go into a new trial?

A. Yes.

Q. A man thinks "Why, here, if I could not have won this time, I can't win next time, and I will go to the supreme court if I get a new trial."—A. Yes.

Mr. HUGHES. Mr. Bates, if I gather the significance of the questions that have been propounded to you, it is whether a question of law arising on the weighing of an instruction to test the question whether it is legal, or the consideration of an exception to determine a purely legal question, that the determination of that legal question is the same in all courts?

A. Yes, sir; sure.

Q. And the method of determining it is the same in all courts?—A. Yes, sir.

Q. Let me ask you if it is not true in the practice of this State that the supreme court refuses to interfere with the action of the trial court in granting or refusing to grant a new trial unless upon the most manifest, well-established error?—A. Yes, sir; that is true.

Q. And almost invariably refuses to review the action of the trial court in either granting or refusing to grant a new trial.—A. Almost—I didn't quite catch that.

Question repeated to the witness.

A. Well, I would not say almost invariably; I would say generally.

Mr. HUGHES. Well, I think you might go even a little farther.

Mr. MCCOY. May I ask a question right there, Mr. Hughes, on that point? I do not want to interrupt you, but I want to clear up this matter.

Q. Then, unless the error in a charge is manifestly an error and prejudicial, it does not lead to a reversal?—A. No, sir.

Q. Does not the same sort of thing apply when the motion is made to the trial court for error in a charge, practically?—A. Sure.

The CHAIRMAN. Do you wish to ask any further questions, Mr. Hughes?

Mr. HUGHES. Has it not been established by the decisions of the supreme court of this State that the trial judge has full power to grant or refuse to grant a new trial on any ground which appeals to his discretion, and that that is not reviewable by the supreme court unless it is a plain abuse of discretion?—A. Why, sure.

Q. Mr. Bates, is it not the rule in this jurisdiction and established by the authorities generally, that it is not only the right but the duty of the trial court to grant a new trial for any error that in the judgment of the court has led to an erroneous verdict, whether excepted to or not?—A. Yes, sir.

Q. Under the decisions of the courts of this State and elsewhere, if the case is predicated upon a single act of negligence, and the court, by inadvertence or otherwise, has instructed the jury to the effect that they may return a verdict for the plaintiff for any negligence, when other acts have been claimed before the jury in the argument, that such an instruction is erroneous and prejudicially erroneous?—A. I don't think there is any question about that; if I understand you, if there is only one act of negligence pleaded in the complaint?

Q. Yes. Now, Mr. Bates, I apprehend that these inquiries have been propounded to you because of some reference which has been made in this case to the Melovich case. Were you present when the court ruled on the motion for the new trial in that case?—A. Well,

I don't know—I don't know it by that name. If it is the case that had some attention in the newspapers——

Q. The case prosecuted by Herbert Myers and defended by Kerr & McCord of Melovich against the Stone & Webster Engineering Co.—A. Yes, sir; my recollection is it was in one of the court rooms here, and I was waiting to take up a matter before Judge Hanford, and I heard part of his decision in that case.

Q. As a lawyer, did there appear to you to be anything unusual in that decision?—A. No, sir.

Q. Or ruling?—A. No, I could not say there was.

Q. Was the jury there—it might be inferred from some of the questions propounded that remarks said to have been made by the court were made in the presence of the jury?—A. Why, that was on motion day.

Q. That was not in the presence of the jury?—A. No, sir.

Q. Is it not true that under our compensation act the amount fixed by statute in this State for the loss of an arm is $1,500?—A. Yes.

Q. And that compensation act was desired by the laboring classes generally—the employees of factories and mill companies and railroad companies?—A. Yes, sir.

The CHAIRMAN. Is not your compensation act an alternative act—that is, has not the plaintiff the right to sue at common law if he chooses?

Mr. PRESTON. It is compulsory and exclusive.

The CHAIRMAN. How is that, Mr. Hughes?

Mr. HUGHES. I could answer that question for you, but Mr. Preston is really the author of the act, and I think he can answer you correctly. I think he can do it so much better that I prefer that he should answer it.

The CHAIRMAN. Mr. Preston, can you answer that?

Mr. PRESTON. It is compulsory and exclusive.

Mr. MCCOY. Does it apply to an action brought in the Federal court or moved into the Federal court?

Mr. PRESTON. It applies to any accident happening in the State of Washington after a certain date named after its passage.

Mr. MCCOY. Was it in force when Melovich brought his suit?

Mr. PRESTON. I do not know when he brought his suit. It was in force on the 1st day of November, 1911—no—it was in force in June, 1899, but it became operative as between employer and employee the 1st day of October, 1911; it did not apply to accidents which happened prior to its passage.

Mr. MCCOY. Do you know when the Melovich accident happened?

Mr. PRESTON. I do not.

Mr. HUGHES. I do not think it was applicable to that case.

Mr. MCCOY. I would like to ask another question.

Mr. PRESTON. May I correct my answer? When I said it applied to every accident which happened in the State, I meant to exclude those that are outside of the jurisdiction of the State, such as in interstate commerce and on the high seas.

The CHAIRMAN. Oh, we understood you to exempt such as those.

Mr. MCCOY. Now, Mr. Bates, you say that the trial judge may at his discretion set aside a verdict?

A. Yes, sir.

Q. I don't think that you really mean to state that literally, do you?—A. Why, if in the exercise of his discretion he thinks the verdict should be set aside, he has the right to set it aside.

Q. Without regard, of course, to any legal rules?—A. No; I supposed, of course, you are referring to legal rules. If, after hearing the motion and hearing the argument, the judge is of the opinion that the verdict should not have been granted, or that error has been committed, he has the right to set the verdict aside.

Q. Well, if he finds that error has been committed, has he any right not to set it aside?—A. No; no legal right not to set it aside if he finds that error has been committed.

Q. Then it is not a matter of discretion at all, but it is a matter of law; if it is wrong it should be set aside and if it is right it should not be set aside?—A. Yes.

Q. Now, in answer to a question by Mr. Hughes, you said that the judge under the law of this State has a right to set aside a verdict whether the exception had been taken to certain error or not.—A. Yes.

Q. Suppose that at no stage of the trial or of the proceedings on the motion for new trial is the point raised by anyone that a certain thing in the way of a charge or what not was error; have you ever known of a judge to himself pick out something that nobody complained of at any stage, and make use of it himself?

Mr. HUGHES. If you desire it, we will submit to you the authorities as to what the courts have said on that subject.

Mr. MCCOY. I am asking Mr. Bates now.

A. I have known judges to—no; I don't know that I have ever known them to pick out an error that has been committed. I have known them to grant a new trial for reasons that have not been submitted by either counsel.

The CHAIRMAN. Were they reasons that could not have been raised on appeal and therefore would not be cause for reversal in the appellate court?

A. Yes.

Mr. MCCOY. Have you ever known the supreme court to pick out anything which the supreme court itself had said to be erroneous, but which none of the parties represented by their attorneys claimed to be erroneous, and set aside a judgment?

A. I do not recall now; there may have been, but I do not recollect now.

The CHAIRMAN. Any further questions, Mr. Hughes?

Mr. HUGHES. Mr. Bates, would the granting of a new trial because the verdict was excessive be a granting of it upon a question of law?

A. Well, it would be a little of mixed law and fact, I think; the law gives them the right to grant the new trial because the verdict was excessive; the fact that the verdict was excessive, of course, is a matter of fact.

Q. A matter of opinion or judgment of the court?—A. Judgment; yes, sir.

Q. And even our supreme court has done that, and in the Williamson case the question was not even raised by counsel, isn't that true? What I mean to say is, that the supreme court sets aside a verdict or reduces it or grants a new trial because it is excessive, just as

the trial court does?—A. Yes, sir; there was a case against the Great Northern, if I remember right, in which they reduced the verdict where the question was not raised by anyone.

Mr. McCoy. Personal damage case?

A. Yes.

Q. What was the title of the case?—A. Somebody against the Great Northern road. It was a case where the verdict, my recollection is, was rendered for $30,000.

Q. Wasn't it argued on the briefs of the defendant that the verdict was excessive?—A. It never was raised until the question came up for rehearing before the supreme court.

Q. Then having reduced it there was a motion for a rehearing by the plaintiff and that was the first time that it was ever argued?—A. Yes, sir.

Q. Who was the counsel for the defendant in that case?—A. Frank Graves, of Spokane, was counsel for the plaintiff—or Will Graves—I guess both of them probably, and Judge Gordon was for the Great Northern road.

Q. Do you remember what the nature of the accident was?—A. Yes.

Q. Just state it briefly.—A. It was—my recollection is that it was a mail clerk.

Q. Well, what happened to him?—A. Well, he was paralyzed, I think.

Mr. Hughes. While we were not trying the supreme court of this State, one question I want to propound to you is whether it was the practice in this State to grant new trials because the verdict is excessive, both by the trial court and by the supreme court?

A. Yes, sir.

Mr. Hughes. That is all.

Mr. McCoy. Just a minute. You mean to include in your own mind or in Mr. Hughes's question—where an objection has been made?

A. Well, I have given you the——

Q. (Interrupting.) That is, if it is the practice where nobody raises the point?—A. I have given you a case where they did it where nobody raised the point. It is the practice generally, of course, to raise the point.

Q. Is there any practice which you know of in this State about that sort of thing, where nobody makes the point?—A. I don't know that I can answer that any further than I have answered it.

Q. Well, in answering it in reply to Mr. Hughes's question you answered it categorically, "Yes, that there was such a practice."—A. Yes, sir; there is.

Q. And is the practice in the supreme court established by that one case?—A. I can't say that. I am just telling you what happened in one particular case that I know of.

Q. Then what do you mean when you say that it is the practice to do that kind of thing?—A. I mean that the supreme court or the State court, either one, can grant a new trial or reduce the verdict; can grant a new trial for an excessive verdict and they can reduce the verdict.

Q. You say they can?—A. Yes, sir.

Q. But that does not make the practice.—A. Why, it is the practice to do it.

Q. Now, are you considering it, when you use the word "practice" as you and I know it as lawyers, technically, are you using it as being synonymous with the word "custom"? I see that we do not get together on that.—A. I know what I intend to say is this: If the verdict in the opinion of the lower court is excessive it is their practice to either grant a new trial or reduce the verdict. If the verdict in the opinion of the supreme court is excessive, it is their practice to either grant a new trial or reduce the verdict.

Q. Now, then, Mr. Bates, you used the word "practice" twice there; do you mean that it is customary?—A. The custom or the practice—I used as synonymous terms.

Q. Of course we know that the word "practice" is used in reference to rules and regulations and proceeding?—A. No; I don't mean it that way; I mean that they do it; that it is their custom.

Q. Their custom?—A. Their custom to do it.

Q. Now, is it the custom of either of those courts to do that sort of thing without first having had attention called to the alleged excessiveness, and being urged to make a reduction?—A. I would not say that it was the custom.

JAMES M. ASHTON, being first duly sworn, testifies as follows:

The CHAIRMAN. Please state your full name to the committee.

A. James M. Ashton.

Q. Where do you live?—A. Tacoma.

Q. How long have you lived in Tacoma?—A. About 30 years.

Q. What is your profession?—A. A lawyer.

Q. How long have you been practicing your profession?—A. A little over 30 years.

Q. Are you still in the active practice of the law?—A. Yes, sir.

Q. Are you alone or a member of a firm?—A. Well, I am counsel for a firm. A year ago last January I made an effort to retire from business.

Q. Make it brief, please.—A. (Continuing.) And to quit the practice, but I have not succeeded very well, and I am counsel for the firm.

Q. What firm?—A. Huffer, Hayden & Hamilton.

Q. What does it mean when you say that you are counsel for the firm—are you a member of it or not?—A. Not technically a member, but I am active in the business of the firm.

Q. Do you mean that certain business of that firm is referred to you for consultation and advice?—A. Yes.

Q. Do you practice in the Federal courts?—A. Yes.

Q. And you have done so?—A. Yes.

Q. In Seattle as well as Tacoma?—A. Yes.

Q. Are you acquainted wuth Judge Hanford?—A. I am.

Q. How long?—A. Since 1882—30 years.

Q. What are your relations with the judge?—A. Why, I know him well as a judge.

Q. Anything but professional relations?—A. None whatever.

Q. Any social relationship?—A. No, except I know him real well.

Q. Has he visited your home and you his?—A. Yes, I have been at the judge's home I think once.

Q. And he at yours?—A. Probably once in the 30 years' time.

Q. Outside of your professional work, to what extent have you associated with the judge?—A. Well, not a great deal. Judge Hanford's home is here in Seattle and mine is in Tacoma. Several years ago I used to move about the State a good deal with Judge Hanford and then, of course, I saw more of him socially.

Q. How many years ago?—A. Sixteen—well, 15 or 16 years ago.

Q. Does he and you belong to any organization where you meet?—A. No—what do you mean, Mr. Graham, by organization?

Q. Well, any club—I do not care for your society connections, I do not mean that.—A. Well, I am a nonresident member of the Rainier Club in Seattle and also a member of the Union Club in Tacoma.

Q. And is he a member of the Union Club?—A. I believe he is an honorary member, I would not be sure; I think all the judges are honorary members of our club in Tacoma.

Q. Have you sometimes met him at either or both of those club rooms?—A. Well, I have not met him very much at either club; I have met him occasionally; I am not in the Rainier Club more than once every two or three months, and then only for lunch.

Q. Have you been before Judge Hanford when he was on the bench a great deal?—A. Yes, sir; considerable.

Q. Covering what period of time?—A. Oh, from the time of Judge Hanford's appointment at the organization of the State, down to the present time.

Q. You have observed his manner of presiding during the trial of court proceedings?—A. I have.

Q. Have you at any time noticed him when you thought he was under the influence of any intoxicant while on the bench?—A. I never have.

Q. Have you at any time noticed him acting so that a person who was a stranger to him might think that he was, or might have reason to think that he was?—A. No. I never noticed him so that a stranger might have reason to think that he was under the influence of an intoxicant, but I have noticed him so that a stranger might think that he was short of rest or sleep, or something of that kind.

Q. Did you notice him that way frequently, or seldom?—A. Seldom.

Q. Give the committee some idea of the number of times or some unit of time.—A. I didn't hear the last part of your question.

Q. I say, can you give them some idea as to some unit of time, such as a year or a month, or any unit that you wish—give the committee some idea as to the frequency of the times you have seen him when he seemed to be lacking rest.—A. Well, probably once every two months or three months.

Q. Did you ever see the judge drinking any intoxicants?—A. Yes, sir; I have seen him drink.

Q. Where?—A. Why, I have seen the judge take a cocktail at the Rainier Club.

Q. How often?—A. Well, not more than twice.

Q. Have you ever seen him drink elsewhere?—A. I have seen the judge take a drink once in the Tacoma Hotel in Tacoma.

Q. What?—A. A cocktail, I believe, to the best of my recollection.

Q. Have you seen him drink at other times and places?—A. No; I have been at one or two banquets with the judge and I have seen him take a moderate glass of wine.

Q. Have you at any time seen him when, in your judgment, he was under the influence of intoxicants?—A. I never have in my life.

The CHAIRMAN. Do you desire to ask him any further questions?

Mr. DORR. Have you ever seen him on the bench, Mr. Ashton, when he was apparently incapacitated to attend to the court's business?

A. Never.

Q. During your attendance upon Judge Hanford's court, when you have been present, have you ever seen him in any condition in which, in your judgment, he did not appreciate what was being done?—A. I never have. I will say this, Mr. Dorr, and I think it is due to Judge Hanford to say it, that I have known him to drop his head and have his eyes closed when I have been making an argument to him; I have known this to happen more than once, and I have had him raise his head and open his eyes and put questions to me in connection with my argument that were the crux of the points I was discussing.

Q. Which indicated what, in your opinion?—A. Indicated to my mind that he was listening to every word I was saying although apparently asleep. That was his manner.

Q. How extensive did you practice in his court, Mr. Ashton, when you were engaged in the general practice, the active practice?—A. Well, more so than any other court. Constantly from 1889 down to say 1900, and a great deal of the time since then.

Q. If I understand you correctly it was about a year ago that you concluded to retire from actual practice?—A. A year ago last January.

Q. What has been Judge Hanford's method of ruling upon questions which were presented to him in the course of trials when you were present—his manner and method?—A. Well, his manner has been thoughtful, judicial, logical, the way it appealed to me, and just.

Q. Have you engaged in the trial of injury cases before Judge Hanford?—A. Yes, sir.

Q. Have you had occasion to observe his rulings on the objections to the evidence that was offered during the course of the trial?—A. Yes, sir; I have.

Q. Will you explain to the commission or the committee the judge's manner in making these rulings.—A. Well, as I stated, the same as most any other ruling; although, of course, in the trial of a case when objections are raised and exceptions reserved and so on, the court naturally does not have the time to consider—the same length of time that the judge has on a motion for new trial or things of that character; but his ruling has always been thoughtful, in my judgment, according to the best dictates of his own conscience and mentality.

Q. Have you had any practice in the way of admiralty or maritime litigation before Judge Hanford?—A. Yes, sir.

Q. Was it much or little?—A. Well, a very large amount, for the last 15 or 16 years I have been heavily engaged in admiralty business; in fact, for 20 years I have been heavily engaged in it, but for the last 15 or 16 years it has taken two-thirds of my time.

Q. In those cases, I understand there is no jury.—A. No jury.

Q. It is all tried before the court?—A. Yes.

Q. What has been the judge's attitude in those admiralty cases which you have tried in his court, as to attention?—A. Well, he has been very attentive, and what I have noticed about Judge Hanford in admiralty cases more than most anything else is that he is very painstaking. Now, in admiralty cases, as you gentlemen of the committee probably know, everything is taken down by a commissioner and reported to the court. And many times, particularly in large collision cases and large salvage cases, the evidence becomes very voluminous, and I have never known a case but what Judge Hanford reads every word of the testimony, and it has been a matter of amazement and wonder to me how he has ever been able to do so during those years, with the great pressure of work—he certainly reads every word of it. Sometimes we have in these heavy admiralty cases two or three volumes of typewritten matter of many thousand pages; he is very careful that way in reading and considering it.

Q. In those admiralty cases, Mr. Ashton, has there been involved claims for salvage on the part of sailors and members of the crew of various ships?—A. A great deal of that.

Q. What has been Judge Hanford's attitude in respect to those claims, so far as your personal observation and so far as you have had experience?—A. Well, Judge Hanford has been very fair; in fact, tried to be fair to all sides, both the members of the crew, the officers of the ship, and the owners of the vessel. I have often thought, and I consider that Judge Hanford, if he is to be criticized at all in that regard, it is for too great liberality to members of the crew in cases of salvage services.

Q. What do you mean by that?—A. I mean in allowing them their awards for their hardships and their courage and their efforts in saving whatever was being salved at the time.

Q. Did you further mention that that has been his practice in those cases which you happen to have been a participant in with respect to the crew?—A. Yes; the judge is liberal to sailors in salvage cases.

Q. Have there been any personal injuries involved in any of those admiralty cases which you tried before his court?—A. Yes, sir; there have been some.

Q. What has been the judge's attitude with respect to the members of the crew who have suffered personal injuries?—A. Why, he has always been fair and just, if those personal injuries are sustained in connection with salvage services he is generally very liberal—even more so than usual.

Mr. DORR. That is all.

The CHAIRMAN. You say, Mr. Ashton, that the testimony is always taken by a commissioner in the admiralty cases?

A. Yes, sir.

Q. Does the commissioner report his conclusions or just the testimony?—A. Just the testimony.

Q. Sometimes they report conclusions?—A. No, he never reports conclusions; not in my experience. Well, counsel can sometimes stipulate; that is, the advocates and proctors in admiralty cases can stipulate to have the commissioner do that at times, but that is really done, except when some extensive mathematical computations are to

be made, you know; some complicated affair in connection with insurance.

Mr. McCoy. Is it not the usual thing for judges to decide salvage cases, and to make liberal allowances for the sailors?

A. Well, I don't know as it is usual, Mr. McCoy; it depends on what the sailors do.

Q. And does not that apply in Judge Hanford's case—that it depends on what they do as to how much they get?—A. Yes.

Q. And you do not want the committee to understand that you are prepared to say that Judge Hanford is unusually liberal to sailors in salvage cases, as compared with all the other judges who decide admiralty cases?—A. Well, I believe he goes a little farther than most of the other judges.

Q. What makes you think so?—A. Just from my general reading of the salvage cases in the books in the other districts, and so on. I may be wrong in that, but I think the judge goes a good ways, and I believe in giving the sailor a good allowance, too, when he has worked hard; he is entitled to it.

Mr. McCoy. All the judges do it in my experience. Now, you say you gather that from reading other admiralty cases in which salvage questions are involved; what do you mean, reading them in the Federal Reporter or some other reports?

A. Yes, sir.

Q. Well, you do not get anything in those reports which gives you any very definite information as to what the sailors did who got the allowances.—A. Except as the opinion reviews and discusses their actions.

Q. It does not go into it in detail particularly; in other words, they do not elaborate the evidence in the opinions in salvage cases to any great extent.—A. No, not as a rule; they refer to the conduct and efforts of the crew, of the individual sailors, of course in more or less general terms, say, in a general way what he did.

Q. I should gather, Mr. Ashton, from your testimony, that your practice has been principally in admiralty cases during the last few years?—A. Yes, sir.

Q. Are you president of any bank?—A. No, sir.

Q. Or director?—A. No, sir.

Q. Are you a director or stockholder of any railroad?—A. No, sir.

Q. Are you attorney for any bank, or is your firm?—A. No, they are not.

Q. Are you attorney for any railroad?—A. No.

Q. Is your firm acting for any railroad with a retainer?—A. No.

Q. Are you the head of what is known as the Ashton Syndicate?—A. What is the Ashton Syndicate; I have never heard of it?

Q. You never heard that phrase used?—A. I have heard the phrase used in connection with the ownership of tidelands over in Tacoma.

Q. What is your connection with the ownership of those tidelands; is it a corporation?—A. I am trustee, but not for any corporation; I am trustee for some people who own them.

Q. Have you any personal interest in the land in any way?—A. Except as trustee.

Q. You have no financial interest in them at all?—A. Well, I have a contract in connection with my trusteeship which might give me

a right to participate in the profits that are made out of the property, provided I do my duty properly as a lawyer and trustee.

Q. What is the property, what is the nature of it, and how extensive is it?—A. It involves about 34 blocks of tidelands.

Q. In the city of Tacoma?—A. No, it is on Tacoma Harbor, outside of the city.

Q. You speak of tidelands; when you speak of tidelands you mean tidelands which have the possibility of dockage, don't you?—A. No, sir, I do not, Mr. McCoy; I mean land that is covered by the ebb and flow of the tide.

Q. How far does your ownership carry you?—A. How do you mean?

Q. Does it carry any water rights with it?—A. Why yes, it carries water rights along the deep-water line; it carries the right to build piers and wharves.

Q. How much frontage is there on your property?—A. I should judge about 5,000 feet, or something like that.

Q. Who are the persons for whom you are acting as trustee or the corporations?—A. The persons for whom I am acting are chiefly in New York and San Francisco; they are not corporations.

Q. Who are the individuals—let me ask you another question first—is this agreement or whatever the instrument is a matter of record anywhere?—A. No.

Q. Who are the other people who are interested in that?—A. Why, they are—I don't know as it is necessary—do you think that I ought to answer that question, Mr. McCoy, if it goes into business affairs of a personal nature?

Q. Well, of course, I am reluctant, Mr. Ashton; I can tell you better if I know who they were as to whether I will ask you the next question. In other words, I have no desire to indulge in any pertinent inquiry into your private affairs.—A. Well, they are not railroads nor railroad companies.

Mr. HIGGINS. Do they in any way, so far as you know, bear any relation in their family, or business, or personal, or in any other way with Judge Hanford or any of his family?

A. They do not; they have absolutely nothing to do with him, and I am confident they do not know him.

Q. Has he himself, either directly or indirectly, any business interest or association with you either in the tideland or in any other commercial or business enterprise?—A. He has not; absolutely none.

Q. Has he ever had?—A. No. Wait a moment, Mr. Higgins. I at one time bought some stock in the Hanford Irrigation & Power Co. and maybe the judge had some interest in that; that was some years ago.

Q. How long ago was that?—A. Oh, that was—I don't know—it must have been 8 or 9 or 10 years ago when that company was formed, and I just took a small block of stock.

Q. That corporation was formed under the laws of what State?—A. Oh, I could not tell you; I did not form it; I did not have much to do with it; I think it was Washington.

Mr. HUGHES. Yes.

Mr. HIGGINS. Are you able to give the committee the information as to whether the corporate organization still continues—"The Hanford Irrigation & Power Co."?

A. Well, that I do not know; I really do not know. I paid very very little attention to it in recent years.

Q. Are you still a stockholder in the company?—A. No; I turned my stock over to some other people I understood were taking it over when the reorganization took place.

Q. Who was it you sold it to?—A. Well, I transferred my stock to a Mr. Mitchell.

Q. You don't know who bought it?—A. Mr. Mitchell bought it from me.

Q. Who was he representing?—A. Well, I don't know.

Q. Who owns and operates that property now?—A. Well, I don't know that; I paid no attention to it in recent years.

Q. Where is it located?—A. Its physical properties are over on the Columbia River, near the town which was named after Judge Hanford, the town of Hanford; and they have a hydroelectric plant there at Priests Rapids, a power line.

Q. What was the general purpose and object of the corporation?—A. Its purpose and object was to harness the powers in Priest Rapids of the Columbia River so as to furnish light, power, and heat to all that region of central Washington and help to develop that part of the State.

Q. Did they do that?—A. Yes, to a considerable extent.

Q. You were a member of the corporation from its organization and subscribed to the original articles of the corporation?—A. No, sir.

Q. How soon after its organization did you become a member?—A. Well, I could not tell you with precision, but I know in its very early stages.

Q. And you continued to be a stockholder?—A. Yes, sir; I took a very small block of the stock, I think it was only 10 or 20 shares, or something like that, and held them down until I turned them over to Mr. Mitchell.

Q. How long a time was that that you had them before you turned them over to Mr. Mitchell?—A. Well, I turned it over to Mitchell I guess about five years ago—four or five years ago.

Q. From the time Mr. Mitchell got it, or when your stock was turned over to Mitchell, the management and control of the Hanford Irrigation & Power Co. changed?—A. I understood that it changed; I would not now like to state who handled it, because I do not know with sufficient precision, but there was a general rumor then that it was being reorganized and some other people were buying large interests.

Q. Can not you tell the committee, Mr. Ashton, who purchased that at that time, what corporation or organization or individual or association?—A. Well, I really can not. All that I know is that I transferred it to Mr. Mitchell.

Mr. McCoy. You say the properties of the Hanford Power & Irrigation, or is it the Hanford Irrigation & Power?

A. I think the name was the Hanford Irrigation & Power Co.

Q. You say that their properties were at some place named Hanford, or thereabouts?—A. Or thereabouts, yes, sir; the main properties, I think, were up the river from Hanford.

Q. And was the town of Hanford named after Judge Hanford?—A. I understand so.

Q. And the company was named after him?—A. I think so; I am not sure as to that; I think so.

Q. Who asked you to buy the stock which you bought?—A. Well, I could not remember that; really I do not know.

Q. What did you pay for it, do you remember?—A. I think we paid par for it and I think it came this way, Mr. McCoy, that to add to the general development, that a right to buy the land was taken, and then the shares of stock were measured in some way according to that right.

Q. The shares carried with them the right——A. I think so.

Q. To take some of the property?—A. Yes, sir.

Q. Do not you remember who first spoke to you about buying that stock or taking an interest in the matter?—A. I do not remember. I know it was not Judge Hanford, if that is what you are driving at, because I first heard of it over in Tacoma, and if I remember right, Mr. McCoy, that it was a man named William Jones that spoke to me about going into that, but as to that I am not positive.

Q. Do you remember anything that Jones said to you; do you remember anything that the man, whoever it was that brought your attention to it, said to you to get you to go into it?—A. No; I do not remember what was said.

Q. Well, what was that that controlled your decision in regard to taking the stock; why did you take it?—A. Well, I think that I thought, I guess, I had a chance to make some money.

Q. Did you look into the project in any way before you put in your money?—A. Yes, I inquired. I remember talking with Mr. Jones; whether or not he invited me to subscribe or not, I could not say, but I remember talking with Mr. Jones and reaching the conclusion that it was a good proposition. You see, Mr. McCoy, I am an old resident of the State and in the Territory before the State; I have ridden on horseback over all that region years ago and I knew Priest Rapids in a general way and I often thought what a grand thing it would be, you know, to develop them.

Q. Well, did the fact that Judge Hanford's name was connected with it in any way influence you?—A. Oh, not in the least.

Q. Had the company at that time bought any property, any real estate?—A. Why, I understood that they had a number of sections of land at and about Hanford and had also secured or were securing the right of way for their ditch to conduct the water from just above the rapids down to the power house and that they had secured the property located at the intake at Priest Rapids.

Q. In regard to those tidelands down there in Tacoma, are they involved in any litigation of any kind; is the title to them or the right of possession of them or anything of that kind in litigation; is there or has there been any litigation in regard to that?—A. There is no litigation now; there was litigation.

The CHAIRMAN. Mr. Ashton, you stated awhile ago, as I recall it, that you, as trustee, would have an interest in these tide flat lands if you performed your duty as an attorney successfully. Was that about what you said?

A. Well, I mean, Mr. Graham, by that, this: That if I administered my—earned my money or earned my fee, I guess that I would have an interest, but my fee, I guess, will not be paid until the land is improved, and so——

Q. (Interrupting.) You also stated that some at least of the holders or the proposed holders of interests in that land lived in the East, out of this State.—A. Yes, sir.

Q. You say that it has been in court at sometime in the past. What court?—A. It was in the United States court.

Q. Judge Hanford's court?—A. Yes, sir.

Q. Has any final determination of the matter been reached?—A. Yes, sir.

Q. Is there any other phase of it yet to be litigated?—A. None whatever; it is disposed of in the Supreme Court of the United States.

Q. Judge Hanford tried it in the lower court?—A. Yes, sir; it was heard before Judge Hanford.

Q. When was that?—A. 1908.

Q. Was the decision favorable to you and your colleagues?—A. It was favorable to the State of Washington and in that way favorable to myself and my colleagues, as grantees of the State.

Q. Did the Supreme Court of the United States in any way modify the decision or opinion of the trial court?—A. It did not.

Q. And that litigation is now completed?—A. Disposed of, remittitur is down from the Supreme Court and all time for further action in the way of a rehearing or otherwise has long passed.

Mr. HIGGINS. Did you say that the Supreme Court affirmed Judge Hanford's decision in that case?

A. Well, it went off in the Supreme Court of the United States on the question of jurisdiction.

Q. What were the issues, briefly, raised in the case?—A. Briefly, the issue was whether or not the United States could dispose of the shore of the United States to Indian tribes of the United States and thereby fail to carry out its trust to the future States of holding the shore between the meander line and deep water in trust for the future States.

Q. Had you an interest in those tidelands before that litigation was instituted?—A. Had I an interest?

Q. Yes.—A. Yes; the same as I have stated.

Q. The same as you have now?—A. Yes.

Q. Did you appear as attorney in the case?—A. Oh, yes; I appeared as attorney in the case and I appeared as party in it.

Q. What was the title of the case?—A. Why, it was the case of—a number of Indian names.

Q. Can you give us the volume of the Supreme Court Reporter in which it is reported?—A. No; I can not do it now.

Q. Can you furnish it to the committee?—A. Yes; I can get it.

Q. Sometime to-day?—A. Yes; can give you the Federal Reporter decision, and also you will find it in the Supreme Court Reporter, where it was simply dismissed without jurisdiction. It was not the ordinary dismissal. The court went into it with a few lines and cited some cases of the Supreme Court of the United States—I will look that up for you.

The CHAIRMAN. The reporter will insert that information when they get it in this connection at this place.

Whereupon a recess was taken until 2 o'clock p. m.

AFTERNOON'S PROCEEDINGS.

Continuation of proceedings pursuant to recess.
All parties present as at former hearings.

WILLIAM H. PUMPHREY, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name?
A. William H. Pumphrey.
Q. P-o-m-——A. P-u-m-p-h-r-e-y.
Q. Where do you reside, Mr. Pumphrey?—A. Across the bay, in Kitsap County.
Q. How far from the city of Seattle?—A. About 10 miles.
Q. How long have you lived in this vicinity?—A. Forty-two years.
Q. What is your occupation?—A. Well, I am out there on a little place just at present.
Q. A farm?—A. Well, I don't know whether you would call it a farm or what would you call it. I call it place.
Q. A country home?—A. A country home.
Q. Are you engaged in any occupation?—A. No. My son is in the chicken business. I am living with him.
Q. What has your business been?—A. I was in the book and stationery business in Seattle for 30 years.
Q. Do you remember a trial in the Federal court in which Judge Hanford presided a few years ago, where one Holt was defendant, charged with homicide?—A. I do.
Q. You were on the regular panel during that term of court, were you?—A. Yes, sir.
Q. Did you serve on that jury?—A. I did.
Q. How are the jurors selected for this service?—A. I guess they are drawn regularly every time. I was subpœnaed, or whatever you call it, to appear here for the—I think it is called the November term, or January, I don't know what it is. It was in December.
Q. Who were the attorneys on the respective sides of that case?—A. Mr. Todd was the United States attorney—Elmer E., I think is his name, and Mr. Caldwell, assisted by Mr. Revelle, was for the defense.
Q. When did you learn that you would be required as a witness here?—A. At this——
Q. (Interrupting.) Now.—A. Why, yesterday evening.
Q. Had you any conversation with anyone as to what you were to come about?—A. No, sir.
Q. Have you talked with anyone yet about that?—A. No, nobody connected with the case.
Q. Sir?—A. Nobody interested in the case at all.
Q. Well, I didn't quite mean that, but have you talked with anyone up to this time as to what you were to give testimony about?—A. No.
Q. Nobody?—A. No, sir. What I know myself.
Q. How long did that trial last?—A. Why, I could not say positively; it was something over a week, I think, that we were in the jury box and on the jury after we were instructed, I think it was something over a week; I am not positive.

Q. Do you recall any occasion during that trial when Judge Hanford while on the bench seemed to be nodding or napping or sleeping?—A. I don't. Judge Hanford has a way of closing his eyes sometimes, but he is not always asleep, I think, when his eyes are closed.

Q. Does he appear to be?—A. No, just—I would take it that the man was concentrating, that is all, from the way he acts.

Q. Do you recall any instance or occasion during that trial when one of the attorneys made an objection to the introduction of some evidence and some little time elapsed before the judge noticed the objection?—A. I do not.

Q. Or made any ruling upon it?—A. I do not.

Q. If such a thing occurred, it escaped your observation?—A. If it did, yes, sir.

Q. Was it in this court room the case was tried?—A. Well, I don't know. I think there is a resemblance between the court rooms in this building and I can't—I think this is the room; if so, the jury sat here, but I have forgotten what seat.

Q. Where did you sit, if it was this room and that jury box?—A. Well, I think I was on that back row of seats there, but which one I don't know.

Q. Afterwards, I believe, when you came to consider of the verdict—— A. (Interrupting.) Now hold on a moment, please, strike that out. That Holt business, I think that went to the jury in the old building, did it not?

Q. Well, just give your best recollection of it.—A. Well——.

Q. But let what has been stated stand in the record.—A. Well, I think that went to the jury in the old Federal building down here.

Q. I don't know.—A. Well——

Q. Just give your best recollection of it.—A. Well, I think that is where it went to the jury, but——

Q. (Interrupting.) Well, was the situation there the same, relatively, as this is?—A. Exactly the same.

Q. In regard to the bench and the jury box?—A. Yes, yes.

Q. The attorneys sat at a table in front of the judge's bench, as they are located here now, did they?—A. Yes, sir; the judge was on our left as we looked from the jury box, and the attorneys were in front of us.

Q. Immediately in front of you——A. (Interrupting.) Yes.

Q. (Continuing.) Where you sat?—A. Yes; just the same as they are here in this room.

Q. To what extent during that trial did the judge assume the attitude which you have referred to when one might think he was asleep?—A. Oh, only occasionally.

Q. What was the position of his head at those times, back against the chair, as mine is now, or was it forward on his chest or toward the chest?—A. Well, sometimes it would be forward. The judge has a habit of pulling at his whiskers, plucking at them, like this, and he would do that frequently.

Q. Yes. I am not asking now about his habits, but about what actually took place then. I don't care to have you answer according to what you think his habit is, but if you recall, I want to know what he did then.—A. Well, I can't recall.

Q. Well, on any of the occasions during that trial, did you notice him when he was in the condition you have referred to? Was his head leaned forward or backward, or was it erect?—A. Oh, it was—sometimes his head there would be back on the back of the chair and then at other times his head might have been dropping a little.

Q. When you say "might have been," do you mean it is your recollection it was?—A. Well, yes.

Q. How long at a time would he continue in that attitude?—A. Not long.

Q. Make that answer more specific, if you can.—A. Well, I can't.

Q. Well, would it be five seconds or a minute?—A. Well, I don't know——

Q. (Interrupting.) Or 20 minutes?—A. I was not keeping time on the judge, of course.

Q. I know; but if you observed it at all you must have a recollection?—A. No; I would not undertake to say——

Q. (Continuing.) As to whether it was a short time or several minutes?—A. I would not say whether it was a minute or two minutes or 10 minutes or a half a second.

Q. Because you did not observe that closely; was that the reason?—A. No.

Q. Why?—A. I was not interested in that portion of it. There was not a day when I was on the jury box that I thought the judge was asleep, and consequently I paid no attention.

Q. You were giving your attention mainly to the questions of the lawyers and the answers of the witnesses?—A. Yes; that is what we were there for.

Q. Quite so, quite so. Have you seen Judge Hanford elsewhere than in court?—A. When?

Q. At any time.—A. Yes; often meet him. I just came up in the elevator with him.

Q. But prior to to-day?—A. I have not seen——

Q. (Continuing.) Have you been with him——A. (Interrupting.) I have not seen Judge Hanford, to speak to him I was going to say, since the Holt trial, but probably I have, maybe once or twice.

Q. Well, if you did, it did not impress itself on your recollection.—A. No, no; if I did, it was just casually meeting.

Q. Have you ever seen the judge, or been with him here in the city in the night time?—A. Yes, I have seen the judge at a good many social functions.

Q. Have you at any other place, in the night time, here in the city?—A. No; I think I met the judge at the Rainier Club one night several years ago.

Q. Are you a member of it?—A. No, sir.

Q. Were you?—A. No, sir.

Q. You were just a guest then?—A. Yes, sir.

Q. On one occasion only?—A. I think so.

Q. Have you seen the judge drinking any intoxicating drinks?—A. Well, I have seen the judge take a drink, but what he drank I don't know—whether intoxicating or not.

Q. Where was it?—A. Oh, I could not recall. I have seen him take a drink at social functions—drink wine or punch, or anything there, just the same as the rest of us.

Q. Well, if wine or punch, you have an opinion as to whether it was intoxicating?—A. Well, there are punches and punches.

Q. Sir?—A. There are punches and punches.

Q. Yes. Jim Flinn can prove that. Well, when you spoke of punch I suppose you meant punch made from whisky.—A. Well, not necessarily.

Q. Well, did you?—A. Well, I don't remember what the punches were made of. Oftentimes they have claret punch.

Q. Very well. You say you don't know. That settles it.

The CHAIRMAN. Gentlemen, do you desire to ask the witness further?

Mr. DORR. Just a few questions.

By Mr. DORR:

Q. Mr. Pumphrey, when the Holt trial was held, were you on any other cases, or was that the only one?—A. No; I was on some other cases during the term.

Q. How long were you in attendance on Judge Hanford's court as a juror at that time?—A. Why, I think we were subpœnaed to meet here on a certain day in December and I think it was nearly the first of March before we were discharged.

Q. That is, on the regular panel.—A. Yes; on the regular panel.

Q. Then I infer from that that you sat in a number of other cases as a juror?—A. Yes, there were some other cases.

Q. What position in the jury, in the Holt case, did you occupy if any other than an ordinary juror?—A. I was elected foreman of the jury after we got our instructions and retired.

Q. Yes. How long was the jury out in that case, if you remember?—A. Well, I could not be certain on that, but I think that we went out in the forenoon and we did not get back in—we didn't come to a verdict until the next afternoon, the afternoon of the next day.

Q. You would be out all of one night then?—A. Yes; we were out all of one night.

Q. And practically two days?—A. Yes, sir.

Q. Is that correct?—A. Why, to the best of my recollection, yes, sir.

Q. Do you remember of any instance, either in the Holt trial or in any other trial where you were attending court as a juror, when Judge Hanford was presiding on the bench, of ever seeing him in a state of intoxication on the bench?—A. I do not. I never have seen him that way.

Q. Or in any condition that led you to believe that he was intoxicated?—A. No, sir.

Q. Have you ever seen him intoxicated off the bench?—A. I beg your pardon?

Q. Have you ever seen him intoxicated at any time?—A. I never have.

Q. How long did you live in the city of Seattle?—A. I came to Seattle in the fall of 1870 and I moved over where I am in May, 1901.

Q. That is, over onto the small———A. (Interrupting.) Yes.

Q. (Continuing.) Ranch?—A. Yes.

Q. Until you moved away from Seattle, what was your business here?—A. I was in the book and stationery business up to within

about eight years before I left town, and then I was route agent for the Northern Express Co.

Q. How many years were you engaged in the stationery business in this city?—A. Why, I think in the neighborhood of 30; between 25 and 30.

Q. And during all that time had you known Judge Hanford?—A. I have known him ever since he came to Seattle.

Q. Who was here first, he or you?—A. Well, I don't know. I came here in 1869. I don't know when the judge came. I came here in the spring of 1869. The judge's father and mother lived here at that time, but I don't know whether he was here or off at school. That I can't remember.

Q. But the family were here?—A. Yes; the family were here.

Q. Before you?—A. Yes; when I came here.

Witness excused.

W. H. BOLEN, having been first duly sworn, testified as follows:

Mr. McCOY. What is your full name?

A. W. H. Bolen.

Q. Are you here under subpœna, Mr. Bolen?—A. I am. I have it here.

Q. Where do you live?—A. Sorrento Hotel.

Q. That is in Seattle?—A. Seattle, Wash.

Q. And are you an attorney?—A. I am.

Q. How long have you lived in Seattle?—A. Seven years.

Q. Do you know a man named Bennett, who testified at this hearing here the other day?—A. Well, I was informed that that was his name. I didn't know him at the time I had——

Mr. McCOY (interrupting). Will you stand up, Mr. Bennett?

A man stood in the audience.

The WITNESS. Yes; that is the gentleman.

Mr. McCOY. Is that the man?

A. That is the gentleman.

Q. Did you ever have any conversation with him about Judge Hanford?—A. I did.

Q. When was it?—A. It was June 29, which was Saturday, about between 7 and 8 o'clock.

A. Where was it?—A. Washington Annex Hotel, Seattle.

Q. You may state the conversation in your own way.—A. I just—it has been my custom recently to eat dinners at that hotel. I had been in the habit of living there—I lived there for 18 months. I was up there on that particular evening and just got through dinner; sat down in the lobby of the hotel near the window. Mr. Bennett was then seated at the window. Mr. Perry passed through the lobby and stopped at the cigar counter to purchase a cigar, I believe.

Q. What Perry?—A. John H. Perry, attorney. Mr. Bennett then turned to me—he was an absolute stranger to me and I to him—and said, "I wonder where Mr. Perry—John Perry—is going to hang his shingle out after this investigation is over." I said, "That's a strange thing; I was going to ask Perry that question myself." Well, there were two other gentlemen there; Mr. Desmond was seated on my right; so we entered a general conversation about the Hanford inves-

tigation, and the subject of our conversation was in reference to the line of testimony that was given last week by the various witnesses on Judge Hanford's drunkenness or alleged drunkenness. So Mr. Bennett asked me what particular bearing the fact of Mr. Hanford being drunk would have on this investigation toward his impeachment. I said, "I understand the purpose of the testimony with reference to drunkenness was to connect up, as an incident or circumstance, his general line of misconduct, if any, and if his drunkenness in any way affected his judicial decisions or his work on the bench, why, that would be taken by the judicial committee—the congressional committee—as a circumstance toward his impeachment." Well, he said, "I can't see myself where the fact of a man being drunk would have anything to do with the case." He says, "I have personally myself seen Judge Hanford drunk not once, but a dozen times, and have ridden on the trains with him; sat very near him in the car."

Q. When he was in that condition?—A. When he was in that condition. And our conversation went off on the question of circumstance and circumstantial evidence and so on, and I gave some curbstone opinions to him about circumstantial evidence.

Q. Well, who else was present at the time he made that statement to you?—A. When he made that statement, Mr. Desmond, who is likewise an attorney practicing law here—called to the hotel to see me that evening; we had an engagement; that was our meeting place—be overheard Mr. Bennett's query to me as to where Mr. John H. Perry was going to hang his shingle out when this investigation was through, but as to the other matters his attention was attracted by a conversation of the gentleman on his right and he paid no particular attention to it, I understand from him.

Q. Well, did Mr. Bennett's method of giving you this information make it appear that it was a josh?—A. Why, no, the man was very loquacious, he had probably had a good dinner, and he was smoking a cigar, and he was in the mental attitude of carrying on a conversation; and I was a total stranger to him, and he voluntarily advanced the information. In fact he wished to engage me in conversation about this inquiry.

Mr. McCoy. Has the stenographer Mr. Bennett's testimony here? I would like to see it for a minute.

The testimony was handed to Mr. McCoy.

Mr. McCoy. Now, at the time this conversation took place, were there a number of traveling men—traveling salesmen sitting there by you?

A. No; he was the only traveling salesman. I at the time didn't know he was a traveling salesman, but he was the only one there at that time. Shortly after the conversation got to the point of circumstantial evidence, which was somewhat later than his statement to me about Judge Hanford's condition, why, another elderly gentleman who travels for—I don't know, but he sells in this territory trunks and grips and so on—came into the hotel from the street, and he is a gray haired gentleman, and I got up and gave him my seat beside Mr. Bennett, and I went to another portion of the lobby and got a straight-back chair and brought it up in the circle; that made five, that made Mr. Desmond and myself and Mr. Bell—this gentleman

I now speak of—and Mr. Bennett; and they were the only—we five were the only persons present until I left the hotel.

Mr. McCoy. Well, now, at any time while the five whom you have mentioned were present, did Mr. Bennett repeat what he had said to you in regard to Judge Hanford's alleged intoxication?

A. No; he merely made that statement, and I didn't care to discuss the matter, and we went off, as I say, on various lines. I believe Mr. Bennett cited some case with reference to circumstantial evidence and auto suggestion, and so on, and then we went off discussing Hugo Munsterberg work on psycholoy on the witness stand, and then it simmered down until I left with Mr. Desmond.

Q. Do you know any man named Hitchcraft?—A. I don't. I never heard the name; never knew anybody by that name.

Q. Was there any such man there present at the time the conversation took place?—A. Not to my knowledge; no, sir. The gray haired gentleman, his name—Mr. Hitchcraft, or whatever you mention—he didn't appear until I, say, at least five or possibly ten minutes after our conversation in reference to the Judge Hanford inquiry.

Q. And did I ask you whether or not you repeated this conversation to Mr. Perry?—A. No; you did not.

Q. Well, did you?—A. About two hours later the same evening I again saw Mr. Perry and mentioned the fact to him, and the following day, which was Sunday, I again saw him, and he asked me if I understood that gentlemen was still in that hotel. I said he was, and I gave a description to Perry, and he immeditaely walked over to the blotter of the hotel, the registry, and I think learned his name. Of that I don't know, but I know he went toward the blotter and engaged the clerk in conversation.

Mr. McCoy. At this point, I am not clear whether it is noted in the record that the gentleman who stood up over here, answering to the name of Mr. Bennett, was the witness who testified here the other day.

That is all, so far as I am concerned.

The Chairman. Are there any further questions with this witness?

Mr. Dorr. None by us.

The Chairman. Maybe Mr. Bennett would like to ask some questions.

Mr. Bennett. He remarks that I was sitting in the chair alone when he came over there. Mr. Clark and Mr. Hitchcraft and I came up from dinner together, and I sat in that chair when this gentleman came in.

Mr. McCoy. You are now testifying under oath.

Mr. Bennett. Yes, sir; I didn't know who this gentleman was at the time. Of course, I have seen him around the hotel.

Mr. McCoy. That is all.

Mr. Hughes. I would like to ask Mr. Bennett——

Mr. McCoy. Well, call him back, please. I gave you that opportunity.

The Chairman. Did you say Bolen or Bennett?

Mr. Hughes. Bennett. I would like to ask Bennett a question.

Mr. McCoy. I would like to have Mr. Bolen back, too.

Mr. Hughes. I am not going to ask anything about that, because it is hearsay testimony. I want to ask this witness one or two other questions.

The CHAIRMAN. Take your place.
Mr. MCCOY. I just want you to be here a minute, Mr. Bolen.
The CHAIRMAN. Take the witness stand.

M. C. BENNETT, being recalled, testified as follows:

By Mr. HUGHES:

Q. Did you ever see Judge Hanford intoxicated?—A. No, sir.
Q. On the train or anywhere else?—A. Never. Never saw the man until I saw him here Wednesday when you brought him in here.
Mr. HUGHES. That is all I want to know.
The CHAIRMAN. I think that was his answer the other day, so that this is mere repetition.
Mr. HUGHES. You might ask him as to the conversation with Mr. Bolen, but I care nothing about that. I only want to get at what is the fact.
The CHAIRMAN. Well, that was in the record already. That is all, Mr. Bennett.

By Mr. MCCOY:

Q. I would like to ask you a question. Was Mr. Hitchcraft, or whatever the name was, present at this conversation?—A. No; not over there; no.
Q. You had forgotten this conversation when you were on the stand the other day?—A. Well, Mr. Hitchcraft was the only man I have heard talk about that.
Q. You had forgotten this conversation that you have just heard Mr. Bolen testify to?—A. Yes.
Q. You had forgotten that?—A. How?
Q. You had forgotten that conversation when you testified the other day?—A. Yes.
Q. You had forgotten all about it?—A. About Hitchcraft? No; I had not forgotten about that, but he was not over there.
Q. Had you forgotten your conversation with Mr. Bolen?—A. I don't know as I just exactly understand you.
Q. When you testified here the other day, had you at that time forgotten that you had had a conversation with Mr.Bolen?—A. I didn't know who Mr. Bolen was at that time.
Q. Well, you have seen him on the witness stand to-day?—A. Yes.
Q. Well, then, you had forgotten you had had any conversation with the man who testified here two minutes or so ago?—A. Why, no; I know he was there.
Mr. HUGHES. Perhaps it would be fair to the witness. He was not called by us. I never saw him before, but it seems to me it would be fair to the witness to ask him about that conversation. It is not a matter——
Mr. MCCOY. I have gotten out of the witness and out of Mr. Bolen all I want about the transaction. He is here. If you want to ask him, ask him.
Mr. HUGHES. I don't care anything about it, because it is not evidence.
The CHAIRMAN. I don't care to ask him anything further. I gave him an opportunity to say what he wanted to say.
Mr. MCCOY. I would suggest that he has something to say to Judge Hanford in the nature of an apology.

Mr. HUGHES. Oh, I think——

Mr. MCCOY. I suggest that the witness has something to say to Judge Hanford in the nature of an apology.

Mr. HUGHES. I think he has, too, if he made the statements that are made here.

Witness excused.

JAMES M. ASHTON, being recalled, testified as follows:

By Mr. DORR:

Q. Mr. Ashton, you stated that according to your best recollection some gentleman by the name of Jones brought to your attention the Hanford Irrigation & Power Co. at the time or about the time you purchased the stock in that corporation. What Mr. Jones was that?—A. William Jones, of Tacoma.

Q. Was he interested in the company, do you know?—A. I don't know whether he was or not. He knew about it and contemplated becoming interested, I think.

Q. Now, with reference to the tideland dedication concerning which you testified this forenoon, I hand you a copy of the Federal Reporter, volume 170, and ask you if you can identify that case in that volume? A. Yes; I can.

Q. What is the page of the volume of the Federal Reporter 170 at which the case commences?—A. Page 509.

Q. At which the case commences?—A. Page 509, volume 170, Federal.

Q. Who were the attorneys, or what is the title of the case reported there?—A. United States and others against Ashton and others.

Q. Who were the others that are referred to in the title as the plaintiffs' party?—A. Well, there was the State of Washington and——

Q. (Interrupting.) The plaintiffs' party, I say?—A. Oh. Well, there were a bunch of Indians, something like five or six Indians who were trustees of the descendants of the Puyallup tribe of Indians.

Q. And the United States was appearing as a guardian for the Indians, was it not?—A. Yes.

Q. That is a leading question, but that is the fact?—A. That is the way it was in the court below.

Q. Now, the defendants included who besides yourself?—A. Why——

Mr. MCCOY. (Interrupting.) Is that material, Mr. Dorr?

Mr. DORR. I want to show the State of Washington was a party; that is all.

Mr. MCCOY. Well.

A. It included the State of Washington as the main party.

The CHAIRMAN. Direct him to whatever you want to go into particularly.

Mr. DORR. And several others, without going into details?

A. Yes; any others who had purchased any of these lands from the State, in addition to myself, you know.

Q. Now, who were the attorneys for the plaintiff?—A. Why, Benjamin S. Grosscup—B. S. Grosscup here—of Tacoma, was the special Assistant Attorney General, and Charles Bedford was associated with him for the United States.

Q. Who were the attorneys in the case before Judge Hanford, for the defendants?—A Mr. Grosscup and Mr. Bedford.

Q. For the plaintiffs they were?—A. For the defendants you said.

Q. I now ask you as to the defendants?—A. Well, there was Mr. Cushman for the defendants—Edward E. Cushman.

Q. Is he the present United States judge?—A. In Alaska; yes, sir.

Q. Who has just been appointed to this district?—A. Yes, sir.

Q. As the successor of Judge Donworth?—A. Yes, sir; the same man.

Q. Who else?—A. And Col. W. H. Doolittle, of Tacoma, and then there was my firm, Ashton & Hayden, as it stood then.

Q. That case is——A. (Interrupting.) Then do you want—then there was W. P. Bell, the attorney general of the State of Washington, you know?

Q That is what I wanted to find out.—A. He was for the State of Washington.

Q Now, that case was appealed from Judge Hanford's judgment to the Supreme Court of the United States, as I understood you this morning?—A. Yes, it was.

Q. And dismissed by the Supreme Court for want of jurisdiction?—A. Yes, that is right.

Q. Is it reported in any of the United States Supreme Court reports?—A. There is a memorandum decision to that effect in volume 220 United States Supreme Court Reports, page 604. The same case will be found in the lawyers' edition at page 605 of volume 55.

Q. I observe that the title of the case which you have just referred to in the Supreme Court reports is not the same as the one given in the Federal Reporter, but it is the same case, is it?—A. It is the same case.

The CHAIRMAN. Mr. Ashton, would you pass the volume over, please?

A. It is just a memorandum. I think you will find it a little fuller in the Lawyers Edition [producing volume].

Mr. DORR. How was the State of Washinton interested in that litigation, Mr. Ashton?—A. Why, the defendants purchased the property from the State and the State became involved for the purpose of defending its title.

Q. And the Attorney General did appear in the case all the way through?—A. Oh, yes; all the way through. He took an active part.

Q. Had the patents yet issued by the State——A. (Interrupting.) Yes.

Q. (Continuing.) To these lands?—A. Yes, sir.

Mr. DORR. That is all I wish to ask Mr. Ashton.

By the CHAIRMAN:

Q. The Supreme Court of the United States did not touch upon the merits of the matter at all?—A. No, Mr. Graham.

Q. All it said was, "Dismissed for want of jurisdiction?"—A. Yes. And then it cites a number of cases there.

Q. But those cases, I presume, are cited as authority for the action they took and the proposition they assert there, it seems, for want

of jurisdiction?—A. Yes, they are authority. But if you will look at those cases you will find that they are also authority upon the fact that the constitutional covenant for the future States, you know, must not be interfered with. There is also authority on those points.

Q. Well, a case is authority on a great many points, but when it is cited to support a particular proposition we would be hardly right in assuming that the court cited it to support a proposition which had reference to the other things decided in the case.—A. Well, probably not. But they base their decision on want of jurisdiction.

The CHAIRMAN. That is very apparent from what they say. That is all.

Witness excused.

THEODORE L. STILES, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name, please.

A. Theodore L. Stiles.

Q. S-t-i-l-e-s?—A. S-t-i-l-e-s.

Q. Where do you live, Mr. Stiles?—A. At Tacoma.

Q. How long have you lived there?—A. Twenty-five years ago yesterday.

Q. How long have you lived in this vicinity anywhere?—A. That same time.

Q. Where did you come from to Tacoma?—A. Directly from Arizona.

Q. You are a professional man?—A. I am a lawyer.

Q. And have been for how long?—A. Forty-one years.

Q. Are you still in the active practice of your profession?—A. I am.

Q. Have you a firm connection?—A. I have not.

Q. You are practicing alone?—A. Alone.

Q. Does your practice extend to the Federal courts?—A. Somewhat.

Q. To what extent have you practiced in the court over which Judge Hanford presides since you have been at Tacoma?—A. My practice would not be called extensive. It has been now and then.

Q. Of course you are acquainted with Judge Hanford?—A. Very well.

Q. Intimately?—A. No; I could not say intimately.

Q. Is it a professional acquaintance; that is, through your business as a lawyer, or is it more than that?—A. Entirely professional.

Q. Have you at any time had any appointment from the judge?—A. I have not.

Q. Have you practiced at Seattle, as well as Tacoma, before Judge Hanford?—A. I have.

Q. If at any time you have seen Judge Hanford when you thought he was under the influence of any intoxicant, you may tell the committee about it.—A. I never have.

Q. Have you seen the judge drink any intoxicating liquor?—A. I think I have, though I could not put my finger on but one instance.

Q. What one was that?—A. That was an occasion three years ago, when Judge Donworth was appointed in the district, and we had a great jollification at Tacoma over it, and both judges were there and

everybody was feeling particularly happy because of the circumstance that we had at last got an assistant judge in the district; and there was a good deal of champagne and other good things there that night, and I very distinctly remember lifting my glass to Judge Hanford; but that is the only time I could swear positively that I ever saw him take a drink, though my impression would be that I have perhaps taken a before-dinner cocktail or something of that kind with him at the Rainier Club.

Q. You state that you lifted your glass to him. It seems to me that testimony is directly against you rather than against him.—A. Well, I am willing to accept the impeachment.

Q. What did he do?—A. I am very sure that he returned the compliment.

Q. He responded?—A. Yes, sir.

Q. Are you a member of the Rainier Club?—A. No; I am not.

Q. You were a guest there?—A. I am frequently a guest there.

Q. You say you think you have seen him drinking there?—A. I would say perhaps that once or twice, when I have joined him at the table at luncheon or at dinner, that there has been a cocktail on the table, or something of that kind; very frequently occurs; and I have a few times sat down at luncheon with the judge.

Q. Have you seen the judge late at night at any time here in Seattle?—A. No; I don't think I ever did.

Q. Have you seen him at any time or at any place when he appeared to you to be more or less under the influence of intoxicants?—A. It never struck me for a moment, in my acquaintance with Judge Hanford, that he was at any time under the influence of intoxicants.

Q. Have you noticed anything peculiar in his manner as a presiding judge—in his demeanor and appearance?—A. I have noticed what other witnesses have spoken of here, and heard it commented upon frequently among lawyers.

Q. Describe what you noticed.—A. I used to, when Judge Hanford sat more frequently at Tacoma, when I had no case of my own I was in the habit quite frequently of attending the court in its sittings, and I noticed often—oh, now and then, as I would be there—that Judge Hanford would seem to be weary and occasionally his head would drop forward and his eyes were closed; sometimes he would throw his head backward and close his eyes. I have seen him get up and stand behind his chair and close his eyes. Anyone who did not know his habits might think that he was napping, but I venture that the lawyers in the case never thought so. My practice before Judge Hanford has been mainly in equity cases, and I have noticed at times what Mr. Bates spoke of this morning, that when a lawyer was making a rather prosy argument the judge would very frequently drop his head, close his eyes, or something of that kind, but I have always attributed it entirely to weariness, knowing the life that the man was leading, working from 12 to 16 hours a day.

Q. Of course you don't want us to infer anything against Mr. Bates's argument by your statement?—A. Not at all; not at all. I have had the same experience.

Mr. HIGGINS. That suggestion of the prosiness came from you, not from Mr. Bates.

The WITNESS. Well, of course, I have larger liberty in that respect than he had.

The CHAIRMAN. Any further questions to ask Mr. Stiles, Mr. Hughes?

By Mr. HUGHES:

Q. You have tried some long cases—jury cases—before Judge Hanford, have you not?—A. A few.

Q. And have had opportunity, in the trial of cases, both law and equity, to observe his manner of presiding over the trial?—A. I have.

Q. And his rulings?—A. Yes.

Q. I ask you, Judge Stiles, whether he was always prepared when an objection was raised or a question was argued, notwithstanding his habit of closing his eyes or nodding, to decide and decide immediately upon its submission to him?—A. I never saw any hesitation whatever.

Q. What do you say as to the clearness and accuracy of his decisions?—A. I think Judge Hanford is remarkable in that respect. In statement he has few equals, among our western judges at least, and I know of no superiors.

Q. What do you say of his knowledge of the law?—A. I don't think we have anyone among us who is his superior in that respect.

Q. What do you say of the clearness and retentiveness and accuracy of his memory?—A. Why, I can only speak of one test as to that, and that is he always seems to be familiar with cases that are the ordinary run of cases in the run of cases that go in the courts back and forth, and the judge always seems to be familiar with those. You can hardly speak of one that he does not mention it as—some feature of it.

Q. What do you say as to his ability and temperament as a judge—judicial ability and temperament?—A. I don't question his ability whatever. I have thought, sometimes that in temperament, perhaps through habit, he was a little hasty, severe.

Q. A little severe?—A. Yes. Perhaps my own experience accounts for that more than anything else.

Q. Judge Stiles, how long have you yourself been a judge?—A. I was a judge once five years.

Q. In what capacity?—A. As a judge or member of the supreme court of this State.

Mr. HUGHES. That is all.

By Mr. MCCOY:

Q. The judges in the Federal court follow the laws of the State, substantially, don't they, as far as practice and what not?—A. Generally in the practice in actions at law.

Q. Do you think that a judge who has a retentive memory and is well posted on the law ought to be thoroughly familiar, without reminder, with the sections of your code here in this State in regard to material and immaterial variance and complete failure of proof?—A. Why, I have no doubt that a judge in the Federal court will become acquainted with those matters generally. I don't suppose a judge of the Federal court studies the statutes of the State to any great extent.

Q. Well, don't you think that a judge who was administering the law of the State, practically, in the Federal court every day in the trial of cases ought to be thoroughly familiar with those sections?—A. Well, the practice in the State courts is not controlling in the

Federal court; there are lots of points, a great many points, in which the Federal court has its own practice and follows it. Generally, though, they are the same.

Q. Is the Federal court in any way bound by those three sections of the code that I have spoken of—the code of Washington?—A. I doubt that.

Q. What?—A. I doubt that.

Q. In any kind of a case?—A. I doubt that in any case. I have not seen it tested, but there are many provisions which it does not follow; for instance, in matters of new trial, for instance, that are of no importance whatever in the Federal court.

Witness excused.

J. B. BRIDGES, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell your full name.

A. J. B. Bridges, Aberdeen, Wash.

Q. How far is that from Seattle?—A. Something over 100 miles.

Q. In what direction?—A. Southwest.

Q. How long have you lived at Aberdeen, Mr. Bridges?—A. Some 12 years, although I lived in a town immediately adjoining Aberdeen for some 10 years prior to that, with an office most of the time at Aberdeen.

Q. What is your business or profession?—A. Practicing attorney.

Q. For how long a time?—A. Twenty-odd years.

Q. And still in the active practice?—A. Yes, sir.

Q. You are acquainted with Judge Hanford, I assume?—A. I am.

Q. How long have you known him?—A. Oh, 15 or 18 years; I don't recall the exact time.

Q. To what extent have you practiced in his court?—A. To a certain extent. I would not want to say that my practice had been extensive in the Federal court, but I have had considerable there.

Q. Where, mostly?—A. Chiefly at Tacoma, when Judge Hanford sat there, and somewhat here in Seattle, also, but more in Tacoma.

Q. Covering what period of time?—A. I think probably the first time I appeared in his court for the trial of a case was something like 15 or 18 years ago—15 years ago, I would say.

Q. How many cases a year would you have before him?—A. Oh, I could not approximate that; I——

Q. (Interrupting.) How many times a year would you appear professionally in his court?—A. At different times, different amounts. Maybe two or three cases a year, on an average, or a half a dozen cases possibly; some years more than that, possibly some less.

Q. During the trial of those cases you would be at Seattle or Tacoma, whichever it was, and live at the hotel until your business was done, and then you went back home?—A. Yes, sir.

Q. Had you any other opportunity to notice or be with Judge Hanford except on those professional occasions?—A. Yes; I have generally attended the State bar association meetings, and Judge Hanford has practically always attended them, and I have met him and been around and with him more or less on those occasions. So also on some other occasions. I have met him in Aberdeen a time or two. He was there not long ago on some celebration day and delivered an

address, and I was with him considerable on that occasion, and some other occasions similar to that.

Q. During your acquaintance with him, have you at any time noticed him when you thought he was affected by or under the influence of intoxicating liquors?—A. I have never seen him under the influence of intoxicating liquors; at any rate, I did not so consider he was.

Q. Have you seen him under circumstances when one not acquainted with him might think he was?—A. Yes.

Q. What were they?—A. Judge Stiles just gave a very good description of a peculiarity of Judge Hanford when he apparently takes cat naps.

Q. A lawyer ought to give his own testimony independent of any other witness.—A. Yes. I am just starting. He apparently, when on the bench or elsewhere sitting down, takes cat naps. You understand what I mean by that—short naps. It never impressed me that as a result of that he was intoxicated or under the influence of liquor, or possibly that they were the result of weariness. At first when I appeared before Judge Hanford I thought that he was actually sleeping, until—if you will permit me to give an illustration of my belief, I would this one—I happened to be arguing a case before him some years ago, and he was then following his usual practice, and I never saw him when he didn't, of taking, apparently taking, short naps. I was younger then in the practice than I am now and it was somewhat embarrassing to me, but I finally came to the real meat of the point in my case, and he was apparently still asleep, but when I struck the point he looked at me and whirled in his chair, revolved clear around and came back and looked at me again in such a way that I floundered around for about two or three minutes and took my seat and advised my client he might as well go home, as he evidently was going to lose his case, and he did. From that very point that I have in mind it has always been pretty hard to convince me after that that he was asleep.

Q. Did he say anything to you on that occasion?—A. Nothing; didn't say a word at that particular time.

Q. Did you complete your argument on the point, that crucial point?—A. I did; I did. I had a good deal of doubts about the position that I was taking; I might say that, in fairness to the judge, and——

Q. (Interrupting.) Have you ever seen Judge Hanford drinking intoxicating liquors?—A. About three or four years ago the American Bar Association had its meeting here in the city of Seattle——

Q. (Interrupting.) Make it brief.—A. Yes; I will. And I happened to sit at the same table at the banquet with him. There were all kinds of drinks there, and Judge Hanford on that occasion drank a little bit, tasted of some of the liquor that came on the table, as the rest of us did; but, although there were some in the audience who became intoxicated and there was a great deal to drink, Judge Hanford was not during that evening and under those circumstances under the influence of intoxicating liquors.

Q. Did you ever at any other time see him drink intoxicating liquor?—A. I think, although I am not positive about it, that on one occasion when he came to Aberdeen for the purpose of delivering some oration that he had missed his train and been up nearly all night and

was very tried, and my remembrance now is that after his lecture I asked him, or some one in my presence asked him, to have a drink, and my remembrance is that he did, although I may be mistaken about that.

Q. A drink of——A. A drink of some intoxicating liquor, wine possibly, or possibly something else. I don't recollect.

Q. Do you recall any other occasion, Mr. Bridges?—A. I don't at the present time.

Q. Have you at any time received any appointment from the judge?—A. No, sir; I have not.

Q. Have you received any emoluments of any sort?—A. No, sir.

Q. There is no branch of his court in your town?—A. Oh, no; no possible way at all. I don't know Judge Hanford intimately at all. My acquaintance with him is purely in a professional way, excepting as I have met him at the bar association or otherwise.

Q. You have never seen him in Seattle, I assume, in the night time?—A. No; I don't recall. I am not around Seattle very much at night, so I don't think I have seen him here.

The CHAIRMAN. Any further questions, Mr. Hughes, to ask this witness?

Mr. DORR. Yes.

By Mr. DORR:

Q. Mr. Bridges, you spoke of your usual attendance at the State Bar Association meetings. When were those held?—A. Why, there have been two that I remember in Seattle.

Q. No; when, I say?—A. When? Oh, generally in either July or August.

Q. Once a year?—A. Once a year, yes.

Q. That is the annual meeting of the State Bar Association of the State of Washington?—A. Yes, sir.

Q. At which attorneys attend from all over the State?—A. Yes, sir.

Q. Did you ever hold any official position in that organization?—A. Why, I had the honor to be president for one year.

Q. What year was that?—A. I think it was three years ago; may have been two; it may have been four.

Q. Have you had an extensive practice in State courts?—A. Why, I have been pretty busy in the State courts.

Q. For how many years?—A. Twenty years, practically.

Q. Have you practiced before any other Federal judges than Judge Hanford?—A. I have been in the court of appeals two or three or four times at San Francisco, and I have been before some of the other judges who have sat here in the State of Washington, particularly Judge—who recently resigned.

Q. Donworth?—A. Donworth.

Q. From your experience in courts and in the practice of your profession, what do you say, Mr. Bridges, as to Judge Hanford's judicial temperament?

The CHAIRMAN. Now, I don't think that ought to be put that way, Mr. Dorr—comparing him with other judges.

Mr. DORR. Well, I will change the question, if I may be permitted to do so, and ask it in this way:

Q. Will you please state to the committee whether or not you consider Judge Hanford as having a proper judicial temperament to

preside over the Federal court?—A. I do. Judge Hanford has some peculiarities. He has been a remarkably hard-working man, but, generally speaking, a man of excellent judicial ability and temperament, in my opinion.

Q. What do you mean by "peculiarities," Mr. Bridges?—A. Well, I refer in part to the one that I have mentioned heretofore, his peculiarity, on the bench and off the bench, of apparently taking short naps. Possibly another being that he may be around with you or his friends for an hour without talking, evidently his mind consumed on something else.

Q. Well, after those spells of silence what happens usually?—A. Generally, that is—I don't understand your question, I think.

Q. After those spells of silence, I say, for an hour or so, that you have spoken of, will he talk?—A. Oh, certainly; certainly. If he gets into conversation, he is a very excellent and learned conversationalist.

Q. What is Judge Hanford's habit in ruling on the trial of cases?—A. In all the experience I have had with him he has been very quick and accurate in his ruling.

Q. Do his rulings show that he is familiar with the subject under consideration, or not?—A. Yes, sir. I have had him—in cases that I have tried—from memory the court gives the volume and, I think I can safely say, the page of decisions—from memory, understand—from decisions out of the Supreme Court of the United States affecting the case at bar. I have considered that Judge Hanford had quite a remarkable memory.

Mr. DORR. That is all.

By the CHAIRMAN:

Q. Haven't you heard a great deal of complaint among the lawyers as to Judge Hanford's temper on the bench?—A. No; I haven't heard that.

Q. Have you heard any?—A. No; I don't think I could—I don't think I have ever heard any personal complaint of his temper upon the bench. I have heard some, younger lawyers particularly, complain of his apparent sleepiness on the bench; but, I think, never of his temper.

Q. Have you not heard lawyers complain of his treatment of them from the bench?—A. I don't now recall anybody.

Q. Have you heard any complaint on the ground that the judge has favorites among the members of the bar?—A. I have always heard just the contrary; that the judge was thoroughly, both among the lawyers and elsewhere and otherwise, without favorites. That has been his strongest reputation, possibly, in the State of Washington.

Q. You have given a very good negative answer to my question. Please give it in an affirmative answer. Have you heard that he has favorites among the members of the bar?—A. I have not.

By Mr. MCCOY:

Q. Have you ever heard that he had favorites in making appointments to receiverships?—A. No; I have never heard that.

Q. Ever heard of Sutcliffe Baxter?—A. I don't recall now.

Q. You are not in Seattle to any great extent?—A. No; but I have—just as business may bring me here is all.

Q. Now, this apparent sleepiness or inattention; you say that that is a peculiarity of Judge Hanford?—A. Well, I think it is rather more developed in him than in most men. Most men, of course, have more or less of it; but then I should say that it is a peculiarity in Judge Hanford.

Q. Well, when you say it is a peculiarity, just exactly what do you mean?—A. Most men, I think, when they give the appearance of taking naps, as Judge Hanford gives the appearance, are unquestionably asleep. My own judgment is that Judge Hanford is not.

Q. Have you ever been in the room of the Supreme Court of the United States when it was in session?—A. I have.

Q. Have you since Mr. Justice White has been Chief Justice?—A. Yes, sir.

Q. Have you ever noticed him indulging in any such practices?—A. I have not. I have not been very much before that court.

Q. Have you seen him close his eyes and put his head back on his chair?—A. I have not been before that court, except this winter a little while, and I did not observe it then.

Q. Never saw Mr. Justice Holmes do a thing like that?—A. I think not. I observed one of the judges this winter, when I happened to be there, doing that, apparently asleep; he had his head laid back and his eyes closed. I don't recall now which one it was.

Q. Now, as a matter of fact, Mr. Bridges, that is not a peculiarity at all, is it, in any one judge?—A. Oh, no; unless it is possibly more developed in one than another.

Q. You mean unless it is so emphasized as to call very particular attention to it; that is what you mean, isn't it?—A. Yes.

Q. As a matter of fact, you could, if you knew the judges in the United States you probably could pick out a thousand of them who did it, and it would not attract any attention?—A. Very likely.

Mr. McCoy. That is all I want to ask.

Witness excused.

Charles F. Peterson, having been first duly sworn, testified as follows:

The Chairman. Tell your full name?

A. Charles F. Peterson.

Q. Where do you live, Mr. Peterson?—A. In Seattle.

Q. How long have you lived in Seattle?—A. About 12 years.

Q. Are you engaged in any business?—A. I am in the timber and coal land business.

Q. How long have you been in that business?—A. About four years.

Q. Dealing in land?—A. Yes, sir.

Q. Buying and selling it?—A. Well, trying to sell.

Q. Are you acquainted with Judge Hanford?—A. Slightly.

Q. How long have you known him?—A. I have known of Judge Hanford about 20 years.

Q. Is your acquaintance a personal one or a mere sight acquaintance?—A. It is what you would call a sight acquaintance.

Q. And you have known him by sight, you say, how many years?—A. I should say 20 years.

Q. Before you came to Seattle where did you know him?—A. I came to Seattle in 1890. I stayed here a short time and went away and came back about 12 years ago.

Q. You knew him since your first coming to Seattle?—A. Yes, sir; I knew of him.

Q. To what extent have you had an opportunity to see him during that time?—A. Well, I have seen him very frequently.

Q. Under what circumstances?—A. Passing him on the street; seen him in different places of business. I have seen him in his court room; I have seen him very frequently.

Q. Have you, in his court room, noticed any peculiarity in his actions or demeanor?—A. I have not.

Q. Have you ever noticed him when he was apparently napping or sleeping while presiding in court?—A. I never was in his court room but twice. I was in his court room on two occasions, where acquaintances of mine were taking out naturalization papers, and I was their witness before him. That is one occasion. One before, another party; that was on one occasion I was in his court room, and a gentleman up here at Maltby was taking out his naturalization papers, and the other time I have in mind was before this late Judge Donworth, who just resigned.

Q. Have you ridden on the street car with the judge here in the city?—A. No, sir.

Q. Have you at any time seen the judge when in your opinion he was affected by intoxicating liquor?—A. I have.

Q. Where was that?—A. I have seen him on several occasions when he was in an intoxicated condition.

Q. Could you recall the first time when you saw him in that condition?—A. The first time to me, that I remember of, was about eight months ago; I think it was in last November; I was going down to the Colman Dock at 9.45 to meet some friends that were coming over from Tacoma, and I had occasion to go through the bar at the Savoy, at the Rainier Grand Hotel, and as I was passing through Judge Hanford was leaning on the bar in an intoxicated condition.

Q. When you say "leaning on the bar" what do you mean more particularly; what was his attitude or position?—A. Well, he was leaning on the bar with his—as I remember, with his left arm up on the bar; had the glass in front of him, and to me he resembled a man that was drunk.

Q. Did you see him drink any liquor there?—A. I did not. I just passed through as I was going to the lavatory.

Q. Were there others present?—A. There were some other gentlemen there. I don't remember who they were.

Q. Was there anyone with him?—A. I don't remember whether there was or not. I just remember of having seen him. As I was passing through I paid no particular attention to it; didn't even stop.

Q. What experience have you had in noticing men who were under the influence of liquor?—A. I have had some. I believe I am——

Q. (Interrupting.) Do you feel that you know, then, a man is intoxicated or drunk when you see him?—A. I think I would be a good judge.

Q. Now, could you tell us more particularly, Mr. Peterson, what it was in him or in his conduct that made you conclude that he was drunk that night?—A. Well, the principal thing would be the fact

that I knew that that was Judge Hanford, and from his appearance there was no question in my mind at all but what he was drunk—his expression in his face, the way he was leaning up on the bar, and he had a glass before him with a small amount of liquor in the glass; what it was I don't know—paid no attention to it.

Q. Have you seen him frequently when he was sober?—A. Yes; I have seen him when there was nothing about the gentleman's actions that would lead you to believe that he had been drinking.

Q. Well, on this occasion did his conduct differ from his conduct and appearance on other occasions when you saw him when he was sober?—A. Oh, yes.

Q. Did he notice you?—A. No.

Q. Were you near enough to him to be noticed?—A. I walked right beside of him; just passed him as he was leaning upon the bar and I was walking through.

Q. Have you ever seen him on any other—did I interrupt you?—A. No.

Q. Have you ever seen him on any other occasion when you thought he was under the influence of liquor?—A. I have. About four months ago I was coming from the Orpheum; was going home; I stopped in the Savoy to get a drink, and I saw Judge Hanford leaning on the bar with both arms, and I took a good look at him. There was no question in my mind at all but what the man was very drunk.

Q. Was he drinking then, as far as you noticed?—A. No; I don't think that he was; he was just simply standing there meditating.

Q. What time was it?—A. About 11 o'clock at night.

Q. And what time was the first occasion that you described?—A. It was between 9 and 9.30; I was going down to meet the 9.45 boat.

Q. Were there others in the barroom at the Savoy on the occasion you speak of?—A. There were several, I think; yes.

Q. Did you know any of them?—A. I did not.

Q. Was there anyone with you?—A. I was by myself.

Q. Have you seen him on any other occasion when in your opinion he was under the influence of intoxicants?—A. I have. I saw him about two months ago.

Q. Where?—A. In the bar at the Mehlhorn—in the Mehlhorn Building.

Q. Is that in the center of the city?—A. Yes, sir.

Q. In the business part of it?—A. Yes, sir.

Q. At what time of day or night was that?—A. It was about 5 o'clock in the afternoon. I frequently go in the Queen City Barber Shop to get shaved. After I got shaved the gentleman that waited on me—I asked him if he would have a drink. He says, "Well, I will have some buttermilk." And we just stepped in the adjoining room, and I was ahead, and as I went in I saw Judge Hanford leaning on the bar. We walked up to the bar, and I says to the gentleman, "Do you know Judge Hanford?" He says, "Oh, yes." I says, "There he is—drunk." "Yes," he says, "he is. Oh," he says, "I see him come in here very frequently."

Q. Who was this man?—A. This gentleman's name was Hyatt.

Q. Spell it.—A. H-y-a-t-t.

Q. Did the judge leave the place or change his position while you were there?—A. I think not. We got what we wanted and we

separated and went out and he was there when we went out, when we left the building.

Q. Have you seen him any other times than the three you have mentioned when you thought he was intoxicated?—A. I saw Judge Hanford about two weeks ago going up by the Washington Annex Hotel. I was standing in the entrance. And I will not venture the assertion that he was drunk at that time, but I will say this, that if he was not drunk that the judge is failing very rapidly.

Q. What was he doing?—A. He was walking toward the Washington Hotel.

Q. Was he alone or with some one?—A. There was a gentleman with him.

Q. Do you know who it was?—A. I do.

Q. Who?—A. Sam Piles.

Mr. HUGHES. You mean Senator Piles?

A. Yes, sir.

The CHAIRMAN. Were you alone or with some one?—A. I was standing in the entrance of the hotel. It was about 6.30 in the evening.

Q. Mr. Peterson, have you at any other time than those stated seen the judge when in your opinion he was under the influence of any intoxicant?—A. I don't remember of any other time.

Q. Have you any doubt in your mind as to the identity of the person you saw on those occasions?—A. I know Mr. Piles very well; I have known him possibly as long as I have Judge Hanford, at sight. I never have had any business transactions with him in any way, shape, or form; I have known of them, known of their—of Mr. Piles's connection with political affairs of this county and State in particular, and I believe that I know Mr. Piles.

Q. I refer more particularly to Judge Hanford's identity.—A. Well, there is no question in my mind about that.

Q. Have you at any time had any litigation in his court?—A. Never.

Q. Have you been connected with the court in any way, as a juror, witness, or otherwise?—A. No, sir.

Q. Have you any personal feeling of any kind toward or against Judge Hanford?—A. Absolutely none.

Q. Have you a speaking acquaintance with him, or not?—A. I have.

The CHAIRMAN. Any further questions?

By Mr. MCCOY:

Q. You were subpœnaed, weren't you, Mr. Peterson, to attend here?—A. Yes, sir.

Q. In answer to a question asked by the chairman, in describing Judge Hanford's condition on one of these occasions when you saw him in some saloon, I believe when you were saying something about your knowing that he was intoxicated you said "because I knew it was Judge Hanford." What was the significance of that phrase?—A. Well, it has always occurred to me that a gentleman occupying a position on the Federal bench should not visit such places as that.

Q. You did not mean, then, that because it was Judge Hanford that fact strengthened your belief that he was intoxicated?—A. Oh, no, no; not in the least.

Mr. McCoy. That is all.

The Chairman. Any further questions, gentlemen?

By Mr. Dorr:

Q. Mr. Peterson, you have an office here?—A. I have.

Q. Where is it?—A. In the Oriental Building.

Q. Are you alone there?—A. Yes, sir.

Q. Or in partnership?—A. I am alone.

Q. Engaged in the timber and coal business?—A. Yes, sir; coal-land business.

Q. Timber land and coal land?—A. Coal land; yes, sir.

Q. As an owner or broker, or in what capacity?—A. Both.

Q. Do you own timber lands?—A. Timber and coal lands both, yes, sir.

Q. Here in the State of Washington?—A. In British Columbia.

Q. Do you own any here?—A. No.

Q. You are an owner of lands in British Columbia?—A. Yes, sir.

Q. The occasions that you have given on which you have testified that Judge Hanford appeared to be drunk relate to a circumstance in the Rainier Grand Hotel bar and the Savoy Hotel?—A. Yes, sir.

Q. And the Mehlhorn bar?—A. Yes, sir.

Q. And once on the street about two weeks ago with Senator Piles, walking up Third Avenue?—A. I didn't say that he was drunk on Second Avenue two weeks ago.

Q. What do you say about that?—A. I made the remark—I made the statement that if he was not drunk that the judge was failing very rapidly.

Q. Now, what do you base that statement on, what particular facts or circumstances or indications?—A. Well, I was standing in the entrance of the hotel as they were coming up street, and, knowing the two gentlemen as I did, and the expression in Judge Hanford's face and in the helpless way in which he was moving up the street, it occurred to me that he was under the influence of liquor. Now, I will not go so far as to say that he was drunk or anything of the kind, but in my own honest opinion I honestly believed that the judge had been drinking.

Q. Will you go so far as to say that he had been drinking?—A. No, sir.

Q. That you know it?—A. No, sir; I will not.

Q. Have you any other reason for asserting that than his appearance?—A. That is all.

Q. You did not smell the odor of liquor?—A. No, sir.

Q. Or anything of that kind?—A. No, sir.

Q. Have you ever seen Judge Hanford take a drink?—A. Have I ever seen him?

Q. Yes, sir.—A. Yes, sir; I have.

Q. At either one of these bars that you have mentioned?—A. Yes.

Q. Which one?—A. All three of them. I saw him—I will say now I won't say that he was taking a drink; he was standing up at the bar leaning against the bar at the Rainier Grand, with possibly a half or two thirds of a glass of liquor in front of him—a long glass.

Q. Who was with him?—A. He was by himself.

Q. What was the liquor that was in the glass?—A. I don't know.

Q. Did you see him take any?—A. I saw the glass setting in front of him on the bar. I naturally assumed that he had been drinking.

Q. You assumed that he had been drinking?—A. Yes, sir.

Q. Did you see him take a drink in the Savoy bar?—A. I saw him in about the same condition there, had a glass setting in front of him and he had both arms up on the bar.

Q. Standing there in meditation?—A. Yes, sir.

Q. And was that the condition that you saw him in in the Mehlhorn Building?—A. No; I think not. In the Mehlhorn Building he was very busy and he was taking a drink.

Q. Taking a drink?—A. Yes, sir.

Q. Of what?—A. Well, he had a long glass, about that long [witness illustrating]. I would call it a wine glass.

Q. Well, what was he drinking?—A. I don't know.

Q. Did you see him or hear him order the drink?—A. I did not.

Q. Had it been served before you came in?—A. They were just serving him as we came in.

Q. How does it happen that you were in all these bars; did you go there to drink yourself?—A. I frequently take a drink; yes, sir.

Q. You frequently do?—A. Yes, sir.

Q. How frequently?—A. Oh, possibly two or three times a week; maybe once a month; maybe a dozen times a day.

Q. Well, now, just the usual custom, a dozen times a day or once a month?—A. Oh, about two or three times a week is all I generally take a drink.

Q. Sometimes a dozen times a day?—A. Yes.

Q. How had it been on these particular days with you, Mr. Peterson?—A. Well, I think the last occasion it was the first drink I had had that day.

Q. That is when you saw him at which place?—A. At the Mehlhorn—in the Mehlhorn Building.

Q. That was the first drink you had had that day?—A. Yes, sir.

Q. How about the other?—A. Well, at the Rainier Grand I didn't go in after a drink; I went through the bar and out through into the lobby, into the lavatory.

Q. You didn't stop there at all?—A. No, sir.

Q. Just walked through?—A. Just walked through.

Q. And how about the Savoy incident?—A. At the Savoy it was about 11 o'clock at night and I went in there to get a drink.

Q. How many had you had that day?—A. I don't remember, possibly one or two, something like that.

Q. The Mehlhorn Building bar is the Saratoga, isn't it?—A. Yes.

Q. The one that is commonly called the Saratoga. Can you fix the date of any of these incidents?—A. I don't believe I could.

Q. There is nothing else in the circumstances that would enable you to fix the date of the time you went down to meet the boat——A. (Interrupting.) Yes; I could do that for you.

Q. Will you please give it to me?—A. I could not give it to you now. I can refer back. I went down there to meet some friends that came over to spend Sunday with me.

Q. You can fix that date, can you?—A. I can find it out, yes; I can get that date for you.

Q. Was it on a Saturday evening?—A. It was on Saturday evening, yes.

Q. At 9.45, or there abouts?—A. About 9.30.

Q. Just before the 9.45 boat arrived?—A. Yes.

Q. This is only a block from the Colman Dock, is it?—A. Yes.
Q. The Rainier Grand Hotel is on First Avenue?—A. Yes, sir.
Q. And that is very close to the Colman Dock?—A. Yes.
Q. Will you fix the date for us and bring it in to us, if you can not do it now?—A. Bring it in to you. I can do that for you by referring to the register at the Washington Annex Hotel; I can find out just exactly the evening that it was.
Q. The Washington Annex Hotel is only a short distance from where we are now sitting?—A. The Washington Annex Hotel is over here on First and Stewart—Second and Stewart.
Q. It is only a short walk over there?—A. Yes.
Mr. DORR. May I ask the committee to have the witness go over there and do that and then return?
The WITNESS. Well, now, that would necessitate me running back through the register for some months.
Mr. McCOY. I would like to ask why you consider that so important, Mr. Dorr?
Mr. DORR. I would like to fix that date, if possible, to ascertain whether this witness may not be mistaken as to the man he saw.
Mr. McCOY. Well, now, can't that be just as well determined if Mr. Peterson brings the date here any time?
Mr. DORR. If what?
Mr. McCOY. If Mr. Peterson comes here and fixes that date at any time, that fact can be just as well demonstrated then as to break up the hearing.
Mr. DORR. Yes; at any time. That is all I wanted to ask him now.
The CHAIRMAN. The committee can only ask Mr. Peterson to do it; it can not require him to go anywhere or do anything but to come here and testify.
Mr. DORR. Beg pardon?
The CHAIRMAN. The committee has no power to command him to go anywhere or do anything except to bring him here to testify, but the committee will ask him to do it.
Mr. HUGHES. He has offered to do it; he says he will do it.

By Mr. DORR:

Q. Just another question or two before leaving the stand now, Mr. Peterson. Do you live at the Washington Hotel Annex?—A. Washington Annex Hotel; yes, sir.
Q. That is your residence?—A. That is my residence; yes, sir.
Q. Mr. John H. Perry lives there, too, does he not?—A. Yes, sir.
Q. Are you acquainted with him?—A. Very well.
Q. And——
The CHAIRMAN (interrupting). Just a minute there.
Mr. DORR. Have you consulted him about this case or has he consulted you about it?
Mr. McCOY. Go ahead; answer the question.
A. Yes, sir.
The CHAIRMAN. What is the materiality of that?
Mr. McCOY. I ask that it be answered. He has answered it. I want it answered.
The CHAIRMAN. Very well; my colleague wants it answered.
Mr. DORR. What was the answer?
A. I have talked with Mr. Perry about this affair a great deal in the last three or four or five or six months.

Q. Yes.—A. But very little as to what I knew about Judge Hanford.

Q. Yes, sir.—A. Very little, until yesterday.

Mr. McCoy. It gives the opening that I wanted.

Mr. Dorr. That is since you have known Mr. Perry was working this matter up?

A. Yes, sir.

Q. You know he has been one of the active men engaged in the work on this case?—A. I possibly—I know a great deal about it; yes, sir; I do.

Mr. Higgins. What is your answer, that you know a great deal about it?

A. I know a great deal about what Mr. Perry has been trying to do with the judge.

Mr. McCoy. You will have a chance to state it in just a minute, Mr. Peterson.

A. Yes.

Mr. Dorr. I understand that you didn't tell Mr. Perry what you would testify to before yesterday?

A. I never did.

Q. Until yesterday?—A. No, sir.

Q. When were you subpœnaed?—A. I was subpœnaed yesterday evening.

Q. That is the 4th of July?—A. Yes, sir.

Q. Have you been taking any part in working up evidence in this case?—A. Absolutely none whatever.

Q. You have not been employed in any capacity?—A. No, sir.

Mr. Dorr. I think that is all I care to ask the witness until such time as he may be able to fix that date.

Mr. McCoy. I would like to have you, Mr. Dorr, finish everything you want to ask him now, with the exception of the one question as to what the date was.

Mr. Dorr. That is all that I now think of that I care to ask him.

By Mr. McCoy:

Q. Now, Mr. Peterson, you were at the room—one of the rooms occupied by Mr. Graham and myself last evening in the Hotel Washington Annex, weren't you?—A. Yes, sir.

Q. You came there at our request, preferred through Mr. Perry, didn't you?—A. Yes, sir.

Q. You came there with a great deal of reluctance, didn't you?—A. I think I did.

Q. And you stated that you did not want to testify, didn't you?—A. I did.

Q. And you gave a reason for that, didn't you?—A. I did.

Q. And will you please state the reason just as you stated it to us, as you gave it to us?—A. It has always occurred to me that this affair or this matter of removing Judge Hanford from this bench is a matter that the citizens of this town should become interested in. I have not taken any interest at all in any way, shape, or form in regard to Mr. Perry or Mr. Perry's movements; he and I have been very close friends for a good many years.

Mr. Higgins. Also interested in business with him?

A. No, sir; in no way, shape, or form. He has told me what he has been doing and the reason why he was doing it. I never have even as much as admitted to him that I have seen Judge Hanford drunk or that I approved of what Judge Hanford has done; but yesterday afternoon we were talking and the question was put to me right straight, he says, "Have you ever seen Judge Hanford drunk?" And I said, "Well, John, if I tell you yes I suppose I will have to go on the witness stand." I says, "I have seen Judge Hanford drunk, and I question whether there is a business man in this town but what has seen Judge Hanford drunk."

Mr. HIGGINS. You don't want that question in the record, Mr. Chairman, do you?

Mr. MCCOY. That is what he stated to us last evening. I want him to state what he stated to us last evening. Mr. Perry has been mentioned so many times here, we would like to show what difficulty Mr. Perry is having in getting the people of Seattle to come forward and do anything; so that his motives can not be questioned any longer.

Mr. HIGGINS. There don't appear to be any difficulty with this particular witness.

Mr. MCCOY. Well, that is your opinion, I have no doubt.

The CHAIRMAN. Proceed.

Mr. HIGGINS. I take the witness's own statement for it.

Mr. MCCOY. You may go ahead, Mr. Peterson.

The WITNESS. Well, the witness is telling you the truth.

Mr. MCCOY. Go on, Mr. Peterson; you have a right to answer my question. You can tell the committee——

A. (Interrupting.) What was it?

Q. (Continuing.) Here, for the record, what you said to us last evening up in the hotel, that led to your being subpœnaed?—A. Yesterday afternoon about 5 o'clock Mr. Bolen, the gentleman who just testified here a few minutes ago, Mr. Desmond and Mr. Perry, were sitting on a couch in the hotel. I just came in and Mr. Perry called me over, he says, "Sit down."

Mr. DORR. Excuse me. Is this what he told the committee in his answer to you?

Mr. MCCOY. Yes, he told us all about this last night.

The CHAIRMAN. Not the committee, but members of it.

Mr. MCCOY. He told Mr. Graham and myself. That is what you are referring to [addressing witness]?

The WITNESS. Yes. Mr. Perry and Mr. Bolen and Mr. Desmond had been in a conversation in regard to the Judge Hanford case, and as I came in they called me over and one of them says—Mr. Perry says, "Now, Peterson," he says, "supposing you were called upon to testify in this case, what would you testify to?" I says, "I would be compelled to testify that I had seen Judge Hanford drunk on several occasions," and that was all there was to our conversation at that time. About 10 o'clock last night Mr. Perry called me and asked me to come up to room 400 at the hotel. I went up to room 400 and I was introduced to these gentlemen.

Mr. HIGGINS. You had better indicate which ones of them.

A. You wasn't there.

Mr. HIGGINS. You mean Mr. Graham and Mr. McCoy?

A. These two gentlemen here; yes.

Mr. HIGGINS. Yes.

A. And questions were asked——

The CHAIRMAN (interrupting). I may add at that point that Mr. Higgins was in Tacoma.

The WITNESS. Yes; you told me that Mr.——

The CHAIRMAN (interrupting). That we had not access to him.

The WITNESS. And there was this gentleman. This gentleman was there and the question came——

Mr. MCCOY (interrupting). The sergeant at arms, Mr. Brennan?

A. Yes. Questions were asked me if I had ever seen Judge Hanford drunk, and I told them that I had, and I asked that they not subpœna me to come and testify in this matter at all, and they wanted to know why and I told them why.

Mr. MCCOY. What did you tell us was the reason why you did not want to come?

A. I told you that it occurred to me that there were business men enough in Seattle whose testimony possibly would go further than mine; that I had every reason to believe that they knew that these conditions did exist about Judge Hanford's drinking. I don't believe that there is a member of the Rainier Club—I will not make one exception—but what knows that Judge Hanford has been there drunk time and time and time and again. I have reasons for making these statements, because I believe they are true.

Q. Didn't you tell Mr. Graham and me that you were afraid of the effect on your business if you came and testified?—A. I told you that it would affect my business, possibly.

Q. Didn't I personally urge you, as a matter of duty, to come here and testify?—A. You did.

Q. Telling you that we had heard rumors, since we came to this city, of all kinds and descriptions, about Judge Hanford—didn't I tell you that?—A. Yes, sir.

Q. And that we felt it was due to him and to the community to know what the truth was, that he should be exonorated if the charges were not true, and he should be impeached if they were true?—A. Yes, sir.

Q. Was that the substance of part of what I told you?—A. That is just exactly what you told me.

Q. Didn't I tell you that it had come to our attention that a committee of the Merchants and Credit Men's Asociation had undertaken to get us some evidence in this matter, and that a man named Goldsmith had had an interview with them and they then refused to go ahead with it—I told you that, didn't I?—A. Yes, sir; you did.

Q. And I told you that apparently the lawyers in the city were afraid to come ahead and say anything, and that I thought there ought to be some people here in Seattle, if the facts were as rumored, who should have courage to come forward and testify, and I urged you to do it on that ground; is not that the fact?—A. You did; yes, sir.

The CHAIRMAN. Any further questions of this witness?

Mr. DORR. Not at this time.

The CHAIRMAN. You may stand aside.

Mr. MCCOY. Mr. Peterson, don't leave, please. I want to ask you a question or two when Mr. Hyatt is through.

W. H. HYATT, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name to the committee.

A. W. H. Hyatt.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Eight years.

Q. What is your present occupation, Mr. Hyatt?—A. Barber.

Q. Has that been your occupation all the time you have lived here?—A. It has.

Q. You were present when Mr. Peterson testified awhile ago?—A. I was.

Q. Are you the Mr. Hyatt to whom he referred?—A. Yes, sir.

Q. Do you recall the occasion to which he referred, when he and you were in a bar near your shop?—A. I do.

Q. What was the name of that bar?—A. Saratoga bar.

Q. Are you acquainted with Judge Hanford——A. (Interrupting.) No.

Q. (Continuing.) By sight or personally?—A. By sight.

Q. How long have you known him that way?—A. About five years.

Q. How certain are you as to his identity?—A. Very certain.

Q. On the occasion referred to by Mr. Peterson, did you see Judge Hanford in the barroom there?—A. I did.

Q. What was his position?—A. He was leaning against the bar, over the bar, with his arms.

Q. What position was his head in?—A. Well, just kind of hanging down.

Q. With reference to drinking, what was he doing?—A. He was not drinking at the time; just seemed to be standing there.

Q. If there was any drink near him, tell about it.—A. There was; there was a glass there.

Q. What was in it, if you know?—A. Well, I would think it was liquor.

Q. What shape of glass was it?—A. Kind of a slim glass.

Q. Was it so located with reference to other persons that it might have been some other person's glass?—A. No; nobody, just—it was very close at that time.

Q. Was your attention called to him——A. (Interrupting.) Yes, sir.

Q. (Continuing.) At the time?—A. It was.

Q. Did you specially observe him?—A. I did, after my attention was called.

Q. Did you note his condition?—A. Yes.

Q. What do you say as to whether or not at that time the judge was intoxicated?—A. Well, I would call it a pitiful condition, pitiful condition; I would—that is——

Q. Well, what would you say as to the question as to his being intoxicated?—A. I would call him intoxicated.

Q. Have you seen him at any other time when you thought he was under the influence of liquor?—A. I could not say that I ever did; no, although, I have seen him many times come in this place.

Q. How often have you seen him there?—A. A great many times. I have been there over——

Q. (Interrupting.) Could you see the barroom from your shop?—A. No; but the entrance comes in where I——

Q. (Interrupting.) Could you see persons entering?—A. Entering.
Q. Or leaving from your shop?—A. Entering and leaving.
Q. How frequently would you see Judge Hanford come in or go out?—A. Well, at times it was frequent and other times it was not so frequent.
Q. Well, give us the best description you can on that point, Mr. Hyatt; how often in a week?—A. Well, sometimes maybe every day for a few days; then other times I would not see him.
Q. Is your chair nearest the front window?—A. It is very near the—I can see anybody that comes in the hall.
Q. Well, you don't see everybody that goes in and out, I presume.—A. Oh, no, but it is in a position to see if I was——
Q. (Interrupting.) Did his coming or going make any impression on your mind different from that of any other person coming or going?—A. No, sir; no.
Q. Did the fact of his official position in any way arrest your attention to his being there or going there?—A. Oh, I have noticed that, of course.
Q. How long since you first noticed him going there?—A. Oh, ever since I have been there, off and on.
Q. That is how long?—A. About four years and a half.
Q. On an average, would you estimate for us, if you can——A. (Interrupting.) That would be very hard to do.
Q. (Continuing.) About how often a week——A. (Interrupting.) I could not.
Q. (Continuing.) You saw him going or coming there?—A. Estimate it, I could not; a great number of times I have seen him there.
Q. At what hour?—A. Well, generally toward evening.
Q. What time do you close the shop?—A. I leave at 6.30.
Q. If he came there later than that you would not see him?—A. I would not see him, no.
Q. Did you ever see him drinking anywhere else than at the Saratoga bar?—A. I never did.
Q. Did you ever see him anywhere else when you thought he was more or less under the influence of intoxicants?—A. No, sir.
The CHAIRMAN. Do you wish to ask the witness anything, Mr. Dorr?

By Mr. DORR:

Q. When was this particular occasion, Mr. Hyatt, that you were with Mr. Peterson?—A. Why, it would be over two months ago, would it? Just about that time.
Q. Are you able to fix the date?—A. I could not fix the date.
Q. You and Mr. Peterson went into the bar together to get a drink, did you?—A. We did.
Q. And you saw the judge standing there?—A. Yes, sir.
Q. Did you see him drink anything?—A. No, I didn't.
Q. How long were you together in the bar?—A. Just a short time, not more than five minutes at the most.
Q. Do you remember what you drank?—A. Yes, sir.
Q. What was it?—A. Buttermilk.
Q. Do you remember what Mr. Peterson drank?—A. I think he drank some liquor of some kind.
Q. And then you returned to the shop?—A. Yes, sir.
Q. And where did Peterson go?—A. He went out on the street.

Q. Now, do you want the committee to understand, Mr. Hyatt, that you observe everyone that goes into that saloon, or are in a position to do so from your chair?—A. I am in a position to do so, but I do not say that I observe every one.

Q. Where is the saloon door?—A. Right at the side of the—side entrance, right off the hall.

Q. You go into a general entrance into the building?—A. General entrance, yes.

Q. And the barber shop is at the rear of that general entrance, isn't it?—A. Right at the rear of that general entrance.

Q. And where is the saloon entrance with reference to the entrance to the shop?—A. It turns right off at the entrance of the shop.

Q. And you can from your position see everyone who enters the the saloon?—A. I can when I am at the chair, yes.

Q. Which is your chair?—A. The second chair.

Q. From the front——

A. (Interrupting.) Yes, sir.

Q. (Continuing.) Of the shop? Did you see anything about the judge on this occasion that attracted your attention, except that he was standing up there at the bar?—A. Well, my attention was drawn to it and I looked at him and I noticed that others that came in did the same.

Q. Did he appear to be drowsy?—A. Well, very much that way, yes.

Q. Drowsy?—A. His head over the bar.

Q. Appeared to be standing there and engrossed in deep study, didn't he?—A. Kind of a stupor, yes; something of that kind.

Q. You know nothing about his drinking?—A. I don't.

Q. Have you ever seen him drink?—A. I never did.

Q. Your eyes are in normal condition, are they?—A. How?

Q. Your eyesight, is it normal?—A. Yes, sir.

Q. How?—A. Yes, sir.

Q. Natural?—A. Eyes?

Q. Sir?—A. Eyes?

Q. Yes.—A. Why——

Q. (Interrupting.) Are your eyes good?—A. Well, I have got—I have got one bad eye, but then——

Q. (Interrupting.) Got one bad eye?—A. Yes.

Q. What is the trouble with that?—A. Well, that was hurt at one time and it is not good.

Q. Is the eye gone?—A. It don't bother me.

Q. Vision?—A. Vision, yes.

Q. The vision is gone?—A. Yes.

Q. You have but one good eye?—A. That is all.

Mr. DORR. That is all.

Witness excused.

Mr. MCCOY. I want to say, for the record, that the reason why Mr. Higgins did not hear what was going on last night was because we did not know that the interview was coming off. He was taking a holiday, as we were.

Mr. HIGGINS. I will make a statement, if that is regarded as material or relevant or of any importance at all——

Mr. MCCOY. I simply put it in to show——

Mr. HIGGINS (continuing). That I was in Tacoma, in response to an invitation; that I had a good time and I didn't know the committee was going to meet, and I supposed we would have no session yesterday. If that is regarded as at all important or relevant, I will make that statement.

Mr. MCCOY. That is exactly what I was going to say for the record, so as to protect Mr. Higgins.

Mr. HIGGINS. I had a very favorable impression of Tacoma, too.

The CHAIRMAN. The reason for entering into that matter at all is that we want the record to show, as we want those interested in this hearing to understand, that the whole committee acts together, and that as Mr. Higgins is the minority member of the committee and was not present on that occasion, it was simply because he was not accessible. The record should show that, and that is all that it was intended to have it show.

Mr. DORR. Mr. Chairman.

The CHAIRMAN. Mr. Dorr.

Mr. DORR. We have never understood that there was any majority or minority members of this committee.

The CHAIRMAN. Oh, I think you knew that fact, Mr. Dorr.

Mr. DORR. It is a subcommittee of the Judiciary Committee.

The CHAIRMAN. Yes; but you did know, did you not, that two of the members of the committee belong to one political party and one to another party?

Mr. DORR. Certainly, we knew that.

The CHAIRMAN. They are usually known as majority and minority members. Did you not know that?

Mr. DORR. We certainly knew that.

The CHAIRMAN. That is what I meant.

Mr. DORR. But we never suspected that that would enter into the investigation of a judicial matter.

The CHAIRMAN. It does not, it does not, and it shall not. The truth is the truth and facts are facts, no matter who produces them, and we want to get all the truth and all the facts that are relevant, and none else.

Mr. DORR. That is what we assumed.

The CHAIRMAN. Regardless of majorities or minorities.

Mr. HUGHES. Mr. Chairman, may I be permitted——

The CHAIRMAN. I want to make just another statement, if you please, Mr. Hughes, in that connection. We have gentlemen of the press here, and I would be glad if in their papers they would make a minute of the fact, for the benefit of the public, that the committee desires to get into its hearings all the material evidence concerning this inquiry—that is, all the truth—and we would be pleased to have the papers make that announcement so that when we leave here no one can say they did not have an opportunity to come in and be heard as to the facts within their knowledge.

Mr. HIGGINS. Do I understand, Mr. Chairman, that to mean that this committee is going to sit here until every witness desiring to make a statement material to the charges and matters under House resolution 576 shall be heard?

The CHAIRMAN. The chairman's understanding of it was that anyone having knowledge of that kind would consult the committee, not here in court as a committee, but outside of the hearings, and if

they bring to the committee facts which are material and which we ought to take back to the full Judiciary Committee, it is the chairman's opinion we ought to stay here until we get all those facts.

Mr. HIGGINS. Does that mean that the majority of the committee are going to determine the materiality of them?

The CHAIRMAN. That means that the chairman believes what he has just stated to be the true course to pursue.

Mr. HIGGINS. Oh, but if any——

The CHAIRMAN. The thing to which you refer is a question that should be taken up in executive session, rather than in the presence of a house full of strangers.

Mr. HIGGINS. I desire to get in the record just that very fact; if any single member of the committee deems it important and necessary that a particular witness or a particular class of witnesses should be called, will that witness be called?

The CHAIRMAN. The witness will be called if the committee determines he should be called; in other words, the committee will act with perfect fairness.

Mr. HIGGINS. Well, that is hardly an answer, of course, to my question.

The CHAIRMAN. The chairman thinks it is.

Mr. HIGGINS. Well, to be specific: Should I request, or should any other member of the committee request, that a certain class of witnesses be called, or any particular witness be called on a matter that is material and relevant in the mind of that particular individual member of the committee, in response to House resolution 576, will that witness be called?

The CHAIRMAN. As I said before, those are matters that should not be brought out here, but should be discussed in executive session; but the Chair has no hesitation in saying that this committee, like all other bodies of its character, must act by a majority.

Mr. HIGGINS. Well, of course that is an answer in the negative.

The CHAIRMAN. Well, you will have to construe it your way, but I take it there is no escape from that conclusion; I know of no other way that anybody can act than by a majority.

E. P. DOLE, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell your full name?

A. Edmond Pearson Dole.

Q. Where do you live?—A. In Seattle.

Q. How long have you lived in Seattle?—A. I lived in Seattle about four years—the first four years of the nineties—and I have been in Seattle this time about five years.

Q. Making about nine altogether?—A. About nine altogether.

Q. With an interim of——A. (Interposing.) Well, I was in Honolulu for about 10 years, and then I was in Washington, D. C., for about 2 years.

Q. Have you any business at the present time?—A. I am an attorney at law.

Q. Practicing your profession?—A. Yes.

Q. Mr. Dole, you are of course acquainted with Judge Hanford?—A. Somewhat; yes.

Q. And have been how long?—A. I have been somewhat for 20 years.

Q. You have practiced in his court?—A. To some extent; not to a great extent.

Q. Have you had any opportunity to observe the judge's demeanor and manner of holding court?—A. Well, in regard to what?

Q. More particularly with reference to his physical condition or apparent physical condition and attitude while holding court.—A. I have never seen him at any time when he did not seem to be alert and attending to the business before him. He has a habit sometimes of dropping his head and apparently not paying strict attention to what is being said, but when it comes to rule it is evident that he has heard everything that has been said.

Q. What opportunity have you had to notice him at other times or places than in court?—A. Not very much.

Q. If at any time during your acquaintance with him you have seen him when you thought he was under the influence of intoxicants, please tell that?—A. I never have.

Q. Have you ever seen him drink?—A. No, I never have. I have not been in the way of seeing whether he drank or not.

The CHAIRMAN. Are there any further questions of this witness?

Mr. DORR. Mr. Dole, were you subpœnaed?

A. I was.

Q. When?—A. This morning.

Mr. DORR. That is all.

The WITNESS. Otherwise I would not have been here.

Witness excused.

CLINTON W. HOWARD, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell the committee your name.

A. Clinton W. Howard.

Q. Where do you live?—A. Bellingham, Wash.

Q. Where is that, Mr. Howard?—A. That is in the northwestern portion of the State, in Whatcom County.

Q. That would be north and a little bit west of Seattle?—A. Practically north, 97 miles north.

Q. What is your business?—A. An attorney at law.

Q. Engaged in the active practice of your profession?—A. Yes, sir.

Q. For how long a time?—A. Since 1887. I have resided in Bellingham since the 1st day of November, 1889.

Q. Is that in this Federal judicial district?—A. It always has been since I have lived here.

Q. Where is the Federal court usually held?—A. At Bellingham now, for the last four or five years.

Q. Who holds the court there?—A. Judge Hanford.

Q. He has for how long?—A. Since the court was organized at Bellingham.

Q. How much court is there each year at Bellingham?—A. It is my recollection there are two terms. They are sometimes broken by adjournments between the times; also——

Q. (Interrupting.) Lasting about how long, in the aggregate?—A. Oh, I think possibly a week would be as long as Judge Hanford has held court at Bellingham at any time. The district, however, is coordinate with Seattle; in other words, cases that are brought in Bellingham may be filed in Seattle or Bellingham.

Q. I quite understand about that, but now it is on Bellingham we are.—A. Yes.

Q. And the aggregate of court held there each year by Judge Hanford would be about two weeks, would it?—A. Yes; I think two weeks would be the limit.

Q. At what other point have you attended court where he presided?—A. At Seattle.

Q. How much?—A. Oh, I have been here frequently for the last 15 or 16 years.

Q. And for how long a time when you came?—A. Oh, I have had cases that would run as high as four or five days.

Q. Trial work?—A. Yes, sir.

Q. Jury trials?—A. Yes, sir.

Q. Have you had any occasion to observe Judge Hanford in Seattle otherwise than during court hours?—A. Occasionally I have met him in a social way.

Q. Where?—A. At the Rainier Club and——

Q. (Interrupting.) Are you a member of it?—A. I am a nonresident member of the club; yes, sir.

Q. That entitles you, of course, to the privileges of the club?—A. Which I very seldom avail myself of.

Q. Have you at any time while Judge Hanford was holding court observed anything peculiar in his attitude or demeanor——A. (Interrupting.) I have.

Q. (Continuing.) On the bench?—A. I have frequently observed Judge Hanford apparently close his eyes and pull his little chin whiskers, and, to a casual observer, would be asleep.

Q. For how long at a time?—A. Oh, that would occur very frequently during the trial of a case.

Q. Now, how long would he seem to be asleep at one time?—A. I didn't say that he was asleep.

Q. I didn't say you said that he was asleep.—A. I said to the casual observer he might appear to be asleep.

The CHAIRMAN. Repeat the question to the witness.

Question repeated to the witness.

A. Oh, I have seen Judge Hanford anywhere from two to three or four or sometimes five minutes, I should say.

Q. And was that continuous?—A. No.

Q. For any length of time—for instance, whenever he appeared to wake up how soon would it be until he would seem to be asleep again?—A. I have seen him nod that way very frequently during the progress of a trial.

Q. What time mostly, before or after lunch?—A. Either in the morning or in the afternoon; I have never noticed any particular time.

Q. What would the position of his head be on those occasions?—A. Sometimes inclined forward and sometimes backward; mostly forward, I should think.

Q. Have you observed him elsewhere than on the bench in that attitude?—A. Yes, sir.

Q. Where?—A. I remember one evening, it was the evening of the 11th of October last, Mr. E. W. Purdy, the president of the First National Bank of Bellingham, and myself, were returning from

Olympia; we had been pallbearers at Mr. Fairchild's funeral, he was the chairman of the State railroad commission. We met Judge Hanford on the interurban at Tacoma coming to Seattle; we talked to him about four or five minutes and then took another seat, and I noticed that the judge slept a good deal of the way over. But in our conversation with him he was perfectly normal in every respect.

Q. So that a great deal of the time when you observed him either in court or riding on the train he seemed to be napping?—A. I would not say that, because I have seen many attorneys make the mistake of thinking he was napping.

Q. I did not ask the question that way; you are not listening evidently. Read it to him.

Question repeated to the witness.

A. I would not say that he was napping; no, sir.

Q. I did not ask you to say anything about it. Why don't you listen to my question?—A. I thought I did.

Q. I said "He seemed to be napping."—A. Seemed to whom to be napping?

Q. To you——A. No, sir.

Q. (Continuing.)—the witness.—A. No, sir; I am too familiar with the judge——

The CHAIRMAN. Will you repeat the question to him once more?

Question repeated to the witness.

A. No, sir.

Q. Is that so or not?—A. No, sir.

Q. How much of the time did he seem to you to be napping?—A. The only occasion that I ever saw him on the train that I now recall is the one that I have just referred to. Many times in the court room close his eyes and, as I said, to a casual observer would apparently be napping, but as a question was raised or a law point suggested he would turn instantly and rule on it with concise clearness that was perfectly convincive to my mind he had not been sleeping or dozing.

Q. And the point I want to get at and the question I wish you to answer is, how much of the time did he act so as to seem to a casual observer to be napping?—A. Oh, that is a relative question and very difficult——

Q. Will you answer it?—A. (Continuing.)—difficult for one to determine.

Q. Answer it.—A. I would say that during the course of the day Judge Hanford in the trial of a long case might do that six or eight times in the morning or six or eight times in the afternoon, or both.

Q. Of course you, in trying a case, would not have your eyes on the court?—A. Well, I find——

Q. You, I presume, were watching the witnesses and the jury more than you were the judge?—A. I find that most of the witness chairs are somewhat relatively like this is to the bench of your committee, so that you would take in both at the same range—in examining the witness I watched the judge.

Q. Have you any knowledge as to whether there was any special cause for the peculiarity which you have mentioned?—A. None whatever.

Q. You know of none?—A. None whatever.

Q. Have you ever seen the judge drink intoxicants?—A. I saw him take one drink once.

Q. Where?—A. That was in the Cascade—in what was called the Cougar Club, in the city of Bellingham.

Q. When?—A. On one occasion when he went with me from the court room.

Q. What did he drink?—A. I think he had a highball.

Q. Is that the only occasion when you saw him drink any intoxicants?—A. That was the only occasion I ever recall of.

Q. Did you ever have any appointment of any kind from the judge?—A. What do you refer to?

Q. Oh, as commissioner, or——A. Oh, no; none whatever.

Q. (Continuing.) Or any patronage of any sort.—A. I never had dollar from him, as attorney's fees, or otherwise; no, sir.

Q. Have you had any cases in which the court fixed your fees.—A. None whatever; no, sir.

The CHAIRMAN. Do you wish to ask the witness any further questions, Mr. Hughes?

Mr. HUGHES. Mr. Howard, you have had considerable important litigation before Judge Hanford, have you not?

A. At various times; yes, sir.

Q. And you have participated in the presentation to him of important questions for judicial decision?—A. Yes, sir; some of them, I expect, as important as was ever brought before him here in this city; I refer to the litigation with the Great Northern and the Seattle & Lake Washington Waterway Co.

Q. A committee reading this testimony might infer from your description of him that Judge Hanford was no longer of sufficient mental and physical vigor properly to dispatch his work; I wish you would state, in the light of your knowledge of him and your experience before him, what is Judge Hanford's capacity as a judge and a lawyer in his understanding of the law and his ability to rightly interpret it; and his capacity to dispatch business?—A. I would say that Judge Hanford has the most enormous capacity for work of any judge that has ever come under my experience; and I may say, further, that so far as the bar of Whatcom County is concerned, no one stands higher or is held in greater reverence and respect. On one occasion when Judge Hanford first opened court there both the superior court judges adjourned their court and the entire bar attended, as a mark of respect to Judge Hanford. In the 23 years' practice I have had there I have always been gratified to be able to present to one of our superior judges a decision of Judge Hanford, knowing the value and respect that they place upon his opinion.

Q. You are the retiring president of the State Bar Association?—A. I was president of the State Bar Association for the year 1911—the Washington State Bar Association.

The CHAIRMAN. Any further questions of the witness?

S. F. BRUCE, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell the committee your name.

A. Samuel F. Bruce.

Q. Where do you reside, Mr. Bruce?—A. At Bellingham, Wash.

Q. How long have you lived there?—A. Twenty-three years.

Q. You are an attorney at law?—A. Yes, sir.
Q. Practicing your profession?—A. Yes.
Q. And you have been during your residence at Bellingham?—A. Yes, sir.
Q. How big a place is it?—A. A population of between 26,000 and 30,000 people.
Q. A seaport?—A. Yes, sir.
Q. How long have you known Judge Hanford?—A. About 22 years, or a little more.
Q. Have you had much business before him?—A. I have had a reasonable amount of business before Judge Hanford.
Q. At Bellingham and at Seattle also?—A. Yes, sir; and at Tacoma; I tried cases at all three points.
Q. Extending over how long a period?—A. I think I tried my first case before Judge Hanford in 1892.
Q. How much business have you had before him in the last 5 or 10 years?—A. Well, I have had a fair volume of business, and there is nearly always——
Q. Where was it mostly?—A. For the most part it has been at Seattle.
Q. How do you go from Bellingham to Seattle, by rail or water?—A. Rail and water both, if you wish.
Q. How long a trip is it by rail?—A. Three hours and fifteen minutes.
Q. When you come to court you remain here until your business is completed?—A. Yes; certainly.
Q. What were your social relations and what was your social acquaintance with the judge, if any?—A. Well, I have some social acquaintance in a business way. I have no visiting acquaintance.
Q. You mean by that, in a professional way?—A. In a professional way, yes; a business way.
Q. Well, have you seen the judge much, if any, when not in court?—A. Well, I have seen the judge a great many times when he was not in court, during that period.
Q. To what extent have you seen him during the evening or night when not holding court?—A. Well, I have seen him, perhaps, a dozen times I have been with him of an evening and night.
Q. Under what circumstances?—A. I have spent the evening with him at the club.
Q. The Rainier Club?—A. Yes, sir; I was traveling with him and——
Q. Are you a member of it?—A. No, sir; I am not.
Q. You were there as a guest merely.—A. Merely as a guest. I formerly had a membership in the club, but I have dropped it.
Q. When did you drop it?—A. In 1903, I think.
Q. Have you at any time during your acquaintance with the judge seen him drink intoxicating liquors?—A. I have.
Q. How frequently?—A. Well, I would not say oftener than two drinks of an evening, at the time when we would be visiting.
Q. Have you at any time seen him when in your opinion he was under the influence of intoxicants?—A. I never saw him when I thought he was under the influence of intoxicants.
Q. Have you seen him when on the bench, as you have heard witnesses tell about, when he seemed to be napping?—A. Yes, sir; I would want to emphasize the "seemed." I do not think I have ever

seen him napping, but I have seen him many times when one not acquainted with his peculiarities would think he was napping, possibly.

Q. Well, while in the course of a day's work of five hours how much of the time do you think he would spend that way?—A. Well, I think that was measured according to the volume of work or the character of work that he had been doing. I have noticed at times when it would not be observable; I would not observe it in a half a day; and then I have seen times when it would be recurrent for periods a few minutes apart—oh, it would not be any longer, perhaps, than half an hour in the forenoon or afternoon.

Q. You mean, Mr. Bruce, as I understand you, that when he worked particularly hard he seemed to be napping more than when he was not working so hard?—A. Well, I would say from my observation, the greater a variety of business that he had before him at the time the more he would appear to relax into inattention, and close his eyes.

Q. Is it not your experience that when a man is exhausted and lacking rest and he seems to be nodding and napping, he is much more apt to actually sleep than if he were not exhausted for lack of rest?—A. Certainly, if a man is exhausted he is more apt to yield to his physical requirements than if he is not exhausted.

Q. And if he is nodding and napping in appearance because of exhaustion, is he not more likely to go the whole distance and go to sleep?—A. He is; but I do not want to admit such to be a proper description of Judge Hanford.

Q. And what do you mean when you say, as I understood you, that he was in that condition more when he was working hard and exhausted than at other times?—A. I think——

Q. (Continuing.) If it was due to exhaustion why was not he asleep, from what you have described as to his appearance?—A. I do not think it was due to exhaustion. If you will permit me to explain, I think Judge Hanford is a man that works upon various subjects simultaneously, and he would be working on three or four subjects; he will close his eyes in an attitude of study or repose, and to one not acquainted with that peculiarity he would appear to be napping; but he is, perhaps, working on three or four problems together; that is the way I think it is with Judge Hanford.

Q. Do you mean at one and the same time?—A. Yes, sir; at one and the same time.

Q. That he has a sort of triple-action mind?—A. Yes, sir; he has a mind that is more than ordinarily acute, and I am satisfied that he could carry three or four subjects in his mind at the same time and dispose of them and reason accurately on each one at the same time.

Q. I think you have already stated to me that you have never seen him when, in your opinion, he was under the influence of intoxicants?—A. No, sir; I never have.

The CHAIRMAN. Do you gentlemen wish to ask the witness any further questions?

Mr. MCCOY. Is Bellingham a railroad center?

A. There are five railroads, I think, there.

Q. Has railroad business been the principal business which you have been before the court on?—A. No, sir.

Q. What is your general practice, admiralty?—A. I am a general practitioner; I have had a great variety of cases before Judge Hanford.

Q. Any admiralty business?—A. Yes; I had admiralty business.

Q. Do you make a specialty of that at all?—A. No, sir; I am no specialist; I make no specialty of it, although I had several cases before Judge Hanford in that jurisdiction.

The CHAIRMAN. Do you gentlemen wish to ask the witness any questions?

Mr. DORR. Have you represented any one of the railroad companies, Mr. Bruce, during this time?

A. No, sir.

Q. Your practice is, so far as they may be involved, entirely against them?—A. Altogether.

Q. On the other side?—A. Yes, sir.

Q. You spoke of traveling with Judge Hanford; will you explain to the committee where you traveled with him, and when?—A. Well, I have—I should not probably say that I traveled much with Judge Hanford—I have been on journeys when our paths lay together, and we traveled on the same train or the same boat—the same conveyance.

Q. You do not mean by that that you took trips together?—A. No, sir; we did not take trips together; simply were thrown together casually.

Q. Simply by chance?—A. Simply by chance; yes, sir.

Q. Where have you been on those occasions?—A. I have traveled between Seattle and Spokane, Seattle and Tacoma, and between Pasco and White Bluffs, on the Columbia River, and back down the river, and then have been thrown together at Hanford Station or White Bluffs, just by chance.

Q. Where is Hanford Station, Mr. Bruce?—A. That is a stopping place on the Columbia River, about 45 miles north or upstream from the junction of the Northern Pacific Railway and the river at Pasco; it is in Benton County.

Q. Do you have anthing in the way of interests which would take you over to that country?—A. Yes, sir; I have some interests over there.

The CHAIRMAN. Is this important, Mr. Dorr?

Mr. DORR. Only with respect to the suggestion that has been made by the committee, that the Hanford Irrigation & Power Co. might become involved here.

The CHAIRMAN. Just ask him straight out in reference to it if he is interested.

Mr. DORR. Are you in any way interested in the Hanford Irrigation & Power Co.?

A. I am not interested in the company whatever further than that they are a creditor of mine on the purchase of a piece of land that I have not fully paid for yet.

The CHAIRMAN. Speak up a little louder.

A. I say I have an interest in a piece of land that we purchased from the Hanford Light & Power Co., or the Hanford Land & Irrigation Co., and I find that I have not paid for it fully yet.

Q. You mean the Irrigation & Power Co., is it not?—A. The Irrigation & Power Co.

Mr. DORR. That is, you have a piece of land over in that district which you bought from the corporation?

A. Yes, sir; that is the only interest I have.

Q. In any of those trips which you have made, where Judge Hanford was a fellow passenger with you on the cars, have you ever seen him dozing or sleeping, apparently?—A. Yes, sir; I have seen him in the same attitude that I described a moment ago.

Q. Do you mean when he was on the bench?—A. Yes.

Q. Have you ever found him on the bench at any time during your practice or observed him in a condition where he did not know all that was going on in the court room?—A. No, sir; I have never—I have never appeared before a judge whom I thought understood everything—every phase of the situation—so thoroughly as Judge Hanford.

The CHAIRMAN. Avoid comparisons, Mr. Bruce—avoid comparisons; just state as to Judge Hanford.

A. Well, I would say that Judge Hanford is exceptionally alert to everything going on before him.

Mr. DORR. How has he acted with respect to rulings that were required to be made in the progress of trials which you have been engaged in?

A. Well, his rulings are always very decisive and very prompt whenever the occasion to rule arises.

Q. What would you say about his manner of instructing juries?—A. His instructions are always very clear and very plain to the jury.

Q. Do you know anything about the volume of work that the judge has been doing?—A. I know it has been very heavy, especially up to the time of the division of the State and the creation of a second judge in this district.

Mr. DORR. That is all, I think.

The CHAIRMAN. Are there any further questions?

JAMES M. PALMER, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name.

A. James M. Palmer.

Q. You live in Seattle?—A. Yes, sir.

Q. How long have you lived in Seattle?—A. Since May 1, 1907, the last time I came here.

Q. Did you live here prior to that also?—A. I lived here from July or August, 1903, until the first month or two in 1904. I lived in Tacoma from January or February, 1904, until May, 1907, at which time I came to Seattle and have been here continuously ever since.

Q. You are an attorney at law?—A. Well, I am an attorney at law, but I have not practiced in the State of Washington; I have been following the profession of shorthand reporting since I have been in this State.

Q. To what extent have you done work as a reporter in Judge Hanford's court?—A. I have reported in Judge Hanford's court in Tacoma in the two terms a year that were held in Tacoma from 1904 until 1907, commencing in the middle of March and extending into April and commencing in the middle of October and running into November, according to the length of the cases that he had on his calendar, and I reported, I think, every term of court one or more cases in that court from April, 1904, until April, 1907.

Q. Was all that at Tacoma?—A. All that work was done at Tacoma.

Q. And at Seattle how much?—A. At Seattle I have not done as much reporting of cases in the United States court as I did at Tacoma.

Q. What time would your work in Seattle cover?—A. I would say that I have reported not to exceed 12 or 15 cases in the last three or four years in Seattle.

Mr. HUGHES. You mean in Judge Hanford's court?

A. I mean in Judge Hanford's court.

The CHAIRMAN. Have you done any reporting in his court at any other points than those?

A. My recollection of it now is that one time I went to Bellingham and I reported a case for him there, and it seems to me another time during my residence in Tacoma that I reported a case for some attorneys at Aberdeen, but I am not certain about that.

Q. Mr. Palmer, a court reporter taking testimony can not give much of his attention to anything else than the testimony and his work, can he?—A. I think that a court reporter is keenly alive to everything that goes on in the court room, because he never can tell at what instant something is going to happen that will have to be made a part of the record, and I think a court reporter is more keenly alive to all of the facts that are transpiring and the circumstances that are occurring in the court room than any other one man in the court room.

Q. Do you refer particularly to the things which he observes by the sense of hearing, or do you include things observable by the sense of sight also?—A. By the sense of sight as well as hearing.

Q. Did you observe the peculiarity of Judge Hanford on the bench, about which you have heard some testimony?—A. Yes, sir.

Q. As to his apparent napping?—A. Yes.

Q. And sleeping?—A. Yes.

Q. When did you first begin to notice that peculiarity?—A. I think the first time I ever reported in his court.

Q. That was how long ago?—A. Eight years ago.

Q. Have you noticed any change in the judge with reference to that peculiarity since that time?—A. No change.

Q. You think that it remains about the same?—A. May I ask if you mean by that, do I think it is worse now, or within the last six or eight months than it was eight years ago?

Q. Better or worse?—A. I think it is just about the same.

Q. That is your answer?—A. Yes.

Q. Is there any time of the day at which it is worse than any other time, in your opinion?—A. No; I can not say so. I think I have seen him lean back in his chair and put his head on the back of the chair. He generally sits in a chair somewhat like the one you are sitting in now, particularly in Tacoma.

Mr. MCCOY. A high-backed chair?

A. A high-backed chair, that he could lean his head back against. I have seen him close his eyes and keep them closed for some moments; but I never thought he was asleep. He did not act to me like he was asleep, and I never heard an attorney spring an objection that Judge Hanford ever called on me to read the record unless there was a dispute between one or more of the attorneys as to the exact verbiage used in the question or in the objection. Judge Hanford always ruled right the minute that the objection was made. Judge Hanford would rule right on the spot. I never would have to read any of the record

back to him. I have seen him, more than that, sitting in a chair when, apparently, he would have his eyes closed, and I have seen him without opening his eyes or making any movement say, "I think you have followed that line of inquiry long enough; it is immaterial; I do not see any benefit to be derived from it"; or, he would say to the attorney, "That has not got anything to do with the case; ask some other question," and apparently he was following the record right along all the time. I never did see Judge Hanford sit in his chair when anything happened like that that I ever had to sit down and read any of the record back to him unless it was a dispute between some attorney and the witness or two attorneys as to what had been said before.

Q. To what extent, if at all, have you had an opportunity to observe the judge when he was not holding court?—A. The last part of the time that I was in Tacoma, in April, in March, and April, 1907, Judge Hanford appointed me United States commissioner to succeed Judge M. L. Clifford, who was appointed judge of the superior court. At that time I was reporting in Judge Hanford's court, and I knew some days before Judge Clifford's resignation was actually sent to the governor that Judge Clifford intended to resign his office as United States commissioner. I officed with Judge Clifford at the time and therefore knew it before the resignation had been forwarded to the governor—or not to the governor, but to Judge Hanford. I asked Judge Hanford one day at noon if he would go to lunch with me. He said he would; he would be glad to. We went down from the building in which the United States court was held at that time, the Chamber of Commerce Building in Tacoma, across to the Donnelly café. It was my custom at that time to take a drink before eating lunch. I invited the judge to have a drink with me, and we went in and got a drink—the judge had one, too, but what it was I do not remember. We went into the lunch room and we sat there for an hour, and I asked Judge Hanford at that time if he could see his way clear to appoint me United States commissioner. He was in the habit of not saying very much; he would sometimes see you and talk to you a good deal, and then again he would see you and say "How do you do," or some abrupt statement and would not say anything more to you for quite a long time; and at that time he and I sat there at lunch and I asked him about that appointment, and he didn't say anything more to me until we got almost through lunch, and he said, "I will appoint you"; that is all he said to me. That is about all the conversation we had. I know, subsequent to that time, Judge Hanford and I went to lunch at the Donnelly Hotel several times, and sometimes the judge would talk to me in regard to cases that were being tried and sometimes he would just simply say nothing at all, all during the lunch hour.

Q. When did your service as commissioner terminate?—A. My appointment as commissioner terminated by reason and by virtue of the fact that I removed from Tacoma to Seattle, and that operated as a termination of the appointment. I held the appointment of commissioner for some three or four months.

Q. Had you any other appointment from the judge than that one?—A. I never had.

Q. Have you at any time seen Judge Hanford when in your opinion he was under the influence of an intoxicant?—A. No, sir; I never saw him when he was under the influence of an intoxicant.

Q. Did you ever see him drinking otherwise than as you have stated?—A. I remember one time particularly—I was thinking of it this afternoon while I was sitting here—some time in 1906 there was a banquet at Tacoma; there was Gen. Ashton, and Judge Hanford, and Judge Burke, and, I think, Judge Stiles, and several other men spoke. The Post-Intelligencer of Seattle and the Tacoma Ledger employed me to report those speeches. The banquet commenced some time along about 9 o'clock in the evening——

The CHAIRMAN. Make it as brief as you can.

A. (Continuing.) And the speaking commenced about 11 o'clock, and from then on until 1 o'clock there was speaking. Judge Hanford at that time made a speech that lasted for 35 or 40 minutes, and after the banquet had been held for three hours Judge Hanford made one—a remarkably clear speech, clear all the way through.

Q. The question was if you had ever seen him when you thought he was intoxicated.—A. I never saw him intoxicated at all.

The CHAIRMAN. Any further questions of this witness?

Mr. HUGHES. Had he drank any that evening at the banquet?

A. Yes, sir.

Q. They were the ordinary liquors served that are customarily served at banquets of that kind?—A. Yes.

Whereupon an adjournment is taken until to-morrow morning, July 6, 1912, at the hour of 9.30 o'clock.

EIGHTH DAY'S PROCEEDINGS.

SATURDAY, JULY 6, 1912—9.30 A. M.

Continuation of proceedings pursuant to adjournment. All parties present, as at former hearing.

JESSE E. FRYE, being first duly sworn, testifies as follows:

The CHAIRMAN. Please state your name to the committee.

A. Jesse E. Frye.

Q. Where do you live?—A. Seattle.

Q. How long have you lived here?—A. Since June, 1902.

Q. What is your business or occupation?—A. Attorney at law.

Q. How long have you practiced your profession?—A. Since the spring of 1883.

Q. And you still are?—A. Yes.

Q. Have you ever held any official position during any of that time?—A. Yes, sir.

Q. What was it?—A. City attorney, member of the legislature, and United States attorney for the district of Washington.

Q. When were you district attorney for this district?—A. July 1, 1902, to June 30, 1906.

Q. Who was the presiding judge during that time?—A. Judge Hanford.

Q. All of it?—A. Yes, sir; unless they called in some person from——

Q. I mean regularly.—A. Oh; yes, sir.

Q. Apart from your professional duties and court work, to what extent have you associated with Judge Hanford during those years?—A. Well, during the first three years of that term the district included the whole of the State of Washington. Of course, we held two terms

at Spokane, Walla Walla, and Tacoma, as well as Seattle, and while we were at those places I mentioned we usually dined together or something of that kind.

Q. Apart from those occasions, and while in Seattle, to what extent did you associate with the judge outside of court work?—A. Occasionally he would go to dinner with us.

Q. Were you a member of any club or other organization of which he was a member?—A. No, sir.

Q. Mr. Frye, did you have any practice, except your official duties, while you were district attorney?—A. Very little.

Q. How much of the time were you in court where Judge Hanford was presiding?—A. Except when I was away on vacations, or something like that, I was in the court room nearly every day, off and on; generally at the opening in the morning and the opening in the afternoon and on preliminary motions or during the trial of cases.

Q. Except when you were yourself engaged in court work you would not be in court?—A. Yes.

Q. You have been here and have heard witnesses testify as to some peculiarities in Judge Hanford's appearance and demeanor on the bench?—A. Yes, sir.

Q. Can you give the committee your impressions as to that?—A. Why, at times Judge Hanford would seem drowsy or something of that kind, but he always had a firm grasp on the proceedings.

Q. What were the things that a person unacquainted with him would observe about him on those occasions?—A. I think they might judge that he was drowsy.

Q. To the extent of sleeping?—A. Oh, perhaps so, unless they examined it closely; unless they made a close observation.

Q. To what extent would that continue while he was on the bench?—A. Oh, it was only occasionally; perhaps it might be to-day and perhaps for the next three or four days he would not be.

Q. Did it manifest itself more at some time of the day than at other times?—A. Well, perhaps along in the afternoon of the day where he had been working hard.

Q. It was more apparent at that time?—A. Oh, yes.

Q. Have you ever seen the judge drinking intoxicating liquors?—A. Except his taking a cocktail just before meal when he was with us.

Q. Have you ever had occasion to observe the judge in the nighttime in the city here?—A. Except only at his chambers. When I was United States attorney, of course, we both worked at night.

Q. Have you, at any time been in any saloon or drinking place with him in the city?—A. No, sir.

Q. Have you ever seen him at such places?—A. No, sir.

Q. Did you ever observe or have you been with him when he was going home on the street car?—A. No, sir; I have not.

Q. Have you, in your opinion, at any time seen him when he was under the influence of an intoxicant?—A. No, sir; I have not.

Q. To what do you attribute his attitude and demeanor on the bench, which you have heard spoken of and testified concerning by by the witnesses?—A. I think it is due to overwork and perhaps a little lack of sleep.

Q. Do you know of any other reason?—A. No, sir; I do not.

The CHAIRMAN. Any further questions to ask the witness?

Mr. McCoy. Is it not a matter of common observation, Mr. Frye, that when a man gets to be Judge Hanford's age that he needs less sleep than when he is younger?

A. I think it depends on the person.

Q. You do not think that is a common characteristic?—A. I know that I require more now than I did 10 years ago.

Q. How old are you?—A. I am 53.

Q. You do not call yourself old?—A. Old, certainly not; but I say I require more sleep now than I did 10 years ago.

Q. When a man gets to be 63 or 64——A. I could not say as to that.

Q. You do not know how that would be?—A. I could not say as to that. I never had any experience as elderly people.

Mr. Hughes. Mr. Frye, what can you say as to Judge Hanford's habits of industry?

A. Work spells his life.

Q. How many years were you district attorney?—A. Four years.

Q. What was the amount of judicial business, speaking generally, which Judge Hanford had to transact during that period?—A. Very heavy.

Q. What about his hours of labor, outside of the court day?—A. Why, he spent most of those in his chambers. I know that I have met him there many times at nearly midnight when I would be working.

Q. Was it his habit to work nights, or was that only occasionally?—A. Oh, it is his habit.

Q. What do you say as to his judicial temperament and his judicial ability, both?—A. I think it is great.

Q. Have you seen any evidences of bias or partiality in the administration of justice while he sat upon the bench?—A. No, sir; I have not.

Q. You speak of occasions when he would close his eyes, apparently nodding—did you see any evidences in your experiences with him as district attorney when, by reason of any such acts or facts on his part, he appeared not to be attentive to everything that was transpiring?—A. No, sir; he always had an intelligent grasp on all the proceedings.

Q. Did he ever, to your knowledge, fail to rule promptly upon any objection or upon any question presented to the court?—A. Not when I was present.

Q. Did he ever fail to show a quick, ready comprehension of the exact question that was raised or presented?—A. No, sir.

Q. Have you ever known Judge Hanford to have been under the influence of liquor?—A. No, sir.

Q. Your term of office immediately preceded that of Elmer E. Todd?—A. Well, Mr. Sullivan, I think, was in for two months—two or three months.

Mr. Hughes. That is all.

Mr. McCoy. Would you say, by any comparison that you have been able to make with the judges here or in other parts of the country, that the amount of time that Judge Hanford put on his judicial work was extraordinary?

A. I would have to answer that, Mr. McCoy, by reference, when I was United States attorney, to the amount of work that each district

had done, and I think there are only two other districts in the United States that compared with this for the volume of business. I think one was the southern district of New York and one was in Pennsylvania.

Q. Do you mean that you tabulated the amount of work done?—A. I gathered it from the reports to the Attorney General of the United States.

Q. The number of cases tried?—A. Yes, sir.

Q. And disposed of?—A. Yes, sir.

Q. Well, take it outside of the Federal courts and get into the State courts—would you say that Judge Hanford worked more hours than hundreds of other judges in the United States?—A. He works more hours than those local judges out here do.

Q. Do you know that the local judges here do not work nights?—A. Oh, occasionally; but they do not do the amount of work that Judge Hanford does.

Q. Does the judge of any court who has to sit from October to June continuously have to work nights and nearly every night in order to keep up with his work?—A. In a measure.

Q. Well, in a measure, and in a great measure; don't they have to do it almost continuously?—A. I don't think you will find the local courts do that as much.

Q. Do you mean the local courts here in Seattle?—A. Yes, sir.

Q. You do not know about the judges or the courts in other parts of the country, do you?—A. No; certainly, I have no experience there whatever.

Mr. Higgins. Is it not true, Mr. Frye, that the work that devolves on the Federal judge depends very much on the character of the district that he presides over?—A. Certainly.

Q. That is to say, in a district which is a seaport district and also on the international, or near the international, boundary line, and in a new country where land questions and mining-law questions arise, much more work, in the very nature of things, devolves upon a judge presiding in that district than upon one who presides in some of the older districts of the country?—A. Certainly; he meets every phase of the law here.

Q. Is it not also true that in admiralty practice, which is a peculiar practice and one in which few lawyers are qualified, or do as a matter of fact engage in, that the greater amount of the testimony is frequently taken before a commissioner or examiner, and that all of it has to be reviewed by the judge?—A. That is true.

Q. Is it also true that in the last few years Congress has passed legislation with reference to the white-slave traffic, to the guaranteeing of pure food, railroad rate legislation, and other legislation analagous to that, which has increased the amount of business which would be transacted by a Federal judge?—A. Yes, sir. I do not know about the rate regulation.

Q. How is that?—A. I do not know about the rate regulation. I think that goes to the Interstate Commerce Commission.

Q. You have spoken of the reports to the Attorney General?—A. Yes.

Q. That, of course, would be accessible to the committee, and if it is it will furnish a record of the amount of cases tried and the amount disposed of in this judicial district, will it not?—A. Yes, sir; the United States attorney has to make an annual report.

Q. In this district as well as in all the other districts of the country, would it not?—A. Yes, sir.

Q. And by a consultation with that annual report of the Attorney General, which reports the business in all the judicial districts of the country, it is a matter of mathematics, almost, to make an absolutely correct comparison from the official records?—A. Yes, sir.

Mr. HIGGINS. That is all.

The CHAIRMAN. If I understand your answer, it merely states your conclusion that in your opinion the judge's appearance on the bench, his apparent napping, was due to exhaustion?—A. I would say that.

Q. Overwork?—A. Overwork and lack of sleep.

Q. Overwork and the exhaustion that follows from overwork?—A. Yes, sir.

Q. And yet you say that on those occasions his mind was always keenly alert?—A. Yes, sir.

Q. How do you reconcile those two statements? That if his appearance of lethargy and sleepiness, or sleeping, was due to exhaustion, would it be possible for him not to sleep and to be mentally and keenly alert?—A. I would not call it an appearance of lethargy, Mr. Graham; but always on those occasions I have watched him carefully myself and he always had a grasp on the proceedings, always.

Q. In other words, his mind on those occasions acted as if he were not exhausted?—A. Apparently so; yes, sir.

Q. Yet you say that his appearance, in your judgment, was due to exhaustion?—A. I would say that; that is the way that I would feel sometimes.

Q. Well, do you see in those two positions any contradiction?—A. There might be, but in his case he always had a grasp of everything.

Q. It was not his body that was tired, but his mind, if he was tired at all?—A. Well, I do not know; he used to ride the bicycle a great deal and get tired that way, and things of that kind.

Q. Do you mean by that that his appearance of sleep or exhaustion was due to physical exertion?—A. It might be; I don't know.

Q. Have you an opinion on that point?—A. No; I have not, only I know he has a great——

Q. (Interrupting.) That is not the impression you wanted to convey at first?—A. No; certainly not.

Q. It was the vast amount of judicial work——A. Yes.

Q. Of mental work——A. Yes, sir.

Q. To which you attributed his exhaustion and his demeanor——A. Yes, sir.

Q. Or his apparent demeanor on the bench?—A. Yes, sir.

Q. Yet, as I understand you, while he appeared to the ordinary person to be napping or sleeping, and that appearance was due to exhaustion, mental exhaustion, still his mind was entirely alert and keen and active, and he was not mentally exhausted?—A. It was always alert; I could not say whether it was exhausted or not.

Q. If it was exhausted it could not have been alert, could it?—A. He was always alert.

Q. Now, do you see some contradiction in that?—A. I do; I see the point.

Q. Can you give any explanation of it?—A. I can not, sir. I have studied that a great deal myself.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Is it not true, rather, that Judge Hanford's peculiarities were evidence of the divorcement of mind from body, and of simply a physical relaxation in order that his mind might be unhampered by bodily fatigue of long hours of labor?

A. I could not express an opinion on that, Mr. Hughes.

The CHAIRMAN. You are not getting into the psychological field.

The WITNESS. I could not answer that.

The CHAIRMAN. One witness has stated that even when he was apparently sleeping his mind was so constituted that he could think of three distinct things and reason about them at one and the same time; do you agree with that?

A. Well, I never saw any particular instance of that, as I remember.

The CHAIRMAN. That is all, Mr. Frye.

Mr. HUGHES. Mr. Frye, you have been asked about the litigation incident to the white-slave laws; was there a good deal of that work in this district?

A. Yes, sir.

Q. And was there a large amount of litigation growing out of the laws affecting the Indians?—A. Yes, sir.

Q. Various laws affecting the Indians?—A. Yes, sir; both criminal and civil.

Q. What is peculiar to the Federal court?—A. Yes, sir.

Q. And the immigration laws—the exclusion act?—A. Yes, sir.

Q. Particularly in relation to the Chinese?—A. Yes, sir.

Q. Was there a great deal of that class of litigation?—A. Yes, sir; a great deal.

Q. The practice in this district in respect to equity cases was that all the testimony was taken out of court, and that in the examination and in the determination of equity cases the court had to read the evidence and then require briefs upon the facts and the law, and examine those for the purpose of deciding the case?—A. That is the practice; yes.

Q. Briefs in addition to the oral argument?—A. Yes.

Q. Which briefs had to give a synopsis or analysis of all the facts?—A. Yes, sir; to be printed.

Mr. MCCOY. Do you know any district where that is not the practice?

Mr. HUGHES. I am merely trying to show the amount of work——

Mr. MCCOY. There is nothing unusual in that, is there?

Mr. HUGHES. Nothing unusual at all.

Mr. MCCOY. Just what every judge does.

Mr. HUGHES. Only as bearing on certain questions which were asked and which I want now to ask the witness for the purpose of explaining.

Q. As a matter of fact, aside from the terms fixed by the law at which the ordinary business before the court in the trial of cases of all kinds before the court took place, was Judge Hanford's time occupied during the entire year in the interims between the trials or between the terms, rather?—A. Yes, sir; that was the time that he handled the equity and the admiralty cases, ordinarily, and examined the records.

Q. During the period of your incumbency in office when you were brought in close relationship with Judge Hanford, do you know of

a time when he ever had any vacation at any season of the year?—A. No, sir.

Q. You practiced law a number of years before coming to this State?—A. Yes, sir.

Mr. McCoy. There is not any fixed term or terms; there are not any terms of court prescribed by the statute, except that the court must be convened on a certain day?

A. That is what we call the November and the May terms.

Q. And they they run on as long as the business of the court lasts.—A. And while we were in the whole district we had an October term——

Q. And these admiralty and equity cases were being considered in term time, then?—A. Certainly, whenever he had the leisure out of the regular trial work.

Q. Whenever he had the leisure, but it was part of the ordinary business of the court to hear equity and admiralty cases, and he heard them in term time?—A. Except that they were always heard when there was no jury tirals on—the testimony was taken and he examined the records.

Q. Well, that is what would happen in every district?—A. Yes.

Q. It is a usual, regular thing?—A. Certainly, in Federal courts.

Q. You never heard of anything different anywhere else?—A. Certainly.

Mr. Higgins. If you can recall readily, I wish you would state when the State of Washington was divided into two districts?—A. It was in 1905, I do not remember the exact date.

Q. When was the additional district judge for the western district provided for?—A. Judge Donworth, I think, about three years ago.

Q. 1909?—A. Somewhere along there; I don't know exactly, but about three years ago, I think.

Mr. McCoy. Do you know whether or not it is a fact that in the State of New Jersey when there was a single Federal judge there, there was more admiralty cases tried than there was by Judge Hanford in the State of Washington?—A. I could not say that; the Attorney General's report will show.

Q. I refer you for that statement to the history which was furnished me the other day—the biography of Judge Hanford, where that statement was made—I do not know it myself.—A. I don't know.

The Chairman. We are getting back to New Jersey now, where the judges always keep awake—there are too many mosquitoes there.

Mr. McCoy. We have other things to keep them awake besides mosquitoes.

The Chairman. Mr. Frye, on that question of the amount of work, which you have specially remembered and know about, could you tell us how many days he held court each year?—A. No; I could not.

Q. Will the report to the Attorney General tell that?—A. I think it would. Well, that would only, of course, apply to the Government work and would not apply to the private cases.

Q. What do you mean by private cases?—A. "John Smith *v.* John Jones."

Q. You mean litigants in this court?—A. Yes.

Q. In which the United States was not a party?—A. Yes, sir.

Q. Could you tell us how many days altogether?—A. I could not, Mr. Graham.

Mr. HUGHES. I will say to the chairman, for the information of the chairman, that we anticipated that that might be of interest, and we have taken steps to secure from the clerks, from their records, the facts covered by the question; that is to say, the actual days on which he held court in the various districts.

The CHAIRMAN. Will that report show whether he held court all the day, or just during motion hours?

Mr. HUGHES. I can not tell you as to what it will show. We have asked them to make it—showing how many days he held court.

The CHAIRMAN. And the court rule was to convene at 10 and sit until 12 and then convene at 2 and sit until 5, making five hours of a court day when the court sat a full day—that is not exhausting?

A. No; not in itself.

Q. What would you say of a judge who held court 10½ months the year from 9 in the morning until 12 and from half past 1 to 6 and who did an appellate court duty in addition to that?—A. Pretty good worker.

Q. On your theory he would not be awake on the bench at all, would he?—A. That is not my theory; I am not testifying as to any theory, but just what occurred.

The CHAIRMAN. Very well; are there any further questions of Mr. Frye?

F. M. LATHE, being first duly sworn, testifies as follows:

The CHAIRMAN. Give your full name to the committee.

A. Fred M. Lathe.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Twenty-one years.

Q. What is your occupation or profession?—A. I am deputy United States marshal.

Q. How long have you been deputy marshal, Mr. Lathe?—A. Since 1902.

Q. Ten years?—A. Ten years this fall.

Q. Did you hold any other official position at any time?—A. No, sir.

Q. Been attached to the court of which Judge Hanford is presiding judge?—A. Yes, sir.

Q. Has he been all that time?—A. Yes, sir.

Q. Do you go to other courts with him, to Tacoma, or Bellingham, or other points?—A. I go to Bellingham usually, and occasionally to Tacoma.

Q. How often did you go to Bellingham?—A. I think I have been to Bellingham every time that the judge has gone there, except once, since the court was held there.

Q. How many times a year?—A. Twice, I think.

Q. For how long a time?—A. Two years, I think it is—I think it is two years since we have been holding court there.

Q. I mean, how long a time on each trip?—A. Sometimes we were there two days and sometimes four or five—I think we were there five days the last time.

Q. Do your duties keep you in the court room while the court is sitting?—A. Not ordinarily.

Q. What are your duties?—A. My duties—I have charge of the office here under the marshal.

Q. You do the clerical work?—A. Yes, sir.

Q. And your duties keep you in the office as clerk?—A. Yes, sir.

Q. Bookkeeping and the like—so that you are in the court room only occasionally?—A. That is all; if there is occasion for the deputy to be in the court room I see that he is there, and if the prisoners are to be brought down I see that they are there at the proper time.

Q. It is not your duty and it has not been your practice to stay in the court during the court business?—A. No, sir.

Q. To what extent have you been in the company of Judge Hanford when the court was not sitting?—A. I have seen him only then when I would happen to meet him in the building and hear him in his office and see him going in and out.

Q. Have you at any time seen the judge when, in your opinion, he was under the influence of an intoxicant?—A. No, sir.

Q. Have you ever seen him drinking in your life?—A. Yes, sir.

Q. Where?—A. I saw him take a couple of drinks at Bellingham three or four years ago; I saw him take, I think it was, two drinks on the train going home from Bellingham.

Q. In Bellingham, where was it, in a saloon or dining room?—A. Hotel.

Q. Hotel bar?—A. Yes, sir.

Q. With company or alone?—A. I think the clerk of the court was with him at the time.

Q. Who?—A. The clerk of his court.

Q. Do you know what he drank?—A. No, sir.

Q. Where did you see him drink on the train, at the table or somewhere else?—A. In the buffet car.

Q. Was he alone or with some one then?—A. He was with three or four others.

Q. Do you know what he drank?—A. No, sir.

Q. Did you ever see him drink at any other time or place than those?

Q. Have you noticed the condition referred to by the witnesses in which the judge appeared when presiding in court at times?—A. Yes.

Q. Describe his appearance on those occasions.—A. You refer to the times that they——

Q. I refer to the testimony of the witnesses as to his condition when he appeared to be napping or asleep.—A. Yes, sir; he would close his eyes and hold his head forward like that [illustrating], his chin on his chest, for a brief space of time, and then open his eyes and look around. He has a habit of just stroking his chin; I presume he is thinking about something or about to say something at the time; he has always—he almost invariably does it when he is about to say something.

Q. How long does his head remain on his chest or drop forward?—A. Only for a very brief space of time; a few seconds, maybe.

Q. On any of those occasions would his breathing be audible?—A. No, sir; not to me.

Q. To what extent would that continue during the time that he sat on the bench?—A. Some days he would be addicted to that habit or indulge in it more than on other days.

Q. Was there any time of the day when it was more apparent than other times?—A. Yes; I think so.

Q. What time?—A. Between, maybe, half past 11 and 12 and a half an hour after, say, half past 2 or 3, or something of that kind.

Q. Was his appearance on those occasions such as to attract the attention of those not familiar with him?—A. I think possibly it was; yes, sir.

Q. Can you tell the committee what the impression of a person not acquainted with him would probably be from seeing him in that condition on the bench?—A. I think possibly, very likely at first, the people would think he might be dozing, but I doubt very much whether a person could remain in the court during the entire session of the court and come away with that impression.

Q. Was his appearance as you saw it and as it impressed you on those occasions such as to lead an ordinary person to think that he might be under the influence of intoxicants?—A. No, sir; I should think not.

Q. On the occasions when you saw him drinking, in your opinion, did he show any of the appearances of being under the influence of what he drank?—A. No, sir.

Q. How many drinks did you see him take within a short time, at any one time?—A. Two, I think.

Q. That was in a hotel bar at Bellingham?—A. Yes, sir; I think he took two drinks in the hotel bar on one occasion, and I think he took two drinks on the train.

Q. Were you present on both those occasions?—A. Yes, sir.

Q. Can you tell the committee, if you have any recollection about it, what it was that he drank?—A. I have no idea; it was liquor of some kind, I presume.

Q. It was not water?—A. No, sir; it was not water; it was liquor; that is, I presume it was.

Q. That is, you mean some preparation of whisky?—A. Yes, sir; apparently; maybe; I don't know.

Q. You are not a lawyer?—A. No, sir.

The CHAIRMAN. Any further questions of the witness, Mr. Hughes?

Mr. HUGHES. Have you been about the Federal courthouse during your term of office very frequently at nighttime?

A. Yes, sir.

Q. Enough so you could say to the committee whether or not you are familiar with Judge Hanford's habits of laboring at night in his office?—A. Yes, sir.

Q. What is the fact?—A. Why, during the time that we were in the old building at Fourth and Marion Street, from July, 1908—I think we moved to this building in 1909, in April; I was in the office frequently; I had to be in my office, which was next to Judge Hanford's chambers, and I frequently saw the judge coming upstairs and going into his office and remaining there until after—well, he was there when I went away—I could hear him in his office; of course, I do not know what he was doing there.

Q. Either I misunderstood you or you made a slip of the tongue—how long did the Federal court sit at the building at the corner of Fourth and Marion?—A. I don't know how many years. Of course, we moved from there in April, 1909, I think.

Q. You spoke of 1908.—A. In July, 1908; from that time on until the time that we moved I had a great deal of night work to do, more than I had previous to that time.

Q. Well, did you observe him previous to that time working nights?—A. Yes.

The CHAIRMAN. What time would you leave your office on those occasions?

A. I would leave between half past 10 and 11, or half past 11.

Q. What time would you come back after the day's work?—A. I would get back about half past 7.

Q. What time would the judge get back?—A. About 8.

Q. And usually what time did he leave?—A. I don't know, sir.

Q. Did he never leave before you?—A. Yes, I think he has, but more times he did not.

Q. How many evenings a week would you come back there?—A. Possibly I would average two nights a week right straight along; it was not two nights every week, you understand; some weeks I had to work every night, and other weeks I would not be there.

Q. I understand you; some weeks you would work every night in the week, and then other weeks you would not be there at all.—A. Yes, sir.

Q. That would depend a good deal on whether there was a grand jury sitting?—A. Yes, sir; and extra work.

Q. Mostly grand jury work; when you had witnesses to look after?—A. Yes, sir.

Q. And to get out indictments, and things of that sort?—A. Yes, sir.

Q. And when there was criminal trial work on, of course you would be there too?—A. Yes.

Q. The civil cases tried in court did not affect you very much?—A. We have to serve processes in civil cases, writs, and to get the witnesses.

Q. They do not keep you going like the criminal work?—A. No, sir.

Q. So that probably most of your night work was done during the sessions of the grand jury and the trial of criminal cases?—A. Yes, sir.

Q. That is about right?—A. Yes, sir; I think so.

Q. Was there a couch in the judge's room?—A. I don't know whether there was or not.

Q. Do you know whether he rested in that?—A. No; I do not.

Q. You have no knowledge as to what he was doing there, except he was there?—A. I could hear him occasionally—I could hear him walking up and down the office, next to the one that I was in.

Q. There was no reason in the world why you should pay any particular attention to him, or to what he was doing there?—A. No, sir.

HENRY LANDES, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell the committee your name, please.

A. Henry Landes.

Q. Where do you live?—A. I live in Seattle.

Q. How long have you lived here?—A. I have lived here 6 years; previous to that I lived at Port Townsend 30 years.

Q. Port Townsend in this State?—A. Yes, sir.

Q. Are you in any business now or profession?—A. I am.

Q. What is it?—A. I am president of the Landes Estate Co.

Q. What is the nature of that corporation?—A. Well, it is a family corporation looking after its own interests in the way of land.
Q. It is an incorporation?—A. It is an incorporation; yes, sir.
Q. Holding and owning land in this State?—A. Yes, sir.
Q. What character of lands?—A. Well, buildings and town lots and acreage.
Q. That is really a sort of a trusteeship—a family estate?—A. Yes, sir.
Q. And you are the manager?—A. I am the manager.
Q. Are you a lawyer by profession or were you at any time?—A. No, sir.
Q. Colonel, do you know Judge Hanford?—A. I do.
Q. How long have you known him?—A. I have known him for 35 years.
Q. Casually or intimately?—A. Fairly intimately.
Q. Have you had any business association with him?—A. None whatever.
Q. Any social relations?—A. Yes.
Q. Do you and he belong to the same social organizations?—A. I belong to the same club.
Q. What is that, the Rainier?—A. Yes, sir.
Q. How long have you been members of it together?—A. Altogether about 10 years.
Q. Did you meet and spend some time together in the club?—A. Well, occasionally.
Q. To what extent have you attended court presided over by Judge Hanford?—A. I have never been in court but once.
Q. Were you in there then on business or merely as a visitor?—A. I was in there then on business.
Q. Did you have any litigation before Judge Hanford?—A. I did.
Q. In which the corporation or yourself individually was a party?—A. Myself individually.
Q. Was that the only occasion on which you had litigation before the judge?—A. The only time.
Q. Have you had any other social relations with him, such as visiting him or he visiting you at your home?—A. Well, he visited me once at my home; that was at Port Townsend.
Mr. HUGHES. Port Townsend in this State?
A. Port Townsend.
The CHAIRMAN. How long ago?
A. Let's see; it must have been 10 years ago, I think.
Q. Have you ever seen Judge Hanford drinking intoxicating liquors?—A. I have.
Q. Where?—A. At the club.
Q. To what extent?—A. Well, once in a while he would take a cocktail with his friends—myself and probably others.
Q. How frequently have you seen that happen?—A. Very seldom.
Q. Have you ever seen the judge when, in your opinion, he was under the influence of intoxicants?—A. Never.
Q. Have you ever seen him in the city here late at night?—A. Yes.
Q. How late?—A. Why, I have seen him at late as 11 o'clock.
Q. Do you recall any particular occasion?—A. Well, one particular occasion was, I think, when we had a banquet; we were at a banquet together when the fleet was here—Admiral Thomas.

Mr. HUGHES. It is difficult for me to hear what the witness is saying; if the chairman would suggest to him to talk a little louder.

The CHAIRMAN. Do the best you can, Colonel.

The WITNESS. My throat is a little affected.

Q. How long ago was that, Colonel?—A. It must have been—I don't remember exactly—to my best recollection four or five years ago.

Q. Have you seen the judge down town anywhere else than at banquets, at night?—A No, I can not recall—yes, I have seen him down town at the club.

Q. How late at the club?—A. Eleven o'clock.

Q. How often?—A. Well, not very often.

Q. That is what I want to get at—was it frequent or seldom?—A. Very seldom.

The CHAIRMAN. Any other questions, Mr. Hughes?

Mr. HUGHES. No questions.

E. C. MCDONALD, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name.

A. E. C. McDonald.

Q. Where do you live?—A. Spokane, Wash.

Q. How long have you lived there?—A. I have lived there since 1897.

Q. What is your business or profession?—A. I am engaged in the practice of law.

Q. And you have been how long?—A. Since 1897.

Q. All that time in Spokane?—A. Yes.

Q. Spokane is not now in the same Federal judicial district as Seattle?—A. No, sir.

Q. When was the district separated or divided?—A. In 1905, when Judge Whitson, I think, was appointed and assumed his duties; I think in April, 1905.

Q. Seven years ago?—A. Yes, sir.

Q. Are you acquainted with Judge Hanford?—A. Yes.

Q. How long have you known him?—A. Slightly ever since I have been in the state since 1890, and much more intimately from 1897 to 1905 while he was holding court at Spokane.

Q. How much of the time did the judge hold court at Spokane before the division of the district?—A. There were two terms a year over there and he held court.

Q. How much actual court?—A. I should say from two to four weeks in each term. You will understand, Mr. Chairman, that I have not looked into this matter at all.

Q. We understand that and we expect only approximation.—A. I should say from two to four weeks at each term.

Q. That would average three weeks each term, six weeks a year.—A. I should think so.

Q. That is your best recollection?—A. That is my best recollection.

Q. To what extent did you attend court presided over by Judge Hanford at other points than Spokane?—A. I don't think I ever appeared before Judge Hanford except in Spokane and a few times in Seattle when I came over here on some emergency matter, such as a temporary injunction or something or other.

Q. Merely some motion?—A. Yes, sir; I never tried a case, I don't think, before Judge Hanford in Seattle.

Q. To what extent have you had a general observation of the judge for any length of time otherwise than when he held court at Spokane.

A. He has been to my house at Spokane and I have been to his in Seattle; I have been at his club here and he has been to my club in Spokane.

Q. How much have you been at his home in Seattle?—A. I think two or three times only.

Q. And he at yours in Spokane?—A. About the same number of times.

Q. And how frequently have you met him at the Rainier Club?—A. I have not met Judge Hanford much for the last few years, but from 1905 to 1909 I was in Seattle a great deal and I used to go to the Rainier Club and see him four or five times in the course of the year.

Q. Are you a member of it?—A. The Rainier Club? No, sir.

Q. You are just a guest?—A. I was sometimes a guest of Judge Hanford and sometimes a guest of the late Gov. McGraw and other members of the club.

Q. And how frequently was the judge with you at your club in Spokane?—A. Some terms of court I would see him two or three times a week.

Q. At the club?—A. Yes.

Q. What was the name of your club?—A. The Spokane Club.

Q. Have you observed the manner in which Judge Hanford presided in court in Spokane?—A. Yes, sir.

Q. To what extent if at all on those occasions did the judge appear to be drowsy or napping?—A. Well he did not appear to me to be that way at all. I have seen Judge Hanford sitting with his eyes closed, but I knew him so well that it never occurred to me that he was asleep.

Q. Describe just how he looked on those occasions?—A. Well, he sat there and closed his eyes just as I have seen a great many other judges do.

Q. And what position would his head be in?—A. Sometimes he would have his head back on the high chair, about like you are sitting there now.

Q. And at other times?—A. At other times he might drop his head a little.

Q. Well, was his appearance such that a person unacquainted with him might think he was asleep?—A. I think a person who came into the court room and saw him for just a few seconds might gain the impression that he was dozing; but among the lawyers that thing never obtained.

Q. How much of the time did he spend that way?—A. Oh, just a little.

Q. What were the court hours at Spokane?—A. From 10 to 12 and from 2 to 5.

Q. From 10 to 12 in the forenoon and 2 to 5 in the afternoon?—A. Yes, sir.

Q. Have you ever seen the judge at any time drinking intoxicating liquors?—A. Yes, sir.

Q. Where?—A. At the Spokane Club and the Rainier Club.

Q. You saw him drink more or less, I presume, on every occasion on which you and he visited either club.—A. No; I would not say that.

Q. Well, give us the fact, whatever it is, how frequently?—A. I have spent a good many evenings with Judge Hanford at the Spokane Club, and dined with him, and on most of the occasions he would take a drink.

Q. What was his drink?—A. Well, sometimes it was a cocktail and sometimes a highball.

Q. Some preparation of whisky?—A. I should say so.

Q. How many drinks have you seen him take within a comparatively short time on any one occasion?—A. I don't think I ever saw him take more than two or three in the entire evening.

Q. Did you ever see Judge Hanford when, in your opinion, he was under the influence of intoxicating liquors?—A. No, sir; I never did.

The CHAIRMAN. Any further questions of the witness?

Mr. HUGHES. You are at present first assistant United States district attorney at Spokane?

A. Yes, sir.

Q. For the eastern district of Washington?—A. Yes, sir.

Q. In describing Judge Hanford's appearance on the bench, his habit of closing his eyes, let me ask you if on any such occasion you ever observed that Judge Hanford appeared not to be cognizant of all that was transpiring in the case before him?—A. In all my experience—in my opinion, he was grasping on everything that was going on and heard everything that was going on.

Q. When questions arose for the action of the court in the course of the conduct of a suit, did he rule promptly?—A. Very quickly.

Q. And what was the nature of his ruling as to clearness and accuracy of it?—A. He was perfectly clear and accurate.

Q. What would you say as to the ability of Judge Hanford; judicial ability of Judge Hanford; judicial and legal ability of Judge Hanford?—A. We have always regarded him as one of the ablest judges in the West.

Q. What would you say as to his judicial temperament?—A. I think it is a very fine one.

Q. And what as to his partiality or impartiality between litigants before his court?—A. I never saw him display any partiality at all.

The CHAIRMAN. I presume you have seen but little of him since the division of the district?

A. Very little. I don't think I have appeared before Judge Hanford since 1905, when we got our new district over there.

Q. You are now assistant district attorney there?—A. Yes, sir.

The CHAIRMAN. You are excused.

WILL H. THOMPSON, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell the committee your name.

A. Will H. Thompson.

Q. Where do you live, Mr. Thompson?—A. Seattle, Wash.

Q. How long have you lived in this city?—A. Twenty-three years.

Q. What is your profession?—A. Attorney at law.

Q. Are you still in the active practice of your profession?—A. Yes; reasonably active.

Q. How long have you been practicing law?—A. Forty-one years.
Q. Mr. Thompson, I assume that you are acquainted with Judge Hanford?—A. Yes, sir; and I have for 23 years past.
Q. Since he came to this part of the State?—A. Since I came.
Q. Since you came?—A. Yes.
Q. Have you had much business in his court from time to time?—A. Yes, sir; I have been quite actively engaged in litigation.
Q. What was the nature of it?—A. General; every branch of the business, almost. For eight years I was the western counsel for the Great Northern Railway Co., and all our cases were brought in his court; or at least transferred to his court, and then, generally, in all my practice it has been quite largely in the United States court.
Q. Do you have any other railroad clients?—A. No, sir; none other.
Q. How long a time did you say you represented the Great Northern?—A. Eight years, or a little more.
Q. What years were those?—A. Beginning in 1906—or beginning in 1896, I should say, and ending in 1904.
Q. To what extent did you associate with Judge Hanford when not in court?—A. Well, occasionally, you might say, only; I never was of an extremely social nature, and usually was alone after my working hours, but I was very frequently in Judge Hanford's association.
Q. Are you a member of the Rainier Club?—A. Yes, sir; I am not now, but I was for many years.
Q. Were you a frequent visitor to the Rainier Club rooms?—A. Yes, sir; during all my time.
Q. Did you meet the judge there?—A. Frequently.
Q. Was there any place else except the court room and the club where he and you met?—A. I met him at times at the Firloch Club, another social club.
Q. How do you spell that?—A. F-i-r-l-o-c-h.
Q. Is that still in existence?—A. I think it has been merged with another club now.
Q. When did you meet him there?—A. Well, I met him there from along about 1898 until 1901, or 1902.
Q. Mr. Thompson, there has been testimony produced before us tending to show that when Judge Hanford was on the bench he had a habit of closing his eyes, sometimes leaning his head forward until his chin touched his breast, and that to one unacquainted with him he appeared to be napping; I mention that to you because I know you have not been in the court room.—A. No, sir; I have not been here.
Q. Have you noticed that peculiarity of the judge while he was holding court?—A. Never so pronounced as your question would indicate. I never saw him with his chin upon his breast.
Q. Or near it?—A. Or near it; I have seen him frequently close his eyes in a way like that [showing], but I have never seen him upon the bench with his head dropped as your question would indicate.
Q. Have you ever seen him on the bench when an ordinary observer unacquainted with him might think he was napping—might reasonably think that he was napping?—A. Yes, sir.
Q. What position would he then be in?—A. Judge Hanford usually sat with his face nearer his desk than is ordinary; in other words, he generally sat rather low in his chair and with his head nearer the desk, and I have seen him——

Q. Were his hands and elbows on the desk, or not?—A. Usually one hand and arm upon the desk—very frequently in that condition, with a pencil in his hand.

Q. Go on now.—A. And I have seen him close his eyes in that way for a few moments, but never under such circumstances as indicated to me that he was sleeping, but I can see how a stranger to him might have gathered such an idea, but I never reached any such an idea.

Q. How recently have you practiced in the court with Judge Hanford on the bench?—A. Well, this session; early in the session.

Q. And constantly at intervals prior to that time?—A. Yes, sir.

Q. Have you ever seen Judge Hanford when, in your opinion, he was under the influence of intoxicants?—A. No, sir; I never have.

Q. Have you ever seen him drinking any intoxicating liquors?—A. Yes, sir.

Q. How frequently?—A. Five or six times in the 23 years that I have known him.

Q. Do you sometimes drink liquor yourself?—A. Occasionally.

Q. When were the occasions when you saw him drinking?—A. I drank beer with him once at the Hotel Spokane; I took a Manhattan cocktail with him and with Judge Burke at the Rainier Club at one time; I drank a glass with him at a banquet at Tacoma at one time.

Q. I beg your pardon, but what I am trying to inquire into are his habits, not yours.—A. My habits are perfectly open.

Q. You are telling us only your own habits. Now when you say you drank with him do you mean that you also drank?—A. When I say I drank with him I mean that we together drank.

Q. Are those the only occasions on which you saw him drinking? A. With one exception, yes; he and I drank together at the Firloch Club once.

Q. To what extent, if at all, have you been with him down town late at night, say, after 9 or 10 o'clock?—A. Never in any instance except in the attendance upon the State bar banquet or some other occasion.

Q. Or function?—A. Or function or occasion of that character.

Q. Have you ever drank with him or seen him drink elsewhere than at the clubs or banquets?—A. Once I drank with him at a saloon somewhere on Third Avenue. It has been so long ago that I forget just the particular location.

Q. Well, it is not important?—A. Yes.

The CHAIRMAN. Any other questions?

Mr. HUGHES. Mr. Thompson, you say you have practiced in the city of Seattle and in the State of Washington for the last 23 years.

A. I have.

Q. Where did you practice prior to that time?—A. Indiana—Crawfordsville, Ind.

Q. For how long?—A. Twenty-one years. I lived there 21 years, but I practiced there 18 years.

Q. At Crawfordsville, Ind.?—A. Yes, sir.

Q. Before your appointment as western counsel for the Great Northern road you had practiced in this State how long?—A. From 1889 till 1896—seven years.

Q. Did you have a large amount of damage litigation during that time?—A. Yes, sir; reasonably.

Q. For which side?—A. Well, I was generally for the plaintiff until my connection with the Great Northern service.

Q. Were many of those cases tried in the Federal court before Judge Hanford?—A. Yes, sir; a great many of them.

Q. Will you state to this committee what Judge Hanford's judicial attitude has been with respect to damage cases, as between the plaintiff and the defendant.

The CHAIRMAN. Does that question refer to his personal practice as he has stated it?

Mr. HUGHES. Yes.

The CHAIRMAN. It reads generally—you asked him "has been" instead of "had been."

Mr. HUGHES. I assume that the witness will answer the question from his personal knowledge; I did not propound my question with any other thought in view.

The CHAIRMAN. All right, if it applies to the period covered in the former question.

Mr. HUGHES. I mean to have it to apply to the entire period, because he defended cases during the time he was representing the railroad company, and I am asking him to include the instances where he prosecuted cases on behalf of the plaintiff.

Question repeated to the witness.

A. I do not know how to answer it other than to say that I never saw a judge or practiced before one that was more entirely unbiased, fair, and entirely judicial in his attitude and rulings than Judge Hanford has been.

The CHAIRMAN. Would you state again when you began to be counsel for the Great Northern?

The WITNESS. In February, 1896.

Mr. HUGHES. Have you ever observed Judge Hanford fail to note all that transpired in the conduct of a case before him that would require the attention of a judge?

A. I never observed anything of the kind.

Q. What about the promptness and the clearness and accuracy of his rulings upon questions that arose before him?—A. Well, his rulings always seemed to me to be extremely prompt and vigorous and given in no uncertain way. Whether they were for you or against you, they were unmistakable.

Q. What was his attitude in respect to giving full opportunity to make a complete and fair record so that his decisions might be reviewed?—A. That was characteristic of Judge Hanford; he would hear you whether he had any faith in your position or not; he would give you a patient hearing—that was always true of him.

Q. Do you know anything about the volume of business that Judge Hanford had to transact, the industry that he used or the lack of it that he exhibited in his judicial service?—A. Well, it was extremely large in this district. He was a very hard worked man and a marvel of industry in the disposition of cases. Judge Hanford worked late and early; when we attorneys would not work Judge Hanford worked and disposed of the business.

Q. Mr. Thompson, one witness testified to having been a comrade of Judge Hanford's in the Army; do you know anything about whether Judge Hanford was in the Army?—A. I can not know, but I

thoroughly understand from his history that he was not in the Army, but I can not know because I was not with him during that time.

Q. You yourself were in the Army?—A. Yes, in one army.

Q. Which army?—A. The Confederate.

The CHAIRMAN. You do not remember meeting him?

The WITNESS. I have no recollection of meeting him—there were others, though.

Mr. HUGHES. You are the author of High Tide at Gettysburg.

A. Yes.

Mr. HUGHES. That is all.

DUDLEY G. WOOTEN, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell the committee your full name.

A. Dudley G. Wooten.

Q. Where do you live, Mr. Wooten?—A. Seattle.

Q. How long have you lived there?—A. Nine years this coming August, next month.

Q. Prior to that where did you live?—A. Dallas, Tex.

Q. You are a professional man?—A. Yes, sir.

Q. What is your profession?—A. Lawyer.

Q. How long have you practiced the law?—A. About 30 years.

Q. Are you still in active practice?—A. Yes, sir.

Q. How long have you practiced in this city?—A. Since I came here, in August, 1903.

Q. I assume you are acquainted with Judge Hanford?—A. Yes, sir.

Q. How long have you known him?—A. Well, I got first to know Judge Hanford officially a few months after I came here, probably three or four months; I do not know just when I did meet him first personally, probably about the same time I first appeared in his court.

Q. To what extent have you had business before him?—A. Well, I have tried quite a good many cases before him in the course of my practice, both civil and criminal, and admiralty cases.

Q. I suppose you have been in his court only when you had business there?—A. Yes.

Q. In other words, you have not been here to any extent, at least, when you were not occupied at your own business?—A. No, sir; I have not been in court except on my own business.

Q. Now, outside of your court work, to what extent have you been in his society?—A. How?

Q. In his company or society?—A. Well, not a great deal; I only met Judge Hanford at the meetings of the bar association; I occasionally associated with him, but not to any great extent.

Q. Are you a member of the Rainier Club?—A. No, sir.

Q. Are you a member of any club or association or social organization of which he is a member—of which you and he are members?—A. No; I don't think so; I have seen Judge Hanford at the Rainier Club; I had occasion once or twice to go there to find him, and I found him there at night when I was seeking an injunctive order in pending suits. I am not a member of the club and I never met him there except in a business capacity.

Q. On what occasions would you meet him outside of the court or court hours?—A. Well, I traveled with him between here and Spokane once to a meeting of the State bar association, and I have

met him on the street cars once in a while. I met him several times going to Tacoma on the interurban to attend court over there.

Q. To what extent have you been in his company in the late hours of the evening, say, from 9 to 1 o'clock?—A. I had occasion to hunt him up at night late, at 10 or 11 or 12 o'clock, where I would get orders from him, and get him to sign injunctive orders—orders in matters pending in his court; that is the only time I know that I saw him late at night.

Q. How often did that happen?—A. A half a dozen times.

Q. Where would you find him?—A. I found him in his chambers twice, I think, and once at the Rainier Club, and once I went to his residence.

Q. Mr. Wooten, you have heard some testimony, I think, as to some of his peculiarities while presiding in court.—A. Yes.

Q. Particularly with reference to his apparent napping; have you observed that?—A. Well, I observed that the first time I ever appeared in his court that he had the habit of sitting with his head down, sometimes with his hand kind of rubbing his face a good deal or holding his mustache, and sometimes he appeared drowsy. I soon discovered, though, it was simply a peculiarity, because he seemed to know what was going on pretty well, I noticed.

Q. Do you recall when you first observed that appearance of drowsiness?—A. Sir?

Q. Did you observe that appearance of drowsiness at once when you first became acquainted with him, or was it later?—A. Well, I noticed it, I think, the first case I ever tried before him. It did not strike me as anything especially peculiar because I had known a judge—one of the best judges I ever knew—who had the same peculiarity—Judge Moore, of the Supreme Court of Texas, had exactly the same peculiarity, and I did not, for that reason—it did not strike me as anything specially peculiar—it did not impress me specially.

Q. It was not the first instance of the kind you had seen?—A. No.

Q. But it was the second?—A. Yes; well, I have known a good many men along about his years that had it.

Q. To the same extent?—A. I do not know that I ever knew two men who had it to the same extent that he and Judge Moore had. That is the judge I have spoken of. I will say that it did not impress me exactly as drowsiness, but I thought that he was not paying attention to the case, but I soon found out that that was not true.

Q. What would you attribute it to?

A. Well, I just attributed it to a habit of shutting his eyes to think, and it just became somewhat of a habit of his.

Q. It did not occur to you, then, that it was the result of severe mental labor?—A. Well, it might have been due to that. I discovered very soon after I came in contact with him officially, that Judge Hanford was a man that worked a great deal in chambers, working at night a great deal.

Q. How do you know?—A. When I first came to Seattle I roomed up above where the old Federal court building was, and I had noticed often a light burning in his room very late at night, and sometimes I would see him moving to and fro; it was up in the building, at Marion and Fourth, I think it was; and I had occasion to go to his chambers sometimes before the court met or after the court met, and he looked like a man who had lost a good deal of sleep.

Q. The question I asked you is just on that line. Did you attribute his apparent drowsiness in court to his loss of sleep?—A. And hard work—and his work, and then more particularly I attributed it to personal habit that he had of shutting his eyes and apparently closing out the world; and if I had not been formerly accustomed to seeing the same thing in another judge, whom I considered a very capable judge and one of the best judges I ever knew, I might have thought that he was not paying any attention.

Q. Am I right in concluding from your answers that it was your opinion that while he seemed drowsy and tired, he was not so in fact?—A. I found out very soon that he was not; that his mind was very active and that he heard everything that was going on, because he really ruled on every question that arose with perfect intelligence and, in fact, with more than ordinary quickness.

Q. And that the apparent drowsiness and sleepiness was not real?—A. No, sir; I found it was not.

Q. Have you ever seen the judge when, in your opinion, he was under the influence of an intoxicant?—A. No, sir; I never did.

Q. Have you ever seen him drink intoxicants?—A. I think the only time I was ever in his company when there was any drinking was on one night I went to see him at the Rainier Club and drinks were ordered. I do not remember what he drank. My recollection is that it was some light drink, possibly lemonade; I do not remember now.

Q. Have you any recollection about it?—A. No, sir; I do not remember what he drank, but he did take a drink of some kind.

Q. I did not ask you to guess at it.—A. That was the only occasion I was ever in his company when there was any occasion to drink.

Q. You were there, then, I think you stated before, to get some injunctive order?—A. Yes, sir.

Q. Did he sign the order for you there at the club?—A. I went over the case with him and read the bill in equity to him and stated the nature of the case, and then he listened to it very attentively and asked a few questions about it and asked whether I had the order prepared, and he read it and signed it.

Q. Did he do that for you on more than one occasion?—A. Yes; I got two orders from him at his residence on——

Q. (Interrupting.) Who was the petitioner?—A. Well, in the case in the Rainier Club it was a case of G. W. Phelps against Whitney and others.

Q. It was an individual?—A. Yes, sir; it was a controversy arising between a member of the Order of Railway Employees and the order—the lodge—a local lodge——

Q. Involving the rights of a member of the order?—A. (Continuing.) The Brotherhood of Railway Employees, I think they called it.

Q. And what particular line of employment was he in—a conductor, brakeman, or engineer?—A. It is this order that had its headquarters at Cleveland. F. H. Morrisy was at the head of it. This man Whitney, who was one of the defendants—I think he was the vice president or manager. It is a national order.

Q. It was on a petition involving the rights of a member of the order as against the rights of the order?—A. Yes, sir; they had attempted to expel him from the order and he was seeking an injunction against it.

Q. Against his expulsion?—A. Yes, sir.

Q. Do you remember any other order he signed for you at the Rainier Club?—A. No; that was the only order he ever signed there. I do not remember what the others were at his residence. It is a good long while ago.

Q. Have you ever seen the judge down in the city after 9 o'clock at night—not at the club or at a banquet or anything of that kind, but down town?—A. No, sir; I don't think I ever did. I do not remember ever seeing him on the street at night.

Q. Did you ever drink with him or see him drinking at any other time or place than the Rainier Club?—A. No, sir.

The CHAIRMAN. Any other questions, gentlemen?

Mr. MCCOY. Has Judge Hanford a law library at his house?

A. Well, I think he had a few books. I do not remember noticing whether he had an extensive library or not. I know that he had a private library, but I do not remember about the law books. I think he had some law books there.

Mr. HUGHES. Mr. Wooten, the injunctive orders that you obtained from Judge Hanford were interlocutory restraining orders pending an application for a temporary restraining injunction?—A. Yes, sir; I think they all were.

Q. Have you represented the plaintiffs in personal-injury cases, either civil actions at law or actions in admiralty, before Judge Hanford?—A. Yes, sir; a good many.

Q. More than you have the defendant?—A. Quite a number of that sort of cases.

Q. You had more cases of that kind for the plaintiff than for the defendant?—A. Well, they have always been for the plaintiff.

Q. In the light of your own experience before him, tell the committee what has been Judge Hanford's attitude—judicial attitude, I mean—in litigation of that kind, as between the plaintiff and the defendant?—A. Well, I found him to be universally fair. In fact, it seemed to me that in the cases I have had personally before him that he rather leaned to the plaintiff in the case of employees injured in the service of corporations. I have considered his attitude has been a very sympathetic one toward the plaintiff. So much so that in one case I know which I had before him he evinced such a decided sympathy in his charge that I got reversed in the circuit court of appeals after I got a judgment on that ground.

Q. You say the reversal was on that ground?—A. Yes; he took the case away——

Mr. MCCOY. I did not hear that. Will the reporter repeat that?

Whereupon the question and answer are read by the reporter.

A. (Continuing.) Well, he took the case away from the jury, or rather he charged the jury to find a verdict for the plaintiff, and rather over my protest, because I thought I had a good case to go on the merits, and the circuit court of appeals reversed him and said he should have submitted it to the jury.

Mr. MCCOY. You were for the defendant, then?

A. For the plaintiff.

Q. And he directed a verdict?—A. He directed a verdict for the plaintiff in the case.

Q. And specified the amount which they should give?—A. No; of course he did not specify the amount, but he charged that the plaintiff

had made out his case completely and submitted only one issue to the jury, and that was the issue of contributory negligence.

Q. In other words, you wanted the whole case to go to the jury so that they could not predicate any error.—A. I wanted the whole case to go to the jury—I did not care to have it imperiled by having the plaintiff's case—having the defendant practically charged out of court.

Mr. HUGHES. Have you ever known of Judge Hanford being under the influence of liquor?

A. You say did I ever see him under it?

Q. Have you ever known of Judge Hanford being under the influence of liquor?—A. No, sir.

Q. What would you say as to his judicial ability?—A. Well, I consider him a superior judge, and always did.

Q. What would you say as to his judicial temperament?—A. Well, what do you mean exactly by that?

Q. Well, that question has been raised here—it has been charged that he was not a man of judicial temperament, whatever that may mean—now if your knowledge of the English language does not enable you to know what is meant by that, I do not know in what way I can explain it to you.—A. If you mean by that a temperament or disposition to be perfectly fair and to weigh both sides of all questions submitted to him, I would consider that he had a very fine judicial temperament. Sometimes he evinces a little petulance on the bench toward counsel for some, what he considered unnecessary, delay or making trivial objections, that he considered so—he evinces occasionally a little petulance, but I never knew it to go, in my practice or presence, to go to the extent of a ruling that was dictated by anything but what seemed to be a judicial consideration of the merits of the question.

Q. What was his judicial habit in respect to dispatch of business, judicial business?—A. Well, he dispatched business very rapidly.

Q. You spoke of formerly residing in Texas—how long did you practice law there?—A. From the time I was admitted to the bar I practiced law in Texas about 20 years, a little over 20 years.

Q. Constantly?—A. Yes—well, I was in Congress for a while—in politics for a while.

Q. How long were you a Member of Congress?—A. I was in the Fifty-sixth and Fifty-seventh.

Q. Congresses?—A. Yes.

The CHAIRMAN. That is all.

C. F. YEATON, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name.

A. C. F. Yeaton.

Q. Where do you live?—A. Seattle.

Q. And you have lived here how long?—A. Twenty-six years.

Q. What is your present occupation?—A. Bailiff of the Federal court.

Q. How long have you been in the Federal court?—A. Continuously about 18 months; I served 6 months one time before that.

Q. Who appointed you?—A. Marshal Jacoby.

Q. What was your business before that time?—A. Why, I had been in the general merchandise nearly all my life.

Q. Here in Seattle?—A. Here and Alaska and Oregon.
Q. Before you were appointed bailiff did you know Judge Hanford?—A. Yes, sir.
Q. How long have you known him?—A. I think 28 or 29 years.
Q. How intimately?—A. Not intimately at all; just simply as a public man.
Q. By observing him?—A. By observing him; that's all.
Q. Where?—A. Here in Seattle.
Q. On the street?—A. On the street and in court. I knew him when he was an attorney at law.
Q. Had you any occasion to be in court except as a mere visitor or caller?—A. No, sir.
Q. Were you ever a juryman or in any way connected with the court prior to the appointment as bailiff?—A. No, sir.
Q. To what extent did you see him in court prior to your appointment?—A. Well, not very much, except that I occasionally visited the court; that is all; and I have seen him on the street and in public speeches and such things as that.
Q. While you were acting as bailiff, what was your duty?—A. Well, mostly in charge of the jurors and in attendance on the court.
Q. Did your duties keep you in court most of the time?—A. Yes, sir; constantly in court when the court was in session.
Q. Has any judge but Judge Hanford presided in the court during that time?—A. Judge Donworth.
Q. But Judge Hanford most of the time?—A. Most of the time, and recently Judge Rudkin.
Q. Have you noticed the peculiarities of the judge's demeanor while presiding of which you have heard testimony here?—A. Yes, sir.
Q. When did you first notice his tendency to nap or appear as if he were napping on the bench?—A. Well, I think that was soon after I was appointed bailiff. Occasionally I would notice that he was in that drowsy condition.
Q. Was his appearance such as to lead an ordinary observer who did not know him to think that he was asleep?—A. Well, I should judge they would think he was drowsy—drowsy on the bench at times.
Q. Describe as you saw him what his appearance was.—A. Well, occasionally his head would drop down a little, but he was always in his rulings just as prompt as——
Q. (Interrupting.) I did not ask you about that. Stick to the question. What was his appearance is the question.—A. Well, a sort of drowsy appearance I would say.
Q. Well, what? Indicate that drowsiness.—A. I say his head would drop occasionally.
Q. How frequently?—A. Not very frequently; perhaps two or three times in the course of a forenoon or afternoon.
Q. For how long at the time?—A. I would not judge over two or three seconds at any time.
Q. Have you been with the judge during the time you were bailiff at any places outside of the courthouse?—A. No, sir; only I have met him on the street.
Q. At what hours?—A. Generally at noon or immediately after court.

Q. How late at night have you ever seen him on the street?—A. Never at any time.

Q. Did you ever see the judge drinking any intoxicating liquors?—A. No, sir.

Q. Have you ever seen him when, in your opinion, he was under the influence of intoxicating liquors?—A. No, sir; not in the least.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Did you have occasion to be here in the evenings when terms of court were being held or juries were out?

A. Yes, sir; often when the juries are out at night.

Q. Do you know anything about Judge Hanford's habit of working nights?—A. Yes, sir; most always in his office.

Q. How late?—A. Well, I have seen him there as late as 11 o'clock.

Q. That would be as late as you would be around?—A. Yes, sir; I generally go home before that.

E. C. KILBOURNE, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. E. C. Kilbourne.

Q. Where do you live, Mr. Kilbourne?—A. Seattle.

Q. How long has that been your home?—A. Twenty-three years.

Q. What is your business?—A. Bailiff of the United States court.

Q. For how long?—A. Nearly 11 years.

Q. What was your business before you became bailiff?—A. Chief engineer for the Union Electric Co.

Q. You are a stationary engineer by profession?—A. By trade.

Q. Do you know Judge Hanford?—A. I do.

Q. And you have been bailiff in his court for all those years?—A. Yes, sir.

Q. What are your duties?—A. To take care of the juries; to take them to their meals, and to take care of their rooms, and look after them.

Q. Are you on duty in the daytime?—A. Nighttime. When I have a jury I always take care of the jury nighttime.

Q. Are those two bailiffs who have the same duties to perform in that regard?—A. Yes, sir.

Q. Yourself and Mr. Yeaton?—A. Yes, sir.

Q. You act in conjunction with one another?—A. Yes, sir.

Q. Are you both present in the court room at the same time or not?—A. As a general thing.

Q. Two bailiffs in the court room at one and the same time?—A. As a general thing; yes, sir; whenever there happens to be a jury out, and then there is the court besides following any other cases, you know.

Q. You are both on duty, too, when you have not juries?—A. No, sir; when there is no court we are not on duty.

Q. Have you observed any peculiarity in Judge Hanford's manner while he presides in court?—A. Not any more than usual that I know of.

Q. Did you ever see other judges presiding?—A. Yes, sir.

Q. Have you noticed any difference in his demeanor or attitude while on the bench from that of the other judges?—A. Sometimes he drops his head like that [illustrating] as though he were studying or something of that kind, and I have seen other judges, but not in the United States court, do the same thing.

Q. In the same way?—A. Yes, sir; but not in the United States court—in the county court.

Q. Who?—A. Different ones.

Q. Who, for instance?—A. Ronald.

Q. Who?—A. Ronald, for one.

Q. How do you spell that?—A. R-o-n-a-l-d.

Q. Who else?—A. Judge Main.

Q. And how do you spell that?—A. M-a-i-n.

Q. You think that their attitude and appearance and demeanor on the bench is similar to that of Judge Hanford?—A. Something as though they were studying on some matter or something of that kind.

Q. Is their appearance such as might lead an ordinary observer to think that they were napping?—A. Well, no; I would not think that they were napping; no.

Q. I spoke of an ordinary observer.—A. That is, they might have their eyes closed, of course, as I have seen Judge Hanford do.

Q. Listen to my question. Is the appearance of Judge Hanford and these other gentlemen such as might lead an ordinary observer not acquainted with them to think that they were napping?—A. Well, a man that was not acquainted with them might think they were napping.

Q. And might reasonably think so?—A. Because they were not used to seeing them that way.

Q. To what extent have you observed Judge Hanford when he was not holding court?—A. I met him on the street several times.

Q. At what hour?—A. In the daytime.

Q. Did you ever see him on the street in the nighttime?—A. Not only as I had a jury out.

Q. Well, on that occasion, where did you see him on the street?—A. Then I would meet him as I was going out to lunch, or something of that kind.

Q. That would be in the evening when you were taking dinner with him?—A. Yes, sir; or at 12 o'clock.

Q. At night?—A. Yes, sir.

Q. I thought you said when you had the jury out. I meant out on the street, but I see that you mean out in their room.—A. Well, I took them out to lunch at 12 o'clock; that is what I meant.

Q. Twelve o'clock at night?—A. Yes, sir.

Q. Usually?—A. Yes, sir; always.

Q. And how often have you seen him on the street at that time under those circumstances?—A. Not very often; it just happened that I would happen to pass him as he was going down town.

Q. About how often?—A. Well, I could not say.

Q. Where did you take them to—the jury—to lunch?—A. Down to the Wood Café, as a general thing.

Q. What direction is that from this building?—A. Southwest.

Q. How far?—A. Three blocks.

Q. Well, do you recall any occasion when you were doing that and met Judge Hanford or saw him?—A. I could not just recall the dates and the case.

Q. I did not ask you the date, but do you recall the particular occasion, without fixing the date?—A. Yes.

Q. Was he meeting you, or going in the same direction?—A. He was going in the same direction.

Q. Do you know where he was going from or to?—A. No, sir; I do not. He left his office just ahead of me as I went down the stairs with the jury, but where he went I do not know.

Q. He was going south, that was not in the direction of his home, was it?—A. No, sir; not at that time.

Q. Have you ever seen the judge when in your opinion he was under the influence of intoxicants?—A. No, sir.

Q. Have you ever seen him drinking intoxicants?—A. No, sir; I never did.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Have you been here at the Federal court room in this building, or the Federal court when it was in this building or at the old courthouse, very frequently at nights when your duties required your presence here.—A. Yes, sir.

Q. You were never here at nights except at times when your duties as bailiff required you to be here in attendance upon the juries.—A. That is the only time.

Q. Was that or has that been frequent or only at rare intervals?—A. Well, not so awfully frequent—just occasionally it happens to come that way.

Q. What do you know about Judge Hanford's habits so far as you learned of them from the means which you have described, respecting his working in his office at nights?—A. Well, at nights when I had a jury out I have been here all night and I have known him to stay here all night for that matter—stayed as long as I did—but he would go out and eat the same as I would with the jury—I would take them out—and I have known him to stay other times until 2 o'clock and then tell me that I could get him at his home by phone if I wanted him—several times I have known that to happen.

The CHAIRMAN. Was there a couch in his room?

A. Yes. I have known him to lay down and sleep on the couch and I have went in and covered him up with a blanket several times when it would slip off the couch—I would cover him up—I have been in there several times to do that.

JOHN STRINGER, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. John Stringer.

Q. Where do you live?—A. Seattle.

Q. How long have you lived there? A. Twenty-five years.

Q. What is your business?—A. I am at the present time deputy sheriff of King County. I was—that is before 1908—I was deputy United States marshal from 1898 until 1908, when I went into the sheriff's office.

Q. When were you deptuty marshal your duties were in connection with Judge Hanford's court.—A. Yes, sir.

Q. What were your particular duties?—A. I had charge of the office here in Seattle, and we traveled all over the State at the time. During those days he held court in Seattle, Tacoma, Spokane, and Walla Walla.

Q. Your duties, then, do not keep you in the court room.—A. No, sir; not all the time.

Q. You had general supervision of the marshal's office.—A. Yes, sir.

Q. The marshal himself not being present much or any of that time.—A. He stayed in Tacoma.

Q. So that here in Seattle you had entire command of the local force.—A. Yes, sir.

Q. You had two bailiffs who attended to the particular court duties, such as looking after juries and grand juries and waiting on the judge.—A. Two bailiffs and a crier—there were three in the court room.

Q. The two bailiffs are the gentlemen who just left the witness stand?—A. Well, one of them was—the other was appointed since I was here.

Q. Mr. Kilbourne and Mr. Yeaton were those two.—A. Mr. Yeaton was not there when I was.

Q. How much did your duties bring you into personal contact with, or where you had a chance of personal observation of Judge Hanford?—A. Well, a great deal. I was in the court and out of the court; his chambers was next to the marshal's office, and while I was in the marshal's office I studied law and had access to his library, and was in and out of that; he gave me free access to it and I would go in and out whenever I chose, and so I went in and out of his library and in and out of the court room at all times or any time during the day.

Q. You had a chance, then, to observe Judge Hanford's appearance and demeanor while on the bench?—A. Yes, sir.

Q. Did you notice anything peculiar in it?—A. No; I did not—I could not say that I did. The only thing he had a habit of closing his eyes apparently; to one who was not acquainted with him would say that he was asleep, and in fact I have, at time, thought perhaps he was taking a nap just for an instant like, but after the argument of the case for a new trial or for anything in regard to what the witnesses said he would always have the important part of that witnesses's' testimony so that he could correct the attorneys on either side while I had thought that he might have been dozing; to me at the time it proved to me beyond any doubt on earth that he was not; that he had every faculty that he was possessed of during the trial of the case.

Q. To what extent have you been with the judge elsewhere than in court?—A. I slept—before I was married in 1901—I slept in the guardroom in the marshal's office next to his library; they have an inner room there, and as I said, I studied law there and sometimes would be up until 1 o'clock—I studied sometimes later, sometimes until 2 or 3 o'clock, and sometimes I would go into the judge's chambers and he would be in there working on his cases; at other times I would hear him walking backward and forward—other nights when I would not go in there I would hear him walking backward and forward and I could hear him taking out the books and putting them back into the cases as if he were reading them; and then I have been with him on the train to Tacoma and stayed there while he was holding court there, and I have observed him more in Tacoma and Walla Walla and Spokane than I did here in town, because after he would leave his chambers there, of course, late at night—very late at night, as far as I would know—he would go home, because while I slept in

the marshal's office there I did not go out. After I was married, of course, I did not sleep in the marshal's office any more.

Q. When were you married?—A. 1901.

Q. The court adjourned at 5 p. m. or earlier?—A. Five or earlier; very seldom that he would have a night session or be later than that; it would be an extraordinary case.

Q. You mean when he would have a night session in court?—A. Yes.

Q. How often has that happened?—A. I do not recall now just how many times that was; it was not very often, though, that he would have a night session.

Q. It was a rare thing?—A. Rare; yes.

Q. What time would the judge come back to his office after leaving it when the court adjourned—how soon after?—A. He would vary from 7 to 8 o'clock after he would go home.

Q. Do you know where he had gone; whether he went home or dined elsewhere, as a usual thing?—A. He went home; he lived up here on Madison Street and he would go home in the evening and return. In fact, I have called him up at the house for some things that I would want. He was a man and is a man of absolutely the same habit every day and you can about catch him any time that you want him.

Q. You say he would come back to his office every evening after dinner?—A. Not every evening, but the great, great majority of evenings while I slept in the marshal's office there for two or three years he was in his office as a regular thing.

Q. Do you know whether he had a working library at his home?—A. I don't know that.

Q. As far as you know he did his work in this building or in the court room?—A. When it was on Fourth and Marion.

Q. Yes; in the other courthouse.—A. Yes, sir; he did it in his office; I was in the library time and time again at night and he was in there reading and working on his cases along until sometimes 2 or 3 o'clock in the morning. I know one night that Tom Delaney, who is now dead—he was the chief of police—he was a customs officer, and we were out at Lake Washington, and coming in we met the judge going up the street where the Providence Hospital is, just above Fifth or Sixth on Madison Street, and it was close onto 4 o'clcok, and he was walking up the hill going home at that time.

Q. Do you know where he came from?—A. I do not know, except that at 11 o'clock I was in the office and his light was in the chamber and his light was lit, but of course I could not tell where he had been in the meantime, except from the two circumstances that I would conclude that he was there—from the fact that he was there at 11 o'clock and then seeing him walking home I put it down that he had been in his library all that time.

Q. Have you ever seen the judge drinking intoxicating liquors?—A. Yes, sir.

Q. Where?—A. In Walla Walla I had a drink with him, I think, once or twice, and in San Francisco I had a drink with him once or twice.

Q. Were those the only occasions when you saw him drinking?—A. I think that is all; I may have seen him take a drink in Spokane, but I am not sure.

Q. Did you ever see him in or going into a barroom in Seattle?—A. Yes.

Q. Where?—A. Down opposite the Burke Building I have seen him going in with Judge Burke. I don't remember the name of the bar.

Q. What barroom was it?—A. I do not recall the name of it, whether it was—it is opposite the Burke Building on Second Avenue.

Q. Is that the only occasion or was there more?—A. No; it has been, I think—I have seen him, too, with Judge Burke in Sutherland's barroom; I have seen him, probably in those 15 years, I have seen him four or five times in a barroom.

Q. Twice or more than twice with Judge Burke?—A. I beg your pardon?

Q. Was it twice only or was it more than twice you saw him with Judge Burke?—A. I think he was always with Judge Burke—I don't think I ever saw him alone that I remember of.

Q. Did you ever see him drinking anywhere else in Seattle than on those occasions?—A. That is all, except at a banquet or something.

Q. Or a function of some kind?—A. Something like that; I never noticed whether he drank or not at those.

Q. Are you a member of any club of which he is a member?—A. No, sir.

Q. Have you ever seen him when, in your opinion, he was under the influence of liquor?—A. No, sir.

Q. Or any intoxicant?—A. No, sir; never; he could not have been a man that you could say was a drinking man to excess and I, seeing him every day and knowing his condition and his manner, and say that he was a drinking man to excess at all.

Q. Was his appearance which you have described while on the bench such as would ordinarily or might reasonably lead an ordinary person to think that he was taking a nap?—A. Yes, sir.

Q. What would you attribute that to?—A. Well, I do not know. Of course I know that he does not sleep very much at night; he is a regular nighthawk to work; he seemed to almost love his library, and lived in it and was in there all the time at night and late, except probably he would go out some afternoon, and then even he would return and work in his library, and at 12 o'clock at night he would get up and go down town and get something to eat, or something like that; and I noticed that, as the bailiff has explained here, when the jury would be out, and he would return again and put in an hour or two then; and it may have been from that loss of sleep at night that he should have gotten that caused him to be drowsy and sitting in the chair listening that way; of course it would bring on drowsiness. I have seen him get up a great many times and walk backwards and forwards on the bench and stand and put his hand on the chair.

Q. You say he would go out for something to eat or something like that? What did you mean by "something like that"?—A. Well, I don't know where I got the impression from, but it is my impression that I either saw it or it was told to me, of course, that he generally went out about 12 o'clock and got a cup of coffee and a piece of bacon, or something like that. Now, I do not remember that I saw him, except that——

Q. (Interrupting). Very well, if you are right that the judge is a nighthawk and a glutton for work at night, and works most of the

night at all hours; when during the day he seems to be napping, is it not entirely probable that he would be napping?—A. You can draw your own conclusion, of course.

Q. I want your opinion?—A. What is my opinion—if he was napping?

Q. Yes.—A. It is not my opinion that he was asleep on the bench, because, as I have said before——

Q. The circumstances which you have described would make it quite probable, wouldn't it?—A. Yes, it would.

The CHAIRMAN. Any further questions?

Witness excused.

JOHN T. CONDON, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name.

A. John T. Condon.

Q. Where do you reside?—A. Seattle.

Q. You have lived here how long?—A. I have lived here, except a few years going to school, all my life.

Q. You are the first witness that we have had that has lived here all his life.—A. I was born in a little neighboring town over here and I have lived here all my life in this vicinity except a few years at school.

Q. What is your present occupation or profession?—A. I am dean of the law school at the University of Washington.

Q. How long have you occupied that position?—A. Since 1899.

Q. What is the attendance at the law school?—A. Two hundred and fifteen.

Q. How old is it?—A. I organized it in 1899.

Q. Is the attendance increasing year by year or is it standing?—A. It is considerably—we started with something like 20—the class in which Mr. Stringer was—Mr. Stringer started in the first class.

Q. What is the attendance at the university altogether?—A. Two thousand six hundred and fifty-three we put down on the rolls—I have not tested the accuracy of it.

Q. How old is it?—A. It was organized in 1861; it had practically started its real life in 1895, when it moved to its present location.

Q. Do you practice law, Mr. Condon?—A. Very little, hardly any.

Q. Do you maintain a law office?—A. I do not.

Q. What subjects do you yourself teach?—A. Well, in the whole course of law I handle them all for a little while; I was the whole school and I had to handle them all, but I have now simmered it down to subjects like constitutional law and evidence, and the side of the law school that I am trying to develop personally is how to find the law and how to make application of the general principles to the practice of the law, and forms of practice and statute law. Those are special features that I am trying to develop.

Q. Have you practiced law in the city of Seattle at any time?—A. Yes, sir; from 1892 to the time I went into the law school, 1899.

Q. Of course you are acquainted with Judge Hanford?—A. I am and have been all that time.

Q. How long have you known him?—A. Ever since I can remember. I knew him before he became a judge; I knew him when I was a little boy running around and he was a practicing lawyer.

Q. Is he in any way connected officially with the university?—A. Not in any way.

Q. Or with the law school?—A. Not in any way.

Q. Have you had any official or business relations with him?—A. Unless you can call this an answer to your question: In 1901 I organized the John Marshall celebration, under the auspices of the law school, if you remember that occasion; and Judge Hanford delivered the principal address and I was in close touch with him for two or there weeks during that occasion.

Q. How intimately have you been associated with him in any way?—A. I have known him personally very intimately all my life. He is a member of the Pioneers' organization, of which I was a member, and he has always been closely identified with the Native Sons' organization, in the sense that he has always been friendly with them—not a member of them in any sense—it is an organization that I belong to.

Q. To what extent have you attended court when he was presiding?—A. During the time that I practiced law I attended court frequently—I did not have an extensive practice in that court, but I was a young man at that time, and I went to court frequently to observe how things go on.

Q. Were you present in the court room when witnesses testified as to some of his personal peculiarities with reference to his manner of procedure; for instance, with reference to his appearance as if he was taking a nap?—A. I heard some evidence this morning—I was here about 15 or 20 minutes four or five days ago, and on that occasion the witnesses were principally bartenders.

Q. Have you noticed that peculiarity in the judge yourself?—A. I think about a year ago I tried a case before him, assisting Messrs. Wright & Kelleher, and at that time I thought he was asleep myself, but when he came to decide the case I thought he was very much awake.

Q. Professor, will you please tell the committee the appearance of Judge Hanford on the occasion when you thought he was asleep—in her words, tell what it was that made you think so.—A. Well, during that case, it lasted about a day, for about five minutes of that day I thought probably he had his eyes shut, or appeared to have his eyes shut—did have his eyes shut, in fact—I reached the conclusion he was sleeping at that time.

Q. What was the position of his head when his eyes were shut?—A. Well, not much out of the usual; he generally had his head down when he sat on the bench; something like this [illustrating], and it is his habit frequently to twist his whiskers something like this—he would cease twisting his whiskers, and his eyes were shut; but his head seemed to be in about the same position.

Q. Have you ever seen the judge when, in your opinion, he was under the influence of intoxicants?—A. No, sir; I have been with him on a number of occasions when he had ample opportunity to be, if he wanted to.

Q. Have you ever seen him partake of intoxicating liquors?—A. I have.

Q. What were the occasions?—A. One occasion was a little dinner given by a number of the Native Sons in honor of the Hon. Joseph Kuhn, of Port Townsend, in which Judge Hanford sat at my right.

There was wine on that occasion, and I saw him take some wine that night, but he certainly was not intoxicated, or anything like that.

Q. On any other occasions have you seen him drink?—A. I saw him take a drink on an occasion of a bar excursion out of Spokane; I was near him nearly all that trip and he did not become intoxicated. I only remember now of seeing him take one drink.

Q. Are those the only occasions that you recall when you saw him drinking intoxicants?—A. I think they are; I am pretty sure they are, sir.

Q. To what extent have you observed him or had an opportunity to observe him here in the city in the nighttime?—A. Well, I saw him frequently; I came down frequently at night, more than I do now; I would see him on the streets once in a while.

Q. At what hours?—A. At varying hours. Before I took up the law school I used to be down town late at nights like all young fellows are, and I would see him around anywhere from—up until midnight anyway, once in a while.

Q. Where would you see him?—A. On the street as I would happen to be passing.

Q. Have you ever on any of those occasions seen him drinking intoxicants?—A. I never did.

Q. Or in a place where intoxicants were sold and drunk?—A. No, sir; I never saw him any place where intoxicants were sold and drunk.

Q. Have you been with him in the Rainier Club?—A. No, sir; but that recalls one other occasion when I saw him taking a drink. I used to be a member of the University Club, of which he is an honorary member, and I saw him take one drink there one time.

Q. You spoke of his taking drinks at a banquet; you mention wine; on the other occasions which you mentioned what did he drink, if you remember?—A. I do not remember what it was. At the Spokane bar excursion there was whisky and there was beer and later there appeared some champagne on the scene. I do not remember now, but I think it was whisky on that day, diluted with water, that he drank.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Mr. Condon, in what esteem are the judicial decisions and opinions of Judge Hanford held as precedents?

A. Well, I think they are highly regarded by the profession in Seattle; I have not thought much on that question; I think generally they are esteemed.

Q. What do you say from your knowledge of him as to his judicial ability?—A. I think he is a man of considerable.

Mr. McCOY. Do you think that we had better go into that, Mr. Hughes?

Mr. HUGHES. It seemed to me that that was one of the questions involved.

The CHAIRMAN. Don't you think the record shows it sufficiently?

Mr. HUGHES. You mean shows that it is a question involved?

The CHAIRMAN. No; I don't think the record shows that at all; but don't you think that there has been enough testimony produced as to his great legal ability; in the absence of any countervailing evidence what is the use of piling it up?

Whereupon a recess is taken until 2 p. m.

AFTERNOON'S PROCEEDINGS.

Continuation of proceedings pursuant to recess.
All parties present as at former hearing.

R. B. ALBERTSON, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name, please.

A. Robert Brook Albertson.

Q. Where do you live, Mr. Albertson?—A. In the city of Seattle.

Q. How long have you lived here?—A. Since July, 1883.

Q. You are a lawyer by pofession?—A. Yes, sir.

Q. And you have been for how long?—A. Since February 6, 1883, when I was admitted by the Supreme Court of North Carolina.

Q. How long have you practiced your profession in Seattle?—A. I endeavored to practice the profession when I first arrived in the city, in the summer of 1883, but was unable to arrange for the opening of an office on account of a lack of financial opportunity, and was a clerk for a time in the law office of Burke & Raisen, and afterwards in the law office of Struve, Haines & McMicken for a period of about three years. Since then I have been engaged in the active practice of the law in the city of Seattle, up to the time of my appointment by the governor of the State in February, 1903, as a judge of the Superior Court of the State of Washington.

Q. Are you now occupying that position?—A. I have occupied that position since the time of my appointment.

Q. How many judges are on the supreme bench in this State?—A. There are nine judges of the Superior Court of the State of Washington residing in King County and elected or appointed from King County. The nmber has been increased from time to time since the State was admitted.

Q. Well, do I understand that after their appointment they do circuit court duty or trial court duty?—A. The judges of the superior court have jurisdiction over the State. They may be called by a judge of the superior court of any county to assist him in that county, or they may be apponted by the governor of the State to assist any judge in any part of the State where his services may be needed. They have a common-law jurisdiction as a trial court.

Q. This superior court you speak of——A. Yes.

Q. (Continuing.) Is that the nisi prius court of this State?—A. The nisi prius court, with an appeal to the supreme court of the State direct. The supreme court is the highest tribunal of the State.

Q. And are the judges of the superior court appointed by the governor?—A. They are elected. I was appointed myself when the number of judges in this county was increased by the legislature. The governor has the power to appoint until the next general election, and I held until the next general election, as judges who are appointed do. I have been elected twice since that time by the people.

Q. What is the term of office, Judge?—A. Four years.

Q. Are the judges of the supreme court also elected by the people?—A. They are.

Q. For how long a time?—A. Six years, I believe.

Q. I assume that you are acquainted with Judge Hanford.—A. I am.

Q. Before going on the bench, to what extent did you practice your profession in his court?—A. My practice was general in all of the

courts of the State. My practice in the Federal court was not as extended, perhaps, as that of some of the lawyers, but I had a fairly representative practice in the Federal court.

Q. During the time you were practicing to what extent, if at all, did you associate with Judge Hanford outside of the work before him when he was on the bench?—A. I believe that I first met Judge Hanford personally in the summer of 1884, when I occupied a desk in a law office that was adjoining the law office of Judge Hanford. I became acquainted in that way and have known him personally from day to day ever since that time, meeting him frequently. Since I have been on the bench I have met him at my club more often than elsewhere.

Q. The Rainier Club?—A. The Rainier Club.

Q. Have you been with him or have you seen him when he was not holding court at any other place than the Rainier Club during the last 5 or 10 years?—A. Yes; I have. Judge Hanford has taken an active interest in public affairs and has presided over a great many public meetings; has taken an active interest in the work of the chamber of commerce, of which I have been a member. I have been associated with him as a member of different committees in which we were commonly interested.

Q. To what extent have you seen him or been with him late in the evening or nighttime during the period I have mentioned?—A. I don't recall having been with Judge Hanford at night very often. Occasionally I visit my club in the evening—not very often—and occasionally I have met Judge Hanford there in the evening. I have met him there frequently in the last few years in a casual way, as a member of the club—joined him at lunch; played billiards with him.

Q. Do you recall the public meeting at which one Dr. McCormick spoke about three years ago or a little less, at the Alhambra Theater?—A. I do.

Q. Were you present at that meeting?—A. The King County Medical Association invited Dr. McCormick, a distinguished physician from Kentucky, who was taking an active interest in the promotion of the public education along the lines of hygiene, and he addressed a meeting at the Alhambra Theater, held under the auspices of the King County Medical Society. I was invited by the committee in charge to preside over the meeting and was called upon to introduce the speaker of the meeting, Dr. McCormick, and other gentlemen who were there present to participate.

Q. Do you recall seeing Judge Hanford at that meeting?—A. I do.

Q. Did you notice at what time during the meeting he came in?—A. I don't recall. I remember that after I had introduced Dr. McCormick I had a list of names of gentlemen who were invited to speak, and on that list was Judge Hanford, and I looked around—I don't know whether I observed Judge Hanford before the conclusion of the address of Dr. McCormick or not, but I did see him and presented him to the meeting as one of the speakers.

Q. Did you see him again after the meeting?—A. I did.

Q. Where?—A. At the close of the meeting the medical society adjourned to the Washington Hotel, where a lunch was provided, and the speakers of the evening, or some of them, were invited to attend. I was present, and also Judge Hanford, and a number of other gentlemen who did not belong to the society.

Q. If you noticed, you may state whether on that occasion Judge Hanford was in any degree under the influence of intoxicants.—A. I was surprised to hear that there was any such intimation. I was not aware of it myself and could not believe it possible.

Q. That is a little bit wide of the question, Judge.—A. I have endeavored to be explicit, but I will be glad to explain. I did not observe him under the influence of intoxicants and did not suppose that he was. Nothing in his manner would indicate it.

Q. Have you at any time during your acquaintance with him seen him when in your opinion he was affected by or under the influence of intoxicating liquor or any intoxicant?—A. I can say that from my acquaintance with Judge Hanford for a period of 30 years, I have never seen him when I had any idea that he was under the influence of intoxicants.

Q. Have you seen him drink intoxicants?—A. I have.

Q. Frequently or occasionally?—A. Occasionally.

Q. What were the circumstances?—A. Why, as a member of the club, as members of such bodies are often in the habit of doing, I have seen him take refreshments of that sort.

Q. What did he drink?—A. Well, now, I really don't recall. I think I have seen Judge Hanford take a cocktail; I think I have seen him take diluted whisky. I never made a note of what he was drinking, or anything of that kind. I have never known him to indulge beyond the limit of men who are in the habit of frequenting clubs and indulging in the use of liquors.

Q. Have you seen him drink in any saloon or bar?—A. I don't recall. Certainly not for many years.

Q. Apart from public meetings or your meetings with him at the Rainier Club, to what extent, if at all, have you seen the judge about town in the nighttime?—A. I am very seldom down town at night myself, and I don't recall having met Judge Hanford in the nighttime for years, unless it be on the infrequent occasions when I have happened to be at the club myself in the evening.

Q. Either at the club or at some function?—A. Or at some function. Judge Hanford was president of the Washington Society of the Sons of the American Revolution, and I have been present on such occasions when he was presiding.

The CHAIRMAN. Do you wish to ask Judge Albertson any further, Mr. McCoy?

By Mr. McCOY:

Q. The superior court, Judge, has three branches in its jurisdiction, hasn't it—the common law, equity, and probate?—A. It is a nisi prius court, having general common-law jurisdiction; it is a trial court having jurisdiction over probate matters.

Q. While those matters come before the same judge they are treated as three separate branches of the practice?—A. Any judge of the superior court of this State has full common-law jurisdiction. While for convenience in the administration of the business of the court different departments are established, yet the judge of any department has complete jurisdiction, and he may try any case that comes into the court if it is assigned to him for trial.

Q. Well, would you try the validity of a will in the equity branch of the court or the probate branch?—A. The probate of wills is before

a judge of the superior court sitting in probate, not on what may be termed the "equity" side of the court. We have a practice under the statute in probate, not on what may be termed the "equity" side of the court. We have a practice under the statute which regulates the administration of estates in the probate of wills.

The CHAIRMAN. How about a contest after the probate?

A. That may be tried before any judge of the court; it may be tried before a jury. I tried a contest of a will a few years ago—the will of Melody Choir—which came up from the probate court on an issue of fact as to the sanity of the testator.

Q. Was that under some provision of your code or statute or did the judge sitting in probate simply refer the issues?—A. The judge sitting in probate ordinarily is not provided with a jury. He would have jurisdiction to call a jury; but as a matter of practice it is usual to refer matters requiring the determination of a question of fact to a judge who is provided with a jury.

Q. How would a proceeding to test the validity of a will be entitled? Would it be entitled simply "In the Superior Court of the State of Washington, such and such a county," or would it be indicated in any way that it was in the probate division of the court?—A. When a will is offered for probate, the proceeding is entitled "In the matter of the estate of ———, deceased." There is a petition for the probate of the will and the hearing of the testimony as to the execution of it. The judge issues a certificate of the validity of the will, an executor is appointed, and from that time the proceedings are conducted before the probate court.

Q. Suppose the will were admitted to probate and anybody sought afterwards to test the validity of it, would that be in that same probate court or would it be on the equity side of the court?—A. Usually it is in the probate court, before the judge of that department. It would not be, as I understand it, a distinctive equity proceeding—that is, within the jurisdiction of the probate court. The judge of the probate court has the powers of an equity judge.

Q. Like a surrogate?—A. Yes.

By Mr. HIGGINS:

Q. Judge Albertson, it is in evidence before this committee that Judge Hanford, when he entered the Alhambra Theater, gave to the mind of a man, who was observing him closely, evidence of intoxication, and that in his speech that he delivered on that occasion there were also evidences of his being under the influence of liquor. How close did you sit to Judge Hanford in the Alhambra Theater?—A. I presented him to the audience, and he stood within 3 feet of me as he spoke.

Q. Did you talk with Judge Hanford before he spoke?—A. Not before he spoke. I didn't speak to him, I believe, until after the audience dispersed. I went with him from the theater over to the Washington Hotel, to attend this luncheon given by the medical society to Dr. McCormick.

Q. Did you walk with him over there, or do you mean went in the same company?—A. No, I didn't, I believe, go with him. I don't recall my companion at the time, but we walked over. I saw Judge Hanford present at the luncheon. At the close of the luncheon I saw him leave the room. We reached the sidewalk together with a num-

ber of other gentlemen. I was invited by one of the doctors, who had an automobile at the curb, to ride with him to my own home, and I recall this doctor invited Judge Hanford, and I believe Judge Burke, if I am correct about it, to go along, but as I recall they said they preferred to walk, and the last I saw of Judge Hanford was when I rode away with my friend, leaving Judge Burke and Judge Hanford standing on the sidewalk.

Q. Was the Alhambra meeting largely attended, or otherwise?—A. It was as splendid an audience as ever I saw assembled anywhere in any city.

Q. What is the capacity, Judge, of that theater?—A. Oh, there must have been several thousand people present there.

Q. And how many were present at the luncheon that you had later at the Washington Hotel?—A. There was a very full attendance of the members of the King County Medical Society, and quite a number of doctors from outside who came to attend this meeting.

Q. Can you approximate the number of those present?—A. Oh, I would think there were a hundred or thereabouts?

Q. Was there speaking at the luncheon also?—A. Well, Dr. McCormick was the chief speaker of the evening. I don't recall that anybody else indulged in any extended remarks. The meeting culminated in a movement for the organization of a society in the city to promote the cause of public education along the lines of hygiene, and I was requested by the society to name a committee to organize such a movement.

Q. Is your acquaintance and your observation and your opportunities of meeting Judge Hanford under different conditions, at the club, as I understand it, occasionally———A. Yes, sir.

Q. (Continuing.) In the court room———A. I have had no occasion to be in the Federal court room for 10 years.

Q. (Continuing.) Well, on public occasions, such that you feel that if there had been anything abnormal, due to intoxication or any other cause, that you would have noticed it—observed it?—A. I would think so. Of course I——

Q. (Interrupting.) Well, was there, Judge, as a matter of fact, in the speech that he delivered, anything unusual or extraordinary or peculiar, so far as he was concerned, in the delivering of the speech?—A. Nothing that I can possibly consider as indicating any want of mental or physical balance.

Q. Or in his manner?—A. There was not.

Mr. HIGGINS. That is all.

The WITNESS. (Continuing.) Within my observation. If there was, it was a complete surprise to me, because it never occurred to me.

The CHAIRMAN. Any further questions with the judge?

By Mr. DORR:

Q. Judge Albertson, can you remember any of the other gentlemen who were on the platform that evening in the Alhambra Theater?—A. Dr. Matthews and Judge Burke. It has been quite awhile ago; I am not able to recall all of them. There were quite a number of speakers invited, who were not able to attend, but there were three or four speakers who made brief remarks. They were not expected to attempt anything of a very serious nature. I thought that Judge Hanford made a very well-timed address, and there was nothing in it

that excited any suspicion in my mind that he was not thoroughly himself.

Q. Have you held any other public positions in the State, except what you have mentioned, that is, your office or position as superior judge?—A. I was elected city attorney of the city of Seattle in the summer of 1889, and a member of the house of representatives of the legislature of the State in 1894, and again as a member of the same house in 1900. I was speaker of the house of representatives of the legislature of 1901.

Mr. DORR. That is all.

Witness excused.

IRA A. NADEAU, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name.

A. Ira A. Nadeau.

Q. N-a-d-e-a-u?—A. Yes, sir.

Q. You live in the city?—A. Yes, sir.

Q. How long have you lived here?—A. Upward of 25 years.

Q. What business are you in?—A. I am the agency manager for the Equitable Life Insurance Co. at this time.

Q. How long have you been in that position?—A. About three years; a little less.

Q. Prior to that what did you do?—A. I was director general of the exposition—the Alaska-Yukon-Pacific Exposition—immediately preceding that.

Q. How long did that job last?—A. About four years, as I recollect; three to four years.

Q. Are you acquainted with Judge Hanford?—A. Yes, sir.

Q. How long have you known him?—A. Twenty-five years.

Q. How intimately?—A. Oh, quite so. I see him quite frequently.

Q. Is your acquaintance a personal one or a casual one?—A. Personal one.

Q. Have you had social relations with him?—A. Yes, sir.

Q. Visit his home?—A. Not his home.

Q. Where did you have the social relations with him?—A. In public gatherings and at the Rainier Club principally.

Q. You are a member of the Rainier Club?—A. Yes, sir.

Q. How frequently have you met him there?—A. Oh, two or three times a week, I think.

Q. In the nighttime or daytime?—A. Both.

Q. What hour of the evening, usually?—A. Oh, anywhere from 8 until 11 usually, or a little later, perhaps, occasionally.

Q. Have you attended the judge's court much or any?—A. I was admitted in his court in 1888 and subsequently had some relations as a litigant, that is, representing litigants. I was in the railroad business at that time and we had litigation before his court.

Q. In what capacity were you in the railroad business?—A. I was manager of the road that is now the Northern Pacific, that enters into Seattle.

Q. Were you also attorney for the road?—A. No, sir.

Q. Did you practice law at any time?—A. Not in this State; no, sir.

Q. Well, you did not, then, in that way attend the judge's court?—A. Not as an attorney.

Q. If you did in any capacity, tell the committee in what capacity you did?—A. As manager of the railroad company.

Q. You were in here from time to time when matters concerning the railroad company were up for consideration?—A. Not in recent years; but——

Q. (Interrupting.) How long ago?—A. The first litigation—the most important—was in 1888.

Q. And your attendance here from time to time continued until when?—A. Well, for a period off and on for 10 years, perhaps.

Q. Until 1898, or about that?—A. Yes; just about.

Q. Since that time to what extent, if at all, have you attended the judge's court?—A. I have not at all.

Q. What opportunity had you to observe the judge otherwise than in the court or the club?—A. Well, I have met him on public occasions a good many times in connection with exposition matters and in connection with the chamber of commerce. At the time of the destruction of San Francisco I was the executive vice president of the Seattle Chamber of Commerce and appointed a relief committee, of which I named Judge Hanford as chairman, and I saw him daily a good portion of the day or evening of every day for the following two or three weeks while our contributions were being made and collected in money and merchandise and forwarded to San Francisco.

Q. To what extent have you had an opportunity to notice the judge and know of his movements or condition in the evenings during the last 8 or 10 years, such as you have stated, in the club, say from 6 or 7 o'clock to 12 or 1?—A. During the summer of 1909, during the exposition year, we had a great many functions, many of which the judge attended. I have seen him in the evening at other public gatherings in Seattle.

Q. Have you seen him in the evening or in the night otherwise than at functions or public gatherings?—A. Very——

Q. (Continuing.) And at the club?—A. I don't recall. Very rarely.

Q. Have you at any time noticed Judge Hanford when, in your opinion, he was more or less under the influence of intoxicants?—A. No, sir.

Q. Have you seen him drink?—A. Yes, sir.

Q. Where?—A. At the club.

Q. What?—A. Oh, I don't recall. I know he drank beer there and drank cocktails, and I don't know whether there was anything else or not, but I know he drank both drinks that were made of whisky and beer.

Q. Was that the usual thing or only occasional?—A. Well, many times at the club he would come in there in the evening and he would not drink at all, he would go to the reading room, spend his time there and meet Judge Burke or other gentlemen and pass the time of day. Occasionally I have met him and he would always insist he wanted some exercise and so I have played billiards with him and engaged in other games—played dominoes.

Q. What personal knowledge have you as to his ordinary time for going to his home at night?—A. Well, I have seen him leave the club along from 11 to 12 o'clock several times; I could not say just how often.

Q. Could you state to the committee how many times the judge would drink some intoxicant during an evening from the time he entered until he would leave about 11 o'clock?—A. Well, I could hardly answer that question correctly. I don't know. I have seen him drink on occasions. Other times he might be in the club and I would not see him; I would be with other parties.

Q. Have you any knowledge as to whether after leaving the club the judge would call at any barrooms or saloons?—A. I don't know.

Q. Did you ever see him do that?—A. No, sir.

Q. Did you ever see him drink in a barroom?—A. No, sir.

The CHAIRMAN. Do you wish to ask the witness further? Mr. Hughes, do you wish to ask further?

Mr. HUGHES. I think there is nothing.

Mr. DORR. Nothing.

Witness excused.

Mr. HUGHES. While the committee is waiting, I have now the papers that I spoke of on a previous occasion—the certificates of the clerks of the various Federal courts in the State, showing the number of days which Judge Hanford was engaged in the trial of cases in different portions of the State, in tabulated form, all under the certificate of the clerks except that I have had made for convenience a tabulation of the whole, which appears on the first page.

The CHAIRMAN. How long a period of time does that cover?

Mr. HUGHES. It covers 20 years or 22 years; I have forgotten which. I think from 1890 down to the present time. [Handing papers to the chairman.]

The CHAIRMAN. Mr. Hughes; the statement you hand us, of the certificates of the various clerks, giving the number of days on which Judge Hanford held court for the last 20 years, is summarized on the page I now hold in my hand, is it not?

Mr. HUGHES. Yes. The original papers submitted to you show the exact days in each year on which Judge Hanford held court at the various places where the Federal courts are held in this State. The summary shows the total number of days for the whole period of time in each of those courts, and also shows the average number of days in each year on which Judge Hanford held court.

The CHAIRMAN. The paper marked "Exhibit 28," then, is the summary of all the statements which you offer?

Mr. HUGHES. Yes.

The CHAIRMAN. And it shows the number of days upon which court was opened by the judge in any of the places within his judicial district?

Mr. HUGHES. Yes; the number of days between June, 1890 and June, 1912.

The CHAIRMAN. The summary or the complete statement does not show whether court was in session all day or not?

Mr. HUGHES. It does not, and I may add that it also shows the days when he served in the court of appeals.

The CHAIRMAN. Does it show the days when he held court in other districts than his own?

Mr. HUGHES. My understanding is that it shows only when he held court in the circuit or distrcit courts of the United States for the district of Washington and also in the circuit court of appeals.

I think it does not show any service in other courts than I have mentioned.

The CHAIRMAN. The summary shows 45 days in San Francisco and 5 days in Helena.

Mr. HUGHES. Yes; it does show the other courts; that is right.

The CHAIRMAN. So that it is a complete statement of all the days that he opened court or held court in any district in the country?

Mr. HUGHES. Yes.

The CHAIRMAN. Exhibit 28 will be made a part of the record.

Mr. HUGHES. In this connection, Mr. Chairman, I would like to offer at this time a list of the cases in which Judge Hanford participated as a member of the circuit court of appeals, in the years 1910 and 1911, which list also shows not only the cases in which he participated as a member of the court but the portion of those cases in which he wrote the opinion of the court, and also those in which he wrote the dissenting opinion, for the purpose of showing something of his work outside of the district and circuit courts within the last two years, the statement showing the title of the case and I think the book and page of the Federal Reports in the cases where he wrote the opinions.

The CHAIRMAN. The paper offered will be printed and marked "Exhibit 29."

Mr. MCCOY. Mr. Hughes, have you any list of the cases decided by or presided over by Judge Hanford, in which appeals have been taken, showing the number of affirmances and reversals?

Mr. HUGHES. No, we have not, but that could be obtained if you care for it.

Mr. MCCOY. Mr. Hughes, I have here volume 44 of the Washington Reports and find the case of Williams *v.* The Spokane Falls & Northern Railway Co., page 363. Is that the case which we were talking about the other day as the one which you claimed established the practice of the supreme court setting aside verdicts for excessiveness?

Mr. HUGHES. I think this is a case that was mentioned by one of the witnesses.

Mr. MCCOY. Well, is there any other case in the State where the supreme court has done that sort of thing?

Mr. HUGHES. Well, speaking only from memory, Mr. McCoy, I would say that there has been a very considerable number of cases in which the supreme court have required a modification by way of reduction of the judgment or, in the alternative, a reversal and a remanding of the case to the lower court for a new trial. That has occurred a great many times.

Mr. MCCOY. The point in discussion at that time was the right of the court or the practice which the court indulged in of ordering a reversal unless the judgment were modified, where no point was raised by counsel on either side.

Mr. HUGHES. Well, I remember one of the witnesses testifying—mentioning that there had been a case, and as I recall he spoke of the Williams case, and I think this is the case that that witness had in mind as being a case of that kind.

Mr. MCCOY. But you spoke of some case of that kind, as I remember it, is that the case that you had in mind?

Mr. HUGHES. Well, I think I only asked my questions with reference to those suggested by the witness, because I do not recall having in mind any specific case when I propounded questions.

Mr. McCoy. Well, now, in that case counsel for the appellant was somebody named Gordon, wasn't it?

Mr. Hughes. M. J. Gordon and C. A. Murray the record shows were attorneys for the appellant, and Graves & Graves for the respondent, who was the plaintiff in the court below.

Mr. McCoy. And the appellant was the defendant?

Mr. Hughes. The defendant in the court below; yes.

Mr. McCoy. One of the judges was named Root?

Mr. Hughes. Yes.

Mr. McCoy. Is he the same judge who was accused of having handed down an opinion written by Mr. Gordon, who is counsel for the defendant there?

Mr. Hughes. He is; yes, sir.

Mr. McCoy. And was that fact established, or was it simply a charge?

Mr. Hughes. I don't think there was ever any final determination of the matter. Judge Root resigned, and I may say that it was undoubtedly true from the facts that were produced. The bar committee investigated it. I think there is no question but that the fact was established, and without dispute, that the opinion had been prepared and submitted to Judge Root and afterwards——

Mr. McCoy. By Mr. Gordon?

Mr. Hughes. Yes. But now in doing that—we are not trying Judge Root—I am not making along with that statement any of the explanations that have been offered, and I do not want to be understood as attempting to express anything one way or the other—that is, in the way of condemnation or vindication, because I am merely attempting to answer, as briefly as possible, a categorical question.

Mr. McCoy. But of course there could not be any vindication of that kind of an action by an explanation.

Mr. Hughes. I think that is true.

Mr. McCoy. In this particular case there were three judges participating, weren't there—in this Williams case?

Mr. Hughes. Do you mean in the supreme court?

Mr. McCoy. Yes; in this case we are talking about here, this Williams case.

Mr. Hughes. You mean in the supreme court?

Mr. McCoy. Supreme court; yes.

Mr. Hughes. It was submitted, evidently, to one of the departments consisting of five judges. Judge Root writes the opinion on rehearing, and it is concurred in by Mount, Hadley, and Crowe, Judge Dunbar dissenting.

Mr. McCoy. I thought it was three. It was five.

The Chairman. What is your provision, Mr. Hughes, as to having decisions rendered by a part only of the supreme court?

Mr. Hughes. Our law, when the bench was increased to nine members, for the purpose of dispatching the business of the supreme court, provided for two departments, and the practice has been for one department to sit at a time, the chief justice sitting with and presiding over that department, while the other four are engaged in examining the cases that have been submitted and assigned, and in writing opinions, so that the court will be continuously in session from the beginning of the term until the business is dispatched, but by departments, only one department sitting at a time. When a dissent-

ing opinion occurs, when less than five judges agree upon the decision of a case, it is submitted to the full bench en banc, nine judges then participating.

The CHAIRMAN. In this case that did not happen.

Mr. HUGHES. I think it did.

The CHAIRMAN. Only four judges agreed.

Mr. HUGHES. Oh, I think it must have been subsequently submitted. I do not recall the case; I didn't follow it closely at the time. It was a matter that attracted some attention, but I don't know what occurred in that particular. But that has been the practice—to meet, possibly, the constitutional question that would be involved by the decision of less than a majority of the entire court.

The CHAIRMAN. Is there anything further that you have to submit at this time?

Mr. DORR. I would like to suggest that this is not the case at all that was referred to by Mr. McCoy, that involved the——

Mr. HUGHES. No.

Mr. DORR. (Continuing.) Question of Mr. Gordon having anything to do with Judge Root's opinion. That was an entirely different case, at an entirely different time.

Mr. MCCOY. Yes; I understand that.

Mr. HUGHES. I did not understand Mr. McCoy to ask me that question.

Mr. MCCOY. The case in which Mr. Gordon wrote an opinion which Judge Root used was a case where Mr. Gordon appeared for the Northern Pacific Railway Co., wasn't it?

Mr. DORR. The Great Northern Railway Co.

Mr. MCCOY. Or the Great Northern; some railroad company. I knew this was not the case. I am trying to put a value on that opinion, that is all. The opinion was written by Judge Root.

The CHAIRMAN. Is Mr. Smith, the immigration agent, present? Mr. Smith, weren't you to furnish the committee with some documentary evidence?

Mr. J. SPEED SMITH. Yes, sir; I was requested to furnish the committee with a copy of my instructions, as I understood, as to the general conduct of naturalization work.

The CHAIRMAN. Are you ready to do it now?

Mr. J. SPEED SMITH. No, sir; I haven't been able to find that, but I am writing to Washington. I expect to get a letter any day. I have not been able to find the original copy, Mr. Graham, but I have taken the matter up with my division.

The CHAIRMAN. If you get it, will you hand it up?

Mr. J. SPEED SMITH. If I can't find it in my files, the division can give a copy right from Washington; it can be furnished from Washington. I will report to the committee just as soon as I get it.

M. D. HAYNES, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell your name to the committee.

A. M. D. Haynes.

Q. H-a-y——A. H-a-y-n-e-s.

Q. Where do you live?—A. I live 611 Harvard Avenue North.

Q. Seattle?—A. Seattle; yes, sir.

Q. How long have you lived here?—A. Over 20 years.

Q. What business are you in, Mr. Haynes?—A. I am engaged in handling real estate.

Q. Buying and selling?—A. Yes, sir.

Q. City or country real estate?—A. Mostly city property.

Q. How long have you been engaged in the real estate business here?—A. Since 1898.

Q. With reference to where Judge Hanford's home is, what part of the city do you live in?—A. Well, we go home on the same car line, the Broadway car line.

Q. Which one of you rides farther from town?—A. He rides about four blocks farther than I do.

Q. How long have you known Judge Hanford?—A. Oh, I have know him 15 or 16 or 17 years; I don't know just exactly.

Q. How intimately?—A. I know him very well. I see him every day or two.

Q. Have you a personal acquaintance with him?—A. Yes, sir.

Q. Visiting acquaintance?—A. I don't visit at his house, but I see him very frequently.

Q. Where?—A. I see him on the car line; I see him in the street; I meet him very frequently in the Rainier Club.

Q. Are you a member of the club?—A. Yes, sir.

Q. How long have you been?—A. Seven years, I think.

Q. How frequently do you see him there?—A. Probably three or four times a week; oftener, maybe.

Q. What hours of the day or night?—A. I have seen him very often at lunch time; see him very frequently in the evening.

Q. How late in the evening?—A. Well, it is the judge's custom to come into the club there 10 or 11 o'clock in the evening and remain there for an hour or so at that time.

Q. Do you see him on those occasions?—A. Generally, or very frequently, at any rate.

Q. How many times in a week or month?—A. Oh, I don't know; probably a dalf a dozen times or oftener in the month.

Q. Do you spend any time in court while he is presiding?—A. I never have unless I have had business there.

Q. You mean trials?—A. Yes, sir.

Q. Business as a litigant?—A. Well, business as being interested in cases that may have been in this court.

Q. That is, being a party to them?—A. Well, in a way, yes. I was in the judge's court some three months ago in connection with a case that we were partially interested in.

Q. He and you?—A. No; myself and my associates.

Q. A real estate matter?—A. No; it was a matter of transportation. The transportation company was suing an insurance company and we were interested in the insurance.

Q. The case was litigated in Judge Hanford's court?—A. Yes, sir.

Q. Is that the only litigation you had there?—A. Yes, sir.

Q. And was that the only occasion you had to observe the judge while presiding in court?—A. Well, it is the only case that I have a distinct recollection. I have seen the judge in his court a few times, but not regularly.

Q. To what extent have you ridden home with him on the street cars in the evening or at night?—A. Very frequently.

Q. Give some approximate idea of the number of times.—A. Oh, well, I would—very frequently when I am down in town the judge would be going home from the club on the ame car very often.

Q. I know; but define very frequently now.—A. Well, say five or six times a month, to be safe.

Q. At what hour—what is the latest time you recall?—A. Possibly 12 o'clock or half past 12.

Q. Have you ever seen the judge drinking intoxicants?—A. Not to excess.

Q. That is not quite the question. Your answer is not quite responsive.

Question read.

A. Well, I have seen the judge drink a glass of beer occasionally in the Rainier Club. That is the only place I have ever seen him take a drink.

Q. Did you ever see him drink anything other than beer?—A. No, sir.

Q. Any other intoxicant?—A. No, sir.

Q. How frequently have you seen him drinking beer there?—A. Oh, not often. Occasionally I have seen the judge drink a pint of beer when he would come down from the—I presume from his work, from the Federal building.

Q. Was that his usual drink when you saw him?—A. Yes, sir.

Q. Alone or with others?—A. Generally in company with some person who was sitting there in the club.

Q. Did you ever see him drink any decoctions or preparations of whisky?—A. I never have.

Q. Did you ever see him drink anywhere except at the club?—A. No, sir.

Q. Have you ever seen him when in your opinion he was under the influence of intoxicants?—A. Not in the slightest.

The CHAIRMAN. Anything further with this witness, Mr. Higgins? Mr. Hughes?

Mr. HUGHES. Was he asked about riding home in the evening? I haven't been listening.

The CHAIRMAN. He has stated that he rode and approximated the number of times and the hours that he rode, and has stated his opinion as to his drinking.

Mr. HUGHES. That is all.

Witness excused.

Mr. HUGHES. Mr. Chairman, I would like to make a correction in what heretofore occurred, which should appear just ahead of this witness's testimony. You asked me about the circumstance that only four had concurred in this opinion upon rehearing, after having asked me about the two departments, and I answered that I did not know what course this case had taken, because I didn't recall particularly. On examining, the matter having been called to my attention by Mr. Door, I find that the case was decided in 1906 when the bench consisted of seven members and only one department and prior to the statute which I have referred to increasing the number to nine and creating two departments. The opinion therefore was the opinion of a majority of the entire court. I do not know that that is material, but in view of the questions asked I wanted the record to show.

The CHAIRMAN. I asked the question for my personal information rather than affecting this matter.

L. Frank Brown, having been first duly sworn, testified as follows:

The Chairman. What is your name?

A. L. Frank Brown.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Since the fall of 1898; about 14 years.

Q. What is your business or profession?—A. I am a lawyer.

Q. How long have you been practicing your profession?—A. Twenty years.

Q. Where?—A. Formerly in Colorado, Leadville, Colo., 6 years; 14 years here.

Q. Have you lived in Seattle all of the time since you first came here?—A. Yes, sir.

Q. What courts does your practice extend to?—A. The superior and Federal courts.

Q. Are you acquainted with Judge Hanford, of the Federal court here?—A. Yes, sir.

Q. How long have you known him?—A. For 14 years.

Q. To what extent have you had business in his court?—A. Quite extensively; not in the sense that the older and stronger firms have had, but a large amount of litigation up until recent years, three or four years ago.

Q. Are you now and have you been practicing alone or in association with some one else?—A. Up until three years ago—four years ago—I was a member of Graves, Palmer, Brown & Murphy; the last four years I have been—three years I have been practicing alone.

Q. Give the committee some more definite idea of the amount of business and the amount of time which you have spent in Judge Hanford's court.—A. In the earlier two or three years—two years, I think—in my practice I was sort of an understudy, you would call it, of Burley & Piles, the well-known law firm here. Later—and I had a great deal of work before Judge Hanford in the argument of law problems, not so much in the trial work, simply assisting. Later I was counsel for organized—some of the organized-labor movements of the city, the Cooks and Waiters' Union, and all along the water front—the Seamens' Union. Later, under the firm of Graves, Palmer, Brown & Murphy, I had considerable work there representing the personal-injury litigation for defendants, eastern clients, and general practice. The earlier years were in admiralty and things of that sort; the later years in general construction of insurance matters and general practice that comes before the Federal bench, but more in the nature of presentation of law matters than the actual trial work, my associates doing the main work in that line.

Q. To what extent, if at all, have you had an opportunity or occasion to notice Judge Hanford when not presiding in court?—A. Well, I have had a rather good opportunity of seeing Judge Hanford, both in public and private; not at his home, but I used to belong to the Rainier Club; I saw him a good deal in different social service movements of the State, but of course never had an intimate acquaintance with him in any way.

Q. During your practice in his court, or your presence in his court, if you noticed any peculiarity in his manner while presiding please tell the committee what that peculiarity was.—A. Well, Judge Hanford has the mannerism of lack of attention, apparently going to

sleep, and that sort of mannerism; petulant at times and easily irritated. That is the sort of thing, in a general way.

Q. With reference to his apparently going to sleep, will you give the committee more particularly his appearance and actions, so that they may if possible reach their own conclusion from those?—A. My first observation of Judge Hanford was shortly after I came. I had never come in contact with the Federal bench except with Judge Hallet, of Colorado, and then not in an intimate way, and in matters coming up before Judge Hanford for the Pacific Coast Co., which Burley & Piles represented, one of my first appearances there was one where to me Judge Hanford in appearance was asleep. It was in the afternoon, as I remember it. Of course it is years ago, but just the impression was so vivid because of him going to sleep, as I thought. His head came forward and a relaxation of the muscles, and I shall never forget it, because I would never do it again, he seemed to be unconscious for a short time and aroused himself, and I had stopped, I hardly knew how to proceed, and he looked over his glasses and said, "Young man," or I think I said in substance—I don't recall—but something about that "If your honor was incapacitated that I desire to continue this matter," using of course a very unfortunate work, and he looked right over his glasses and said very keenly, quickly, to me, "Young man, you proceed." And it was distressing to me of course, because it was my—practically my—first effort before him and made an impression on that account.

Q. What was the thought in your mind that led you to make the remark that you did?—A. Well, I thought he had lost consciousness just for a moment; that he was asleep.

Q. Go on.—A. Later it is—now, the times of these occurrences that I relate to me it seems, as I told the committee when called before them, it is unjust to Judge Hanford; I feel I never had such a situation in my life, knowing the good parts of the man, to seem to emphasize what to me are the bad parts, when I can not fix time or circumstance or case even, but yet the vividness of the impression is so keen that I simply feel that it is probably just as unjust to go into the facts where he has no—probably any—opportunity to overcome testimony of that kind. I don't know what the committee's ruling on that sort of thing would be, but I am—the family; I know the different members of his household, I am fond of them—and I of course dislike very much to go into those things where they are not definite as to time, but simply definite as to place and as to fact.

Q. Do you mean that you recall the event?—A. I recall the event.

Q. But you do not recall the particular time when it occurred?—A. But to me the harm to society and to Judge Hanford is just as great, probably, as to refrain from giving the——

Q. (Interrupting.) The event that you have told us of occurred——A. (Interrupting.) In the earlier years.

Q. (Continuing.) I assume, soon after you began practicing in his court?—A. Yes, sir.

Q. And that was when?—A. Well, that was in the fall of, or the spring, I should say—fall or spring of 1899.

Q. Well, in view of your experience since you have your better knowledge of Judge Hanford and his habits, what do you now think as to whether he was nodding at that time?—A. Well, I think Judge Hanford was nodding on that particular occasion.

Q. Well, do you think it extended as far as sleep?—A. Well, it was a loss of mental consciousness for a short period, in my judgment. Of course you understand that Judge Hanford, like a great many other men of keen mentality, close their eyes; on many occasions he is mentally alert when his eyes are closed. I am simply not emphasizing that that is a common occurrence, but that this particular occurrence is——

Q. (Interrupting.) What impression do you wish to convey, Mr. Brown, as to this time; do you think that his eyes were closed to aid mental concentration or because he was in fact asleep?—A. No, sir; I thought that Judge Hanford was asleep for a time; was what I should call loss of consciousness. Later experiences on the bench and off the bench with Judge Hanford—he is a man who eats rather heavily at lunch time; fermentation sets in, and in the afternoons, particularly from 2 o'clock on, for an hour or so it is often difficult—not always, by any means—but sometimes very difficult for—from my observation, for Judge Hanford to keep awake, because fermentation and intoxication sets in on food just as much as any other—as liquor.

Q. Do you recall any other occasions when you noticed Judge Hanford in the condition or a condition nearly similar to the one he was in at the time you have described?—A. One other distinct impression with reference to nodding, in the later years, I should say five or six years ago, in the old building; I never—have had very little—in fact, very little since he moved up here; Judge Hanford—the circumstance and time is of course not vivid as in the first place, but it gave me the belief of loss of consciousness, as the result of I don't know what.

Q. What were the circumstances?—A. Well, as I say, that is where, to me, the injustice of it appears. I don't even know the name—I don't remember the case. Judge Hanford—I know I was arguing some motion or demurrer with reference to one of the insurance—I think it was the Ætna Indemnity—something that had come up—one of the Eastern clients there—and I noticed that condition, but it was my keen impression—was one of loss of consciousness; I believe that Judge Hanford was asleep temporarily.

Q. Continuing how long?—A. Oh, just a very short time. He would nod and just catch himself and brace up; and, as I remember, to overcome that impression himself he often would walk back and forth on the bench in the afternoons. I mean on the——

Q. (Interrupting.) On those occasions when he recovered himself, what was the manner of his recovery; in other words, would he raise his head gradually and slowly or with a snap like that [illustrating]?—A. Well, it was a quick motion as though he was trying his best to overcome the loss of consciousness, in realization that he maybe had lost consciousness; but of course the profession have learned that many times he when he is—not when he is in that condition, but when his eyes are closed he is thinking vigorously, and I had learned by the first experience to just go right on and pay no attention to it.

Q. Do you recall any other instances similar to those you have mentioned?—A. There are only two such instances in my practice that seem to be absolute facts.

Q. What knowledge, if any, have you as to the judge's habit concerning drinking intoxicants?—A. Well, I know Judge Hanford drinks.

Q. Have you seen him drink?—A. Oh, yes; I have seen him drink.

Q. Where?—A. Rainier Club. I don't recall any other places distinctly enough to remember them.

Q. Do you know what he usually drinks?—A. Yes—well, I don't know what he usually drinks, because I don't——

Q. (Interrupting.) What have you seen him drink?—A. I have seen him drink beer and what we call cocktail—a whisky preparation.

Q. Have you at any time seen Judge Hanford when, in your judgment, in your opinion, he was under the influence of intoxicants?—A. Yes, sir.

Q. Please state the circumstance.—A. There are two distinct circumstances, not as to time, but as simply as to place, within a radius of three or four years apart, I should say, when they were in the old building. I was up arguing a motion or a demurrer, I have forgotten which and the case in which it was, but I came up——

Mr. HIGGINS. What was that case?

A. I say I don't know the case. I had gone into the clerk's office, wondering why they hadn't put it on the calendar, and stated something to them and went into the—there was a vacant room from which Judge Hanford went upon the bench, between the clerk's office and going upon the bench, and while I was there about to phone, Judge Hanford came out to go upon the bench and I noticed his condition then.

The CHAIRMAN. What was it?

A. Beg pardon?

Q. Go on, tell the incident.—A. Judge Hanford's mannerism to me, as I have observed in drink, his eyes are bloodshot and his face flushed and he has what I call a broad walk—sailor's walk or railroad walk, as distinguished from—he spreads his feet far apart, and never, of course, have I seen him stagger, in that sense, in going upon the bench or anywhere else, excepting once that I remember, but he simply had, to me, all the indications of drink. The telephone is right by the door as one passes through, and I observed his condition and considered him intoxicated.

Q. Where was he going?—A. He was going on the bench.

Q. Did he go on the bench and hold court?—A. Yes, sir.

Q. And held court?—A. Yes, sir.

Q. Have you at any other time seen him when you considered him intoxicated?—A. There was one other time later, in the old building, but I was not close to him, except in the relation of about where Mr. Hughes stands to him upon the bench, and observed his condition then, which, as a result of a good deal of wide experience in that sort of thing, made me feel and believe that Judge Hanford was intoxicated; his mannerism upon the bench; he has a—that is, whenever I have observed him under conditions of that kind he seems to get his breath with difficulty and a very little liquor unbalances him. His nervous energy, in my judgment, is such that it seems to affect him very quickly. I don't think it takes very much to get him in a condition of that sort; but to me at that time he was intoxicated. But other than those two times, I have never seen him in a condition with reference to liquor that would make me feel that he was incapacitated for his duties.

Q. To what extent, if at all, have you seen him in the city in the night time?—A. Well, never very much until—my home is at 753

Harvard Avenue. For the last two or three winters, or up until two winters ago, one winter ago Mrs. Brown and my daughter were away and I used to go home very late from my place of business, and spent not as much time as most men at the Rainier Club, but at that time I was a member and Judge Hanford would come in rather late and would occasionally take something, and sometimes not. But winter before last, I think it was in 1910, sometime during the month of December or January—in the winter months anyway—I went home very late at night and observed Judge Hanford on several occasions.

Q. What would you say as to his condition on those occasions?—A. I think Judge Hanford was in an intoxicated condition, from his manner.

Q. Were there others who had an opportunity of observing him at that time?—A. I don't recall any such.

Q. Have you seen the judge in any public drinking place?—A. Not that I recall; no, sir.

Q. If, on any of the occasions you speak of that you have seen him on the street car, you noticed his manner of getting on a car or getting off it——A. (Interrupting.) Why, once——

Q. (Continuing). You might state that.—A. (Continuing). I was considerably distressed about his condition on one night, and I simply followed him to where he gets—he lives three or four—I don't know how many blocks, I think—I don't know how many, beyond where I live, and I simply felt that he was not in a condition to go on and I simply sort of shadowed him to see that he got home safely. Of course he didn't know it, nor anybode else. I noticed his condition then as he got off the car. It was one of more lacking in self-control than usual, but able to get around, to get to his home and get in. I felt that he was not in that and I simply followed him to see that he did.

Q. Was there anything in his walk which confirmed the opinion you had?—A. Yes, sir; Judge Hanford on that occasion was decidedly under the influence of what to me was intoxication.

Q. What time was it?—A. Well, it was late at night; it was, I should say, 12 o'clock; might have been a little later; it was very near the last cars.

Q. Do you recall any other instances when you saw him in your opinion under the influence of intoxicants?—A. No, sir; not in a definite way upon which to predicate any.

The CHAIRMAN. Any further questions?

By Mr. McCOY:

Q. You spoke about the eastern clients. What were they?—A. Well, our firm represented a number of the bonding companies here at that time—the Aetna, the Title Trust Co. of Scranton, Pa., and there were three or four others I don't recall at this time.

Q. Furnishing indemnity bonds?—A. Furnished indemnity bonds——

Q. (Continuing). Covering accidents?—A. For accidents, things of that sort, and one insurance company, as I remember it.

The CHAIRMAN. Any further questions, Mr. Hughes?

By Mr. HUGHES:

Q. Mr. Brown, you say that not very long after you came here, within a year or so at least, you presented a matter to Judge Hanford, making an oral argument to him?—A. Yes, sir.

Q. When you were with Burley & Piles?—A. Yes, sir.

Q. Do you remember what it was you were presenting?—A. No, sir.

Q. A motion or demurrer?—A. I don't.

Q. Do you remember who was on the other side?—A. I don't.

Q. You at that time thought he seemed to lose consciousness for a time?—A. Yes, sir.

Q. And made some remark that implied that he was incapacitated?—A. Well, I made such a remark because I simply didn't know hardly what to do. I knew that my talks were often calculated maybe to put men asleep, but it made a very——

Q. (Interrupting). And the moment you paused and made the remark——A. (Interrupting). Yes, I made some remark.

Q. (Continuing). He immediately answered you peremptorily to proceed, did he not?—A. Not immediately, no, but there was no great amount of time elapsed. I stopped, you understand, and, evidently not hearing the talk I presume it created an impression that something was wrong and he braced up, as I express it, and gave me a very keen attention.

Q. Do you remember whether he decided against you or not?—A. I don't.

Q. You remember he passed upon the matter promptly and clearly, don't you?—A. Yes, sir. I don't know as to the——

Q. (Interrupting.) So far as you could see, he had lost nothing of the value and weight of your argument at all?—A. I don't—I don't recall that phase of it, because—whether it was for or against me. I simply was broken hearted because he didn't pay attention, as I thought.

Q. But weren't you really broken hearted because of the apparent reprimand involved in his——A. (Interrupting.) Well, both, of course, made an effect upon me; it was natural.

Q. How long afterwards was it that you mention another instance when you thought he had momentarily lost consciousness?—A. Well, I can't—as I say, Mr. Hughes, that is where it seems to me——

Q. (Interrupting.) Well, approximately how long after the first?—A. I can't—just—it is the statement of a fact and the surrounding circumstances are not sufficiently vivid to predicate time. I should say it was four or five years after. It was——

Q. (Interrupting.) Do you remember what you were presenting, a motion or demurrer?—A. No; I don't.

Q. Making a legal argument?—A. I was making a legal argument.

Q. Do you remember who was on the other side?—A. I don't.

Q. You remember that he appeared to nod while you were making a legal argument?—A. Yes.

Q. You didn't think that was particularly unusual, did you, Mr. Brown?—A. What is it?

Q. You didn't think that was particularly unusual, did you?—A. Yes, sir. Yes, I—I—I—I did.

Q. Do you want to say to this committee, Mr. Brown, that Judge Hanford lost any of the force of your argument?—A. Why, I can't go into his—I simply know that under ordinary circumstances that when a—when a man nods that he certainly—if he does listen or understand, it is not because he is asleep, but in spite of it.

Q. Do you remember how he decided——A. (Interrupting.) I don't.

Q. (Continuing.) The matter that was pending before him?—A. I don't.

Q. Now, you would determine whether he had missed any of your argument at all by what he said and the character of his decision, would you not?—A. I was not conscious of any loss or—the impression that was made upon me was not, I think, that he decided one way or the other; it was simply that he was asleep.

Q. What I am trying to get at is whether by his decision he gave any evidence that he had missed anything in the argument of either counsel in that matter or failed to follow—comprehend the whole question or all the questions that were presented to him.—A. Well, I have no distinct impression upon which to give the committee except that on—I hardly know how to answer the question, Mr. Hughes. My impression was that—simply what I have given the committee; as to the inference as to what his mental condition while that was going on, of course I don't know.

Q. You have given your impression as to what was his condition when his eyes were closed?—A. Yes.

Q. That is not what I am asking you for, Mr. Brown; I am asking you whether there was anything at the conclusion of the argument, when the judge was called upon to speak, to announce his conclusion or his decision, that indicated that he had failed to comprehend all that was said in the argument before him and to fully comprehend the questions submitted to him for decision?—A. There was no distinct impression of that sort made upon me at all.

Q. Now, you have testified to one occasion when, in your opinion, he was intoxicated when he was going into the court room for the purpose of commencing the discharge of his judicial duties in court?—A. Yes, sir.

Q. When was that and where?—A. I can't——

Q. (Interrupting.) In the old court room or in this new one?—A. In the old court room.

Q. Which one of the old court rooms, the one in the Colman Building or the one down here on the corner of Fourth and Marion?—A. Fourth and Marion.

Q. Where was he when you saw him?—A. Well, he was—you come out the court room—not—the court room is this way, but the room from which he comes is on that side of the hall, and he came as though he came through that door, and I would be standing about where Mr. Haynes was, phoning; he had to pass right by me as he went upon the bench.

Q. Were you standing in the clerk's office?—A. No, I was standing—there was a vacant room there with a table, you remember, and a phone, where we could always go from the clerk's office to phone or sit down and copy papers and——

Q. (Interrupting.) He passed through that room on the way through his private office, passed through the clerk's office——A. (Interrupting.) To the bench; yes, sir.

Q. (Continuing.) To the bench, and it was as he passed through that room that you saw him?—A. Yes.

Q. And you were standing at the telephone?—A. I was standing at the telephone.

Q. Engaged in telephoning?—A. No, I was waiting, trying to get the telephone. I had started to get the telephone. It was busy or something and I was just waiting, walking back and forth, there, when he came through.

Q. Then you were not at the phone?—A. Not at all; no, sir.

Q. Or standing at the phone when he passed?—A. No, I was pacing, as I remember—going back and forth, anyway. I saw him just as he came through the door and was close to him.

Q. Saw him pass through the room?—A. Yes.

Q. That is, across the room?—A. Yes.

Q. The room extended from the corridor to the street side of the building and was comparatively long and narrow, probably 12 feet wide, wasn't it?—A. Well, it is rectangular; yes.

Q. Yes. And he came out of his room through the side door and passed across the room a distance of probably 12 feet; not over that?—A. Yes, I should say, approximately.

Q. Now it was while he passed across the room that distance of 12 feet that you observed him?—A. Yes.

Q. Did you speak to him?—A. Yes.

Q. Did he speak to you?—A. I spoke to him.

Q. Did he acknowledge your salutation?—A. No, he did not; but I didn't think anything of that, because it is common for him to do that.

Q. Yes, when he is preoccupied, particularly?—A. Yes, preoccupied.

Q. The conclusion you reached then was based upon his walking across the floor while you could see him in the interval that elapsed while he was crossing that room?—A. Well, no; why, yes, my impression was made at that time.

Q. Did you go into the court room?—A. Yes, sir.

Q. Did you watch him preside at that trial?—A. Not long, no; I just went in a moment and my motion, of course, not being on, I didn't stay any length of time.

Q. Was there a case coming on to be heard?—A. I think—my recollection is not. There were legal arguments on——

Q. (Interrupting.) Motion day?—A. Motion day.

Q. When all the bar were there?—A. I don't recall as to that at all.

Q. Do you have any recollection of who were there?—A. No; not a thing.

Q. Mr. Brown, if Judge Hanford gave any appearance of being intoxicated upon the bench, wouldn't you recall the circumstance of who were there?—A. Not at all, Mr. Hughes.

Q. Or what lawyers were there?—A. Not at all, as I say——

Q. (Interrupting.) Did you make any mention of it to any of the lawyers?—A. Why, I suppose I have; yes.

Q. Did you at that time?—A. I don't——

Q. (Interrupting.) Did you speak of it—call their attention to it?—A. I don't recall whether I did or not.

Q. Did you watch for the purpose of seeing whether you were mistaken or not?—A. No; I didn't.

Q. Watch and notice whether he was able to pass upon the questions that were presented in the same manner that he did before?—A. Not at all.

Q. Did you take any steps to determine whether what you had seen was due to mental preoccupation or to indisposition of any kind? A. Why, not at all, Mr. Hughes, because a wide experience with reference to drunken men has absolutely—I think I know a drunken man when I see him—I mean an intoxicated man, I——

Q. (Interrupting.) Mr. Brown, you would not say that Judge Hanford could be drunk upon the bench without its being a matter of common knowledge among the bar of this city, would you?—A. Yes, sir.

Q. Drunk on the bench and under the circumstances you have described——A. (Interrupting.) Why, no, sir; it is not a matter of common knowledge. Judge Hanford is not drunk upon the bench as a matter of general reputation.

Q. I say if it had been——A. (Interrupting.) In the whole period of 14 years which I have practiced before him, these are the only two times that I ever saw him where I felt that he was under the—so under the influence of liquor that it incapacitated him for his work.

Q. And do you mean to say that he was under the influence of liquor or drunk, or don't you make any distinction between those?—A. Well, I have used the softer expression—intoxicated—rather than the other expression—drunk. That is all.

Q. You missed the question I asked you a while ago. If Judge Hanford had been drunk on the bench on that occasion when members of the bar were there to present legal arguments, do you think it could have escaped the common knowledge of the bar of this city?—A. I don't know. I am not dealing with what their impressions were. The——

Q. (Interrupting.) Did you ask anybody else——

The CHAIRMAN (interrupting). Mr. Hughes, let the witness finish his answer, please.

Mr. HUGHES. I don't mean to interrupt the witness.

The CHAIRMAN. If you have anything further to say you may say it and finish your answer.

Last question and answer read.

A. Of course my problem in testimony is not as to whether a certain state of facts which I saw and believed in made a similar impression upon you, or Mr. Dorr, or somebody else. As I gather your question, that is what you mean. I think if—well, I will not give my——

Mr. HUGHES (interrupting). Mr. Brown, do you mean to tell this committee that you would see him go upon the bench intoxicated, or drunk, as you put it, and be there for the purpose of presenting legal arguments, before others there for the same purpose, and that you would not speak of it or ask others, to find out whether you were mistaken?

A. Why, I have discussed that phase of——

Q. (Interrupting.) I mean at that time and place?—A. Why, no.

Q. At that time and place?—A. No; I did not. I don't remember whether I did or did not.

Q. Well, do you think that it could have escaped the attention of others and have escaped the common comment of the members of the bar who were present if they saw what you think you saw?—A. Well, I don't know, Mr. Hughes.

Q. The spectacle of a judge intoxicated on the bench——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Would be a very rare one; one that you do not know to be one that has ever occurred in the city of Seattle unless it occurred on the two occasions when you mention; isn't that true?—A. Those are the two that I remember distinctly, sufficiently as a fact to state to this committee.

Q. Wouldn't it immediately attract the attention of all the members of the bar, as it did yours——A. (Interrupting.) I don't know.

Q. (Continuing.) If you were not mistaken?—A. I don't know. There might have been many motives as to why the profession might or might not——

Q. (Interrupting.) Do you mean——

Mr. McCoy (interrupting). Let him finish the answer.

A. I say I don't know. It takes a great deal of—I don't know what you would call it—with the men of capacity and character coming on here time after time since I have been sitting here to-day, and it is one of the saddest things that I have ever done, to seem to go counter to the common opinion of the profession, when I know the capacity and character of Judge Hanford in so many ways, and yet on the bench he was in that condition, in my judgment.

Q. Do you think any man need ever apologize for telling the truth?—A. I am not apologizing; but you are using an argument with me that because other men have gone on, or might have gone on, or might have known of this condition——

Q. Not at all, Mr. Brown. —A. I understood your——

Q. (Interrupting.) Not at all, Mr. Brown.—A. (Continuing.) Statement to mean that.

Q. I am asking as to that occurrence and whether if what you saw—what you think you saw—was observed alike by others it would not have been a matter of comment between you and the other members of the bar.—A. Well, it was not a matter—it made a very strong impression on me and I suppose I discussed it, but I don't——

Q. (Interrupting.) Do you know that you discussed it with anyone there?—A. I don't.

Q. Do you know whether you remained there long enough to observe Judge Hanford's action upon the bench at that time?—A. Yes, sir.

The Chairman. You have gone over all this ground a number of times; I think often enough.

Mr. Hughes. I was not intending to cover the ground twice, if I could get the witness to follow my questions. What I am trying to get from this witness is whether anything occurred that afternoon from which he could determine who else was present at that time, or whether he remained long enough to be able to recall and relate anything that transpired there.

The Witness. I didn't—I don't. I have so stated——

The Chairman (interrupting). He has stated that a number of times.

A. (Continuing.) To the committee and so stated that situation, but in spite of that they say that the weight of the testimony is with them and not with me, and subpœnaed me.

Mr. HUGHES. When was the second occasion that you mention in court?

A. With reference to drink?

Q. Yes.—A. Well, I can't tell, Mr. Hughes.

Q. When was it with reference to the first one you mention?—A. Well, it was four or five—three or four—a series of years; whether it was three or five, I can't say.

Q. Before or after the first one you mention?—A. After the first.

Q. After. How long ago was the last occasion that you mention?—A. Well, I should say it was five years ago.

Q. What time of day was the first occasion that you mention, forenoon or afternoon?—A. The first occasion was in the forenoon, where I saw him come—where the circumstance of being in the room took place.

Q. And at the time he was passing throngh the room that you have described, when you had been trying to telephone, that was at 10 o'clock in the morning, at the time of opening court?—A. I don't recall the time.

Q. What?—A. I don't recall the time, but it was——

Q. (Interrupting.) You had not seen him drinking——A. (Interrupting.) No, sir.

Q. (Continuing.) That day?—A. No, sir.

Q. You did not converse with him so as to notice the odor of liquor upon him?—A. Yes; I should say I did.

Q. Sir?—A. Yes, sir; I should—I did observe.

Q. The odor of liquor at that time?—A. Yes; as he passed.

Q. What?—A. That was one of the causations that made me believe that he was under the influence more or less.

Q. What time of day was the second occasion that you refer?—A. As I remember, it was in the afternoon.

Q. Do you remember the circumstances attending it; what you were there for?—A. No, sir.

Q. What your business was there?—A. No; I only know that it was some one arguing some insurance matter, as I remember it, and that is not vivid at all, not enough to——

Q. (Interrupting.) Did you see him go on the bench at that time?—A. No, sir.

Q. You drew your impressions from your observations of him sitting on——A. (Interrupting.) From standing arguing——

Q. (Interrupting.) How?—A. Yes, sir; both sitting down and getting up closer in argument.

Q. Was that when you were making an argument?—A. Yes, sir.

Q. Was that the same time that you spoke of his napping?—A. No, sir. No; I have only seen Judge Hanford twice napping in my judgment, in my judgment, and twice——

Q. (Interrupting.) And on this occasion he did not appear to close his eyes or nap?—A. Why, his eyes were—had Judge Hanford's usual characteristics when he is in that condition of being bloodshot and red and drawing a deep breath.

Q. Mr. Brown, you have testified here that you never saw him in that condition except twice, aside from what you saw on the street car?—A. Well, I understood that you were asking me about the second time——

Q. Yes.—A. (Continuing.) On the bench.

Q. But you speak of his usual condition as though you had been frequently with him under such circumstances.

The CHAIRMAN. He referred to the second time, Mr. Hughes, but whether it was the second time in order of time or the second time on the bench I did not myself understand.

Mr. HUGHES. Well, that is what I have been trying to get at. The second time he mentioned on the bench was after the first one——

The WITNESS (interrupting). Yes.

Mr. HUGHES (continuing). The witness says, I believe.

Mr. HUGHES. And your only experience, then, was in arguing a matter before him as he sat on the bench?

A. Yes, sir.

Q. You drew your inference that he was intoxicated from seeing him sitting on the bench?—A. Yes, sir.

Q. And you don't know what the case was?—A. No, sir.

Q. You don't know what the matter you were arguing was?—A. I don't.

Q. You don't know who the attorney on the other side was?—A. I don't.

Q. Do you know how he decided the question?—A. I don't.

Q. For you or against you?—A. I don't.

Q. You don't even know that?—A. No, sir.

The CHAIRMAN. He has stated all that.

Mr. HUGHES. I don't think he has.

The CHAIRMAN. You have had the witness now 35 minutes. You have asked him all this before. Go ahead, but please be as brief as you reasonably can.

Mr. HUGHES. You don't remember who the attorney on the other side was? I haven't got that answer.

A. No; I don't, Mr. Hughes.

Q. You refer to one other occasion that I want to call your attention to when you say you followed him home.—A. Yes, sir.

Q. Did you make yourself known to Judge Hanford?—A. No, sir.

Q. Did you speak to him?—A. I did not.

Q. Did you follow him without letting him know that you followed him?—A. Yes, sir; just to see that he got to the gate safely.

Q. When was that?—A. I don't know as to—it was—the month in which it was—it was during—I saw Judge Hanford very frequently on the car while Mrs. Brown was away, going home late myself—oh, it would be several times, in a condition of sleep, of overweariness, due, I assumed, to overwork, but on this time, though, in a condition that made me feel alarmed about his condition, and so I followed him simply to see that he——

Q. (Interrupting.) Did you have any reason for not speaking to him?—A. Well, to me Judge Hanford is very peculiar. I have never gotten close in a social way with him. It made me—I simply didn't do it because I didn't think it was wise to do it. I didn't analyze my motives for not doing it.

Q. You haven't fixed the time yet.—A. I can't fix the time.

Q. Approximately?—A. Approximately it was in 1910, in February or March, I should say, but that is simply——

Q. (Interrupting.) Was your motive to observe and report the fact or to take care of Judge Hanford?—A. No, sir; it was simply to see that he got home safely.

Q. And have you any other reason to offer for not going up to him and speaking to him——A. Not at all.

Q. (Continuing.) Than you have given?—A. My only reason for not doing it was because of his—I felt if he could navigate home so that he could get in safely, that it would be embarrassing both for him and myself to apprise him of the fact, if he was in a condition to be apprised. That was my main motive, as I look at it now. Of course, at that time I had no thought of anything.

Q. Was anybody else on the car that you recognized at all?—A. I don't recall. I don't—no, sir.

Q. Did you ever mention this circumstance to other leading members of the bar or members of the bar association of this city?—A. No, sir; I did not.

Q. Did you ever mention any of these circumstances to the bar association of this city, or the members of it?—A. No, sir; I did not, because——

Q. (Interrupting.) You have told this committee that you for a time were connected with the firm of Burley & Piles as an understudy. What was your next law association?—A. Palmer & Brown was the next.

Q. And what was the next? A. Root, Palmer & Brown.

Q. Judge Root, afterwards of the supreme bench of this State?—A. Yes, sir.

Q. How long were you associated with Judge Root?—A. I think five years.

Q. Five years.—A. I was——

Q. (Interrupting.) Before he went on the supreme bench?—A. Yes, sir.

Q. You and your partner were instrumental in securing his appointment to the supreme bench?—A. I was not. Mr. Palmer, I think, was very instrumental in it.

Q. And after he left the firm, then it became Graves, Murphy——A. (Interrupting.) Palmer, Brown & Murphy.

Q. (Continuing.) Palmer & Brown. Were you a member of the firm of Graves & Murphy? Were you in the firm—was it Graves, Murphy, Palmer & Brown?—A. Graves, Palmer, Brown & Murphy was the firm name.

Q. Or Graves, Palmer, Brown & Murphy. And how long did you remain in that firm?—A. Three—four years, I think—three—I have forgotten.

Q. How?—A. Three or four years.

Q. Wasn't it less than that, Mr. Brown?—A. I don't think—I don't recall.

Q. And after you left that firm, didn't you practically quit the practice of the law?—A. Yes, sir. I was mentally and physically incapacitated for two years, out in the cold, cold business world.

Q. And, as a matter of fact, you have not practiced any since that time, of any consequence, in any of the courts, have you?—A. Absolutely; yes, sir; I have been a busy man in law work the last three years.

Q. I ask you if you have been practicing in the courts?—A. Yes, sir.

Q. And having cases?—A. Yes, sir.

Mr. HUGHES. That is all.

By Mr. McCoy:

Q. When you say you were mentally and physically incapacitated, do you mean by that that you lost your mind?—A. Oh, I mean I was worn out with work, and the doctors had scared me to death; that I had to get out, and I simply——

Q. (Interrupting.) Do you mean it was a case of nervous breakdown?—A. Yes, sir; I was simply——

The CHAIRMAN. That is all.

Witness excused.

C. W. IDE, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name.

A. C. W. Ide.

Q. Where do you live?—A. Seattle.

Q. What is your business?—A. Contractor.

Q. How long have you been in that business?—A. About 4 years; 5 years.

Q. How long have you lived in Seattle?—A. About 9 or 10—9 years.

Q. Mr. Ide, are you personally acquainted with Judge Hanford?—A. I am.

Q. How long have you been?—A. From 16 to 18 years.

Q. Have you had any business or social relations with the judge?—A. I was United States marshal in his court five years.

Q. What five?—A. From 1896 to 1901 or 1902.

Q. During your acquaintance with him did you hold any other official position?—A. No. Do you mean during the period I have known him?

Q. Yes.—A. Well, following that I was collector of customs.

Q. At Seattle?—A. At—in this district; in the State of Washington.

Q. That would not bring you in contact with him?—A. Many customs cases, of course, arise in court. We were in court nearly every term.

Q. During the years you speak of, give the committee some definite idea of how much of the time you were in the company or in the presence of Judge Hanford—had an opportunity to observe him?—A. During the years I was marshal I attended nearly every session of the court twice each year at Seattle, Spokane, Walla Walla, and Tacoma; two sessions each year in each place.

Q. Was it your custom to remain in court during the session, or did you have a separate office in which you stayed?—A. Well, I had a separate office; but when we went from Tacoma, where my headquarters was, I generally went with them and took care of the court business; that is, opened court.

Q. You had, however, a court crier and a bailiff or two——A. Bailiffs and deputies, too.

Q. (Continuing.) Who accompanied you; took care of the work of the court room themselves?—A. A great deal of the time; but when I went to those places away from home I was most always in court.

Q. Did you observe the peculiarity of Judge Hanford of which you have heard testimony, concerning apparent napping on the bench?—A. Yes; I have read that in the papers.

Q. What?—A. I have read that in the papers. I haven't heard any testimony heretofore.

Q. If you observed anything of that character in Judge Hanford while on the bench, tell the committee what you saw.—A. Well, I have seen, many times, the judge lean back in his chair and close his eyes, but——

Q. (Interrupting.) Did you ever see anything else than that?—A. No; I never did.

Q. He would put his head on the back of the chair and would close his eyes?—A. Yes; lean back in his chair, generally, and close his eyes.

Q. Did he tilt the chair, or remain motionless in it on those occasions?—A. Well, I don't know that I can remember. I expect he leaned back. He turned the chair around frequently and would lean with his elbow on his desk.

Q. Is that the extent of your observation of those peculiarities about which we have heard testimony?—A. That is the extent; but I never saw—in the hundreds of times that I have been in court, I never saw anything that would lead me to believe that he was not awake; he would rule on a point as quick as he would had he been looking at the attorney.

Q. Have you ever observed the judge when, in your opinion, he was under the influence of any intoxicant?—A. I never have.

Q. Have you seen him drink?—A. I think I have on one or two occasions.

Q. Where were they?—A. Once in Walla Walla and—both times in Walla Walla, in the hotel.

Q. Are those the only occasions on which you ever saw him drink?—A. The only two drinks that I ever saw him take.

Witness excused.

EDWARD C. CHEASTY, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name in full, if you please.

A. Edward C. Cheasty.

Q. C-h-e-a-s-t-y?—A. C-h-e-a-s-t-y, yes, sir.

Q. You live in Seattle?—A. Yes, sir.

Q. And are in business here?—A. Yes, sir.

Q. What is your business, Mr. Cheasty?—A. In the clothing business.

Q. How long have you lived in Seattle?—A. Forty years.

Q. You are a member of the park board here?—A. Yes, sir.

Q. You are acquainted with Judge Hanford?—A. Yes, sir.

Q. He has been associated with you on the board, has he, or has he been?—A. No.

Q. Have you had any relations with him because of your membership in the park board?—A. Yes; I have.

Q. What were the relations?—A. Well, mainly in consulting with Judge Hanford in reference to the public work of the city. I have frequently had occasion to go to him and ask his advice about different things that we have had in hand, and have consulted him along those lines because he has been very much interested in the work of the park department.

Q. For how long a time have you been consulting him, how many years?—A. Well, I was a member of the park board for four years

and then was removed and was out of office for about a year and eight or nine months, and I have been back again about—since the first of this year, and during all that time at intervals I have had occasion to talk with Judge Hanford about our work.

Q. Where would you usually confer with him?—A. Well, a good many times in my own office; sometimes in his office, and sometimes in the Rainier Club, and other places that I have happened to meet the judge.

Q. At what hour usually?—A. Well, no particular hour.

Q. Day or night time?—A. Oftentimes in the daytime, sometimes at the lunch hour, and other times in the afternoon, sometimes in the evening; it would all depend on circumstances; just how and when I happened to meet him.

Q. How late can you recall conferring with him in the evening?—A. Oh, I think, perhaps, as late as 12 o'clock.

Q. Frequently or exceptionally?—A. No; not frequently.

Q. That would be at the club, would it?—A. Sometimes.

Q. Have you had other relations—social or business relations—with him than you have stated?—A. Yes; I have.

Q. What were they?—A. Well, I have known Judge Hanford all my life. I was born here in this State. I have always known Judge Hanford. I could not say to the day or the exact year.

Q. What I want to get at, Mr. Cheasty, is to what extent have you been in his company other than as you have stated?—A. Well, there have been intervals of sometimes months at a time when I have not seen the judge to any great extent, other times when I have met him a great deal. In a social way I have attended a great many dinners that he has been at—public and private dinners. I have often——

Q. (Interrupting.) Did you see him in the evenings at other places than at the club?—A. Yes, sir; many times.

Q. Where, except functions such as you have referred to?—A. Yes, sir; I have seen him at private houses where I have been dining, and in larger affairs—public or semipublic dinners—on a great many different occasions.

Q. Have you seen the judge when in your opinion he was under the influence of any intoxicant?—A. I never did; no, sir.

Q. Have you ever seen him drink intoxicants?—A. Yes; I have.

Q. Where?—A. Well, at these different affairs that I have mentioned, some of these dinners I have attended, frequently wine would be served, and sometimes I have seen the judge take a drink in the Rainier Club, but that is all.

Q. You are a member of the club, are you?—A. Yes, sir.

Q. And you have been for how long?—A. I have been since—for 15 years; 1897 I joined.

Q. Is your home in the same direction from the business part of the city that his is?—A. Not at present; no.

Q. Was it at any time?—A. Yes, sir.

Q. Have you ever rode home at night with him?—A. Yes, sir.

Q. On the street car?—A. I have.

Q. How late?—A. Well, I think, perhaps, as late as 12 o'clock occasionally.

Q. Have you on any of those occasions seen him when in your opinion he has been indulging in intoxicants?—A. I never did.

Q. Did you ever see him nod or appear to sleep on the car?—A. Well, I have seen the judge when I—I never have seen him at a time when I would feel that I could say he was asleep; no; but I have seen him—his head nod and his eyes close just for a minute or two at a time, but I would not say that I have ever seen him when I thought he was asleep.

Q. I think the question was, when he seemed to be asleep?—A. Well, it did not impress me that he was asleep; no.

Q. Have you ever been present in court when he occupied the bench?—A. I have.

Q. Have you on any of those occasions observed him when a stranger to him might reasonably think that he was napping?—A. No; I don't think I have in court.

The CHAIRMAN. Any further questions of the witness?

By Mr. HIGGINS:

Q. Mr. Cheasty, I didn't understand your business. What was it?—A. Men's clothing.

Q. That is, both retail and wholesale?—A. No; retail.

Q. Are you a member of the Merchants' and Credit Men's Association of Seattle?—A. No, sir; I am not.

Q. Can you tell the committee who the officers of that association are, if you know?—A. I could not.

Q. Do you know how long the association has been organized?—A. My impression is, a number of years. I could not say with any great accuracy, because my business does not bring me into that sort of an association.

Q. It is not the association to which retail merchants generally belong in this city?—A. I think not; I think it is a wholesale—it is an organization of the wholesale merchants, as I understand it.

Q. How large is the membership?—A. I have not any idea.

Q. You have no information about it. That is all.

By Mr. HUGHES:

Q. Mr. Cheasty, have you been, within the last 10 or 12 years, a juror in this court—Federal court?—A. In Judge Hanford's court?

Q. Yes.—A. No, sir.

Q. In riding home with him at nights, when you have noticed him drop his head or close his eyes, have you ever sat down and talked with him after noticing that?—A. Yes; I have.

Q. Tell the committee what was the result of your observations in the conversations with him, as to whether he appeared to be under the influence of liquor or to be asleep or sleepy?—A. I never saw Judge Hanford in my life when I thought that he was under the influence of any drug or liquor at any time. I have noticed, as I said before, occasionally, that the judge's eyes would close, and knowing him as well as I do I would keep right on talking to him just the same as if his eyes were open, and it appeared to make no difference at all so far as he was concerned, he kept up his part of the conversation exactly the same as he would if his eyes were open.

Mr. HUGHES. That is all.

Mr. HIGGINS. Can you tell the committee, Mr. Hughes, who the officers of the Merchants' and Credit Men's Association of Seattle are?

Mr. HUGHES. I will ascertain for you. I do not recall at the

present time, although I have met them at their meetings and addressed them at their meetings. I can readily find out for you who the present officers are. I can't recall, however, at this moment.

Mr. HIGGINS. I wish you would do so.

Mr. HUGHES. I will be glad to do so.

Witness excused.

An adjournment was here taken until 9.30 o'clock next Monday morning.

NINTH DAY'S PROCEEDINGS.

MONDAY, JULY 8, 1912—9.30 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

F. T. MERRITT, being first duly sworn, testifies as follows:

The CHAIRMAN. Please state your name

A. F. T. Merritt.

Q. Where do you live, Mr. Merritt?—A. 2420 North Broadway, Seattle, Wash.

Q. How long have you lived in Seattle?—A. About five years and a half.

Q. What is your profession?—A. Lawyer.

Q. How long have you practiced your profession?—A. Nineteen years.

Q. Still in the active practice?—A. Yes, sir.

Q. Any particular line of practice, Mr. Merritt?—A. No, general practice.

Q. Does your practice extend to the Federal court presided over by Judge Hanford?—A. Yes, sir.

Q. To what extent have you been in that court?—A. For the last five years I had occasion to be in that court a great deal. I have a great deal of admirality practice that I have charge of and that, together with the fact that I represent some corporations, takes me into the Federal court a great deal.

Q. What are they?—A. What are——

Q. What are the corporations?—A. Railroad corporations and steamship corporations.

Q. What ones?—A. The Oregon-Washington Railroad Co. and the Alaska Steamship Co. and some others.

Q. The railroad company you mention, is that a steam or a trolley line?—A. Steam line.

Q. Interstate or intrastate?—A. Interstate.

Mr. HUGHES. It is a branch of the Union Pacific, is it not?

A. Yes.

The CHAIRMAN. Have you practiced before Judge Hanford anywhere else than at Seattle?

A. In Tacoma.

Q. To what extent?—A. Oh, I have had, perhaps, a half a dozen or a dozen matters before him over there; I could not say just how many.

Q. To what extent have you noticed or had an opportunity to notice Judge Hanford outside of court?—A. For the last two years, or practically two years, I have lived just beyond Judge Hanford on the same car line and had occasion to take the same car with the judge

a great many times during that time, especially late in the evening, and it was the custom of my wife and myself to go to the theater about once a week and I had occasion to work late in the evenings a great deal during that time, and I have ridden out with the judge a great many times during the evening and late in the evening on the same car.

Q. As much as once a week?—A. I should say on an average more than once a week, yes, sir.

Q. Have you any association with him, other than your professional association?—A. Not at all.

Q. Have you associated with him in any club or social organization?—A. Why, I believe he belongs to the Arctic Club; I have seen him in there—that is the club I belong to—I am not a member of the Rainier Club.

Q. Have you observed any peculiarity in the judge's apparent condition while presiding in court?—A. I have noticed him once in a while close his eyes and he would nod his head.

Q. For how long a time have you noticed that?—A. Do you mean in time or for how long a period?

Q. No, for how far back?—A. I should say most of the time since I practiced before him; that is, not most of the time, but I mean as far back—I should say I noticed it when I first commenced to practice before him about five years ago.

Q. What was that answer?—A. I should say as far back as about five years ago I noticed it first; I could not say exactly.

Q. In your opinion, does the habit increase or diminish or remain as you first noticed it?—A. I don't think it increased at all, I should say. I had a case I tried before him a few months ago that took several days; I do not remember that he closed his eyes any time during that case.

Q. Have you at any time noticed Judge Hanford when, in your opinion, he was under the influence of intoxicants?—A. I have not.

Q. Have you seen him drinking liquor?—A. Once only.

Q. Where?—A. San Francisco.

Q. When?—A. He took dinner with me in the Palace Hotel in the evening, and we had a cocktail together.

Q. That was the only occasion when you saw him drinking any intoxicants?—A. The only time.

Q. And what hours of the night have you seen him go home?—A. It is usually 11 or a little after 11 o'clock that I have seen him, sometimes a little earlier than that; that is the usual time.

Q. How late was the latest that you happened to meet him going home?—A. Well, it is hard to say; I do not think I ever saw him going home later than half-past 11 or 12 o'clock, or a quarter to 12.

Q. Were those occasions when you were going home from the theater or from your office?—A. Both.

Q. On those occasions, if you noticed anything in the conduct of the judge that was out of the ordinary, tell what it was.—A. Why, the only thing I have noticed was that he would close his eyes and nod his head as he sat there in the car occasionally. Nothing else. I noticed that he never had any trouble—he always knew when he came to his street—about getting off—he got up without being told and walked out of the cars, the same as anyone would get off.

Q. Of course those occasions were included in one of your former answers, but I will ask you if, on any of those occasions, he was more or less under the influence of intoxicants?—A. He was not. He was in the same condition that I have seen him early in the morning in court, or in the afternoon, or at other times—simply apparently a little drowsy.

Q. Was the drowsiness or nodding which you spoke of in court like the nodding on the street car, which you saw him indulge in?—A. The same.

Q. On those occasions, or any of them, were you engaged in conversation with him?—A. Not particularly; no; I have spoken to him, but not to engage in conversation with him.

Q. A mere salutation?—A. That is all.

Q. How far did you ride together?—A. From here to his home; sometimes it would be down Second Avenue a few blocks; it would depend on where he got on.

Q. That would be how long ride?—A. About 2 miles nearly.

Q. And in point of time?—A. About 18 or 20 minutes.

The CHAIRMAN. Any further questions?

Mr. HUGHES. What is your firm?

A. Bogle, Graves, Merritt & Bogle.

Witness excused.

GEORGE DONWORTH, being first duly sworn, testifies as follows:

The CHAIRMAN. Please state your full name.

A. George Donworth.

Q. D-o-n?—A. D-o-n—Donworth.

Q. Where do you reside, Judge?—A. In Seattle, Wash.

Q. How long have you lived in Seattle?—A. Twenty-four years.

Q. You are, of course, a lawyer by profession?—A. Yes.

Q. And are now on the bench?—A. No; I retired, or I resigned, from the bench some two months ago.

Q. What court were you presiding over?—A. I was one of the United States district judges for this district from the spring of 1909 until the spring of 1912.

Q. Did you have any other judicial experience?—A. No; none whatever.

Q. Do you now hold any official position?—A. None whatever.

Q. Are you practicing your profession, Judge?—A. I am.

Q. In Seattle?—A. Yes.

Q. You, of course, know Judge Hanford?—A. Yes; I know him very well.

Q. And you have known him how long?—A. Twenty-four years.

Q. During your life in Seattle?—A. Yes.

Q. To what extent have you been thrown in his society during that time?—A. Well, during the three years that I was on the bench I, of course, was very frequently thrown into his society; probably on an average once a day. During the 10 years prior to that time I saw him probably two or three times a week; mostly at the club or in the court room.

Q. Your offices, while you were on the bench, were in the same building, were they?—A. They were in Seattle. But I remained in Tacoma about half of the time and Judge Hanford but seldom came there during my term of office.

Q. Were you assigned particularly to duty at Tcoma?—A. It was a matter of division between Judge Hanford and myself. We agreed that I should be responsible for the Tacoma business and he should be responsible for the Seattle business, but that each one would help out the other as occasion might require.

Q. And although holding court most of the time in Tacoma, your home was still in Seattle, was it?—A. Yes, sir.

Q. How long a ride is it from one town to the other?—A. About an hour and a quarter on the cars.

Q. Prior to your service on the bench, please state again what your opportunity was for seeing and observing Judge Hanford.—A. Well, during the first few years that I was in Seattle I saw him only occasionally, as I had a case in court. Later I had more connection with Federal litigation and saw him more often in the court room or at chambers, and we were both members of the Rainier Club and I saw him there, oh, I suppose three or four times a week; perhaps sometimes oftener.

Q. At what time of the day or night, mostly?—A. Well, either at luncheon or during the evening.

Q. Extending into the evening how late?—A. I should say midnight at times.

Q. Have you had occasion, Judge, to notice the peculiarity so often spoken of here in Judge Hanford as to his apparent nodding or napping on the bench?—A. Yes; frequently.

Q. When did you first notice it?—A. I think as early as my first practice in his court; I do not recall the time when I did not notice it.

Q. And have you continued to notice it up to the time you last saw him presiding in court?—A. I think so.

Q. What do you think as to whether there has been any aggravation or diminution in the apparent condition or habit?—A. I should think it was more marked since the removal to this building than before.

Q. A little over three years ago?—A. It is more than that.

Q. Four years ago?—A. I think about five years ago, if I am not mistaken.

Q Judge, would you describe that condition as you observed it?—A Well, I noticed it more frequently during arguments by attorneys; the judge would close his eyes and apparently be dozing, but on the slightest interruption in the argument, or if any point came up that was out of the ordinary, he immediately showed that he was listening and watching the argument as closely as if his eyes had been open. I do not recall that any lawyer that I had a case for or against, or that I was associated with in any way, ever felt that his argument was being lost by reason of that peculiarity.

Q. While you were on the bench I assume you did not have as good an opportunity to notice this condition as before.—A. That is correct.

Q. While he was holding court you probably were also?—A. Yes, sir.

Q. Were your hours the same as his?—A Yes, sir.

Q. Have you any explanation of his condition on those occasions?—A. I think it is due to a temperamental or individual mannerism. I never attributed it to anything else. I never heard that that was used as a basis for a charge of intoxication until about the time of

the Dreamland Rink meeting. I then heard that that mannerism was taken as evidence by some persons of intoxication. I had never heard that before. I think that in Judge Hanford's presiding in this building, that the poor ventilation, particularly at the end of the room where the bench is, to some extent made his mannerism more apparent—made him more drowsy, or apparently drowsy, than he otherwise would have been. The ventilation in the district court room, as we call it, the other court room, is exceedingly poor; particularly in that end where the bench is. After presiding there for two or three hours I have frequently felt a dizziness that would only go away after I had gone out into the fresh air. I assume that it would affect any other man to the same extent as it affected me

Q. I do not understand you to mean by that that you nodded or napped on the bench —A. I do not remember that I ever did; it was a feeling of dizziness with me; it never went so far, however, as to affect my ability to attend to the business of the court.

Q. But if it were due to bad ventilation, how would you account for the mental alertness of which you speak?—A. Oh, I was mentally alert myself. I simply felt, and feel now, that if one had a predisposition to close his eyes and be drowsy that the lack of ventilation might make that occur more frequently.

Q. In order that the record may show the fact; in the room in which we now are, that is Judge Hanford's room, on the north side of it—is this the north side?—A. Yes.

Q. (Continuing.) There are three large windows which open from the top and bottom; the judge's seat at the bench is about 4 or 5 feet back of the nearest window—that is, back of the line of the nearest window—that is about right, is it?—A. I think so.

Q. With a very large, wide open space in front of it, so that the ventilation where the judge sat was very little, if any, inferior to the ventilation in the other parts of the room?—A. The record should show that Judge Hanford seldom held court in this room; the other room is the one almost always used

Q. In this building?—A. Yes, sir; and I think it should show also that during a great part of the year the climatic conditions are such that to keep the windows open to the extent needed to furnish perfect ventilation would cause a great part of the persons in attendance on the court to contract severe colds.

Q. The general information I have received is that there is not much difference in the temperature here in winter and summer. What is the fact as you understand it?—A. The difference in temperature is not so great, although it is a difference enough to cause a marked summer and a marked winter. The dampness is much more frequent in winter than in summer.

Q. It is the question of dampness, then, to which you referred more particularly, is it?—A. I am no expert on ventilation or on climatic conditions; I am simply giving my observation as best I can.

Q. Well, is it your experience or observation that the judge was in the condition referred to more in the other room than in this one?—A. I would not say that I noted any difference in that respect.

Q. Judge, have you at any time noticed Judge Hanford when, in your opinion, he was in any degree under the influence of intoxicants?—A. I never have.

Q. Have you ever seen him drink?—A. Yes.

Q. To what extent?—A. Why, sometimes before dinner, I have seen him drink a cocktail; I think at times two cocktails; other times, in the evening, I have known him to drink beer.

Q. Where?—A. At the Rainier Club.

Q. Well, was that drinking beer just an occasional drink, or was it more than that?—A. Well, I would call it an occasional drink.

Q. During a social game of cards or dice or dominos, or anything of that sort?—A. I think the only game Judge Hanford has played at the club was dominos. Yes; he would drink during those games.

Q. Have you ever seen him drink other than on the occasions you spoke of when he took a drink before dinner or the times when you saw him drink at the club?—A. I presume I have seen him drink at other places, but I do not now remember that I have.

Q. If you did, it was on some rare occasion—to what extent have you been with the judge, or have you seen him in the nighttime elsewhere than at the Rainier Club?—A. I do not now remember of ever meeting him in the evening other than at the Rainier Club, except at court chambers and at some private evening party.

Q. Have you on any of those occasions seen the judge drinking?—A. No, sir; I think not.

Q. What drink, if any, have you seen him take other than beer?—A. Only the cocktails.

Q. And that was before meals?—A. Yes, sir.

Q. Have you lunched with the judge at times?—A. Yes, sir.

Q. Where?—A. At the Rainier Club here and at the Tacoma Hotel, in Tacoma.

Q. Was that occasionally or frequent?—A. Just occasionally.

Q. To what extent did he partake of intoxicating liquors on those occasions, if at all?—A. I do not remember of his ever taking a drink at lunch.

The CHAIRMAN. Any questions of the judge?

Mr. MCCOY. Judge, did you do your work in the building evenings, or at home?

A. I came to the building only occasionally in the evening; I should say I averaged two or three evenings a month only in the building.

Q. And then you worked at home in the evening?—A. Yes, sir.

Q. Do you have a library at home?—A. No; the work at home that I did was largely in reading the records of cases submitted in writing—equity and admiralty cases.

The CHAIRMAN. Any questions, Mr. Hughes?

Mr. HUGHES. Judge Donworth, during the three years that you were on the Federal bench did you frequently have conferences with Judge Hanford respecting judicial work and cases?

A. Yes.

Q. What information can you give the committee regarding the amount of work Judge Hanford had occasion to do during the period that you were on the bench—judicial work I mean?—A. The calendar at Seattle was always full. It was full at Tacoma also, although I was able to just about keep even with it. In Seattle I think the work accumulated more rapidly than it could be dispatched. There was always a great deal of work to do, and Judge Hanford was attending to it with a great deal of industry.

Q. Had not the work accumulated and was not the calendar very much behind on account of the need of an additional judge before you were appointed to that office; before the office was created and your appointment was made?—A. There was quite a large accumulation at Tacoma; there was some accumulation here; but I do not think that it was in such shape that lawyers could not get their cases up fairly expeditiously. I think Judge Hanford had kept it up fairly well here.

Q. What do you know as to the hours of labor of Judge Hanford, either from your experience on the bench or prior thereto, from your experience and observation?—A. I think he usually put in a pretty full day from 10 until say 12.30 in court and at chambers, and then from 2 until about 5.30, and I have no personal knowledge of his being at the Federal Building every evening or very frequently, because I was not personally present very often in the evening, but I often found him at work when I came there in the evening.

Q. Do you know anything about his hours of labor prior to your going upon the bench? I mean outside of the ordinary day—working at nights?—A. Yes, sir; I have had occasion to apply for temporary orders and such things during the evening, and I usually found him at his chambers when I had occasion to do that.

Mr. HIGGINS. Judge Donworth, I understood you to testify that you frequently lunched with Judge Hanford at the noon hour?

A. I do not know whether I said frequently; I do not think I had lunch with him frequently, but on numerous occasions.

Q. It is in evidence by the testimony of Mr. Peterson that Judge Hanford was—while he does not use this language—an inordinately large eater. He even intimated that his intoxication was due to the fermentation of food. Are you able to express an opinion from having lunched with Judge Hanford, or to give any opinion to the committee on that subject?—A. I am not conscious that I ever formed any opinion one way or another on that point.

Q. What was the fact. Did he eat a light lunch or a hearty lunch?—A. It never struck me one way or the other. I should say that he was an ordinary eater.

Mr. HUGHES. Have you not observed the fact that he frequently takes nothing but a glass of buttermilk for his lunch?

A. I have not observed that.

The CHAIRMAN. In view of his previous answer don't you think that is a leading question?

Mr. HUGHES. He might have been able to observe that fact without there being any inconsistency in his answer.

The CHAIRMAN. Anything further?

Mr. HUGHES. I would like to ask Judge Donworth one other question.

Q. Some question has been raised here as to the practice of the courts and as to whether they, in this district, ever grant new trials for errors that have not been presented or urged or to which exceptions have not been taken by counsel; have you ever done so, Judge Donworth?—A. I do not recall that I have.

Q. Do you recall the Pappas case—the case of Pappas against the Great Northern Railway Co.? A. I recall the case; yes, sir.

Q. Wasn't that the case in which you granted a motion under some such facts? A. My charge was excepted to and on the argu-

ment for the new trial I was convinced that I had charged the jury erroneously on the point excepted to and I granted a new trial. Of course in the Federal court the judge is vested with a very broad discretion about granting a new trial; whenever he thinks a new trial would be in the interest of justice, he has that discretion—it has been so decided in numerous cases.

The CHAIRMAN. Is his discretion any broader than that of any other nisi prius judge in those cases?

A. I should think so. The Federal court follows more closely the English practice, and the judge is a bigger factor in the court than he is in the State court.

Q. Any nisi prius judge has very wide discretion in that manner and one that the reviewing court will not interfere with unless it has clearly been abused. Is not that the general rule? A. I think that that is the general rule.

Q. Both in the State and Federal courts? A. With this qualification, that in the Federal court the judge has the right to advise the jury in his charge as to how he thinks the case should go, if he thinks justice requires him so to do. In other words, he has the right to express his opinion on any question of fact to the jury, provided he informs them that his opinion is not binding upon them. I think that same idea would run into the motion for a new trial, and a judge who has that right that I have referred to would probably have a broader discretion than in the State court where they are prohibited from expressing any opinion on a question of fact.

Q. Have not some of Judge Hanford's judgments been reversed for the very thing which you speak of?——A. I have never heard of it.

Q. (Continuing.) Suggesting to the jury or virtually telling them how they should find?—A. I have never heard of it. I have used that right myself when I thought justice required it.

Q. Have you exercised that right in favor of the plaintiff?—A. Yes, yes. In a case against the telephone company I cautioned the jury, in reference to certain testimony introduced by the defendant, and called their attention to the strength of the plaintiff's case, because I felt at the close of the argument of counsel that the counsel for defendant had made a stronger argument that might carry with the jury.

Q. Did you go to the extent of telling them that in your opinion they should find for the plaintiff?—A. Not in so many words; but the intimation was plain.

Q. That was your intention?—A. It was the intention to let the intimation be plain; yes.

The CHAIRMAN. Anything further?

Mr. MCCOY. Judge Bonworth, it is not really a matter of what you would call discretion; is it—rulings of that kind—is it not that on all the circumstances of the case you legally think you ought to do one thing or the other—in other words, the administration of justice, particularly in common-law cases, does not depend on anybody's discretion, does it?

A. Yes, sir; it does, in the Federal court. Whether the judge shall intimate to the jury his opinion on a question of fact is a thing that appeals to a man's sense of abstract justice and nothing else—there is no rule about it. The judge may either express his opinion or he may refrain from expressing it and commit no error whatever.

Q. That is, on the charge?—A. On the charge.

Q. Now, I am speaking of motions for a new trial. Do you think that the decision of a motion for a new trial is a matter which rests in the discretion of the judge? Is it not a matter that lawyers can argue with reference to the facts and point out where they have a right to a new trial, or the other side point out that there is no ground on which to grant the motion for the new trial?—A. Well, that is largely true and yet not altogether true. In arguing the motion for a new trial we bring forward—if I were trying to get a new trial I would bring forward the points where I felt I was legally entitled to a new trial; I would dwell upon those, and after having covered those fully, if I felt I had ground for so doing, I would then take the position that as a matter of justice the verdict was wrong, and ask the judge to exercise his discretion.

The CHAIRMAN. That is his judicial discretion?—A. Yes, sir; we have all heard the story, I suppose, of what is sometimes referred to by lawyers as the thirteen rule—where the judge set aside a verdict with the remark that "It takes thirteen men to rob a man in this court."

Mr. MCCOY. Is it your opinion that courts are constituted to administer what they designate as abstract justice?

A. No; of course, the courts must follow the law absolutely.

Q. And is not the point before an appellate court always, when they are speaking about a judge's discretion, that the judge has had a better opportunity—the trial judge—to observe the witnesses and so forth, and so to that extent he is in a better position to judge than any appellate court can be, and so far as the question depends in any way, or turns in any way on the observation of the witness there, they are very reluctant to interfere with the judge's ruling, but where that element is not involved the case must be decided by them and also by the nisi prius judge on exactly the same grounds.—A. Well, you are right about that. Of course, by "abstract justice" I do not mean to ignore the law; but where one set of witnesses testify one way and another set another, the justice of that case is, of course, one way or the other under the law. If the judge has a clear idea that the justice is one way in spite of the fact that some witnesses have sworn to the contrary, the judge then has a discretion in granting a new trial to apply his sense of the right of the case.

Q. Yes; Then the question would be on the weight of the evidence.—A. Yes.

Q. And that is a legal proposition and not a discretionary proposition.

The CHAIRMAN. I believe that is all.

Mr. HUGHES. Was that last question answered?

The WITNESS. Yes; that is, if the judge believes the weight of the evidence is different from the way the jury believed the weight of the evidence to be the the judge would grant a new trial unless some other reason in the case made it improper to do so.

Mr. HUGHES. Did I understand either the question or the answer to imply that weighing the evidence and the decision reached as the result of weighing it is a legal question; or the problem solved after the weighing of the evidence and the arriving at the decision is a solving of a legal proposition or a legal question?

A. It depends on in how broad a sense you use the words "legal question."

Mr. McCoy. Don't you mean this, that the ultimate question is a question of fact, but the solution of it must be determined by legal methods of reasoning?

A. Of course, when we come to weigh the evidence, while it is a judicial question it is not legal in the narrow sense of the word legal.

The Chairman. Don't let us get into the domain of psychology.

Witness excused.

Nathaniel W. Bolster, having been first duly sworn, testified as follows:

The Chairman. Tell your full name.

A. Nathaniel W. Bolster.

Q. Spell the last name for me.—A. B-o-l-s-t-e-r, sir.

Q. Where do you live, Mr. Bolster?—A. Seattle, sir.

Q. How long have you lived in Seattle?—A. Some 22 years odd.

Q. What is your present occupation?—A. Shorthand writer, sir.

Q. What has it been during those years?—A. The same business, sir.

Q. In what line of employment have you been engaged?—A. Court work or anything that comes from court work—hearings and matters of that kind and general reporting.

Q. In connection with judicial proceedings of one sort and another? A. Mostly, sir.

Q. To what extent have you been employed in Judge Hanford's court?—A. To a very large extent, sir.

Q. Be more specific.—A. I think I reported the majority of the cases that were tried—reported in Judge Hanford's court; that is my present recollection. I used to do——

Q. (Interrupting.) During how long a time?—A. More particularly in the earlier days, from 1900 down.

Q. To when?—A. Well, I reported, I think, five cases this last term—right this present term.

Q. You said more particularly in the earlier days, and you said from 1900. To what time would constitute those earlier days?—A. I meant by that that there were periods when I was absent from the city on other engagements. But in those days there was just one firm, practically, of court reporters in Seattle, of which I was a member. Since then there have been others. The number of courts—superior courts—has increased, so that there have been a great many others in the business, but Mr. Bowman and myself at one time did all of Judge Hanford's business—all the Federal court business.

Q. You were employed by the attorneys in the respective cases?—A. Yes, sir.

Q. Where was your office, with reference to the Federal Building?—A. On the same street, within a block and a half of the Federal Building.

Q. Did you at any time have an office in the Federal Building?—A. Never, sir.

Q. To what extent were you in the court except when on duty reporting?—A. I would say never; very seldom.

Q. To what extent did you observe Judge Hanford elsewhere than in court during this time?—A. Not to a very great extent—to some extent.

Q. What occasions had you for seeing him or observing him except in court?—A. I have accompanied Judge Hanford and the jury at times to view the premises that were under litigation, the subjects of litigation, and on those occasions I have traveled with him on the street car. I have seen him in town a good deal when I have not seen him on the bench.

Q. Where—where in town?—A. On the streets; on the street cars.

Q. Anywhere else?—A. I think that I saw Judge Hanford once at the Rainier Club. I had occasion to go there for some business engagement with some member of the bar. I have seen him at banquets that I have had to report, quite often.

Q. What was your business at the club?—A. Speeches—public speeches.

Q. Was your business at the club on that occasion or those occasions to take down some order which the judge would make?—A. No, sir.

Q. What was it?—A. I think I had to go somewhere with some member of the bar and I had an appointment to meet him at the club. I saw Judge Hanford, I remember, on one occasion at the Rainier Club.

Q. Do you remember more than once?—A. I think not, sir.

Q. Have you had occasion to observe the peculiarity of Judge Hanford when presiding, with reference to nodding and napping?—A. Yes, sir, I have.

Q. When did you first observe it?—A. I observed it from the first time I had occasion to write shorthand in Judge Hanford's court. I noticed it in those days.

Q. Do you agree with a stenographer who has given testimony, that the stenographer taking notes can do the work during the taking of testimony before a jury and also observe with his eyes whatever is going on in the court room?—A. Yes, sir; I do; and especially with reference to the judge's attitude and his remarks; one has to take—a stenographer has to keep one eye on the judge all the time, you might say, to note any remark that is made by the judge, because—while I don't like to say it—a stenographer is in a sense you might almost say a spy on the judge. The attorneys engage him for the purpose of getting everything that the judge says, and if the judge makes in the presence of the jury any remarks they expect him to get every little syllable that the judge says in the record so that they may take advantage of it.

Q. Since the remark of which I speak has been made, I have myself given some attention to the stenographers here engaged, you for one, I think, and I haven't noticed you take your eye from the work, nor have I noticed the gentleman now at work taking theirs from the work. What is your observation?—A. I would say that that is a very different situation from proceedings in the court for this reason, sir, if you will permit me to say it: In Judge Hanford's court the stenographer is not seated away down below the level of your bench where he can not observe your face or you at all, can not see you——

Q. (Interrupting.) Can't those gentlemen see me now?—A. I could not where I sat—when you refer to what I was doing.

Q. Are not those two gentlemen in front of me, are not they situated so that they can see me now if they will look at me?—A. Yes. The first way that my chair was placed in the position that you refer to I was down below about——

Q. (Interrupting.) You haven't yet answered my question, however.—A. I would say that the conditions are very different in the trial of a case, because——

Q. (Interrupting.) You are not now answering my question.—A. I beg your pardon then, sir. I will try to.

Q. Do you remember it?—A. I think so.

Q. Will you answer it?—A. Your question, as I understand it, was that you have observed myself——

Q. (Interrupting.) No; not at all. The last question was: "Can't the gentlemen now working here see me where I sit if they only direct their eyes toward me?"—A. I think they could see your face, sir; yes.

Q. You know they could see me, do you not?—A. I think so, I think they can; yes, sir. I am free to say that I think so; yes.

Q. But they haven't looked at me and could not very well without missing something of what is going on, could they?—A. Yes; they could. I could.

Q. Very well; go on now and tell us what you observed of Judge Hanford.—A. I observed this of Judge Hanford, that he used to close his eyes in the court room in the course of the trial. It was quite a standing joke in our office that a new attorney coming to Judge Hanford's court for the first time and seeing Judge Hanford do that, would imagine that Judge Hanford was not paying attention to what was going on, and it was just a standing joke in our office to notice the surprise and amazement that would come over them when they would find that he was keenly observant of everything that had transpired and had really a better perspective of the testimony by closing his eyes than he would have if he had had them open. I imagine he shut out a lot of extraneous sounds—a person putting his head in the door or slamming the door, or those things—the side things happening in the court room—to get a better perspective of the testimony by doing so. That was my impression, I have had it—that it was a constant——

Q. (Interrupting.) Do I understand you to say that his appearance was such as to lead lawyers who were not acquainted with him to think that he was not observing the testimony, or, in other words, that he was napping?—A. I would think that that would be the impression of a new man who had never seen him but the one time.

Q. Have you heard expressions of that sort from such men? A. I have.

Q. Often or seldom? A. As I say, when a stranger blew into town and tried his first case before Judge Hanford, it got to be a joke in our office to find what a surprise it was to him when he tried——

Q. (Interrupting.) Was the joke in your office based upon what attorneys would say about his condition? A. No; rather the surprise that—the manner in which it affected the new men.

Q. During the time you knew him, to what extent, if at all, have you seen the judge partake of intoxicating drinks?—A. Judge Hanford—I have seen him partake of intoxicating drinks. We went to view some premises at Alki Point one time; there was a condemnation by the Government for a lighthouse; the jury had to wander around, and the judge and I wandered around the premises, and came back in the afternoon. It was a hot day, and I suggested to the judge that I had a lot of work to do and I thought I would like

to take a drink, and asked the judge if he would accompany me. He agreed to do so, and I saw him take a drink at that time in O'Brien's—Steve O'Brien's saloon on James Street—on Cherry Street.

Q. What did he drink?—A. Sherry and egg; and I remarked at the time that—

Q. (Interrupting.) I don't care about that.—A. That I——

Q. (Interrupting.) What he said is not very important. Is that the only time you saw him take a drink?—A. No.

Q. When else?—A. I took a drink on another occasion with him and a member of the bar at the Butler Hotel.

Q. In this city?—A. In this city.

Q. When was that?—A. That was a matter of five or six years ago.

Q. What did he drink then?—A. I think he drank a cocktail.

Q. Do you recall any other occasion when you saw him drinking?—A. I don't.

Q. Just those two?—A. That is all I can recall.

Q. At what hours of the night have you seen the judge or been with him down in the city?—A. I am a good deal of a night hawk myself. I have to work late at night, and I have sometimes—when the jury has been out here I have an occasion to—used to formerly do it a great deal; be on tap so that if the jury required any extra instructions, additional instructions, that I would be there to take them down, and I used to stay up sometimes as late at 11 o'clock or 12 o'clock at night and I would see the judge.

Q. Were you under orders to be about——A. I felt it my——

Q. (Continuing.) For that purpose?—A. I felt it my duty to the attorneys who employed me to be there; to be around when there was an important case out.

Q. You failed to catch the point of my question.—A. No, sir.

Q. Or at least you didn't answer it.—A. Tantamount to orders; I consider a contract of engagement——

Q. (Interrupting.) Was that habitually or occasionally?—A. Used to be a very frequent occurrence formerly; it has not been of late years.

Q. Well, why would you be there at some trials where you officiated as stenographer and not at all of them?—A. There are a great many more men in business in the town now and it is easier to get a man, if it is needed in an emergency——

Q. (Interrupting.) Listen to my question again. I am not speaking of the cases where you did not officiate, but the cases where you did officiate as the stenographer. The question is, Why would you not attend all of them for the purpose you mention?—A. I didn't attend them at those hours at night. I say I stayed in my office, subject to call. Now, if I were called on the most unimportant case I would go, but juries don't usually stay out all night on trivial cases.

Q. Well, go on and answer the question. To what extent have you observed the judge on these occasions late at night?—A. The extent—I could not——

Q. (Interrupting.) Would you see him except as you were in fact called into the court to take some additional instruction which might be necessary to give to the jury?—A. Not very often; very rarely otherwise.

Q. Have you seen the judge in any saloon in the city at night, except the Butler bar, as you have stated?—A. No, sir, and that was not at night; that was at noon.

Q. Then have you ever seen him in a saloon at night?—A. No, sir.

Q. Nor drink in a saloon at all except as you have stated?—A. Two occasions.

The CHAIRMAN. Any further questions with Mr. Bolster, Mr. Hughes?

Mr. HUGHES. No.

Witness excused.

A. C. BOWMAN, having been first duly sworn, testified as follows:

The CHAIRMAN. What is your name, please?

A. A. C. Bowman.

Q. Where do you live, Mr. Bowman?—A. Seattle.

Q. What is your business?—A. United States commissioner.

Q. In Judge Hanford's court?—A. District court of the western district of Washington.

Q. Appointed by whom?—A. Judge Hanford.

Q. When?—A. My first appointment was in 1892.

Q. And then?—A. I have been reappointed since.

Q. By Judge Hanford?—A. By Judge Hanford.

Q. And you are still acting?—A. I am.

Q. You have an office in the court room?—A. I have not.

Q. In the court building, I mean?—A. I have not.

Q. Where is your office?—A. Central Building.

Q. How far from this building?—A. Five or six blocks.

Q. In the old courthouse did you have an office in the court room, the courthouse building?—A. I did not.

Q. How much of the time are you present in court when it is sitting?—A. Very little time present in court. I am in the court room frequently during the week.

Q. Your duties, however, are performed elsewhere than in the courtroom?—A. Yes, sir.

Q. And at your own office?—A. Yes, sir.

Q. Always have been?—A. Always have been.

Q. Before you were appointed commissioner how long had you been acquainted with the judge?—A. Ten years.

Q. What was your business then?—A. Shorthand reporter.

Q. In what court?—A. All courts in the State.

Q. To what extent did you do reporting in Judge Hanford's court?—A. Mr. Bolster and myself and I think possibly one other member of the firm at that time did all of the work in the Federal court. I did a reasonable——

Q. (Interrupting.) Your share of it?—A. (Continuing.) Share of it.

Q. Do I understand that as commissioner you take the testimony yourself?—A. I do.

Q. And report it to the court?—A. Yes, sir.

Q. Have you had occasion to observe the peculiarity in Judge Hanford's demeanor while presiding of which you have heard testimony?—A. I have.

Q. That is, as to apparent napping——A. I have.

Q. (Continuing.) Nodding?—A. I have.

Q. How long have you noticed that altogether?—A. That is difficult to say. It has extended back over many years. I could not say the number of years.

Q. Will you give us your best recollection?—A. I don't recollect the first time I observed it, but I did observe it many years ago when reporting in his court after he was appointed United States district judge.

Q. You have heard witnesses—the last witness and the one before the last, I think——A. I heard the last——

Q. (Continuing.) Testify?—A. I heard the last. I didn't hear Judge Donworth's testimony.

Q. You heard Mr. Bolster's?—A. Yes, sir.

Q. Now, have you anything to add to what he said, as you recall it?—A. Only this: I have noticed Judge Hanford during the examination of witnesses when his eyes were closed and counsel seemed to be going beyond the reasonable limits of an examination along a certain line, and Judge Hanford, without an objection, would suggest that he had pursued that line of examination far enough; and I also can say that when objections were made by counsel to questions, that if the judge had been sitting with eyes closed, that I never remember of an instance where he asked the reporter to read the question in order to get the point of the objection; in other words, he ruled without hesitation and with absolute apparent understanding of all of the preceding questions and answers.

Q. To what extent, if at all, have you seen the judge partake of intoxicating drinks?—A. Very seldom.

Q. Do you recall any of those occasions?—A. I think probably three years ago, in Bellingham—he held a term of court there, and I think one night after holding an evening session until probably 10 o'clock, that on the way to the hotel the judge and myself and some one else who was with us stepped into a bar—I am not sure whether it was in the hotel or near by—where the judge took a drink of whiskey before going to bed.

Q. Do you recall any other instance where you saw him drink liquor?—A. Not within recent years. Some years ago I used to see him at the Washington Club; but he was a very spare drinker.

Q. Are you a member of the Rainier Club?—A. I am.

Q. Have you been with him there?—A. I have not. I have not been a frequent visitor at the Rainier Club for a number of years.

Q. Have you ever been with him or drank with him or seen him drink at a saloon in Seattle?—A. I don't believe that I have; I don't remember it.

Q. To what extent have you been in his company, or have you had an opportunity to observe him at night in the city during the last 10 years?—A. Not very much.

The CHAIRMAN. Any further questions with Mr. Bowman, Mr. Hughes?

By Mr. HUGHES:

Q. Have you ever seen Judge Hanford under the influence of intoxicating liquors?—A. I have not.

Witness excused.

SAMUEL H. PILES, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name.

A. Samuel H. Piles.

Q. Where do you reside, Mr. Piles?—A. Seattle.

Q. How long have you lived in Seattle?—A. Twenty-six years.

Q. What is your present business or profession?—A. I am a lawyer.

Q. Practicing your profession?—A. Yes, sir.

Q. Do you hold any official position at this time?—A. None whatever.

Q. Have you held any?—A. Yes.

Q. What?—A. Well, in the early days I was city attorney of this city, assistant district attorney, as it was then called in the Territorial days, and I was six years in the United States Senate.

Q. From the State of Washington?—A. From this State; yes.

Q. What six years, Senator, was that?—A. From March, 1905, until March, 1911.

Q. To what extent have you practiced your profession in Judge Hanford's court?—A. Yes; quite extensively.

Q. During your term as Senator I presume you did not do much law business?—A. No; I gave up the law business altogether when I was elected to the Senate and dissolved my law firm.

Q. Prior to your service in the Senate to what extent did you practice in Judge Hanford's court?—A. Well, I had quite an extensive practice in Judge Hanford's court in admiralty and equity and actions at common law.

Q. For how long a time?—A. Oh, twenty-odd years. I practiced before Judge Hanford when he was chief justice of the Territory of Washington.

Q. Did you at any time have any business relations of any sort with him?—A. No; I never had any business relations with him that I recall.

Q. Any investment of any kind with him?—A. No.

Q. Did you have any business relation or property relation to the Hanford Power & Irrigation Co.?—A. None whatever.

Q. Senator, if you observed the peculiarity in the judge's manner of presiding in court which you have heard witnesses testify about, please tell the committee about it.—A. Well, I have observed the peculiarity of his apparently dozing on the bench.

Q. How long since you first observed it?—A. Oh, twenty-odd years ago.

Q. And how recently have you observed it?—A. Well, I have not been before Judge Hanford for a number of years.

Q. About how many?—A. The year before I was elected to the Senate I traveled around over the country most of the time, and I had been very ill, in an effort to regain my health. I haven't seen much of Judge Hanford in court for, say, seven years.

Q. Well, prior to your going to the Senate you observed him then in that respect, did you?—A. Yes.

Q. What would you say as to his condition at that time compared with his condition when you first knew him, with reference to this dozing, or apparent dozing?—A. Oh, I think it was about the same. I have noticed Judge Hanford apparently dozing in the afternoon. I remember distinctly my—I remember distinctly the first occasion I

observed that. It was a case I was trying myself, and I thought that Judge Hanford was not giving the case as thorough attention as he ought, but I soon observed, on objections there, that I had made myself or that some one else had made, to a witness, that he was thoroughly alive to what was going on, that it was simply a peculiarity of his.

Q. Have you at any time seen the judge partake of intoxicating drinks?—A. Yes.

Q. Where?—A. In this city and at Tacoma, I think Spokane; other places where I have been with him.

Q. Are you a member of the Rainier Club?—A. Yes, sir.

Q. Have you been with him there?—A. Yes.

Q. Drank with him?—A. Yes.

Q. At what hours, mostly?—A. Well, for the last year I have, I think, met Judge Hanford on an average of twice a week at the Rainier Club. I used to stop there on my way home. That was before I moved, which I recently did, to my old home. Up to a few weeks ago I was residing at the corner of Cherry and Boren, which is just up the hill above the club and on the way to Judge Hanford's home, and going from my office I would generally step into the club about half past 5—in fact, there was sort of a tacit agreement between Judge Hanford and myself that we would meet there about half past 5—and play a game or two of dominos before going to dinner; so I should say I have met him on an average, during the last year, of about twice a week at the Rainier Club—played dominos with him and took drinks with him.

Q. What was his usual drink, Senator?—A. Beer or cocktail.

Q. You would then go on home to dinner?—A. Yes.

Q. Now, what about meeting him again or later in the evening or at night at the club?—A. Well, on several occasions I have invited the judge to dine with me at the club and to go to the theater, and he has returned the compliment, so with that exception, I don't recall meeting him in the evening at the club unless it would be at a banquet—some big dinner that some one was giving there. We would meet there on several occasions at banquets.

Q. Well, on the occasion of dining at the club, would you have something to drink while at dinner?—A. Oh, yes; we used to take a cocktail before our dinner.

Q. Anything else?—A. No; that is all we would take. If we would go out to the theater, we would come back and take a drink after that and then go home.

Q. What would it be, generally?—A. Well, I took a rye highball, as a rule, and after dinner I generally take brandy myself. The judge would take either a cocktail or a glass of beer.

Q. After eating, as a rule?—A. Yes; I have seen him take beer when he would come in in the evening.

Q. After the theater?—A. Yes; I think I have. I am not thoroughly positive of that.

Q. Well, is what you have described a thing that occurred pretty regularly when you met?—A. Well, sometimes we would not drink—either one of us would not drink. Sometimes the judge would not be feeling very well, and sometimes my stomach would not be in good condition, but ordinarily we would take a cocktail or he would take a cocktail and I would take a rye highball.

Q. Before eating?—A. Yes.

Q. And have you at any time been in any of the barrooms or hotel bars or saloons in the city with him at night?—A. Well, I—at night?

Q. Yes.—A. No; never at night.

Q. At other times?—A. I don't think I was ever in a barroom in the night in my life. I have very rarely been in barrooms myself, but I do think that I have been with Judge Hanford and Judge Burke and other lawyers in the barroom at Saratora's—used to be Saratora's, it has changed hands now, I have forgotten the name of the place—and some other place, I don't just recall the name of it now; but that was always in the daytime.

Q. You mean you were there with the judge? A. Yes. I don't think I was ever with him in a barroom more than three or four times in my life.

Q. Well, were those formerly or were they recently?—A. Oh, those were years ago, more than six, seven years ago, so far as I recall. I may have been in a barroom with him since, but I don't recall it.

Q. Senator, if at any time you have seen the judge when in your opinion he was more or less under the influence of intoxicants, I want you to please tell the committee of it.—A. Well, I have never seen Judge Hanford under the influence of intoxicating liquors. I have been with him at banquets where he had every possible occasion to become intoxicated if he wished to. I remember recently I attended quite a large banquet where he was chairman of the evening; we had all kinds of drinks, starting in with a cocktail and winding up with champaign and brandy. Dr. Matthews was there as one of the guests.

Q. Was that the occasion when Dr. McCormick lectured in the Alhambra Theater?—A. No, this was a dinner given by Mr. Hill at the Rainier Club, and a number of gentlemen were there, I think——

Q. (Interrupting.) What Hill?—A. Samuel Hill. Given, I think, to Mr. R. H. Thomson, who was about leaving the city at that time. And I have never seen Judge Hanford drink any more than a gentleman ordinarily would drink under such occasions as you and I and all other men attend at times.

Q. Will you tell the committee, Senator, what is your idea as to when a man is under the influence of intoxicants?—A. My idea is that when a man is under the influence of intoxicating liquor, is when he is dominated to a certain extent by liquor; he forgets himself to a certain extent—loses that gentlemanly control of himself.

Q. Might he walk normally and be under the influence of liquor, in your judgment?—A. Slightly, I think a man could, yes. I think a man could walk—some men can walk erectly.

Q. At what stage would you say a man was intoxicated?—A. Well, never having been intoxicated myself, I am not an expert on that subject.

Q. Well, haven't you seen some who in your judgment were?—A. Oh, yes; I have seen men intoxicated very frequently.

Q. Well, at what stage would you call his condition one of intoxication?—A. Well, I say I would consider a man—when I speak of a man as intoxicated I would speak of a man who had lost control of himself. I would speak of a man under the influence of liquor, as I would understand it, when he to a certain extent had lost control of himself.

Q. If he were less able to take care of himself than before he drank any, would you say he was intoxicated?—A. I didn't catch that, Mr. Chairman.

Q. If a person were less able to take care of himself than if he had not drank any, would you say he was intoxicated?—A. No; I don't know as I would if a man was able to take care of himself. I don't mean that he was able simply to know what he was doing. I would say a man was intoxicated even though he was able to take care of himself.

Q. And if he walked unsteadily, what would you say?—A. I would say he was intoxicated; that is, if the unsteady walk was produced by intoxicants.

Q. Yes; of course.

The CHAIRMAN. This is the witness, as I recall it, who one of the witnesses the other day stated—Mr. Peterson, I think—stated he was in company with Judge Hanford when he thought the judge was under the influence of liquor. I will leave the examination on that point to you [addressing Mr. Hughes].

By Mr. HUGHES:

Q. Senator Piles, a witness by the name of Peterson testified to seeing you pass the Washington Annex, going in the direction of the Washington Hotel, or the Moore Theater, going north on Second Avenue, as I recall it, one evening about 5—one evening, I won't undertake to state the exact time—a few weeks ago, at which time he described Judge Hanford as, in his opinion, being intoxicated, from his appearance and his walk. Will you tell the committee what you know in respect to the correctness of that statement?—A. Well, the witness evidently mistook other persons for Judge Hanford and myself, for I have not been in the vicinity of the Washington Hotel or the Washington Annex with Judge Hanford or anyone else since the 29th day of April. I say the 29th day of April because I remember quite distinctly that I had not been in that neighborhood since attending the theater with Judge Hanford.

Q. On what date?—A. The 29th of last April. I had the matter investigated at the Rainier Club, because I ordered my tickets from the club. I invited Judge Hanford to dine with me that evening. We took dinner at the club. I ordered my tickets from there. And I also investigated from the theater, to make certain that I was correct, and I find that Margaret Anglin, the play which we attended, was played at the Moore Theater on that evening. We left the club about 8 o'clock; we walked to the Moore; we left there somewhere in the neighborhood of 11 o'clock; walked back to the Rainier Club, where we took a drink, and from that we walked on up the hill as far as Boren, where I left Judge Hanford at the corner of Boren and Madison, he going on out as far as Broadway and walking on to his home, and I walked on to my home. On that evening Judge Hanford was perfectly sober. We had, I think, a cocktail at our dinner, and maybe we had one before dinner—two before dinner, I am not certain but what we played that evening, dominoes, and probably took—I took a rye highball and he a cocktail, and then ordered our dinner, which I think is correct, and had another cocktail, possibly, at dinner; and from there we went on up to the theater, stayed there three hours, came out, and went back to the club, and did as I have

said, and then went home. I have not been with Judge Hanford in that section of the city for several years prior to that date, and I know I have not been in that neighborhood since that date.

Q. Senator Piles, have you known Judge Hanford intimately for many years?—A. Yes; I knew Judge Hanford when I just came here as a young lawyer, practically. I located in Snohomish, in this State, a small town 50 miles from here, and Judge Hanford was then practicing on the circuit, and he used to come to Snohomish and try cases there, and that is where I got acquainted with him, and I have known him ever since.

Q. I meant to ask whether your acquaintance has been an intimate one, and one that brought you in very frequent——A. (Interrupting.) Yes.

Q. (Continuing.) Personal contact with him?—A. Yes; all the time I was in the Senate I would see Judge Hanford very frequently during the summer when I was home. We attended many banquets together; many conferences together in respect to the exposition that was going on at one time, and different public matters. He was on the national affairs committee, as I recall it, of the chamber of commerce, and he used to confer with me very frequently during the last six years in the summer time, and for many years I have been closely associated with him. I think since 1895 or 1896 I have been rather friendly with Judge Hanford, you might say.

Q. Have you ever known of Judge Hanford being under the influence of intoxicating liquors——A. (Interrupting.) I have not—never.

Q. (Continuing.) So that his mind would be affected in the keenness and clearness and quickness of his perception of facts and of their relation to each other?—A. No; I have not.

Q. Or in any degree that you in your definition to the chairman would say involved his being under the influence of liquor, as distinguished from being intoxicated?—A. I have not.

Mr. HUGHES. That is all.

The CHAIRMAN. Any further questions?

By Mr. McCOY:

Q. Senator, have you ever had wine with Judge Hanford at the Rainier Club?—A. Well, I don't recall that I ever saw Judge Hanford drink any wine. I know I have myself had wine in his presence, but I am not sure that I ever saw him drink any wine.

Q. Have you ever seen Judge Hanford at the club when he was at a table where people seated around it were treating each other?—A. Yes; I have.

Q. How many would you say at any one time was the largest number around the table at the club where they were treating?—A. When Judge Hanford was at the table?

Q. Yes.—A. Oh, I should say probably five or six.

Q. Each one of them would take a turn at treating?—A. No. What we used to do, we would shake the dice to see who would pay for the drinks.

Q. You mean shake the dice to see who would pay for one drink for the crowd?—A. Yes.

Q. And then stop?—A. No; sometimes we would repeat that.

Q. Well, how many times have you ever seen that repeated—more than twice?—A. I don't think so. No; I don't think I ever did.

Q. Haven't you seen occasions at the club when he was at one of these tables with four or five people when each man at the table treated every other man at least once?—A. No; I never have. That is not done in the Rainier Club, at least to my——

Q. (Interrupting.) Is Judge Hanford a regular or an honorary member of the club?—A. I think he is a regular member.

Q. Have you ever seen him take anything to drink after dinner was finished?—A. Yes; I have seen him take brandy, I think; I think he has taken brandy with me, or maybe some other after-dinner drink.

Q. You have been considerably interested, have you not, Senator, in the agitation, I will say, against Judge Hanford, springing out of the railroad meeting that took place last August?—A. Considerably interested, is your question?

Q. Interested in Judge Hanford in relation to the agitation against him arising out of his injunction issued against the railroad company?—A. Well, I had nothing to do with that; in no manner connected with it in any way; but I have been interested in Judge Hanford in this matter.

Q. But you have been specifically interested in the agitation against him, haven't you?—A. Against him?

Q. Yes.—A. Why, no; I have been interested——

Q. (Interrupting.) Did you ever call on John H. Perry in regard to the matter at all?—A. Oh, I misunderstood you. Yes; I have been interested in the agitation against him. I did; I called on Mr. Perry and had a talk with him about it.

Q. What was the subject of your talk—to get Mr. Perry to discontinue the agitation so far as it lay in his power to do it?—A. Well, I will tell you all about it. I have known Mr. Perry ever since he came here, I think. He was a Kentuckian, as I am, and I am not sure but what he came here with some letters of introduction to me. At any rate, I have always been very friendly with him. He used to come to my house, and I was always glad to see him. And I heard—I think Judge Hanford himself told me that he understood that Mr. Perry was preferring charges against him; that some gentleman had met Mr. Perry on the street, and he told Mr. Perry—or rather Mr. Perry told him—that they were going to prefer impeachment charges against Judge Hanford, and I said——

Q. (Interrupting.) On what grounds, Senator?—A. Well, this—I don't remember what ground was stated. This gentleman told Judge Hanford, not me. I don't remember what the grounds were. But I told Judge Hanford that I didn't believe that was true. I said, "I don't believe Mr. Perry will go into any business of that kind." I said, "I know Mr. Perry well; have always regarded him as a friend of mine, and I am going down and have a talk with him about it." And so I did; I went to Mr. Perry's office and I told him I had heard these things, and I think I said Judge Hanford told me. I am not sure that I told him that, however. And I asked him about it, and he said yes, it was true. "Well," I said, "it can't be possible, John, that you are behind this." "No;" he said he was not; he said he was acting as an attorney for other people.

Q. Did he say who the people were?—A. I think he spoke about some Eastern people. I don't believe he gave any names. I think

he said that they were—he was simply getting the matter in legal shape with people who had this testimony, or something of that kind.

Q. Had what testimony?—A. He told me that—along the very lines of the charges that have been filed here.

Q. Didn't he tell you that he represented certain newspaper people?—A. I think he did; but I am not sure that he mentioned them.

Q And did he tell you that he represented anybody else?—A. I don't think he did; no.

Q He said that those were all the people that he represented, the newspaper people?—A. Well, I am not just sure how he put it. I think he put it this way: He said he represented some newspapers—I am not sure but what he said magazines—down east, and that he expected to go to Washington soon, or down East soon, but he didn't know just when. I remember he told me—he said he would know "next week," but I didn't see him the next week, nor heard no more about it. And I told him that those things—in my judgment it was impossible for those things to be true—that they could not be true; that the people who had known Judge Hanford here all these years and associated with him, if they were true would know it; and, besides, I think I said, "If Judge Hanford were addicted to drunkenness there would be some marks on his face, and that no living man who looks at Judge Hanford could see any lines of drunkenness in his face."

Q. Well, now, fix, if you can, Senator, about when that call was?—A. That call on Mr. Perry?

Q. Yes.—A. Oh, I don't remember when that was. It seems to me it was probably two or three months ago, but I am just guessing at that. I remember at that time——

Q. (Interrupting) Wasn't it last fall?—A Well, it might have been even that. I don't remember, to tell you the honest truth about it.

Q. Wasn't it as early as September, 1911?—A. That might be true; I don't remember. I never have charged my memory at all with the time of it. Anyhow I know it ran on quite a while and I heard nothing more of it and I supposed the thing was all over, except Judge Hanford told me about that time that he knew he was being shadowed by detectives; he said that he was being followed everywhere, at any rate, and I told him——

Q. (Interrupting) Did you tell Mr. Perry that?—A. I don't think I did. I don't recall that I did.

Q. Well, now, where at that time had you learned of the charges, if any had been made or were to be made, against Judge Hanford?—A I am pretty sure that Judge Hanford told me that some friend of his had met Mr. Perry on the street and Mr. Perry had stated that they were preparing charges against Judge Hanford; that he had been studying the Swayne case, the impeachment case, and in a short time these charges were to be made against Judge Hanford. Now, who that man was I don't know, but I am pretty sure now that it was Judge Hanford who told me, and after I got this information from Judge Hanford I went and had a talk with Mr. Perry about it.

Q Now, didn't you tell Mr. Perry that the matter of his arrest arising out of this rink meeting could be fixed up if he would drop these charges?—A. Not at all, sir. I never had such a conversation as that with Mr. Perry.

Q. Didn't you tell him that the judge had a pretty high opinion of him—Judge Hanford—arising out of some argument Mr. Perry had made in Judge Hanford's court?—A. No. I will tell you what I did say to Mr. Perry. I said to Mr. Perry this: I said—no, no. I said, "Now, this it seems to me is a very unjust thing and it ought not to be brought against Judge Hanford, for it is only a disgrace to the city," or something of that kind, but subsequently—no, I think probably—I don't know as I ever talked with him but once, but anyway Mr. Perry told me that he had made an argument before Judge Hanford in some case and that he had treated him, he thought, with more attention or something of that character than any other lawyer in the case, and that he was somewhat surprised at that on account of the trouble that had taken place over here at the rink. And so I then remarked that Judge Hanford had always made it a point, I thought, in his life to be particularly careful that he gave every man who was supposed to have a grievance against him a fair chance in his court, or words to that effect.

Q. Well, now, was not the occasion of this interview at about the time when Mr. Perry and several others had been arrested on charges arising out of this rink meeting——A. (Interrupting.) Well, it was after that time, just how long I am not able to say.

Q. How long, Senator? See if you can't fix it pretty closely?—A. Well, it was some time, but several weeks, I think; but I would not undertake to be definite about that at all.

Q. Were you interested in the Sullivan case—the Sullivan will case?—A. I was; yes.

Q. Were you one of the attorneys who brought an action in Judge Hanford's court to test the validity of the alleged Sullivan will?—A. I was one of the attorneys in the case. Piles, Donworth, Howe & Farrell, I think, were the attorneys, but I did not appear personally in the case.

Q. Your firm appeared?—A. Yes.

Q. As attorneys for whom?—A. For Marie Carrau and John Corcoran, I think.

Q. Marie, who was that?—A. No, no; for Hannah Callahan and John Corcoran.

Q. And what was the purpose of the bill? What was the relief demanded in the bill?—A. Well, sir, to tell you the truth, I don't know except in a general way, for I never read the bill.

Q. Well, in that case Judge Hanford took jurisdiction and tried the case, did he not?—A. He did.

Q. And his decision in the matter was finally reversed by the Supreme Court of the United States?—A. Well, it was reversed, but I think it was reversed by the circuit court of appeals.

Q. Well, then, reversed. The decision of the circuit court of appeals reversing Judge Hanford was affirmed by the Supreme Court?—A. I have little familiarity with the proceedings taken in the case because I had nothing personally to do with the litigation. I didn't follow it.

Q. Didn't you have some personal financial interest in the outcome of it?—A. I did.

Q. And what was that interest?—A. I think my law firm had a 12½ per cent interest in it, although it was charged that we had 50

per cent in it; but my recollection is that the law firm of Piles, Donworth, Howe & Farrell had a 12½ per cent interest in the Sullivan case.

Q. And had they that interest at the time they brought the action in Judge Hanford's court?—A. Yes, sir. That interest, however, arose under a contingent fee.

Q. Well, are you sure as to the amount of it?—A. Well, I am pretty certain it was about 12½ per cent; that that was our interest. The title to the property was placed in my name and I was holding as a trustee for a large number of people, and that is how I was swamped at one time with begging letters when it was charged that I had received a million dollars out of the Sullivan case.

Q. Trustee for alleged heirs or——A. (Interrupting.) I was trustee for my law partners and everybody else whom we represented.

Q. Was that a private trusteeship or under some appointment of the court?—A. It was taken in my name and I simply held in trust; that is all there was to that. That case was tried in the State court on testimony and the findings of the court—every court before whom it went—was in our favor from the beginning to the end. I don't remember what phase of it was tried before Judge Hanford, but I do know that it went before several judges, every one of whom found in favor of the heirs we represented and found that the will that was set up in the case was a fraudulent will and had never been made by Mr. Sullivan.

Q. Now, was the trusteeship which you occupied the trusteeship of those who had bought out the interests of alleged heirs?—A. I represented under this deed—the deed was made to me in Ireland; I really didn't know anything about it when it was made. The property was conveyed to me—possibly a one-half interest; I am not sure now about that even. The deed may have been only for an undivided one-half interest in the property; it may have been for it all. I didn't give the matter any attention at all. But, anyway, whatever it was, I held it in trust for myself, my law partners, and other people who were financing that lawsuit.

By the CHAIRMAN:

Q. When was that, Senator?—A. When was the suit commenced?

Q. Yes.—A. I think the suit must have been commenced some time in 1903 or 1904; I am not sure about that either.

Q. That was before you went to the Senate?—A. Yes.

Q. You were then in the active practice of your profession?—A. Yes.

Q. And, as I understand it, the alleged will was an oral one?—A. That was it.

Q. A nuncupative will?—A. Yes.

Q. And the case was started in Judge Hanford's court, in the Federal court, to set aside this alleged will?—A. Well, I will tell you the truth, Mr. Chairman. I have so little knowledge of that case, I don't know just—my recollection of the matter is this, in a general way: that the will—this alleged oral will—had been admitted to probate in the superior court when nobody knew anything about it, and I think we commenced some litigation in Judge Hanford's court to set it aside—set aside that probate and to establish title to the property, but I am not certain about that.

Q. Do you recall whether when you began that suit in his court the question of his jurisdiction to try such a case was raised or argued?—A. I think it was.

Q. Who would know about that?—A. James B. Howe would know all about it.

Q. Is he here?—A. Yes, sir; he is here. He is my law partner. He is not in this court room, but——

Q. (Interrupting.) Was he then a member of your firm?

Mr. DORR. He is in the room now, Mr. Chairman.

The CHAIRMAN. Is he a member of your firm?

A. Yes. Well, he was a member. He has often cautioned me about discussing the Sullivan case, because he has often laughed at me, saying that I didn't know anything about it, which is true.

Q. But you know that Judge Hanford took jurisdiction of the matter?—A. Yes; but Mr. Howe can tell you all about it from beginning to end, because he went through the case thoroughly and understands it thoroughly.

Q. Now, this trust deed that you spoke of, which you took as grantee in Ireland, was that ever filed here?—A. Oh, yes; it is of record here; I think it is of record now.

Q. It of course will speak for itself as to the interest conveyed to you?—A. Well, Mr. Howe will know exactly.

Q. Yes.—A. I am not sure whether the whole—I am rather inclined to believe, though, that there was only a half interest put in me.

Q. Was that the interest which was conveyed to the attorneys and others——A. (Interrupting.) Yes.

Q. (Continuing.) Interested as attorneys?—A. Yes—not as attorneys.

Q. And the other half, did that remain in the grantor?—A. Must have, unless it was put in me. I am not sure but what the whole thing was deeded to me.

Q. What I want to get at is, did they at that time by any other deed convey the remainder of it to anybody—you or anyone else?—A. Not that I know of, Mr. Chairman.

Q. Do they retain any interest in it yet—those Irish heirs?—A. Well, I think they sold their property.

Q. Did they sell through you or your firm?—A. Did they do what, sir?

Q. If they sold, did they sell through you or your firm?—A. No; they didn't sell through me or my firm.

Q. Do you know who purchased from them?—A. Well, there was a tract of land up here north of Ballard, 160 acres of land; I heard that they sold that to Mr. Treat for $1,500 an acre, but I don't know anything about the truth of it.

Q. That land is now in the inhabited portion of the city, is it?—A. Oh, it was at that time. That is, it is just north of Ballard. What we call Ballard was then a suburb of Seattle—about 20,000 people at that time I think out there.

Q. What other property was there?—A. There was two lots with a building, down on First Avenue.

Q. Do you recall if Judge Hanford wrote any opinion which was published, in deciding the case?—A. No, I don't. I don't know whether he did or not.

Mr. DORR. Yes; he did, Mr. Chairman.

The CHAIRMAN. Where is it reported?

Mr. DORR. I can furnish it to you. It is in one of the Federal Reporters of that date.

The CHAIRMAN. All right.

By Mr. McCOY:

Q. Senator, you said a few minutes ago that you held as trustee for people who financed the matter. What do you mean by that?—A. I mean by that this: That an Alaskan by the name of Lewin went to Europe with a young man by the name of Wright, who thought he could find the heirs to the Sullivan estate, he having been informed, as I understood it, by the late Capt. Burns that John Sullivan had told him that he had relatives at Cork, Ireland. These heirs entered into an agreement with Mr. Lewin, as I now recall it, whereby they were to give him a certain interest in the property if he could recover it, he to employ the lawyers and pay all expenses; and so he did employ my law firm, and when the deed was taken in my name I held for him and his brother and whatever people were associated with him.

Q. Mr. Lewin?—A. Yes.

Q. Lewin and his brother?—A. Yes. I think there were some other people associated with him, but I am not sure about that even.

Q. Senator, do you know what the net result to the heirs of Sullivan was?—A. No; I don't.

Q. Who does know?—A. I think Mr. Howe. Well, I don't know as he would know the net result, either, because——

Q. (Interrupting.) Does Mr. Howe know who were interested financially in the matter?—A. I don't think he knows any more about that than I do.

The CHAIRMAN. Will the probate files in the superior court show what——

A. (Interrupting.) Well, I think the property was distributed to me. I think that was it. There was a lot of lawyers represented—I say a lot of lawyers represented these people from Ireland. What they were paid, I don't know anything about that.

By Mr. McCOY:

Q. Well, the property finally got into the possession of a corporation, didn't it?—A. That part of it that was the Lewins and the lawyers interested in it got into a corporation.

Q. When you say the lawyers do you mean your own firm or all the lawyers?—A. No; I sold out my interest in it and I got $15,000. That is every cent I have ever received out of the Sullivan case. I sold that out several years ago, before the corporation was formed. I have had no interest in it since, and I have none now, and I never have received a penny out of the case beyond the sum of $15,000 for which I sold my interest in the property. Judge Donworth sold his interest for $16,000, as I am informed, and Mr. Howe, after putting a large amount of money in it, held onto his interest, and has an interest in this Third Avenue—First Avenue property now, after having bought out the heirs.

Q. The First Avenue property is where?—A. It is between—I have forgotten the number——

Mr. HUGHES. Cherry and Columbia.

A. Between Cherry and Columbia. It is 120 feet, with a three or four—four-story building, I think on it; old fashioned.

Q. Business building?—A. Yes; but Mr. Howe can give you all the information on that subject that you want, I think. He is certainly——

Mr. HIGGINS. (Interrupting.) What was the corporation that was formed?

A. Beg pardon?

Mr. HIGGINS. What was the corporation that was formed—the name of it?

A. I don't know the name of it, for I never was a member of it. I sold my interest before it was incorporated.

The CHAIRMAN. Anything further with Senator Piles?

Mr. HUGHES. Just one question.

Mr. HUGHES. You sold your interest after the courts had adjudicated that the people you represented were the true heirs of John Sullivan?

A. Well, I don't remember, Mr. Hughes, in respect to the date. Mr. Howe can tell you all about that. I never paid any attention to it.

Witness excused.

JAMES B. HOWE, having been first duly sworn, testified as follows:

The CHAIRMAN. State your name, please.

A. James B. Howe.

Q. You live in Seattle, Mr. Howe?—A. I do.

Q. You are an attorney at law?—A. I am.

Q. Practicing your profession?—A. I am.

Q. How long have you practiced your profession in Seattle?—A. Since 1889.

Q. What is your present business connection?—A. I am the counsel for the Puget Sound Traction, Light & Power Co.

Q. I meant, more particularly, are you alone or associated with other attorneys in your business?—A. Mr. Piles is my partner.

Q. The firm name is?—A. Piles & Howe.

Q. How long have you two been associated alone?—A. Alone; we have been associated since 1907.

Q. And prior to that time?—A. The firm was Piles, Howe & Farrell, for about a year and a half or possibly two years, and prior to that time it was Piles, Donworth & Howe.

Q. I believe you heard the questions asked Senator Piles with reference to the Sullivan will case, so called?—A. I did.

Q. Were you the member of your firm who gave that case personal and active attention?—A. I was.

Q. As I understand it, this oral will had been probated in the State court here?—A. A decree of probate had been entered but our position was that it never had been probated, because of failure to take jurisdictional steps. The statute in this State provides that before an oral will can be probated a citation must issue to the heirs and next of kin. In this case the citation was issued at 11 o'clock

of a certain date, returnable at 10 o'clock on the same morning. The testimony of the witnesses was immediately taken——

Q. (Interrupting.) Well, there, just a moment. Was that a clerical error, or how did it happen that the hearing was set and heard before the citation issued? Was that a clerical error or was that the fact?—A. I think that was the fact, so far as I know.

Q. Was there evidence afterwards offered on that point?—A. There was.

Q. Well, go on.—A. We took the position that the decree of probate was a nullity, and we attacked the jurisdiction of the court to enter that decree. The procedure which we adopted was: We knew that the question of whether a Federal court had jurisdiction to set aside a decree of probate and to hold a will void for fraud was a question over which there was much controversy. We understood the law in this State to be that the State court of general jurisdiction had the right to entertain a proceeding to set aside a decree of probate and to hold the will invalid on account of fraud. That in our case, diversity of citizenship existing, the Federal court had the same jurisdiction as the State court had. We recognized, however, that the question was doubtful. I therefore filed a bill in the Federal court to first have the decree of probate adjudicated a nullity, the will a nullity because of fraud, and I also invoked the jurisdiction of the circuit court on the theory that if it could not go into those matters of jurisdiction it could construe an oral will and determine whether real estate passed under it, and that it also had jurisdiction to determine the question of will or no will, just as it would in an action of ejectment in some States.

I filed on the same day, and a few moments afterwards, a proceeding in the State court to accomplish the same result, so that if the Federal court did not have jurisdiction the State court would be vested with jurisdiction. The case proceeded in the Federal court, and the principal case on which I relied to sustain the jurisdiction of the Federal court was the case of Richeson against Green, decided in the circuit court in Oregon, in which the opinion was rendered by, I think, Judge Hawley and concurred in by Judge McKenna, who afterwards went to the Supreme Bench.

Q. Where is it reported?—A. I can't give you offhand.

Mr. McCoy. Here it is: 9 Circuit Court Appeals, 565; 61 Federal Reporter——

The Witness. That is it; that is it.

Mr. McCoy (continuing). 423. Same case, 159 U. S., 264.

A. Yes. I relied principally on that case for this reason, that on that decision having been rendered by the circuit court of appeals for this circuit, certiorari was applied for to the Supreme Court of the United States. I examined the briefs in the case and found that the application for certiorari was principally based upon the proposition that the Federal court in Oregon had no jurisdiction to entertain a suit to set aside a decree of probate on the ground of fraud and to adjudge a will invalid on the ground of fraud, and I thought the Supreme Court of the United States was always careful to prevent the courts from exercising jurisdiction in cases where they didn't have it, and that was the decision that I largely relied on in asserting the jurisdiction in the Federal court.

Q. At the time you relied on it, it had not yet reached an opinion of the Supreme Court, had it?—A. I am speaking of the case of Richeson against Green. It had, and had been decided and jurisdiction had been denied—I mean the certiorari had been denied.

Mr. McCoy. On the ground that that was an improper way to bring it up for review?

A. Not at all.

Mr. McCoy. Or involving the merits?

A. Involving the merits. When I say involving the merits, the Supreme Court of the United States did not give any opinion at all; it simply denied the writ; but I meant to say that in the case in the circuit court of appeals they had gone into the question of jurisdiction and the question of merits.

The Chairman. They hadn't even taken up the ground on which they denied the writ?

A. No; but when I argued the case in the Supreme Court of the United States I made to them practically the same statement that I have made here, that I thought that as the court had denied the application for certiorari, it was a very strong intimation that jurisdiction existed; and I remember Judge Harlan said, "You can not depend very much on the action of the court on applications for certiorari," or words to that effect.

Q. Who argued the other side of the question before Judge Hanford?—A. The counsel declined to argue that question—any question on the merits, but filed a brief. It had been previously argued by Mr. W. F. Hays on the question of jurisdiction. The question of jurisdiction was several times argued.

Q. I understand you to say, then, that you relied entirely on the case which you have cited?—A. No, no. You misunderstood me. I said I relied largely. I had quite an extensive brief on the subject and examined the matter very thoroughly, and I think that I had the satisfaction of knowing that the Supreme Court of the United States in a subsequent case distinguished it and practically held I was right.

Q. What case?—A. It is a case decided within the last three years. I can't give it to you from memory. Mr. Justice White dissented, and he delivered the opinion against me in the Supreme Court of the United States in my case.

Q. Will you later give us the case which you think held substantially according to your contention in this Sullivan case?—A. Not substantially, but I think it held this. As I said, my bill invoked the jurisdiction on several grounds. One ground was that assuming that the decree of probate could not be attacked, that the will could not be attacked; there remained a third ground, that real estate could not pass under an oral will, and the bill specifically invoked the jurisdiction of the circuit court if the will was valid if probated, whether real estate passed under it or not.

Q. But you had two massive bridges to cross before you reached that third one which the court would have jurisdiction of?—A. I don't think so.

Q. How could they consider the question of title to real estate without first considering the question of the will?—A. I think that the circuit court had no jurisdiction to consider the validity of the decree of probate, or to consider the making of the will; that those

would be foreclosed questions in the circuit court, but that would not prevent the circuit court from assuming the validity of the will and the validity of the probate to say whether real estate passed under the will.

Q. But do you think that court would go on and litigate a question of that character when the court knew that there were two other questions involved which might make that litigation entirely futile?—A. I think it would. I think if it had been a case where instead of filing a bill in equity we would have had to have proceeded in ejectment, that the court would have been compelled to have done so.

By Mr. McCoy:

Q. Why didn't you go into the State court with it?—A. We did.

Q. I mean, why didn't you prosecute the case in the State court?—A. I didn't care to argue the case where it would have had to have gone before the same judge who probated the will on a citation issued at 11 o'clock, returnable at 10 o'clock on the same morning.

Q. You mean you suspected his integrity?—A. I don't think that it is a question of giving reasons for that, but I think I had a right to seek the jurisdiction of the Federal court where diversity of citizenship existed.

By the Chairman:

Q. Have you no means in this State, or had you none then, of getting a trial before some other judge than that one; in other words, was there no means of getting a change of venue from the judge?—A. There was not at that time. The statute which we now have—we have a statute now regarding that; at that time we did not. I will say, as a matter of fact, that when we did proceed in the State court there was no such statute, and I requested the judge to transfer it to another one, and he did so.

Q. What was the practice prior to that time with reference to cases where the lawyers for any reason wanted a change from the judge—a change of venue?—A. Why, he would simply ask the judge; state any reasons.

Q. Well, you didn't doubt, Mr. Howe, did you, that this judge would have given you a trial by some other judge had you asked it?—A. I did.

Q. You did not, however, make the effort; you didn't——A. I didn't.

Q. (Continuing.) Ask for it before trying the suit in the Federal court?—A. No; and I never intended to go into the State court. As a general rule, if my clients are nonresidents, I usually bring the suits in the Federal court, although I have the greatest confidence in the State courts; I think they are as honest men as there are anywhere.

Q. You heard Senator Piles's statements with reference to your knowledge of the agreement between the lawyers and the heirs in Ireland?—A. I did; yes.

Q. Was his statement of that agreement correct?—A. Well, as I caught it, he didn't know very much about it, but——

Q. (Interrupting.) Will you please state it for us?—A. The way the matter came up was this: There was a young man named Wright and a man named Lewin who got in touch over finding the heirs to the Sullivan estate. My firm was employed by Lewin to represent

these heirs. He had a contract with these heirs and had a contract for a half, and my firm was employed to represent them, and our interest was a third of the half. After the suit was filed in the Federal court I applied for and obtained a commission to take testimony in Ireland, and I went over to Ireland to take the testimony. When I was over there a deed was executed. Instead of simply this contract which ran to Lewin a deed was executed which took the place of the Lewin contract, and that deed ran to Mr. Piles, and Mr. Piles held that property—there was no trust expressed in the deed—he held that deed in trust for Lewin and for my firm.

Q. That was for one-half——A. One-half.

Q. (Continuing.) Of the property. Was it all real estate?—A. There was—no, there was—I think at the time of Sullivan's death there was about $15,000 of money; something like eleven or fifteen thousand—I have forgotten which.

Q. What was the course of the litigation in the Federal court? Senator Piles thought it was decided by the circuit court of appeals.—A. It was.

Q. And appealed by whom from that to the Supreme Court of the United States?—A. The circuit——

Mr. McCoy. Just a minute, Mr. Howe. Perhaps we can get that right into the record at this point here. The case is Callahan and others against O'Brien and others, 116 Federal Reporter, 934, reported on the appeal in the circuit court of appeals in the 125 Federal Reporter, 657, and in the Supreme Court of the United States in the 199 United States, 89. I take that from this memorandum here.

A. Yes.

Mr. McCoy. I didn't mean to interrupt you.

The Witness. No interruption at all, Mr. McCoy.

The Chairman. Who perfected the appeal from the circuit court of appeals to the United States Supreme Court?

A. Feeling that the jurisdiction in that court was doubtful, I took an appeal and also applied for certiorari. The Supreme Court held up the decision on the question of certiorari until the case was reached on the merits, and at the time of the oral argument I didn't know whether they were going to take jurisdiction on the appeal or on certiorari. They held that there was no constitutional question involved, that they had no jurisdiction on appeal, but did take jurisdiction on certiorari and affirmed the decision of the circuit court of appeals, which reversed Judge Hanford and dismissed the bill.

Mr. McCoy. Did both courts hand down opinions?

A. Yes, sir.

The Chairman. You were present and heard Senator Piles as to his disposition of his interest in the matter, and I think he said as to your disposition of your interest?

A. No; he said, I think, Mr. Donworth's.

Q. Oh, yes.—A. I retain my interest in the present corporations.

Q. What is the name of the corporation?—A. There are two corporations in which I am interested.

Q. With reference to the Sullivan estate?—A. Yes.

Q. What are they?—A. There is the Urban Investment Co. and there is the Mercantile Investment Co., and there was—prior to the

formation of the Urban—there was the Olive Street Realty Co. and the Ballard Land Co. Possibly I had better explain that if you——

Q. (Interrupting.) You may.—A. When the supreme court of the State decided the case finally, three corporations were formed. One was known as the Mercantile Investment Co., that took the interest in the Sullivan Building, which is on First Avenue; another was the Olive Street Realty Co., which took the undivided half interest in property at the corner, I think, of Eighth and Olive.

Q. Now, from whom did these corporations take the property?—A. They took the property from Lewin, from Wright, from Piles—not Piles; he had disposed—from Mr. Jacob Furth, from George Donworth, and myself, and Mr. Farrell; and in the Ballard company Mr. McCord had bought an interest from Mr. Wright.

Q. Of the firm of Kerr & McCord?—A. Yes.

Q. He was not interested in the litigation, though, was he?—A. No.

Q. He bought stock in the corporation?—A. No; he didn't buy. He bought an interest from Mr. Wright.

Q. Oh, yes.—A. Mr. Wright had an interest which represented a certain number of acres in the Ballard property, and Mr. McCord bought his share in that particular acreage.

Q. Are you interested in both the corporations?—A. I am interested in the Mercantile and in the Urban. I disposed of my interest in the Ballard.

Q. What is the name of the Ballard corporation?—A. The Ballard—I think the Ballard Land Co.

Q. Does it still retain an interest in the property which was the Sullivan estate?—A. It does; yes.

Q. So that there are three corporations now?—A. There really would be four, you might say. The Olive Street Co., though, has no property. It disposed of its property to the Irish heirs.

Q. Senator Piles stated the interest of your firm to be 12½ per cent, whereas you stated it would figure out 16⅔ per cent. Which is right?—A. I am correct. I know very much more about that matter than Senator Piles.

Q. Sixteen and two-thirds per cent——A. Yes.

Q. (Continuing.) Is your share of it?—A. I will say, just in that connection, that after we incorporated, Mr. Corcoran, the Irish heir—the surviving Irish heir—came over here and the Ballard property was divided physically. He took his share of the Ballard property; he took his share of the Olive Street property. And the Sullivan Building, we didn't think that ought to be physically divided, and the Urban Investment Co. purchased his interest in the Sullivan Building.

The CHAIRMAN. Are there any further questions?

By Mr. McCOY:

Q. You say, Mr. Howe, the supreme court of the State finally passed on the whole proposition?—A. Yes.

Q. Involving what points, the validity of the will?—A. The validity of the will, the question of its probation——

Q. And the heirship?—A. And the heirship.

Q. Did it write an opinion and hand it down?—A. Oh, yes; the case has been before the supreme court of this State four or five times. I was kept very busy protecting the property.

Q. Is there litigation now pending?—A. There is one case, brought by Mr. Hays individually, after he was enjoined by the court from setting up any claim to the property. He has violated the injunction and brought suit, claiming that he has a half interest in a half interest in the property, and that is now pending in the supreme court. A judgment by default was entered against him; he applied to have that judgment set aside, and that was denied, and he took an appeal, and that is pending now.

Q. Was that injunction in the State court?—A. In the State court.

Q. Now, as nearly as you can recollect, Mr. Howe, will you state all the people other than the heir or heirs of Sullivan, who at any time have had any interest in the Sullivan estate or the Sullivan litigation or the outcome of the litigation financially?—A. There was—I had best start at the beginning, to get it in chronological order.

Q. Yes.—A. There was Arthur Lewin and Edward Lewin——

Q. Neither of those was an attorney?—A. Neither of those was an attorney.

Q. Just state, if you will, whether they were attorneys or what, and if not, what their business was, so that we can identify them.—A. They were men who had gone up into the Klondike in Alaska.

Q. And met Sullivan there, I suppose?—A. Oh, no; oh, no. They were the men who had employed Wright. They first lived in Seattle, in the early days; they knew Sullivan here—that I get by hearsay, however—and after Sullivan's death this young man Wright, who was an attorney and who knew Capt. Burns, a real estate man here who knew Sullivan pretty well, had the idea that he could find who Sullivan's heirs were, and he had an arrangement with Lewin by which Lewin was going to carry on the litigation for those heirs, to establish their claim. Then Lewin employed us to handle the litigation. The next person who was interested was Mr. Farrell, who was at that time an attorney but not a member of our firm. He afterwards became a member of our firm and remained a member until it was dissolved. Then Mr. Piles sold his interest, Mr. Donworth sold his interest——

Q. (Interrupting.) How did Senator Piles and Judge Donworth come into it? Of course I understand——A. They were members of the firm.

Q. Oh.—A. They were members of the firm——

Q. Oh, yes.—A. (Continuing.) Of which I was a member.

Q. I didn't catch that. And was that the firm name at one time?—A. Piles, Donworth & Howe, and then Piles, Donworth, Howe & Farrell. Then Mr. Jacob Furth bought Mr. Piles's interest.

Q. And who is he?—A. He is the chairman of the board of directors of the Seattle National Bank and is the president of the Puget Sound Traction Co.

Q. Lives here?—A. Lives here; yes.

Mr. HUGHES. May I ask when that was?

A. Mr. Piles sold to Mr. Furth—I think, Mr. Hughes, it was in 1908; possibly may have been 1907; I am not sure of that.

Mr. HUGHES. Was it before or after the court had decided in favor of your client?

A. Oh, it was after the court had decided.

Mr. McCoy. I meant really to confine my questions to the period prior to what you call the final decision of the case.

A. Yes.

Q. Not what has come along since.—A. Well, that was after the final—what I call the final decision; establishing all that we contended for. And the two companies now that own the Sullivan Building are the Mercantile Investment Co. and the Urban Investment Co. Those are the only companies in which I now have any interest.

The Chairman. Anything further with Mr. Howe?

Mr. Hughes. Since Mr. Howe is on the witness stand I would like to ask him a few questions along a different line.

Q. How long have you practiced law in this State, Mr. Howe?—A. Since 1889.

Q. How frequently have you or how extensively have you practiced in Judge Hanford's court?—A. I used to be in Judge Hanford's court quite frequently. Of late years I have done more counsel work than actual litigation, although in the past two years I have had some very important cases before Judge Hanford.

Q. Have you met him often personally also?—A. I have.

Q. Are you familiar with his personal habits?—A. Yes.

Q. Will you state whether you have ever known of his being under the influence of intoxicating liquors?—A. I have not. I have seen Judge Hanford when I knew that he had been drinking, because I have taken many a drink with Judge Hanford myself.

Q. Have you ever seen him when his mind was affected in any way——A. (Interrupting.) No.

Q. (Continuing.) By the use of intoxicating liquors?—A. I have not.

Q. Or his ability in any way impaired, either judicially or otherwise?—A. I have not.

Q. What are his habits of industry?—A. What are his habits of what?

Q. Industry.—A. I think he is one of the most laborious judges that I have ever known, if not the most laborious.

Q. What do you say as to his ability as a lawyer and judge?—A. I have never been before a judge that I had a higher respect for as a trial judge.

Q. You have observed the habit of closing his eyes?—A. I have.

Q. Occasionally nodding?—A. Yes.

Q. Explain that to the committee.—A. I feel this way about that: It is frequently embarrassing to a lawyer to argue a case if he thinks the judge is not paying attention, whether it is from drowsiness or anything else; but I had a very practical experience with Judge Hanford in that connection. Some years ago Mr. Grosscup and I were representing the Northern Pacific Railway Co. in the case of Thompson against the Northern Pacific Railway Co. We knew that if we were to prevent that case from going to the jury it had to be done on the cross-examination. Judge Hanford was apparently drowsy and Mr. Grosscup and I were somewhat disturbed that the judge was not catching the plaintiff's testimony. We——

Q. (Interrupting.) You mean for fear he was not?—A. We feared that he was not catching it. We made our motion for a directed verdict, and Judge Hanford quoted the testimony of the plaintiff and directed the verdict. The case was afterwards reversed by the court

of appeals, and on the second trial you represented the Northern Pacific Railway Co. and got a verdict from the jury.

I have also—I don't mean to volunteer, but in connection with the statement you have just made, so far as the matter of drowsiness is concerned, I have commenced my argument in the Supreme Court of the United States with one of the most distinguished judges who ever sat on that bench snoring so loudly that it could be heard over the court room; and I didn't put him to sleep, for Judge Dillon argued the case just ahead of me.

Mr. McCoy. Were you able to waken him by your argument?

A. I was not, but the argument went over until the next day, and he came in and he plied the questions pretty vigorously to me and I wished that I had left him asleep.

Mr. Dorr. It has been suggested that for the information of the committee you furnish it with the decisions of the State court in the Sullivan litigation. Will you do so?

The Witness. Yes, sir; I will do so.

A recess was here taken until 1.30 o'clock this afternoon.

AFTERNOON SESSION.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing. James B. Brown, same witness, on the stand.

Mr. Howe. I have made a list, Mr. Chairman, of the cases in the State court where the Sullivan case is reported, and in the Federal court, and also the cases which you asked me for—the later cases by the Supreme Court of the United States.

Mr. Higgins. Are these duplicates?

A. Yes, sir; duplicates.

The Chairman. Do I understand you, Mr. Howe, that these are the cases upon which you relied to sustain your position?

A. Oh, no; not at all. These are simply the reports; these are decisions in the Sullivan case, with the exception of after you pass 199 United States then come the cases that, in my judgment, showed that the Supreme Court on one phase of my case would, if it was presented to them now, uphold the jurisdiction.

Mr. Hughes. Just one moment. I would like to ask Mr. Howe another question.

The Chairman. This may go in the record in connection with Mr. Howe's statement.

Document marked "Exhibit No. 29."

Mr. Hughes. Do the cases which you have submitted to the committee give an adequate conception of the amount of litigation and controversy in the lower court?

A. Oh, they do not pretend to. I made two trips to Ireland, and there was testimony taken over there and I was over there for—on the first occasion about—the whole trip was about 60 days and the last about 90 days.

Q. And in the lower court were there a large number of claimants?—A. Yes; I think there were probably over 100.

Q. Who set up claim to being heirs of John Sullivan?—A. Yes.

Q. Were there many who pressed their claims in the litigation, so that the litigation was made involved?—A. Yes; it was very involved. I do not know that there was a more complicated case ever tried in this district, in some phases of it.

Q. And was there a very large amount of time necessarily involved in the taking of the testimony and the litigating of the case?—A. A great deal of time.

Q. How long was it in the various courts?—A. It began in June, 1901, and ended by the last Supreme Court decision in April, 1908.

Q. You testified that you practiced here since 1889; did you practice law prior to coming here?—A. I did; in South Carolina.

Q. How long?—A. For nearly nine years—eight years or nine years.

Mr. HUGHES. That is all.

The CHAIRMAN. That is all, Mr. Howe.

Mr. HUGHES. I would suggest to the committee that we would like to have Mr. James Kane called; he is leaving the city for Alaska to-night.

The CHAIRMAN. What is his name?

Mr. HUGHES. James Kane.

The CHAIRMAN. Along the same line that we have been going on?

Mr. HUGHES. Yes.

The CHAIRMAN. He will be called.

JAMES H. KANE, being first duly sworn, testifies as follows:

The CHAIRMAN. Your name; state your name to the committee.

A. James H. Kane.

Q. Where do you reside, Mr. Kane?—A. Seattle, Wash.

Q. How long have you lived here?—A. I have resided here since March, 1903.

Q. What is your present business or profession?—A. I am practicing law.

Q. How long have you been practicing law?—A. I engaged in the practice of law just a few days after I came here. I was admitted to the bar, I think, on the 17th day of March, 1903, and I have been engaged in the practice of law ever since.

Q. In Seattle?—A. Yes, sir.

Q. Have you any associates in your business, or are you alone?—A. My firm is Farrell, Kane & Stratton—C. H. Farrell and W. B. Stratton.

Q. Are you in the general practice of law?—A. Yes, sir.

Q. Are you representing any corporate business?—A. Yes, sir. Our firm represents a number of corporations, and also in the general practice, too.

Q. What ones—what large corporations or concerns?—A. We represent the Pacific Coast Steamship Co. and the Pacific Coast Co. and the Columbia and Puget Sound Railroad, and then a number of local corporations, such as banks and Galbraith, Bacon & Co., and some of the milling companies.

Q. The transportation companies you mention are interstate, are they?—A. There is a question whether some of them are or not. The Pacific Coast Steamship Co. operates steamships from here to Alaska and also to California. The Pacific Coast Co. owns and oper-

ates part of those and others, and then the coal company has its coal lands out here; the railroad company is a small railroad; it has about 40 miles of road running from here out into the coal mines in the Black Diamond country; that is entirely a local concern organized under the laws of this State, and all of its property is within the State here—all the coal company.

Q. Have these companies had litigation in the courts here?—A. Yes, sir.

Q. In what courts, State or Federal?—A. Both State and Federal. The Pacific Coast Steamship Co. is a foreign corporation, so is the Pacific Coast Co. and the coal company, and in damage suits we have been brought into these courts sometimes, whenever damage suits arise between those people involving money or controversy over an amount which would bring it into the Federal court.

Q. Have you removed any cases yourself to the Federal court for these corporations?—A. Personally I have not.

Q. Have your firm?—A. Yes, sir; our firm has.

Q. How about the railroad company?—A. The railroad companies are organized under the laws of the State of Washington, and all its litigation is tried out in the State courts.

Q. To what extent have you yourself had business in Judge Hanford's court?—A. Well, the first jury case I ever tried I tried before Judge Hanford a few months after I came here, and since then I have tried a number of cases. I have been in court here a number of times on motions and different matters.

Q. To what extent have you been associated with Judge Hanford otherwise than in court?—A. Frequently.

Q. Where?—A. On the street and in the court room. And I knew where his office was when I came here first, down in the old building, down on the corner of Fourth and Marion. At that time I officed on Second Avenue, almost directly below there, and I frequently met Judge Hanford in the evenings when I was going home, both at dinner time and late in the evening.

Q. How late?—A. I have met him as late as 11 o'clock and sometimes later coming out of his office in the old building there. When I was going up the hill to my home he would be coming out, and I met him on the street between Fourth and Second Avenues.

Q. How long ago was that?—A. That was in 1903–1905 and possibly 1906, up until the time this building was built, when the court moved up here. I just forget how long the exact time is.

Q. Have you had any litigation in the States court involving those interstate companies?—A. Oh, yes; you mean——

Q. Have you had any litigation involving those companies which was begun and concluded in the State courts?—A. Yes, sir.

Q. Which court has the greater volume been in?—A. The greater volume of their business, I would say, is in the State court.

Q. How much of their business—how much of the time have you been in Judge Hanford's court in the trial of cases of any kind?—A. Well, now, I might explain in this way. I do not do as much business for the companies, such as the Pacific Coast Co., as other members of our firm, but I have represented other concerns here in litigation. I have tried a number of personal-injury suits for the defendant in this court, and I have likewise tried some for the plaintiff. I have tried some other classes of litigation here and have been a party in it—not

personally—but represented different parties in different kinds of litigation. I have tried a number of cases here. Of course I have tried more cases in the State court than I have in the Federal court.

Q. I am not particularly interested in the State court work. I merely wanted to find out your opportunity to observe Judge Hanford.—A. Every term of court I have been in this court on some matters, sometimes trying important matters that took several days, sometimes cases of less importance.

Q. Have you had much opportunity to observe Judge Hanford during the trial of the cases?—A. I have.

Q. Have you noticed the peculiarity which has been testified about when the judge appears to nod?—A. Yes; I have. I have noticed Judge Hanford when I was trying cases before him, especially jury cases, when he would nod and close his head—or close his eyes, I should say—at times, but I have always noticed him, too, that whenever there was an objection that Judge Hanford ruled as clearly and as promptly as any man could possibly on a question or an objection that was made.

Q. When you first saw the judge and noticed that condition, what was the impression it made upon you?—A. Well, the first thought that naturally came to my mind was that he was sleepy.

Q. His appearance, to one unacquainted with him, would ordinarily and reasonably lead to the conclusion that he was asleep?—A. Yes; it would; but my association with him in practice and trying cases before him convinced me shortly that my conclusion was erroneous.

Q. Have you noticed any change in him in that regard, with reference to indulging in that condition more or less than when you first knew him?—A. Well, I have noticed that condition of late years, for the last four or five years, probably three or four years, more than I did before, because I have tried more cases during the last before him than I did previous to that time.

Q. Well, I am asking you in regard to him, without considering you—in him, have you noticed any change or increase or diminution in that regard?—A. Well, personally I can not say that I have. I have noticed it a few times in Judge Hanford, when, as I say, when he was sitting here trying cases—I can't say that that is more or less.

Q. To what extent have you seen him on the street during the year you mention it?—A. Well, I have met him frequently. I have met him—I will change that—I will say that I have met him at least three or four times a week on the street.

Q. At what hours?—A. I have met him when he was coming from lunch. My office was in the Central Building, and frequently when I was coming from lunch I have meet him coming down the hill from the Rainier Club when he happened to be up to lunch. I have met him after court in the evening between 5 and 6, and I could not say whether I have met him just of late in the—late in the evening on the street or not; I don't think I have.

Q. Did you notice any difference in the indulgence in that habit which you refer to at different hours of the day?- A. No.

Q. If there was any difference, when did it seem to affect him the most?—A. Well, now, I could not say as to that, because when I noticed it and when I made up my mind what it was, it made no impression on me at all after that because I thought it nothing out of the ordinary and, therefore, I could not say what time it was, and until

this controversy arose just a short time ago it was not called to my attention again.

Q. Did you notice any difference with reference to the work going on in the court as to his indulgence in that habit; that is, during the trial of the case or during presentation of argument?—A. No; I have never seen Judge Hanford when I thought he was even sleeping during an argument unless—I can't say that, but I have seen him when jury trials were progressing here and when the testimony was being taken in a quiet sort of way, and then some attorney might make that objection, that the judge was in the position which you have described, and the ruling would be made on it promptly and quickly.

Q. I do not get your thought, as to whether that occurred more or less during the argument than during trials.—A. I would say it occurred more during trials than during arguments.

Q. Have you seen it occur on all occasions?—A. Well, I would not swear that I did not; when I noticed it was during the trials.

Q. By your answer I understand you to mean that it became so habitual to you that you had become so accustomed to noticing it and——A. (Interrupting.) No; I would not put it that way. I say this, that during my experience in court I noticed that in Judge Hanford, and naturally when I noticed it first I thought about it, and then I saw the results and the effect when he was called upon to rule on questions; when in any way his attention was brought to the proceedings of the trial and it was necessary to rule, he ruled promptly.

Q. Was it so usual that you might fail to notice it when it happened in your presence?—A. No, sir.

Q. You would notice it?—A. Yes, sir.

Q. Was it so pronounced as to arouse the attention even of those who were accustomed to seeing it?—A. No, sir; I would not say that.

Q. Your first answers indicated with him would think he was asleep on those occasions?—A. No; I would not want to give that exact impression. He would simply lean back in his chair and I have seen him close his eyes; I have seen him also sit up and appear to pay no attention to what was going on; but that did not occur so often that it was habitual or anything of that kind. I have seen it occur here in the court room. It was not the most usual thing, yet it occurred at intervals during the trial of a case.

Q. How many times would it occur in an afternoon of three hours—in an afternoon session at a trial?—A. Well, to name the number of times, it is a rather difficult thing to do; possibly I would not say over once or twice when I was here, and I have tried cases before him when he did not do it at all.

Q. What time of day did it appear to be most pronounced?—A. You asked me that before and I can not say just when it would appear most pronounced.

Q. Have you ever seen the judge drinking intoxicants?—A. No, sir; I have not.

Q. Never?—A. I have never been in a saloon where he has been drinking and I never saw him in a saloon or saw him coming out of a saloon.

Q. Have you ever seen him when he appeared to have been drinking intoxicants?—A. No, sir; I have not.

The CHAIRMAN. Are there any further questions of the witness?

Mr. HUGHES. What is the name of your firm?

A. Farrell, Kane & Stratton.

Q. How long have you practiced here?—A. Since 1903.

Q. Mr. Kane, I thought that at one state of your testimony you were interrupted before you had completed an answer. You testified to seeing him frequently at night prior to the time when they moved into the new Federal building?—A. Yes, sir.

Q. When Judge Hanford had his private office in the building at the corner of Fourth and Marion?—A. Yes, sir.

Q. The building occupied as the Federal courthouse?—A. Yes, sir.

Q. Did you ever observe anything else as to his habits of work at night other than seeing him coming out of his office at half past 11 at night?—A. Yes, sir; I have passed by there late at night going home and I have seen his offices lit up and I have seen him coming out late at night, coming out of there, and I met him on the street between Fourth and Second coming down the hill as I went up, and when I saw the light there I immediately concluded that he was there studying, as he had that reputation of working late at night.

Testimony of the witness closed.

ALVIN R. BRAVENDER, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. Alvin R. Bravender.

Q. Where do you reside?—A. Seattle.

Q. How long have you lived here?—A. Since March, 1908.

Q. What is your business or profession?—A. Attorney.

Q. Practicing your profession?—A. Yes, sir.

Q. Have you been since coming to Seattle?—A. Yes, sir.

Q. Are you alone or are you associated with some one in the practice?—A. I am alone.

Q. What is the nature of your practice?—A. It has been just a general practice such as would naturally come to a young man breaking into a city where he knew no one.

Q. Did you ever practice elsewhere than in the State of Washington?—A. I practiced in New York State.

Q. How long?—A. I was three years in a clerkship and then for about nine months after I was admitted I practiced there in the office that I had served my clerkship time in, and then came West to Seattle direct.

Q. In the city of New York?—A. No, sir; Syracuse, in central New York.

Q. Since you have been practicing in Seattle to what extent have you been engaged in Judge Hanford's court?—A. I have not been engaged in Judge Hanford's court at all so far as I know.

Q. Have you ever been present in the court when it was sitting—you may state that?—A. I have been present in this court at different times.

Q. How long have you known Judge Hanford?—A. Why, I think that I first—I think that the first time I saw Judge Hanford was in April or May after I came here, at the time I was admitted to the district—the Federal district and circuit courts on motion; I think that was the first time I saw Judge Hanford.

Q. That would be in the spring of 1908?—A. In the spring of 1908; yes, sir.

Q. Since that time to what extent have you seen him from time to time anywhere?—A. Why, I have seen him at different times, perhaps once a month or so in the court room and perhaps not quite that often, not on an average greater than once a month in the court room, and then occasionally I would see him on the street.

Q. And what hours would you see him on the street?—A. Well, I had an office in the Henry Building for a time, and I used to see him going south on Fourth Avenue as often as once a week perhaps, as I would be coming out of the Henry Building I would see the judge going down the street, just to notice him.

Q. What time of the day or night?—A. That would be at luncheon time usually.

Q. Have you ever seen him at any time later than that on the street?—A. Yes, sir.

Q. Where would you see him on those occasions?—A. Why, I have seen him in the afternoon, I do not remember the particular occasions very clearly, I just noticed seeing him, that is all, and I have seen him on one particular occasion late at night, along about 10 o'clock at night.

Q. When was that?—A. That was about the last week of April or the first week of May.

Q. Of this year?—A. Of this year.

Q. Have you at any time seen the judge drinking intoxicating drinks?—A. Never.

Q. Have you at any time seen him when he seemed to you to be under the influence of intoxicants?—A. On this one occasion; yes, sir.

Q. Describe that occasion more particularly, if you please.—A. There had been a meeting, or rather a stereopticon lecture by Mr. Chadneau, of the Seattle Art Museum, at the museum which my wife and I had attended. This was over between 9.30 and 10 o'clock, and as I recall it we were on our way down to take our car, walking down Fourth Avenue, and as we came down Fourth Avenue near Spring and Madison or on Madison, after we passed the Carnegie Library I noticed Judge Hanford coming out of the Rainier Club. We passed him about midway in the block between Madison and Marion. He seemed to be—well, he seemed to be having all he wanted to do to keep steady; he did not seem steady on his feet, and he passed my wife and I at a distance of 6 or 8 feet, and the smell of liquor was plainly perceptible.

Q. Have you any doubt in your mind as to the identity of the person you are describing?—A. Absolutely no doubt.

Q. Did you speak to him or he to you?—A. I do not believe I spoke to him at the time; no.

Q. Were there others in sight?—A. No; my wife and I and Judge Hanford were the only persons in that block—that is, between us and looking down the street—there may have been some one just immediately back of us, but they were not immediately back of us.

Q. Did his condition at that time excite attention or comment?—A. It did.

Q. From whom?—A. My wife asked who that was.

Q. There was nothing strange about that.—A. Well, she said he smelled like a brewery.

Q. Well, did you notice him before she called your attention to him?—A. I had noticed him coming across the street; yes.

Q. Had you noticed anything extraordinary or peculiar in his condition before she spoke to you?—A. No; I do not think I had noticed anything particularly. I remember turning around and looking at him as he went on up the street—as he went, after he had gone past us.

Q. Well, from his appearance and from all you observed there, tell the committee whether, in your judgment, he was then intoxicated.—A. Well, there are degrees of intoxication, but to my mind I thought at the time that he was considerably under the influence of liquor of some sort. That is how it looked to me.

Q. Did you ever on any other occasion see him when you thought he was under the influence of liquor?—A. Not that I recall.

Q. When did you say this occasion was?—A. It was the last week of April or the first week of May. By calling up the Seattle Museum Association and finding the night that Mr. Chadneau delivered his lecture, you can get the exact day. My recollection is that it was right around the first of May—very shortly in that time.

The CHAIRMAN. Any further questions? Mr. Hughes, do you wish to ask the witness any questions?

Mr. HUGHES. Was your wife between you and Judge Hanford when he passed you?

A. Yes.

Q. How near were you to Judge Hanford as he passed by?—A. Well, we-were not, I should say, 2 to 3 paces—from 6 to 9 feet.

Q. You say that you observed some odor which your wife described to you?—A. Yes; it was perceptible.

Q. How?—A. It was perceptible—the odor of liquor was perceptible.

Q. That was not the way you said your wife described it—she spoke something about a brewery?—A. She said he smelled like a brewery.

Q. Do you know how a brewery smells?—A. Yes, sir.

Q. Or what kind of liquor is manufactured at a brewery?—A. Yes, sir.

Q. You thought he had been drinking beer, then?—A. No; I did not.

Q. You did not—then you do not agree with your wife?—A. No.

Q. What sort of a night was it?—A. Why, it was a clear, cold evening.

Q. You were walking south on Fourth Avenue?—A. South on the west side of Fourth Avenue.

Q. On the west side? Had he crossed the street?—A. He came across the street.

Q. Where did he cross the street?—A. He crossed the street diagonally from the corner of Fourth and Marion.

Q. Diagonally across, toward the Lincoln Hotel?—A. Diagonally across to where the Butler Annex was, which is a block below the Lincoln.

Q. And then he walked on north on the west side?—A. He walked on north, on the west side of the street.

Q. Were you opposite the Butler Annex when he passed you?—A. I should say we were about 50 feet from the corner.

Q. When he passed you?—A. When he passed.

Mr. HUGHES. I guess that is all.

The CHAIRMAN. Is your wife in the city?

A. Yes, sir.

Q. Would she come at your request without a subpœna?—A. She has not been well for the last couple of days. She was sick in bed nearly all day yesterday and sick when she got up this morning, or she would have come down with me this morning. I do not know how she is feeling now. I was not able to get her by phone at noon.

Q. Will you notify the committee whether she will come and when she can come?—A. I will.

Mr. HUGHES. May I ask two or three other questions?

The CHAIRMAN. Yes.

Mr. HUGHES. Are you personally acquainted with Judge Hanford?

A. I have met him; that is—personally acquainted—no. I have met him to be introduced to him, to say, "Mr. Bravender, this is Judge Hanford." That is the extent of the personal acquaintance.

Q. But you do not assume that he would recollect you, so that there would be a special acquaintance between you and him?—A. No; I do not.

Q. Of course he sees so many that you would think nothing of that?—A. There being so many young lawyers I did not think anything of the fact that we did not speak, because I am aware that a good many judges—the younger lawyers speak to them and they have met them all in a block, and they do not remember names so that that would not have any——

Q. (Interrupting.) You do not know anything about Judge Hanford's personal mannerisms or personal habits or personal peculiarities, do you?—A. Nothing at all, except such as I have observed in the court room and seeing him on the street.

Q. And you never noticed him on the street at night before, did you?—A. That is the only time that I have any recollection of, Mr. Hughes.

Witness excused.

The CHAIRMAN. Have you any other witnesses who are in a hurry to leave?

Mr. DORR. The one that I gave the chairman the name of this morning.

The CHAIRMAN. Who was it?

Mr. DORR. Barney Flood.

Mr. HUGHES. He is the doorkeeper of the Rainier Club.

BARNEY FLOOD, being first duly sworn, testified as follows:

The CHAIRMAN. Please state your name.

A. Barney Flood, sir, Judge.

Q. Where do you live, Mr. Flood?—A. Seattle, sir.

Q. How long have you lived in Seattle?—A. Four years.

Q. You don't look as if you had lived that length of time anywhere.—A. I beg your pardon, sir?

Q. Four years, did you say?—A. Four years.

Q. Forty years, I understood you to say?—A. No, sir; four years.

Q. What is your present occupation?—A. Doorkeeper of the Rainier Club.

Q. How long has that been your work?—A. Three years this June.

Q. When do you go on duty?—A. 11.30 in the morning.

Q. And when do you leave off?—A. I leave off from 3 to half past 4, and from half past 4 I work until 12.

Q. Was there any one else than you on duty as doorkeeper?—A. No, sir; except the office staff.

Q. Except who?—A. The office staff.

Q. What are your duties?—A. My duties are to know everybody that comes in and look after everybody as far as I am capable of doing it, Judge.

Q. Well, do you remain at the door or near it all the time you are on duty?—A. At the door all the time, sir.

Q. How many persons come in and go out during your watch?—A. During the watch there is over 400.

Q. That is, from 11.30 in the morning until you quit at night?—A. Yes, sir; until 12 o'clock at night.

Q. Do you mean that many persons pass the door during your watch?—A. Well, that many persons, except in cases where the members bring in somebody—sometimes a member will bring three or four guests with him for lunch or for dinner.

Q. How many members are there altogether?—A. There are 950.

Q Is the place closed when you quit work?—A. Yes, sir.

Q Do you know all the members individually?—A. Yes, sir; I do.

Q Do you know Judge Hanford?—A Yes, sir.

Q How frequently does the judge go into the club?—A At luncheon time

Q Every day?—A Not every day, not every day, Judge; but mostly every day, and then he is generally in from 5 until about half past 6, and then comes back in the evening from about 9 until between 11 and 12.

Q How frequently is he there from 5 until past 6?—A Almost every day.

Q And how frequently does he come back about 9 at night?—A. Nearly all the time when he is in Seattle.

Q He stayed there until about what hour?—A Between 11 and 12.

Q. What time do you quit?—A. 12 o'clock, except when there is a banquet or some other occasion to be looked out for and then we have to wait until 1 or 2; otherwise it is 12 o'clock, sir.

Q So that you would see him six times every day?—A Yes; in and out.

Q. He came in and went out at the noon hour for lunch.—A Yes, sir.

Q And then he came in and went out from 5 to half past 6 in the evening —A. Yes, sir.

Q And then he came in and went out from 9 till half past 11.

Q. Did you ever see him later than half past 11 except on the occasion of a banquet?—A If there was a banquet and he was a guest at a banquet and had to stay for perhaps to make a speech, or something like that, he might be later.

Q. You mean a banquet at the club?—A Yes, sir at the club.

Q. You do not know what goes on in the clubrooms, do you?—A. I don't quite understand—what goes on in the clubroom?

Q You do not know what the members eat or drink in the clubrooms?—A. No, sir; I could not say that I do.

Q. You are at the door?—A. I am at the door.
Q. Where is the floor where the members eat and drink?—A. The floor where they eat and drink is on the main floor as the door goes in.
Q. The same floor that you are on?—A Yes, sir.
Q And where from your place?—A. It is about 40 yards away from the place.
Q. Is there a wall between?—A. A wall between; yes, sir.
Q Have you ever seen the judge drinking in the clubrooms?—A No, sir; I have not.
Q. Have you ever seen him go into the club or out of it when he seemed to you to have been drinking?—A. No, sir; I did not.
Q. Did you ever see any member there who seemed to you to have been drinking?—A. There has been some of the members; yes, sir
Q Did you ever see the judge when it seemed to you that you smelled the odor of liquor from him?—A. No, sir; I did not, and I speak to him every time when he comes in and out and I always check his umbrella
Q So far as you know of Judge Hanford you never saw him take a drink in his life?—A. No, sir; I never saw him take a drink
Q You never smelled liquor on him?—A. No, sir.
The CHAIRMAN. Do you wish to ask the witness any further, Mr. Hughes?
Mr. HUGHES You say you have seen members coming out of the club that you thought were under the influence of liquor?
A. Yes, sir.
Q You observed that from their appearance and demeanor and by noticing the odor of liquor on their breath —A. Just by the odor, Mr Hughes.
Q Were you there on Sunday evenings from 5 o'clock every night?—A. Yes, sir; every night.
Q. Were you there last September or October?—A. Yes, sir; I never missed an hour in the three years—at the time of duty.

Witness excused.

SAMUEL R. STERN, being first duly sworn testifies as follows:
The CHAIRMAN. Give your name to the committee.
A. Samue R. Stern.
Q You live in Seattle?—A In Spokane.
Q. How long have you lived in Spokane?—A. Twenty-one years.
Q Are you an attorney?—A I am.
Q Practicing your profession?—A Yes, sir.
Q. How ong have you been practicing it?—A. Thirty-three years.
Q. Do you know Judge Hanford?—A Yes, sir.
Q. How ong have you known him?—A. Twenty-one years
Q. He used to hold court at Spokane?—A. Yes, sir.
Q. When was that?—A. Generally prior to about five or six years ago.
Q How much of the time?—A He usually held two sessions of court a year there.
Q. And lasting how long?—A. From three to six weeks.
Q Both sessions last that ong?—A Each session lasting from three to six weeks and sometimes a little longer.
Q. Did you practice before the Judge elsewhere than at Spokane?—A. Here in Seattle

Q. To what extent?—A. Here perhaps our or five times a year I would practice before him

Q. You mean the trial of a case?—A. Sometimes during the trial of cases and sometimes on applications that I had to make in his court.

Q. For orders?—A. For orders; yes, sir.

Q. On those occasions your stay was as brief as you could make it, I suppose?—A. Sometimes I have been here a week at the time.

Q. Did you, appear before the judge at court elsewhere then in those places?—A. I have appeared before Judge Hanford at Walla Walla.

Q. To what extent?—A. On several occasions, not ver many.

Q. Have you been in any way associated with him otherwise than as a lawyer practicing before him?—A. I have, in a social way

Q. How?—A. Well, I met him at clubs. I have met him in my own apartments; I have played pool with him on occasions and played cards with him.

Q. At Spokane?—A. Yes, sir.

Q. Are you a member of the Rainier Club here?—A. No, sir.

Q. The judge is an honorary member of your club in Spokane?—A. I do not know.

Q. Was he?—A. I could not tell you.

Q. Did you during your practice before the Judge notice a habit which you have probably heard the witnesses testify about, of nodding and seeming to nod asleep on the bench?—A. Yes; I have observed that.

Q. When did you first observe it?—A. I think I noticed it in Judge Hanford for the last 15 years.

Q. You heard it spoken of as a subject for comment.—A. Not until this matter came up

Q. Did you ever hear it commented on or spoken about until this matter came up?—A. I have not.

Q. Where was he when you first noticed it?—A. In Spokane, on the bench.

Q. What impression did it make on your mind then?—A. I usually noticed it in the afternoon; I had an idea that he had rather a hearty lunch perhaps and drowsy with advancing years, as most of us do, along in the middle of the day at his period of life.

Q. Was it more pronounced at that time than at other hours of the day?—A. I noticed it more along in the afternoon and along in the middle of the court session.

Q. Did you continue to notice it, so as to confirm that view during your acquaintance with him, and that habit?—A. I noticed it, I think, to such an extent that I rather attributed it to the lack of exercise. I never knew the judge to do very much except walk occasionally, and I thought it was lack of exercise more than anything else.

Q. Can you state whether the habit continued to grow on the judge or whether it remained stationary?—A. I thought, as far as I have been able to observe, it has been the same ever since I have known him; at any rate for the last 15 years.

Q. To what extent have you had an opportunity to notice the judge in the last five years?—A. Well, I have been in his court on frequent occasions, perhaps half a dozen times a year.

Q. In Seattle?—A. In Seattle; yes, sir.

Q. Did you notice it on those occasions?—A. I did.

Q. Well, did it seem to you to have changed in any way from your first observation of it?—A. Not at all.

Q. To what extent, if at all, have you seen Judge Hanford drink intoxicants?—A. I have seen him at dinner time when he has been with me take a drink or two; I have seen him at banquets of the bar association and different meetings that we have had in different parts of the State and here. I have seen him drink about what the rest of us did. He was never under the influence of liquor, however.

Q. Have you seen him in Spokane—I think you said or meant to say, take a drink or two at meals?—A. Yes, sir; he has taken a drink or two with me.

Q. What kind of a drink?—A. I have known him to take a cocktail or a little wine.

Q. Have you at any time noticed him when, in your opinion, he was affected by or under the influence of intoxicating drinks?—A. I never have.

The CHAIRMAN. Are there any further questions of this witness? I have forgotten, Mr. Dorr, that you wanted to ask him some questions. You were the attorney in a certain habeas corpus case before the judge?

Mr. HUGHES. The Littoy case.

The CHAIRMAN. I did not remember the name.

Mr. DORR. H. C. Littoy, that was the case.

The CHAIRMAN. The case in which Mr. L. Frank Brown——

Mr. HIGGINS. No; E. H. Brown.

Mr. HUGHES. Edwin J. Brown.

The CHAIRMAN. In which Mr. Edwin J. Brown was attorney on the other side?

A. Yes, sir.

Q. Do you remember that case?—A. Very well.

Q. When was it?—A. About six years ago, between five and six years ago. I would not be accurate about that.

Mr. DORR. Eight years ago, as a matter of fact.

The WITNESS. Eight years, is it? I didn't think it was so long.

The CHAIRMAN. Where was it?

A. Here in Seattle.

The CHAIRMAN. Mr. Dorr, you may inquire about that yourself in your own way.

Mr. DORR. Tell the committee, briefly, a few points about that case, Mr. Stern; when did it commence?

A. Well, I was representing at that time the State board of dental examiners in the prosecution of unlicensed dentists and I had convicted Mr. Brown on three different charges at three different times.

Q. Do you mean this same Mr. Brown?—A. Yes, sir; Edwin J. Brown, and this Dr. H. C. Littoy had been convicted on at least two different charges, and other dentists here, about 10 of them, and the cases in the State court, where the conviction had been secured were on appeal to the supreme court of our State, and about that time Mr. Brown and a man by the name of Parker, associated with him—John R. Parker—desired to test the constitutionality of the act in the Federal court, and secured a writ of habeas corpus, claiming that Littoy was in jail and being improperly and unlawfully detained there, and that matter came up on the presentation of

that writ to Judge Hanford. Now, my recollection is—Judge, do you want my recollection of the circumstances?

Q. Yes, if there is anything peculiar in the trial or anything unusual, please state it.—A. Well, it was only this, perhaps, that was unusual. We presented no briefs, and the matter was argued, my recollection is, by Mr. Parker, and he started in to make quite an extended speech along general lines when Judge Hanford asked him to confine himself to the question which was before the court, and asked a great many questions during that hearing, as to what the petition contained and what the facts were, and called on me for a verification as to some of them, and then asked for the decisions of the supreme court of our own State on the question, and they were presented, one particularly that I remember, in 31 Washington.

Mr. McCoy. What is the title of that case?

A. Smith against the State board of dental examiners. I think Mr. Howe at that time briefed that case and argued it, in which all the questions that were being raised by Parker and Brown were thoroughly and exhaustively treated by the court and passed upon, and I know that Judge Hanford in his inquisition there made it rather uncomfortable for the attorneys because they did not seem to be willing to get down to the legal questions involved, but wanted to talk about the facts in general. He intimated upon the hearing that the writ would have to be dismissed, but in view of the importance of the matter as they—as it occurred to them, Messrs. Parker and Brown, he said he would write an opinion, which he did, and I have read the opinion—the opinion is here, I know, in the record.

Mr. Dorr. I now hand you the opinion in cause No. 1207, filed July 6, 1904 [showing], and I will ask you if that is the opinion in the case which you have just referred to?

A. Yes, sir.

Mr. Dorr. We would like to have this opinion admitted, if you please, as a part of the examination of this witness.

The Chairman. Do you want the opinion in the record?

Mr. Dorr. Yes; as an exhibit.

The Chairman. Why?

Mr. Dorr. As showing the manner in which the case was disposed of by the court.

The Witness. It covered every question that was raised there.

The Chairman. If I might look at it.

Was it not published anywhere?

Mr. Dorr. No; it is not published.

The Witness. No; it never was published.

Mr. Dorr. Was there anything during that trial in the attitude of Judge Hanford, in his demeanor upon the bench, that suggested to your mind any doubt as to his paying strict attention to all the proceedings?

A. No; absolutely nothing; in fact, I thought he watched it even closer than I did.

Q. Was there any time during which this case was heard before the court that he appeared to be under the influence of any intoxicant?—A. No; absolutely not.

Q. Mr. Brown has testified in this case that during that trial Judge Hanford appeared to him to be under the influence of intoxicating liquors on the bench; what would you say as to that?—A. Oh,

it is absolutely untrue. He certainly was not intoxicated that day. In fact, that is why I said what I did say. He asked so many questions, and had the different questions so well in mind that it would not be possible for a man who was intoxicated to pay that attention to the argument of the case.

Q. Was there anything in his appearance which would indicate to your mind that he was intoxicated?—A. Absolutely nothing.

Q. Does the opinion that was filed in this case, in your judgment, show a clear conception of the issues that were before the court?—A. It is a masterful opinion. It is as clear and clean cut an opinion as any man could possibly write on the questions that were involved in that case—not one alone, but there were several raised—and I know we submitted no briefs, so that he must have had some recollection of the arguments and the points raised and made when he wrote that opinion..

Q. Have you held any public positions in this State or some public positions?—A. Well, I never held office, if you mean that; I have been president of the State Bar Association; I had that pleasure.

Q. What year?—A. 1908, I think.

Mr. DORR. I think that is all.

Mr. MCCOY. Did the sheriff make a written return to the writ of habeas corpus?

A. Yes, sir; I think he did.

Q. Was not the case argued on the petition and the return?—A. Yes, sir; but they tried to inject something in addition into it.

Q. You say that the judge's opinion indicates that he must have paid very close attention to what was said in the argument?—A. For this reason, if I may state it: It was sought to show that these different unlicensed dentists were being persecuted and not prosecuted and that the State board of dental examiners was causing their arrests upon different occasions, piling one arrest on the other, for the purpose of driving them out of business and not merely for the purpose of convicting them of those different offenses, and a great deal was said along that line which, of course, did not appear upon any sheriff's return, indicating that they were unlawfully or illegally restrained; and I remember that particularly because Mr. Parker laid particular stress on that fact, that those people were being persecuted, and they wanted this decision from the Federal court to stop the so-called persecutions, or prosecutions—as we, of course, thought they were—in the State court. That was one of the questions interjected that was entirely aloof from the real question involved, and that was the constitutionality of the act under which those people were being prosecuted.

Q. Did Judge Hanford's opinion review anything but the question of the constitutionality of the law?—A. Yes, sir.

Q. What else does it review?—A. It refers to this fact, and it refers to the further fact that it was apparently an attempt to secure an appeal in the Federal court, when the State court had already held adversely; and I think, as I remember that opinion, he stated that those people had their remedy by going to the United States Supreme Court without clogging the Federal court, which then had all the work, not only here, but in other districts as well, with those unnecessary appeals. He looked on it as in the nature of an appeal from

the decision of the State court, and he treated all those things in his opinion, as I recollect it.

The CHAIRMAN. When was the opinion written, with reference to the time of the hearing?

A. Well, I should think a week after the decision was rendered.

Q. There is not any discussion of the evidence in the opinion, is there, Mr. Dorr?

Mr. DORR. There was no evidence, as I understand it, Mr. Chairman.

The CHAIRMAN. That is my understanding; but my colleague, Mr. Higgins, thinks otherwise.

Mr. DORR. I understood it was purely a legal argument on the writ from the sheriff's return.

The CHAIRMAN. The majority of the committee, both my colleagues, think it would be better to have it go in the record, and of course they have the right to their way about it, but what is there in the opinion which could not have been written if Judge Hanford had been in New York on the day of that hearing; he had the petition, the return, the pleadings in the case before him the day after the hearing just as well as the day of the hearing, and when he was not in court that day could have written this opinion, could he not?

Mr. DORR. I can only refer you to the evidence which has been adduced from the witness who is now on the stand, in which he stated that the opinion showed a clear conception of the arguments that were made before the court.

The WITNESS. If I may state, Mr. Chairman, the point with me was this, as I recollect it: There were so many matters interjected that were alia aliunde, the mere return and petition that counsel kept harping upon, and those are matters that I think—of course, it has been a long time ago; it is eight years ago—but I did not think it was as long as that, but I know that Judge Hanford asked very many questions why those matters were brought up; that they were not proper, and I know he writes of them in the opinion.

The CHAIRMAN. Two of the members of the committee request that they may go in; the chairman does not see the value of it, however.

Document received in evidence and marked "Exhibit No. 31."

Mr. DORR. Just another question or two. You spoke of having convicted Dr. E. J. Brown several times; when was that, with reference to the time of this particular hearing?

A. I think at the same term of court at which Dr. Littoy was convicted.

Q. In what court was that?—A. In your superior court here of King County.

Q. Convicted of just what?—A. Practicing dentistry without a license.

Q. And that was Dr. Brown's interest in this proceeding, was it not?—A. Oh, he appeared as an attorney; he was an attorney at the same time he was practicing dentistry, and he appeared with John R. Parker; that is my recollection.

The CHAIRMAN. Well, the dentists were at that time in good faith contesting that law, were they not?—A. I would not want to say that, Mr. Chairman; a number of convictions had been secured and the cases had gone to the supreme court and been affirmed, and then they

started in when again confronted with those offenses, and we thought—and the supreme court finally refused further to hear those appeals, because they thought they were taking those appeals for the purpose of keeping up a continual row among the so-called ethical and non-ethical dentists.

Q. And had Judge Hanford anything whatever to do with any of those former convictions?—A. Not a thing.

Mr. McCoy. Do you see that there is any objection to a case that has once been tried in the supreme court, or a question that has once been tried in your supreme court or State courts, being taken into the Federal courts? One witness testified here this morning that he took a case into the Federal court which had been in the supreme court, and for a certain reason, which he gave, he did not want to push it there; in fact, what he testified to, as I understood it, was this: He brought identical suits in the superior court and in the United States district court, and that he did not press his suit in the State court for certain reasons which will appear in the record, but preferred to go in the Federal court; now is there any reason why a man should not go into the Federal court on a writ of habeas corpus without being criticized?

A. Only this, possibly, that if I were representing a fake dentist who had not been able to succeed in the superior court of the State and in the supreme court of this State I would probably have been very glad to experiment with the Federal court.

Q. Do you consider that Dr. Brown was a fake dentist?—A. Yes; I do.

Q. What do you consider a fake dentist to be?—A. One who don't know any more of the practice of dentistry than he did.

Q. What do you know about what he did know about it?—A. I saw his examination papers in some cases and I heard the testimony; I heard him tell about the practice of dentistry being the correction of a malposition of an unnormal condition.

Q. Do you consider that an examination paper will test a man's ability to practice dentistry?—A. I think so, as much as a man's examination paper will test his ability to practice law, every bit.

Q. You do think so?—A. Yes, sir.

Q. How is it with medicine?—A. Well, I don't know why it should not be so with medicine, except that they might do some mechanical work.

Q. And the same way—the same way in surgery?—A. The same way in surgery; they might do some work, some surgical work fairly well, but for the general practice, such as one indulges in in dentistry and in law, I think that a man should at least be able to spell ordinary words or to have some conception of what ordinary words mean, and ought to have some little idea of the amenities of the profession, which Dr. Brown never has had.

The Chairman. Is there anything further with the witness; stand aside.

Witness excused.

The Chairman. Does that conclude the list of those witnesses who are anxious to get away?

Mr. Hughes. Mr. Carroll has been here several days——

The Chairman. We will call Mr. McIntyre.

J. D. McINTYRE, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell your full name to the committee.

A. J. D. McIntyre.

Q. Where do you live?—A. Seattle.

Q. How long have you lived here?—A. Twenty-two years.

Q. Are you in business?—A. Yes.

Q. Or profession?—A. Yes.

Q. What?—A. I am a farmer.

Q. Has that been your occupation?—A. No, I am a civil engineer.

Q. Have you practiced engineering during the 22 years you have lived here?—A. Yes, sir.

Q. In what line?—A. For the United States Government and in ordinary private practice.

Q. What particular work did you do for the Government?—A. I surveyed the Okanogan Indian Reservation.

Q. And in the civil practice of your profession what did you do?—A. I laid out townsites and made surveys of city property, and made maps and one thing and another.

Q. When did you leave off your work as civil engineer?—A. About 12 or 15 years ago.

Q. How far from the city do you live?—A. I live in the city.

Q. Well, is it not kind of a slam on the city to say that you are farming in the city?—A. Well, no; not in this case. I am farming near Olympia. I am president of a nursery company and we plant a great many fruit orchards.

Q. Are you acquainted with Judge Hanford, Mr. McIntyre?—A. I know him only officially.

Q. Explain that a little more fully, please.—A. Well, I know him in his official capacity as judge; for instance, 20 years ago, or about that, he issued my naturalization papers, I being a foreigner.

Q. You mean your acquaintance with him is only a sight acquaintance?—A. No; a little more than that. He appointed me court commissioner here 15 years ago for Douglas County.

Q. How long did you serve in that capacity?—A. About four years.

Q. What country were you born in?—A. I was born in Canada.

Q. And naturalized when?—A. It was either in 1892 or 1893.

Q. Well, during the years you ha e known Judge Hanford what opportunity have you had for observing him both in court and out of it?—A. Very little; I have been in his court room many times and have seen him sitting on the bench. I li e near where he does and see him nearly every day, going backward and forward on the Broadway car.

Q. At what hours?—A. Generally about from 9 to 10 o'clock in the morning and then I see him going home occasionally at night.

Q. How late?—A. Generally when I have seen him going home at night it has been very late, probably from 10 to 12 o'clock, or something like that.

Q. Have you on any occasion ridden home on the car on which he rode?—A. Yes, sir; many times.

Q. Did you ever observe the judge while presiding in court?—A. Yes, sir.

Q. Did you notice any peculiarity in his demeanor or appearance while on the bench?—A. No, nothing that I should consider of any

importance. He had no peculiarity particularly. I noticed that he would sometimes shut his eyes—I took it to be that the light hurt his eyes.

Q. Did he appear to you at any time to be nodding?—A. No, I never saw him nod.

Q. If at any time you have seen the judge when, in your opinion he was affected by intoxicating drinks, tell the committee of that.—A. Well, you know it is pretty hard to tell whether a man is drunk or not; there might be something else the matter with him.

Q. Tell if you have seen him when he seemed to you to be under the influence of liquor or some other intoxicant; tell it—A. Well, I certainly never did in the morning or when he was on the bench or in the day time.

Q. Well, if you did at any time, tell us that.—A. Well, I might be mistaken in it, you know; he might be sick.

Q. Well, tell us what you saw.—A. Well, I have seen him on the cars going home late at night when he appeared to be under the influence of liquor, and I took it that he had been to some banquet and made too many speeches, maybe.

Q. If you recall tell the first occasion which you observed.—A. I never noticed anything of that kind until here lately, and I am trying to recall when that was; I think of two occasions now, but I can not fix the time; I know that it must have been from three or four or five months ago was the last time, and it seems to me about two months before that, but I could not fix the time exactly.

Q. That was the first time, is it—where was he when you first noticed him?—A. He was sitting in the car going home.

Q. About what hour was it?—A. It seems to me that was about probably between 11 and 12 o'clock.

Q. Which of you was on the car first, if you recall it?—A. Well, I think that he was on the car—you speak of the first time?

Q. Yes.—A. I think he was on the car the first time.

Q. Which of you gets off the car first?—A. He does.

Q. Now, what first attracted your attention to him on that occasion?—A. Well, he kept falling asleep and acted so strangely that everybody in the car noticed it—not everybody, but I saw several sitting near me that were smiling about it and thought the judge had overstepped the mark a little bit.

Q. Did you hear any remarks or comments about his condition around there?—A. No.

Q. I do not ask you what they were, but did you hear any remarks?—A. I did not; no one spoke.

Q. What was the thing in others which you did notice?—A. Well, I noticed that their attention was drawn to his condition.

Q. What was his position in the car?—A. Well, he was sitting in the front part of the car and he kept his back pretty well to us; there was too little seats that face each other in the front part of all those cars, and he could not sit steadily, but was able to take care of himself all right and when he got off he knew where he was getting off and he got off and the conductor helped him a little.

Q. Did you notice him after he got off?—A. No, sir; it was very dark and it was raining and I could not see.

Q. As you said, the other occasion was about perhaps a few months later?—A. A couple of months later, as nearly as I can recollect.

Q. Where was he when you first noticed him the second time?—A. Well, he was sitting in the car going home.

Q. What was there in his appearance that attracted your attention that time?—A. Well, very much the same as he did the first time, only I thought he was probably in a little worse condition at that time.

Q. Were there others on the car than he and you?—A. Oh, yes; yes, sir.

Q. To what extent did others notice him on that occasion, if they did notice him?—A. Well, of course anyone will notice a prominent man like him. There was a lady I noticed sitting opposite him there and she was laughing, and the gentleman that was with her making some comments and smiling, and the people close around where he sat there took notice of it, but I did not know any of them; they were strangers to me.

Q. What did you say his condition was then with reference to being intoxicated?—A. Well, as I say, he might have been unwell; he is an old gentleman, and he might have been unwell; maybe that was not what was the matter with him.

Q. Did he show any evidences of suffering or pain?—A. Well, I could not say that he did; no.

Q. Did you notice him getting off the car this second time?—A. Yes, sir.

Q. How did he get off—alone, or did he have help?—A. I think he got off alone, but he could not manage getting back to the door very well; he seemed to not be able to see well.

Q. Which end of the car did he get off at?—A. He got off the rear end.

Q. How far did he have to walk from where he sat in the rear?—A. Both times he was sitting near the front of the car.

Q. Well, how was he with reference to steadiness as he went back through the car?—A. Well, he was not steady at all.

Q. Sometimes the motion of the car causes unsteadiness.—A. Yes; yes, sir.

Q. Was that the case with him, or was it some other cause?—A. No; it was not the fault of the car; I can't say; he was not steady.

Q. Did you see him on any other occasions than those two when in your opinion he was under the influence of some intoxicating drink?—A. I have not, and I have seen him many times for years and years, and he was always perfectly proper.

Q. Have you ever seen him drinking?—A. I never have.

Q. The second time you saw him get off did he have help in getting off or not?—A. I don't think he did. I think be got off himself.

Q. Was there anyone with you?—A. No; I was alone.

The CHAIRMAN. Any further questions of the witness, Mr. Hughes?

Mr. HUGHES. No cross-examination.

Witness excused.

Mr. HUGHES. Will it be convenient to call Mr. Carroll and then Mr. Peters next? They are both very busy men and anxious to get away.

The CHAIRMAN. Yes, sir; call Mr. Carroll.

P. P. CARROLL, being first duly sworn, testifies as follows:

The CHAIRMAN. Tell your full name to the committee.

A. Patrick Pitman Carroll.

Q. Where do you live?—A. Seattle.

Q. How long have you lived there?—A. Since 1886.

Q. What is your business now?—A. Lawyer.

Q. How long have you practiced your profession?—A. About 40 years.

Q. Still active in the practice?—A. Yes, sir.

Q. Are you alone or associated with some one in the practice?—A. Alone at this time.

Q. What connection have you had in your practice?—A. Well, I have had associates with me at one time; Judge Root and John C. Tenike.

Q. To what extent, Mr. Carroll, did your practice bring you into Judge Hanford's court?—A. Well, I suppose I know Judge Hanford longer and more intimately than any other man in active practice to-day. I have known him for 30 years, if not thirty-odd.

Q. To what extent did your practice bring you into his court?—A. The record will show that I was a constant practitioner in his court, not only when he was on the State bench but on the Federal bench.

Q. What line of business did you have in his court as Federal judge?—A. Mostly in admiralty.

Q. To what extent have you been an associate of the judge when he was not on the bench?—A. Prior to his appointment to the judgeship I traveled over the Territory with him when he was United States assistant district attorney.

Q. And since he has been on the bench?—A. I have been in his court very constantly.

Q. How is it as to outside of the court; what was your association with him?—A. I have met him frequently; our children grew up together—our sons and daughters; especially the daughters were very intimate. Judge Hanford has been to my house time after time to dine, and his daughters also.

Q. And he and you are lifelong friends and your children and his are also friends?—A. Yes, sir.

Q. And your families?—A. Yes, sir.

Q. Are you a member of the Rainier Club?—A. No, sir; although I helped to organize it I never became an active member.

Q. Have you seen the judge drink intoxicants?—A. I have.

Q. To what extent?—A. Well, like I do myself, occasionally; I never saw him drunk; I never saw him but at times when he could be drunk if he wanted to be; he drank at my table many times and I drank myself with him at his table.

Q. To what extent have you been with him here in the city, in the evenings in the last 10 years?—A. I am a late worker myself; very late; I seldom get to bed until 12 and oftentimes between 12 and 2, and I am up as a rule at 5, and Judge Hanford is a late worker and has always been to my knowledge; and before we had the city cars here he had offices when he was assistant United States attorney and my office—that was before the fire, as we call it—in what is known as the Ponson Building at the foot of Cherry Street and First Avenue now; his office was over where the Northern Pacific ticket office is now; I think on the second floor right over there, and he used to go

home my way, and we would start up as a rule, up Cherry Street to Third and up Third to Marion and up Marion to Fourth and up Fourth to—I would leave him at Ninth and he would go up to what used to be Eleventh and now, I think, it is Boren, where the Perry Hotel is.

Q. Did you sometimes take a drink on the way home?—A. As a rule I would call him up on the phone and ask him if he wanted to take a nip, and sometimes he would say yes, and then we would make an appointment and we would meet and go home together, and I would part with him at Ninth and Madison and he would go on up two streets farther.

Q. Now, Mr. Carroll, when was that; that is, when did they get street cars to take you home?—A. I think the first street cars started in April, 1890. I was the promoter of that street car line myself, or aided in its promotion, that is, the Madison line.

Q. Twenty-two years ago?—A. Yes, sir; right after the big fire.

Q. Well, my question, if you will notice it, was of later years; it related to the last 5 or 10 years; have you ever been downtown with him at night to any extent in the last 5 or 10 years?—A. Yes, sir; on several occasions.

Q. How many; fix it by some unit of time.—A. Probably on an average, I should say, not to exceed three nights; that is, in the last five years; I have been away from home a great deal; that is, my business has taken me out of the city a great deal and away from Seattle, and I have been away at times for months and weeks and days, and consequently I have not met him as much, but at home—when I am at home I am generally late in the office at night and I possibly would meet him in the last five years maybe four or five times; two or three time a month, according to my business or ability to be home.

Q. Did he and you ever have a drink together in the nighttime during the five years you speak of?—A. I believe on a few occasions; yes. I had business with him about interlocutory orders and ex parte orders. cases that he tried, and I would prepare the papers for him to sign the decrees and take them to his office, and if I would have business at my office I would call him by phone and ask him whether he would be there in his office at such a time that evening, and he would say yes and I would tell him I had such and such papers to sign, and I would call on him at such and such a time and we would go home together.

Q. What was the nature of those orders?—A. Decrees in admiralty and decrees in equity cases.

Q. You spoke of being away a great deal of the time later on.—A. Yes, sir.

Q. On professional business?—A. Yes, sir.

Q. Where at?—A. Attending the Federal court in Portland and attending the Federal court, the circuit court of appeals in San Francisco, and elsewhere along this circuit.

Q. Do you still keep up your habits of working late at night?—A. Yes, sir, I do; I got to bed this morning at half past 1.

Q. Would you mind telling us your age?—A. My age, I think I was 68 on the 17th of March last—St. Patrick's day.

Q. Did you always work that hard?—A. I have; yes, sir. If I get four hours' sleep it is all I need. It is all that I am accustomed to in

my whole life. I have often got out of the saddle to get a rest and let a fellow that was sore footed get in, during the time past from 1861 to 1865; and I have often slept in the saddle, too.

Q. Have you at any time seen Judge Hanford when you thought he was more or less under the influence of liquor?—A. Never, sir. I never saw him when you could say that he was drunk, that he didn't know what he was doing. I have gone home from banquets and from special occasions when he had taken probably three or four glasses of intoxicants, but that don't make him drunk and don't make him unsteady either—a man accustomed to intoxicants.

Q. In your opinion what is a man's condition, physical condition, when he is drunk?—A. A man is drunk when he is unable to stand erect and to give an account of himself.

Q. I don't think you would find many who would disagree with you in that—until he gets in that condition he is not drunk, that is your opinion?—A. Oh, no; he might be drunk before that, but he could not be able to stand erect—I have seen men stagger at times and have staggered, and if staggering was to indicate that they are drunk I would be drunk every day. I got in the street car, and a few mornings ago, all the people laughed at me—neighbors of my own that knew me—the car runs around a bend there and I was thrown across the car and I said "Ladies and gentlemen, I am not drunk."

Q. I don't think we care about what you said; being a lawyer you can see that we do not.—A. I admit that the objection is well taken.

The CHAIRMAN. Are there any further questions of this witness?

Mr. HUGHES. Mr. Carroll, how long have you been a member of the bar?

A. I think I was admitted to practice in—I am not sure, I think 1872—1870 or 1872, in the city of New Orleans.

Q. How long did you practice in Louisiana?—A. About 10 years.

Q. And then you came here?—A. Yes, sir.

Mr. HUGHES. One or two other questions. What has been your practice, or what class of litigants have you frequently represented in this court?—A. Mostly in admiralty.

Q. I mean in admiralty, what classes of parties?—A. Well, I was for years here attorney of the sailors' union and also for a long time of the longshoremen's union and for the stevedores.

Q. What has been your experience before Judge Hanford with reference to bias or lack of bias and fairness or partiality, as the case might be, before Judge Hanford; how have those men fared as to liberality or illiberality of judicial treatment?—A. So far as the facts and the law would permit him he has extended justice as far as he could toward sailors and those needing such assistance as the law ought to give them.

The CHAIRMAN. That is all.

Witness excused.

W. A. PETERS, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name, please.

A. William A. Peters.

Q. Your last name again.—A. William A. Peters.

Q. P-e-t-e-r-s?—A. Yes, sir.

Q. Where do you live?—A. In Seattle.
Q. How long have you lived there?—A. Since the year 1886.
Q. What is your business?—A. Attorney at law.
Q. How long have you been a lawyer?—A. Since 1886.
Q. Practicing your profession still?—A. Yes, sir.
Q. I assume that you are acquainted with Judge Hanford?—A. I know him; yes, sir.
Q. To what extent have you practiced in his court?—A. I had some practice before him as territorial judge. As soon as he came to the bench as United States district judge I have had perhaps my share of practice before him.
Q. Along what line?—A. Along the lines of general practice, some admiralty; in the early days more admiralty than now; some equity suits, and mostly jury suits or jury cases.
Q. Has your practice in his court continued up to the present?—A. Yes, sir.
Q. You have had occasion to observe the judge's manner of holding court, I presume?—A. I have.
Q. Have you noticed the peculiarity in him of which the witnesses have testified within your hearing?—A. Of his sometimes seeming abstracted and nodding?
Q. Yes.—A. Yes.
Q. And appearing to nod?—A. Yes.
Q. When did you first notice that peculiarity?—A. I can not recall that I have ever noticed any difference in his demeanor or behavior in the time that I have known him.
Q. You do not recall now, then, when you first noticed that peculiarity in him?—A. No, sir; I do not. It certainly has been a considerable period of time.
Q. Is it as much as would lead one unacquainted with him to conclude that he was asleep?—A. Well, I should hardly judge so to an attorney. While examining witnesses, while the testimony was being produced, one might think that he was not paying attention. Sometimes he is writing in his docket; sometimes he is wheeling about in his chair; sometimes, and a very usual feature, would be his putting his beard in his lips in this manner [showing]; often his hand over his eyes in this manner [showing], and, as has been indicated, sometimes often with closed eyes; sometimes his head would nod, but whenever called upon to pass upon the propriety of a question he indicated on all occasions that he was fully in touch with all of the details of the testimony which had been produced before, and I have been surprised to observe in arguing motions for a new trial—sometimes weeks after the hearing has passed—I have been surprised at the wonderful recollection that he had of the details of the testimony as produced before him in such trials, where his demeanor was the same as on other occasions.
Q. What class of clients have you represented before the judge?—A. In my earlier days, probably a general practice; I think, perhaps, in all cases, a general practice.
Q. Have you had any railroad or other——A. I never represented a railroad. At one time, for perhaps a year, my partner, Mr. Powell, had some suits for—yes; and perhaps I tried some for one of the railroads here, a street railway company—it lasted for about a year.

Q. What one?—A. The Seattle, Renton & Southern Road; but I never had any cases before Judge Hanford for that road. That is some seven or eight years ago.

Q. Are you connected with it now?—A. No, sir.

Q. Are you connected with any interstate carrier of freight or passengers?—A. No, sir.

Q. To what extent have you had an opportunity to observe the judge when he was not on the bench?—A. I saw quite a little of him in the early days—1886 and then on—I saw more of him as I grew older at the bar. I saw a great deal of him in the summer of 1909, when we were both on an executive committee here of the American Bar Association for that meeting. The previous spring and during that summer of our fair he, being the nominal chairman of the executive committee, and I had frequent meetings with him and other persons.

Q. In speaking more particularly of the last 10 years, what would you say?—A. Prior to 1909 I have seen him very frequently; I have been on many committees with him of a public nature, and particularly in connection with the bar and bar association matters.

Q. Are you a member of the Rainier Club?—A. Yes, sir; I have been so since its organization.

Q. Have you met him there?—A. Frequently.

Q. How frequently?—A. Well, very often at lunch. If I came in to lunch and no one was sitting at his table, if I came about it I would join him, and he would join me if he came in and I was sitting at the table with no one sitting with me; and I would certainly say that while he was in town and I was in town I would see him once or twice a week.

Q. How late have you seen him there?—A. If I had been working at my office, I would see him, or, if for some reason I had to stay down town, when I would drop in at the Rainier Club on my way home, it being on my way home, I have seen him sometimes; very infrequently, however.

Q. Have you taken drinks with him there?—A. Yes, sir.

Q. Seen him drink when you were not drinking with him?—A. Yes.

Q. Give us some idea of the extent to which that has happened.—A. If I brought a party of gentlemen in there, usually lawyers, and introduced them to Judge Hanford and asked him to take a cocktail before lunch or before dinner of which we were both parties, he would join me in one, for the purpose, evidently, of being simply sociable. I never saw him take another; I have been at frequent banquets with him of one nature and another, mostly professional, that is, of the Bar Association, connected with lawyers' affairs and any social matters, I have seen him take liquor with the rest of us there, but nothing to have any effect upon him.

Q. Those lawyers whom you would take to the club with you were, of course, out of town lawyers?—A. Out of town lawyers; oh, yes.

Q. What is the rule in that regard; are residents of the city eligible to visit the club as guests?—A. No, sir.

Q. It is not the usual custom?—A. It is not the usual custom.

Q. So that the out of town lawyers who were with you on those occasions were acquainted with the judge, I suppose?—A. Usually; yes, sir.

Q. And you would have a drink together?—A. Yes, sir.
Q. Just one?—A. Yes, sir.
Q. Did you ever see the judge repeat at the club?—A. I do not recall that I have.
Q. Did you ever play any games with him at the club?—A. No.
Q. Did you ever see him playing dominos, or any other games of cards?—A. I think I have seen him play dominos; I have never seen him play a game of cards.
Q. Would he drink while playing?—A. I do not recall that I have seen that.
Q. You have no recollection about it one way or the other?—A. No, I have never played a game of dominos with him myself, and perhaps the matter would not be impressed upon me.
Q. Have you drank with him anywhere else than at the club or seen him drink?—A. I can not remember but one occasion and that was over in Spokane when I was trying a case over there six or eight years ago, when we had one cocktail together at the invitation of a brother lawyer of Spokane.
Q. And that was the only one except at the club?—A. Yes, sir.
Q. You never drank with him in any of the barrooms of the city here?—A. I do not recall a single instance; no, sir.
Q. Well, have you at any time seen the judge when in your opinion he was affected by or under the influence of intoxicants?—A. I never have.

The CHAIRMAN. Any further questions of the witness?

Mr. HUGHES. Nothing further. That is all.

Testimony of witness closed.

The CHAIRMAN. Is Mr. A. P. Perry present?

A. P. PERRY, being first duly sworn, testifies as follows:

The CHAIRMAN. Please state your name.

A. A. P. Perry.
Q. Have you been subpœnaed?—A. No, sir.
Q. How do you happen to be here, Mr. Perry?—A. I just dropped in.
Q. Do you want to be heard as a witness?—A. Yes, sir.
Q. A. P. Perry is your name?—A. A. P. Perry.
Q. Where do you live?—A. I live in Tacoma.
Q. What is your business, Mr. Perry?—A. Lumberman.
Q. How long have you lived in Tacoma?—A. About eight or nine months.
Q. Where did you live before that?—A. 905 Fourth Avenue north, Seattle.
Q. For how long a time?—A. 1900.
Q. What was your business in Seattle?—A. I was a lumberman.
Q. In the lumber business?—A. Yes, sir.
Q. In what way—selling lumber?—A. No; running a sawmill.
Q. Are you acquainted with Judge Hanford?—A. No; I am by sight.
Q. How long?—A. About 10 or 11 years.
Q. What opportunity have you had for seeing the judge and noticing him in that time?—A. I saw him on the bench several times and met him frequently.

Q. What were you doing in court when he was on the bench?—A. I have been there as a witness.

Q. In cases for other persons?—A. Yes, sir; and a couple of times for myself.

Q. Have you had any litigation before the judge?—A. I have; yes, sir.

Q. Have you had any opportunity to see him when not on the bench?—A. I have; yes, sir.

Q. Where?—A. Coming over on the interurban and seeing him in Seattle.

Q. If at any time you have seen him when in your opinion he was under the influence of some intoxicant, please tell the committee.—A. I saw him in the bar back of the Seattle Hotel in 1906 pretty well under the influence of liquor. I saw him take three or four drinks, buy a quart bottle of whisky, and stagger out into the street.

Q. Was he with anyone or alone?—A. All alone.

Q. What time of the day or night was it?—A. It was in the evening after dark. I should judge it was about 9 o'clock at night.

Q. Have you at any other time seen him when you thought he was under the influence of intoxicants?—A. I have seen him when I came up on the interurban before he got into Seattle.

Q. Well, what was his condition with reference to sobriety?—A. He appeared to be very much under the influence of liquor.

Q. How far did you ride with him on that occasion?—A. From Tacoma to Seattle.

Q. How did he demean himself on the way over?—A. He sat down and went to sleep.

Q. All the way?—A. Yes, sir.

Q. Were you near enough to tell whether there was any odor of liquor on him?—A. I sat in the seat behind him.

Q. What do you say as to the question of odor?—A. It was very strong.

Q. What was it?—A. It was whisky, I think.

Q. Have you at any other time seen him when you thought he was more or less intoxicated?—A. Those are the only two times I have seen him when I thought he was under the influence of liquor.

Q. Have you any personal feeling of any kind against the judge?—A. Not a bit.

Q. If at any time you saw him in court when it appeared to you that he was under the influence of liquor, you may tell of that—A. I do not think I ever did in court.

The CHAIRMAN. Are there any further questions of this witness, gentlemen?

Mr. HIGGINS. What was the case, Mr. Perry, you spoke of that you were a party to?

A. I was a witness, I think, in the case of Thomas Conway *v.* Northern Pacific, at one time; and another case where he had issued an injunction against our company and taken the case out of the State court after the case had been decided in the State court. He took charge of the case and issued an injunction and prevented us from going ahead under our decision in the State court.

Q. What other cases have you yourself or your company had in the court?—A. I think that is the only one—one or two.

Mr. MCCOY. What was the company?

A. The A. P. Perry Lumber Co.

Q. And who was the plaintiff?—A. A. P. Perry.

Q. And who was the defendant?—A. The Tacoma Mill Co. was the plaintiff and I was the defendant in the Federal court?

Q. Who owns the Tacoma Mill Co.?—A. I do not know.

Q. Who are the officers of it?—A. Charles Hill is one of them and a Mr. Chesbrough, of San Francisco, is another one.

Q. Who is Charles Hill?—A. A resident of Tacoma; Charles E. Hill.

Mr. HUGHES. When was this injunction case you speak of—the Tacoma Mill Co. *v.* A. P. Perry Lumber Co.?

A. I do not recall it, but you were the attorney there, Mr. Hughes.

Q. Do you remember when it was?—A. It was where he had issued an injunction and prevented us from going ahead under our decision out of the State court.

Q. Do you remember when it was?—A. No.

Q. You are not a lawyer, are you?—A. No.

Q. You were beaten in that case, were you not?—A. Why, no; I won the injunction alright in the Federal court.

Q. I mean before Judge Hanford?—A. I guess so; he threw us out of court so quick I never found out whether I was beat or not.

Q. You have always felt sore against him since then, have you not?—A. No; I have not.

Q. Who was your attorney?—A. W. I. Agneau.

Q. How long ago was it?—A. I can not tell; 1904 or 1905, I think.

Q. You have felt a grudge against Judge Hanford since?—A. No, sir. We never heard our appeal in the court; we never recognized the injunction.

Q. Do you mean you disobeyed the injunction?—A. Yes, sir; we disobeyed the injunction. We went to the State court to seek our relief.

Q. And went ahead without reference to the injunction of Judge Hanford?—A. We did not violate the injunction; we completed our case in the State court and won out.

Q. Was that case heard in Tacoma?—A. Yes, sir.

Q. All of the proceedings had been had in the State court before this case occurred in the Federal court, didn't it? All through you had nothing else to do in the State court?—A. Yes sir. We won in the State court, and he issued an injunction and commanded the case to be brought before him, and my lawyer would not recognize him.

Q. You came into that court and the case was tried in that court. Is not that true?—A. No, sir; I never tried that case in that court.

Q. Well, passing that by——A. He gave you a $1,000 judgment by default because we would not appear in his court.

Q. Did you live at Olympia at that time?—A. No. sir.

Q. When did you say you lived in this city?—A. I lived here since 1900 until last November.

Q. When was it that you rode on the street car with him?—A. It was coming over from Tacoma. I can not recall the day, but about six years ago.

Q. About six years ago?—A. Yes, sir.

Q. And what time a day was it?—A. It was at night; the car got in here about 9 o'clock, I should judge.

Q. Is that when that case was tried?—A. No; that had no reference to that case at all; that is just when I came over with the judge.

Q. Now, was not it earlier in the evening than that?—A. No, it was not.

Q. Was not it right after the adjournment of court, getting in here about 6 or 7 o'clock?—A. No; it was after dark.

Q. How?—A. It was after dark. I used to get in here about 9 o'clock.

Q. The Interurban gets in here every hour and has for several years, doesn't it?—A. Yes; usually.

Q. Can you tell with any great degree of certainty what hour it was?—A. No; I could not; but it was after dark that night.

Q. Yes, but it gets dark here at certain seasons of the year at 5 o'clock, doesn't it?—A. Yes; but it was dark then, too.

Q. Can you say because it was dark that it was later than 6 or 7 o'clock in the evening?—A. Yes; it was later than that.

Q. How do you know that?—A. I do not leave my place at McIntosh until 5 o'clock. I usually take the 5 o'clock train, and it takes an hour and one-half to reach Tacoma. I usually leave about 8 o'clock out of Tacoma.

Q. There is nothing to prevent you taking a 7 o'clock train?—A. Well, there is sometimes; I usually have something to look after in Tacoma.

Q. Now, it is not usual for persons to sleep on the cars riding between here and Tacoma, is it?—A. No.

Q. You do that yourself sometimes, don't you?—A. I do not know that I ever did; no.

Q. You say you saw him in the bar of the Seattle Hotel?—A. In the bar back of the Seattle Hotel; I do not know the name of the place, but it is back of the Seattle Hotel.

Q. In the Occidental Building, you mean?—A. The Seattle Hotel; do you know where that is?

Q. Yes; but to make sure of it, it is the Occidental Building?—A. I do not know whether it is the Occidental Building or not.

Q. Well, it is on Yesler Way?—A. Yes.

Q. That three-cornered building?—A. Yes.

Q. Yesler Way is on the south side of it and James Street is on the north?—A. It is a bar right back of the Seattle Hotel—in the Seattle Hotel.

Q. Who was with you at that time?—A. Frank Williamson.

Q. Where is he?—A. He is the man who shot himself the 3d of July.

Q. The 3d of this July?—A. Yes, sir.

Q. Anybody else with you that is dead?—A. I do not recall of anyone.

Q. Anybody else that you know of that is alive?—A. No, sir; there were several men in the barroom, but I did not know them.

Q. Do you remember anybody who was in that barroom at that time?—A. I do not. Frank Williamson was the only one in the whole crowd, and Judge Hanford.

Q. You did not know Judge Hanford personally at that time?—A. No, sir; I knew him at sight, though.

Q. What were you doing in there?—A. I went in there; I had some business with Frank.

Q. Frank who?—A. Frank Williamson.

Q. Business that you had to transact in the barroom?—A. That we did; I went in and got him—we met there.

Q. Did you transact your business there?—A. We transacted our business in the Seattle Hotel, but I met Mr. Williamson in the barroom.

Q. Did you drink there?—A. No, sir; I do not drink.

Q. You never drink?—A. Yes, sir; I have, but I do not now and did not then.

Q. How long were you in the bar?—A. Half an hour, I should judge.

Q. What were you doing during that half hour in the bar?—A. I was in there with Mr. Williamson, talking to Mr. Williamson; I met him in there.

Q. Were you sitting down?—A. A part of the time.

Q. Where?—A. In one of the boxes right in front of the bar.

Q. There is but one box there, and that is not in front of the bar; is not that the case? Is that the Hyde's liquor store, formerly Sartori's liquor store?—A. Sartori's I think, something like that.

Q. You know that there are no boxes in front of the bar there?—A. There is a box in front of the bar; there was at that time.

Q. There is no box except at the south end on the left-hand side, at the Yesler Avenue side.—A. On the left-hand side there is a box and Mr. Williamson and I sat in that.

Q. From there you could not see very much of the barroom at all from it, could you?—A. Yes; you could see all the bar.

Q. Did you see anybody with Judge Hanford?—A. Yes; there were several in there; I do not know who they were, though. I am not very well acquainted here.

Q. Well, how long was he in company with these other persons?—A. He left the crowd of them and stepped into the front part atter the closing doors and bought a quart bottle of whisky and wenf out onto the street; that is the last I saw of him.

Q. You followed him?—A. No; we happened to be in the front part about the time he was leaving.

Q. That is the opposite part from where you have already located yourself in the box?—A. We were in the box, and we left and went to go out through the hotel.

Q. That is the wholesale part?—A. Yes, sir.

Q. And is entirely separated from the bar?—A. Yes, sir; there are little swinging doors there.

Q. And they shut off the view from the saloon part?—A. Yes, sir.

Q. To the street from which you say you left that by?—A. Well, Mr. Williamson and I left the saloon and went into the hotel part.

Q. Now, do you know how many men were in there with Judge Hanford?—A. I do not.

Q. Were they familiar persons or familiar figures that you knew?—A. No, sir; I do not know a dozen men in Seattle.

Q. You do not know a dozen men in Seattle?—A. No, sir.

Q. But they were standing there with Judge Hanford and they took a drink?—A. Yes, sir.

Q. Did you see them take more than one drink?—A. Yes, sir; I saw them take three or four drinks.

Q. Are you sure about that?—A. Yes, sir.

Q. Did all of them take three or four drinks?—A. I know Judge Hanford did.

Q. Did the rest of them that were with him?—A. I do not know what they took, but I know what Judge Hanford took.

Q. Why did you notice Judge Hanford without noticing the gentlemen with him?—A. Because I was more interested in him than I was in the rest of them.

Q. Why was you more interested in him?—A. I wanted to see what he was.

Q. Why did you do it? Tell the committee.—A. I just wanted to find out myself.

Q. Well, can not you tell them what your interest was?—A. Yes; I wanted to see what he was.

Q. That is not a motive; that is curiosity.—A. Well, curiosity, then.

Q. Was there anything but curiosity?—A. No.

Mr. HUGHES. That is all.

Witness excused.

FRANK SPEIR, being first duly sworn, testified as follows:

The CHAIRMAN. State your name.

A. F. W. Speir.

Q. Where do you live, Mr. Speir?—A. Seattle.

Q. How long have you lived here?—A. About nine years.

Q. What is your present occupation?—A. Crossing patrolman.

Q. How long have you been patrolman of any kind?—A. Nearly seven years.

Q. You have been here in the court room, I believe?—A. How is that?

Q. You have been here in the court room?—A. I came in here about quarter to 11 to-day.

Q. Were you subpœnaed?—A. About 20 minutes to 11, I think, this forenoon, I was subpœnaed.

Q. Where are you located?—A. Third Avenue and Union.

Q. How long have you been located there?—A. Going on three years.

Q. Where were you before that?—A. Well, I have worked at the station quite a good deal and walked the beat a good deal.

Q. The railroad station, you mean?—A. No, sir; the police headquarters.

Q. Doing desk duty there?—A. No, sir; as wagon man.

Q. Are you acquainted with Judge Hanford?—A. Just by sight.

Q. How long have you known him that way?—A. Why, for the last four or five years.

Q. If you have seen Judge Hanford at any time when he seemed to you to be under the influence of liquor?—A. No, sir; I never did.

Q. Have you ever seen him drinking any liquor?—A. No, sir.

Q. Have you ever seen him in any place where liquor is sold?—A. No, sir; I never did.

Q. How late have you seen him on the street at night?—A. I don't remember of ever seeing him later than about 5.30 or 6 o'clock.

Q. How late do you stay on your beat?—A. Ten minutes after 6.

Q. Have you ever seen him down town after that hour?—A. No, sir.

Q. Have you stated to anyone recently that you saw the judge when you thought he was intoxicated?—A. No, sir.

Q. Mr. Speir, think a moment about that and be sure of that. Have you in conversation with anyone recently stated that you saw the judge when you thought he was intoxicated?—A. No, sir; I never did.

Q. Have you at any time?—A. No, sir.

The CHAIRMAN. You may stand aside.

Witness excused.

C. O. WOOLCOTT, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. C. O. Woolcott.

Q. Where do you live?—A. Seattle.

Q. How long have you lived there?—A. A little over 23 years.

Q. What is your business?—A. I am a patrolman—a policeman.

Q. What duty are you doing now?—A. I am working crossing at Fourth and Pike Street.

Q. How long have you been at that crossing?—A. Nearly three years.

Q. Before that what were you doing?—A. Well, I walked the beat in different parts of the city.

Q. Do you know Judge Hanford?—A. Just by sight; that's all.

Q. How long have you known him that way?—A. I suppose 10 or 11 years.

Q. Have you at any time seen the judge going into places where drink is sold?—A. I do not remember ever seeing him; no, sir.

Q. Have you ever seen him drinking any liquor?—A. No, sir; I do not think I ever did; I don't remember of it.

Q. Have you ever seen him when you thought he was more or less under the influence of liquor?—A. I have; yes, sir.

Q. Where?—A. I saw him on the corner of Second Avenue and James Street one night.

Q. When?—A. Well, it has been a number of years ago; I can not recall just how long ago.

Q. Approximately?—A. Well, I presume it was about nine years ago—eight or nine years ago.

Q. What time was it?—A. It was late in the evening; probably 10 or 10.30.

Q. Was he alone or with someone?—A. He was alone.

Q. What was his condition?—A. Well, he was pretty drunk.

Q. What direction was he going?—A. Why, he was waiting for a car there.

Q. Did you see him get on the car?—A. No, sir; I did not wait for that.

Q. What was there about him that made you think he was pretty drunk?—A. Well, he was staggering about.

Q. How long had you known him at that time?—A. Oh, I presume may be a couple of years.

Q. Have you any question as to who it was that you saw there?—A. None whatever.

Q. How long did you observe him?—A. Well, I was there probably five minutes, and I met a friend there and we stood there and talked a few minutes.

Q. Did your friend notice his condition?—A. He called my attention to it first.

Q. What was his name?—A. His name was McKerr.

Q. Where is he?—A. He is dead; died about four years ago.

Q. And what did you say his name was?—A. Kerr; Samuel McKerr.

Q. What was his business?—A. He was in the dairy business.

Q. What was the judge's condition with reference to his ability to stand still and erect?—A. Well, he could not stand still. He kept stepping around and staggering about, and he went back and leaned up against the building and stood there a little while.

Q. Where was he when you left?—A. Where was he?

Q. When you lost sight of him?—A. He was still standing there. I did not wait for him to take the car. He came up once and asked us what the car was that was coming up. There was a car coming up the street, and he asked us what car that was while we were standing there.

Q. Were you near enough to him to tell whether there was an odor of liquor from his breath?—A. Yes, sir.

Q. What was it?—A. You could smell liquor very strong.

Q. What was it—beer or whisky?—A. I could not say; probably it was pretty mixed, by the smell of things.

The CHAIRMAN. Any further questions?

Mr. HUGHES. What time of the evening would you say that it was?

A. I presume it was close to 10 o'clock; perhaps a little after 10.

Q. Did you observe whether he took the James Street car line?—A. I didn't see him take the car. I don't think he was waiting for the James Street car.

Q. For the one on Second Avenue?—A. There was a car coming up Second Avenue, and he came and asked us what car it was. I think, probably, that he was waiting for that car.

Q. You could see what the car was from the sign upon it?—A. Yes, sir.

Q. Was that the car he wanted?—A. No; that was not the car he wanted.

Q. You did not wait until the car came that he wanted?—A. No, sir; he went back. At least he didn't take the car. He stood there backed up against the building. I suppose it was not the car he wanted.

Mr. HUGHES. That is all.

The CHAIRMAN. When were you subpœnaed?

A. About 10.30 this morning.

The CHAIRMAN. The committee will now take a short recess.

Witness excused. Whereupon, after recess, the following witness is called:

Prof. EDMUND S. MEANY, being first duly sworn, testifies as follows:

The CHAIRMAN. Please give your full name to the committee.

A. Edmund S. Meany.

Q. You live in Seattle?—A. Yes, sir.

Q. And you have for how long?—A. 35 years.

Q. You are connected with the Washington State University?—A. Yes, sir.

Q. And have been how long?—A. For 30 years.

Q. What is your present connection with that institution?—A. Professor of history.

Q. Is that your special work all the time?—A. Yes, sir.

Q. Are you acquainted with Judge Hanford?—A. Yes, sir.

Q. How long have you been acquainted with him?—A. For 30 years.

Q. To what extent have you been associated with him?—A. Always he has been interested in matters of history, and for the last 10 years he has been trustee of the historical society, of which I am secretary, and I have been thrown with him that way a good deal.

Q. How often does that society meet?—A. Not often, but the trustees transact the business for it and publish a quarterly.

Q. Do they have meetings at stated periods?—A. No, sir.

Q. Just at the call of the chairman?—A. At the call of the chair.

Q. How often do they meet, as a matter of fact?—A. Not often.

Q. Have you other opportunities of seeing and meeting Judge Hanford besides on those occasions?—A. Well, we were thrown together a good deal during the exposition for three years—for a period of three years he was a trustee of that, and I was also a trustee of it.

Q. But you are not in attendance at court when the judge presides, are you?—A. No, sir.

Q. And you had little or no occasion to see him or meet him in the city here.—A. Only on those occasions I have mentioned.

Q. Except when the trustees of the historical society meet.—A. Yes, sir.

Q. And that might be how often in a year?—A. Oh, I met the judge at that and other occasions probably 8 or 10 times a year.

Q. Where do you and he meet usually?—A. In his chambers.

Q. At what time of the day?—A. Afternoons.

Q. Do you sometimes see him at banquets or other public occasions?—A. Frequently.

The CHAIRMAN. I presume you would want to show by this witness the judge's capacity for work. Is that right? Perhaps you had better ask him so as to make it brief, you or Mr. Dorr, to save time—get at the points you want.

Mr. HUGHES. How long have you known Judge Hanford?—A. something over 30 years.

The CHAIRMAN. I have gone over that ground pretty fully.

Mr. HUGHES. State what you know as to the general activities of Judge Hanford in matters of public interest and matters aside from his judicial work, briefly; the time he has devoted to it, and all that sort of thing.

A. We served together on a committee to get the Seward statue, which took about three years; we served together to get the McGraw statue, which is still pending; we served together on these exposition committees and the historical society, of which I have spoken, and several other public occasions of that kind have brought us together, and I had occasion to meet him frequently in that work. I had an occasion also to write, at the request of Mr. Page, of the World's Work, an article, about nine years ago, about Judge Hanford, at which time my attention was called to the fact that he had made a record that was not equaled probably in the United States, by district judges anywhere, for the number of cases and

the amount involved in the cases—a unique record for large work—and it appealed to me as an historian and I delved into it and I wrote the article It was not published, but it satisfied me of the judge's capacity for large work and much of it.

Q Have you ever known of his being intoxicated?—A. Never.

Mr. HUGHES. That is all.

Witness excused.

JEROLD LANDON FINCH, being first duly sworn, testifies as follows:

Mr McCOY. What is your full name?

A. Jerold Landon Finch.

Q. And you are an attorney?—A. Yes, sir.

Q. Practicing in Seattle?—A. Yes, sir.

Q You live here?—A. Yes, sir.

Q. How long have you lived here?—A. Eleven years.

Q How long have you practiced law here?—A. Eleven years.

Q. Ever practice in any other place?—A. In Michigan.

Q. How long did you practice there?—A. Three years.

Q Did you have a case before Judge Hanford in bankruptcy, in which you thought you had any occasion to complain of his handling of it?—A. I did.

Q. What was the title of the case?—A. In re Heckman & Hansen, bankrupts.

Q That was the case in which a receiver had been appointed in the State court?—A. Yes, sir.

Q. On a friendly application?—A. Yes, sir.

Q. The purpose being to conserve the estate for the benefit of the creditors, some of the creditors having proceedings pending against this concern?—A. It was to conserve the estate in the interest of the owners, Heckman & Hansen; they had no differences with their creditors.

Q. They were a partnership, or was it a corporation?—A. A partnership.

Q. What phase of the matter got into the Federal court before Judge Hanford?—A. The partnership of Heckman & Hansen voluntarily petitioned themselves into bankruptcy, that being a Federal question got into the Federal court.

Q. Were you attorney for them as petitioner?—A. I was not.

Q. Who was the attorney?—A. C. A. Reynolds.

Q. Did you get into the case as attorney—what was the firm?—A. Heckman & Hansen.

Q. After the petition in bankruptcy had been filed?—A. Yes, sir.

Q. At what stage of the case did you take it up as attorney?—A. At the stage where the State court purposed to sell the property of Heckman & Hansen.

Q. Your purpose in coming in was to get a stay and prevent the sale?—A. Yes.

Q. Was that the effect of the proceeding or not?—A I was unable to prevent the disposition of the estate by the State court.

Q. What other step in the bankruptcy proceeding after that did you take as attorney?—A. The bankruptcy estate was declared closed and then I came in with a petition to reopen that estate.

Q. Who declared it closed?—A. Judge Hanford upon application of the trustee in bankruptcy.

Q. Did the trustee in bankruptcy make a report?—A. Yes, sir; he did.

Q. Did the report purport to show that there were no assets of the bankrupt?—A. It did.

Q. And that was the basis on which he reported that it should be closed?—A. Yes, sir.

Q. And did he make that report of his own motion or did some attorneys move in the matter to get the report from him?—A. It was made in the name of the trustee in bankruptcy—he acted through his attorney.

Q. And who was the trustee?—A. Mr. Gray, of the firm of Gray & Tait.

Q. Well, what did you do in the way of moving to reopen the case?—A. I filed with Judge Hanford a petition to reopen the estate.

Q. Alleging in the petition what facts as the basis as your claim for the granting of the petition?—A. I showed to him that Heckman & Hansen were shipbuilders; that they had brought to him an estate of upward of $60,000, and that they had debts aggregating not more than twenty-two or three thousand dollars. I suggested in the petition that at the time of the adjudication in bankruptcy the possession of the property was in the State court, having been obtained through a receiver appointed in that court in a case entitled "William Curtis against Heckman & Hansen"; and I suggested that that suit there had been brought upon an account stated smiply and that there were no equities involved whatever.

Q. In other words, no lien was claimed in that suit on the assets of the firm?—A. Absolutely; that was the way it was suggested to Judge Hanford in the petition. I suggested further that after having a receiver appointed for the concern nothing further had been done in that case over there.

Q. No judgment had been taken, you mean, on the claim?—A. No, sir; that no judgment had ever been rendered at all. I also suggested that the Scandinavian-American Bank, an institution of this city, had conspired with the receiver in the State court to obtain the possession of the assets of the concern, and to that end had petitioned the State court to be allowed to sell the property and that he had afterwards done so, but at a grossly inadequate price, the price being $24,125.

Q. The sale being subject to the liens?—A. And the sale being subject to liens.

Q. So that that was the net amount over claims which were secured—well, that was practically net?—A. Yes; practically net. Then I suggested to him that the estate in his court had been manipulated in this way—that certain creditors, five small creditors whose claims as a whole aggregated $23, had come into his court and had caused a trustee to be elected and had gotten a bond for the trustee and had then hired an attorney to represent the trustee and that he had reported to Judge Hanford that there was no estate.

Q. Was that after the sale of the property had taken place?—A. Yes. And I further suggested that the reason no creditors had moved in the matter was because the bank had bought up the claims of the creditors and there were none to move. I further suggested in the petition that the reason why the bankruptcy machinery had not been set in motion was due to the fact that the referee in bank-

ruptcy at that time was the attorney for the bondsmen of the receiver in the State court and was more incrested over there in seeing his client get off that bond than he was in setting in motion the bankruptcy machinery.

Q. Who was the referee?—A. John P. Hoyt.

Q. Is he referee now?—A. He is; yes. This petition I presented to Judge Hanford in chambers, and I suggested that he take it under advisement owing to the charges that it contained and owing to the fact that I did not want—while it was an ex parte matter I did not want to take snap judgment in any way and I wanted him to know what I had said in my petition and to know what the order meant before he should give it to me, opening the estate. I heard no more from it until one day I received a phone message from the law office of Ballinger, Ronald & Battle suggesting that the matter was coming up for hearing before Judge Hanford about three days subsequently.

Q. Now give the names of the members of that firm?—A. R. A. Ballinger, Alfred Battle, and J. T. Ronald.

Q. Had they appeared in the proceedings prior to that day?—A. They had not. No; they had not. Between the time when this notice was given me by phone and the day suggested when it would be heard, there were two or three affidavits left at my office in my absence which did not purport to show who had left them there, or in whose behalf they had been filed.

Q. No attorneys' names on them?—A. I think not. If there was, then the objection that I took at the time was because they did not purport to be offered in anyone's behalf.

When the matter came up before Judge Hanford I asked to strike those affidavits because they were offered in behalf of no one in interest in the bankruptcy proceedings. Judge Hanford refused to do it.

Q. Giving what reasons?—A. He did not give any reason. He then suggested that on his own motion he was going to send the whole mattr to Judge Eben Smith, who at that time was master in chancery here, whom he designated as special referee in bankruptcy, and that he was going to have Judge Smith look into the matter. I suggested to Judge Hanford that I did not think it was quite proper that the rights of my clients should be held up while he was looking into affairs that pertained mostly to questions of integrity of officers of his court; for he had given me to understand that that was what moved him particularly.

Q. What officers do you refer to?—A. I do not know whom he had in mind.

Q. Do you mean attorneys?—A. Yes, sir; I mean attorneys.

Q. Do you refer to them as officers of the court?—A. Yes, sir; I refer to them as officers of the court. I also suggested that it would be an expensive proceeding and that there were no funds that I knew of to take care of it; but Judge Hanford said that he guessed that a way would be found, and he sent it to Judge Smith. I asked Judge Hanford if he would himself then get up the order—I did not know what his mind was—and he said that he would, and he did get up an order and filed it in the case.

Q. An order of reference, you mean?—A Yes. We went down before Judge Smith. There, at that time, a large number of attorneys gathered——

Q. Name each one o them.—A. There was R. A. Ballinger there was Alfred Battle, there was Richard Saxe Jones J. B. Metcalfe, J. S Jurey C A. Reynolds, John P. Hoyt, and, I think, John E. Humphries, but I am not sure.

Q. This John P. Hoyt is the referee which you have been talking about?—A. Yes, sir.

Q. In whose behalf did those attorneys purport to appear?—A. I asked that question before Judge Smith, and I tried to get Judge Smith to make them declare themselves and he refused to do so

Q. Was the record of that proceeding kept from the time you started before Judge Smith?—A. I think so I think from the very start the record was kept.

Q. No entry made on the record of the names of anyone for whom those attorneys appeared, or the names of the attorneys?—A There was no record made of the client for whom they appeared; I do not know whether the record was made of their appearances or not.

Q. Go ahead.—A. One of the first things that I wanted to prove—that I felt incumbent upon me to prove there—was the connection that the Scandinavian-American Bank had with the proceedings in the State court.

Q. What was it that you offered to prove in connection with that bank?—A. I offered to show that they——

Q You mean the bank?—A. Yes; the bank had obtained possession of the property from the State court; it had been actually taken in the name of a man named Mayhew; but I claimed in my petition and before Judge Smith that Mayhew was acting simply as the agent for the Scandinavian-American Bank.

Q. Who were the principal officers of that bank?—A. Mr. Soeberg, Mr. Grondahl.

Q. What are Mr Soelberg's initials?—A. A. H. Soelberg.

Q. Name the offices that they held, if you know.—A. Soeberg, I believe, was vice president; Mr. Grondahl, E L. Grondahl, I think, his initials were, was cashier; one J E. Chilberg had some office, I think a director in the bank.

Q. Who was the attorney for the bank?—A. R. A Ballinger, of the firm of Ballinger, Ronald & Battle were the attorneys for the bank.

Q. Go ahead; you were testifying as to what you offered to show.—A I offered to show the connection of the bank with the present physical possession of the property which was then being held through this man Mayhew or a person or a corporation that was organized about that time named the Seattle Ship Yards Co.

Q. You mean that Mayhew, or the corporation, purported to hold the title to the property of your clients which had been sold by the receiver in the State court?—A. Exactly.

Q And they claimed under the sale?—A. Exactly. I offered to show that this man Mayhew, or the corporation, as the case might be, was simply the agent of the bank. When we undertook to do so several of the members of the bank's directorate, I think Mr Soelberg and Mr Grondahl and Mr. Chilberg I believe it was, testified that the bank had nothing to do with the obtaining of the property; that they did not know the man Mayhew and were not interested in the property in any way. Then I supbœnaed someone, I think perhaps it was Mr. Soelberg, with a subpœna duces tecum to bring the

books of the bank. He responded to the subpœna personally, but did not bring the books.

Q. Did he give any reason for not bringing them?—A. His reason was that they would show nothing to the contrary of the testimony of the witnesses had he brought them, and that was argued also by the attorney for the bank at that time, Mr Battle—Judge Battle taking the brunt of the work and the argument there before Judge Smith.

Q. Were they arguing the legal proposition that because the witness claimed that his books would not show something that therefore he need not bring them?—A. They did not argue it legally, but simply Judge Battle suggested that because I had the word of, as he expressed it, half a dozen reputable citizens of this town as to what the facts were I did not need the books.

Q. What was the ruling of the referee on that?—A. The ruling of the referee was that he did not have power to deal with the situation, and I recognized that, and so I asked him for a certificate sending the whole proceedings back to Judge Hanford. He gave me such a certificate, and we came before Judge Hanford. At that time Judge Hoyt suggested that certain remarks that I had made when those parties had refused to bring in the books would make me amenable to punishment of some sort, and I suggested to the court that maybe my choice of language was not of the best—I would just as soon change it if it did not change the substance of what I had said.

Q. What was it you had said?—A. Well, I had suggested that those parties had perjured themselves before Judge Smith, and my words were that I would make them the sickest crowd that had ever attempted to foist a job of perjury upon a court. That language came up in the certificate to Judge Hanford. Judge Hanford replied that he did not want any attorney to feel that he was going to offend the court so long as he was striving to do his duty as he saw it, but he says, "Counsel seems to be going on a fishing excursion. He does not know what is in those books, but he wants to find out something." And I interrupted him, and I suggested or I asked him if he wanted an argument or wanted me to argue that point at that time. I suggested that the time for argument as to what I knew about what was in the books was when the men subpœnaed had obeyed the subpœna of the court. That irritated Judge Hanford slightly, and he asked me if I had the books of the bank would I be able to show anything to reflect upon the parties under investigation. I did not know at that time—I never have known since just who or what Judge Hanford thought was under investigation—but I replied to him that if he would let me have the books of the bank I would bring evidence sufficient to disbar R. A. Ballinger, J. B Metcalfe, Richard Saxe Jones, and C A. Reynolds. He replied to me, "You make that good, or I will disbar you." Well, I asked him might I have my books, and he said, "You can have any books. I will make an order that you can have any books that you have a mind to call for," and he did so, and I got such books as I wanted. We proceeded to take the evidence down there.

Q. Before the referee?—A. Yes, sir.

Q. Judge Smith?—A. Yes; and eventually we got through, although it took several months' time before we were through. Judge

Smith then made a report to Judge Hanford, but in the report he had not followed my petition to reopen the estate and had not dwelt upon those things that I had dwelt upon in the petition and things which I had dwelt upon before him and failed to even state those things that I had complained about before him and in my petition. He did not either send up the evidence along with his report.

Q. The evidence had been taken stenographically and transcribed?—A. It had not been transcribed, but it had been taken stenographically. Before the hearing there I had learned of some facts that I did not know when I filed my petition to reopen the estate, so I embodied these additional facts in an amended petition to reopen the estate and came before Judge Hanford and asked leave to file it and also asked of him an order that he send it back to Judge Smith and get a definite report upon the facts alleged in the petition.

Q. Now, you say that he send it; you mean send the matter back to Judge Smith?—A. Send the whole matter back along with the amended petition and get a report from him upon the matters which were suggested in the amended petition.

Q. As well as in the original petition?—A. Yes; the facts that I had learned and which were new facts incorporated in the amended petition were these: That the State court had not, in fact, received the purchase price for the property that I thought it had received, having based my conclusions upon the record that was made in that court; that, as a matter of fact, while the State court purported to have received some $24,000 for the property——

Q. You mean, now, the receiver in the State court?—A. Yes, sir. As a matter of fact, the receiver received not a cent. He did not have money enough to pay the expenses of his receivership, and he had actually been discharged with the debts of his receivership still owing and with the record showing him with the possession of $24,000. As a matter of fact, he had not received anything whatever.

Q. Had they gone through the form of making a payment in any way?—A. Not at that time they had not. As a matter of fact the day that he was discharged the Scandinavian-American Bank paid to him $2,000—that was set out in my petition.

Q. Where did you ascertain that fact?—A. Before Judge Smith.

Q. You mean that was the testimony?—A. That was the testimony down there, and I embodied that in my amended petition. I also learned of another fact, namely, that the attorney who had petitioned my clients into bankruptcy had been paid $250; that $150 had been paid by the Scandinavian-American Bank and $100 had been paid by the bonding company on the bond of the receiver over in the State court.

Q. Did that come out in the testimony before Judge Smith?—A. That came out in the testimony before Judge Smith, and I embodied the fact in my amended petition, and I called Judge Hanford's attention to those facts. He said that I might file the amended petition, but that he was not going to bother Judge Smith about the matter any further, that Judge Smith had had the matter before him for some months, and that he was not going to send it back to him any more. Then I filed my exceptions to the report of Judge Smith, both as to some things that he had said and some things that he had not said, but which he had been requested to say.

Q. You mean some things that he was requested to find?—A. Yes, sir.

Q. Some things he had found which you took exception to and some things which he failed to find as requested?—A. Yes, sir. Then that left us in the situation of having a report with exceptions to the report, but no evidence. So I went to the stenographers who had taken the evidence and personally paid to them—in addition to about one hundred or one hundred and fifty dollars that I had paid to them as a per diem—I paid them $450 in cash for the testimony. I paid that out of my own pocket. I did it for two reasons; one being it being in the interest of my clients to get evidence and the other because I considered myself a friend of the court and thought that he ought to have the record of such things as was brought out before Judge Smith. The respondents or my opponents, whatever you may designate them, filed a motion to confirm Judge Smith's report and tacked onto it a motion that the court should disbar me personally.

Q. In the bankruptcy court?—A. In the bankruptcy court; yes, sir.

Q. Did it ever transpire whom they claimed to represent?—A. No; it never did.

Q. And at that time there was nothing before Judge Hanford to show for whom those attorneys appeared?—A. There was not to my recollection. I challenged them all down the line as to whom they represented, and I do not think that had ever come out at all.

Q. Did you challenge them before Judge Hanford?—A. (Referring to document.) I want to say now in answer to the question referring to the motion that I made a moment ago that it starts off in this way——

Q. You are now reading from what?—A. From the motion which they made in the court to confirm the referee's report and to disbar me.

Q. That is the report of Judge Smith?—A. Yes. It reads [reading]:

In the District Court of the United States for the District of Washington, Northern Division. In the matter of Heckman & Hansen, bankrupts; No. 2203. Motion for confirmation of report and findings of special referee and for disbarment of Jerry L. Finch.

Comes now R. A. Ballinger, Richard Saxe Jones, J. B. Metcalfe, John P. Hoyt, and C. A. Reynolds, in propria persona, and also the Seattle Ship Yards Co., by Ballinger, Ronald & Battle, their attorneys, and moves the court for an order confirming the report and findings of the special referee, Hon. Eben Smith, made and filed in this matter, and also move the court for an order disbarring Jerry L. Finch, attorney for the bankrupts, Heckman & Hansen. This motion is based upon the files and records in this cause and upon an order and warning to the said Jerry L. Finch given by this court in open court when the said Finch asked for an order to submit books and papers of the Scandinavian-American Bank for his examination.

R. A. Ballinger.
R. S. Jones.
J. B. Metcalfe.
Ballinger, Ronald & Battle.

Now, that motion is the only paper and constitutes the entire pleadings of my respondents or opponents in that proceeding.

Q. Was that paper served on you?—A. Yes; and filed in court.

Q. They appeared for themselves and for the shipbuilding company?—A. The Seattle Ship Yards Co.

Q. Which was the company which had been organized after the sale in the State court?—A. Yes, sir; and which took over the possession of the property from Mr. Mayhew.

Q. And which was not a creditor of your partnership clients.—A. And which was not a creditor in any sense of the word. Their sole interest being that they had acquired the property. Those exceptions that I mentioned, that I filed, and the motion of those parties to confirm, were lying dormant; nothing being said while I engaged the stenographers to get out that testimony. It occurred to me one day, however, that the record had best be made by having Judge Smith authoritatively return that evidence, so I came before Judge Hanford and asked him for an order directed to Judge Smith directing him to return the evidence in the case. and suggested to Judge Hanford that I had already compensated the stenographers for that evidence. The suggestion being made in reply to Judge Hanford's remark that he understood there was a large volume of evidence taken and he did not know how it was to be paid for. He gave me the order. That afternoon about 4.30 I received——

Q. Just a minute before you come to that. He gave you an order on Judge Smith to return the testimony?—A. Yes. The same evening that he gave me the order on Judge Smith to return the testimony, about 4.30 in the afternoon I received a notice from Ballinger, Ronald & Battle's office that the whole matter would come before Judge Hanford for final disposition the next morning at 10 o'clock.

Q. Had the testimony at that time been transcribed into typewriting?—A. No; it had not. I came into court the next morning and myself started the proceedings. I suggested to Judge Hanford that I had been served with a notice that he was going to, or would take up that morning the exceptions of the bankrupts to the referee's report and also the motion of my opponents to confirm the report, and said that, of course, the matter could not come on this morning.

Q. Now, was that morning the same morning on which you were notified to appear in response to this motion or notice which you have read?—A. Yes, sir. Let me make you understand it. I got the order for the testimony one morning at 10 o'clock; that same afternoon I had the matter noted for the next morning on me.

Q. Now, when, with reference to the service of the paper which you have read, was this occasion?—A. The very next morning, being 24 hours after Judge Hanford had given me the order to get the testimony.

Q. Then the paper which you have read to us was the paper which was served on you at 4 o'clock that afternoon.—A. No. That was a motion which was made some little time before, but which was lying dormant with the exceptions of the bankrupts to Judge Smith's report.

Q. You do not quite understand me, I think. You have read here a moment ago, what?—A. The motion made by my opponents to confirm the report and to disbar myself.

Q. When was that returnable?—A. That motion?

Q. Yes.—A. That was not made returnable. It was simply filed, no special time set for the hearing.

Q. So that that matter had not been acted upon?—A. That matter had not been acted upon nor set.

Q. And no time was set for it?—A. That is true; it is also true as to the exceptions which I had filed. When I suggested to Judge Han-

ford, I said "Of course the matter can not come on this morning," he said "Of course it can come on this morning, Mr. Finch, and it will come on." I said, "Pardon me, your honor, it is the very matter in which you gave me the order yesterday to get the evidence, and the evidence is being gotten out just as fast as it can be done and will be here in the course of time, but in the meantime we can not hear anything." He said, "Well, I will hear no more from you, Mr. Finch," and I sat down. Judge Battle immediately arose and took about three or four minutes of the court's time. I could not interpret him then, and so I can not do it now—I could not conceive of just what his position was, and I did not know of any way of replying to him. I said to Judge Hanford, when he got through, that I knew of no way to take up exceptions to a referee's report except with the evidence before me, and we did not have the evidence, and, therefore, I could not present the matter that morning. I did say then that I wished he would hold the matter open for, say, 10 days, that I would like to file, I think I called it, an argument in the matter. He granted, if I recall, the 10 days, and within that time I presented to him what I denominated an argument rather than a brief.

I wanted to argue the facts showing the facts rather than the law. I do not recall just when that was filed or when it was with reference to the evidence getting before him but the evidence was placed before Judge Hanford and I think, before my argument was filed. Anyhow, I did not have what I thought was sufficient time and as time went on without hearing from Judge Hanford I got up before hearing from him a supplemental argument and went up to the court and asked leave to file, and he courteously accepted that. Subsequently he filed a memorandum decision, denying the rights of the bankrupts to have their estate reopened. Before he did that I went before him one day in open court and took what I called a petition. I had it headed entitled in his court and headed "In re R. A. Ballinger, J. B. Metcalfe, Richard Saxe Jones and C. A. Reynolds" and in the introductory to that petition I called his attention to the occurrences that I have mentioned here a little bit ago, to where I had suggested that upon certain conditions I would bring him evidence to disbar, sufficient to disbar those parties and his suggestion that I do so or he would disbar me and my willingness to accept the situation as he had made it, and suggested that I now wanted to present to him just those things that I had learned, and in so doing I would confine myself to the evidence which was introduced before Judge Smith. I placed the petition or I gave it to the clerk to give to him and Judge Hanford took it and tossed it to one side and said nothing. And that is the only response, that tossing of the paper to one side is the only response that I ever had to the petition.

Q. What was the prayer of the petition, in brief?—A. Well I told him to make any order he saw fit. I asked him to. That was the words of the prayer:

> Wherefore your petitioner respectfully asks that your honor make such order in the premises as to your honor may seem fitting.

Q. Let me see that paper.—A. (The witness hands paper to Mr. McCoy.) I wish that the committee have the amended petition to reopen the estate and also that they have in their possession, that they receive at this time that petition in regard to these parties. I want you to have the petition for a double purpose. I want it especially

for this purpose that it serves to acquaint Judge Hanford with certain facts that occurred before Judge Smith certain evidence which nevertheless may have been and was irrelevant and immaterial as regards the case made in the petition to reopen the estate.

Q. It was relevant in regard to his threat to disbar you, I presume?—A. It was relative to that; yes, sir. That was my second reason for offering it. Judge Hanford afterwards——

Q. (interrupting.) Just a minute, Mr. Finch; at the time when you filed this paper which you designate as a petition and in which you ask the judge to make any order he saw fit to make, had he then decided the other matter namely, the motion on the report of the referee?—A. No he had decided nothing; he had it all before him at one time. He then after getting this petition however he determined the bankruptcy matter by refusing to reopen the estate. Then he called a meeting of the King County bar. The newspapers suggested that the occasion for the meeting had to do with the Heckman & Hansen proceeding so I went.

Q. You were not invited?—A. I was not invited, no. The meeting was held in Judge Hanford's court room. At that time there were a couple, maybe 300 members of the King County bar present. Judge Hanford called the meeting to order and suggested as the reason for it that charges had been made by me against certain members of the bar and that they in turn had made charges against me, and that he deemed the matter was one for the bar association to deal with. Judge Roger Greene was then made chairman of the meeting, and he took the chair usually occupied by the court when on the bench, Judge Hanford himself taking a chair by the side of Judge Greene. Then in the meeting someone a member of the bar, Mr. Ira Bronson, offered a motion that the whole matter be referred back to Judge Hanford with the recommendation that there was not a scintilla of evidence anywhere to substantiate my charges, and no foundation for their ever having been made.

Q. Was that after discussion or after premeditation?—A. No sir; there was no word of discussion whatever. Judge Gay, that is judge since. Mr. Gay seconded the motion. The motion was put by Judge Greene before the meeting. Nothing was being said, and I suggested to the meeting that I felt I would like to talk to them, but at the same time I had such a personal interest in the matter that I felt like being urged first.

The CHAIRMAN. You mean being requested?

A. Yes, sir; requested—you can put it that way. And then I sat down. Mr. Bronson said that he—as far as he was concerned he had already heard more than he cared to about the matter, and he was ready to vote, and believed that the rest of the bar were also so minded. Judge McCafferty suggested that it might be that I had an apology to offer, and that maybe that was what I wanted to say, and that I should be heard, but others asked for the question, and it was put and carried right there in Judge Hanford's presence.

The CHAIRMAN. Before you leave that point, do you know whether any of those persons, either the mover of the motion or the seconder or the chairman or any of them had read the testimony?

A. Well, I know it; yes; but then, I do not suppose I know it in a legal way—that I know it in a legal way. That testimony is a book that thick [showing]; perhaps 5 inches thick.

Q. How many pages?—A. I think about 600 pages.

Mr. McCoy. The testimony on file in the court at that time?—A. Yes.

Mr. Dorr. Eight hundred and eighty-six pages, I think, to be correct, Mr. Finch.

The Chairman. Was there any reference to the testimony?

A. None whatever, and no desire expressed to get it or to see it. Then the bar—someone made a motion that a committee of five be appointed to see what could be done with me for making such unfounded charges, and that committee—that motion was carried, and the committee was appointed.

Q. By whom?—A. I think the chair appointed the committee. It made Mr. E. C. Hughes chairman; John Powell, L. C. Gilman, L. T. Turner, and John Arthur were the other members of the committee.

Q. Had any of them been interested in the case in any way?—A. No.

Q. Were or was any of them attorney or attorneys for any party that had been interested in the case in any way?—A. No.

Mr. Dorr. Who was the fifth one?

A. John Arthur. The committee subsequently invited me to be present on a couple of occasions, maybe three—I won't say how many—and I met them. Subsequently they made a report to the court. I won't undertake to say what is in that report, for I do not recall it. It was not served on me, and I did not have a copy of it for a year or two afterwards. I did not interest myself in it. The recommendation was made that no action be taken against me. at the same time my recollection is that they reported that my conclusions were founded on erratic and illogical reasoning, etc.

Q. What took place at those meetings of the committee?—A. The committee simply asked me what there was to the matter, and I responded. We spent two evenings that I know of, and possibly three evenings, talking.

Q. Was the testimony taken before the referee before the committee at that time?—A. Yes, I think that they asked for it; but we did not go into that. The committee—I said we did not go into it; I do not know to what extent we went into it—the committee, I felt then and I always felt, took too much of a lead in the matter. I felt then that had they not suggested by certain questions the direction in which to go when I was talking with them they would have seen things in a different light.

Q. What do you mean by that?—A. I think, for instance, that Mr. Hughes, who is present here now, and who was present at those meetings, is surprised at the facts about which I have testified, because we at those meetings never got so far as to take up the matters as they occurred in Judge Hanford's court. The committee guided me off into a discussion of things that occurred over in the State court; in other words, into the merits of the case, while my complaint was that Judge Hanford would not let me get to the merits of the case. If that answers your question, then I want to go on a little further.

The Chairman. Are you nearly done? If you are not, perhaps this would be as good a stopping place as any other.

A. Well, with just one more instance.

The Chairman. Very well.

A. About two or three weeks after everything was over—that is, Judge Hanford had refused to reopen the estate and the bar had completed its whitewashing—I went home one evening and I read in the Star, a newspaper published in this city, that Judge Hanford from his bench that morning had delivered an opinion in the—or something in the—Heckman-Hansen case, and had said something like this, as I recall it: That in the Heckman & Hansen matters the entire trouble—

is due to a young upstart named Finch, who is either an unscrupulous scoundrel or a halfwit and incompetent. In either case he ought to be disbarred, but the court is without power in the premises because the bar has refused to act. Nevertheless, Mr. Finch can congratulate himself that he has gotten off as lightly as he has.

Subsequently I interviewed the Star reporter responsible for the article and he assured me that Judge Hanford had delivered the matter from his bench the day before and had furnished him the copy from which the report was made.

Mr. McCoy. You mean had furnished a copy of his remarks to the reporter of the Star?

A. To the reporter of the Star.

Q. That is, the judge had written it out and delivered it from the bench and when he got through he handed it to the reporter of the Star.—A. That was what was told me at the time. I had no place at the time to have a judicial determination of the matter, so I did not pursue it further, and the occurrence, even the newspaper report, I suppose, is hearsay; but the old files of the Star, I think about October, 1904, will show the report of the matter on the front page, double-columned, with large black type heading on it.

Q. Was it in any other paper so far as you know?—A. The Times referred to the matter, and the P. I. did not touch on it at all.

The Chairman. Is this a convenient place for you to stop?

The Witness. Yes.

The Chairman. You will be here to-morrow morning. You will come back here at 9.30 in the morning. The committee will now be in recess until 9.30 to-morrow morning.

Whereupon an adjournment is taken until to-morrow, Tuesday, July 9, 1912, at 9.30 o'clock a. m.

TENTH DAY'S PROCEEDINGS.

Tuesday, June 9, 1912—9.30 a. m.

Continuation of proceedings pursuant to adjournment. All parties present, as at former hearing. U. L. Finch (same witness) on the stand.

Mr. McCoy. Mr. Finch, at the close of the hearing yesterday you had reached a point where you were testifying about the newspaper report of the statement in regard to you made by Judge Hanford; you may go ahead from that point and state.

A. One of the things which very much incensed Judge Hanford, when I first presented to him my petition to have the estate reopened was the fact brought to his attention that the estate had been administered by five small creditors, whose claims aggregated only $23.

Q. When you say administered you mean——A. I mean that they had taken charge of the proceedings and had carried through whatever had been done. That fact was brought to Judge Hanford's attention, and I emphasized the fact that they were trying to cover up some matters; that the only legitimate excuse that they would have in a bankruptcy proceeding would be to collect their money, and that was the one thing that they had not come to do, which was evident from their having proven their claims and spent more than the amount of them in getting a bond for a trustee and hiring an attorney to carry on matters, and then were content to have the estate declared closed without getting their money. That was one of the things that incensed Judge Hanford.

Q. Now, you say, "incensed Judge Hanford;" how do you judge that fact?—A. Judge Hanford said to me when he sent the matter to Judge Smith: "Mr. Finch, I want to know if I have a set of scoundrels practicing in my court," and from the fact that he asked the question in his chambers about the creditors, I know that that was on his mind. Now——

Q. (Interrupting.) Now, you have stated, I believe, that the sending of this matter to Judge Smith, as referee, was purely on the initiative of Judge Hanford?—A. Absolutely so.

Q. That is right, is it?—A. Yes, sir; that is absolutely true.

Q. Did you make any request that he should do so, or intimate it to him in any way?—A. None. I objected to it, and his own order sending it there shows that he sent it upon his own motion.

Q. What did you state to Judge Hanford as the ground for your objection to having that course followed?—A. I suggested that the rights of my client to have the estate opened did not depend on whether or not he had, or whether or not certain officers and the attorneys of his court had acted wrongfully. I also suggested that that would be an expensive proceeding and that there was no money in the court or in the hands of my clients, because all that they had had been brought to court in the bankruptcy proceeding. Now, before he decided the matter at all, I had presented to him the petition touching upon the four attorneys whom I specifically charged.

Q. Before he decided what branch of the matter?—A. Any branch of the matter.

Q. That is at the time when your application was pending to have the case reopened?—A. Yes, sir. In that petition—and I want to make use of it, because it apprises Judge Hanford very fully of the matters which were being covered up by the action of these creditors in his court. In that petition I said—this is as the first paragraph:

That on the 16th day of July, 1903, in open court before your honor, your petitioner, as attorney for Heckman & Hansen, bankrupts, was advocating certain rights relevant to matters suggested in a certificate sent to your honor by the Hon. Eben Smith, a special referee appointed by your honor to determine certain facts in relation to a petition filed by said Heckman & Hansen to reopen their estate in bankruptcy, from which certificate it appeared that a certain witness had been duly subpœnaed to appear before said special referee and bring with him certain books in his care and under his control, and that the witness so subpœnaed appeared and failed to bring with him the said books, and the said referee being without power to deal with the situation had certified the matter to your honor. In the course of argument upon the matters brought before the court by said certificate your honor asked of petitioner, in effect, whether if he had the books he could show anything which would reflect in any way upon any parties involved in the matters under investigation before said special referee; to which inquiry petitioner replied in effect that if your honor would allow him to have the books which had been subpœnaed he would bring to you the

evidence which would disbar Judge R. A. Ballinger, Gen. J. B. Metcalfe, Mr. Richard Saxe Jones, and Mr. C. A. Reynolds, officers and attorneys of your court. To which promise your honor replied in effect that the statement thus made should be made good by petitioner and that unless he did so your honor would in turn disbar him. And your honor duly made and entered an order that the books called for in said subpœna should be produced. In the course of subsequent proceedings before your special referee the books referred to were produced, and by the aid of them and from other sources petitioner has presented before said special referee the testimony and documentary evidence which he believes ought and will disbar from practice before your honor's court the parties heretofore referred to and named in the caption hereof. And that your honor may have an understanding of the matters indicated in petitioners promise as above related, he presents to your honor as an officer of your court the facts which have been brought out before said special referee and which is in the evidence submitted to him, and upon this his petition respectfully asks your honor to make such order as may to your honor seem fitting in the premises.

And then, in the end of that petition, I also stated:

Your petitioner finally alleges that in all matters and things in this petition set forth he has confined himself entirely to the matters and things which have been presented to said special referee, the Hon. Eben Smith, except in those instances wherein he has specifically alleged his belief, and in those instances he has based such belief upon the matters and things presented to said referee and which are in his record.

Then I recited to Judge Hanford the facts which I claimed had been brought out before the referee. In the first place, I called his attention to the fact that Heckman & Hansen were copartners doing business under the firm name and style of Heckman & Hansen; they were shipbuilders and until their business was wrecked and their property converted as hereinafter alleged were engaged in building and repairing seagoing vessels of all descriptions in the city of Ballard, King County, Wash. Mr. Hansen of the firm confined his attention entirely to matters and things going on in and about the yards and pertaining entirely to the labor expended about the premises. Mr. Heckman attended entirely to the office, to all the outside business, and especially to the financial affairs of the firm. In actual practice between the partners Mr. Hansen had and exercised no voice in the management of the business of the firm. But in the matters hereinafter referred to Mr. Heckman acted for and on behalf of the firm.

Mr. HIGGINS. Does that petition which you are reading from present in a succinct form all that you could say in the course of your examination with the exception of what you have testified about yesterday?

A. Well, it would—yes, sir; it does.

Mr. HIGGINS. Then I suggest, Mr. Chairman, that it be printed as an exhibit.

The WITNESS. There are, however, some things that I want to call to the committee's attention specifically.

Mr. HIGGINS. I understand that, but I think if in that form it presents your testimony it ought to be printed.

The CHAIRMAN. It will be printed.

Mr. HIGGINS. We will have it marked and put in evidence.

The CHAIRMAN. If you desire to call specific attention to any part of it you can do so, and you can use it for that purpose.

Mr. MCCOY. Now, in testifying, refer to it as exhibit No. 32, and at this stage let us have the other papers which you used yesterday—they might as well all go in together.

A. This is the amended petition to reopen the estate. Chronologically it should be the first one of those two.

The CHAIRMAN. Let this paper be marked as "Exhibit 32" then—that is, the amended petition to reopen the estate. This Exhibit No. 32, which is now admitted in evidence, is the amended petition filed by you on behalf of the bankrupts asking that the estate be opened; is that right?

A. That is right.

Q. Now, what is this paper, which you are now handing me?—A. That is the petition In re Ballinger et al.

The CHAIRMAN. Mark that "Exhibit No. 33," being the petition in the matter of Ballinger and others. Now, referring to Exhibit No. 33, state what you care to in regard to that.

Mr. DORR. I might ask whether the witness has yet produced the original petition.

The WITNESS. No; this is my office copy.

Mr. MCCOY. These are both true copies of the original papers, are they?

A. Yes, sir.

Mr. DORR. I did not mean that point; but this is the amended petition—is this the first petition—does the amended petition contain all the allegations that were in the original petition and other allegations?

A. They do.

Q. Have you a copy of the original petition with you?—A. I do not have it and I do not possess one.

Mr. MCCOY. That is on file in court.

The WITNESS. That is on file in court.

Mr. MCCOY. If it has any significance, Mr. Dorr, then, it can be produced.

Mr. DORR. I do not understand that it would have.

Q. Now, the amended petition is a repetition of the original petition with certain additional averments; is that correct?—A. It contains one change, and only one, that I recall, and that is this: In the original petition I had alleged that the State court had sold the property of the bankrupts for a certain sum, being an inadequate sum. In my amended petition I disavow the receiver having sold the property for any sum whatever; that he had received any purchase price for it.

Mr. MCCOY. But otherwise the two petitions were the same, or were similar?

A. Otherwise they were similar, as I recall it.

Q. Now, calling attention, as you were doing, to such matters in Exhibit No. 33 as you wish to.—A. I called Judge Hanford's attention to the original controversy that had gotten Heckman & Hansen embroiled in the courts. I did it for the purpose of showing to him that while their property had been tied up, had been taken away from them in a way, yet they never had had anywhere a trial on any of the matters, or a judgment rendered against them. I could not make it clear to him. I could not to the committee unless I recited the original controversy that occurred between them and the Scandinavian-American Bank. Mr. Heckman claimed to me, and in the evidence, that he had gone to the bank to get a loan of $5,000 in company with Judge Ballinger.

Mr. MCCOY. We do not know who Judge Ballinger is.

A. Judge Ballinger at that time was Mr. Heckman's attorney.

Q. What is his full name?—A. Judge Richard A. Ballinger. That the bank had agreed to loan the $5,000 for a period of five years, payable $1,000 a year. That having agreed upon the loan, Mr. Heckman had made to Judge Ballinger a power of attorney empowering him to consummate the arrangement; that afterwards it developed that Judge Ballinger had given him, instead of a note for five years payable at $1,000 a year, a note for $5,000 payable in 90 days, and in addition had given a mortgage upon the firm's plant to secure the note.

Q. Was the power of attorney broad enough to permit the giving of a mortgage?—A. In the evidence that matter was controverted. Mr. Heckman said that it was not, and denied that the power produced was the power that he executed; that is my recollection of the evidence.

Q. At any rate, the mortgage was given?—A. At any rate, the mortgage was given. About a month after the discovery of the fact that the note was given for $5,000 payable in 90 days, and Mr. Heckman claimed to have discovered that when the bank notified him that the note was due. Before I mention that, I wish to say that Mr. Heckman claimed to have taken the matter up immediately with Judge Ballinger, and Judge Ballinger suggested that he would get the matter attended to and fixed up as originally agreed upon. About a month after that a certain boat, the schooner *Alice*, was brought to the shipbuilding plant to be repaired.

Q. Which shipbuilding plant?—A. The shipbuilding plant of Heckman & Hansen. The boat was in the hands of a trustee, a man named William Calhoun. The Scandinavian-American Bank had a mortgage on the boat for $20,000, and a representative of the bank, Mr. Grondahl, had come to the yard and with Mr. Calhoun and in the presence of Judge Ballinger had made an arrangement to have the boat repaired.

Q. By Heckman & Hansen?—A. By Heckman & Hansen. The arrangement relative to paying for the repairs had been that Heckman & Hansen were to draw each day upon the Scandinavian-American Bank for their pay as the work progressed. Mr. Heckman claimed afterwards, in the evidence, that when he had drawn from the bank about $6,000 on this account the bank notified him to come in and care for their overdraft of some $6,000 before noon of the next day; and he went in there to see about it and they claimed—the bank claimed—that that money was an overdraft, and he claimed that it was payment far repairs on this boat.

Mr. DORR. May I interrupt to ask whether the witness is testifying from personal knowledge or what these parties told him?

The WITNESS. I am testifying as to the matters which I represented to Judge Hanford in this petition solely.

Mr. MCCOY. Right there, I will ask you what has become of Mr. Heckman and Mr. Hansen?

A. Mr. Heckman is dead; Mr. Hansen is feeble-minded or insane.

Q. All right; you may go ahead.—A. Because of those two disputes, and because of the fact that Judge Ballinger, when Mr. Heckman took it up with him, then advised him that the bank had conferred with him, Ballinger, about the matter, and that he was their attorney, and would have to look after their side of it. Mr. Heckman went and employed Metcalfe & Jurey as his attorneys.

Q. You might give the full names of that firm.—A. James B. Metcalfe and John S. Jurey. Then I advised the court that Mr. Metcalfe took the first action; that he had libeled the schooner *Alice* for this $6,000; that as soon as he had taken that action, and within three or four days afterwards there had been brought against Heckman & Hansen by the Scandinavian-American Bank, through Judge Ballinger, about three or four other suits, one of them being upon this overdraft alleged, and in which the bank, through Judge Ballinger, had garnisheed all of the available funds of the concern of Heckman & Hansen.

Q. Where were those funds?—A. There were several; two or three debtors of the firm of Heckman & Hansen, whose names I do not now recall, that were garnisheed.

Q. In regard to R. A. Ballinger's knowledge of the existence of those debts; was that obtained through his having been attorney for Heckman & Hansen?—A. That was the allegation of the petition; yes, sir.

Q. Then a suit was brought?—A. Then a suit was brought by one William M. Curtis upon an alleged account stated in the sum of $1.500, and in that suit a receiver was appointed by the court. That receiver then——

Q. (Interrupting). Now, just a minute there. What was the allegation, in what ever paper was served, the complaint or whatever you call it, which warranted or purported to warrant the appointment of a receiver; what was the basis of the receivership?—A. The basis of the receivership was stated to be the wanton course of the Scandinavian-American Bank in suing—in embroiling Heckman & Hansen in legal controversies, and the allegation was made that unless a receiver was appointed and the estate conserved it would be lost.

The CHAIRMAN. Will you [addressing somebody in the audience] kindly remove that camera from the room and keep it out?

Mr. MCCOY. Now, all right; proceed.

A. (Continuing). A showing was also made, I think it was in the complaint; perhaps it was not; maybe it was in the first report of the receiver—that the assets of the concern were four times in excess of their liabilities.

Q. Did you claim, or was it ever claimed, that there was any collusion on the part of the Curtis concern in bringing this suit—was there ever any testimony given looking to proof of that fact?—A. It was charged by my opponent that that was in fact a friendly suit, and, as a matter of fact, Mr. Heckman himself had supported the application with an affidavit, setting forth the facts complained of.

Q. So that, as a matter of fact, it was claimed that the suit was in the interests of your clients rather than adverse?—A. Exactly, exactly; and I do not think it can be construed otherwise. Now, if I were to pursue my own course, I would take up the allegations that are contained in this petition. I do not know whether you meant a moment ago by your ruling that I should not do that; that you would simply take——

The CHAIRMAN. Not at all.

Mr. MCCOY. I think the chairman meant, at any rate that would be my opinion, that you might pursue whatever course will best

bring the matter before the committee in the briefest way, so as to fully bring out all the matters you wish to.

The CHAIRMAN. Mr. Higgins thought, and the committee's thought, was that the petition should go in consecutively in one place; but you can go on and make such explanations or comments as you wish.

A. The order of the superior court appointing Peter L. Larson as receiver in that case contained instructions to him to take possession of the properties of the firm and manage the same and carry on and operate the business, and pursuant to that the receiver took full possession of all the property of Heckman & Hansen.

Q. Was there any authority in the order permitting the sale of the property?—A. Not at that time.

Q. In his order of appointment, I mean.—A. No; it contemplated that he was to go on and manage the property. The libeling of the *Alice* occurred on the 15th of June. It was in July following that those various suits were begun.

Q. By the Scandinavian Bank?—A. Yes, sir.

Q. In what year?—A. I think that was 1901. I call your attention to these dates at this time because in Judge Smith's report he suggests that Metcalfe & Jurey's sole object and all that they could do in the interests of Heckman & Hansen was to take some dilatory steps and gain time. I call attention to the fact that instead of that being the case, they took the first step themselves, and the further fact that in the summer months of July and August our courts here, our State courts, are not in session. A demurrer would operate to hold up any proceedings until the following September unless it was some matter that required immediate action.

Q. I do not think I get the connection of that remark; are you now referring to the suit in which the *Alice* was libeled?—A. Yes, and to the suits brought in the State court.

Q. But the *Alice*, of course, was not libeled in the State court; it was libeled in the Federal court.—A. In the Federal court.

Q. Now, who was it that took the first step which you mentioned?—A. Gen. Metcalfe and the firm of Metcalfe & Jurey.

Q. In libeling the *Alice*?—A. In libeling the *Alice*.

Q. What was the connection of your remark about the courts not being in session and the demurrer being sufficient to hold a case up until September?—A. I had—before Judge Smith—I had made some complaints relative to the method in which Gen. Metcalfe had acted in the proceedings, and Judge Smith's report was that Gen. Metcalfe's sole object and all that he could possibly do for the firm was to put in some dilatory tactics—put in demurrers and motions and the like and gain a little time for them.

Q. Well, did he do that?—A. He did put in a demurrer, yes, sir.

Q. What was the suit in the State court?—A. To some of them, I do not know that he did in the receivership proceedings, I don't think he did.

Q. All right; go ahead.—A. Then, in the petition I called Judge Hanford's attention to the method in which those various cases were gotten rid of. They were practically stipulated out of court. The details I will pass over.

Q. You mean the other cases in the State court in connection with the receivership proceedings and the suit by the Scandinavian-American Bank?—A. Yes, and also the *Alice* matter in the Federal court.

Q. Does that petition show the outcome of the libel suit?—A. It does.

Q. I just want to know the fact; you do not need to read it.—A. It does. I then set out that the receiver in the State court had gone to that court and got an order of sale and disposed of Heckman & Hansen's property.

Q. Who acted as his attorney on that?—A. Richard Saxe Jones. While that matter was pending, before the sale, Mr. Heckman went and employed C. A. Reynolds to supplant Gen. Metcalfe. Mr. Reynolds then came into Judge Hanford's court with a petition in bankruptcy asking that his clients be adjudged bankrupts. He got an order of adjudication in bankruptcy and he also obtained a restraining order directed at the State court, restraining it from proceeding further. His application for the order made some charges of fraud, not, however, specifically, as I remember it. I remember reading it and that was served on the State court and held up the proceedings over there.

Q. When you say it was served on the State court, do you mean it was served on the receiver?—A. I do not know who it was served on, except that it was made effective; that is all I know. Then I alleged in this petition Judge Ballinger and Richard Saxe Jones came into Judge Hanford's court and in their moving papers suggested that they appeared specially and to apprise the court that he was proceeding under a misapprehension of the facts. They did not state what the facts were, but they got an order from Judge Hanford making a reference to United States Commissioner Bowman to take testimony to see whether the State court was getting an adequate price for the property and whether a better price could be obtained in bankruptcy. Proceedings were had before Commissioner Bowman and ultimated in the Federal court taking off its restraining order against the State court. I alleged in this petition that at that time it appeared from the evidence before Judge Smith that the attorney for the bankrupts in his court——

Q. Whom?—A. Mr. Reynolds had already received from the bonding company on the bond of the receiver in the State court $100.

Q. As a fee, you mean?—A. Yes.

Q. As the attorney?—A. Yes; and he had also received from the Scandinavian-American Bank the sum of $150.

Q. Those facts were proved later on, were they?—A. They had already been proved.

Q. They had already been proved?—A. They had already been proved.

Q. In the hearing before Judge Smith?—A. This allegation had been made in this petition and I had confined myself to the evidence before Judge Smith, as I specifically told Judge Hanford.

Q. Was that fact disputed in any way?—A. The receiving of the money was not disputed; the excuse was offered——

Q. By whom?—A. By Mr. Reynolds; that the bank had paid the money as a contribution to be given to Mr. Hansen, for whom the bank felt sympathy on account of his affliction, and Mr. Reynolds said that he had the money and that we could have it any time that we had a mind to come and get it.

Q. Did he claim that the entire $250 had been given for that purpose, or for some part of it?—A. The $150 was all that he got from

the bank, and that the whole of that sum had been given for that purpose.

Q. Did he claim he had ever tendered it to your clients in any way or tried to get them to take it?—A. No. Then I suggested to Judge Hanford that in the State court the receiver had received no money whatever for the property, but that on the day he was discharged he was paid $2,000 by the Scandinavian-American Bank. I also suggested to him that the way that the State court had—the way the record in the State court had been fixed up was by some of the parties—I don't know that I alleged whom—went into the State court and obtained an order of distribution of the money and when they had obtained that money they paid into court with one hand twenty thousand and some odd dollars and took out the greater portion of it at the same time with the other hand.

Q. Took it out for alleged creditors?—A. Upon claims of their own that they had proven.

Q. Now right there; in regular receivership proceedings in the State courts in Washington what is the practice in regard to ascertaining who are creditors?—A. I do not know what the practice is. In this case there was no action taken by the court. No one could examine the record of the State court and determine who the creditors were. I think that that is the only receivership proceeding that I have had to do with in the State court.

Q. And you do not know whether it is the practice to require a receiver to advertise for claims?—A. I think that it is. I do not know whether he did that in this instance or not. It is not made a part of this petition and I do not recall it.

Q. All right, go ahead—at any rate, the record in the State court does not show that any advertising was done for creditors.—A. No; I can not say that. I do not know. You are asking me something that is outside of this petition and I do not happen to recall it now, if I ever knew it.

Q. All right.—A. I also stated to Judge Hanford that out of the amount that the bank had paid the receiver when he was discharged, the receiver had paid the debts of the receivership and had given a certain amount of the remaining to his attorney, Richard Saxe Jones.

Q. Were all those facts proved before Judge Smith?—A. Yes.

Q. Without controversy?—A. Yes; the payment of the money—it was never suggested had not been made—the written evidence—I had of it——

Q. In other words, those facts were proved and not disputed.—A. They were proved and not disputed, the payment of the money.

Mr. Hughes. For my own information and that the record may be clear, when the witness said "I suggested so and so to Judge Hanford" I want to ask him whether he made that suggestion orally or whether he is now stating that the suggestions were those contained in the petition?

Mr. McCoy. He has already stated they———

The Witness. (Interrupting.) I am confining myself to the petition and I want to be so understood.

Mr. McCoy. (Continuing.) That he is confining himself to what he stated in the petition, and he is simply summarizing it in a way for our benefit.

The WITNESS. I am not giving any evidence of anything, Mr. Hughes, outside of what is contained in this petition, and I do not pretend to.

Mr. McCOY. Proceed.

A. (Referring to the petition.) There are a great many further allegations contained in this petition which I think is interesting to the committee, but I think they are made as succinctly in the petition as I could make them on the stand and for my purposes I think that I have called attention to as many as I care to at this time, although I would like to have the committee inform itself as to everything that is contained in the petition. I think a great many of the questions which you might want to ask later, perhaps, will be found answered in that petition.

I want to say this now, that I made it, I think, very plain, and I think the petition will bear me out, what it was that the creditors in Judge Hanford's court—this little handful of five creditors, were interested in covering up. I showed, too, that the net result of the manipulation had been this, that Heckman & Hansen, who had an estate of $60,000, had been despoiled of that estate, and that it was not due to any financial difficulties at all; that when they were enbroiled in the courts as they were, they were making $2,000 net per month, and that they never had any bills presented to them by their creditors that were not paid promptly; that they were a going concern and in the best of condition; that they had lost all of that property and at the same time they never had had a trial on any action anywhere, or any judgment rendered against them.

Q. Nor any lien claimed against them in any action pending in the State court?—A. There had been liens claimed; that is one of the suits of the bank had been to forclose.

Q. That was subsequent, however, to the receivership proceeding?—A. No, it was a few days before; they had brought a suit to foreclose this $5,000 mortgage given under the circumstances that I have just related.

Q. That was not involved in the receivership proceeding?—A. That was not involved in the receivership proceeding and was not proven there as a claim.

Q. In other words, as I understand you, the suit of Curtis on this account stated never resulted in a judgment?—A. No.

Q. And there never was any judgment in any matter involved in the receivership proceedings in the State court?—A. That is true.

Q. Therefore, in the State court there was no one who claimed a lien on any of the properties of your clients in so far as the receivership was concerned?—A. That is true.

Q. And that, without any adjudication of any kind or description in favor of any creditor, their property was sold out in the State court; that they never got a cent out of it except so far as it may have been used to pay creditors and in the bankruptcy court no creditor ever got a cent out of it; is that substantially it?—A. Yes, sir; that there was no money—I don't know that I just catch your question, Mr. McCoy.

(Question repeated to the witness.)

A. Let me answer it this way. In the State court the receiver was discharged showing that he had about $20,000 in his possession.

Later on the record was straightened, I think by Mr. Mayhew, the purchaser of the property, getting an order of distribution, as he called it, and receiving about sixteen or seventeen thousand dollars.

Q. In payment of claims of creditors which he had purchased or acquired control of?—A. Which he had purchased; yes, sir; and the balance of the money was taken out by other creditors.

The CHAIRMAN. What was the aggregate amount of the claims of the five petitioning creditors?

A. $23.

Q. $23?—A. $23.

Mr. MCCOY. That is the creditors who were petitioning or who did petition to have the estate declared closed.

A. Yes, sir; they were law clerks, for the most part, in Judge Ballinger's office.

Q. They were what?—A. Law clerks in Judge Ballinger's office—the petition sets out their identity.

Q. Were they original creditors or creditors by assignment?—A. No—by assignment [referring to petition].

Q. I wish you would name them.—A. One was A. J. Tennant, at that time a clerk in Judge Ballinger's office; he was afterwards his partner; he was a creditor for $4.73; F. A. Brightman, a clerk in Judge Ballinger's office, $7.10; John Larrabee, a clerk in Judge Ballinger's office, $5.25; D. C. Conover, a former clerk in Judge Ballinger's office, $2.50; Charles W. Russell, a bookkeeper in Mr. Mayhew's office, $3.55. Those were the creditors that came into Judge Hanford's court.

Q. And moved to close the estate?—A. Yes.

Q. The net result to Heckman & Hansen was, whereas they started in being solvent they came out without anything.—A. Yes, sir; and without getting any trial or ever getting so far as an answer in any of their cases.

Q. Have you finished you statement now as far as you care to make it?—A. Why, I think so.

Q. In testimony yesterday you read, as I remember it, a notice of motion, one branch of which was that you be disbarred? What was the other relief asked for by that notice?—A. That the report of Special Referee Judge Smith recommending that the estate be not reopened be confirmed.

Q. Now, did you ever hear before of a joinder of two such proceedings?—A. I never did; it was a novelty to me.

Q. Did you ever know of any attorney anywhere in a civilized country who ever heard of such a thing?—A. I never did.

Q. What is the regular method of disbarment proceedings, if there is any regular method in Washington?—A. There is no regular method; it is an informal matter which can be taken up most anyway; I understand now that the Seattle Bar Association have a special committee to whom such matters are delegated, but that is an association formed since these matters occurred. I understand, from newspaper reports, that it was formed because of the fact that things were so rotten in the King County bar that some of the bar felt they did not want to associate with some of the others and they wanted a special association. That is my understanding of the reason as it was given in the press at that time.

The CHAIRMAN. Has any court other than the supreme court of the State the power to disbar an attorney in Washington?—A. They do it.

Q. Well, they might deprive him of the right to practice in that particular court, but his license would remain good elsewhere, wouldn't it?—A. I am not informed about that.

Q. The license issues from the supreme court.—A. Exactly.

Q. And what other court would have the power to revoke that license?—A. I do not know, but I have observed that proceedings have been instituted in our superior court by the Seattle Bar Association.

Q. The superior court might, I take it, for a reasonable time suspend an attorney from practicing in its court, but its jurisdiction would not extend beyond his own court, would it?—A. I think I would subscribe to that, but I never looked up the authority.

Mr. MCCOY. A Federal judge would have power on a proper showing, perhaps, to not disbar, but to suspend an attorney who had been admitted to practice in his court.—A. I have not any doubt of it.

Q. Without that having any effect on his original admission to practice in the State court; well, while that would be so, of course the State court could not control the practice in Federal courts, but now I want to ask you another question. Either before or after the appointment of this committee of the bar association have you known of any cases where an attorney accused of malpractice or other objectionable things has been tried in any way for or upon the charges for the purpose of determining whether or not he should be disbarred?—A. Yes, I have observed the newspaper reports; I have never taken any interest in the proceedings and I never have been present, but I am quite sure that the Seattle State Bar Association have instituted proceedings and have taken and tried them in King County.

Q. The committee of the bar association makes the original investigation?—A. Yes.

Q. Is that how it's done?—A. Yes.

Q. And then they report to the court that there is sufficient ground for proceeding in the matter.—A. I do not think they report to the court. I think they—if they are satisfied that there are grounds—they bring an action before the court upon their own motion. I do not want to—I am only giving my opinion of that, however. I think there are others here who can advise you fully.

Q. Have you ever held any official position in the city of Seattle, Mr. Finch?—A. I was deputy prosecuting attorney for one year.

Q. That is a county office?—A. Yes, sir, it is a county office.

Q. And the appointment is given how?—A. The appointment is coming from the prosecutor himself.

Q. You had yesterday a pamphlet which you read from; will you let me see that, please? [Witness hands pamphlet to Mr. McCoy.] This pamphlet is a petition for review pending in the United States circuit court of appeals in the matter of Heckman & Hansen; what aspect of the matter got into the circuit court of appeals?—A. I petitioned the circuit court of appeals to review the proceedings had before Judge Hanford. It is a special proceeding granted by the bankruptcy act itself. It is rather a peculiar one, too, I think. I never met with anything just like it. The petition is one that the

law contemplates may be answered or pleaded to or demurred to; it is a novelty to me.

Q. Without going into that, what was the object of your petition and what did it bring into the circuit court of appeals for review?—A. It took down there so much of the record as I could take.

Q. In what branch of the proceedings?—A. Just the matter of law.

Q. What was it you sought to have reviewed; what action of Judge Hanford?—A. His refusal to reopen the estate.

Q. What happened?—A. They denied the application.

Q. On what grounds?—A. On the grounds that the superior court, I believe, had jurisdiction in the matter, or something of that sort, to sell the property. They laid down this law that where one court—one of two courts of concurrent jurisdiction first takes cognizance of a case it may proceed to the end. There was no question raised as to that law being a law. I had always conceded it, but the point I had tried to make was that the State court was proceeding without having any liens before it to foreclose or having anything more than the mere naked legal possession of the property; but the way the matter—from the way the matter had been handled in this court I could not make that point before the circuit court of appeals; when I presented my petition I set that out very plainly, but Judge Hanford made a reference on that petition and it got before Judge Smith, and the evidence which was taken grew to about 800 pages of typewritten copy, and I was unable to get that before the circuit court of appeals.

Q. Now, you were unable, you mean, for the lack of money to pay for it?—A. For the lack of money to pay for it, yes. I am also doubtful if I could take up the facts anyway; I think that the law is all that could be taken up on a petition to review; but I could not get the facts as I stated them in this court, so that I could get a square opinion from the circuit court of appeals.

Q. Did you apply for a certificate of facts?—A. No, I did not; I simply took down each and every paper that had been filed in Judge Hanford's court and certified properly, of course, and a copy of the minutes of his record.

Q. Did the circuit court of appeals hand down an opinion?—A. They did.

Q. Have you any idea where it is reported?—A. I can readily find it for you.

Mr. Dorr. I will hand it to your honor.

Mr. McCoy. Just give the citation, please, Mr. Dorr.

Mr. Dorr. One hundred and forty Federal, at page 859, the case is entitled "In re Heckman et al."

Mr. McCoy. Can I see it, please? [Mr. Dorr hands the volume of reports to Mr. McCoy.]

The Chairman. The opinion cited starts out by saying "An order will be entered striking from the records the addendum to the petitioner's brief." What was this addendum?

A. In my brief, at the end, I addressed myself personally to the court; to the circuit court of appeals, in which I set out the facts that I had related to Judge Hanford and suggested to the circuit court of appeals that if they had any old-fashioned notions akin to mine as to what should be done under those circumstances and cared to look

into it I would devote my time to showing those facts to them, and they struck it out.

Mr. HUGHES. They were also uncivilized?

Mr. McCOY. Let me see that pamphlet again.

The WITNESS. You may have it if you wish.

The CHAIRMAN. The opinion is so very brief that it will save others the trouble of looking it up if it were inserted in the record, and it may go in at this point.

Whereupon the decision cited is copied into the record as follows:

In re Heckman. Circuit Court of Appeals, Ninth Circuit, October 23, 1905. No. 1166.

BANKRUPTCY—JURISDICTION OF COURT—PROPERTY IN POSSESSION OF STATE COURT.

A court of bankruptcy can not administer upon property of a bankrupt which at the time of the filing of the petition was in the actual possession of a receiver appointed by a State court more than four months previously, and which was subsequently sold by order of the State court in the same proceeding.

Petition for revision of proceedings of the District Court of the United States for the Northern Division of the District of Washington, in bankruptcy.

Jerold Landon Finch, for petitioners.

R. A. Ballinger, J. F. Ronald, and Alfred Battle, for respondent.

Before Gilbert, Ross, and Morrow, circuit judges.

Ross, circuit judge. An order will be entered striking from the records the addendum to the petitioners' brief. The petition is an original proceeding in this court to obtain the review and revision, pursuant to the provisions of section 24b of the bankruptcy act of July 1, 1898 (U. S. Comp. St. 1901, p. 3422), of the action of the district court for the State of Washington in refusing to reopen the estate of the bankrupts and administer upon property of theirs which, according to the record before us, was in the actual possession of a receiver appointed by the superior court of the county of King, State of Washington, in a suit brought by a creditor of Heckman & Hansen more than four months before they filed their petition in the court below to be adjudged bankrupts, under process of which State court the property the petitioners now seek to have the court of bankruptcy undertake to administer was sold and disposed of. That this can not be done is conclusively settled by the decisions of the Supreme Court in the cases of Pickens *v.* Roy, 187 U. S. 177, 23 Sup. Ct. 78, 47 L. Ed. 128, and Metcalf *v.* Barker, 187 U. S. 165, 23 Sup. Ct. 67, 47 L. Ed. 122. See also Frazier et al *v.* Southern Loan & Trust Co., 99 Fed. 707, 40 C. C. A. 76; In re Price (D.C. 92 Fed. 987.

Proceedings dismissed at the petitioners' cost.

Mr. McCOY. I suggest, Mr. Chairman, that as to this record in the circuit court of appeals, it should be introduced—is this a brief?

A. That is a brief on my petition.

Mr. McCOY. Well, never mind it then.

The WITNESS. It also contains the addendum which they struck.

The CHAIRMAN. Anything further with Mr. Finch, Mr. McCoy?

Mr. McCOY. No, I think not.

The CHAIRMAN. Any further questions with Mr. Finch, Mr. Dorr?

Mr. DORR. Mr. Finch, when did you first come into the Heckman & Hansen litigation?

A. The day the State court was about to dispose of its property—of the property of Heckman & Hansen.

Q. You mean the day that the sale was about to be consummated?—A. Yes.

Q. After the order of sale had been made?—A. My recollection is that the order of sale and the confirmation was all one order.

Q. Well, was it about the time the sale was to be effected that you came into it?—A. Yes.

Q. Did you appear in the State court?—A. I did.

Q. What did you do over there?

Mr. McCoy. Just a minute; in order that we may get it into the record, what do you mean by saying that the order of sale and the confirmation were all one or both one?

A. I mean just that. My recollection is that the sale and the order confirming the sale was one and the same order.

Mr. Hughes. Don't you think, Mr. McCoy——

The Witness (continuing). I am not quite sure of that, but I think that also it contained the order discharging the receiver—I am not sure about that.

Mr. McCoy. Is that order in court?

Mr. Hughes. Don't you think, Mr. McCoy, if that is deemed material, that you should not speculate upon memory about a thing of importance when the witness's memory is so mixed; of course it seems to me absurd that the order and the confirmation of sale could be one and the same document, but the record itself, if there is any such in existence, should speak instead of his memory.

Mr. McCoy. Well, we heard yesterday of a citation dated 11 o'clock in the morning was made returnable at 10 o'clock the same morning. Now, it may be that things go that way in the State of Washington, I don't know.

Mr. Hughes. The record should speak, however, as to these matters.

Mr. McCoy. Surely, if anyone has it here we might have it.

Mr. Hughes. It can be obtained easily.

Mr. Dorr. I have the record all right, but I did not wish to interrupt the witness.

The Chairman. It will all come out in due course—proceed.

Mr. Dorr Are you quite through, Mr. McCoy?

Mr. McCoy. Yes.

Mr. Dorr. What did you do in the State court, Mr. Finch?

A. I suggested the fact that the firm had been adjudicated bankrupts.

Q. In the Federal court?—A. Yes.

Q. Did you file any written appearance over in the State court?—A I don't think so.

Q. Who were you acting for?—A. Heckman & Hansen.

Q. You mean to say as a friend of the court you volunteered this information?—A. No; not at all.

Q. Well?—A. I was acting for Heckman & Hansen.

Q. Were you acting as a party to that litigation?—A. Why, yes.

Q. By any pleading or paper?—A. Yes.

Q. Now, what was that?—A. Why, I think it was denominated a motion to stay proceedings.

Q. Which you filed in the State court?—A. Yes.

Q. Then you did enter an appearance there?—A. Oh, certainly; I thought you meant a formal entering of an appearance.

Q. I want to know if you got into that case as an attorney of record?—A. Well, that was the place.

Q. That was the first connection you had with any phase of this litigation?—A. Yes.

Q. Now, it was a fact at that time that Heckman & Hansen had filed a voluntary petition in bankruptcy in the Federal court?—A. It was a fact; yes.

Q. Did you have anything to do with that?—A. I did not.

Q. How did that come to your attention?—A. My clients informed me of it.

Q. That they had filed a voluntary petition?—A. Yes.

Q. In the Federal court?—A. Yes.

Q. And had been adjudicated bankrupts?—A. Yes.

Q. Now, did they employ you?—A. They did.

Q. At that stage of the proceedings?—A. They did.

Q. To supersede those other attorneys?—A. They did.

Q. Were the other attorneys then dismissed from the case?—A. No, sir; I want to see whether I can answer your question or not. I don't know. In all the subsequent proceedings I had to contend with both Metcalfe & Jurey and Mr. Reynolds, although they did not pretend that they were acting for Heckman & Hansen.

Q. Well, they were, were they not, the attorneys of record for Heckman & Hansen?—A. I don't think Gen. Metcalfe was, because Mr. Reynolds had been employed to supersede him.

Q. Well, the firm of Metcalfe & Jurey were the attorneys of record for Heckman & Hansen, were they not?—A. They were at the inception, and I don't know whether——

Q. Do you know——

Mr. McCoy. Finish your answer.

A. I don't know whether Mr. Reynolds was employed to supersede them; he made no record of the matter, or he simply took charge of the proceedings from them on.

Q. Do you know, as a matter of fact, whether Metcalfe & Jurey ever retired from this case?—A. No; I do not know.

Q. Do you know whether Mr. Reynolds ever retired from his representation in court of Heckman & Hansen?—A. I know in subsequent proceedings I took charge of them and that he was not there.

Q. Well, did he withdraw from the case formally, or did you simply come in the case as an additional counsel and do the work?—A. Well, I came into the case to take charge of them and merely supplanted him, as a matter of fact, without a formal order, if that is what you mean.

Q. There was no change on the record?—A. In the State court?

Q. In the State court, sir?—A. No; only in this. Some orders taken in the State court showed Mr. Reynolds as the attorney for the bonding company.

Q. I have not reached that phase of it yet; I am asking about the representation of Heckman & Hansen.—A. Well, I have answered you just as well as I can. There was no formal order of substitution made there.

Q. Now, Mr. Finch, you testified very clearly on yesterday that in these proceedings in the bankruptcy court you did not know who Gen. Metcalfe and Mr. Reynolds were representing, and I want you to state now whether you insist upon that answer or whether you wish to modify it.

Mr. McCoy. Just a moment. I just call your attention to the fact, Mr. Dorr, that my recollection of the testimony is not so.

The CHAIRMAN. First ask the witness what he did testify to, rather than stating it as a fact.

Mr. DORR. What did you testify to yesterday as to those various attorneys and their respective relations to the litigation before Judge Hanford?—A. I said that in these proceedings before Judge Smith I did not know who they represented.

Q. Well, now, do you wish to adhere to that answer, or to modify it, since I have called your attention to the fact that these gentlemen were the representatives of Heckman & Hansen in the State court?—A. I adhere to what I said yesterday.

Q. Who were the attorneys for Heckman & Hansen in the bankruptcy proceedings?—A. C. A. Reynolds, before I supplanted him.

Q. In the Federal court?—A. Yes.

Q. Was his name ever withdrawn as an attorney of record for Heckman & Hansen in the Federal court?—A. I think so.

Q. Do you know?—A. That is my best recollection, that he was.

Q. And you still insist that at the time of these proceedings before Judge Eben Smith, master in chancery, you did not know the relations of Mr. Reynolds or Mr. Metcalfe or his law partner, Mr. Jurey, to the Heckman & Hansen litigation?—A. I don't say that.

Q. Well, what is the fact about it; did you or didn't you?—A. I did not know whom they represented when they got down before Judge Smith, or what they claimed their position was in that case.

Q. You knew that they had been personally attacked in your original and amended petition, didn't you, before Judge Hanford?—A. I think not.

Q. You think not?—A. I think not. I think that in the original petition Judge Ballinger was not mentioned. I think Mr. Metcalfe was not mentioned.

Q. Do you mean to state to this committee that in the original petition you did not make a wholesale charge of fraud against the Scandinavian-American Bank and its attorneys and against the superior court and its receiver and the receiver's attorney and the attorneys of Heckman & Hansen that had preceded you?—A. I mean to say this, that I certainly made charges of fraud in that petition and I charged the Scandinavian-American Bank and the receiver in the State court with collusion. I do not think at the present time that I named Gen. Metcalfe or Ballinger—Judge Ballinger.

Q. What do you mean in your statement in open court about Judge Ballinger, which you have testified about at this hearing, that if you were given these books of the Scandinavian-American Bank you would produce evidence that would be sufficient to disbar Gen. Metcalfe, R. A. Ballinger, Richard Saxe Jones, and C. A. Reynolds?—A. You mean that question in connection with your other one?

Q. Yes.—A. I mean this, that after I got down there before Judge Smith I learned of a whole lot of facts that I never suspicioned before.

Mr. MCCOY. Tell what they were before you get through with your answer.

A. I learned, for instance, of the payment that had been made to Mr. Reynolds of the $150 by the Scandinavian-American Bank, and of the $100 that had been paid him by the bonding company; I also learned of certain moneys that Metcalfe & Jurey got that I never had heard of before.

Q. And you wish to insist upon your answer that in the petition which you filed originally in Judge Hanford's court you did not make a general wholesale charge of fraud.

Mr. McCoy. Now, just a minute; if the petition is in court I suggest that it be handed to the witness and let him answer as to what he said.

Mr. Dorr. I think you have it, Mr. McCoy, or it is on the reporters' table.

Mr. McCoy. Then the petition speaks for itself.

The Chairman. Is this it?

The Witness. No; the original petition I did not have and do not have, nor a copy of it.

Mr. Dorr. This one which has been introduced as Exhibit No. 33 purports to be the original petition.

A. No.

The Chairman. That is the amended petition?

The Witness. That is the original petition relative to Ballinger, where I told the court what I had found.

Mr. Dorr. Where is the other?

Mr. McCoy. Here it is [showing].

The Witness. You do not have it Mr. Dorr, here, unless you have it some place the petition to which that is an amendment.

Mr. Dorr. We will just take this one.

Mr. McCoy. What are you handing him now?

Mr. Dorr. The amended petition. I will ask you to begin with paragraph 5 and read forward to paragraph 11.

The Chairman. Is this the original petition which the witness now has?

Mr. Dorr. It is the one which the witness produced.

The Witness. No, sir, it is the amended.

Mr. McCoy. Refer to it by the exhibit number and then we will not get it confused; what is the number on the face of it—on the front of it—is it not marked as an exhibit on the face?

A. Thirty-two.

Q. Then you are reading now from Exhibit No. 32?—A. Yes, sir, the amended petition. I am quite familiar with these paragraphs.

Mr. Dorr. Do you say, being familiar with them, that they do not contain the charge of a general conspiracy?

A. No, I do not say anything of the sort.

Q. You say they do?—A. Why certainly.

Q. Sir?—A. Why, certainly.

Q. And naming the Scandinavian-American Bank and its officers, Richard A. Ballinger, J. T. Ronald, and Alfred Battle, its attorneys, J. B. Metcalfe, John S. Jurey, C. A. Reynolds, who at different stages of the proceedings represented Heckman & Hansen; John P. Hoyt, the referee in bankruptcy in Seattle; Warren A. Worden, the referee in bankruptcy in Tacoma; A. C. Bowman, special referee appointed in the Heckman & Hansen litigation by Judge Hanford at one of the preliminary hearings; Peter L. Larson, the receiver of the superior court; Richard Saxe Jones, the attorney of said receiver; E. F. Fisher, trustee in bankruptcy; and the law firm of Gray & Tait, attorneys of said trustee?—A. They do not name one of them except the bank.

Q. Doesn't it by reference then?—A. I don't think it does. You are reading from Judge Hanford's opinoin and I would be glad to have you take it and see if it does.

Q. I am asking you the question.—A. No; it does not.

Q. It does not?—A. It does not. I would be glad to have anyone see if it does, too.

Mr. DORR. That is what I want to have them do.

Mr. MCCOY. What page in Judge Hanford's opinion are you reading from, Mr. Dorr?

Mr. DORR. Page 8.

The CHAIRMAN. Mr. Dorr or Mr. Finch; was there any other information before the court which justified the citation or reference in the opinion to the names which Mr. Dorr has read?

The WITNESS. No; not in the connection that Judge Hanford uses it there. Judge Hanford in that is trying to explain why he made the reference to Judge Smith and he charges that I charged all those people, which is not true.

Q. If you know, where did Judge Hanford get the names which are recited in his opinion and now read by Mr. Dorr?—A. Later; later, after we had been before Judge Smith and when I came back to Judge Hanford after he had made his reference down there, I had charged certain of the persons and I have named them, but he, he has included a wholesale list of names there as though I had charged them, and I had not done anything of the sort; and even to this day—take Judge Worden, for instance.

Q. What I want to get at is this: If you know, how did Judge Hanford get those names; from the record or from any evidence then before him, or did he draw upon his private information for them, or how did he get them?—A. Judge Hanford apparently has put in there the name of everybody that was in any way connected with this case and says that I charged them with some specific allegation of fraud. Take Judge Worden, of Tacoma; there is not any excuse for his name being in there.

Mr. MCCOY. You mean that that is an absolute fabrication, so far as you are concerned; so far as you and your charges are concerned?

A. If you will let me read it I will tell you what is a fabrication.

Mr. DORR. I would like to proceed with the cross-examination first and then I will hand it to him.

The CHAIRMAN. It is not quite a cross-examination; it is just a further examination.

Mr. DORR. A further examination.

The CHAIRMAN. We have no cross-examination.

Mr. DORR. Further examination—I stand corrected.

Q. I refer to paragraph 10 of your petition, which reads as follows:

> Your petitioners further represent that at the instance of your petitioners a subsequent reference of the matter of these bankruptcy proceedings pertaining was made to the Hon. Warren A. Worden, referee of this court, residing at Tacoma, without the said district, and the adjourned meeting of said first meeting of creditors for the purpose of proving claims and electing a trustee was held before the said Hon. Warren A. Worden on the 28th day of May, 1902.

Now, is not Mr. Warren A. Worden's name mentioned here?—A. It is not in what you told me to refer to—no sir; you told me to refer to paragraph 10.

Q. I am reading from paragraph 10 of the original petition, which you told me, without examining your copy, was the same as the

amended petition with one slight exception which you explained.—A. I do not have it before me; I have the amended petition, and that is a different paragraph.

The CHAIRMAN. Possibly the paragraphing was changed in the amended petition.

Mr. DORR. Well, is that allegation in your amended petition?

A. I can not recall the paragraphing. Paragraph 11 has an allegation in which the Hon. Warren A. Worden is named.

Mr. McCOY. Read it.

A. [Reading:]

Your petitioners further represent that at the instance of your petitioners a subsequent reference of the matters to these bankruptcy proceedings pertaining was made to the Hon. Warren A. Worden, a referee of this court residing at Tacoma, without this said district, and the adjourned meeting of the said first meeting of creditors for the purpose of proving claims and electing a trustee was held before the said Hon. Warren A. Worden on the 28th day of May, 1902.

Q. That is paragraph 11 in the amended petition?—A. Yes, sir.

Q. Now, will you read from paragraph 10 in your amended petition?—A. [Reading:]

Your petitioners further represent that at the time reference of these matters was made to the referee in bankruptcy, as aforesaid, the said referee was attoney for and an officer of the bonding company which had bonded said receiver in the said State court, said Peter L. Larsson, and against which said receiver gross charges of fraud and mismanagement has been made in said court, and further charges were about to be made, and the said referee, with knowledge of said charges and the truth thereof, and with knowledge of said adjudication and of the reference of all matters thereto pertaining to him as referee, as aforesaid, became engaged in the said State court in an effort to free his said client from the said bond of said receiver, and to that end the said referee conspired and colluded with the said Scandinavian-American Bank to postpone and delay proceedings in these bankruptcy matters until after the alleged sale of the said property of these bankrupts had been made in the said State court, as aforesaid, and the evidence of the fraud of said receiver concealed and removed as far as possible, and until the said bonding company, his client, should be released from the said bond of said receiver; and, in furtherance of said conspiracy, the said referee wilfully failed and neglected to call the first meeting of creditors of these bankrupts to elect a trustee, or to set in motion in any manner whatsoever the machinery of this court looking toward the administration by this court of the said estate, as by law and duty to these bankrupts he was required to do, until after the said alleged sale by said State court had been made and the property delivered to the said Mayhew, as aforesaid, and in the evidence of the fraud of said receiver to that extent removed and covered up, as aforesaid, and after the said bond of said receiver had been discharged by said State court. That said first meeting of creditors was not called by said referee until the 14th day of April, 1902, as more fully appears from the records and files of this court in this matter, reference to which is hereby made.

Q. Now, without naming Judge Hoyt, didn't you refer to him in that?—A. Yes, sir; I did.

Q. Then what is the excuse for your answer that Judge Hanford drew on his imagination in naming Judge Hoyt?

Mr. McCOY. He did not make that answer, Mr. Dorr.

The WITNESS. I did not say so.

Mr. DORR. What did you say?

A. I said there were some of them.

Q. Who is that?—A. One of them is Worden and the other—if you will let me take that I will name you the rest.

Mr. HIGGINS. Do you claim that in the opinion Judge Hanford filed he went outside the record of the case, either in the pleadings or the evidence taken or statements made by counsel?

The WITNESS. I would like to read the opinion and then I would answer it. It is a long opinion and I would like to have it before me and I would be glad to answer it.

The CHAIRMAN. Before being required to answer any further questions on it I think he should be permitted to see the opinion.

Mr. HIGGINS. You mean you can not answer it without seeing the opinion?

A. That is true. I have not read Judge Hanford's opinion for four or five years.

Mr. DORR. Have you sufficiently examined the allegations in your petition to reopen the Heckman & Hansen case, to ascertain whether or not Judge Hanford, in his decision, in referring to the parties that I have named, had basis for so doing in your petition?

A. I have not examined the petition at all, but I have examined the list of names that he says I attacked, and I will answer your question in reference to them. He says I attacked J. T. Ronald and Alfred Battle. I did not. They were members of the firm of Ballinger, Ronald & Battle, but I always picked out Judge Ballinger as the man that I was attacking. That is also true of John S. Jurey. He was a member of the firm of Metcalfe & Jurey, but I never attacked him personally; it was Gen. Metcalfe that I hit at. Then there was Warren A. Worden. There is not a possible excuse for putting his name in there as a man that was attacked. There is A. C. Bowman. I never said at any time or to this day have I charged A. C. Bowman with anything. It is likewise true of E. F. Fisher, who was the trustee. It is true of Gray & Tate. He always says I attacked the local representative of the American Bonding & Trust Co. I did nothing of the sort.

Q. You did, however, make the statement, in open court, that if you were given an order for the books of the Scandinavian-American Bank you would produce evidence from those books sufficient to disbar Richard A. Ballinger, J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds?—A. I did not. I said if he would let me have the books I would bring in the evidence; yes, sir. I did not say that I would get the evidence from the books.

Q. Did you ever get the evidence?—A. I got that which satisfied me and I presented what I had to Judge Hanford, and, to make good on it, I paid $450 out of my own pocket to show to him.

Q. That is, for the transcript, you mean?—A. Yes, sir.

Q. Did you have a contingent fee in this matter?—A. I did.

Q. And advanced the money to carry on the litigation for Heckman & Hansen?—A. I did.

Q. You didn't find anything inconsistent with the law in doing that, did you?—A. None at all.

Q. Originally, the order of sale that was made in the superior court, as I understood you to state, provided that the property was to be sold subject to the liens against it?—A. I don't know where you got that, Mr. Dorr. I did not take that matter up, that I know of.

Q. I gathered that from your testimony on yesterday, when you were being interrogated by Mr. McCoy.—A. I did contend—I did contend before Judge Smith, before Judge Hanford, and even in the State court—that the property had been sold subject to liens.

Q. And you so testify here?—A. I think Mr. McCoy asked me the question yesterday and I did so testify.

Q. That is still your understanding?—A. That is my understanding of the law; yes, sir.

Q. It was really the foundation of your complaint—that a sufficient amount of revenue had not been realized from this sale, because they had used the proceeds of the sale to pay off the liens?—A. No, sir. The original complaint that I made to Judge Hanford did suggest that they had tried to get hold of that property for a grossly inadequate price; that is true. Subsequently, as a matter of law and as an additional reason why he should reopen the estate, in order to show him that there was property that was not administered, I suggested that the property, if it had been sold at all, had been sold subject to liens.

Q. And you still so insist that that was the way it was sold?—A I insist that, as a matter of law, that that property was sold subject to liens.

Q. Did you ever examine the order of sale in the superior court?—A. I did. I went through all the papers at that time—everything bearing on the matter.

Q. Don't you know, as a matter of fact, that the condition was just exactly the reverse from what you have stated?—A. I don't know it, as a matter of fact; no, sir.

Q. From the order of sale that was made in that court? I hand you the order of sale, Mr. Finch. [Handing witness paper marked "Exhibit 34."]

Witness examines paper.

Q. Is that not correct?—A. What do you mean?

Question read.

Q. I now ask you, after having inspected the order of sale in the superior court in cause No. 32817, entitled William Curtis, plaintiff, against C. A. Heckman and M. E. Hansen, copartners, and so forth, whether the order did not provide for this property, specifying all the items of property that was owned by the defendants, to be sold at upset prices, fixing an upset price on each parcel or property and providing that any person having liens on said property, or any part of it, might become bidders at the sale and might apply the amount of the liens as a part of the purchase price?—A. It is absolutely so.

Q. Sir?—A. That is absolutely so.

Q. Absolutely so?—A. I never contended different.

Q. All of the property that belonged to these defendants, Heckman & Hansen, was described in this order of sale, wasn't it, Mr. Finch?—A. For anything I know that is true. I know nothing to the contrary.

Q. And each piece was given an upset price?—A. Yes.

Q. Regardless of liens?—A. I think that is true.

Q. And it also provided—the order did—that it might be sold in the aggregate for a sum of not less than $24,000?—A. I didn't read that. I don't know whether it is there or not.

Q. [Handing paper to witness.] You will now look at the paper and see if you are able to answer.—A. Yes; that is true.

Q. The bid that was finally accepted for this property was $24,125?—A. That is true, I believe.

Q. The sale was advertised, was it not?—A. I think so.

Q. Under the order of the Superior Court of the State of Washington?—A. Yes, sir.

Q. And it called for sealed bids?—A. Yes, sir.

Q. The best bid tendered for the entire property was $24,125?—A. So reported to the court; yes.

Q. And that is the bid that was finally accepted?—A. Yes, sir.

Q. Now, at that stage of the proceedings, or at about that point, chronologically in the history of this matter, Heckman & Hansen filed the voluntary petition in bankruptcy that I have already asked you about?—A. Do you mind my suggesting to you a question before you ask that one?

Q. Certainly not.—A. My point about the sale being made subject to lien was that it was not a lienholder who made the bid or bought the property. That is the point that I made, as a matter of law.

Q. Yes; that was some distinction of law that you had in your mind.—A. That is all that I——

Q. (Continuing.) As distinguished from the order of the court?—A. No; I claimed that the law applicable to the orders as the court made them, and the bid, as they were made, showed that the property was sold subject to liens. The only one that I understand that was to take it for the liens was a lienholder. If he should bid, as I understood it, he might apply his lien upon his bid, and that plainly would carry the right to get the property without liens; but a stranger to the record, I don't understand, unless he protected himself, would take free of liens. It is my understanding that a man bidding at a sale without protecting himself takes the property subject to the liens.

Q. So it was your theory that these upset prices that were specified in the order of the court might be adopted if the lienors bought the property, but if an outsider bought it he would have to pay those prices and then pay the liens in addition.—A. He would not have to. He could do as he was a mind to.

Mr. McCoy. Mr. Dorr, do I understand it to be your thought that if one lienor bought the property other liens than his would be in any way protected by——

Mr. Dorr. (Interrupting.) No; your honor, there are several described pieces of property in the order of sale——

The Chairman. (Interrupting.) Under the order, as I understood it, only the purchasing lienor would be protected.

Mr. Dorr. No; I will read you the part of the order that I am discussing just at present. First, I wish to state that the order of sale describes several tracts of property and articles of property, beginning with parcel A and running alphabetically with descriptive letters to parcel G. Then there is an upset price fixed in the order for each one of these separate parcels. Then it provides that bidders will be allowed to bid on the whole of said property or on one or other number of said parcels, and shall have the right of removal of all machinery, tools, buildings, and supplies from any one parcel, with 75 days from the time of the acceptance of any bid in which to make such removal; that the upset price for the whole of said property in any one bid shall be $24,000, and for any two or more parcels less than the whole of said property the sum of the upset price of each thereof. That any and all parties having liens upon any parcel or

parcels or the whole of said property be allowed to bid upon said property and to apply on their bids the amount due upon their lien or liens; the lien of Carstens & Earles upon the Windsor property, described as parcel A in this notice, being preferred to the lien of the Scandinavian-American Bank thereon, and that unless a greater or larger bid shall be received for any parcel of said property subject to any such lien, the party holding such lien will be allowed to purchase the same for the full amount of such lien or liens; adding thereto, however, in such manner as shall be determined upon by this court and equitably adjusted among the parties, upon parcel B the sum of $1,900.40 expended by said receiver in betterments to said parcel B, and further adding thereto upon such parcels as shall properly distribute the costs and expenses thereof, all of the costs and expenses of this receivership not already paid, together with the sum of a thousand dollars borrowed from the Washington National Bank of Seattle, under an order of this court, for the purpose of conducting the affairs of said receivership. The amount of such expenses and the sum so borrowed is estimated by the receiver to be $2,250.

It is my contention, Mr. Chairman, that the order is perfectly and clearly specific in directing this property to be sold or offered for sale at these upset prices, regardless of who the purchasers may be; but it offers to the lienors the privilege of becoming bidders if they so desire, and in that event it permits them to use the amount of their liens upon the property as a part of the purchase price.

The CHAIRMAN. Do you understand that it would have been practicable for each lienor to have saved his debt under the terms in that order?

Mr. DORR. I am not in a position to answer, Mr. Chairman, because I have no personal knowledge of the amount of these respective liens——

The CHAIRMAN. The number of them, rather.

Mr. DORR. (Continuing.) Referred to or the number of them.

The CHAIRMAN. Well, seven pieces of property; and if there were only seven creditors and the creditors could agree among themselves which piece each one would bid on, they might thus save themselves and be protected; but if there were more than seven, it would be impossible for them to do it, or if the seven could not agree on a division of the property it would not have been practicable for them to do it, would it?

Mr. DORR. There seems to be seven pieces of property described, a part of which are real estate; one parcel consists of marine ways, tools, machinery, and machine shop; another one of certain bills receivable and accounts due Heckman & Hansen; another one of yacht *Vigilant*; another one of a steamer, *Clara Hawes*, and so forth. Now, I don't know, nor do I think it is at all material, the amount of any of these liens. There is a specific upset price mentioned for each one of these parcels of property. The first of $6,000, and the next is $9,000, and so forth.

The CHAIRMAN. Have you any recollection of what the receiver's report of the sale does show as to the number of purchasers? I think you said that it was sold to one purchaser for $24,125.

Mr. DORR. That is my understanding of it; yes, sir.

The CHAIRMAN. So that after all only one creditor or lienor could have been protected when one bought all of the property.

Mr. DORR. Why, not at all. If the property is sold for $24,125 to a stranger who has no liens, that money is paid into the registry of the court and distributed to the creditors.

The CHAIRMAN. Well, if you haven't enough to go around, as a lienor he would not have been protected.

Mr. DORR. Well, there would be a deficiency, and that would have to be equitably settled by the court.

Mr. MCCOY. Do I understand you, Mr. Dorr, that in receivership proceedings in the State court any order of sale of the property can be made in such a way as to require lienors to look to the proceeds of the property and wipe out their liens?

Mr. DORR. Well, that depends upon the nature of the lien, Mr. McCoy.

Mr. MCCOY. Well, let us assume that it is a first mortgage on real estate belonging to a concern that is thrown into a receivership, and that the superior court orders the sale of the property. Now, let us suppose that the holder of the first mortgage sits still and does not go anywhere near the sale and that the sale results in less than the amount of his mortgage, is he wiped out?

Mr. DORR. Not at all. His mortgage is not disturbed.

Mr. MCCOY. That is what I would suppose.

Mr. DORR. But, on the other hand, to answer your question further, if the man who holds a first mortgage has a lien upon the land alone for his security, without any personal obligation of the maker of the mortgage, then he would be barred from participating in any of the dividends that might arise in the receivership, otherwise he is relegated to his security; but the mere sale of a piece of property that is mortgaged does not affect that mortgage unless by judgment or decree of the court, after the mortgagee is brought in, he consents to release it and become a general creditor. That sometimes occurs.

Mr. MCCOY. Well, but we are talking now about a matter outside of any agreement; and for that reason is not Mr. Finch's contention absolutely sound, that except so far as any lien creditor who became a purchaser wished to come in and apply the amount of his lien on the purchase, still the others who did not care to do that were not affected in their liens on the property at all?

Mr. DORR. I say in answer to that suggestion, Mr. McCoy, that Mr. Finch's position is absolutely unsound and untenable under the terms of this order of sale, which provides for the upset price of every article of property involved without any reference to the liens at all. A man who buys the first description, A, which is a parcel of land, need not inquire as to the amount of encumbrance upon that property except to ascertain that it does not exceed the amount of his bid.

Mr. MCCOY. In other words, your contention is that a man who has a mortgage running, we will say five years, on a piece of property, and a sale takes place at the end of two years and a half, that he can be disturbed in his mortgage and compelled to take his money at the end of two years and a half because of a sale in court, and not insist on waiting until the five years expire and then realize on his mortgage.

Mr. DORR. No; I say that he can not be disturbed.

Mr. MCCOY. I don't see what we disagree about then; and I understand that is Mr. Finch's position.

The CHAIRMAN. Well, proceed now and let us see.

Mr. DORR. I do not understand Mr. Finch's position to antagonize anything I have said or anything that Mr. McCoy has said, but I wish to have the record show I do understand his position to mean that if this property was sold to a stranger for $24,000, that stranger would have to assume and pay off these liens in order to get clear title to the property.

Mr. MCCOY. I think his contention is absolutely sound. Now have you the report of the receiver of the sale?

Mr. DORR. Yes, sir.

Mr. MCCOY. Does that show who the bidders were and what liens they had and all the liens that were on the property regardless of bidders?

Mr. DORR. I have four or five different reports which I will submit a little later on, if I may.

The CHAIRMAN. Proceed with the examination, Mr. Dorr.

The WITNESS. At this time I want to suggest that, in any event, Mr. Chairman, I made no charge of fraud with reference to that particular item. My point was simply, as a matter of law, there was some money anyhow, which should move Judge Hanford to reopen the estate.

Mr. DORR. How many liens were there on this property, Mr. Finch?

A. I don't know.

Q. So far as money values are concerned?—A. I don't know.

Q. You don't know the amount of the encumbrance?—A. I don't.

Q. Now, at that juncture in the proceedings Heckman & Hansen filed a voluntary petition in bankruptcy in the bankruptcy court?—A. They did.

Q. And you asked for a temporary injunction against this sale?—A. I did not. I was not in the case at that time.

Q. Well, who did?—A. Mr. Reynolds.

Q. C. A. Reynolds?—A. Yes, sir.

Q. And that temporary injunction was issued?—A. It was.

Q. Out of the Federal court?—A. Yes.

Q. Upon the theory that the bankruptcy court might take jurisdiction of the matter?—A. I presume that was the theory.

Q. And the case, so far as involved the proposed sale, the value of the property, was referred to Mr. A. C. Bowman as special referee?—A. Subsequently it was.

Q. Well, during the pendency of the injunction———A. (Interrupting.) It was.

Q. (Continuing.) While the sale was held up?—A. It was.

Q. And he took evidence as to the value of the property and the estate of the bankrupts to ascertain whether or not the bid of $24,125 was a reasonable bid?—A. Yes.

Q. And he reported his findings to the court to the effect that it was, in his opinion, a reasonable bid for the entire property?—A. Yes, sir.

Q. Sir?—A. Yes, sir; the record so shows. I was not a party to it at that time.

Q. You were not a party to it, but you knew of that, did you not?—A. Yes.

Q. And after that report was made to Judge Hanford he dissolved the temporary injunction?—A. Yes, sir.

Q. And released the jurisdiction that he had asserted over this particular property?—A. Yes, sir.

Q. Otherwise left it in the hands of the superior court?—A. Yes, sir.

Q. Upon the theory that it would not avail the estate anything to bring that property into the bankruptcy court?—A. Yes, sir.

Q. Sir?—A. Yes, sir.

Q. That is correct, isn't it? Judge Hanford filed a written opinion on that phase of the case?—A. Yes, sir; I think so. I don't know whether I have ever read that or not; I don't know.

Q. Well, you know of it, do you not?—A. I don't think I know of it; no, sir.

Q. Well, you know that that was the order of the court?—A. I know that was the order of the court.

Q. And then the sale——

Mr. McCoy. Is that order here, Mr. Dorr?

Mr. Dorr. Yes, sir; I have a copy of it before me.

Mr. McCoy. If you don't care to put the opinion and the order in now, it can go in later, but it might be well to get it right in here.

Mr. Hughes. Let me suggest—it would seem to me that it may become necessary to put in such papers as are involved in this proceeding, and that when that time comes they had better be put in in order. We can't very well do it piecemeal. I think it is better to put them in in order.

Mr. McCoy. Well, perhaps you are right.

Mr. Hughes. I think we will get the whole record then.

Mr. McCoy. All right; just ignore my suggestion.

Mr. Hughes. In an orderly way.

Mr. McCoy. I accept Mr. Hughes's suggestion to do it that way—put them in all together.

Q. Then you came into the bankruptcy court?—A. Yes.

Q. As attorney for Heckman & Hansen?—A. Yes. Could I, before you go into that, enlighten you a little further on this proceeding before Mr. Bowman?

Q. If you wish; yes.—A. Yes. I want to bring out that; in my petition in regard to Mr. Ballinger, I advised Judge Hanford with reference to these proceedings before Mr. Bowman this way: "With the petition"—that is, petition in bankruptcy—"Mr. Reynolds filed an application for an injunction to restrain the State court from making the sale proposed to be made on the following day, the 18th, as above related. The application was supported by the affidavits of Mr. Heckman and one C. S. Hills, an employee of the local representatives of the American Bonding & Trust Co., the surety on the receiver's bond in the State court. The showing made was a general showing of fraud. Your honor granted an injunction prohibiting the State court from proceeding further. Three days later, January 21, Judge Ballinger and Mr. Jones appeared in your honor's court, disavowing a general appearance and openingly stating, in their moving papers, that they came for the special purpose of informing your honor that you knew nothing about the real facts. They made no attempt to show what the real facts might be; but in some manner induced your honor to enter an order of reference to United States Commissioner A. C. Bowman and directing said commissioner to try out two facts—namely, whether an adequate price was being obtained for the property by the State court and whether a better price could be obtained from a sale

by your honor's court—and your honor's orders further recited that no further proceedings be taken in the bankruptcy proceedings in your honor's court without special notice to them, Judge Ballinger and Mr. Jones. Hearing was had before Commissioner Bowman. At the hearing Mr. Reynolds suppressed most material evidence, kept his client off the stand in the interests of Mr. Jones and Judge Ballinger, and later submitted the matters to Commissioner Bowman without argument. The proofs were closed without Mr. Heckman's knowledge, and he learned of the fact only when he read in the newspapers the commissioner's decision. The commissioner reported favorable for Judge Ballinger and Mr. Jones, and an order was entered by your honor, on March 3, 1902, dissolving the injunction against the State court and permitting said court to confirm the sale, if so advised.

"Mr. Heckman was then advised by Mr. Reynolds that the order which your honor had entered on January 21 meant that no further proceedings could be taken in your honor's court without consent of Mr. Jones and Judge Ballinger. Mr. Reynolds returned to the State court and three days later, on the 6th of March, when the court directed the alleged sale to be made by the receiver, Mr. Reynolds was present, sanctioned, and advocated the same; and the very order taken by the parties on that day, the granting of which Mr. Heckman had hired Mr. Reynolds to oppose, names Mr. Reynolds as the attorney for the American Bonding & Trust Co., the surety on the bond of the receiver. From the evidence submitted to your special referee it appears that while said hearing was in progress before Commissioner Bowman the said American Bonding & Trust Co. paid to Mr. Reynolds '$100 in cash and employed him as its attorney in the receivership proceeding and in three or four other matters in which it was engaged'; and it also appears that the Scandinavian-American Bank paid to Mr. Reynolds the further sum of $150."

Mr. DORR. Well, now, do you still insist that——

Mr. MCCOY. Now, just a minute. Were those facts disclosed by the hearing before Judge Smith?

A. Yes; that is what I offered to prove to Judge Hanford, from the very evidence that I had taken down there and paid $400—$450—to get to show to him.

Mr. DORR. Do you still insist that you did not charge or intend to charge Mr. Bowman with any dereliction of duty?

A. I have never said anything of that sort. And your questions, Mr. Dorr—you are misleading yourself.

Q. Well, never mind.

Mr. MCCOY. Let him answer the question, Mr. Dorr; let him answer the question.

A. I filed an original petition. I claim that in that original petition I did not charge Mr. Bowman nor any of the parties that I named a while ago. I also claim, even now, that I have not in any regard charged Mr. Bowman. I don't think to-day that Mr. Bowman has any knowledge of those things that I have just read as contained in this petition.

Mr. MCCOY. What have you been reading from?

A. I have been reading from——

Mr. MCCOY. What exhibit?

A. Exhibit 33, paragraph——

Mr. McCoy. (Interrupting.) Just a minute. What is Exhibit 33?

A. It is In re Ballinger et al.

Mr. McCoy. And is not the petition at all to reopen the proceeding?

A. That is true. It is not.

The Chairman. The committee desires to get into the clerk's office before it closes, which it will do in a few minutes. We will take a recess at this time. The committee will be in recess until 1.30.

AFTERNOON'S PROCEEDINGS.

Continuation of proceedings pursuant to adjournment.

Jerald Landon Finch resumed the stand.

The Chairman. Proceed, Mr. Dorr.

Mr. Dorr. Mr. Finch, what do you understand is meant by an "upset" price?

A. Why, I think that it means that the first man to bid at that particular price would get the property.

Q. That is what you understand an upset price means—— A. That is one.

Q. (Continuing.) As applied to these matters we are discussing?—A. That is the only legal definition that I know of in the books.

Q. Upset price—— A. (Interrupting.) Yes.

Q. (Continuing.) Means the first man that bids—— A. (Interrupting.) At that figure gets the property. If you are in doubt about it I would like to refer you to Black's Dictionary, a law dictionary.

Q. Oh, I am not in doubt about it, but I want to know what you meant.—A. I see Mr. Hughes smiles about it.

Q. Sir?—A. I see Mr. Hughes smiles about it.

Q. Well, I am not examining Mr. Hughes; I don't see any necessity for reference to him.—A. You won't find it in "Words and Phrases."

Q. Your understanding is that it means what you have stated. This order of sale which is identified in this record as Exhibit 34 was filed on December 3, 1911, was it not, Mr. Finch [handing paper to witness]?—A. It so has the filing mark of the superior court, and I think that is correct.

Q. Do you remember when the sale was made in the State court?—A. Finally consummated the 6th or the 14th of March, I don't just recall the dates; one or the other, I think.

Q. Following?—A. Yes.

Q. Following the date that the order of sale was entered?—A. Yes.

Q. And then there was a report of the receiver filed following the sale, was there not?—A. I don't know about that from memory.

Q. Don't you recall that circumstance in the proceedings?—A. Not from memory.

Q. Just examine the paper now handed you, which will be marked for identification "Exhibit 35," and see if you can answer the question.—A. The filing mark of the superior court shows that this paper was filed March 13, 1902.

Mr. McCoy. It had better be marked, Mr. Dorr, I think, "35" for identification, do you want it, or in evidence?

Mr. Dorr. "Thirty-five." I shall offer it in a moment.

Paper referred to was marked "Exhibit 35," for identification.

Mr. DORR. Will you examine it, Mr. Finch, and see if that is not the report of the receiver upon the sale of the property?

A. (After examining.) Now what was your question?

Q. Whether that is not the report of the receiver with respect to this sale of the assets of Heckman & Hansen?—A. I don't know, sir. I will submit it to you or the committee and defy you to tell what it is—whether it is or it is not.

Q. You can't tell?—A. No, when he says here that "the interest of Heckman & Hansen in said steamer was sold to M. F. Mayhew under the sale heretofore confirmed by your honor"—I wish to withdraw my answer for a moment until I read this further. [Witness examining paper.] This is a report of the receiver, but I don't know whether it is such a report as you designate it; I can't interpret it.

Q. Is it not a report covering the sale of these assets?—A. It does refer to the sale, yes, sir.

Q. And states that the sale was made pursuant to the order that you have already identified, does it not, for $24,125?—A. (After examining.) Well, I will again have to refer you to the report. I don't know.

Q. You don't know that?—A. No, sir.

Q. Do you know that you appeared in court and contested this sale as reported by the receivers?—A. Oh, I know that, yes, sir.

Q. After this report, which is denominated the fourth report of receiver, was filed?—A. I took certain proceedings in that court, it is true.

Q. You took exceptions to the sale?—A. I did.

Q. The confirmation of the sale?—A. I did.

Q. As reported by the receiver in this paper?—A. I don't know whether it is as reported in that paper or a paper before that?

Q. Well, was there any other report of this sale, that you know of, except the one I am showing you?—A. I don't know. I would have to look at the third report of the receiver at least. That is designated the fourth.

Q. Look at the third one and see whether that covers the sale—the third report [handing paper to witness]?—A. (After examining.) I note that this report—this paper purports to be a copy of the third report of the receiver, used before Commissioner Bowman, and that in the prayer of the petition it asks that the receiver be ordered to complete the sale of the property to Mayhew for the sum of $24,125, and to receive the payment therefor.

Q. Well, as a matter of fact, that third report preceded the sale, didn't it, Mr. Finch?—A. Oh, yes.

Q. And it is not material as showing the confirmation of the sale?—A. I think it is material. I think that that was treated over in the State court as the—at least it was the proceedings—it was the report of the receiver upon which the proceedings were based over there.

Q. Well, now, you stated this morning, as I understood you, that the order of sale contained a confirmation of the sale and the discharge of the receiver?—A. I said that that was my recollection.

Q. I want you to examine Exhibit No. 34, which is the order of sale, and see whether you were mistaken in that or not [handing paper to witness].—A. (After examining paper.) Mr. Stenographer, let me have that question, please.

(Question read.)

A. There is no confirmation in this order of sale that you have handed to me, which is filed December 3, 1901.

Q. And no order discharging the receiver there, either, is there?—A. No, sir.

Q. Then you must have been mistaken in those two matters?—A. No; I don't think so. I don't think that I said that there was any confirmation in that order of sale. That was one taken way back in December.

Q. I now hand you a paper in the case of Curtis against Heckman & Hansen, in the superior court receivership matter, which will be marked for identification "No. 36," and ask you what that is, if you know [handing paper to witness]?—A. It is denominated an order approving fourth report and directing the receiver.

Q. Were you present at the hearing on which this order is based?—A. At the proceedings upon which the order was based, yes; I was present.

Q. And at that time protested this sale?—A. Yes, sir.

Q. Objected to the terms of the sale?—A. Yes, sir.

Q. And made an argument in court?—A. Yes, sir.

Q. What judge of the superior court had charge of this receivership matter?—A. Arthur E. Griffin.

Q. What is the date of the order that you hold in your hand?—A. It is not dated.

Q. What is the date of the filing?—A. Twenty-fourth of March.

Mr. McCoy. What year?

A. 1902.

Mr. Dorr. Then at some time between the date of the report of the receiver stating the facts with relation to the sale and the order which you hold, which has been identified as Exhibit 36, you had a hearing in court?

A. Oh, yes.

Q. Over the sale?—A. Yes, sir.

Q. And the matter was fully discussed at that hearing, was it not?—A. Why, I discussed it fully.

Q. Other attorneys were there?—A. Yes.

Q. A number of them?—A. Yes.

Q. Representing creditors?—A. Yes.

Q. And various interests?—A. Yes; including Gen. Metcalfe and Mr. Reynolds.

Q. They were both there?—A. Yes, sir; and the referee in bankruptcy, Judge Hoyt, he was also there.

Q. He was also there?—A. Yes.

Q. And Judge Griffin overruled your objections?—A. Yes, sir.

Q. And entered an order approving the report of the receiver?—A. Yes, sir.

Q. And confirming the sale?—A. Yes, sir.

Q. I now hand you a further order in the same case, signed by Judge Griffin, which is denominated "Order directing final distribution." I will ask you to examine it, the paper first being identified as Exhibit No. 37, and state whether you were present at those proceedings.—A. I was not.

Q. This order which you now hold in your hand, Exhibit 37, was made in pursuance of the order approving the receiver's report, was

it not?—A. I don't know. It was made without my presence or knowledge; I had nothing to do with it.

Q. You had nothing to do with the distribution of the funds?—A. No, sir; nor the obtaining of the order, or any notice about it.

Q. That is the only thing that is dealt with in this particular order, is it not; the distribution of funds to the creditors whose claims had been approved?—A. I think that is a fair inference; yes, sir.

Q. Is that your name on the back of this order, accepting service of it?—A. It is.

Q. And did you write it?—A. I did.

Q. When?—A. When it was served on me.

Q. You knew about it, then, at the time?—A. After it was done.

Q. When was it served on you, Mr. Finch?—A. I don't know.

Q. Wasn't at the time the matter was taken up in court?—A. No; it could not have been then.

Q. The same day?—A. No, sir; not that I know of; I don't know.

Q. You don't know?—A. No, sir.

Q. Did you take any proceedings adverse to this order requiring the funds to be distributed by the receiver?—A. Not to that particular order; no, sir.

Q. You were not concerned in the distribution of the funds particularly, were you?—A. That is what my opponents seemed to think. I had nothing to do with it and no notice of it.

Q. You took no active steps with regard to the distribution of the funds either way?—A. Nothing, only to oppose them at the time.

Q. Do you mean to say you opposed the distribution?—A. I mean to oppose the State court proceeding in the matter looking toward a sale of the property.

Q. Oh, yes; I understand; but you had no claims to make on these claims that had been filed in the Heckman & Hansen case, had you?—A. I never looked at them with that idea in view; no, sir.

Q. You didn't know, or don't now know, that any of them were wrong in any respect?—A. No, sir; I never examined them.

Q. So far as you now are able to state, the claims were all bona fide claims?—A. So far as I know; yes, sir.

Q. There were over 50 general creditors, were there not?—A. I don't know, but I think so.

Q. Aside from those who had liens and mortgages and of one kind and another of preference?—A. I think so.

Q. Did you ever appeal or was there any appeal taken from the proceedings in the State court?—A. No, sir.

Q. You then came into Judge Hanford's court on the 15th of January, 1903, and filed a petition for the discharge of the bankrupt, did you not?—A. Yes, sir; some time, I——

Q. (Interrupting.) Well, look at the paper now handed you and state whether that is the petition you filed [handing paper to witness]—A. It is.

Q. What is the date of it?—A. The 15th day of January, 1903.

Q. Prepared and filed by you?—A. Yes, sir.

Mr. DORR. I ask that this paper be identified as Exhibit No. 38.

(Paper referred to was marked "Exhibit 38," for identification.)

Mr. DORR. And on the next day you secured an order of discharge from the Federal court, did you not [handing two papers to witness]?

A. No, sir.

Q. What is the fact about the discharge?—A. It was obtained the 16th day of the next month; that was February.

Q. Oh; the 16th day of the next month?—A. Yes, sir.

Q. And you drew the order?—A. Yes, sir.

Q. And presented it to the court?—A. Yes, sir.

Q. Obtained the discharge of the bankrupts?—A. Yes, sir.

Mr. DORR. I ask that the order of discharge be identified as Exhibit 39.

Paper referred to was marked "Exhibit 39" for identification.

Mr. DORR. Now, do you claim, Mr. Finch, that there was any irregularity in the discharge of Heckman and Hansen?

A. None whatever.

Q. In the bankruptcy?—A. None whatever.

Q. That was all regular?—A. Perfectly so.

Q. And at that time you knew the whole history of the State court litigation?—A. Yes, sir.

Q. How long afterwards did you file your petition to reopen this case in Judge Hanford's court?—A. I think in March of that year, 1903.

Q. That would be the following month after the discharge was entered?—A. I think that is true.

Q. I want to ask you this question, adverting a moment from the chronological history of the litigation, whether or not Heckman himself was not instrumental in securing the receivership in the State court?—A. I have no personal knowledge, even from my client, on the subject, but that is the inference that I would draw.

Q. You understood it at the time, did you not?—A. I drew that inference. I had no understanding, but I should not deny it for a moment.

Q. That he was favorable to the receivership?—A. That is what I infer; yes, sir.

Q. And that receivership was adverse to the Scandinavian-American Bank at that time, was it?—A. Yes, sir.

Q. Mr. Heckman, as you understood it, had inspired this receivership for the purpose of heading off the bank?—A. That was my understanding of it.

Q. The bank was then foreclosing a mortgage, was it not?—A. Yes, sir.

Q. And finally secured a judgment of some $9,000?—A. I don't know whether they ever took their judgment or not in that case.

Q. You have testified that no judgments were even entered in this case?—A. In the receivership case, that is true. I don't know whether it was entered in the mortgage foreclosure case or not. I do recall that a stipulation was entered into that that might be done; I know that is in the files.

Q. That judgment might be taken?—A. Yes.

Q. Did you sign that stipulation?—A. No; that was when Metcalf & Jury were representing Mr. Heckman.

Q. You had nothing to do with it?—A. No, sir.

Q. Now, to refresh your recollection, I will just ask you to look at these files, which are somewhat voluminous and, I think, need not be introduced, and see whether you can state whether there was a judgment entered in the foreclosure case in the superior court against

Heckman & Hansen [handing papers to witness]?—A. This purports to be a judgment roll and has within it a decree of the superior court.

Q. That paper that you are examining is the original court file, is it not?—A. Yes, sir.

Q. Signed by the judge himself.—A. Yes, sir.

Q. And is a judgment—you know it is a judgment, don't you?—A. Yes, sir.

Q. For how much money?—A. $9,021.65.

Mr. McCoy. Is the property anywhere described in that judgment roll?

Mr. Dorr. Yes, sir.

Mr. Hughes. Fully.

Mr. Dorr. It is one of the pieces of property that is referred to in the order of sale.

Mr. McCoy. But the mortgage did not cover the entire property, real and personal, of Heckman & Hansen, did it?

Mr. Dorr. It describes two pieces of real estate that are described in the order of sale, and I will, if suggestion is made, furnish a copy of the description of the property that is involved in the foreclosure proceeding——

Mr. McCoy. Well, can you identify it by the letters in the previous exhibit that you read?

Mr. Dorr. If you will excuse us just a moment, we will see.

Mr. McCoy. Yes.

Mr. Dorr. (After comparing papers.) The mortgage covers two items shown in the order of sale, B, which is real estate, and——

Mr. Hughes. The parcel B.

Mr. Dorr. Parcel B and D, isn't it?

Mr. Hughes. Parcel D, which is the machinery and shops in the Heckman & Hansen yards.

Mr. Dorr. They are separated in the order of sale into two divisions, the real estate being parcel B and the personal property parcel D.

Mr. McCoy. Now, my question was in that foreclosure action is it alleged that the mortgage which was being foreclosed covered all the real and personal property of Heckman & Hansen?

Mr. Hughes. No; it sepcifically describes it.

Mr. McCoy. Two separate items one being real estate and the other personal property?

Mr. Hughes. Yes.

Mr. Dorr. Yes.

Mr. McCoy. And there being other real and personal property not covered by the mortgage?

Mr. Dorr. Yes, sir; these seem to be the two principal items.

Mr. McCoy. What is the title of this action in which the judgment of foreclosure was entered?

Mr. Dorr. Scandinavian-American Bank *v.* Heckman et al., No. 32772, in the superior court of King County.

Mr. McCoy. Was that a judgment of foreclosure and sale?

Mr. Hughes. There is an amended complaint there in which the receiver is a party.

Mr. Dorr. Well, I haven't come to that yet.

Mr. Hughes. Well, but it is an amended complaint.

Mr. Dorr. But it is the same description, isn't it?

Mr. Hughes. I think it is, but he is asking for the title.

Mr. McCoy. I was asking for the title.

Mr. Hughes. So if you go to the amended complaint you will get the title; there is some little modification. An amended complaint was filed in this cause. Better give him the title now and let it go in the record.

Mr. Dorr. I will give you the title of the amended complaint, which brings the receiver into the action.

Mr. McCoy. Yes. This gives all the parties that were bound by the judgment?

Mr. Dorr. Yes, sir; I suppose so.

Mr. Hughes. Yes.

Mr. McCoy. That is what I was after; I want to get them all in there, who were defendants.

Mr. Dorr. No. 32772. In the superior court of the State of Washington for the county of King. Scandinavian-American Bank, a corporation, plaintiff, *v.* Andrew Heckman and Martin Hansen, copartners doing business under the firm name and style of Heckman & Hansen; Carstens & Earles (Inc.), a corporation, and Peter L. Larsen as receiver of the firm of Heckman & Hansen.

Mr. McCoy. Well, now, who were Carstens & Earles, or what is their interest in the property alleged to be?

Mr. Hughes. They had a senior lien on one piece of property.

Mr. McCoy. They had a senior lien. Well, is it asked that their lien be determined and the property sold to realize on it? Have they answered? If those defendants, Carstens & Earles, filed an answer in the case it ought to appear whether they consented to have their lien adjudicated in that action.

Mr. Hughes. I don't think all the files are there. The decree shows the facts and shows that their lien was admitted on a part of the property to be senior.

Mr. McCoy. If that is a judgment roll, it ought to have the answer in, hadn't it?

Mr. Hughes. If all the pleadings are there it should be. I don't think they are all there.

Mr. McCoy. Mr. Dorr, if you can't find that, suppose you read the judgment so far as it undertook to effect Carstens & Earles—if that is their names.

Mr. Dorr. Yes, sir. I am answering your first question now, and then I will do that. The prayer of the complaint with respect to Carstens & Earles is—paragraph 2 of the prayer:

> That a decree may be made and entered establishing the mortgage herein described in plaintiff's first, second, and third causes of action as valid, subsisting the first liens upon all of said real estate and personal property above described, and the whole thereof therein mortgaged to secure payment of the judgment to be rendered herein, said mortgage recited in said third cause of action, to be subject, however, to the lien of the defendants Carstens & Earles (Inc.), and their rights as above set forth.

Counsel here examined papers.

Mr. Dorr. If I may pass this matter temporarily, I will ask Mr. Hughes to compare these descriptions with the schedules in the order of sale, and the question can then be answered accurately. There are no involved descriptions of lands by metes and bounds.

Mr. McCoy. My question, Mr. Dorr, I think, would not call for that. Mr. Hughes stated that Carstens & Earles had a superior lien on the property described in the complaint, or on some part of it,

to the lien which the plaintiff claimed Now my question was simply this: Was Carstens & Earles's lien adjudicated or affected in any way in that proceeding? And I don't care anything about the description of the property at all.

Mr. DORR. Very well, then.

Mr. HUGHES They were made parties to the proceeding, and the decree of court provides what is the status of their lien with reference to that of the plaintiff.

Mr. DORR. Well, that is just what Mr. McCoy wants to know.

Mr. MCCOY. That is it exactly

Mr. HUGHES. The decree will tell all of that.

Mr. DORR. Well, I will read the provision in the decree regarding that point.

Mr. MCCOY. Yes.

Mr. DORR (reading):

> It is further ordered, adjudged, and decreed that the defendants Carstens & Earles (Inc.) and Peter L. Larsen, as receiver of the firm of Heckman & Hansen, and all persons claiming under them or either of them, are hereby barred from all right to redeem from such sale, save such rights as are provided by the statute laws of the State of Washington in that behalf provided, and the rights of the said Carstens & Earles (Inc.) as prior mortgagees of the lands and properties described in description No. 2 last aforesaid.

Mr. MCCOY. Well, in other words, the prior lien of Carstens & Earles was not attempted to be disturbed by that decree?

Mr. DORR. No; it was recognized as superior to the lien of the plaintiff.

Mr. MCCOY All right. Now, then, was the property sold, so far as you know, under that decree of foreclosure?

Mr. DORR. No, sir. It was sold by the receiver.

Mr. MCCOY, Well, was this decree a decree of foreclosure and sale?

Mr. DORR. It was a decree of foreclosure and sale but the——

Mr. MCCOY. Is there any order in there directing the sale of the property to satisfy the lien that was found to exist in favor of the plaintiff; and if so, who was directed to make the sale?

Mr. HUGHES. Let me answer. There was the usual order of sale according to our statutory provision, which would be by the sheriff.

Mr. MCCOY. That is just the point I want to develop.

Mr. HUGHES. As a matter of fact, the court, however, instead of issuing an execution, a special execution for a sale or an order of sale to the sheriff, proceeded through its officer, the receiver, to sell the property, and, as I understand the record to be, the only sale made was that made by the receiver.

Mr. MCCOY. Well, now, just explain this, Mr. Hughes, will you, or Mr. Dorr: Why was the practice which Mr. Hughes has just stated, namely, a sale by the sheriff, departed from, and was there anything in the decree which directed anybody but the sheriff to make the sale?

Mr. DORR. Well, the decree, upon an examination of that document, which I have now been able to make, appears to be the ordinary decree of foreclosure.

Mr. MCCOY. Then if the ordinary practice had been followed, the sheriff would have sold this specific property under that specific judgment, to realize on this specific lien; is that right?

Mr. DORR. If there hadn't been a receivership involved, that would have been the ordinary and the only natural outcome of it, but where

a receivership is involved, as it was in this case, under our practice it may be sold either way.

Mr. McCoy. Well, that is just what I want to find out. In other words, the regular practice was adopted under the circumstances.

Mr. Dorr. Under the circumstances of this peculiar case, because the property was involved in the receivership, as I so understand it.

Mr. Hughes. I think I may add, the uniform practice here is, where there is a receivership and the property has been taken into the custody of the receiver, and is therefore in Custodia Legis, that the court never proceeds through its ministerial officer, the sheriff, but always through its receiver, to dispose of the property and does not make or allow the sale to be made by the sheriff, because it would be disturbing the possession of the court in the hands of the receiver.

Mr. McCoy. That is what I was getting at.

Mr. Hughes. And that proceeding was adopted in this instance, and I think, so far as I know, in all instances has been in this jurisdiction.

The Chairman. Proceed, Mr. Dorr.

The Witness. In this connection, Mr. Chairman, now I would like to call your attention to the——

Mr. McCoy (interrupting). A little louder.

The Witness. I would like to call your attention to the petition, exhibit—what is the one that is marked?

Mr. Dorr. Which one is it?

A. The "Re Ballinger." I don't think that this——

Mr. Dorr. Is this [handing paper to witness]?

A. This is not marked, and I think it is a second copy that I have.

Mr. McCoy. Where are the exhibits?

Paper handed witness.

The Witness. Exhibit 33, beginning with paragraph 9 and reading to and including paragraph 14, as having a bearing upon the examination at this time. Paragraph 9. I will not read it all, but paragraph 9 reads as follows:

During the time when these various actions were begun, the said courts, State and Federal, were not in session. Between the times when the suits were brought and the convening of the courts in the fall of the year 1901, said Scandinavian-American Bank had entered into a general conspiracy with the receiver, Mr. Larsson, and his attorney, Mr. Jones, and Messrs. Metcalfe & Jury, attorneys for Heckman & Hansen, to wipe out of existence the latter firm and to convert the properties of the firm to the use of said bank. The conspiracy on behalf of the bank was entered into and carried out by Judge Ballinger, and the method pursued and steps taken in annihilating the firm and converting the property appears from the evidence before your special referee to have been and is alleged by your petitioner to have been as shown in paragraphs 10 to 16, inclusive, following.

Now, paragraph 14 deals with this suit that Mr. Dorr has just asked me about. I will have to read paragraph 13 to make 14 intelligible. Paragraph 13 says:

December 9 the attorneys of record, without Heckman & Hansen's consent—

That was Metcalfe—

consent or knowledge stipulated that judgment might be taken for want of answer in the suit brought for the foreclosure of the $650 chattel mortgage.

Paragraph 14 says:

On the same day a like stipulation, without the knowledge or consent of Heckman & Hansen, was entered into in the case brought for the foreclosure of the $5,000 note and mortgage.

And bear in mind, please, that that $5,000 note and mortgage, there was a controversy about that, as I stated this morning.

Mr. DORR. Do you claim that any of this money that is involved in these proceedings was not owing by Heckman & Hansen?

A. No, sir; I don't.

Q. Do you claim that that $5,000 that you say Judge Ballinger borrowed for them was not used by them and received by them?—A. I do not. It was used for the very purpose for which it was borrowed.

Q. That is, for their business purposes?—A. Yes, sir.

Q. And you do not dispute the right of Judge Ballinger to represent Mr. Heckman in making that mortgage, do you?—A. Not—I don't dispute his right to make the mortgage—or to—yes, I do; it was disputed in the case, that he had no right to make a mortgage, that it was not the agreement.

Q. It was not the agreement?—A. No.

Q. You do say he had a right to borrow the money without giving a mortgage?—A. I say this, that it was contended that judge—that Mr. Hechman had borrowed $5,000 from the Scandinavian-American Bank, payable a thousand dollars a year; that would be the whole thing payable in five years; that is what he contended was the arrangement, and he contended that he had left Judge Ballinger to consummate that arrangement.

Q. Well, you said something about a power of attorney being used by Judge Ballinger. Just what was that, Mr. Finch?—A. Well, to consummate that arrangement Mr. Heckman gave Judge Ballinger a power of attorney. Acting under that power of attorney, Judge Ballinger gave a note, instead of one payable in five years at the rate of a thousand dollars a year he gave one payable in 90 days, and, in addition, gave a mortgage upon their property to secure the note. Now, mind you, I am telling you what his contention was.

Q. Heckman's contention?—A. Yes, sir.

Q. You don't know anything about it other than what Heckman told you, do you?—A. That is true; nothing.

Q. You do know that Judge Ballinger had the power of attorney?—A. I know that he did.

Q. Regularly?—A. How is that?

Q. A regular power of attorney?—A. I simply know what I have told you.

Q. You know that he had a general power of attorney, do you not?—A. I do not know what it was. There was the power of attorney introduced in evidence before Judge Smith.

Q. Well, it was a full general power of attorney, was it not?—A. I think that was true.

Q. And is this not the paper [handing paper to witness]?—A. That is the paper.

Q. Who wrote the body of that paper?—A. I don't know.

Q. Don't you know Mr. Heckman's handwriting?—A. I do not.

Q. Do you know his signature?—A. I doubt if I know his signature sufficient to identify it.

Q. You don't know, then, whether it is a genuine power of attorney or not?—A. Oh, I don't know; no, sir.

Mr. MCCOY. Now, there is a question, Mr. Dorr, about who wrote the power of attorney. Let's have the facts in regard to that.

Mr. DORR. Well, I am asking this witness. I don't know, Mr. McCoy.

The WITNESS. Well, I don't any more than you do.

Mr. MCCOY. I think Judge Hanford's son can tell you who wrote it. The fact is, Mr. Dorr, is it not, that this power of attorney is written in the handwriting of a man named Tennant?

Mr. DORR. I don't know. I will try to find out, if I may have it.

Mr. MCCOY. Well, I say Judge Hanford's son can answer that question, if you will ask him. If he can tell you, we might as well have it admitted as proved.

Mr. DORR. Mr. Battle informs me that the body of the instrument is in Mr. Tennant's handwriting—Mr. A. J. Tennant, who was a witness to the instrument.

The CHAIRMAN. He also acknowledges it on the back of it; the signature there clearly indicates that he wrote the body of it.

Mr. DORR. That it is also witnessed by Mrs. Heckman; that it is signed by Mr. Heckman; that it was acknowledged before Mr. Tennant, a notary public.

Mr. MCCOY. But the handwriting to which you called the attention of the witness, asking him whether it was not Mr. Heckman's handwriting, is now admitted, for the record, to be the handwriting of Mr. Tennant. Is that right?

Mr. DORR. That part in the body of the instrument; not the signature.

Mr. MCCOY. No; but the part which you asked the witness about, saying "Is that not Mr. Heckman's handwriting?" is the part which now is admitted to be in Mr. Tennant's handwriting.

Mr. DORR. Yes.

Mr. MCCOY. Is not that a fact?

Mr. DORR. That is the statement made by Judge Battle, who was a member and is a member of that old law firm. I didn't know when I asked the question.

Mr. MCCOY. I know it, Mr. Dorr; you did not.

Mr. DORR. And the similarity of the writing attracted my attention.

Mr. MCCOY. I did happen to have the information, and that is why I asked you to get the admission for the record. You did not know it.

Mr. DORR. I did not; nor do I see that it makes any material difference one way or the other.

Mr. MCCOY. Well, I would not have thought so, except that you asked the question.

Mr. DORR. I asked that question, Mr. McCoy, on my own recollection of Mr. Finch's testimony that there was something crooked in this power of attorney. If there is, I am just as anxious to find it out as any member of the commission.

Mr. MCCOY. I had forgotten he testified that way. Did he say there was something crooked about the power of attorney?

Mr. DORR. I understood him to say yesterday that there was something wrong with this power of attorney.

Mr. MCCOY. My recollection of his criticism was that Judge Ballinger was trying to carry water on both shoulders; that is all.

The CHAIRMAN. Gentlemen, let's make some progress.

Mr. DORR. Now, Mr. Finch, going forward to the proceedings in Judge Hanford's court to reopen the Heckman & Hansen case——

Mr. McCoy. (Interrupting.) Just a minute, Mr. Dorr. I would like to have that go into the record as an exhibit.

Mr. Dorr. Very well.

The Chairman. Let it go in.

Paper referred to was marked "Exhibit 40."

Mr. Dorr. The power of attorney is identified as "Exhibit No. 40."

The Witness. I might add a later thought: The suit involved in that $5,000 proceeding that has just been referred to——

Mr. McCoy. You mean the foreclosure?

A. Yes. (Continuing.) Is based upon the note to which Judge Ballinger's name is signed as power of attorney, in which he appears as attorney for the plaintiff.

The Chairman. Is the note, the original note, among the court files?

Mr. Dorr. The only thing that you claim——

The Witness. (Interrupting.) I think so.

Mr. Dorr. (Continuing.) Is that Heckman told you that the note should be payable a thousand dollars per year instead of at one time?

A. That is all I know about it; yes, sir.

Q. The amount was all correct?—A. The amount is correct.

Q. There is no dispute but what Heckman & Hansen received the money?—A. None whatever. Judge Ballinger received the money and properly applied it. They did not have it in their hands, so far as I understand it.

Q. Well, it was paid over to them or applied to their interest, wasn't it?—A. Certainly.

Q. You do not claim that that money was diverted in any way from Heckman & Hansen?—A. Not at all; not at all.

Q. Or that any other money was, at any time, in those proceeding, do you?—A. Oh, I don't know as I would want to answer a broad statement like that.

Q. Well, you don't make any specific claim that any money was embezzled or misappropriated in this entire proceeding, do you?—A. Nothing, only in the manner that I have complained.

Q. Yes; I understand that. Now, coming down to the proceedings before Judge Hanford to reopen the Heckman & Hansen case, you filed a petition and then an amended petition?—A. Yes, sir.

Q. You have offered the amended petition in evidence?—A. Yes, sir.

Q. Now, I would like you to identify the original petition, if you can [handing paper to witness].—A. This is it which you have handed to me.

Q. That was filed when, Mr. Finch?—A. April 11, 1903.

Mr. Dorr. I would like to have it marked as "Exhibit 41."

The Chairman. You offer it now?

Mr. Dorr. I want to offer these all together, if I may, this whole bunch of exhibits.

The Chairman. Very well.

Paper referred to was marked "Exhibit 41" for identification.

Mr. Dorr. The matter was then referred to Judge Eben Smith, the master in chancery——

A. (Interrupting.) Yes, sir.

Q. (Continuing.) To take evidence?—A. Yes, sir.

Q. And that hearing covered a period of about three months?—A. All of that I think, off and on.

Q. Do you mean to say that you were continuously working on this matter before Judge Smith for three months?—A. No, sir.

Q. Or at odd times?—A. At odd times.

Q. Off and on?—A. Off and on.

Q. And the evidence that was taken before Judge Smith, so far as the witnesses that you had called is concerned, was transcribed by your order and reported back to Judge Hanford?—A. Yes, sir.

Q. But the other evidence was not transcribed, was it?—A. That is true.

Q. Then the 889 pages of transcript in that case only represents the evidence adduced by yourself?—A. That is true.

Q. That evidence was filed in Judge Hanford's court some time before the final hearing on the matter, was it not?—A. No, sir.

Q. Well, what is the fact as to the dates, then?—A. It was filed after the final hearing.

Q. You state that as a fact?—A. Yes, sir.

Q. When was it filed, Mr. Finch?—A. June 21, 1904.

Mr. McCoy. Are you reading the file mark on it?

A. I am reading the file mark.

Mr. Dorr. When was the hearing?

A. On the 8th of June, 1904.

Q. Sir?—A. On the 8th of June, 1904.

Q. What transpired at that time?—A. The hearing on the motion to confirm the report and the exceptions of the bankrupt as to the report.

Q. Do you mean to say it was finally argued on that date?—A. Yes, sir.

Q. Sir?—A. Yes, sir.

Q. When was the opinion rendered?—A. I don't know. Some time subsequent to then.

Q. Don't you know that Judge Hanford read this testimony before he decided the case?—A. I don't know that.

Q. Don't you know that he copied, literally. three or four pages of the transcript in his opinion?—A. Yes, sir; I do.

Q. Well, then, he must have had it?—A. Yes, sir; he must have had it.

Q. He must have had it?—A. He must have had it?

Q. Yes, sir.—A. I never have denied it, but I say——

Q. (Interrupting.) I thought you contended he decided this case before he got the evidence?—A. No, sir; I said he heard it before I could get the evidence there.

Q. Heard the arguments on it?—A. Yes, sir.

Q. And then he got the evidence and read it?—A. I don't know whether he read or not. He got the evidence. I got it to him.

Q. And he did not file his opinion in that case until——A. Interrupting). Until after I had filed the evidence in the case.

Q. For some considerable time afterwards?—A. I don't know how long.

Q. July 11th, wasn't it?—A. I don't know, sir. I have no recollection of it.

Q. But you do know that he copied literally a number of pages of this testimony?—A. Yes, sir; I do know that.

Q. You were a witness yourself in Judge Smith's court, were you not?—A. I was.

Q. And testified at length?—A. Yes, sir.

Q. There are altogether 34 witnesses there, are there not, Mr. Finch?—A. What was the question?

Q. There are altogether 34 witnesses before Smith?—A. I don't know the number.

Q. A large number?—A. A large number.

Q. Every one you wanted to call——A. (Interrupting.) Yes, sir.

Q. (Continuing.) You were permitted to call?—A. Yes, sir.

Q. Now, during those proceedings the question arose over your right to have the books of the Scandinavian-American Bank brought into court?—A. Yes, sir.

Q. Objection was made that to bring those books would seriously interrupt the daily proceedings and business of the bank?—A. I don't know whether that was the ground of their objection. I remember so distinctly an entirely different ground, that I don't know whether that one was offered or not. It did not impress me.

Q. Well, that was one of the grounds, was it not?—A. I don't know. That may have been so.

Q. And then, in addition to that, the officers and representatives of the bank all testified that there was nothing in these books that would show or throw any light upon any of these transactions?—A. Something to that effect.

Q. And they did object to the books being taken out of the bank during business hours?—A. I don't recall that that was the ground of the objection.

Q. Did not Mr. Battle himself make that objection, in open court, before Judge Hanford?—A. I don't know, but I do know that he made an objection that they would not show anything if he brought them.

Q. This is a large bank, is it not?—A. Yes, sir.

Q. And you were asking for all of their books, covering a long period of time up to the then present date?—A. Oh, no, sir. I specified certain books that I wanted.

Q. Well, they were the books that were engaged in their daily business?—A. I don't think so. I think they were books that had been used and were out of use. That is my present opinion. I can't state at the present time.

Q. You don't know that sure. Now, don't you know that that is the very reason that these bank people did not want to part with the books, because it would interfere with their business?—A. No, sir.

Q. You told Judge Hanford, when you were appealing from Judge Smith's order refusing your subpœna duces tecum, that if you could get possession of those books you would show evidence that would be sufficient to disbar Richard A. Ballinger, James B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds?—A. Yes, sir; that I would be able to bring in sufficient evidence to do that.

Q. And upon that statement he made the order requiring the bank to turn over the books?—A. That is correct.

Q. And they were brought in to Judge Smith's court?—A. Yes, sir.

Q. And you had full access to them?—A. Yes, sir.

Q. And examined them?—A. Yes, sir.

Q. And testified concerning your examination?—A. I testified in the case. I don't recall all about what I testified.

Q. Now, I want to ask you, and you may, if you like, refresh your recollection from the record of this testimony [handing testimony to witness], if you did not, in answer to the questions I will read, give the answers that I will now read? "Question by Mr. Jones"——

Mr. McCoy. (Interrupting.) Wait until the witness gets the place in the book that he is going to refresh his recollection from.

The Witness. I think I don't need to refresh my recollection.

Mr. Dorr. I found the place for him.

The Witness. Yes.

Mr. Dorr. And handed him the book, the record of the evidence.

The Witness. I haven't opened it, but I think—[examining book].

Mr. Dorr. Now, you stated, in Judge Hanford's court, in open court, that if you could have access to the books of the Scandinavian-American Bank that you would produce evidence from them that would disbar Gen. Metcalfe and others. Judge Hanford said to you:

You shall have that order, but if from those books you do not produce that evidence, I will disbar you.

What evidence did you produce from the books of the Scandinavian-American Bank to disbar Gen. Metcalfe? Answer by yourself:

That will have to be argued at length, Mr. Jones——

Q. I don't care anything about any argument; I want an answer to the question.—A. When I get the transcript of the testimony and the matter goes back to Judge Hanford, where, no doubt, we are going, all of us.

Q. I do not care anything about an argument; I want you to answer the question.—A. Well, if you desire, Mr. Jones, that was not the language of Judge Hanford.

Q. Well, you know what the language was—practically to that effect. I do not pretend to quote exactly. But answer the question.—A. Well, there is not any foundation for the question; it assumes things that are not true.

Q. Well, you can state what was said in Judge Hanford's court your own way, and then answer the question.—A. Well, I don't know what you mean now.

Q. You refuse to answer the question, Mr. Finch?—A. I have no question to answer.

Mr. Jones. I ask the commissioner to require the question to be answered.

The Master. Mr. Finch, the general subject matter about which you are interrogated at this particular point is touching a little colloquy between Judge Hanford, on the one part, and yourself on the other. Judge Hanford stating, when you applied for those books, and that if you had those books you could produce evidence, etc., and you replied to him—he asked you if you could prove that, and your reply to him, and then Judge Hanford said to you: "Very well, you may have the books or the order, and if you don't prove it I will disbar you." Now, then, you have got the general matter in your mind.

A. Yes, sir.

The Master. Now, then, Mr. Jones wants you to answer the inquiry as to what passed between you and Judge Hanford at that time.

Mr. Jones. No; I want him to state what there was in the books of the Scandinavian-American Bank upon which he would disbar; but he can make his statement.

The Master. You said first make the statement and then you may answer the question.

A. Why, I find from the books of the Scandinavian-American Bank that they furnished money to Mr. Mayhew to buy the property of Heckman & Hansen, and that Mr. Mayhew bought the property for them. They claimed in court that that was not true; and I intended to show from the books of the bank that that was true, and I think that it has been shown.

Q. Well, answer my question, what in that transaction do you find that would disbar Gen. Metcalfe?—A. None.

Q. You stated at that time that if you could have the books of the Scandinavian-American Bank that from them you would obtain evidence by which you would disbar

Richard Saxe Jones. Now, just state——A. (Interrupting.) I did not state any such thing.

Q. Well, you know what you stated. Taking your statement as you have it in mind of what you did state, what did you find in the books of the Scandinavian-American Bank that would in any way disbar Richard Saxe Jones?—A. I don't think anything, Mr. Jones.

Q. You stated, as I remember, practically to the effect that if you could have access to those books and papers that you would obtain evidence from them which would disbar R. A. Ballinger. Just tell the commissioner what you find in those books or papers of the Scandinavian-American Bank that would disbar R. A. Ballinger?—A. I did not make that statement. But answering the last part of the question, I state that I do not think I found anything.

Q. You stated, as I remember, practically to this effect, if you could have access to these books and papers, you would from them produce evidence to disbar C. A. Reynolds. Just state in your own way anything you found in connection with those books and papers of the Scandinavian-American Bank that would in any way disbar C. A. Reynolds.—A. I don't think anything.

Have I read it correctly?

A. You have.

Q. Those questions were asked you and those were your answers given?—A. Yes, sir; exactly.

Q. And that part of the testimony is attached to the master's report, is it not?—A. Yes, sir.

Mr. DORR. I now ask to have the master's report on his hearing identified as Exhibit 42.

Master's report referred to was marked "Exhibit 42" for identification.

Mr. DORR. After the conclusion of this hearing before Judge Hanford, in which he filed, I believe, a written opinion, on July 11——

A. Perhaps so; I don't recall the date.

Q. Well, you know it was about that time, do you?—A. Yes; it was after June 24.

Q. (Continuing.) A meeting was called of the bar of the Federal court in Judge Hanford's court room to consider your charges?—A. Now, pardon me, if you are going into another matter, then I wish to just advert to that testimony for the benefit of the committee.

Q. Well, I would rather you would not divert me, if you just let me go through with this matter.—A. Very well.

Q. And then you can make any explanations.

The CHAIRMAN. You can come back to it.

Mr. DORR. You can make any explanations you desire later, but I don't like to be thrown clear off the thread of my examination so often.

I will ask now to file, as an exhibit, Judge Hanford's opinion in this matter, which is shown to have been filed on July 11, 1904.

The CHAIRMAN. It may go in as an exhibit. Let it be considered as Exhibit 43.

Paper referred to was marked "Exhibit 43."

Mr. DORR. Now, following the conclusion of this matter before Judge Hanford—or before I get to that, Mr. Finch—you made an oral argument before the court on the master's report?

A. I did not.

Q. You did not?—A. I did not.

Q. Well, you filled two written arguments?—A. I did.

Q. Of great length?—A. Very great length; yes, sir.

Q. One of them consisting of 41 pages of typewritten matter [handing paper to witness], and then a supplemental argument consisting of 22 pages of typewritten matter?—A. Yes, sir.

Q. But you did not appear to argue the case orally?—A. I appeared. I did not argue it.

Q. But you relied upon these written arguments?—A. I submitted them.

Q. Submitted them?—A. Yes, sir.

Q. They were filed in the case?—A. Yes, sir. Do you want me to take it?

Q. At what date? I suggest that you show the dates. I don't think it is necessary to put these in the record.—A. They were both filed July 11, 1904. I didn't file them. Evidently the court filed them both at one time. I submitted them to Judge Hanford.

Q. They have been in the court's possession for some time?—A. Yes, sir.

Q. Before the final decision?—A. Yes; they were submitted.

Q. They are referred to in the decision of the court, are they not?—A. Yes, sir.

Q. As having been on file?—A. Yes, sir.

Mr. McCoy. I think they had better go into the record.

The Chairman. Is there any reason, Mr. Finch, or Mr. Dorr, that you can think of why they should go in?

The Witness. Why they should go in?

The Chairman. Yes.

The Witness. Why, I would like to have them in.

Mr. Dorr. I have no wish about it one way or the other.

The Chairman. They may go in.

Mr. Dorr. If the witness wants them or the committee wants them, I have no criticism.

The Witness. I should like to have them in, Mr. Chairman.

The Chairman. Are they designated so that the one that was filed first with the court may be printed first?

The Witness. Yes.

Mr. Dorr. One is designated as "Argument" and the other one is "Supplemental argument."

Mr. McCoy. The argument was filed first and the supplemental argument afterwards?

The Witness. Yes, sir.

The Chairman. Mark them, Mr. Reporter; let them go in evidence.

Mr. Hughes. Will they be of any great materiality, Mr. Chairman, unless you have the evidence, this eight or nine hundred pages of evidence that was before the court for consideration? In other words, is the argument of counsel of more value in determining whether the court decided rightly?

The Chairman. The Chair will not attempt to pass on their materiality at this time, but probably save the Government money by letting them go in rather than have an argument whether or not they should go in.

Mr. Hughes. I am not arguing that, but it seems to me if they go in the record ought to go in, because that is the material question, as to whether the court decided rightly.

The Chairman. They will go in the record.

Mr. DORR. I was going to suggest in that connection that the evidence is here and it may go along with the rest of the proceedings in this case.

The CHAIRMAN. In that connection, Mr. Dorr, the Chair would suggest that Mr. Finch have that record overnight; that he be given the opportunity to make from it a selection of such portions of it as he contends supports his original claim.

Mr. DORR. And then what for the other side of the question?

The CHAIRMAN. Would that involve the printing of it all?

Mr. DORR. I don't see how a court could consider these written arguments based on evidence without having the evidence itself.

The WITNESS. I only ask to have that go in, Mr. Dorr, because I want them to show for themselves the great painstaking care that I took to show Judge Hanford these facts.

The CHAIRMAN. You were speaking of the arguments, Mr. Finch, there——

A. Yes.

Q. And we were speaking of the testimony.—A. For my part I don't care about the testimony; I am not concerned in it now.

Q. Does your argument show such portion of the testimony as you relied on to support your contention?—A. No; it merely shows citations to the record.

Mr. DORR. The arguments further assume a great many facts that I am free to state to this committee were not proven or there was not any reasonable attempt made to prove them.

The CHAIRMAN. On those points can you tell us whether the record is referred to in the argument?

Mr. DORR. He has referred to the record in two or three places, I think, in the supplemental argument. I don't know about the original.

Mr. DORR. Did you, Mr. Finch [handing paper to witness]?

A. I don't recall, myself.

The CHAIRMAN. Was there any argument—any counter argument submitted?

Mr. DORR. How is that?

Mr. BATTLE. Plaintiff's case was orally argued at the time by myself.

The CHAIRMAN. Was that oral argument preserved in any way?

The WITNESS. It was not.

Mr. DORR. No, sir. I might suggest that we should introduce into this record Mr. Finch's brief on appeal and the brief of the opposing counsel on appeal to the circuit court of appeals, and in that way you would have both sides of the argument.

Mr. MCCOY. You don't contend, Mr. Dorr, do you, that what got before the circuit court of appeals was the same thing that was before Judge Hanford?

Mr. DORR. Oh, I don't contend that the evidence got before the circuit court of appeals.

Mr. MCCOY. I am not talking about the evidence. You do not contend that the contentions that were made before Judge Hanford were the same and the identical and only ones made in the circuit court of appeals?

Mr. DORR. I contend that the contentions that were made before Judge Hanford were carried up to the circuit court of appeals, and

there may have been some additional points presented to the circuit court of appeals; but I think, generally stating, that all of these criminations and recriminations and insinuations were presented to the circuit court of appeals, and if I remember correctly, the circuit court of appeals, on its own motion, struck from Mr. Finch's brief a volume of that kind of material.

The CHAIRMAN. I read into the record to-day the first sentence of the court's opinion, in which they say that the addendum would be stricken from the record. Is that what you refer to?

Mr. DORR. That is what I refer to as having been stricken.

The CHAIRMAN. It is suggested to me by my colleague that I ask whether this record of the evidence might be taken by the subcommittee to Washington, laid before the whole committee, and let it determine whether it should be printed or not. Would that be feasible?

Mr. DORR. Yes, sir; that would be feasible, and agreeable also to us. I do think, though, that it would be manifestly unfair to you gentlemen and the other members of the Judiciary Committee to have the written arguments of counsel on one side of the case without the evidence, or without the arguments of opposing counsel, if you are going to attempt to determine the true merits of that controversy.

The CHAIRMAN. Mr. Finch, do you know of any objection to the printing in the record of the briefs on appeal?

A. Why, I know of no objection to it except that I think it is outside of any material record being made here at this time.

The CHAIRMAN. Inasmuch as there was no record made of the oral argument in reply to your typewritten briefs which were submitted to Judge Hanford, it is of course desirable to get the arguments on the facts presented from the other side, and if that argument is presented in their printed brief it might shed some light on the matter in our record.

The WITNESS. So far as that is concerned, I would be glad that the committee have any argument that they ever made anywhere.

Mr. MCCOY. Did they make any argument in their brief in the circuit court of appeals on the face of that record? Wasn't it argued simply on the question of whether the State court had exclusive jurisdiction, having taken jurisdiction and retained it?

The WITNESS. I have no recollection of what their brief was, the point that they made.

The CHAIRMAN. Would you give us some light on that point, Mr. Dorr?

Mr. HUGHES. What is that?

The CHAIRMAN. Whether the brief of those on that side of the case, in the circuit court of appeals, discussed the facts in substantial reply to Mr. Finch's typewritten briefs filed with Judge Hanford.

Mr. DORR. I will ask permission to ask Judge Battle to answer that question. He is in the room, and is the attorney who had charge of the preparation of that brief.

The CHAIRMAN. He may answer.

Mr. ALFRED BATTLE. May it please the commission, the situation is as follows: The case was heard before Judge Hanford upon oral arguments—that is, I made the presentation of the case, and I think that Mr. Finch practically declined to argue before Judge Hanford

when the matter was before the court on oral argument, but afterwards filed his briefs. The decision was rendered——

The CHAIRMAN. (Interrupting.) If you will just answer the question as asked.

Mr. BATTLE. Yes, sir; I am leading right to that.

The CHAIRMAN. Yes, sir. Of course, if you are going to make a general statement, I suppose you will have to be treated like any other witness, and sworn.

Mr. BATTLE. I don't want to go beyond saying what I thought——

The CHAIRMAN. I just asked you professionally about the other point.

Mr. BATTLE. You want to know simply about the matter in the circuit court of appeals?

The CHAIRMAN. Whether your brief in the circuit court of appeals makes an argument on the facts which substantially replies to Mr. Finch's typewritten argument submitted to Judge Hanford?

Mr. BATTLE. I would have to answer that question this way. The commission will observe that Mr. Finch did not take this case up by appeal, but by writ of review. The writ of review did not take up the evidence.

The CHAIRMAN. It seems to me you can answer the question, Mr. Battle.

Mr. BATTLE. I can only answer it, may it please the commission, in that way. Mr. Finch's brief speaks for itself.

The CHAIRMAN. Well, you are giving a reason why this or that might be so, but does it reply to his argument before Judge Hanford?

Mr. BATTLE. It replies to his argument so far as I considered the substantial questions involved were concerned, yes; but to say that it discussed the evidence would not be correct, because the evidence did not go to the circuit court of appeals.

The CHAIRMAN. That is an answer to the question.

Mr. BATTLE. Yes.

The CHAIRMAN. That is all.

Mr. HUGHES. May I make a suggestion, Mr. Chairman?

The CHAIRMAN. Mr. Hughes.

Mr. HUGHES. I have been sitting here wondering what a great deal of this is about. The inquiry is whether Judge Hanford has been guilty of any matter which subjects him properly to impeachment, and this particular phase of it must involve the judicial acts of Judge Hanford. Now, if he exercised arbitrary power or abused power, that must be shown by his acts, and whether he did right or wrong would only be determined from the evidence in the case. If we were to undertake to impeach a judge upon the arguments or the citations of counsel on the one hand, of the evidence on which he relies, there is not a judge in the civilized world who could not be impeached, because his decision would be wrong. Now, it seems to me that the only way to determine whether there is anything wrong about the action of Judge Hanford in this case is to get at those things which bespeak his judicial acts, or whatever was extra-judicial, if any such there be, and that is not involved in these briefs, with reference to these disbarment proceedings.

The CHAIRMAN. The point you make, then, is that the entire evidence should go before the body which determines the question.

Mr. HUGHES. Or else that the briefs are unimportant. It seems to me that the briefs are unimportant. These, again, are unimportant unless the evidence, the facts, are before the Judiciary Committee.

Mr. MCCOY. There is this additional point about it, Mr. Hughes. As I recollect it, Judge Hanford's opinion undertakes to quote several pages of the testimony; is that right?

Mr. DORR. That is right.

Mr. MCCOY. That is a factor that might be kept in mind, too.

Mr. HUGHES. A great deal of unnecessary material probably is going into the record, which will not be helpful to you in determining this question.

The CHAIRMAN. Quite so.

Mr. HUGHES. And if any of it is material, certainly the question could not be determined without the evidence, and it is to be borne in mind that only the evidence that Mr. Finch took was transcribed. That is all that is being offered.

Thereupon the witness was temporarily withdrawn from the stand.

Mrs. ELIZABETH STEVENSON, being first duly sworn, testifies as follows:

The CHAIRMAN. Will you state your full name to the committee?

A. Elizabeth Stevenson.

Q. You live in Seattle?—A. I do.

Q. How long have you lived here?—A. Twenty-three years.

Q. I want to apologize to you for keeping you waiting as much as you have been; I understand you have children at home who need your service.

Mr. HUGHES. May I ask the chairman that I would like if he would ask the lady to speak as loud and distinctly as possible.

The CHAIRMAN. Are you acquainted with Judge C. H. Hanford of this city?

A. Yes, sir.

Q. Do you know that gentleman at the table there now, standing up, by sight [pointing to Judge Hanford, who stands up in the court room]?—A. No, sir; I have never seen him.

Q. Have you ever seen him before, to your knowledge?—A. No, sir; never.

Q. You are sure of that?—A. That is the truth.

Q. That is a correct statement?—A. Yes, sir.

The CHAIRMAN. You are excused.

Witness excused.

J. L. FINCH, recalled, testified as follows:

The CHAIRMAN. Mr. Dorr, how much longer do you think you will keep Mr. Finch on the stand?

Mr. DORR. I am drawing my examination pretty near to a close, Mr. Chairman.

The CHAIRMAN. Very well; proceed.

Mr. DORR. Has any determination been made with respect to this evidence yet?

The CHAIRMAN. Any decision reached, you mean?

Mr. DORR. Yes; by the committee.

The CHAIRMAN. The chair has been looking over the opinion in the case during the recess and has noticed that in the opinion there is a

considerable amount of the testimony reproduced—quoted in the opinion. In view of that fact the chair is still of the opinion that the proposition made a while ago that Mr. Finch be allowed to select a reasonable amount of testimony from the record and insert it in our record, is relevant and proper inasmuch as the court cited a considerable quantity of the evidence. If there is other evidence of a different character the quotation of it would tend to show, or at least tend to shed some light on the question of the consideration of all the evidence and the bona fides of the opinion.

Mr. DORR. Mr. Chairman, it appeals to me very strongly that if the committee is to examine this evidence or any part of it that it should examine all of it. The record which has been filed in Judge Hanford's court and which is now before this committee consists only of the evidence that was adduced before Judge Smith at the instance of Mr. Finch. It does not contain any evidence offered or admitted by opposing counsel. It is all his testimony, and we are content and shall be satisfied without attempting to produce the other evidence, to take this record made by Mr. Finch; but I submit, Mr. Chairman, that it would be manifestly unfair and prejudicial to the committee and to the rights of the accused to allow this witness to simply cut out excerpts of that testimony.

The CHAIRMAN. Why would it, in view of the fact that the court has cut out excerpts from the other side of the testimony and inserted it in the opinion without quoting the testimony of the character to which you now refer.

Mr. DORR. The court only included in the opinion a continuous part of the testimony covering three pages, to show the tedius and laborious examination, not to illustrate any of the evidence, or to cover any point that was proven or not proven in the case.

The CHAIRMAN. What injustice would be done if Mr. Finch were given the opportunity to point out what he considers the material evidence in support of his contention, and then have the whole of the record submitted to the entire committee at Washington. It would relieve the labors of the committee somewhat and it does impress me, Mr. Dorr, that while I have not had time to read the entire opinion so much of it as I have read referring to some of the evidence would justify giving the opportunity to Mr. Finch to point out in the record evidence of an essentially different character from that which the judge quotes.

Mr. DORR. Yes; upon that proposition it would be eminently fair for Mr. Finch to have the opportunity to do so, but to cut out certain disconnected statements which may be found in this record to prove the charges against Judge Hanford would be monstrous, manifestly unjust. The only way that any judge, or any layman, in order to arrive at a correct conclusion, would be to read the whole record; not a few isolated excerpts.

The CHAIRMAN. Have you personal knowledge of whether the judge read the whole of the record?

Mr. DORR. Well, I know from Judge Hanford's manner in handling those cases, that he did read the whole of the record.

The CHAIRMAN. That is not personal knowledge.

Mr. DORR. No, sir; I do not know it personally in this case, but I am willing to assure the committee that he did.

The CHAIRMAN. There is another feature of it which, Mr. Dorr, clearly you are misapprehending. And I stated it to you once before. The nature of the duty imposed on this subcommittee is this. We are not bound to take all the testimony and we are admitting such testimony as you have offered as a matter of grace and not a matter of right. We are not a court; we are much more in the nature of a grand jury than a court, seeking—in fact our duty would be perhaps to confine ourselves to incriminating evidence to report to the whole committee, that they might determine whether there was sufficient ground for that committee to recommend proceedings by the House by way of impeachment. But we have gone far beyond that and are practically permitting you to make a defense here; not as a matter of grace, rather; and the report we make is not a finality; it is merely introductory to action, if further action should be taken. Indeed, I might add that the report of the whole Judiciary Committee is of the same nature.

Mr. DORR. I understand, generally, Mr. Chairman, what you have stated. I must confess, however, that I further understood from the resolution under which the committee was sitting that the committee would try to investigate, not one side of the question only, but to get at the facts—the truth of the matter, and I am very frank to admit that thus far the committee has been very considerate in attempting to arrive at that result.

Now, coming to the concrete question before the committee. Here is a charge made by Mr. Finch that Judge Hanford's conduct in this case was in some manner nonjudicial. Just what he exactly charges I have not been able to ascertain myself from hearing the testimony, but it certainly involves some suggestion at least of nonjudicial duty on the part of Judge Hanford, involving the decision in this case. Now, suppose that——

The CHAIRMAN. (Interrupting.) Involving the whole conduct of the case in his court——

Mr. DORR. The whole conduct of the case in his court. Now, the evidence will show, if it may be read, the enormous amount of testimony that was introduced before Judge Smith by Mr. Finch, and I undertake to say to this committee now that any man that will read that testimony must come to the conclusion that Mr. Finch's charges were not proven, exactly as Judge Smith reported in his master's report filed in this case. Now, then, to allow the witness, who is naturally a prejudiced witness—must be in the very nature of things—to excerpt from that entire record of 889 pages a few statements that he may find in the record disconnected with the entire statements of the witness, or other credible testimony that was introduced to prove his case would not be fair to this committee. It is not based upon a sufficient investigation of the case to determine whether Mr. Finch's position is correct or wrong.

The CHAIRMAN. Perhaps I can shorten the matter. My colleagues are agreed that the typewritten briefs filed with Judge Hanford by Mr. Finch shall be withdrawn from our record; that they and the briefs filed by the respective parties before the circuit court of appeals, and the record of the evidence taken before the master in chancery, or commissioner, Smith, shall not go into our record, but shall accompany it to the whole committee at Washington for such use as the whole committee may make of them. In the meantime

the chair is more than ever of the opinion that Mr. Finch should have the right to put into our record a reference to such parts of the testimony in that 886 pages which he thinks sustain his contention.

Mr. DORR. I have no possible objection to that arrangement, Mr. Chairman.

The CHAIRMAN. Very well.

Mr. DORR. I think it is fair and just.

The CHAIRMAN. It will shorten the proceedings and probably be the best way out of our present difficulty.

Now, you said a moment ago that you wanted to find out from Mr. Finch just what his grounds of complaint were. It seems to me you have the best opportunity in the world to do it, as you are examining the witness—proceed.

Mr. DORR. I will continue my chronological examination of the witness before asking any of those general questions, with the permission of the chairman.

Q. After Judge Hanford rendered his opinion on your petition for reopening the case—the Heckman & Hansen bankruptcy proceedings—there was a bar meeting called in the Federal court room, as I understood you.—A. That is true.

Q. At which you were present?—A. That is true.

Q. And how many lawyers did you state were there, Mr. Finch?—A. Two or three hundred.

The CHAIRMAN. Speak up a little louder.

A. Two or three hundred.

Mr. DORR. And who presided at that meeting?

A. Judge Hanford called it to order and then Roger S. Greene was made chairman.

Q. Judge Roger S. Greene?—A. Yes.

Q. Ex-chief justice of the Territorial court; that is the gentleman you refer to?—A. Yes, sir.

Q. And what happened there?—A. I went over that in my direct testimony, Mr. Dorr.

Q. You do not wish to add to or take anything away from the narative statement you gave?—A. No, sir.

Q. In your opening testimony?—A. No, sir.

Q. A committee, I believe, you have mentioned?—A. Yes, sir.

Q. As having been appointed?—A. Yes, sir.

Q. And that committee afterwards went into an investigation of this whole matter, didn't they?—A. I don't know; I would not say that.

Q. You were with them how much, Mr. Finch?—A. Two evenings, and possibly three.

Q. Where did you meet?—A. I do not recall—it was here in the city.

Q. At the court room?—A. No, sir; it was at some office.

Q. Some lawyer's office?—A. Yes, sir; it may have been Mr. Hughes's; I do not recall.

Q. And you had full opportunity to explain your conduct, did you?—A. So long as they sat; we talked freely together.

Q. There was never any attempt to curtail you, I mean?—A. No, sir.

Q. You were given full opportunity to be heard?—A. Yes, sir.

Q. That committee afterwards filed a report, didn't they?—A. They did.

Q. Were not all the papers in this case and all the records which you desired submitted to this committee?—A. As far as we went; as long as we sat. They got through before I had any notion they were through.

Q. Did they refuse to consider anything which you offered? That is what I want to get at.—A. No, sir.

Q. They gave you full opportunity to present anything you wanted to present?—A. Now let me explain what I mean. They called a meeting whenever they wanted to and we discussed matters, and then they would adjourn, and when they would want another meeting they would call another and I would meet them. Now I met them on each occasion and we talked freely on those occasions, but, as I said a moment ago, they got through——

Q. (Interrupting.) They had the evidence in this case also before them, didn't they?—A. I do not recall that.

Q. You do not remember that Mr. Hughes called your attention to it and asked you to explain the evidence or any part of it that might have a bearing?—A. I have forgotten whether they made use of the evidence or not. I know we went through a great number of papers.

Q. And that committee continued to exist from July 26 until September 6, didn't it?—A. I do not know what the dates were.

Q. Approximately that time?—A. It may be true; I do not know, sir.

Q. Now, you knew that they filed a report?—A. I read that they did in the papers; yes, sir.

Q. Did you ever see the report?—A. Not for a year or two years.

Q. Why not?—A. I did not have any curiosity to look at it after I saw the newspaper report, and no copy was given me.

Q. Was it printed in full in the newspapers?—A. I think not.

Q. You did not have interest enough to go up to the courthouse to look at it?—A. No, sir; I did not.

Q. You knew that the committee agreed unanimously, didn't you, in the matter?—A. I think so.

Q. Mr. E. C. Hughes was the chairman of the committee?—A. Yes, sir.

Q. Mr. Gilman, Mr. Powell, Mr. Turner, Mr. John Arthur were the other members?—A. Yes, sir.

Q. And they filed the unanimous report?—A. For anything I know. I don't know.

Q. You never have seen it?—A. I have.

Q. When did you see it?—A. A couple of years afterwards.

Q. A couple of years afterwards?—A. Yes, sir.

Q. And you knew from the newspaper reports, or otherwise, at the time what the findings were, didn't you?—A. In effect.

Q. In effect the charges that you have made against those four attorneys were groundless?—A. I don't know—I don't know about that—that they made any such report, and if they did I do not know what business they had making a report on it. It had already been whitewashed by the bar, and they were not appointed a committee to look into the charges against them.

Q. They were not?—A. Why, no; they were appointed to look after me, after the bar sat there and whitewashed the other side. That is why I never took any interest in their proceedings. I never asked for a meeting before them; they did just as they pleased. They had a meeting when they wanted to meet together and I went and talked to them, and when they got through it was their business. I never paid any more attention to it than that, except to treat them as courteously as I knew how when I met them.

Q. Don't you know that the committee found that the charges made by Finch against the several members of the bar were all without foundation and were made without a sufficient investigation of the facts?—A. That sounds like the language I remember reading a year or two afterwards.

Q. It sounds familiar, does it?—A. Yes.

Q. And that they found "We think that Mr. Finch made the charges believing and relying in a great measure upon the erroneous statement made to him by his client Mr. Heckman."—A. I think I remember that.

Q. "We think this statement"——A. But I never hid behind that. I never claimed it.

Q. (Reading:) We think this statement, taken with certain facts and circumstances connected with the Heckman & Hansen litigation were sufficient to cause Mr. Finch to make a careful investigation to determine their truth or falsity. They were wholly insufficient without such an investigation to justify the charges made, and in making them the conclusions reached by Mr. Finch were reached by illogical, erratic, and perverted reasoning.

A. I remember that.

Q. And you remember that, in effect, this committee of the bar recommended to the court that on account of your tender age and inexperience and erratic disposition that you be not disbarred, but be reprimanded.—A. I do not. I never heard it.

Q. You never heard that?—A. I never heard it until this time.

Mr. McCoy. Did they ever take any testimony about your erratic disposition?

A. No, sir; and I think——

Mr. Hughes. I think the report had better speak for itself, Mr. Dorr.

Mr. Dorr. I ask that it be introduced.

The Chairman. What is the relevancy of it?

Mr. Dorr. It is the report of the committee of the bar association on this very matter.

The Chairman. We are not trying Mr. Finch or the bar association, are we?

Mr. Dorr. No, sir; but you are trying Judge Hanford, and this is what grew out of this proceeding.

The Chairman. Was he any party to this at all and did he take any action on it, or was he in any way connected with it?

Mr. Dorr. Mr. Finch has stated that he called the meeting, Mr. Chairman.

The Chairman. Was he one of this committee?

Mr. Dorr. No, sir.

The Chairman. Did the committee report to him?

Mr. Dorr. Yes, sir.

The Chairman. Did he take any action on the report?

Mr. DORR. He simply refrained from taking any action to disbar Mr. Finch.

The CHAIRMAN. Very well.

Mr. MCCOY. Well, he handed down some kind of a report, according to the newspaper accounts.

Mr. DORR. I think that ought to be established.

Mr. MCCOY. I think that ought to go in because I would like Mr. Finch to be given an opportunity to explain that.

Mr. DORR. As to what report was handed down?

Mr. MCCOY. Mr. Finch yesterday stated that he read in the newspapers at one time a statement to the effect that Judge Hanford had from the bench, when he was not there and without any notice to him, rendered an opinion, I presume on the basis of this report.

The CHAIRMAN. I overlooked that feature of it. If Judge Hanford took any action on it it is relevant. Let it go into the record.

The supplemental report of the committee of the bar association is marked "Exhibit No. 36."

Mr. DORR. Can you tell us about that newspaper report now, that which Mr. McCoy has just referred to?

Mr. MCCOY. I am not at all concerned with the newspaper report, but if Judge Hanford did any such a thing somebody must know it officially, and it must be susceptible of proof by producing whatever Judge Hanford did, if it was done in a judicial way.

Mr. DORR. I fully agree with you about that, but I do not think it is a fair way to prove a thing of this kind to have a witness state that a newspaper man told him that somebody else told him something.

Mr. MCCOY. That is just exactly my point, and you were beginning to ask him about the newspaper, and I interrupted you to say that there was a regular way of proving it.

Mr. DORR. I intended to ask him if he knew anything about any proceeding in court.

Mr. MCCOY. He testified about that yesterday.

The CHAIRMAN. We will get to that probably in the end. Do you wish to ask him about the newspaper report?

Mr. DORR. A little later.

Q. You know that this matter came before the bar association, didn't you, of Seattle, too?—A. I do.

Q. Were you present at any investigation that was carried on by the bar association?—A. I was not. I never heard that there was one carried on.

Q. Sir?—A. I never heard that there was one carried on.

Q. You didn't?—A. I never heard of it.

Q. Are you a member of the Seattle Bar Association?—A. I am not.

The CHAIRMAN. I suppose, unless the judge was in some way mixed into it, that it would hardly be proper to go into it.

Mr. DORR. I do not understand that he was.

Mr. HUGHES. If I may be permitted to make an explanation as to whether it is material whether it goes into the record or not—without any reference to Mr. Finch, at all—I would state that the committee made its investigation and reported to the bar association itself; that that report has now gone in evidence. Then the bar association,

on receiving that report, takes action and submitted the whole matter to Judge Hanford, and whatever Judge Hanford did, of which some mention has been made by the witness, must have been predicated, first, on the report to the bar association, and, second, the action of the bar association on the report of the committee, and it is that meeting of the bar association to which Mr. Dorr now refers, and it seems to me that that, perhaps, ought to go into the record.

The CHAIRMAN. His question indicated that it was some independent action by the bar association.

Mr. HUGHES. The action of the bar association was the action taken on our report. That action of the association, together with our report, as I take it, were submitted to Judge Hanford, and whatever Judge Hanford did, which is a matter to be considered hereafter, must have been based upon the report of our committee and the action of the bar association, through which that report was made.

Mr. MCCOY. Was the meeting that was called by Judge Hanford in the first instance a meeting of the members of the bar practicing in the Federal court, or a meeting of the bar association of the city of Seattle?

Mr. HUGHES. My recollection of it is that it was a meeting of the bar practicing in the Federal court. At that time there was a King County Bar Association, but it had practically fallen into disuse, as it has ever since. Subsequent to that time, a city bar association was organized. The King County Bar Association hadn't had meetings for some time—some years prior to that time—hence a general meeting was called by Judge Hanford in view of what had preceded, some discussion in regard to which reference has been made by the witness. At that meeting he called them to order and asked them to select a chairman, and Judge Greene was selected, and then this committee was appointed. When the committee was ready to report, as I recall it, Judge Greene again assembled the bar practicing in the Federal court and to that meeting this report was made. That is my understanding of it, and then the action of that meeting is recorded and is what Mr. Dorr is now presenting to the committee, and the entire matter was then submitted to Judge Hanford. The committee will remember that the witness stated that Judge Hanford had made certain announcements to him when he granted him leave to obtain these books. Now, Judge Hanford, instead of himself taking any action, called the bar and said it was a matter for the bar—I am speaking of what the witness testified, that it was a matter for the bar to consider—and turned it over to the bar meeting, of which mention has been made, and then followed the events that I have stated.

Mr. MCCOY. Where is the resolution, if any, by which the matter was referred to the committee?

Mr. DORR. Originally?

Mr. MCCOY. Yes, sir; from the very beginning.

Mr. DORR. That is the first meeting [handing document to Mr. Hughes].

Mr. HUGHES. Is this the first meeting?

Mr. DORR. Yes.

Mr. HUGHES. I see that Roger S. Greene was chairman and George H. Walker was secretary. This is a record of the first meeting.

That really ought to precede our report [handing document to Mr. McCoy]. I have not examined that paper, but I understood that Mr. Dorr has.

Mr. McCoy. This should be marked in evidence as an exhibit.

Document, being the original resolutions adopted at the meeting first called by Judge Hanford, is received in evidence and marked "Exhibit No. 45."

The Witness. That refers to that meeting.

Mr. McCoy. Is that substantially—does that Exhibit No. 45 contain a statement substantially as to what took place there?

A. Yes, sir. The only exception I would take to it is where it says, "After the reading of the documents above referred to and after some discussion, Mr John Arthur moved the following resolution." I do not think that there was any discussion. I take exception to the report of the committee.

Q. What documents were referred to in that?—A. The petition which I have referred to here in re Ballinger was read. Judge Smith's report was read and the report there says Judge Hanford's opinion—I do not recall that that was read—I think it was just those two papers that were read; I am not sure.

Mr. Dorr. Who do you say made the motion, Mr. Finch?

A. Ira Bronson made it in the first instance.

Q. The certificate shows that it was made by Mr. John Arthur.—A. That is not correct.

Mr. McCoy. Now, this appears to be in the nature of a report to Judge Hanford reciting what took place at that meeting.—A. Yes.

Q. And it recites that certain papers were read, doesn't it?—A. Yes, sir.

Q. (Reading:)

The motion of Richard A. Ballinger for your disbarment, the report of Mr. Eben Smith, United States master, and the opinion of Judge Hanford confirming the report of the said mater in chancery—

And then this report continues as follows:

After reading the documents above referred to and after some discussion, Mr. John Arthur moved the following resolution: "*Resolved by this committee of the bar of Seattle, convened by request of his honor Judge Hanford,* That after hearing a very full statement of all the matters in issue between J. L. Finch, as counsel on one side, and Richard A. Ballinger, James B. Metcalfe, Richard Saxe Jones, C. A. Reynolds, John P. Hoyt, Warren A. Worden, Peter L. Larson, Eben Smith, A. C. Bowman, V. F. Fisher, it is the judgment of the bar that each and all of these gentlemen acted fairly in the entire proceedings involved and are wholly free from blame, and that there is not a scintilla of evidence produced to impugn their motive or their action or to sustain any of the charges brought against them."

Were you called upon to give any proof up to this time?

A. None, whatever. I even suggested that I would like to address them, but I wanted to be invited first.

Q. That was the time when you made that suggestion?—A. Yes, sir; and I was not invited.

Q. The resolution was seconded by Mr. Wilson R. Gay, and, being debated and put by the chair, was duly adopted?—A. The only debate was just a suggestion by Judge McCafferty, that it might be that I had in mind the offering of an apology and that they ought to hear me.

Q. Now, the names which I have read here as the names of those against whom you were said to have made charges are some of the gentlemen against whom you claimed yesterday you had absolutely never made any charges.—A. That is true.

Q. And then the resolution proceeds:

On motion of Mr. E. C. Hughes, in order that Mr. Finch may have an ample opportunity to exculpate himself, if he can, from the charges necessarily involved in the matters appertaining to this meeting and in the resolution just passed, I move that a committee of five, etc., be appointed.

That was what took place next?

A. That was what took place next.

Mr. DORR. Mr. Chairman, the next step in the proceedings will be the report of the Seattle Bar Association, and I would like to offer that as the next exhibit.

Mr. HIGGINS. To Judge Hanford?

Mr. DORR. No; it is an independent action by the Seattle Bar Association growing out of this same matter, as explained by Mr. Hughes a few moments ago.

The CHAIRMAN. Do you want to look at it, Mr. Finch?

Mr. FINCH. I would like to [examines document].

The CHAIRMAN. Are you sufficiently familiar with this to state whether it is a correct copy?

A. I do not know anything about it. I never heard of that thing in my life until just now; I never saw it or heard of it; I did not know it was in existence. I never heard of the meeting of the bar association that adopted it. I have no knowledge of it at all. It is a complete surprise to me.

The CHAIRMAN. Proceed, Mr. Dorr. I understood you to say that was a copy, but that you had one attested.

Mr. DORR. I said I would have one attested by the proper officer of the bar association. That had better be marked subject to verification. I can have him identify that one.

The CHAIRMAN. It can be marked as an exhibit.

Document marked "Exhibit No. 47."

Mr. MCCOY. Now, Mr. Hughes, does that seem to be a report of the Seattle Bar Association?

Mr. HUGHES. The first meeting, I remember, was, as Mr. Finch described it, a meeting of the bar and not of the association technical y. There was an existing association which had practically fallen into disuse. In other words we hadn't had meetings for several years prior to that time. Now I do not recall about this. I do not recall about this meeting. I have a very distinct recollection of the other matters, but I do not at present recall this meeting, and I think it is highly probable that I was not at it. It may have been that I abstained from going there, having been a member of the committee whose report was being passed upon.

Mr MCCOY. The organization which you say was practically defunct was known as the King County Bar Association.

A. Yes, sir.

Q. There is to-day a Seattle Bar Association, and can not we find out when that was organized and whether that is the report of this body or simply members of the Federal bar?

Mr. HUGHES. We can find it out; I notice that they had the same president and the same secretary who acted, and we will supply that.

The CHAIRMAN. Let it go in.

Mr. DORR. Mr. Finch, I understand you to state that when the motion was served upon you for a confirmation of Judge Smith's report you were notified that it came up for hearing the next day, is that correct?

A. Let me have that question again, Mr. Stenographer.

Question repeated to the witness.

A. No, sir, it is not correct. I did not make that statement.

Q. Then I thoroughly misapprehend your testimony on that point.—A. I told you very specifically that that motion lay dormant for a long while along with the exceptions of the receiver—of the referee's—or the exceptions of the bankrupt, I mean, to the referee's report.

Q. What proceeding was that which you referred to on yesterday in which you said that you were served with the motion in the afternoon requiring you to be in court the next morning at 10 o'clock.—A. I said that one day I came to Judge Hanford and obtained from him an order upon the referee, Judge Smith, to return the evidence in the case and that the afternoon of that same day I was served with a notice that this motion which you referred to and which you have in your hand, and the exceptions of the bankrupt to the referee's report, would come up the next morning at 10 o'clock.

Q. Now what is there in your mind that is at all irregular or wrong in that?—A. Trying to hear an exception to a referee's report without any evidence. I do not know how to do it myself, as a lawyer.

Q. It was not done in this case, was it, Mr. Finch?—A. Why, it was done. That is what I am complaining about.

Q. Now look at the motion I show you and see whether you are not mistaken [showing].—A. No; I am not mistaken.

The CHAIRMAN. Proceed.

Mr. DORR. Mr Finch, the motion was served on you on the 10th day of May, was it not [showing]; and also the notice of the hearing was served on you at the same time.

A. That is absolutely correct.

Q. And the date fixed in the notice is on the 14th of May, or at such time as counsel can be heard?—A. That is true; that is the date fixed in the notice.

Q. The report of the referee had been on file since January 25 preceding those dates, hadn't it?—A. That is true.

Q. And you had not yet brought up the evidence.—A. That is true.

Q. And those attorneys served you with this motion in order to compel you to bring in the evidence.—A. I do not know what that was.

Q. Well, you know as a matter of fact in the natural procedure that that would be the effect of it.—A. Well, that might be, but this was a peculiar procedure, and I do not know just what actuated them. I will let them say.

Q. The report of the general master in chancery had been on file in Judge Hanford's court since the 24th day of January.—A. That is true.

Q. And you had taken no steps to bring in the evidence.—A. Until when?

Q. Until away later.—A. Well, a while later.

Q. Until after this motion was made and served on you?—A. I can not say with reference to the time that that motion was served.

Q. Now, Mr. Finch, is it not a fact that this motion was the thing that moved you to get that evidence in?—A. Oh, I don't think so. I know it was not. If it occurred as you say it might have made me apprehensive, but it never was the thing that moved me.

Q. It might have made you a little more in a hurry to get it finished?—A. No, sir. There was nothing that could move me to get into a hurry at that time, sir. I was not scared for a moment. I never have been.

Q. I did not insinuate that you were scared; but were you trying to delay the proceedings?—A. No, sir. The truth was I did not have the money. My clients were bankrupt and I had to raise it personally if it ever got to the court; and I certainly wanted it to get there, as an officer of the court and, as I supposed, a friend of the court at that time; and I would have sold anything I could to raise it, and I raised it for him.

Q. Are you able now to fix the date on which the hearing was had before Judge Hanford?—A. The date that the hearing was had?

Q. Yes.—A. Yes, sir; it was heard on the 8th day of June.

Q. Is that the time at which Judge Battle made his argument?—A. Yes, sir.

Q. And you filed your written argument at that time or before?—A. No; not until after that.

Q. Not until after that?—A. Yes.

Q. How long?—A. I would like to have the argument and I will settle it for you. I have to refresh my mind from that [referring to document]. At the time that Judge Hanford heard this, over my objections, because the evidence was not there, it was the 8th day of June; but having given me an order on the 7th day of June to get the evidence, I took 10 days—I asked for 10 days in which to put in a written argument. Subsequently and within the 10 days I put in the argument which is in my hand and which is marked "Exhibit No. 44," and I wish to call your attention to a statement or two bearing on just what I am testifying about, which is contained in the argument itself.

Q. Does that in any way help you to fix those dates?—A. Yes. I had objected to certain parties appearing before the court, and I said "our concern is not that the matter be not heard at all, but that it be not heard until the evidence arrives." And then I follow that and say, "The following is on the merits and with the hope that the evidence will reach your honor as soon as the argument." Then, at the end of the argument, and that fixes the date definitely.

Mr. DORR. Now, then, Mr. Finch——

Mr. MCCOY. Let him finish his answer.

A. (Continuing.) I say, "the lack of time after the record should have been returned to your honor is responsible for whatever defects may be found in the argument. We have had access to the record

in its unbound form for the past day and a half, though the same has not been returned to the court." So, when I filed this I had gotten access to the record in the stenographer's room, but it had not been returned even then. That is one reason why I did not care whether the committee or anybody else had the evidence. Judge Hanford did not when I gave him this.

Q. Now, let me try and clear up a little bit of uncertainty which seems to surround this matter. I understand you to say just now that you got the order from Judge Hanford to have the evidence returned on the 7th day of June?—A. That is true.

Q. Is that the first time you got an order for the evidence?—A. The first time I got the order; but it was in preparation long before.

Q. Then it was after the motions were served on you?—A. That is true.

Q. Because the motions were served on you, that was what inspired you to get the order for the evidence?—A. Not at all. I had contracted for the evidence before and had paid for it. What inspired me to get the order was to give the authority to the evidence when it should come. I had to bring it in some way. While I had a personal contract with the stenographer to get it out, it did not have any official character until I gave it one in some way. You see Judge Smith had made his report and his duty had ended, and so then I got an order from Judge Hanford to direct Judge Smith to send the evidence up, so as to give it a character.

Q. You had this a day and a half before you filed your argument?—A. No; I didn't have that, but I had access to it in its unbound form.

Q. Well, you had access to the transcript of the evidence?—A. For a day and a half; yes, sir.

Q. For a day and a half. Now, when did you file your amended argument with the court after that day and a half—I mean the original argument?—A. The original argument within 10 days after the hearing on the 8th. He gave me 10 days, and that must have been on the 18th of June.

Q. Then this transcript was in existence at least as early as the 16th of June?—A. About then.

Q. Why didn't you file it right away?—A. Because it was not done. It was filed the first minute I could shoot it in.

Q. And it was on file before you filed your amended argument?—A. Yes, sir; I think that is true. That is my recollection. I think it was because it was on file that I shot in the amended argument. I know I hurried in order to try to get it to Judge Hanford before he should render any decision.

Q. This transcript was filed in court on June 21, 1904 [showing].—A. That is so marked.

Mr. McCoy. Not by you—marked by the clerk.

A. It is not marked by me.

Mr. Dorr. Well, it is marked by the clerk of the court?

A. Yes, sir.

Q. The official filing mark shows it was deposited in court on the 21st day of June, 1904?—A. Yes, sir.

Q. And Judge Hanford's opinion in the case was filed on July 11, 1904?—A. I don't know, but I think so. I take your word for it.

Q. Now, I want to ask you a general question which has been sug-

gested by a member of the committee in this examination. What particular things, points, do you allude to in all of these proceedings as involving Judge Hanford in any unjudicial conduct?—A. His refusal to reopen the estate under the circumstances that I have detailed and his handling of the whole proceedings from the time that I presented the petition to reopen the estate and up to the time that he delivered that phillipic that I told you about yesterday.

Q. The one which you read about in the newspapers?—A. Yes, sir.

Q. Now, what do you know about that personally?—A. As I stated yesterday, I do not have any knowledge of it which makes it competent evidence in my—according to my understanding of the law, I realize that. At the same time from my investigation that was made at the time I know it was true, for my own purposes.

Q. Can you produce that newspaper?—A. I beg pardon?

Q. Can you produce that newspaper?—A. I can not, but I can find it in the files of the Star if they are in tact—I will undertake to do it—would you like it?

Q. Yes, I would like it very much. Will you bring it in please at some future time?—A. I will, if it is in existence in the Star files—in the Star office.

Mr. McCoy. Is there any issue on that point?

Mr. Hughes. Except that it is made the basis of evidence.

Mr. McCoy. How is that?

Mr. Hughes. It is hearsay, twice hearsay.

Mr. McCoy. Is there any denial that Judge Hanford did, from the bench, deliver something in the way of an opinion upon Mr. Finch's case or not, regardless of what it contained; did he do that certain thing?

Mr. Hughes. After the report of the committee?

Mr. McCoy. Yes.

Mr. Hughes. My understanding is no, that he did not; but I just say that from the information I have, but I do not want to go on the record as giving hearsay evidence here. We will find that out for the committee.

Mr. Dorr. That was at the time the committee reported on the disbarment proceedings that we have been inquiring about, was it?

The Witness. No, sir; it was some two or three weeks after. There was nothing at all in Judge Hanford's court—that is, at least there was not anything at all in Judge Hanford's court to require any expression from him at all. There was no motion or demurrer or anything else pending that I know anything about.

Q. There was a report made by this committee of five attorneys filed in Judge Hanford's court in September.—A. I do not know when it was filed.

Q. Now, was it not about that time that you saw this newspaper article?—A. I rather think it was about the 14th of October, that is the date that I should look into the Star files to find it first. If I did not find it then I can find some reference that will guide me to where it is.

Q. You think it was with reference to the report that the committee made, or not?—A. I never supposed it had any reference to anything, sir.

Q. What is you age, Mr. Finch, now?—A. Thirty-eight.

Q. Ten years ago you were 28?—A. Twenty-eight.

Q. Are you practicing law here at the present time?—A. No, sir.

Q. Have you quit the practice? Or how is it that you answered "No, sir"?—A. I have withdrawn from the practice; yes, sir.

Q. When was that?—A. The 1st day of July.

Q. Of this year?—A. This year.

Q. Are you going away to some other place?—A. Yes, sir.

Q. Where?—A. I do not know; I have not determined. I do not know that I shall move away. I have some mining interests that take me away, off and on.

Q. Do I understand that you have abandoned the practice of law altogether?—A. Yes, sir.

Q. Permanently?—A. Yes, sir.

Mr. DORR. That is all.

The WITNESS. At this time, Mr. Chairman, I would like to explain the testimony, if it needs any explanation, that was referred to awhile ago as having been given by me before Judge Smith. Down there the examiner, with myself on the stand, wanted to restrict me strictly to the books of the bank and what they contained, as justifying my remarks to Judge Hanford. The spirit of my remarks to Judge Hanford was nothing of the sort. I wanted the books of the bank in order to make out a complete case. That was understood by all of us at that time. The point that I was trying to make at that time was the connection of the Scandinavian-American Bank with the property, and I wanted to show that they had put up the money to purchase it through this man Mayhew, who pretended to be the purchaser, and while they testified that that was not true—several persons had—I got the books of the bank to prove it; and then occurred the colloquy which you heard so much about before Judge Hanford, and so when they asked me, "What do you find in the books to disbar Judge Ballinger?" I said, "Nothing," and so with the others; and you will find in the very evidence that he read that I made that same controversy at that time.

Mr. MCCOY. I do not think the question needed that explanation, although I am glad you made it.

The CHAIRMAN. Was there objection made or any ruling made by the commissioner on the point which you spoke of, and does the record show it?—A. No, no; except he made a report.

Q. Well, does the record on its face show in any way that an attempt was made to limit you to prove the proposition you had laid down, by the books of the bank and that alone?—A. No; nothing only as you would infer it from that examination there. No; that is all.

Q. Did you have other proof aliaunda the books?—A. Yes.

Q. Were you permitted to put it in the record?—A. Yes, sir.

Q. Is it in the record?—A. Yes, sir.

Mr. MCCOY. In other words, you were endeavoring to prove a conspiracy, and you were having the usual difficulty in proving that sort of thing?

A. Yes, sir.

Q. That always exists in any case?—A. Yes, sir; exactly.

Mr. DORR. The only conspiracy that you found existing existed in your own mind, didn't it, Mr. Finch?

A. No, sir.

Mr. MCCOY. That is for the committee to judge, Mr. Dorr.

Q. You were asked—now, do you want to make any other statement?—A. I don't think so now.

Q. You were asked whether you had filed any appearance in the State court; what is the method in the State court of substitution of attorneys?—A. Well, a formal method would be to stipulate between the client and the attorneys and then take an order upon that stipulation. That is quite a general practice. But it is also a practice when one attorney supplants another, that the other simply proceeds in the case, and no formal record is made.

Q. Well, did anybody object to your appearing as attorney for Heckman & Hansen in the State court?—A. There was attempted to be made the point that I did not represent Heckman & Hansen, but Mr. Heckman was present there, and I claimed that I at least represented him. Mr. Hansen was ill at the time, and Mr. Reynolds claimed that he was competent to represent Mr. Hansen.

Q. Well, did Mr. Heckman disclaim your attorneyship?—A. No. He was there personally and behind me.

Q. You mean by behind you that he was there authorizing you to appear for him?—A. Yes, sir.

Q. What is the method in bankruptcy of getting a substitution of attorneys?—A. Well, matters in the Federal court are more formal, and so it is necessary to get a formal substitution; at least I would infer that from the fact that before one can appear at all he must file an appearance, a paper showing his authority to appear, or at least entering his appearance formally. That being so formal, I would assume, and did in this case, that it was necessary to substitute formally the attorneys, and I did in that case, and I took an order from Judge Hanford to substitute me in place of Mr. Reynolds.

Q. Now, did you state for whom Metcalfe & Jurey appeared in the proceedings in the State court?—A. At first they appeared for Heckman & Hansen, but when I had become the attorney and was trying to thwart the delivery of the property to Mr. Mayhew, they were always in court as opponents of mine; but I never could find out whom they represented.

Q. For whom did Mr. Reynolds appear in the State court?—A. The order taken, or one of the orders at that time, defines him as the attorney for the American Bonding Co., who was the surety on the receiver's bond.

Q. Is there anything on any of the papers which have been offered and admitted in evidence here which shows who the record attorneys were for all the parties and for whom or what parties all the attorneys were appearing?—A. Not that I am aware of.

Q. Is there anything on these exhibits which will show for whom Metcalf & Jurey were appearing, that you know of?—A. Not that I know of.

Mr. McCoy. After we adjourn I wish you would look at those exhibits, unless you can satisfy yourself now. Now, Exhibit No. 43, being No. 32817, the order approving the fourth report and directing the receiver, etc., recites that Metcalfe & Jurey appeared for themselves. What interest did they have, if any, in the matter?—A. I do not know, except as—well, I could not answer that question only this way, that subsequently I made charges against Gen. Metcalfe for his conduct in this case, and I infer that it was because of the truth

of the allegations that I made that prompted him to be present on that occasion.

Q. What prompted him to appear in this matter?—A. I can not answer, unless it was the cause.

Q. Is it your belief and was it your belief that they had any personal financial interest in that proceeding?—A. Oh, they had absolutely no interest in the thing except as it might be that they wanted to keep track of things because they feared subsequent developments; now, if that is the answer, they had no other interest at all.

Q. Who fixed the price which has been referred to as the upset price at which these properties of your client should be sold?—A. I do not know. That was a matter in existence when I got into the case, and it never was disturbed in any way nor investigated.

Q. Was there any complaint ever made that the buildings or the machinery, rather, on the property was offered for sale separately, do you know?—A. No.

Q. Do you know of any adjudication in the receivership proceedings in the State court in the nature of a judgment showing the indebtedness of your clients to anybody?—A. There was no adjudication whatever, and for the very good reason that the bank had bought up the plaintiff's claim, and there was no longer any plaintiff in the case.

Q. Do you believe that Heckman & Hansen were not insolvent?—A. Absolutely believe it.

Q. Under what section of the bankruptcy law did you conceive that you had a right to file a petition in voluntary bankruptcy?—A. Pardon me, I did not do so. It was Mr. Reynolds who filed the petition. But I did take the position subsequently that he did have that right, because the bankruptcy act says that any one who owes debts may file a petition and it does not say that he has to be insolvent, and I think Collier on Bankruptcy admits a bankrupt, or one filing such a petition, may in fact be solvent. It is very unusual, but nevertheless after the matter had been done I simply took the position that I thought the law warranted.

Q. Were you present at the hearings before Mr. Bowman on the question of the adequacy of the upset price?—A. I was not. I had never heard of the case at that time.

Q. You were not in the case at that time?—A. No, sir.

Q. Was there ever any complaint that the upset price was an inadequate price?—A. Only in this way: That there was a complaint made in the petition to reopen the estate in the first instance, upon the ground that the bank was attempting to get a hold of the property at a grossly inadequate price.

Q. Are there any other papers in the receivership proceedings that you think should go into the record to develop the situation fully, and if so, what are they?—A. I would like, as it is 5 o'clock now, to answer that question in the morning. I will think it over to-night.

Q. You stated yesterday, as I remember, that the order of sale, and the order confirming the sale, were in the same paper or part of the same matter?—A. That is my recollection. I will look that up to-night. I have a note upon that and I will see what it was that caused me to think that.

Q. You, I believe, were not at the hearing at which the report of the sale was confirmed?—A. In the State court?

Q. Yes.—A. Yes, sir.

Q. It was the order of distribution which you said you were not at?—A. It was the order of distribution which was granted that I did not know anything about.

Q. Is it usual in this State to date orders other than the mere date of filing; I mean the order itself—is it usual to date it—showing when it was made?—A. Well, the practice varies at the bar. I think the better attorneys at the bar have one practice—they all date them—the best of them do, but sometimes it is recited in the body that the matter occurred on a certain date, and the date of the order will be a week after that or more.

Mr. McCoy. Mr. Dorr, have you offered in evidence the petition for the appointment of the receiver in the State court?

Mr. Dorr. No, sir; I have not.

Mr. McCoy. Is that in court?

The Witness. It was introduced as one of the exhibits before Judge Smith.

Mr. Dorr. I have not seen it.

Mr. McCoy. And the order appointing the receiver; I would like to see both of these.

Mr. Dorr. I will look them up for you, Mr. McCoy.

Mr. McCoy. Do you claim, Mr. Finch, that there was any fraud in obtaining the foreclosure judgment in the action brought by the the Scandinavian-American Bank against your clients and Curtis?

A. Yes, I do. Mr. Heckman employed Metcalfe & Jurey to fight that proceeding, or it was not a proceeding at that time, but the matter that took him to Metcalfe & Jurey was the controversy that he was in over that $5,000 note and mortgage, which resulted in that suit, and he paid them a retainer of $350.

Q. That is, he retained them, as you were informed, to go into court claiming that the arrangement really had been for a $5,000 loan, payable in five installments of equal amounts?—A. I do not know what they were to do, but it was to protect their interests on that theory of the case.

Q. Now, was the $6,000, which I believe was the amount you stated had been used in repairing a certain boat at the request of the bank; was that involved in the foreclosure suit?—A. No; that was not.

Q. Do you know what the date of the $5,000 note was?—A. No; I do not.

Q. Will you make a memorandum of it?—A. I will do so.

Q. Did Judge Hanford say anything to you at the time when he sent this matter to Judge Smith as to what his purpose was in sending it there; and, if so, what did he say?—A. His remark was that he wanted to know whether he had a set of scoundrels practicing in his court.

Q. Well, looking upon the matter as a judicial proceeding, what was the purpose of the reference to Judge Smith?—A. [Referring to document.] I remember, in answer to that question, I remember that at the time the court announced that he would refer the matter to Judge Smith he used these words: "To make a report as to what he finds the facts to be and whether they—meaning the facts—are mate-

rial to reopening the case or only material to the character of the parties affected." Now, his order did not follow that exactly.

Q. Now, in what proceeding, if any, did the Scandinavian-American Bank claim that they had not bought this property sold by the receiver?—A. They claimed it before Judge Smith.

Q. Did they claim it under oath or only in argument?—A. No; under oath.

Mr. McCoy. Will you, if you can overnight, point out in the testimony where, if at all, it was proved that the bank had furnished the money to Mr. Mayhew, and what the testimony on that point is?

Q. What was your objection to the report of Mr. Smith as referee, if any?—A. My objection was that he did not find on any of the facts stated in the amended petition. He found at the end generally that in effect the bankrupts had not made a case; that was a general finding at the end; but my complaint was that he had not found specifically on any of those allegations that I had made.

Q. Now, at page 8 of Judge Hanford's opinion, there was named certain gentlemen against whom you made charges. Have you told the committee fully the names of those against whom you never made any charges?—A. I have.

Q. So that there are no others than those you have named against whom you claim you did not make charges?—A. That is true.

Q. Now, coming to these proceedings in the Bar Association; I wish you would describe a little more in detail what took place before the committee of five which was appointed.—A. They sent me word one day that they would be glad to have me meet them. I do not know whether it was that night or some subsequent night that they named. That word was brought to me by Marion Edwards, who invited me out to lunch that day and told me about it.

Q. Was he on the committee?—A. No.

Q. Who was he?—A. He was a lawyer employed in the office of Peters & Powell, Mr. Powell being one of the members of the committee. I met the committee at the appointed time. I approached them somewhat on the defensive; that is, I did not know who they were, or what they considered they were relative to this case, or what they considered their functions were. They started in by asking me, I think in effect, this—or suggesting to me in effect this: That they would like to make a unanimous report if they could do so, and they were in hopes that I might join in that report; that is, that they might smooth away some things that I thought looked dark in the case and that we might make a unanimous report, and I acquiesced in that suggestion, and then they asked me about some things, particularly in the State court; I think they asked me what was the beginning of the trouble, or, anyhow, the matter was taken up with them in that order. Not from the—not according to the order of the case as it arose in Judge Hanford's court, but according to matters as they had come up over in the State court, even before I had gotten into the case. Those matters were gone over by the committee, suggestions made here and there; sometimes they seemed to agree with the positions that I took and at other times they didn't seem to think there was so much in some of the matters as I did. I remember a general discussion there growing out of the suggestion, either from Mr. Hughes or Mr. Powell, that they could not understand why the bank had denied buying in the property; they could not see why it would

not be just as well to say, "Yes; we bought it," because the expression was in the committee that they did not see any harm in their buying it.

Q. Do you mean that it was admitted there at that time that they actually had been the people who bought the property?—A. No; I mean that the committee took up that discussion among themselves as to why the bank had denied having purchased the property, that being a very prominent point, because it had raised the disturbance that it had in Judge Hanford's court. After we had discussed the matters on two or three occasions there was an adjournment as usual, and so far as I knew we were to meet again when the committee should set the time; but we never went back there, and it was because of that fact that I said what I did yesterday, that I didn't think that Mr. Hughes had ever heard the matters that I presented here to the committee, and it is because the committee upon which he was working at that time stopped in their labors before we got the matters as they had occurred in Judge Hanford's court.

The CHAIRMAN. The committee is very sorry that some witnesses have been compelled to remain here all day without being called, but we will get to them to-morrow promptly, and I will ask them to be here promptly. The committee also wants to announce that it has about concluded to hold evening sessions after to-day, mostly for the purpose of getting into the record this documentary evidence; so that we will probably not have any witnesses on general subjects, but merely for the purpose of introducing documents into the record.

Mr. DORR. Before adjournment may I ask the witness two or three questions to finish up this matter if Mr. McCoy is through?

The CHAIRMAN. No; I think not.

Mr. MCCOY. I am going to ask one or two more in the morning.

The CHAIRMAN. Then you had better wait and make one bite of the cherry. The committee will be in recess until 9.30 to-morrow morning.

Whereupon, at 5.15 p. m. a recess was taken until the following day at 9.30 a. m.

ELEVENTH DAY'S PROCEEDINGS.

WEDNESDAY, JUNE 10, 1912—9.50 O'CLOCK A. M.

Continuation of proceedings pursuant to adjournment.

All parties present as at former hearing.

The CHAIRMAN. The committee will be in order.

J. L. FINCH resumed the stand.

By Mr. MCCOY:

Q. Mr. Finch, calling your attention to "Exhibit No. 47," at page 3½ of the exhibits, the exhibit being the report indorsed by somebody "Action of the Bar Association of Seattle in re J. L. Finch;" after referring to certain transactions there is in parentheses here the following, "which transaction is illustrated in said public print by a photograph of the note in question," referring to a note which Mr. Ballinger was alleged to have something to do with. Now, when, if you know, was the photograph of that note published?—A. That was in the publication of Collier's Weekly of April 10, 1910.

Q. And that was how many years after the time when your matter was investigated by the committee of the bar?—A. Practically six years.

Q. So that you would say that this report had nothing to do with the invesgitation of you?—A. That is true. I would say that that was a report gotten up immediately after the publication in Collier's Weekly of an article reflecting on Judge Ballinger, that publication being in the April 10 number, 1910.

Mr. HUGHES. Mr. Chairman, I think Mr. Finch is correct about that, and I possibly misled you unintentionally when you asked me a question yesterday. I stated at the time that I did not recall personally about that, I didn't know, that perhaps I had not been present, because I had been a member of that committee; but I have learned since then that Mr. Finch's idea about that is correct. I knew nothing about that meeting. I may not have been in the city. I don't recall anything about it.

Mr. MCCOY. The meeting at which this was——

Mr. HUGHES. Yes. That has not anything to do with this matter. It probably should not be in the record in this case. It was handed up at the time among our papers, and assumed to be an action of the bar predicated upon the prior action, but it was taken long afterwards, and, as Mr. Finch says, after the Collier attack on Judge Ballinger. It seems the bar had a meeting and that this record was made at that time, which you now have. I do not see that it has anything whatever to do with this proceeding.

Mr. MCCOY. Did you, Mr. Finch, have anything to do with instigating the publication of that article in Collier's?—A. Nothing whatever.

Q. You testified, in answer to a question by Mr. Dorr, that your supplemental argument, the exhibit No. 1—it is not in evidence—but the supplemental argument you made on your exceptions to Judge Smith's report must have been filed by the 18th of June. Now, is that an independent recollection on your part, or did you mean to say that because that argument was on the 8th and you had 10 days within which to file your memorandum it must have been filed before the 18th?—A. I didn't say that about my supplemental argument, it was about my first argument.

Q. Well, the first argument.—A. Well, that was entirely an independent recollection.

Q. That is, that it was filed on the 18th?—A. Yes. It is based on this: I recall that I took, or Judge Hanford granted me 10 days to file such an argument, and, refreshing my recollection by the argument itself, in the end I refer to the fact that I had had access to the evidence in an unbound form for a day and a half before presenting the argument. Then I recall that my reason for filing my argument was to get it in on time. I did not expect any further concession from the court. Then afterwards I filed without—or presented to the court a supplemental argument. I had to get leave granted me beforehand, but I attempted to get it in and did get it in before the case was decided.

Q. It was suggested yesterday that you should look up the facts in the record of the proceeding before Judge Smith. Have you had time to do that?—A. Well, I have looked at a little of the evidence. It would be impossible to run over any considerable portion of it, but

there is perhaps one or two things in the record that I can refer to and be content to rest upon——

Q. Well, would you prefer to have additional time to go over it?—A. No; I don't think so. It seems to me that in a moment or two I could point to enough in the record to damn the whole proceedings in the court. You will remember that it has been stated in the petition and has been——

Q. (Interrupting.) Which petition?—A. The petition to reopen the estate—the amended petition—and has been referred to several times on the stand, that C. A. Reynolds had been paid a sum of money by the bonding company and by the bank——

Q. (Interrupting.) Now, just fix C. A. Reynolds's connection with the whole matter right at this point.—A. Yes; that is what I wanted to do. C. A. Reynolds was the attorney of Heckman & Hansen, who had been employed to supplant Metcalfe & Jury in the State court, and he filed in Judge Hanford's court the petition in bankruptcy. I have said that he was paid $100 by the bonding company and $150 by the Scandinavian-American Bank.

Q. The bonding company being the company on the bond of the receiver in the State court?—A. Yes. Now, Judge Smith, in his report, made a reference to the matter, but it would take me, I think, to explain it. I don't think that you would catch it if I did not. He makes this reference to it in his report. His report was not paragraphed or paged:

Mr. Heckman, acting for the firm of Heckman & Hansen, employed C. A. Reynolds January 2, 1902, and appeared in this court in the petition to have Heckman & Hansen adjudicated bankrupts, and they were so adjudicated, and a certain sum of money was advanced to him to use in matters of expense, etc., at one time $100 and at another time $150. Mr. Reynolds expended a portion of this money, and the rest of it is in his hands, as appears from the proof taken.

I always contended to Judge Hanford and to the circuit court of appeals that that matter might have been elucidated a little if Judge Smith had said who paid it. It would appear from a casual reading that maybe the bankrupts themselves had paid it on account. Now, I find one reference to the matter on page 113, line 4, to page 114, line 14, of the evidence that was submitted to Judge Smith and by him returned to Judge Hanford. At this time Mr. Hills—the witness under examination was Charles S. Hills, who was a representative of the bonding company——

Mr. McCoy. You are reading from what page of the testimony?

A. 113, line 4. [Reading:]

Q. At this time, Mr. Hills, had you not furnished Mr. Reynolds with money for the purpose of investigating this fraud?—A. We had furnished Mr. Reynolds money for the purpose of protecting or looking into the interests of the company, whatever they might be. We had furnished him money to pay the expenses of witnesses, etc., but we paid him no fee for his services—simply expense money, and that was largely due to the fact that you had entered charges there which we desired to have investigated as much as anybody else.

Q. Then you did pay the expenses of investigating charges against the receiver and paid Mr. Reynolds?—A. Charges of—to investigate the charges you made connected with the receivership, yes, sir.

By way of parenthesis, let me say that I had made some charges over in the State court before the sale. [Continuing reading:]

Q. And you paid Mr. Reynolds his expenses?—A. The expense of witness fees was about all there was to it.

Q. And you said you heard of the charges of fraud; did you consult with Judge Hoyt about them?—A. I don't think I did.

Q. Do you know you did not?—A. I am quite sure I did not.

Q. Did you ever at any time talk with him about the charges?—A. I don't think so.

Q. Did you make a report to your company upon those charges?—A. No, sir.

Q. Never told them about it?—A. I wired the company and asked them for authority to pay the expense connected with an investigation that was then to be had before the receiver.

Mr. HOYT. You mean before Mr. Bowman, the commissioner?

A. Yes. I don't remember the exact word, but that was the tenor or purport of the communication.

Mr. FINCH. When was that, Mr. Hills?

A. I don't remember the date, Mr. Finch. That was the time Judge Hanford referred the question to Mr. Bowman to determine whether a greater price could be obtained for the property than had been submitted as bids to the receiver.

That is the end of the testimony I am reading.

Now, let me say that that proceeding before Mr. Bowman was initiated four days after the proceeding in bankruptcy was begun. The injunction of the State court was issued simultaneously with the filing of the petition and the order of adjudication. Then I refer to Mr.—by the way——

Mr. HUGHES. (Interrupting.) Let me ask in this connection, for information, whether Mr. Finch had come into the case at the time he just mentioned?

The WITNESS. No.

Mr. HUGHES. That was before?

The WITNESS. I knew nothing about it. The amount that I have stated, a hundred dollars, I recall, was the amount that was given in evidence; but last night I was unable to put my hand on that particular—or my eye upon that particular evidence. Then I call the attention of the committee to the evidence of Mr. Mayhew, at page 284, line 3, to page 285, line 10.

Mr. MCCOY. Mr. Mayhew was——

A. (Interrupting.) Mr. Mayhew was the alleged purchaser of the property in the State court, and he, I alleged, was representing in fact the Scandinavian-American Bank. (Reading:)

Q. Mr. Mayhew, referring to the matter of the $150 which you testified as paid to Mr. Reynolds. State whether or not this $150 was paid to Mr. Reynolds for him, Mr. Reynolds, or, if not for he himself, for whose benefit was it paid to Mr. Reynolds?

This, by the way, is cross-examination by Judge Battle. [Continuing reading:]

A. I presume it was paid to Mr. Reynolds for the benefit of Mr. Hansen.

Q. You say you presume; state whether or not that was your understanding?—A. That was my understanding.

Q. Because of what?—A. Because he was in very needy circumstances. By reason of that fact I afterwards employed Mr. Hansen in the yards, when he was incapable of earning a man's pay; paid him full union wages for a long time.

Q. And if Mr. Reynolds did not pay this $150 or turn over this $150 to Mr. Hansen, you know nothing to the contrary?—A. Positively nothing. I would like to state how that transaction occurred. Judge Ballinger remarked to me one day in Judge Griffith's court, there was a movement on foot to do something for Mr. Hansen.

Q. A move was on foot between whom now?—A. Between the creditors and the various interested parties in the Heckman and Hansen transaction.

Q. Go on and state the matter in full.—A. He said, "Would you be in favor of contributing anything?" I said, "Yes, to Mr. Hansen only." "Well," he said "how much?" "Well," I said, "I will leave that with you entirely. You know all the facts in the case better than I do. I will be guided by your advice." And about I would say, two weeks later Judge Ballinger met me at the stairway going down to J. E. Chilberg's office, and said Mr. Reynolds called on him in connection with that Hansen proposition again. He says, "Are you ready now to give anything?" I says,

"Yes, any time." I said, "How much will I contribute?" He says, "Oh, $150." I said, "Send Reynolds out; he can have it any time." Reynolds came out and I paid it to him in cash.

Then I——

Mr. McCoy. Is there any testimony in the case as to what Mr. Reynolds did with the money?

A. Yes. To be fair, Mr. Reynolds made an explanation of the matter. He said he got the money all right, and he said, what was further, he had it in his office and Mr. Hansen could have it any time he was a mind to come and get it.

By Mr. McCoy:

Q. And how long after the reciept of the money was it that he volunteered to let Mr. Hansen have it?—A. Well, the date on the check representing the $150 was April 17, 1902, and these proceedings were being had in the summer of 1903.

Mr. Hughes. You mean the taking of the testimony?

A. How is that?

Mr. Hughes. You mean the taking of the testimony?

A. Yes; when we discovered this and when Mr. Reynolds said he still had it.

Mr. Hughes. Are not the dates in the record there?

A. Beg pardon?

Q. Are not the dates in the record there; aren't the dates there?—A. No; I don't—I don't recall.

Mr. Hughes. The reason I ask for that is that it appears that the matter was submitted to Judge Hanford in June, 1903, and the testimony was taken some months earlier than that, wasn't it?

A. No; it was June, 1904, Mr. Hughes.

Mr. Hughes. Oh, was it?

A. There is in the evidence somewhere the $150 check referred to, or a check evidencing the payment of the $150. I don't find it this morning in looking over the exhibits; but I have with me a photographic copy of it, showing Judge Smith's identification of it, as well as the check itself, and which you will note is a notation down at the corner. The check is signed "M. F. Mayhew." It is made payable to cash, and down in parentheses it says "To C. A. Reynolds, Hansen settlement [producing paper].

Mr. McCoy. I will put this in evidence.

(Paper referred to was marked "Exhibit No. 48.")

Mr. Hughes. As explanatory of this testimony respecting the helping of Mr. Hansen, is it not the fact that Mr. Hansen had about that time received a serious injury in the head while working about the yards out there, something that fractured the skull?

A. Well, without going into details as to the injury, he had received a very serious injury——

Mr. Hughes. Yes.

A. (Continuing.) And one calculated to excite the sympathy of anyone.

Mr. Hughes. And that was the occasion of this talk of raising some money to help Hansen as distinguished——

A. (Interrupting.) That is what Mr. Reynolds claimed; yes, sir.

By Mr. McCoy:

Q. Well, who was running this shipyard, or whatever it was, at that time?—A. Oh, when the injury occurred?

Q. When the injury happened; yes.—A. Mr. Heckman. Mr. Hansen knows nothing about any of these affairs to this day. He received a very severe injury from a shock that came—an electric shock that came—over the telephone one day, and the after effects of it was to completely annihilate his memory; he forgot his native tongue, being a Norwegian; he forgot his wife; he forgot everything, and had to learn over again as a child, and it was while he was in that condition that all of these suits were brought in the State court and the possession of his property taken away from him. When he, so to speak, went to sleep, he owned all this property; when he woke up he was a matter of charity on the town and his family as well, and he has been recovering, or did recover for three or four years thereafter, but kept learning little by little of these matters. I have had no communication with him for four or five years, and I don't know what his state is to-day; but the last I knew he was quite feeble mentally and he had not recovered a great many things in the way of memory.

Q. At the time this check, "Exhibit No. 48," was dated, was Mr. Hansen in a condition mentally to make a settlement with anybody?—A. Oh, no, no. The matters coming up over in the State court on the 6th of March, Mr. Heckman engaged me and I tried to supplant Mr. Reynolds, but he doggedly stayed in the case and helped to put through those proceedings over there, and I suggested that he had no rights, but he said in court that he at least represented Mr. Hansen. Well, Mr. Hansen was very feeble, and I would go to him and try to get him to let me take care of his affairs, but he would then go from my office to Mr. Reynolds, and Mr. Reynolds would win him over; then he would come back to my office, and if I saw him last, why, I was his attorney.

Mr. Higgins. With whom did you have the contract for the contingent fee?

A. Mr. Heckman.

Mr. McCoy. Was he employed by his company while he was in this mental condition, at the time when the accident to him happened, or didn't it happen there at all?

A. What was your question?

Q. Mr. Hughes has mentioned some accident to Mr. Hansen's head. When was that, and by whom was he employed?—A. It occurred when he was running his own business at Ballard.

Q. Oh.—A. He stepped to the——

Q. (Interrupting.) That is the only accident that has happened to him?—A. Yes; and that was the accident referred to by Mr. Hughes.

Q. And it happened while he was running his own business, and not in the employment of anybody?—A. That is true. He received a shock from the receiver of the telephone line one day, that ultimated in that injury.

Q. One question more. What is the nature of the property which Heckman & Hansen used in their business down here in shipbuilding, or whatever they were engaged in?—A. They were shipbuilders at Ballard and they owned certain real property, and had on that property a shipbuilding plant consisting of cradles and machinery of a sort applicable to that business.

Q. And of course it was waterfront?—A. Yes.

Q. Valuable property?—A. It was valuable then. It is a great deal more so to-day. Probably worth a couple of hundred thousand dollars to-day.

The CHAIRMAN. Anything further with this witness?

Mr. MCCOY. Is there anything that you want to add to your testimony, now, Mr. Finch?

A. I wish to add that when I had before me the books of the Scandinavian-American Bank I got the contents of them, so far as applicable to this case, into the record in a complete manner, so that thereafter I was able with a pen and a typewriter to make practically a facsimile of those books. There were three of them—the certificate-of-deposit register, the note-and-collection teller's cash book, and the bills-receivable register; and when I tendered my argument to Judge Hanford I tendered those books at the same time. I wish to call them to the attention of the committee, and if my argument were to either go into evidence or to go along with the committee, I would like to have those books go along. You will see in there a reference to the $150 payment made Mr. Reynolds, and also a notation under the head, "Remarks. Hansen settlement."

Mr. HIGGINS. Is the committee to understand, Mr. Finch, that you do not care to put into the record any notations from the 882 pages of evidence that was taken before the referee in addition to the statement that you have already made?

A. I can only say this, that it is extremely difficult to me to know what to offer at this time. When I went before Judge Hanford, as a matter of precaution, so that I might have, forever, anything that I ever wanted to put my hands on, I put in such evidence as I wanted, and it included all the files from the State court—the original files in all of those cases. Then I had and saw that Judge Hanford got all evidence that I submitted. But now, then, to know what would be complete enough to give this committee at this time I hardly know; but I shall rest upon what I have put in from the testimony.

Mr. HIGGINS. Are we to understand that you do not care to put in anything further than what you have read?

A. Yes; I think you may understand that. I think I will rest on that. Then, I think, there is another item I would like to submit. I have claimed that the receiver never received any money from the bank or anyone else for the property. I have not claimed it on the ground that the money was not afterwards paid in—it is not because any money was lost through the transaction—but I claim that to show that the receiver was not acting in good faith, but was simply playing a part, and the part was in the interest of the bank. So, because of that I want to offer at this time——

Mr. MCCOY. (Interrupting.) Just a minute, Mr, Finch [consulting with the chairman].

The CHAIRMAN. Do you wish to have read to you what you last stated?

A. No. I wish to offer now a photographic copy of an exhibit which was offered in the case, which is in the room now. I could put the original in, but I don't care to disturb the record that is in Judge Hanford's court. The original of this photographic copy lies over on the desk. It is a certificate of deposit for $20,124.

Mr. McCoy. $20,064.77.

A. Yes; and is the certificate of deposit that was paid into the State court to straighten the books of that court after the receiver had been discharged. The depositor there is noted as "We." That means the bank. And it is also so noted on the books of the bank, a copy of which I have just tendered to you.

Mr. McCoy. In other words, the certificates of deposit reads "We have deposited in this bank $20,064.77," and so forth, not showing who.

(No response.)

Mr. McCoy. Let this be marked, please, before you go ahead, Mr. Finch.

(Paper referred to was marked "Exhibit 49.")

Mr. McCoy. You think that was after the receivership account had been filed or——

A. (Interrupting.) It is dated the day the receiver was discharged. He had made a report, however, on the 8th previous to the 24th when he was discharged, in which he pretended that he had that money in his hands. I don't know how extended I ought to go into those proceedings. May I say this, however, that the cause for that record being made at that time, or any certificate being gotten up, was the fact that I at that time had gone to the Supreme Court of the State of Washington for a writ of prohibition and I had made certain allegations, both there and in the State court, mostly to the effect—particularly to the effect that he had not received the money. I at least made that allegation in an attack upon the receiver in the State court; I don't know whether I did in the supreme court or not, but it occasioned them getting up a record in the bank to cover the transaction. Now I offer the next exhibit a photographic copy of an exhibit in the case, being a photograph of a small bank book of Peter L. Larson in the Scandinavian-American Bank. That is the cover. This photograph that I have offered contains or shows the——

Mr. McCoy. (Interrupting.) Well, now, just a minute, please. Let us get them in one at a time.

The Chairman. Mr. Dorr, in putting those photographic copies in the record I assume that you have the originals in the files, and if you have objectio to make to the photographic copies that you will make it at the proper time.

Mr. Dorr We have no objection to these. I don't know whether the originals are available or not, but we have no objections to these at all on the ground that they are copies or for any other ground, for that matter.

(Photographic copy of cover of bank book of Peter L. Larson in the Scandinavian-American Bank was marked "Exhibit 50.")

Mr. McCoy. And this photographic paper which you show me you state is one of the sheets of the book of which there is a photograph on the cover here?

A. That is true.

Mr. McCoy. Namely, "Exhibit 50"?

A. That is true, and shows in the photograph the only entry ever made in that book and shows a credit to Peter Larson, who was the receiver in the State court, of $2,006.45. The date of it is the 24th

of March, the same day that it has been claimed he had on hand some $20,064 and some cents.

The CHAIRMAN. It may go in.

(Paper referred to was marked "Exhibit 51.")

Mr. McCOY. All right, Mr. Finch.

A. Then I offer a photographic copy of another exhibit introduced, being a check book, the only entry appearing being the stub of the first check to one W. Curtiss for $11 75. The original of that check book was introduced in evidence, and it shows a payment of—the stubs show payment of the obligations of the receiver to various parties, and the last two checks—stubs show checks drawn to Mr. Richard Saxe Jones, who was the attorney for the receiver, and to the receiver himself.

Mr. McCOY. And who is W. Curtiss?

A. He was one of the creditors of the receivership; that is, that represents a debt that the receivership—receiver himself—had contracted after he took possession. When he——

Mr. McCOY (interrupting). What is the purpose of this?

A. Well, I want to show from that that when he pretended that he had about $20,000 on hand he did not have enough to pay the debts of his receivership, which amounted to $570, but the bank advanced that to him the day that he was discharged. My only purpose, as I have said before, is not to show that the money which they were supposed to have gotten for the property of the State, sold in the State court was not paid, but it is to show that Peter Larson had nothing to do with it and was not acting in good faith. Had he been acting in good faith and selling the porperty for a price, he would have got his money before he turned it over. Instead of that, all that he got was enough from the bank to pay up the debts and to give some to himself and to Mr. Jones.

By Mr. McCOY:

Q. In other words, you claim that that large check here was a mere wash transaction; that they made a check over to him and he immediately turned it back?—A. That is it.

Q. So as to say that he had had it, and that then the bank advanced enough money to him to allow him to pay off a few of the obligations which he had incurred as receiver, amounting to about $500?—A. That is pretty near it. I don't think he ever had it in his hand except to indorse it on the back, and it was paid into court some time after by other parties than he.

Q. In other words, Mr. Finch, you claim that these exhibits tend to establish a conspiracy on the part of the receiver and certain attorneys——A. (Interrupting.) Yes.

Q. (Continuing.) To defraud the bankrupts and the creditors?—A They tend to show a conspiracy between the bank and the receiver The receiver, it is my contention, acted as a mere dummy to turn the property over to the Scandinavian-American Bank.

Q. Do you contend that there were any other parties in the conspiracy except the receiver and the bank?—A. No, I don't.

The CHAIRMAN. How about the attorneys?

A. Except as the work was done through certain attorneys.

Mr. HIGGINS. Who were those attorneys?

A. R. A. Ballinger, representing the bank; Richard Saxe Jones, representing the receiver; Gen. Metcalfe, of Metcalfe & Jurey, representing Heckman & Hansen at one time; and C. A. Reynolds, later representing Heckman & Hansen.

Mr. HIGGINS. Were these facts presented to the State court?

A. Not all of them. There were charges of fraud made over in the State court, but made before I was fully apprised of the extent of of the fraud, and all of these were not made.

Mr. HIGGINS. Were you in possession of these facts at the time of the approval by the judge of the State court of the receiver's account?

A. No, I was not.

Mr. HIGGINS. Of some of them?

A. A few of them.

Mr. HIGGINS. Did you make a statement to the court of such facts as you thought you had?

A. I did.

Mr. HIGGINS. (Continuing.) Which tended to show conspiracy?

A. I did. That was also shown to Judge Hanford. I can pick it up off of the table here, if you care for it.

Mr. MCCOY. Mark that as an exhibit, please. Describe that for the stenographer, will you?

A. A photographic copy of check book, showing blank check and at the end used stubs.

Mr. MCCOY. A used stub?

A. Well, a used stub, and it is apparent that there are others.

By Mr. MCCOY:

Q. You mean that the book did have other stubs in it, but there is a photograph of one stub there?—A. That is true.

Q. And whose bank book was it?—A. It was Peter Larsen's check book, and it is the checks with which he checked out of the Scandinavian-American Bank the entire amount of $2,006.45 that is shown to have been credited to him on March 24 by this other exhibit.

Q. Two thousand or twenty thousand?—A. Two thousand.

Mr. MCCOY. All right. Will you have it marked now?

Paper referred to was marked "Exhibit 52."

Mr. MCCOY. What facts did you have knowledge of at the time you claimed in the State court that there was fraud or conspiracy in this matter?—A. I can best refer you to a certain paper which I filed over there objecting to the receiver's report. It is rather voluminous and——

Q. (Interrupting.) Well, did you know about these payments to attorneys at that time?—A. No, I didn't, I didn't know anything of the sort.

Q. Did you know about the fact that the receiver had not received that money at the time?—A. That I suggested to the court over there, and that was the occasion of their making up a record in the bank to show that he must have some money.

Q. Did you know at that time—if it is the fact, I don't remember—that $2,000 had been paid to the receiver by the Scandinavian-American Bank?—A. No; I didn't know that.

Q. You found that out subsequently?—A. Yes; it hadn't been paid. You see it was paid the day that the—oh, four or five days after we had had the hearing in the State court.

Mr. HUGHES. In that connection, Mr. McCoy—it is only a matter of information—you speak of a hearing in the State court; before what judge?

The WITNESS. Arthur E. Griffin.

Mr. HUGHES. In March, nineteen hundred and——

A. 1902.

Mr. HUGHES. 1902. This is not a question to the witness, but you recall that the equity assignment was made from year to year. Judge Griffin only had the equity court one year.

The WITNESS. Well, it was before Judge Griffin.

Mr. HUGHES. You are sure it was before Judge Griffin?

The WITNESS. I am absolutely certain it was before Judge Griffin.

Mr. HUGHES. It was after the expiration of the year in which he held the equity court, but if that was true, then he must have taken this hearing because of his familiarity with the case.

The WITNESS. Perhaps so.

Mr. HUGHES. At any rate, you are sure it was before Judge Griffin? That is what I wanted to know.

The WITNESS. Absolutely.

By Mr. McCOY:

Q. You have handed to the committee what you said was a compilation from the books of the Scandinavian-American Bank. One of these compilations is entitled on the outside, "Note and collection teller cashbook." Is there anything in that that you ought to explain to the committee? I mean that this purports to be a copy of that, not the original?—A. Well, I simply compiled from the record taken before Judge Smith the——

Q. (Interrupting.) Well, those entries were in a book of the Scandinavian-American Bank which had the title which I have just read; is that right?—A. Exactly, and——

Q. (Interrupting.) And so far as you copied you copied accurately?—A. Accurately, and——

Q. (Interrupting). What is in there that you ought to explain to the committee, if anything?—A. Well, I don't know—I don't know how much of it to go into. You have, for instance, opened a page to—page of the note and collection teller's cashbook, entries of April 3, 1912, in which you will see a great many of these—of the items that had been involved as cash transactions in the Heckman & Hansen matter was charged in account of the Seattle Shipyards Co. It might be interesting to say that one of the officers of the bank swore positively that the Seattle Shipyards Co. had no account down there. It was only after I got these books and showed it that they took that back, and later on, in my supplemental argument to Judge Hanford, I referred to three or four glaring instances of perjury that had been committed down there before Referee Smith, and which had occasioned a large record, and told him that I thought he ought to look into the matter. If I may locate my supplemental argument somewhere—where is that? [Witness refers to paper.] I said to Judge Hanford in this supplemental argument this. [Reading:]

> Had we time now, we would like to take up the record with the idea of showing your honor specific instances of perjury committed by the witnesses. A discussion of those matters is not necessary to our present object of getting the estate reopened, but it would tend materially to show what circuitous methods it was necessary to employ to get plain ordinary and well-known facts into the record, consequently

the reason for a cumbersome record, the responsibility for the making of which we feel has been placed upon us in your honor's mind. For instance, Mr. Mayhew says that the reason he tendered with his bid a check on the Puget Sound National Bank was that he had another fund of Kelly, Grondahl & Chilberg on deposit there, and it was convenient to use it.

And I cite the record [Continuing reading:]

When your honor has learned that certificates of deposit were furnished Mr. Mayhew by the Scandinavian-American Bank, and deposited by him in the Puget Sound National Bank and used. Mr. Soelberg, too, attached Mr. Grondahl's name to the $30,000 note and then swore that he did not know for what purpose the money was to be used. Mr. Lane, the present cashier, just escaped an order of court directing him to bring in the books of the bank showing the account of the Seattle Shipyards Co. by swearing that the Seattle Shipyards Co. had no account.

And I cited Judge Hanford to the record where he swore to it.

The CHAIRMAN. Read the citation into the record.

A. [Reading:]

(Record, p. 369, line 15, to p. 371, line 16, and p. 381, line 20, to p. 389, line 11.) When, after the occurrence before your honor, July 16, the books were produced and the account of the Seattle Shipyards put in evidence.

Mr. MCCOY. That was the account of the Scandinavian-American Bank?

A. Yes. [Continuing reading:]

We again commend to your honor, too, the reading of the testimony of some of the principals offering the testimony relative to the establishment of the "credit" at the bank. For instance, the testimony of Mr. Soelberg which occasioned the reference back to your honor from Special Referee Smith, and the entire testimony—it is short—of Mr. Kelly.

And beyond calling his attention to it, I could get no action.

Mr. MCCOY. Is that all that you want to say about the memorandum book which you had there?

A. Yes, I think that I don't care to go any further into those books. I want them to speak for themselves the care that was taken to put all the matters before Judge Hanford.

Q. Well, now, are these facts contained in these books so referred to in either your argument or your supplemental argument that when the committee comes to take them up and make use of them it will understand what these items are and what stress you laid on them?—A. Yes, that is true.

Q. That is why I was asking you the questions, because they were blind to me.—A. I wish now I had answered it and will answer it in this way: If you will take my argument and supplemental argument with you, I think matters will be clear.

The CHAIRMAN. Is it requisite that they go into the record, or shall they be taken tentatively and go with the arguments and the testimony in the case?

Mr. MCCOY. I understand they are to go along with the testimony, to be treated in the same way, the testimony and the arguments. We will take them and make such use as we please of them.

The CHAIRMAN. Very well.

Mr. MCCOY. Perhaps you had better mark them right after that remark. There they are. Identify them right on the covers.

Documents referred to were marked, respectively, "Exhibits 44 and 44½."

Mr. HUGHES. Have you the briefs that you are going to take in this case?

The CHAIRMAN. They are here somewhere.

Mr. HIGGINS. The briefs in the circuit court of appeals?

Mr. HUGHES. Yes.

Mr. DORR. I have them here.

Mr. HUGHES. They are not to be offered in evidence, but for the use of the committee.

The CHAIRMAN. They are taken tentatively, subject to the direction of the whole committee.

Mr. HUGHES. I understand you do not intend to put them in evidence, but to take them with you for use.

The CHAIRMAN. Well, they are taken tentatively. They are not to go in our record. We will take them tentatively and let the entire committee determine what use it chooses to make of them.

Mr. DORR. That is, the briefs in the circuit court of appeals?

The CHAIRMAN. That includes the brief, the supplemental brief, the argument filed by Mr. Finch before Judge Hanford, the respective briefs filed in the circuit court of appeals, and these three books which purport to be copies of certain portions of the books of the bank.

Mr. MCCOY. And the——

The CHAIRMAN. (Interrupting.) And the testimony taken before Judge Smith.

Mr. HUGHES. Well, our brief should be furnished them, along with the others, simply for their use in that connection.

Mr. DORR. All right.

Mr. MCCOY. Have you now said, Mr. Finch, all that you care to in regard to this matter?

A. No, sir. Now, I would like to take up for a moment the matter of the files of the State court. The committee yesterday asked me to say how much of the files they ought to have. In the first place, I think that you should have the complaint in the case of Curtiss *v.* Heckman & Hansen, being the case in which the receiver was appointed.

Mr. MCCOY. Well, have you a copy of that there?

A. I do not, but there are several in the record.

Mr. DORR. I have a copy.

A. There is a certified copy there.

Mr. DORR. Together with the affidavit of plaintiff in support of the appointment of a receiver and the order appointing the receiver, that Mr. McCoy suggested yesterday.

Mr. MCCOY. Suppose you put that in right now. Let Mr. Finch have it and see.

Mr. DORR. I will have it marked first.

(Paper referred to was marked "Exhibit 56" for identification.)

[Mr. Dorr handed Exhibit 56 to the witness.]

A. That will not answer, Mr. Dorr. You have mistook the order. The order is not the one appointing the receiver. I forget when that was used in the case, but that is another matter [handing paper back to Mr. Dorr].

Mr. DORR. Well, I took this as I found it in the records.

A. Yes.

Mr. DORR. As prepared by yourself.

A. Yes, for a certain purpose, and for that purpose I didn't have the order.

Mr. McCoy. Well, Mr. Finch, if the papers are in court which you think ought to go into the record, won't you see if they are on the table there, with Mr. Dorr's permission, and get what you refer to.

Mr. Dorr. This exhibit, however, contains the summons, complaint, motion for appointment of receiver, affidavit of plaintiff for receiver, in the State court receivership case, being entitled "William M. Curtiss *v.* C. A. Heckman and M. E. Heckman, copartners, and so forth," No. 32817.

Mr. McCoy. Mr. Dorr, what is the paper which you took to be the order appointing a receiver, which was annexed to that bundle?

Mr. Dorr. At first glance I took it to be the order appointing the receiver, but it is an order directing the distribution of the proceeds from the sale. It is a later order, and I will find the original order and supply it. This order, I think, may be useful, and the entire files that I have mentioned are certified by the clerk of the superior court.

By Mr. McCoy:

Q. Now, Mr. Finch, what other papers except those in Exhibit 56 do you think ought to go in? The order appointing the receiver, I understand, is not there. In addition to that, what else?—A. The affidavit of Mr. Heckman in support of the receivership proceedings, I think, should go in.

Q. Isn't that in that paper?

Mr. Dorr. Yes.

A. No; the affidavit of the plaintiff was there. The plaintiff was a man named Curtiss.

Mr. Dorr. Oh, the affidavit of Mr. Heckman, you mean?

A. The defendant, Mr. Heckman, supported the application and I think his affidavit, in the interest of truth, should go in. I don't know that it does us any good.

Mr. McCoy. Well, now, let me see. The order appointing receiver and Heckman's affidavit—what else?

A. The first report of the receiver, the second report of the receiver, the third report of the receiver.

Mr. McCoy. We had that here, didn't we?

Mr. Dorr. We introduced the fourth report, the last one.

Mr. McCoy. The third report.

Mr. Dorr. The other three we will supply.

A. The objections of Mr. Heckman to the confirmation of sale, filed March 6, 1902; the order approving the third report and directing the sale, filed March 7, 1902; the notice of hearing upon the fourth report of the receiver in advance of its being filed or served, filed——

Mr. McCoy. (Interrupting.) Well, now, right there I will ask you the question: The notice of hearing on confirmation of his report was served in advance of the filing of his report?

A. Yes.

Q. Was a copy of his report filed with the notice?—A. (Interrupting.) No.

Q. I mean served with the notice?—A. No, nor filed.

Mr. Dorr. Do you mean to say that the report was not on file at the time of the hearing?

A. No; at the time that he noted it was going to be heard.

Mr. McCoy. At the time he served notice that it was going to be heard?

A. Yes; the objections of the defendant, Heckman, to said hearing, filed March 8, 1902. The motion for stay of proceedings filed by Mr. Heckman, of March 8, 1902. The order to transmit the files and records to the supreme court, filed March 12, 1902. The fourth report of the receiver, filed March 13, 1902.

Mr. McCoy. Well, isn't that it?

A. No, that is the one that they were going to have a hearing on on the 8th.

Mr. Hughes. The fourth report?

A. The fourth report, yes, sir.

Mr. Hughes. That was introduced.

Mr. Dorr. That was introduced yesterday.

A. Oh, I didn't understand what you meant. Yes, that is true. I thought you meant had I got it into my list of requirements before.

The Chairman. That report is in the record.

The Witness. (Continuing.) The objections of Mr. Heckman filed March 22, 1902; the notice of hearing, a second notice of hearing before the receiver's report, filed March 22; the objections and answers to the receiver's report, filed by Mr. Heckman March 22; the order approving the fourth report, filed March 24, and I think it would be well to have the certified copy of the order of Judge Hanford of March 3, which was field March 7, 1902. At this time I wish to recall very briefly the proceedings in the State court. The third report of the receiver was filed January 14——

Mr. McCoy. 1902?

A. 1902. That was about the time when Mr. Reynolds was employed, and he filed the petition in Judge Hanford's court to restrain the State court from going further. I did not get into the case until the 6th day of March, 1902, the day when proceedings were noted for hearing in Judge Griffin's court. My understanding was that the hearing was upon the confirmation of the sale. My understanding was that it had taken place. I had seen no files. So I offered, on March 6, objections to the confirmation of sale. At that time—and the objections will show for themselves what they were—I suggested the bankruptcy proceedings to that court. The court, however, overruled me and entered an order approving the report—third report—and directing a sale. I suggested yesterday that my memory was that the sale had been ordered or made and confirmed in one and the same order, and it was, I see by looking over the files, this approving the third report and directing the sale which made me think that that was true, and I think now it was true. That order your committee will probably read and your will note that it says:

> It fully appearing to this court that due, sufficient, and proper notice has been given of this hearing to all parties in interest and their respective attorneys, and no objection being made to the approval of the third report of the receiver and the direction and confirmation of the sale in said report noted and contained, and no objection being made to any of the proceedings herein set forth and ordered and directed, now, therefore, it is ordered and directed that the report of the receiver herein be in all things approved and that the receiver be directed to complete the sale to M. F. Mayhew of all the property of the copartnership of Heckman & Hansen set forth in the second report of the receiver and in the order of sale. And it is further ordered and directed that the receiver make and execute good and sufficient deeds and bills of sale for said property, properly describing the same, and such deeds and bills of sale as by such receiver shall be made are hereby fully authorized and confirmed.

And that is he only order of confirmation that I know of in that case. My recollection is that there is no further order. Now, it was

after that order that the fourth report of the receiver was made, which was called to my attention yesterday and I was questioned as to whether or not they would confirm that sale before they would make it or anyone would make an order with making it. Having entered that order—that was on the 7th of March—the receiver then served on me a notice that the fourth report of the receiver would be presented to the honorable superior court of King County, Judge Arthur E. Griffin presiding, on Saturday, the 8th day of March, 1902, at the hour of 11 o'clock in the forenoon of that day. He served me on the 6th with a notice that the fourth report would be brought on for hearing on the 8th, and he failed to serve a copy of the proposed report or to file it.

Q. That was after you had raised objections to this other one which you claimed ordered the sale and confirmed it at the same time?—A. Well, it was the second day that I had been in the case. I had just supplanted one attorney who had supplanted another attorney who had taken Judge Ballinger's place. I being a new attorney and having gotten in on the 6th, I got a notice on the 7th that everything would be wound up on the 8th, although they had not their report out yet. I on the 8th filed objections to the hearing, and suggested, in an affidavit, that the report had not been filed. The matter went over then until—I have forgotten—a day or two, because the report was not on file, and in that——

Q. (Interrupting.) Now, wait a minute right there: On your objection that the report was not on file, the court set it over until it could be filed; is that right?—A. Well, he set it over for about three or four days—something like that, and in——

Q. (Interrupting.) Well, in order to permit the filing of the report, was that the purpose of the delay?—A. I don't know, but the report was filed on the 8th. Perhaps—but it was because I had not had an opportunity to see it that it went over. In the interim of the next two or three days I went to the State supreme court for a writ of prohibition to prohibit this court from going ahead, and promptly served that—a show-cause order upon the superior court, which kept him from proceeding as he had noted he would. And on the 12th, then, Mr. Jones for the receiver made or obtained an order that all the files in the case be sent to Olympia—down the Sound a ways—for the use of the supreme court. I had not any files at that time, and I could not get any from Mr. Reynolds, whom I had supplanted. So these were sent down to Olympia. Then on the 13th the fourth report of the receiver was filed. I had gone to the supreme court before that; so I didn't have the benefit of it then; I could not have had.

Mr. HUGHES. Was there a hearing in the supreme court?

A. On the writ of prohibition, yes.

Mr. HUGHES. And the writ denied?

A. And the writ denied. Then when that was denied the receiver noted again the fourth report for a hearing on the 22d of March. On the 22d of March I filed Mr. Heckman's objection and answer to the receiver's report, specifically taking issue with him on matters that occurred in his first, his second, his third, and his fourth report, and——

Mr. MCCOY. (Interrupting.) Now, just a minute. Do you mean that you pointed out that in some respects his fourth report was inconsistent with his previous three reports?

A. Yes—well, not inconsistent, but I attacked the truth of certain allegations that he made. I also suggested at that time the conspiracy that existed "between the Scandinavian-American Bank and its counsel, Judge Ballinger, and assisted by the firm of Metcalfe & Jurey, and your receiver, Peter Larson, and R. S. Jones, attorney for your receiver, and one C. A. Reynolds," and made certain representations to the court. Mr. Jones and some of the parties then made an application to Judge Griffin to strike my objections to the receiver's report upon the ground that it was scandalous and malicious and reflected upon parties personally, and Judge Griffin concluded that it did so, and struck it from the files.

By Mr. McCoy:

Q. Did it state anything except what you believed to be the fact?—A. No.

Q. And you believed the facts to be material to the matter which you were urging before the court?—A. Yes, sir.

Q. Is it customary in Washington to strike from the record papers simply because they happen to contain reflections on attorneys?—A. Well, that is my first experience and only experience in that regard. Then an order was entered approving the receiver's fourth report, and you have that before you—discharged the receiver. I think that is all at this time.

Q. I want to ask you one final question. Mr. Finch, do you know of any fact in connection with the affairs of Heckman & Hansen, or any fact in connection with any matter which would lead you to believe that if Heckman & Hansen had been fairly and honestly cared for by a fair and honest attorney from the very beginning, they would not now be in possession of their property?—A. I know of absolutely no fact to militate against that. I think it is absolutely true that had they been cared for they would be in possession of their property, and I don't think they would have had any trouble.

Q. Do you base that on your belief that at the time the matter started they were perfectly solvent?—A. Exactly.

Q. And had a going business which was profitable?—A. Profitable, paying them, as I was led to believe, and I thoroughly believe, $2,000 net a month.

Q. Do you make that statement on some investigation you have made?—A. Just simply my client's statement and the challenge that I made before Judge Smith to the effect that their books would show it if the receiver would show the books. We could not get them. And from the further fact that I never met any creditor that had the slightest complaint against them. I could not find that they had ever owed anybody that they had not paid promptly. They had the usual indebtedness of a going concern all right, but it was being cared for as bills were presented.

Q. And the net result of the whole matter is that they were absolutely and completely wiped out of their entire property?—A. Absolutely, and without ever a hearing being had anywhere.

Q. Or ever a judgment obtained against them?—A. That is true.

The CHAIRMAN. Mr. Dorr, any further questions?

By Mr. DORR:

Q. Mr. Finch, under the laws and customary practices and proceedings in this State, in a receivership proceeding instituted in court

as this receivership was instituted, where creditors come in and file claims, and those claims are approved, is that not an adjudication against the insolvent company or the company that is in the hands of a receiver?—A. What do you mean, an adjudication?

Q. Is that not an adjudication of the claims in the amounts that are proven in court to exist against a concern that is in the hands of a receiver?—A. Why, there is a method of proving claims, certainly, and having them allowed, and then it is an adjudication; yes.

Q. That becomes an adjudication?—A. Yes.

Q. That was done in this case, wasn't it?—A. Not that I know of, sir.

Q. Don't you know that these claims were filed and proven?—A. No, I don't.

Q. Do you know anything to the contrary?—A. Why, I know that after we had made all the fight that we could make over in the State court, and after Judge Griffin had stricken out from the records and files the objections and charges that I have made, then came in a list of claims, not that they—that is, through the receiver's report.

Q. Well, you know, Mr. Finch, do you not, that after the receiver was appointed he published notice as provided by order of the court and by statute to creditors?—A. Well, I am inclined to think so. I think I would concede it. I don't know anything to the contrary.

Q. And that a large number of claimants, including over 50 general creditors, filed their claims, under oath, in that court?—A. Not in the court. They may have filed them with the receiver.

Q. Well, with the receiver.—A. They may have. I have no knowledge.

Q. You have no knowledge?—A. No, sir; any more than I know what you have in your pocket now.

Q. You never examined those claims that were filed?—A. No.

Q. And you never contested any claim that was filed, did you?—A. No, sir.

Q. Was there ever any question raised by Mr. Heckman or by yourself, or anyone representing him or them, Heckman & Hansen, against the validity and justness and correctness of any one of those claims that was filed?—A. Not a single one.

Q. Now, those claims were allowed by the order of the court, were they not?—A. I doubt that.

Q. Were they not allowed when the court ordered that they be paid?—A. In the end of it there was such an order entered, and I don't know, but that was entered after the court had denied us even a standing in court over there.

Q. But you were litigating over other questions—that is what I am trying to get at—and not over the validity or justness of those claims?—A. Oh, certainly. I didn't litigate the justness of any claim.

Q. You don't intend——A. (Interrupting.) I don't now.

Q. You don't intend to have this committee understand, do you, that any of these claims which were paid in full, or in part, were not just claims against the estate?—A. I don't contend anything of the sort. They were perfectly just claims; ought to have been paid.

Q. Yes; and at the time this receivership was inaugurated this concern was in debt to the extent of twenty-odd thousand dollars, was it not?—A. Yes, sir.

Q. And a large number of those debts were long past due?—A. Not that I know of.

Q. Well, were not the notes at the bank long past due?—A. I think not. Mr.—I of course take out of consideration the $5,000 note.

Q. All right, eliminate that and refer to the others.—A. There was a small note that Mr. Heckman had, but that was secured by a chattel mortgage somewhere that the bank had taken over and was carrying for him. I remember that.

Q. How was it with respect to Mr. Curtis's claim—the gentleman who brought the suit against Heckman & Hansen in which the receiver was appointed?—A. I have no knowledge. I don't know.

Q. Don't know whether that was due or not?—A. I never investigated. I know he sued on an account stated, but I never investigated his claim.

Q. Of about $1,600, or close to it?—A. Yes; about; between fifteen and sixteen hundred dollars.

Q. Between fifteen and sixteen hundred dollars. Now, when Mr. Curtis brought that suit he filed with his complaint an affidavit in support of his application for a receiver, did he not?—A. Yes, sir.

Q. And you are familiar with the affidavit, are you not?—A. No; I am not. I am familiar with the fact that it was filed.

Q. The general purport of the allegations contained in it?—A. Yes, sir.

Q. And Mr. Heckman also filed an affidavit in support of this same receivership?—A. Yes, sir.

Q. And did Mr. Heckman, at any time, or either Heckman or Hansen, make any objections to the receivership?—A. No.

Q. They were always in harmony and sympathy with it?—A. In the inception.

Q. In the inception. And in this affidavit filed by Mr. Curtis in support of his complaint, being an affidavit of plaintiff for a receiver, he states that a dispute had arisen between the Scandinavian-American Bank and Heckman & Hansen over some advances in the amount of about $7,000?—A. Yes; that is true.

Q. And there was such a dispute, was there not?—A. Yes, sir.

Q. Heckman & Hansen had drawn this money from the bank——A. (Interrupting.) Yes, sir.

Q. (Continuing.) For repairs upon a schooner which was in their shipyards?—A. Yes, sir.

Q. And had not applied it to the payment of the debts incurred in those repairs?—A. That is not true; never claimed.

Q. That is not true?—A. And never claimed.

Q. That is not true, you say?—A. No; not according to my knowledge; and I never heard it claimed.

Q. Is this not true: That after Heckman & Hansen had drawn this $7,000 as advances from the bank for this specific purpose, they themselves caused that schooner to be libeled in the United States district court for the same indebtedness for which this money was drawn from the bank to liquidate it?—A. I don't know. They libeled it in their name and through Gen. Metcalfe, but that is as far as I will go.

Q. They libeled it in their name?—A. Yes; the boat was libeled in their name and through Gen. Metcalfe as their proctor.

Q. For work that they had performed upon it?—A. Yes; for this very claim, and that was the——

Q. (Interrupting.) And that was the—— And for the work that the bank had advanced this $7,000?—A. Yes, sir; that is absolutely true.

Q. That was the schooner *Alice*, was it not?—A. Yes, sir.

Q. And in this affidavit of Mr. Curtis's he explains that matter, does he not?—A. I don't recall.

Q. Well, will you please refer to it and see if you can refresh your recollection [handing paper to witness]?—A. (After examining.) Now, what was your question, Mr. Dorr?

Q. I am asking you if it is not a fact that these matters were generally set forth in the affidavit of Mr. Curtis?—A. Yes.

Q. And also in the affidavit of Mr. Heckman——A. (Interrupting.) Yes.

Q. (Continuing.) Filed in support of the appointment of a receiver?—A. Yes, sir.

Q. Now, at that time the bank had not started to foreclose these mortgages, had it?—A. No.

Q. That came afterwards?—A. That came afterwards.

Q. And the plain fact is, as you have gathered it from all the information obtainable, that the bank had advanced the $7,000, as as they understood, for a specific purpose, to pay for the repairs of this schooner, and instead of applying it to that purpose the defendants, Heckman & Hansen, caused the schooner to be libeled for this amount?—A. No, sir.

Q. That is not right?—A. No, sir. I never heard a claim made that the moneys that they advanced was not advanced or was not applied to the specific purpose for which it was advanced.

Q. Well, then, why did Heckman & Hansen, if they had been paid for that work, libel the schooner for the same thing?—A. I could not answer that, and I don't think any attorney on earth could answer it unless it is Gen. Metcalfe. He did it.

Q. The schooner was libeled at Messrs. Heckman & Hansen's instigation, wasn't it?—A. Yes, sir; and it was the first move that was made when the controversy arose over that very fact; when Heckman & Hansen already had their money for doing that very work, Gen. Metcalfe turned around, as their attorney, and libeled the *Alice*. That is absolutely true, and it is the first move that was made.

Q. Then the first move that was made in this entire proceeding was made by Heckman & Hansen through their attorney?—A. Yes; true.

Q. Represented by Gen. Metcalfe?—A. That is true.

Q. In the libeling of the schooner *Alice*?—A. Yes, and——

Q. (Continuing.) For the same amount that had been advanced by the bank——A. Yes, sir.

Q. (Continuing.) To them?—A. And with Gen. Metcalfe knowing the facts, because he filed that affidavit right there.

Q. Well, did not Mr. Heckman know the facts?—A. Yes, but Mr. Heckman was a Swede; he wasn't a lawyer.

Mr. DORR. You think from the fact that he was a Swede he was so ignorant he did not know whether he had received this money?

A. No, sir; it was because he had received the money, and for work on the *Alice* that he got into the dispute with the bank, and the bank turned round and disavowed that they had paid the money

for the *Alice*, and when he went to Judge Ballinger, his attorney, about it, Judge Ballinger took the side of the bank, and that caused him to go to Gen. Metcalfe, and Gen. Metcalfe, within a day or two afterwards, with these facts in his possession and knowing they had the money, did just what you said he did—he turned around and libeled the *Alice*.

Mr. McCoy. I do not see any use in going further into this matter.

Mr. Dorr. I want to go further, because——

Mr. McCoy. It may be I did not understand it, but here is what I did understand, and I think I understood it right: These people were told that the bank had the mortgage on this boat; they wanted to have the repairs made; they were told that they could draw on the bank as they made the repairs, and that that would be considered as payment for the repairs. Now, if their understanding of it had gone through they would have had their $6,000 and the boat would have been turned over to the Scandinavian Bank. Now, what happened? Later on they were called on to pay this $6,000 as an indebtedness. In other words, the bank said to them, "You owe us this money. We never paid it to you." There was only one thing left for them to do—either fight that claim, libel the *Alice* for the $6,000, or the work that was done to it; that is all there was to it.

Mr. Dorr. They had the money, didn't they?

Mr. McCoy. They thought they had the money, but the Scandinavian Bank said, "You have not. You owe us on an overdraft; give it back to us."

Mr. Dorr. But they did have it?

Mr. McCoy. But no, they didn't have it under the circumstances. They supposed they had it. They supposed the money was paid to them by the bank for their own business—to pay for the work on the boat, but later on it turned out that the Scandinavian Bank says "We didn't pay you the money—we loaned it to you." Now, did they have it or didn't they? That is the point. In other words, they were between the devil and the deep sea. They did not know whether to stand up and fight the bank, and claim that it was a payment and not a loan, or to turn around and libel the boat. Now, they had an attorney, whom Mr. Finch claims here was not fairly representing them, and he put them in the worst position he could possibly put them in by admitting that they had borrowed the money, which they disputed. Now, that is all that there is in it.

Mr. Dorr. I wish to state to the committee that the records that have been and that will be introduced will entirely disabuse Mr. McCoy's mind, I think, of the position he has just taken in this matter.

Mr. McCoy. Wait a minute—I am not taking any position except on the facts as they have been developed here up to this point—up to this point the facts are just what I said. That Heckman & Hansen were between the devil and the deep sea. They supposed they had been paid the money, and they were told later on that they had borrowed it, and if they had borrowed the money then the bank was indebted to them for the repairs on the *Alice*, or at least the *Alice* was indebted to them for the repairs on it, and the thing to do was to libel the *Alice*.

Mr. DORR. In any event, I think it is conceded that they got this money from the bank.

Mr. MCCOY. Undoubtedly. I have not heard it disputed anywhere, and I wondered what you were getting at.

Mr. DORR. Now, Mr. Finch, I asked you distinctly yesterday whether there was any appeal taken to the supreme court of the State in this receivership case, and I understood you to say no.

A. That is true.

Q. Do you mean by that that there was no appellate proceeding?—A. No, sir; I mean no appeal taken.

Q. You mean no appeal.—A. As you and I understand "appeal."

Q. As you and I understand technically the word or the term?—A. Well, yes, technically, if you want to put it that way.

Q. You took the different proceedings which brought the case before the appellate court, other than a regular appeal?—A. I took proceedings there to get a writ of prohibition. I would not designate that in spirit or any other way an appeal.

Q. Well, it was a review of the proceedings, or some of them in the superiour court, was it not?—A. No, no, it was not.

Q. You went to the supreme court for a writ of prohibition?—A. Yes.

Q. And that involved a review of some part of the proceedings in the superior court, didn't it?—A. In one sense, yes; and not in the sense of a review of the proceedings.

Q. And you appeared in that case?—A. Yes.

Q. And argued it?—A. Yes.

Q. And Mr. Richard Saxe Jones appeared for the receiver on the other side?—A. That's true.

Q. And argued the case before the supreme court?—A. That is true.

Q. And the supreme court rendered a unanimous decision against you, didn't they?—A. Yes; that is true.

Q. And that decision is reported in the Twenty-eighth Washington Reports, at page 35, entitled "State of Washington on relation of C. A. Heckman *v.* the Superior Court of King County" [showing volume to witness]?—A. Twenty-eighth Washington, page 35; that is the case.

Mr. DORR. Will you pass that up to the committee?

Witness does so.

Mr. DORR. Now, Mr. Finch, do you wish to be understood that at any stage of these proceedings you did not have a hearing in the superior court, that you were denied the opportunity to be heard there on behalf of your clients?

A. No.

Q. Whenever you made any of those objections about the time, time was extended, was it not?—A. I do not recall. There was once—I do not know that I made an objection on that account, but once I know it was granted for a few days then.

Q. What is your answer; that you were given hearings or that you were not—reasonable hearings?—A. Oh, I do not make any contention about those matters now—we will call them reasonable hearings, if you want to.

Q. Well, do you involve the superior court and the judge of the superior court who had this matter under his charge in this general conspiracy?—A. Not at all—absolutely no.

Q. Not at all—nor the Supreme Court of the State of Washington?—A. Not at all—absolutely no. I have never so much as insinuated anything against either court.

Q. Then, so far as Judge Griffin was concerned, who presided over the department in the superior court having jurisdiction of this receivership matter, you have not any complaint to make?—A. None at all, so far as would attack his integrity. He did not rule for me, and I might complain that he did not rule my way, but I mean that I would not attack his integrity.

Q. Oh, I understand he did not rule for you, Mr. Finch, and I am not surprised at that at all; but that does not involve anything which would amount, in your mind, to a charge against the integrity or honor of Judge Griffin, does it?—A. Why, no; not the slightest; not the slightest.

Q. You believe in your heart and your conscience that he ruled according to what he thought was right.—A. Oh, yes.

Q. In that case?—A. Yes.

Q. And you do not take the position, as I understand you, and you do not want to take the position that there was a single dollar involved in this controversy that was misappropriated or did not go to the parties to whom it belonged?—A. That is true.

Q. Your contention is, and that I understand, I think, clearly from all of your statements, that your complaint rests upon a difference of opinion in law as to the effect of that order of sale as to whether the property should be sold subject to the liens or not.—A. Oh, nothing of the sort; nothing of the sort. I just object to being wiped clear out of existence without a hearing being had anywhere. Just because I owe a dollar, I don't think you have that right to everything I have got.

Q. You do not mean to say that you haven't had hearings almost without end in this matter, do you?—A. Why, I do; I do. And the only thing I am complaining about now is that Judge Hanford would not give me one. He had this whole thing tied up by the adjudication in bankruptcy. We lost our identity when we were made bankrupts, and we never can get anywhere until that string is untied.

Q. Now, Mr. Finch, your clients were tied up in the bankruptcy court because they filed a voluntary petition in bankruptcy.—A. Yes.

Q. And they in that petition represented to the court that they were insolvent and unable to pay their debts?—A. I don't think so.

Q. Will you look at it and see [showing]?—A. Yes.

Q. Doesn't this petition state in the first allegation "That the said partners owe debts which they are unable to pay in full?"—A. That is true.

Q. Now, doesn't that mean they were insolvent, if they could not pay their debts in full?—A. Well, I can't quite answer that, Mr. Dorr; maybe it is and maybe it is not. I don't know whether I should interpret it legally or according to the fact. The fact was they could not pay anything then; but you let them have their

property, as they ought to have it, and they could have paid out four times in excess of their liabilities.

Q. This petition was signed and sworn to by both Heckman and Hansen?—A. Yes, sir; that is true.

Q. On the 16th day of January, 1902?—A. Yes, sir.

Q. That was a long time before you were in the supreme court?—A. Yes, sir.

Q. From the State court?—A. Yes, sir.

Q. The proceeding.—A. Yes.

Q. Now, Mr. Finch, you have stated that at some time Mr. Hansen went to sleep, so to speak; that is, he lost his normal mental condition, as I understand you.—A. That is true.

Q. When was that?

Mr. McCoy. Will you let me ask one question on another line, so as not to have it stranded somewhere in the record?

Mr. Dorr. Certainly.

Mr. McCoy. Did you contend before Judge Hanford that whether or not the superior court had jurisdiction of those assets, that the bankrupts were entitled to have a trustee appointed to protect their interests?

A. Yes, sir; that was my contention.

Mr. McCoy. And that is perfectly sound law, is it not?

A. It is in my mind, but I have not been able to get a court to take that view of it yet.

Mr. Hughes. Do I understand that the same rights could not be protected in the State court in the receivership through his control over his receivers?

The Chairman. I just suggest that if you wish to ask questions that you ask them through the examiner.

Mr. Dorr. Right on that line, I want to ask you,——

The Witness. Yes.

Mr. Dorr. And that question covers the Superior Court of the State of Washington in and for King County, and the Supreme Court of the State of Washington, Judge Hanford presiding in the United States district court in this district, and the circuit court of appeals.

A. No, sir; it was not brought up there.

Q. They have all taken an adverse view?—A. No, sir; not on the point I just referred to. It has not been brought up in that way. We have no place that we can go except to Judge Hanford.

Mr. McCoy. In other words, when you applied to reopen the estate you got switched off onto an inquiry in regard to the character of some attorneys in Seattle.

A. Yes, sir.

Q. And that was as far as you ever got?—A. Yes, sir; that was as far as I ever got and I got swamped there and I was willing——

Here there is some disturbance in the courtroom.

The Chairman. Gentlemen, won't you please observe order? We are glad to have you here, but we must have decorum.

The Witness (continuing). I was willing to even accept the issue that way if he would go about it and see that proceeding through, but when I offered to take that view of it with him I could not get him to take it up and I was just completely swamped.

Mr. Dorr. You stated——

A. (Continuing). Now, before I want to go any further I want to say about the insolvency of the concern. In the petition to reopen the estate the first allegation, and the one that Judge Hanford quotes, is to the effect that we told him in this petition to reopen the estate; that our assets were about $60,000 and our liabilities were about $23,000; and that the reason that they had not been made to so show in the petition which you have in your hand, was due to the fact that at that time we had no access to our books of account or anything that we owned; that our affairs were in the hands of the receiver in the State court.

Mr. DORR. You stated, or it was stated in this involuntary petition in bankruptcy, that the indebtedness was over $32,000, Mr. Finch [showing document to witness].

A. Well, that may be true.

Q. And the detailed statement is given of the debtors.—A. I think so. I did not file it. I think that is true.

Mr. MCCOY. Were any of them put down in the schedule as disputed items—how about the $6,000 item?

The WITNESS. It included the alleged overdraft which was put in, I think, as owing, and the credit not taken as to it; that is my recollection.

Mr. DORR. Their secured claims were scheduled at $16,020, were they not?

A. Yes.

Q. And their unsecured claims at $15,492.82.—A. Yes.

Mr. MCCOY. Is it stated anywhere in the schedule that any claim was disputed?

Mr. DORR. I beg pardon?

Mr. MCCOY. I say, is it stated in the bankruptcy schedules anywhere that any of the claims against the bankrupts were disputed?

Mr. DORR. I will examine it so as to be able to answer you.

Mr. MCCOY. I will take it and see it. For instance, have they got down the $6,000 claim of the Scandinavian Bank; is that claimed to be disputed?

Mr. DORR. That does not seem to be referred to in the schedule, as far as I can observe.

Mr. MCCOY. Never mind, Mr. Dorr.

Mr. DORR. I would be glad to pass it up to you [passes document up to Mr. McCoy].

Mr. DORR. When was it that Mr. Hansen became incapacitated?

A. I think it was in the fall of 1901; I think. I don't know exactly, and I do not know that I ever was advised as to the time.

Q. But he was able to transact business during those proceedings, wasn't he?—A. No; I don't think so, I tried to get him to take my side of the controversy, because Mr. Heckman had employed me. I wanted to keep him from taking the other side, but he would vacillate backward and forward because of his weak-mindedness.

Q. Was he also a Swede?—A. How's that?

Q. Was he also a Swede?—A. Yes, sir; or a Norwegian.

Q. A Norwegian?—A. Yes.

Q. And you think because he would not take your side of the controversy that he was weak-minded?—A. I do not.

The CHAIRMAN. That is hardly a fair inference, Mr. Dorr.

Mr. DORR. Now, with respect to the note that you say Judge Ballinger signed as attorney in fact for Heckman & Hansen. Do you understand that he was attorney for the bank at that time?

A. Do I?

Q. Yes.—A. I take no position in the matter. It is a disputed matter.

Q. Sir?—A. I say it is a disputed matter. Mr. Heckman claimed that he was his attorney.

Q. At the time this note was executed and the mortgage was executed, did you contend that Judge Ballinger was attorney for the bank?—A. I contended and contend that that is what my client claimed; that he was his attorney.

Q. His attorney, but for the bank—the Scandinavian-American Bank?—A. I don't know what you mean.

Q. You know when the note for $5,000 was executed, don't you?—A. Yes.

Q. At that particular time do you claim that Judge Ballinger was the bank's attorney?—A. I presume he was.

Q. Do you know anything about it?—A. I don't know anything about it.

Q. You don't know when his relation commenced?—A. No; I do not.

Q. Mr. Hansen signed that note himself, didn't he?—A. Yes.

Q. Sir?—A. Yes.

Q. In his own person I mean?—A. Yes.

Q. Now, I also show you what purports to be the note, and I will ask you whether you can identify that as the note?—A. I can not. I never saw it before.

Q. You have seen photographs of it, haven't you?—A. Yes; I saw a photograph of it in Collier's Weekly.

Q. Have you got a photograph of this note?—A. No, sir; I never did.

Q. You have had a photograph of it?—A. I never saw the note until this instant.

Q. Now, you spoke of Collier's Weekly; didn't you furnish them some material for the article you refer to?—A. I did not.

Q. Did you talk with any people who prepared the article?

Mr. MCCOY. What difference did it make whether he did or did not?

Mr. DORR. Well, he said he did not have anything to do with it in his answer to your question, Mr. McCoy.

Mr. MCCOY. Then he has answered the question.

The CHAIRMAN. I think it is a legitimate ground of examination.

Mr. MCCOY. I asked him the question because it had to do with the exhibit here, and not to find out——

Mr. DORR (interrupting). He was asked the direct question as to whether he had anything to do with that article.

The WITNESS. I had not.

Q. You did not talk with the man who wrote it?—A. Yes.

Q. Sir?—A. Yes, sir.

Q. And you gave him certain facts?—A. I did not.

Q. You did not give him any of the information?—A. No. He came to me to confer about the matter and I took the position that I did not want to stir it up again—it was an old matter. He asked me if I had any objection to his going to the record. I said "You

can go to any record; it is public, of course." Then he asked me whether he could depend on the record, and I said "Absolutely—anything that I put in."

Q. This note that I have just shown you is the $5,000 that is in question here, is it not?—A. I have not any doubt of it. I never saw it before, but I infer that. I know it—and I have seen a photograph——

Q. It is one of the exhibits in this case, Mr. Finch, and yet you said you never saw it.—A. I never saw it before in my life.

Q. You never had occasion to investigate the note.—A. No, sir; not the original note.

Q. Notwithstanding the fact that you claim that the agreement was that the amount should be represented by five notes payable a thousand dollars a year.—A. One note payable in five years—a thousand dollars a year.

Q. Did you ever know of a bank making a loan of that kind?—A. Did I ever know of a bank——

Q. Yes; a bank.—A. No, sir; I never heard of that. I have heard of them agreeing to do it, though, in the back room in the directors' office and then getting an attorney to get a power of attorney to consummate it.

Q. I say do you know of any custom of any bank to make real estate loans for that length of time?—A. I know it is not the custom.

Q. It is not the custom?—A. No, sir.

Q. This note was signed by Mr. Hansen.—A. Yes, sir.

Q. And it is dated October 31, 1900.—A. Yes, sir. Now let me explain why I never saw it.

The CHAIRMAN. The note does not seem to have been signed in person by Mr. Hansen.

Mr. DORR. Yes, sir.

The CHAIRMAN. It is signed by him for some one else—it reads "Heckman & Hansen, by Martin E. Hansen."

Mr. DORR. I beg your honor's pardon; the witness testified to the contrary, and the fact is to the contrary. It was sgined by Mr. Hansen himself.

The CHAIRMAN. Individually?

The WITNESS. It purports to be signed Heckman & Hansen, by Martin E. Hansen.

Mr. DORR. Individually?

A. By Martin E. Hansen. He has not signed it individually—and it is signed C. A. Heckman, by R. A. Ballinger, his attorney in fact.

Q. Martin E. Hansen was one of the parties——A. Yes, sir; of the firm of Heckman & Hansen.

Q. And he wrote his name on the note.—A. He put "Heckman & Hansen, by Martin E. Hansen."

The CHAIRMAN. He wrote the firm name on it.

The WITNESS. Yes.

Mr. DORR. I mean to say that it was Martin E. Hansen who executed the note.

A. Yes, sir; it is in his handwriting.

Q. It is in his handwriting and it was not done through Mr. Ballinger, or anyone else, so far as Mr. Ballinger was concerned.—A. So far as I know. It shows for itself. Let me tell you now why I

never saw it. It was part of the judgment roll in the superior court in the case brought for the foreclosure of that note and mortgage and apparently had been made up as a part of the judgment roll, and evidently introduced as a judgment roll and I never examined the judgment roll.

Mr. McCoy. As a matter of fact, you never, as attorney for these people, had any litigation in connection with this note, did you?

A. No; I can't get a chance to—I am tied up.

Mr. Dorr. The note as drawn is a 90-day note, Mr. Finch.

A. Yes, sir.

Q. Due 90 days from the date of the note?—A. Yes, sir.

Mr. McCoy. Is that note dated after the date of this injury to Mr. Hansen which you spoke of?

A. I am pretty sure it was not. I am pretty sure that Mr. Hansen had signed that note before his injury.

Mr. Dorr. I would like to have this note marked at this time, if the committee please.

The Witness. The allegation has always been that Mr. Hansen signed the note, believing that he had consummated arrangements made by Mr. Heckman. He never had anything to do with financial matters at all, but he was asked to sign the note while Mr. Heckman was away.

Mr. McCoy. The arrangement was made prior to that time in regard to the signing of the note with Mr. Heckman.

A. The arrangement had been made with Mr. Heckman, and Mr. Heckman had always everything to do with the financial matters, and that is what was alleged all the way through.

Mr. Dorr. You do not know anything about that personally?

A. I know what is alleged. I do not know anything personally about the fact; no. I am not trying to testify about the facts.

Note just testified about is marked "Exhibit No. 57."

Mr. Dorr. There is another note that is involved in this mortgage foreclosure, which is dated November 22, 1900, for $3,000. Will you please state to the committee who signed that note?

A. Mr. Heckman apparently signed the firm name of Heckman & Hansen to it. His credit was pretty good down there at the bank about then.

Q. That is one of the notes that is involved in the foreclosure suit that we were inquiring about yesterday?—A. Yes, sir.

Note marked "Exhibit No. 58."

Q. The $3,000, just identified, being marked Exhibit No. 58, I will now show you still another one [showing]. That is, or was, involved in the foreclosure suit?—A. Yes, sir.

Q. What is the date of that?—A. October 18, 1899.

Q. Who signed it?—A. Heckman & Hansen—C. A. Heckman and M. E. Hansen.

Q. What is the maturity date there?—A. Three months.

Q. Now, you do not understand that either of those notes were ever paid?—A. No, sir.

Q. Except through foreclosure?—A. No, sir; they were not.

Q. Neither one of them?—A. No, sir.

Q. And they were all long past due when this receivership was commenced?—A. Yes, sir; according to their terms—according to the face of them.

The third in the series of notes is marked "Exhibit No. 59."

Mr. DORR. Now, Mr. Finch, I understood Mr. McCoy to ask you something about the customary proceedings to disbar attorneys; I want to ask you this question. I believe you said that the custom was that the matter might come up informally—is that correct?—A. I mean to say that I don't understand that there is a real formal way of attending to the matter. I think the court could make a suggestion, for instance, or I think that if you and I felt aggrieved at a member of the bar that we could go before the court and I think he would listen to us.

Q. Yes; but if you and I should fall out and commit some offense in the trial of a particular case where disbarment proceedings were suggested, or might be suggested, there is not anything unusual about a notice being taken of it in that case, is there?—A. No.

Q. That would be perfectly natural to do so. That is to say, a little more specifically, if you charged these gentlemen whom you have referred to with unprofessional conduct in the course of this particular proceeding, there is not anything unusual that it should be taken notice of in connection with that proceeding originally?—A. Well, I think some courts would treat it one way and some another. Some would listen to anything of that sort without a flicker on their face and others would get mad about it.

Mr. MCCOY. Is it customary, when an attorney makes such a statement as you did, for the court to threaten him with disbarment proceedings in case he did not make good? Do you recollect any case of that kind?

A. It never occurred to me before or since, and I never heard of one.

Q. The custom is to wait until the offense has been committed or perpetrated and then make the complaint or bring the attorney up, is it not?—A. I should say so. That would be the way to do it.

Mr. DORR. Did you ever hear of a parallel case to this?

A. Never, never; this stands alone by itself.

Q. Now, Mr. Finch, what has been shown in regard to the signing of the note—of the $5,000 note—is also true with reference to the mortgage, is it not; that is to say, that Mr. Hansen himself signed that mortgage?—A. He signed the firm name by Martin E. Hansen; yes.

Q. And Judge Ballinger——A. Signed Mr. Heckman's name by R. A. Ballinger, his attorney in fact.

Q. In addition to the exhibits which you have mentioned that you suggest go into the record from the superior court of the proceedings in the receivership, there was a petition of the creditors for an order directing distribution filed?—A. After the receiver was discharged; yes.

Q. Yes?—A. Yes.

Q. Signed generally by the creditors?—A. Yes; I think that is true.

Q. Now, it is a fact, is it not, that all of the creditors of Heckman & Hansen, those that were secured by liens and also the general

creditors, participated in that receivership?—A. Oh, I don't know. Away back in December, before this final discharge of the receiver in March, Mr. Mayhew had been furnished by the Scandinavian-American Bank with a fund—the first one being $2,000—to go and buy up the creditors' claims. That was one of the first things that was done to get possession of the property. Now, as matters went along I suppose that he took an interest in it—although not in the record.

Q. Well, that is not just what I mean, Mr. Finch; what I am trying to find out is if it is not a fact that the creditors of Heckman & Hansen appeared either by themselves or through their assignees, if they did assign their claims, in that receivership case and participated in the distribution of the funds?—A. Well, there were two claims filed by Judge Humphries of this city, but aside from that I do not think there was ever a claim filed in court until after the receiver was discharged, and some of them then came in to get a part of the proceeds.

Q. Is it not a fact, nevertheless, that the general creditors and the preferred creditors came into court to participate in the proceeds?—A. Oh, I think so.

Q. Submitted themselves to the jurisdiction of the court for that purpose?—A. Oh, yes; I think that is true.

Q. And their claims were paid, either to them direct or to their assignees, as proven by the respective claimants?—A. Part of it was and some was not; and when that part that was not paid to them through the State proceedings—they went around to the bonding company on the bond of the receiver and got the balance.

Q. There was not enough of the fund to pay off the general creditors in full?—A. That is true.

Q. They were required to take a percentage settlement?—A. That is true, so far as the court record shows.

Q. That is what I mean, in that receivership.—A. Yes.

Q. Now, I want to ask you two or three questions with respect to Mr. Reynolds's connection—you have stated that he collected $100 for expenses to be used in the investigation of charges made against the receiver in the State court?—A. No.

Q. That was as I understood you.—A. No; I did not make that statement.

Q. Well, let me ask you, then, this question: What is there in Mr. Reynolds's association with that matter that suggests any fraud to you?—A. Why, he could not be attorney for Heckman and the attorney for the bondsmen on the receiver's bond, and serve both clients.

Q. Why not?—A. Because of the fraud of the receiver; the more that we would show of that the more it would cost his other client.

Q. Was there any conflict between Heckman & Hansen and the receiver?—A. Well, the receiver was alleged right along to have been conspiring with the Scandinavian-American Bank to deliver that property to them.

Q. Was there any question that the receiver had embezzled any money or misappropriated any of the funds or converted any of the property?—A. No; nobody knew anything about it. You could not get his books. He never submitted his books. I don't know anything about what he did.

Q. Were not those matters brought to the attention of the superior court by yourself?—A. I don't know. If it was, it was in that objection to his doings, which the court fired out of the record. That is the only place, if any place.

Q. Well, was there any fraud or mismanagement charged against the receiver other than such matters as may have been referred to the superior court?—A. No; if I understand your question.

Q. They were all investigated by the superior court?—A. Eh?

Q. They were all investigated, I say, by the superior court.—A. They were not; they were fired out of the case without an investigation.

Q. By Judge Griffin?—A. Stricken from the record.

Q. By Judge Griffin?—A. By Judge Griffin.

Q. That is the matter which you testified that he called scandalous, I believe?—A. Yes. The charge against the receiver, or against the bank, or their attorneys as constituting conspiracies and the like, trying to get that property, was deemed scandalous and stricken.

Q. Can you imagine any reason why the collection by Mr. Reynolds or the receipt by him of this $100 for the purpose of paying the witnesses to investigate these frauds against the receiver should be charged as an element of fraud against him?—A. Why, yes; just as I say. When I am making charges of fraud against another man, I don't think be can be my attorney and that man's too—it makes me nervous.

Q. I don't yet see how the investigation of these frauds by the procuring of witnesses to attempt to prove frauds, which you allege, could make you nervous.—A. I will illustrate it then. Mr. Heckman—or Mr. Reynolds—came into Judge Hanford's court with a petition in bankruptcy, and he got an order of adjudication, and at the same time he got an injunction against the State court proceeding further on the grounds of frauds being committed over there—he was not very specific in his allegation. Later on——

Mr. DORR. Wasn't it upon the ground——

Mr. MCCOY. Let him finish, please.

The WITNESS (continuing). Later on, over in that court—or two parties came from that court—Judge Ballinger and Mr. Jones, came over to Judge Hanford's court and got an order of reference to Commissioner Bowman to see if they were getting an adequate price for the property over there and if they could do any better over in his court. Down before that, before Commissioner Bowman, certain evidence was introduced; but the matter was closed before Mr. Heckman knew about it—he was expecting to go on the stand. I am testifying about things that had been represented in this evidence now—he deliberately suppressed matters——

Mr. DORR. Who did?

A. Mr. Reynolds; he suppressed matters, I think, in the interest of Judge Ballinger and the bank. [Here witness refers to document.] I set it forth that he, himself, had explained it. Mr. Reynolds admits that he kept his client off the stand before Commissioner Bowman. He said he did so for fear that Mr. Heckman might cast some reflection on Mr. Ballinger, Mr. Jones, or Gen. Metcalfe——

Q. Where is that evidence which you have just quoted from?—A. I am quoting from my argument before Judge Hanford.

Q. But I want to know where the evidence is?—A. The evidence is before Judge Smith to-day. That is in Mr. Reynolds's testimony that was not brought up, because it was presented by the other side, and I did not have money enough to bring that side up. Now, to proceed. After that Mr. Reynolds went back in the State court, and then when I got into the case he assisted in getting through the order of the State court selling the property over there, which was the very thing that he was employed by Heckman & Hansen to resist; and at the same time the order shows that he was the attorney for the bonding company. Well, of course, the bonding company was interested in getting that thing through and in getting themselves released from the bond. Now, that is why I objected to Mr. Reynolds's employment. I don't care what he did with the money.

Mr. McCoy. Is that what made you nervous?

A. Yes; that made me nervous and it does yet.

Mr. Dorr. Mr. Finch, how long was that injunction in existence that Judge Hanford issued against the sale of the property?

A. Four days.

Q. Sir?—A. Four days.

Q. Four days?—A. Well, it was four days before they came into court and asked to have it dissolved. It still remained in existence—I misunderstood your question.

Q. After the temporary injunction was granted how long was it before it was disolved?—A. I think it was granted about the 13th or 14th of January and dissolved about the 3d of March.

Q. Then it was from the 13th or the 14th of February until the 3d of March that the sale was suspended by the injunction order?—A. Yes, sir, which Mr. Reynolds had procured.

Q. Which Mr. Reynolds had procured?—A. Yes, sir.

Q. Now, during that time full opportunity was given to Heckman & Hansen and the creditors, and everybody else, to secure a better bid for the property, was there not?—A. Well, I don't know how to answer that. They were on earth, and that is all I can say, if you consider that a full opportunity—I don't know how to answer your question.

Q. Don't you know that they were told to see if they could find anyone who would offer them more money for that property?—A. Oh, that was the contention, and I think it was true—I always credited it—and I don't doubt that they were so told.

Q. And they never could find anyone, during all those weeks, to give another dollar for the property?—A. That was true. They had a few nibbles at it, and then they went to Gen. Metcalfe about it and somehow or other then it fell down. That was the complaint of Mr. Heckman.

Q. And Gen. Metcalfe was in the general conspiracy?—A. Yes.

Q. And that is the thing that finally you found out that you were the only honest man left?—A. Well, I was the last man—I never got a price, but I named the price that everyone else got.

Mr. Dorr. That is all, sir.

Whereupon a recess was taken until 1.30.

AFTERNOON'S PROCEEDINGS.

Continuation of proceedings pursuant to adjournment.
All parties present as at former hearing.
The CHAIRMAN. The committee will please be in order.

Miss ADELLA PARKER. having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your name.
A. Adella Parker.
Q. Where do you live, Miss Parker?—A. In Seattle.
Q. How long have you lived in Seattle?—A. Oh, more than 20 years.
Q. What is your present business or profession?—A. I am a teacher.
Q. In what capacity, Miss Parker?—A. I teach civics and economics in the Broadway High School.
Q. Are you a member of any profession?—A. I am a member of the teaching profession, and I am admitted to the bar here in the State.
Q. How long since you have been admitted to the bar?—A. I was admitted in 1903.
Q. How long have you been a teacher?—A. I can't remember.
Q. A number of years?—A. I think it is about 16 or 17 years.
Q. Is the institution of which you speak a part of the public school system of the city?—A. Yes.
Q. What is its relation to the graded schools or to the public schools?—A. Well, it stands between the graded schools and the university. It is the head of the public school system—what we call the public school system.
Q. Are the graduates of that school eligible to the classes in the university without further examination?—A. Yes, in most cases; not in every case.
Q. What subjects do you teach?—A. Civics and economics.
Q. Have you any other occupation or work than teaching at present—if you do any editorial work or any——A. (Interrupting.) Well, I publish a little magazine in the city here.
Q. Is that in connection with your school work or independent of it?—A. It is independent of it, except that it deals with the same subjects, largely—civics and economics.
Q. How frequently is it issued?—A. Monthly.
Q. Have you been issuing it for some time?—A. The first issue was in January, 1911.
Q. I presume you have some others associated with you——A. (Interrupting.) Yes, sir.
Q. (Continuing.) That you do not do all the work on the magazine?—A. Oh, no; I don't do all the work.
Q. You might give the name of the magazine, Miss Parker?—A. The Western Woman Voter.
Mr. HUGHES. I didn't get that fully.
A. The Western Woman Voter.
The CHAIRMAN. Is it an advocate of woman suffrage?
A. It is not opposed to it.
Q. What need of it in Washington now?—A. Well, you see it is intended to give information; when women vote they need information. This is intended not to be a magazine to promote suffrage

except in other States, but it gives information about civics and economics here and elsewhere.

Mr. McCoy. Trying to reform Oregon in that respect, is it?

A. Yes.

The Chairman. Does it circulate in other States than this one?

A. Yes, we have subscribers in about half of the States of the Union.

Q. Its influence has not become paramount in Oregon yet?—A. They are going to carry suffrage next November over there, I am quite sure.

Q. Miss Parker, are you acquainted with Judge Hanford, of the United States court here?—A. Yes.

Q. How long have you been acquainted with him?—A. Do you mean how long have I known him by sight or how long have I had a speaking acquaintance with him?

Q. Have you a speaking acquaintance with him?—A. Yes.

Q. For how long a time?—A. I think about 10 years.

Q. And prior to that, if you knew him by sight, you may state how long you knew him that way?—A. Probably about 5 years before the last 10 years. Five years prior to the last 10 years I knew him by sight.

Q. When were you subpœnaed as a witness to be here?—A. Day before yesterday morning.

Q. When did you learn that you were about to be subpœnaed?—A. On the 4th of July.

Q. Is it true that you had been avoiding service?—A. Yes, sir.

Q. Between those dates?—A. Yes, it is true.

Q. Information has come to the committee, or to myself at least, that in addition to your other accomplishments you are quite a sprinter; you tried to evade the service by the officer by running away I understand; is that correct?—A. They didn't overtake me for some time.

Q. How far did you manage to get ahead of him, how far did you run?—A. Well, I turned a corner. If there had only been two of them I think I could have gotten away, but there were three.

Q. It was your purpose to avoid coming here?—A. Yes; I am an unwilling witness.

Q. To what extent have you had an opportunity of observing Judge Hanford during the years you have known him?—A. I have met him rarely.

Q. Give us some idea on what occasions, what the circumstances were when you met him or saw him. Was it in court here or anywhere, or was it on a public occasion, or was it on the street or on the street car; give us some idea of that?—A. I was subpœnaed in a case where Judge Hanford was the presiding judge, some years ago; it was—I don't remember how long ago—it was the case that Mr. Edwin Holden James brought in the interests of that Hindoo against Chief Delaney—some of the attorneys in court will remember it, I think—and I have met him sometimes on the street and occasionally on the street car.

Q. Had you any occasion to observe the judge in court, except when you were a witness as you have stated?—A. No; I never was in his court, except at that time.

Q. Where else have you seen or met him other than on the street cars and in court?—A. Oh, I meet him on the street occasionally, and when I was in law school I remember he gave a lecture at one time—that I met him afterwards.

Q. Miss Parker, if at any time you have seen Judge Hanford when he seemed to you to be under the influence of intoxicants please state about it.—A. Do you wish me to state it just regularly, giving the time and all, or just——

Q. (Interrupting.) You may state——A. (Interrupting.) Yes; there were two occasions when I saw Judge Hanford was under the influence of intoxicants.

Q. Give the first occasion now. Give the time and place, if you can.—A. The first occasion was about five years ago. It was late at night. I had been at the home of a relative on account of illness, and it was within a short time of the last of October, 1907. I fix that time because it is the date of my niece's birth, and the illness was the illness of my niece's mother, my sister-in-law. I left her home late and caught the last car out Broadway.

Q. That would be about what hour, Miss Parker?—A. I think between 12 and 1, but I would not be positive; I am sure it was the last car, though.

Q. On what line, what street?—A. The Broadway.

Q. Very well. Go on now, please.—A. I got the car somewhere from Boren and Pike on up to Broadway; I don't remember; it overtook me somewhere there, and I boarded it, and Judge Hanford was sitting inside the car on the side seat next the door. I had only a few blocks to go, and I stood on the rear platform. He seemed to me intoxicated.

Q. If anything occurred then to attract or rivet your attention on his condition, tell what it was.—A. He was pitched far over. He sat at about the middle of the seat and somewhat on the edge of it, too, and he was pitched well forward and was asleep. The conductor was evidently afraid of carrying him by and woke him, spoke to him, asked him what street he got off at. He was a young man, and he bent over to him and said, "Old man, what street do you get off at?" And the Judge answered "Galer," as I remember it. I left the car before he did.

Q. Give the committee a better idea of the fixedness and strength of your opinion as to his condition. Have you any doubt in your mind as to his being in the state you have told us?—A. No.

Q. Have you any doubt in your mind as to the identity of the person?—A. Oh, no; no.

Q. How far did you ride with him?—A. More than six blocks.

Q. Was the door of the car at that end of it open or closed?—A. Open.

Q. Were you near enough to tell whether there was any odor of liquor on him?—A. No; I was on the rear platform, and I would not know. No; I would not know if there was any odor of liquor.

Q. Was his sleeping audible?—A. Not to me.

Q. During all the time you saw him—that is, during the six blocks which you rode with him—was he asleep all of that time?—A. Except when the conductor awoke him and asked him——

Q. (Interrupting.) How soon was that before your getting off?—A. I think it was very soon after I got on the car that he spoke to him.

Q. Do you know, from your knowledge of the streets there, how far it was to the street he named?—A. I don't know just where Galer Street is; it is a few blocks on, I believe.

Q. Now, Miss Parker, if you please, will you tell us when the other time was and where it was?—A. The other time was near the 1st of September—October, 1910, it was, the year; I remember it, because it was the year we got the vote, and Martha Greening, of Philadelphia, was with me on the car. She had had dinner with me, and we were coming down town. It was between—I think it was between 7 and 8 o'clock, not much past 8 o'clock in the evening, and Judge Hanford was seated in the car when we boarded it.

Q. What direction was the car going?—A. Coming down town. Do you wish me to continue?

Q. Go on.—A. Judge Hanford was not asleep, but we both—we commented on the situation, and we both regarded him as intoxicated

Q. How far did you ride with him on that occasion?—A. From Broadway and Harrison down—I don't know, I suppose—we got off the car somewhere down here on Second Avenue.

Q. In point of time, about how long were you on the car with him?—A. Oh, I suppose 10 minutes; something like that.

Q. Could you describe with more particularity what it was in his appearance or conduct which led you ladies to conclude that he was intoxicated?—A. I think it would be that he did not seem to be aware entirely of his surroundings.

Q. From your knowledge of him when he was not under the influence of intoxicants, and comparing him on those occasions with the occasions which you refer to, what do you say as to whether it might have been some other cause than intoxication which made him look as he did to you?—A. I don't know of any other cause than intoxication that gives just the impression that that does.

Q. Was there any appearance of pain—might pain have caused the condition you saw?—A. No; there was no appearance of pain.

Q. How near to him were you on that occasion?—A. We sat in the next seat.

Q. Behind him or before him?—A. We sat in—we took seats in front of him.

Q. Did you notice any odor of liquor on that occasion?—A. I don't recall any; I could not state that I did.

Q. Which of you noticed his condition first?—A. I did.

Q. Was it the subject of discussion between you on that occasion?—A. Yes.

Q. Have you at any other time seen the judge when, in your opinion, he was to any extent under the influence of intoxicants?—A. I don't recall any. I don't recall any.

The CHAIRMAN. Gentlemen, do any of you wish to ask Miss Parker any questions? Do you wish to ask the lady further?

Mr. HUGHES. Just a question or two.

By Mr. HUGHES:

Q. Did you ever meet Judge Hanford in his home?—A. No.

Q. Did you ever have an opportunity to see him in his work, his working hours, to learn anything of his personal habits?—A. No, nothing—no; I saw him once on the bench.

Q. Yes.—A. And I have seen him when he has made addresses—public addresses.

Q. Where was it that you met him—that you were introduced to him?—A. I suppose it must—I can't recall, but I judge it was in connection with my studies at the law school.

Q. In other words, you never have been thrown in personal contact with him?—A. Oh, no.

Q. So that you have any familiarity with his personal habits or his personal idiosyncracies—you have no knowledge of that?—A. I have seen him occasionally.

Q. I say, you have not——A. (Interrupting.) I don't know his home. I was never in his home; he was never in mine.

Q. Your knowledge of people is such that you know that many people have peculiarities or idiosyncracies that become known only on intimate personal acquaintance?—A. Surely.

Q. You do not have such a knowledge of Judge Hanford?—A. No; I would think not.

Q. On the first occasion that you speak of he sat well forward in the seat, you say, and leaned forward and seemed to you to be asleep?—A. He was asleep; yes.

Q. You think he was asleep?—A. Yes. I would testify that he was asleep.

Q. And when the conductor spoke to him and asked him where he got off he said "Galer Street"?—A. Yes.

Q. You heard that answer?—A. I either heard his answer or heard the conductor repeat it; I can't be sure. I think I heard both.

Q. And you know that Galer Street was the street on which his home was situated—Galer and Tenth?—A. I didn't know it, but I judged it was.

Q. You know it now, don't you?—A. No; I don't know it, unless you inform me.

Q. I thought you knew now?—A. No; I don't know.

Q. Aren't you familiar with Judge Hanford's home? Don't you know where his home is?—A. I believe not.

Q. You know where the Leary Home is, don't you?—A. Yes.

Q. You remember the red house just this side?—A. But I didn't know that was Judge Hanford's home; no.

Q. That would be at Galer Street?—A. Yes.

Q. As you noticed it. On the second occasion you say he was not asleep but he seemed lethargic in his manner?—A. I should say lack of control would explain it better.

Q. In what way?—A. Well, a certain limpness of muscles, and I would not like to say vacancy of mind, but something approaching it.

Q. Did you ever shake hands with Judge Hanford?—A. I think I must have, but I don't recall exactly.

Q. You don't recall about that?—A. I meet him rarely; I see him occasionally.

Q. If you shook hands with him, were you impressed with the same sensation when you shook hands with him?—A. Well, I say I don't recall shaking hands with him.

Q. You don't recall. That is all.—A. I think I must have done so.

By Mr. McCoy:

Q. On this second occasion, Miss Parker, what was the appearance of his face and his eyes, or his face and his eyes especially?—A. Well, intoxication seems to me so definite a symptom that it is almost a standard, and I would say that he looked as if he were intoxicated.

He was flushed and a peculiar—I might say, puffy appearance of the face that usually accompanies intoxication.

Q. Did you notice whether or not his eyes were bloodshot?—A. They were.

Witness excused

L. H. McMAHON, having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your full name.

A. L. H. McMahon.

Q. Where do you live, Mr. McMahon?—A. Salem, Oreg.

Q. How long has Salem, Oreg., been your home?—A. Well, the greater portion of 45 years.

Q. That would be your entire life?—A. Practically so; yes, sir.

Q. What is your business or profession?—A. I am a lawyer by profession, but I am not actively engaged in practicing now.

Q. For how long a time have you been or at least when did you become a lawyer?—A. Oh, I don't know; perhaps 15 years ago.

Q. And when did you cease the active practice of your profession?—A. About three years ago.

Q. Have you any other business or avocation?—A. Well, I have been the owner and editor of semiweekly newspapers and an editor and part owner of a daily newspaper. At present I am in the orchard business.

Q. Where?—A. North of Salem about 10 miles.

Q. Do you grow fruit down there?—A. Well, not a great deal of fruit yet. I have some six hundred and odd acres in orchard and a thousand acres of other land that I am using for general agricultural purposes and crops.

Q. What kind of an orchard, apple orchard?—A. Apples, peaches, pears, and cherries.

Q. What papers were you connected with?—A. I established the Woodburn Independent, at Woodburn, a semiweekly paper at Woodburn, Oreg., in 1888, and I was part owner and stockholder in the Salem Daily Independent and the editor and business manager.

Q. Are you acquainted with Judge Hanford of the Federal bench?—A. I met Judge Hanford formally through the courtesy of a mutual friend, and I have tried cases in his court on three different occasions.

Q. Where?—A. At Tacoma.

Q. When?—A. Well, I can approximate the time. It has been about five years ago.

Q. Were all three of the cases within a single year?—A. I think perhaps within a twelvemonth, but between the two years.

Q. Have you had occasion to notice the judge holding court when you were not yourself connected in any way with the work then under consideration?—A. No, sir.

Q. Are those the only occasions when you saw the judge on the bench?—A. Well, I think that I have seen the judge on the bench immediately preceding each trial when I would happen in the courtroom waiting for the case to be called, possibly the day before, maybe two days before, something of that kind.

Q. If you noticed any peculiarity in his manner or his condition while you saw him on the bench, please tell the committee what that peculiarity was?—A. Well, there were two things that were very

pronounced. One was his lack of courtesy to the attorneys, his intolerant ways of treating the members of the bar in the conduct of the cases. The other was his, as I recollect it now, habitually going to sleep upon the bench in the afternoons. I don't recall that he ever went to sleep in the forenoons. I recall on one occasion in the trial of a case where an attorney was arguing a motion and Judge Hanford went to sleep while he was arguing, threw his head back, his mouth was open, and the attorney argued along for a while, and the situation became acutely embarrassing, and finally he stopped arguing. I think perhaps Judge Hanford was asleep 15 minutes, perhaps 10 minutes, after he quit arguing—after the lawyer quit arguing—ceased his argument, and then the judge wakened with a snore that was audible all over the court room, and the attorney commenced his argument anew. It was almost every day when we tried those cases, as I recollect it, and I distinguish between remembering a thing and recollecting it. This matter has been brought—refreshened in my mind on account of this case. But as I recollect it, Judge Hanford went to sleep every afternoon during the time I appeared in his court, and I think perhaps that that amounted to 10 or 12 days in all of the cases.

Q. Was there any other occasion where the sleep continued as long as on the occasion you have described?—A. No; but he has gone to sleep two or three different times, sleeping a little bit and then waken and rub his whiskers, and the case would proceed.

Q. What was there, if anything, that enabled you to make up your mind as to his condition, that is, what was there in the manner of his changing from apparent sleep to wakefulness which led you to think he had been asleep and not merely closing his eyes?—A Well, the judge has a habit of snoring when he sleeps, with mouth expressions that would indicate that he was asleep. I think I am safe in saying that he was asleep. There is no question in my mind about his being asleep; a sudden start and awakening and opening his eyes and shaking his head and whiskers this way, as a man arousing himself out of sleep.

Q. Have you ever noticed him in apparent sleep when you thought he was not sleeping?—A. No. Judge Hanford was when awake mentally very active.

Q. Have you noticed any occasion when his eyes were closed and seemed to be asleep and objections were made and rulings called for when he proved to be mentally awake and alert?—A. No, I have no remembrance of anything of that kind.

Q. Have you seen the judge preside elsewhere than at Spokane?—A. At Tacoma.

Q. Or Tacoma, I mean?—A. I have not.

Q. If, at any time during your acquaintance with him, he was, in your opinion, under the influence of intoxicants, tell us of it?—A. Well, I know that the judge drank. I stayed at the Hotel Donnelly and I saw him on several different occasions drinking liquor there, and on the afternoon when he was asleep so long he had taken, I think, two drinks at the bar before he went onto the bench. I never saw the judge in a pronounced state of intoxication, but I have seen him on the bench when his mind was evidently not in normal condition and the cause was evidently the influence of alcoholic stimulants.

Q. How often have you seen him when, in your opinion, he was in that condition?—A. Well, in my judgment, he never went on the bench in the afternoon without having some liquor. I didn't see him drink on all of—that is, every day when we were trying a case, but he had the general symptoms of a man who was not drunk but had been drinking liquor. His cheeks were usually flushed, and there was—well, the ordinary symptoms of a man who had a drink or two.

Q. Have you, at any time, had any personal trouble with the judge, or any trouble?—A. No, no, not in the sense of trouble. I was restive while in his court because of his—the discourtesy—not to me personally, but to all the attorneys present, because I felt that—well, he got on my nerves. If you would make a motion and if you would start to argue it, he would rule adversely to you every once in a while without giving you an opportunity to state your premises. He didn't do that often with me, but I saw him with other attorneys and the court. The fact is that he conducted his court as I have never seen a court anywheres else conducted in my life, and I refused a personal damage suit after that rather than take it into his court, because I felt that I could not do a client justice under those conditions. But personally I have nothing whatever against Judge Hanford in any way. In fact, I am not acquainted with him only as I stated, by a formal introduction and the fact that I have tried those cases in his court.

Q. During the course of those trials did the judge at any time reprimand you or address remarks to you which gave you offense?—A. Well, I think the judge and I clashed on two or three occasions. I was unused to the judge's arbitrary method of conducting cases, and I think we clashed on one or two occasions over the admission of testimony. I think one time he refused to allow me to state my premises in an objection to some testimony, and that I insisted upon stating them and did state them. I remember that Gen. Stratton said to me once to be careful, because the judge might fine me for contempt of court, and I said that I was well within my rights as an attorney, and that contempt is an appealable order anyway, and I would not submit to being fined for contempt arbitrarily. Gen. Stratton, who was associate counsel in the case—he was formerly attorney general of this State—perhaps prevented me from insisting more strenuously upon my rights because the general and Judge Hanford were personal friends, and while the general recognized the arbitrary manner in which the court was conducted he excused it on account of the kindness of heart of Judge Hanford. And it got onto my nerves, so that, while I was counsel in chief in the case, I turned most of it over to Gen. Stratton. The fact is that—since you have asked that question it has led to these answers—the fact is the judge's conduct in his own court was such as to—well I felt this way, that if any lawyer or any spectator had conducted himself in Judge Hanford's court as Judge Hanford conducted himself, that he would have been subject to fine for contempt of court; something I was entirely unused to and I will admit prejudice to that extent.

Q. Does the feeling which you have expressed enter into the testimony which you give?—A. No. On the contrary, I have the deepest sympathy for Judge Hanford personally, occasioned by things that mutual friends have told me concerning conditions that surround him

that may and perhaps have a great deal to do with his temperamental habits.

The CHAIRMAN. Are there any further questions? Mr. Hughes, do you desire to ask the witness?

By Mr. HUGHES:

Q. How long since you quit practicing law, Mr. McMahon?—A. Why, I—oh, I practice occasionally, if some case of importance comes up that there is enough in; but I closed my office and gave up the general practice something over three years ago.

Q. Two?—A. Three years ago; yes.

Q. Three years ago. Where was your office prior to that time; in Salem?—A. In Salem; yes, sir.

Q. Did you have a partner?—A. No, sir.

Q. How long did you practice in Salem?—A. Oh, I don't know; 10 or 12 years, I think.

Q. You say you have tried three cases before Judge Hanford in Tacoma?—A. Well, I partially tried the first case and they got me on a pin hook and I had to back out, took a nonsuit, and then I tried——

Q. (Interrupting.) You don't blame Judge Hanford for that?—A. How is that?

Q. I say, you are not blaming Judge Hanford for that?—A. Oh, no; not at all.

Q. It was the attorney for the other fellow that caught you on the pin hook?—A. The other fellow caught me on the pin hook because you have ways of conducting courts over here that we haven't in Oregon.

Q. Well. you spoke of one case that you went out on a nonsuit. What was the next case?—A. It was the same case.

Q. The same case brought over again?—A. Yes.

Q. Was that tried——A. (Interrupting.) That was tried; yes.

Q. (Continuing.) To a jury?—A. Yes.

Q. To a jury?—A. Yes, sir.

Q. With a favorable or unfavorable result to you?—A. I won the case; got a judgment for $7 000; personal injury.

Q. And what was the next case?—A. It was the same case tried over.

Q. The third time?—A. Was not tried the first time.

Q. No; I know it wasn't.—A. The third time it was tried in the court.

Q. Was the case reversed in the court of appeals, or was a new trial granted?—A. Judge Hanford granted a new trial.

Q. Granted a new trial?—A. Yes.

Q. Did you appear before him to argue that?—A. Gen. Stratton appeared to argue the motion for a new trial. I didn't come over.

Q. And then you finally tried it again?—A. And won it.

Q. You won it again?—A. Yes.

Q. And recovered your verdict, or was it appealed?—A. I settled the case.

Q. What?—A. We settled the case. The last verdict was for $4,000, and they were threatening to kill it. The client had no money. I took $3,000 and quit.

Q. And it was in that case, with its various trials, that you occupied some 10 or 12 days before Judge Hanford—is that what you mean?—A. I would not be positive as to the time. I approximate 10 or 12 days in all, possibly longer.

Q. That was your entire experience before Judge Hanford?—A. Yes.

Q. And Mr. Stratton was associated with you on each of those occasions, or only on the last two?—A. On all of them.

Q. On all of them?—A. On all of those occasions.

Q. He was present whenever you were?—A. Yes. Yes; he was present in court whenever I was there.

Q. Did you just happen to be here on business?—A. How is that?

Q. Do you just happen to be here on business?—A. No, sir; I was subpœnaed here.

Q. Or did you come purposely?—A. I was subpœnaed here.

Q. Subpœnaed to come here from Salem, Oreg.?—A. Yes, sir.

Q. What is the title of the case?—A. The one I tried in Judge Hanford's court?

Q. Yes.—A. McLean *v.* The Northwestern Milling Co., of Hoquiam. Is that all, Mr. Hughes?

Q. Who were the attorneys on the other side?—A. A man by the name of Griffith, at one time, and afterwards judge—I can't call his name. Mr. Stratton can tell you.

Witness excused.

JOHN C. HIGGINS, having been first duly sworn, testified as follows:

The CHAIRMAN. State your name, please.

A. John C. Higgins.

Q. Where do you live?—A. Seattle.

Q. How long?—A. About 14 years.

Q. What is your profession?—A. Lawyer.

Q. How long have you been practicing law, Mr. Higgins?—A. Ten years.

Q. All of that time in Seattle?—A. All of that time in Seattle.

Q. What is the general nature of your practice?—A. It is a general law practice.

Q. To what extent do you practice in Judge Hanford's court?—A. Oh, I have a case or two, I suppose, at each term of court; have had for some years.

Q. You are, of course, acquainted with Judge Hanford?—A. I am; yes.

Q. And have been during all of your professional life, have you?—A. All of the time I have been here, I think; yes, sir.

Q. To what extent do you see or associate with the judge out of court?—A. Oh, I see Judge Hanford occasionally on the street, at the Rainier Club, or on my way home. I live on the same street car line that Judge Hanford does.

Q. Have you noticed anything peculiar in the judge's manner as a presiding judge?—A. Well, every man has his own individual peculiarities, I suppose. I have noticed that Judge Hanford had a very rigid hand over proceedings in his court, and is perhaps a little more rigid in his rulings with attorneys than the ordinary judge.

Q. Would you say that rigidness extends to the point of arbitrariness?—A. I have never seen it extend to that point. I think that

it is within the province of every judge who does his duty to curb to a considerable extent the freedom that attorneys like to indulge in in the length of cross-examination or in the length of their arguments, and I have never had any ocasion to feel that Judge Hanford denied me any right that I was entitled to as an attorney, and I have never seen him deny any other attorney the right to present a point with sufficient fullness. Many points can be ruled upon without hearing the attorney, and I have seen Judge Hanford deny attorneys the right to argue an objection to the admission of testimony when it was perfectly patent that there could not be any reasonable objection to it, and when attorneys had overindulged in the privilege of arguing points and objections and extending the record.

Q. Have you noticed anything in his personal appearance during the trial of a case, or during his occupancy of the bench, which was peculiar?—A. Well, I have noticed that in trials that became prolonged, not during arguments, but during the taking of testimony, that Judge Hanford has a habit of nodding on the bench, and I have often, judging entirely from his physical appearance, thought that he was probably asleep; but I have observed that on practically all of those occasions he was ready with a very prompt and clear ruling when the time came for a ruling if objection was made to testimony.

Q. You say on practically all of those occasions he was ready to rule. What do you mean by the use of the word "practically" in that connection?—A. There have been one or two occasions—there were one or two occasions in the trial of one case about six or eight years ago, in Judge Hanford's court, when an objection was made by myself or opposing counsel to questions, and Judge Hanford seemingly did not hear the objection.

Q. What was done?—A. Why, if I were asking the question I repeated it, and counsel repeated his objection in a louder tone of voice, or if counsel on the side was asking a question he repeated it and I repeated my objection, and it attracted Judge Hanford's attention, and he ruled. I think that on those occasions Judge Hanford's mind was not alert, and that he had not for a moment been following the evidence.

Q. And you resorted to the device you have described in order to get his attention?—A. Yes.

Q. Would it be too strong a statement if I said that it was your purpose to wake him up?—A. Well, it was our purpose to attract his attention. Whether he was merely thinking of something else, or was actually dozing, I am not able to say. His appearance at that time was no different than it was on scores of other occasions in the trial of that case, or of other cases, when he was entirely ready to rule, and did rule clearly, as though he had been following the evidence clearly while apparently asleep.

Q. What time of the day was it, Mr. Higgins?—A. In the afternoon. I will say, in that connection, that I have in the trial of cases before Judge Hanford, and occasionally before other judges—have made objections, or heard objections made that the judge was not ready to rule upon, when there was no physical evidence of his being asleep, but because perhaps for a moment he was not following the questions, but was thinking of something else.

Q. How loud a tone of voice did you or your opponent, whoever it was that used it, speak in to arouse the judge?—A. Well, in a

somewhat louder tone of voice, but I think not loud enough to wake up a man who is actually asleep. I should say that it was the repetition of the question in a different tone of voice, or some momentary interruptions of the questions, that might have attracted the judge's attention, as much as the louder tone of voice.

Q. Did you consult with one another as to what you would do to get his attention?—A. You mean counsel on the two sides of the case?

Q. Yes, sir.—A. We did not.

Q. On how many occasions did that occur?—A. Two or three in the trial of one case. That is the only time in a considerable number before Judge Hanford that I have ever found him not following the evidence closely.

Q. Were those occasions on the same day or different days?—A. On two or three different days in the trial of the case.

Q. And that, you say, Mr. Higgins, was how long ago?—A. Six or eight years ago. I have not—I had no knowledge that I was to be subpœnaed in this case until I was actually subpœnaed shortly before noon to-day, and I have had no chance to refresh my recollection.

Q. Has your practice in the judge's court continued up to the present time?—A. It has.

Q. Have you noticed any difference in the judge with regard to the peculiarity you have described?—A. Not at all, except that that occasion six or eight years ago was the only occasion upon which I have ever noticed that Judge Hanford was not following the evidence closely.

Q. Did all those incidents occur in the afternoon?—A. They did.

Q. About what hour?—A. Oh, I am not able to say.

Q. What part of the afternoon, if you can recall?—A. Well, I have no recollection of that. All, perhaps, in mid-afternoon.

Q. To what extent have you seen the judge elsewhere than in court?—A. Oh, I have seen him for the last few years every day or two at the Rainier Club, I suppose, and every few days on the car going home or coming down town.

Q. About what hours, usually?—A. At all hours of the day, from morning when he would come down in the morning until—and generally at noon at the club, or occasionally in the evening at the club, and in the evening going home about dinner time, or late at night.

Q. To what extent have you seen the judge drink intoxicants, if you have seen him do so?—A. I think I have never seen Judge Hanford take a drink at all any place. I can't be clear about that. I may have seen him take a drink at the Rainier Club.

Q. Well, it didn't impress itself on your memory, if he did?—A. It did not.

Q. To what extent, if at all, have you seen him when you thought he was under the influence of intoxicants?—A. I have never seen him when I thought there was the slightest suspicion of his being intoxicated or under the influence of liquor.

The CHAIRMAN. Are there any further questions, Mr. Higgins? Mr. Hughes, do you desire to ask Mr. Higgins?

By Mr. HUGHES:

Q. Did you testify that you live on his street car line?—A. Yes.

Q. Have you frequently ridden home with him or on the same car with him?—A. Well, in several years I have ridden home with him a

good many times. It would not be oftener than perhaps once or twice a week.

Q. At what hours?—A. Either about dinner time, at night, or late at night when I would be going home from the office or from some engagement down town.

Q. Did you observe at such times the same manners that you have described as seeing him evidence upon the bench?—A. Oh, yes; I have seen Judge Hanford often nod on the street car.

Q. From your knowledge of him, did you think at the time that he was under the influence of liquor at all?—A. Never occurred to me to think that he was; no. I saw nothing about his manner to indicate that his drowsiness was occasioned by drinking liquor.

Q. Might such an inference be drawn, however, by one who was not familiar with his habits and peculiarities?—A. Yes; I should think so. I know people have made the statement to me that they had seen Judge Hanford intoxicated, when they had no more evidence than the nodding of his head on the street car, that I had seen myself.

Q. You are one of the regents of the State university?—A. Yes, sir.

Q. Are you a member of the grievance committee of the Seattle Bar Association?—A. No; I am——

Q. Or are you the attorney for it?—A. Well, hardly that. I have conducted, at the instance of the grievance committee and the board of trustees of the bar association, all of the disbarment proceedings that have been conducted by that association since its organization, but I am not a member of the committee. I am simply designated, as the cases come up, to prosecute the disbarment proceedings. I sit with the committee at each of its meetings, but not as a member.

Mr. HUGHES. I didn't know but what the committee might be interested in knowing that fact, and having an opportunity to examine this witness upon that subject, since I have gathered that possibly it conceived that the standards of the profession were lower in the West than some other places.

By Mr. McCOY:

Q. I would like to ask the witness: What is the method of proceeding against an attorney who has been accused and who is brought up on charges, with reference to disbarring him or not; how is the proceeding conducted?—A. Why, if a preliminary investigation by the committee or its attorney discloses what seems to be reasonable ground for an investigation or prosecution, and discloses any reason to doubt the—or any possibility for a reasonable doubt of the charges being well founded—the case is generally taken directly to the accused man himself and his own story on the question taken, or he is asked to appear before the committee, if he chooses to do so, and make his own statement or present what evidence he has. That is mandatory in the case of a member of the association; it is only discretionary with the committee in case of charges against a man who is not a member of the association. And if upon such an investigation the committee decides that a disbarment proceeding should be instituted in court, which under our procedure is the only place that it can be carried on here, the matter is then referred to the board of trustees of the association, who designates an attorney to prosecute the proceeding in court—to institute it. And it is then brought before the

court, as our habit has been, on the relation of the prosecuting attorney of King County, by myself as deputy prosecuting attorney. I am a deputy merely for the purpose of prosecuting those cases. And it is then carried on——

The CHAIRMAN. Before what court?

A. The Superior Court of King County.

Mr. McCOY. Then, what takes place when it is brought before the court?

A. Our statute provides for a regular procedure by a motion and answer, the motion stating the grounds upon which disbarment or suspension is asked, and the defendant then has all of the remedies that he would have in the ordinary civil proceeding. It is designated a civil proceeding by our statute and comes before the court with his motion or demurrer or his answer. The case is brought to issue and tried before the judge as any other civil case triable only before the court itself.

Mr. McCOY. And the evidence presented as it would be in a trial?

A. In an ordinary civil action; yes.

Mr. McCOY. And the respondent having every opportunity to present his case in the same way?

A. In the same way, and the right of appeal in the event he is found guilty.

The CHAIRMAN. If found guilty and the order of disbarment is entered, does that apply to any court but the court in question which makes the order?

A. It applies to all the courts in this State. It does not apply, of course, to the Federal—that is, to all of the State courts in this State. It does not apply to the Federal court here or elsewhere, nor to any State court elsewhere except in cases where a man from this State seeks admission in another State on his certificate here, which has been revoked here, and he will not be admitted in other States.

Mr. McCOY. Is not his admission to practice in the Federal court based on his having previously been admitted in the State court?

A. I am not familiar with the requirements. I have been admitted in all of the Federal courts, but I have forgotten what the statute—the Federal statute requires as a basis for admission. I think that sufficient qualification is shown if a man is entitled to practice in the highest court of the State where the Federal court is sitting, but that is merely an impression. I have not looked up the statute with that point in mind.

The CHAIRMAN. Is that all with Mr. Higgins? Stand aside.

Mr. HUGHES. Just a moment.

The CHAIRMAN. Move along with Mr. Higgins.

Mr. HUGHES. I will ask you if in your investigations you have recently—I mean your investigations before the committtee for the trustees of the bar association—have recently had occasion to investigate Mr. Jerold Finch?

The CHAIRMAN. I don't think we ought to go into that——

Q. (Continuing.) For the purpose of disbarment?

The CHAIRMAN (continuing). Do you? Won't that open up another trial, another hearing, which would take more time than it would be worth?

Mr. HUGHES. I don't know as it would open up another hearing. It is simply a question——

The CHAIRMAN (interrupting). I don't mind going into it, but I don't see the end of it if it is followed to the end. There is no pretense that he was disbarred, is there?

Mr. HUGHES. No, sir.

The CHAIRMAN. Why should we go into it?

Mr. HUGHES. Well, it depends on what weight you give to testimony, that is all. In other words, the purpose, if you ask, is to show that in just such a matter as this, like accusations made against other attorneys, he was investigated—matters which would require the disbarment either of a person who willfully made such accusations, or the disbarment of the persons against whom they were made. That he was investigated by this bar association

The CHAIRMAN. That would lead to an investigation of every disbarment case you have had here, wouldn't it?

Mr. HUGHES. No; I don't think so.

The CHAIRMAN. I do not see why it might not.

Mr. HUGHES. It only bears upon the question of whether Mr. Finch is accustomed to taking extreme and rather reckless views of the acts and conduct of other atttorneys, and of judges which are also involved.

The CHAIRMAN. This is scarcely the way to impeach his testimony, and it would lead us into a field which we would not get out for a long time, if any one chose to follow it. I think we ought not to go into it.

Witness excused.

J. L. ZIMMERMAN, having been first duly sworn, testified as follows:

The CHAIRMAN. State your name, please.

A. J. L. Zimmerman.

Q. Where do you live, Mr. Zimmerman?—A. Seattle.

Q. How long have you been a resident of this city?—A. Between 8 and 10 years.

Q. What is your present occupation?—A. Police officer, sergeant of police.

Q. How long have you been a police sergeant?—A. About nine months now.

Q. And how long on the police force?—A. Between five and six years.

Q. Sergeant, are you acquainted with Judge Hanford?—A. Yes, sir.

Q. How long have you known him?—A. I have known him about five years.

Q. Is that a personal or a mere sight acquaintance?—A. A mere sight acquaintance is all.

Q. At what time are you on duty?—A. At the present time at night from 8 until 4 in the morning.

Q. And at other times prior to your present assignment?—A. Well, we change shifts every three months.

Q. During the time you have known Judge Hanford, tell the committee what opportunity you have had for seeing him here in the city?—A. Well, I have seen him on different occasions in the streets, met him.

Q. Well, at what hours?—A. Well, never very late in the evening. Mostly—I don't think I have ever met him after 9 o'clock, to my knowledge.

Q. Would those meetings be on the street?—A. Yes, sir.

Q. Out on the public street?—A. On the public street.

Q. Have you at any time seen him on the street cars?—A. No, sir; not to my knowledge. I have seen him waiting for cars and getting on cars, but never on the cars.

Q. If you have seen the judge in any public drinking place——A. (Interrupting.) I never have.

Q. (Continuing.) You may state.—A. No, sir.

Q. Have you seen him at any time when he seemed to you to be intoxicated?—A. No, sir.

Q. Have you seen him at any time when he seemed to be under the influence of intoxicants to any extent?—A. No, sir; I don't believe I have; that is, what I would call an intoxicated man.

Q. What do you mean by your qualification in your answer?—A. Yes, sir.

Q. I say, explain, if you will, what you mean by the hesitation and qualification in your answer?—A. Well, I don't think that I have ever seen him at any time when I considered him under the influence of liquor.

Q. Well, have you seen him when you concluded from his appearance that he had been drinking?—A. No, sir; that is, I could not tell that he had.

Question read.

A. No, sir; I never have.

Q. You answered that you could not tell that he had. That is not quite responsive to the question.—A. Well, there might be—it might be that he had had a drink, might have had a couple of drinks, but I have seen a great many people in the same condition that was not drinking, and I would not have any reason to believe that he was drinking.

Q. What was the condition which you refer to?—A. Well, he seemed to be in a sort of feeble manner; that is, in walking on the street.

Q. In what way, Sergeant?—A. Well, sort of dazed; that is the way I would put it; seemed to be a little bewildered.

Q. How did he act on those occasions?—A. Why, I have seen him come walking along and come up to take a street car and acted like a man that didn't just exactly know where he was at. He asked me on one or two occasions about a car, where he would get a car, and I have answered.

Q. For where?—A. I think he asked me for a Capitol Hill car, if I remember correctly. Yes, I am positive he asked for a Capitol Hill car.

Q. Well, are the cars designated in such a way that anyone could tell a Capitol Hill car?—A. Yes, sir.

Q. How are they designated?—A. They are all marked on the front end by the name of each line or the designation "Capitol Hill" in plain letters.

Q. Is there anything in the color of the car to indicate——A. No; not in the color.

Q. (Continuing.) Where it goes? Just the name?—A. Just the name.

Q. That is in large letters?—A. Large letters.

Q. On the front and rear ends?—A. Yes, sir.

Q. And on the side?—A. And on both sides.

Q. And on those occasions—you say you knew him very well?—A. By sight I——

Q. (Interrupting.) Have you seen him when he was not in that condition?—A. Yes, sir.

Q. To what did you attribute his condition on those occasions?—A. Well, I attributed it to his age more than anything else.

Q. But he was not very much older then than other times——A. No.

Q. (Continuing.) When you saw him and he was not in that condition, was he?—A. A man—you put me in—he looked to me to be a man that was not well, that is all. Didn't seem to be. Seemed to be sick or not feeling——

Q. (Interrupting.) Did he seem to be in pain?—A. What is it?

Q. Did he seem to be in pain?—A. No; I can't say that he seemed to be in pain; didn't act like a man that is in pain.

Q. Did you on any of those occasions actually help him on a car?—A. No, sir.

Q. Did you point out his car to him?—A. Yes; I did.

Q. After it was pointed out to him, what did he do?—A. He went over and waited for his car, or I told him where he would get his car and he went over and waited for it, or if the car was there he went over and got on.

Q. How often have you seen him in that condition?—A. I don't think it was over twice; two times, to my recollection.

Q. About when was that?—A. That was about a year ago.

Q. How near together were those two occasions?—A. Oh, I could not say exactly. It possibly was inside of a month.

Q. Have you ever seen the judge carrying liquor with him?—A. Never have; no, sir.

The CHAIRMAN. Any further questions with the witness?

By Mr. McCOY:

Q. Have you talked recently with anybody about this matter of complaints against Judge Hanford?—A. No, sir; I have not. That is, in what regard do you mean?

Q. In any regard. Have you talked with anybody about Judge Hanford in any way, shape, or manner recently?—A. Nothing more than to mention the fact that he was on trial here, I believe.

Q. Did you mention that he was on trial or did the person you were talking to mention that he was on trial?—A. I think the person that I was talking to mentioned that he was. It was a police officer.

Q. What did he say to you?—A. Well, he said—I don't know as I can remember exactly what he did say—something—it was brought up. The police officer that spoke to me about it said that Hanford would probably have a hard time, as I remember it, getting out of the difficulty. That was about all. I said I didn't know much about it.

Q. Well, who was the police officer who spoke to you about it?—A. I think it was Mr. Heath.

Q. Is he the only person, now, to whom you have spoken about this matter recently?—A. Well, no; I don't think so. I suppose there has been others spoke about it in a casual way, but never

discussed it to any extent that I remember much of the conversation about it.

Q. Have you recently stated to anybody anything different from what you have just testified to?—A. No, sir; no, sir.

Q. Or anything in addition to what you have just testified to?—A. No; I would not have any reason to, because I didn't know anything different from what I have testified.

Q. Then you want the committee to understand that so far as you have—well, have you told anybody what you have said——A. (Interrupting.) No, sir.

Q. (Continuing.) On the stand?—A. No, sir.

Q. You haven't mentioned that to anybody at all?—A. I never have; no, sir.

Q. When were you subpœnaed?—A. Last night, 7.30.

The CHAIRMAN. Any further questions?

By Mr. HUGHES:

Q. Mr. Zimmerman, you say that Judge Hanford on one occasion asked you where he could get the Capitol Hill car?—A. Capitol Hill; yes, sir.

Q. That was about a year ago?—A. I think it was about that time. I could not state the exact date.

Q. What did you tell him?—A. I told him where to get the Capitol Hill car.

Q. But what was it that you told him? I mean where did you tell him he could get it?—A. I told him to go to Third Avenue. It was at Second and Pike I met him.

Q. At Second and Pike you met him and he asked you the question and you told him he would get it at Third and Pike?—A. Yes.

Q. Does the Capitol Hill car come up Third Avenue and go out Pike Street?—A. At that time it came up Third Avenue and goes out Pine Street.

Q. Out Pine Street?—A. Yes, sir.

Q. How long had it taken that route?—A. Well, I don't know. There was a change made about that time.

Q. Several times changed the route of the different car lines——A. (Interrupting.) Yes; it has been changed.

Q. (Continuing.) That go east?—A. It has been changed several times.

Q. Does the Capitol Hill car run out Broadway past Judge Hanford's house?—A. No, sir—I don't know where Judge Hanford lives.

Q. Well, if he lives out on Tenth Avenue north, the Capitol Hill car line would not be the one he would take to go to and from his house, would it?—A. It would take him within three blocks of it.

Q. No; it would take him more than that. The Capitol Hill car——A. (Interrupting.) Four blocks.

Q. The Capitol Hill car line goes up on Fourteenth Avenue, doesn't it?—A. Yes—Fifteenth Avenue.

Q. Fifteenth Avenue?—A. Yes, sir.

Q. And goes out north there?—A. Yes, sir.

Q. And on a hill 40 feet higher than Tenth Avenue?—A. Yes; it is.

Q. And it does not go north nearly as far as Galer Street, either, does it?—A. Yes, it goes to Galer; yes, sir.

Q. In other words, the Capitol Hill line goes out on the east side of Volunteer Park, doesn't it?—A. Yes, sir.

Q. And the Broadway line goes two blocks west of Volunteer Park?—A. Yes, sir.

Witness excused.

GEORGE DAY, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee in full.

A. George Day.

Q. Where do you live, Mr. Day?—A. In Seattle.

Q. How long have you lived in Seattle?—A. Twenty-four years.

Q. What is your present occupation?—A. Police officer.

Q. How long have you been on the police force of the city?—A. About 15 years.

Q. What is your duty?—A. Traffic officer.

Q. Traffic officer?—A. Yes, sir.

Q. What does that mean, Mr. Day?—A. Well, it is a station upon a busy corner governing the coming and going of traffic.

Q. Where are you stationed?—A. At Third Avenue and Pike Street, one block from here.

Q. It is the same thing that is known as crossing officer?—A. Yes, sir.

Q. How long have you been on that duty?—A. Approximately four years.

Q. What were you doing before that time?—A. Patrolman.

Q. Patrolman?—A. Yes, sir.

Mr. HUGHES. Would you speak a little more distinctly, Mr. Day?

The CHAIRMAN. Do you know Judge Hanford?

A. By sight.

Q. How long have you known him?—A. I would not be able to state—a good many years.

Q. As many as 8 or 10 years?—A. More than that, sir.

Q. Where have you had occasion to notice the judge?—A. I have seen him repeatedly upon the street.

Q. Anywhere else?—A. Not to my recollection.

Q. At what hours have you observed him on the street?—A. Why, in the daytime and evening.

Q. How late in the evening?—A. I would be unable to state.

Q. Can you approximate the lateness of the hour you would see him in the evening?—A. 10 o'clock.

Q. Never later than 10?—A. I would not be able to say, sir.

Q. Have you ever seen the judge in any place where drinks were publicly sold?—A. No, sir.

Q. Have you ever seen the judge on the street when, in your opinion, he was more or less under the influence of liquor?—A. I have seen him on one occasion when it could be liquor and it could be otherwise.

Q. Describe his condition on that occasion?—A. It was in the evening.

Q. When was that occasion, as near as you can tell?—A. I would be unable even to approximate it; I could not approximate it to even a month.

Q. Well, the year?—A. It was, I think, three years ago this summer.

Q. Where was it, Mr. Day?—A. It was on Second Avenue.

Q. Near what street—what other street?—A. Marion—Second Avenue and Marion Street.

Q. How far is that from this building?—A. That would be five blocks south and one block west.

Q. What time was it?—A. As I say, it was approximately 10 o'clock.

Q. Now, what was it that attracted your attention to the judge?—A. Well, he was—he seemed to be laboring from exhaustion or illness or possibly drink—I took it for granted it was illness, and that perhaps—I didn't see him until he was right at the corner on the west side of the northwest corner of Marion and Second Avenue—and I thought perhaps he had just walked up that heavy grade there and was fatigued. He leaned against the building a number of times in going from the corner to the entrance to the Burke Building, a distance of probably 40 feet, or something like that.

Q. How many times did he lean against the building?—A. Well, I should say two or three times.

Q. Did you notice him as he walked?—A. Yes.

Q. And in the interval?—A. Yes.

Q. How did he walk?—A. Well, he walked in a very labored way.

Q. Well, how was the manner in which he walked with reference to wabbling and staggering?—A. It was as one would walk if they were greatly fatigued; there was no sprightliness to the step and there was no certainty.

Q. Did he walk in a direct line or in a waving line?—A. He would leave the wall of the building for a few feet and return to it until he reached the entrance to the building.

Q. Where did he go?—A. It was at night and I had seen that he was not a subject for my assistance, and he went in the entrance of the building, and that was the last I seen of him.

Q. What building was that?—A. That was the Burke Building.

Q. What business was carried on in it?—A. That is a general office building above the second floor.

Q. Do you know whether at that time he had any office or office connection in that building?—A. No, sir; I do not.

Q. Was there then any bar or drinking place there?—A. Not in that building; no, sir.

Q. Was there any access to any drinking place from the entrance which he went in to?—A. Not in that building; he would have to cross the street or go south across the street.

Q. By going into that entrance he would not reach any drinking place?—A. No, sir; no public place.

Q. For how long a time did you observe him on that occasion?—A. Probably it might have been—it might have taken two minutes.

Q. What was the difference in his appearance and actions on that occasion from the appearance and actions of a man who was intoxicated?—A. I would have to say that that would be governed entirely by a man's, perhaps, first impression, or his desire to consider it intoxication or illness or otherwise.

Q. If it were a man whom you did not know, a stranger with whom you were not familiar and did not know his standing or reputation, what would you have concluded from what you saw as to his condition?—A. That would depend on his age, in my estimation: my con-

clusion, if it was a young man going that way, or a middle-aged man, I should ordinarily call it intoxication.

Q. How old a man do you think the judge was, or is?—A. Well, from his appearance I should say that he is past 70 years of age.

Q. On what do you base your opinion as to his age?—A. General appearance.

Q. Well, if you recall, Mr. Day, tell the committee whether his appearance and demeanor on that occasion suggested the thought to you that he might be intoxicated.—A. It did; yes, sir.

Q. Have you on any other occasion seen him in that condition, or a similar one?—A. No, sir.

Q. Have you on any occasion seen him carrying liquor with him?—A. No, sir.

Q. Or dropping liquor on the street?—A. No, sir.

Q. Have you told us all you know on this subject?—A. I know of absolutely nothing that would be of interest.

Q. And you stated, I think, that you do not recall seeing him on any other occasion when he acted in the way that he did on this occasion, or nearly like it.—A. No, sir; that is the only time that I have ever seen him when there would be any chance on my part to think of such a thing.

Q. Have you seen him on many other occasions?—A. Many times; yes, sir.

Q. Did you ever see him act as he did on that occasion?—A. No, sir.

Q. Did you ever see him walking in a wabbly or hesitating or uncertain way before?—A. No, sir; not that I recall.

Q. Ordinarily how was his step with reference to being firm and vigorous?—A. Well, I might explain that by saying that it would be as you yourself or I would walk after having, prehaps, climbed a very heavy grade for a matter of two or three hundred feet.

Q. I am not speaking of the occasion that you have described now, but other occasions when you have seen him walking.—A. Just an ordinary walk; a very ordinary walk.

Q. Nothing uncertain?—A. No, sir.

Q. In his walk ordinarily?—A. No, sir.

Mr. McCoy. Do you say that a man who was in the habit of riding a bicycle from downtown up to his home near Broadway would be affected by climbing a hill here in the city in that way?

A. You ask me if I had said so?

Q. No; I say would you say that any man who had made it a practice to ride a bicycle from about this portion of the city up onto Broadway or anywhere up in that general neighborhood would be affected unfavorably by walking up one of these grades, or the grade near Marion Street there?—A. I would consider the tax on one's energies to be quite different.

Q. How long ago was this, did you say?—A. Well, I believe it was three years this summer.

Q. What do you mean by saying you would think the tax on his energies would be quite different—you mean more severe—in walking?—A. Yes.

Q. Than in riding the bicycle?—A. Yes, sir.

Q. Then what would you say about the likely effect of the walk up the Marion Street grade of a man who was in the habit of walking

from about this part of town up to his home somewhere off Broadway?—A. I think he would be much better able to stand it, physically.

The CHAIRMAN. Any further questions—any questions, Mr. Hughes?

Mr. HUGHES. The grades are very light grades out Pine Street to Harvard Avenue, and thence out Harvard Avenue or Broadway to Galer Street, are they not—easy grades anywhere there—not over 4 or 5 per cent?

A. I didn't just get that question. Did you say from Harvard to Broadway——

Q. Do you know that going up Pine Street to Broadway and out Harvard or Broadway North the grades are light?—A. On Harvard North?

Q. Yes.—A. Yes, sir; very light.

Q. And also up Pine Street the grades are light?—A. Reasonably so.

Q. Now, the grade on Marion Street is about a 20 per cent grade?—A. It is more than that; I should call it from 23 to 27 per cent.

Q. It is a very steep grade?—A. Yes, sir; it is very heavy.

Q. And it is not an unusual thing to see persons very much fatigued who have walked up that street?—A. I have experienced it myself personally.

Q. And now, if a man had any trouble with the heart, in walking up that street it would be apt to accentuate that trouble and cause unusual palpitation?—A. It is bound to if there is any effort made to go with any speed or any rapidity.

Q. Was there anything about Judge Hanford's appearance or action that night which would be different from that condition?—A. I was not close enough to him to see the expression of his face.

Q. But he apparently was resting, as one whose heart might be excited by the effort of walking up that hill?—A. It could be very easily; yes, sir.

Mr. MCCOY. Did you ever qualify as a physician, Mr. Day?

A. Not exactly, but I have done some hospital work and——

Q. Now, what is the action of a man's heart from walking uphill?—A. Well, that would be the speed that the man would walk at.

Q. Do I understand you to say that you saw Judge Hanford walking up this grade?—A. No, sir.

Q. As a matter of fact, you do not know whether he did or not?—A. That is it precisely; that is the reason I could not determine it.

Q. And would you undertake to say as an expert that what you noticed in his appearance would indicate that he had been affected by walking up a steep grade, or that it was like anything which you had ever seen before in the case of a man who had been walking up that very grade there?—A. What I said was that if he had walked up the grade it could have that effect which I noticed upon him, if he did.

Q. It would have had that effect on him?—A. Yes, sir; if he had.

Q. How do you know it could have had that effect on him—what do you know about his heart?—A. I say it could have had.

The CHAIRMAN. He did not say that he was affected that way; he said that it could have that effect if he had walked up that grade.

Mr. MCCOY. Yes, he said it could have that effect.

The CHAIRMAN. If he had walked up the grade, but he didn't walk up the grade.

Mr. HUGHES. He didn't say that, I think, Mr. Graham.

The CHAIRMAN. How far was it from the north side of the street to the entrance of the building?

A. Well, I should think, probably, 40 feet; it might be a——

Q. If he had walked that distance only up the grade——A. That is all I seen him—he was directly upon the corner.

Q. And it was going that 40 feet that you noticed the condition?—A. Yes, sir.

Q. When he started on that 40 feet he had not been walking up grade at all?—A. Well——

Q. That is, prior to starting on that 40 feet he had been on the level ground?—A. When I seen him he was; yes, sir.

Q. Well, was there some grade in the 40 feet that he walked?—A. No, sir.

Q. It was level, too?—A. Yes, sir.

Q. So that, so far as you know, he did not walk up any grade at all?—A. That is so.

Q. But your statement was that his manner of walking was such as might result from walking some distance up a very steep grade?—A. Yes.

Q. So far as you know he did not?—A. No, sir; I don't know.

Mr. HUGHES. I would like to ask one question.

Q. Where were you when you saw him?—A. I was, perhaps, opposite the entrance of the Burke Building, going southward.

Q. And the first you saw of him was coming toward you on the same street?—A. Yes, sir.

Q. And as he walked along he occasionally stopped and rested as one might do who was overcome for some reason, either because of his heart or any other reason?—A. It could have been occasioned by that.

Q. Now, if he had approached you from the south, would you not have seen him prior to that time, unless he came up the hill from the west?—A. He was approaching me from the side.

Q. But you did not see him until you were within 40 feet of him?—A. Yes, sir.

Mr. MCCOY. Which side of the street was he on when he was approaching you?

A. On the west side of the street, or on the west side of the sidewalk, up against the building.

Q. And you were on the same side of the street going toward him?—A. Yes, sir.

Q. And you did not see him until after he had passed the corner of the Burke Building and was coming along the side of the Burke Building, walking toward you?—A. It was right at the entrance of the jewelry store there, right on the corner.

Mr. HUGHES. What I was asking you was, if he had come from the south, approaching you, would you not have seen him as he crossed Marion Street on that same side of Second Avenue?—A. The probabilities are that I would have noticed him, but I could not say.

Q. But if he had come up the hill from the west you could not have seen him prior to that time?—A. No, sir; I could not.

Mr. MCCOY. How far was the entrance of this jewelry store from Marion Street?

A. It is right on Marion Street, sir.

Q. Is the entrance on Marion Street or on the other side—on Second Avenue?—A. Well, it is on both streets, virtually; it is right in the corner—it is not a square corner—it is an entrance which you go in on the corner.

Q. A diagonal cut on the corner?—A. Yes, sir.

Q. So as to make the entrance?—A. Just a slot taken out of the corner.

Q. Was he standing in there when you saw him first?—A. No, sir; he was standing right at the corner of the doorway.

The CHAIRMAN. That is all, you are excused.

Witness excused.

H. O. FUHRBERG, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee.

A. H. O. Fuhrberg.

Q. Where do you live?—A. 1526 Palm Avenue, Seattle.

Q. How long have you lived in Seattle?—A. Fourteen years.

Q. What is your business?—A. I am in the liquor business.

Q. In what way?—A. Retail.

Q. Selling bottled goods, or do you keep a bar?—A. Both; a bar and bottled goods.

Q. How long have you been in that business?—A. I have been in business for myself 11 years and I have been in the business altogether 18 years.

Q. Do you know Judge Hanford?—A. I do.

Q. How long have you known him?—A. I have known Judge Hanford 14 years—ever since I have been in town, or close to it.

Q. Have you seen him in your place of business?—A. No, sir.

Q. Have you seen him at any time anywhere drinking liquor?—A. No, sir.

Q. Have you seen him at any time when he was under the influence of liquor, in your opinion?—A. Yes, sir.

Q. Where?—A. I received a telephone message from my wife in the month of August or September of last year to meet her on Marion Street and Third Avenue, and I telephoned that I could not make it, but I would endeavor to get off an hour sooner, so that it was between 10 and 15 minutes past 11, and I leisurely walked up toward Marion Street and Second. As I got to the corner of Marion Street and Second Judge Hanford was standing in the entrance of Bronson's bar, and I was about 20 or 30 feet to the south of him. He turned, and I proceeded to cross the street toward the Burke Building. Just then my wife approached, and I suggested to my wife, I said, "That is Judge Hanford;" I said "Wouldn't you think that he would take a taxicab?" Then I assisted my wife on the curb, and we proceeded down Marion Street to the ferry and took the half-past 11 ferry home.

Q. What was his condition then, Mr. Fuhrberg?—A. Why, he wobbled like a child, and his walk was very unsteady.

Q. In crossing the street was he going uphill or downhill or on the level ground?—A. Level ground.

Q. That is, his walk crossing the street was horizontal?—A. Horizontal; yes, sir.

Q. Well, what would you say his condition was with reference to intoxication?—A. I thought he was intoxicated.

Q. Have you seen him at any other time when you thought he was?—A. No, sir; on all the other occasions I have seen him he was perfectly sober, to my knowledge.

Q. Did you ever on any other occasion see him walk as he did then?—A. No, sir; it arrested my attention when I saw him; otherwise I would not have noticed it.

Q. How near were you to him?—A. I was within 20 feet of him when I first saw him.

Q. And during the time he was crossing the street how near to him were you?—A. I walked immediately over to the lamp post; I saw my wife approaching.

Q. Was that toward him or away from him?—A. That was away from him; that is, I went slanting and he went straight over toward the Burke Building.

Q. Was he under your observation all the way across the street?—A. He was.

Q. Where did he go then?—A. He proceeded up toward Madison Street. I saw him probably at the entrance when I ran down; we didn't have more than 10 or 15 minutes to make the ferry.

Q. You say that was a little after 10 o'clock at night?—A. No, sir; I said a little after 11 o'clock.

The CHAIRMAN. Any further questions? Mr. Hughes, do you wish to ask the witness any questions?

Mr. HUGHES. No, sir; no cross-examination.

Witness excused.

W. R. MEAD, being first duly sworn, testifies as follows:

The CHAIRMAN. Give your full name, Mr. Mead.

A. W. R. Mead.

Q. Where do you live, Mr. Mead?—A. 4218 Juneau Street.

Q. How long have you lived in the city?—A. A little over nine years.

Q. What is your business?—A. Police officer.

Q. How long have you been on the police force here?—A. Five years or over.

Q. What are your duties?—A. I am assistant jailer at présent.

Q. How long have you been assistant jailer?—A. Fourteen months and over.

Q. Before that what were your duties?—A. Patrolman.

Q. What part of the city?—A. Well, I worked down in Chinatown, Second Avenue, First Avenue, and Bell Town, and up on the First Hill and Rainier Valley.

Q. What part of the city is Chinatown?—A. Well, we call that below Yesler Way, down on Main Street and Jackson—from Yesler Way to Jackson and from Third and Sixth.

Q. Do you know Judge Hanford?—A. He has been pointed out to me once or twice; I am not acquainted with him.

Q. You mean by that you know him by sight?—A. No; I don't know that I would know the man if I would meet him to-day on the street.

Q. Under what circumstances was he pointed out to you?—A. Well, I was walking along Second Avenue, and I don't know who the man was, but we were walking along and he says, "There goes Judge Hanford," and that was the first time that I ever saw the man.

Q. Describe the man that he pointed out to you.—A. Well, he was not a very large man.

Q. About how tall?—A. Probably 5 foot 7 or 5 foot 8, or such a matter as that, if I remember right.

Q. Can you tell the color of his hair?—A. It was gray, if I remember right.

Q. Do you remember the color of his complexion?—A. No, sir; I didn't pay much attention to it; he just went past us.

Q. Did he have a beard or not?—A. I think he had a part of a beard if I remember right.

Q. What part?—A. Well, the mustache and, it seems to me like he had some whiskers down here at about his chin.

Q. Have you seen that man since?—A. Well, I saw him on the street, I believe, once since.

Q. Well, what were the circumstances under which he was pointed out to you?—A. Well, there was not any; only just he passed us and this man made the remark, "There goes Judge Hanford."

Q. Was there anything peculiar in his appearance then to attract your attention?—A. No; there was not.

Q. Did you see him at any time when there was?—A. No; I don't know as I have.

Q. Well, do you know that you have not?—A. Well, it is just like this; you can't always tell from the looks of a man how that he is.

Q. Tell us what you saw.—A. Well, I didn't see anything any more than——

Q. You tell us and we will judge.—A. Well, I didn't see anything any more than any other man passing at the time.

Q. What did you mean by your answer before the last one?—A. Which?

Q. Your answer seemed to be a sort of a qualified one; you said "You can't always tell about a man's appearance."—A. Well, if a man is going along the street you can't always tell.

Q. Speak up.—A. I say, if he is going along the street you can't always tell just exactly how that he is, but he passed along just the same as any other citizen would.

Q. Have you seen the gentleman who was pointed out to you as Judge Hanford at any time when he seemed to you to be under the influence of intoxicating liquors?—A. No.

Q. Or any intoxicant?—A. No; I don't believe that I have.

Q. Well, tell us what is in your mind, Mr. Mead; have you seen him in any way that would make you doubtful about his condition?—A. No; I don't know that I have.

Q. Your answer is such a one as leaves me in doubt still. You say you do not know that you have; explain what you mean by that answer more fully?—A. Well, I never saw the man, as I told you, only about twice and——

Q. Now, take the second time you saw him, where was it?—A. It was on Second Avenue.

Q. What was he doing?—A. He was going along the street.

Q. What time was it?—A. It must have been about 6.30, probably, in the evening.

Q. Was he alone or with someone?—A. He was alone.

Q. Was there anything peculiar in his appearance or in his walk at that time?—A. No, sir; there was not.

Q. Did you see anything happen that was out of the ordinary?—A. No, sir.

Q. Stil you are leaving me in doubt as to what is in your mind, Mr. Mead, when you answered in answer to my question if you had seen him under certain circumstances and you said "I don't know as I have." There seems to be something in your mind which you are keeping back. If there is anything, tell it.—A. No. The way that can't understand it is that you kind of insinuated if I had ever saw him intoxicated along Second Avenue.

Q. I don't think I insinuated it; I think I stated it.—A. I know that; but still, at the same time, you left that impression.

Q. I think I asked you that question directly. Now, what is your answer to that question?—A. Well, I don't know as I ever did see him in any——

Q Well, have you seen him when you thought he was more or less under the influence of liquor?—A. Well, no.

Here there is some disturbance in the audience.

The CHAIRMAN. I can hardly blame you, but I would much prefer if you would observe the amenities.

The WITNESS (continuing). No, sir; I don't know as I ever have.

Q. Have you talked with anyone about this matter since you were subpœnaed?—A. No; not since I was subpœnaed.

Q. Have you before you were subpœnaed?—A. I might have talked over what I read in the newspapers.

Q. Have you said to anyone that you had seen Judge Hanford when he was under the influence of liquor, or words to that effect?—A. I don t remember of it. I don't remember of it.

Q. Who have you talked with about it?—A. Oh, different ones.

Q. Well, begin with some one first?—A. I could not say. I talked with probably two or three since the investigation has come up about what have read in the papers.

Q. About the judge's habits?—A. No; not personally about the judge's habits.

Q. About his condition at some time or times?—A. Well, what I have read in the papers; yes.

Q. Now, jog your memory and tell us whether you can recall saying to anyone that you had seen him when you thought he was more or less intoxicated?—A. No; I don't know as I could.

Q. Have you seen him carrying intoxicating liquors?—A. No, sir.

Q. Have you ever seen any intoxicating drinks with him?—A. No, sir; I never have.

Q. Mr. Mead, I need hardly ask you if you realize that you are giving testimony under oath?—A. Yes, sir.

Q. You know that?—A. Yes, sir.

Q. Now, will you make it clear to us what you have meant by your answers, which seem to me, at least, to suggest that you do know something and that you are evading the telling of it. What is the condition of your mind in answer to my question, "Have you seen the judge when you thought he was more or less under the influence of liquor?"—A. Well, I will tell you. There is that one time he might have been under the influence a little bit; but of course a man can't tell.

Q. Well, which time was it?—A. That was the second time I saw him.

Q. Well, what was it that led you to think that he might have been under the influence a little?—A. Well, he just stopped and looked around on the corner and went a little ways and looked again and I passed right along, and I didn't pay any more attention to it, but of course I could not say that he was under the influence of liquor, or anything about it.

Q. Did his conduct cause you to think at the time that he might have been under the influence of liquor?—A. No, I don't think so—I don't know as it did.

Q. Well, when did you mention that circumstance to anyone?—A. Well, I could not say when it was.

Q. You did mention it to someone?—A. Well, I don't know. No; I don't remember—I don't remember.

Q. Where was that?—A. On second Avenue.

Q. And what other streets?—A. Along about Second and Columbia, I believe.

Q. You said, I think, it was about half past 6 in the afternoon?—A. Yes, sir.

The CHAIRMAN. Does anyone else desire to ask the witness any questions—Mr. Mead, will you report again in the morning?

A. Yes.

Q. What are your hours of duty?—A. From 10 at night until 6 in the morning.

Q. What time would it be convenient for you to report to the committee?—A. Probably along in the afternoon.

The CHAIRMAN. Well, come to-morrow afternoon.

Witness excused.

S. S. LANGLAND, being first duly sworn, testified as follows:

The CHAIRMAN. State your full name to the committee.

A. Samuel S. Langland.

Q. Where do you live?—A. The corner of Harvard North and East Lynn.

Q. How long have you lived here?—A. Twenty-one years.

Q. What is your business—what business are you in?—A. Lawyer.

Q. How long have you been practicing your profession, Mr. Langland?—A. Twenty-five years.

Q. Are you still in the active practice of your profession?—A. I am.

Q. Do you practice in Judge Hanford's court?—A. No, sir.

Q. Have you at any time?—A. Not directly.

Q. Are you acquainted with the judge?—A. Not on a speaking acquaintance—I know him.

Q. By sight?—A. Yes.

Q. For how long a time?—A. About 20 years.

Q. Have you been present, to any extent, in his court when he was sitting?—A. Not very often.

Q. To what extent have you observed the judge elsewhere than in his court?—A. Well, I have seen him very often and on the street car going home.

Q. At what hours?—A. Well, at the times that I have specially noticed him as being late, somewheres toward midnight.

Q. To what extent have you noticed him during the hour, or hours, about midnight?—A. Well, I have—I am not out very often, but I happened to be out a few evenings that I saw him on the street-car; I live out that way.

Q. If on any of those occasions you saw the judge when, in your opinion, he was under the influence of intoxicants, please tell it to the committee.—A. Well, I have an impression in my mind that I have seen him on four different occasions when, I should judge, he was in an intoxicated condition.

Q. Were those occasions on the street car?—A. Yes, sir.

Q. Have you seen him on the street car at other times when you thought he was not in that condition?—A. Yes.

Q. Which was the more frequent?—A. The ones that I have noticed him when he was not intoxicated.

Q. Take the first time, if you can place it, when you thought he was intoxicated, and tell us when it was, as near as you can recollect?—A. As nearly as I can, I think it was about five years ago, when I was in Tacoma and came home very late, and it was the last car. When I saw the judge dozing and when he went off the car, when he reached his home, he was in a staggering condition—that is, it was difficult for him to get out of the car.

Q. Where did he sit on that occasion?—A. He sat right in front of me, three seats in front.

Q. In leaving the car, did he pass where you sat?—A. Yes, sir.

Q. Did you notice any odor of liquor?—A. No, sir; I did not.

Q. Was there anything else in the manner of his walking to the door of the car which led you to think he was intoxicated? and if there was, tell us just what it was.—A. Well, the condition was that he was staggering very much as he was approaching the rear end of the car, and I also noticed the expression on his countenance, which was very much flushed, and his eyes were very dull.

Q. Did you notice him get off the car?—A. I did not look behind.

Q. Or after he was off?—A. Not this time.

Q. Well, would you say to the committee now what his condition was on that occasion with reference to intoxication?—A. Well, my impression was then, and is now, that he was in an intoxicated condition.

Q. When did you next see him as you stated?—A. Well, I can not place the subsequent dates so definitely, because I had been down town to lodge, and I can not recall it; but it was subsequent to this that I am testifying about, somewhere about 11 o'clock.

Q. At night?—A. At night.

Q. Take the next one in the order of time which occurs to you and tell us of that occasion.—A. On that occasion he was—the first I noticed he was wabbling his head that way [showing] and dozing like this [showing].

Q. Which of you got on the car first this second time that you speak of?—A. I got on the car. Now, I am not prepared to say that—which of us got on the car first.

Q. What was it in his appearance that attracted your attention?—A. The fact that he was nodding his head this way and that way [showing].

Q. Where did he sit from you?—A. He sat on the left side, in front.

Q. And where were you?—A. I was toward the rear of the car, about, I should judge, about 4 or 5 feet from the rear, toward the front.

Q. In going into the car, do you know what end of it he came in at?—A. No; I do not.

Q. How long did you ride with him that evening?—A. Well, I live four blocks north of him, and so he always got off before I did.

Q. That would make him ride for about how many minutes?—A. About 20 minutes, at least.

Q. How much of that time was he in the condition you have mentioned?—A. You mean of these different times?

Q. No; this second occasion.—A. I do not believe I quite understand you.

Q. Well, as I understood you to say when you noticed him he was asleep or seemed to be?—A. Yes, sir.

Q. Now, how much of the 20 minutes you were with him did he remain in that condition?—A. Well, he remained in that condition all the time.

Q. And how did he know where to get off—how did he happen to get off the car?—A. Well, that I do not remember, whether the conductor came to him, or de did it himself; I can't say.

Q. You haven't any recollection of it?—A. I have no recollection of it at all.

Q. Did you notice him as he got off the car on that occasion?—A. Yes, sir.

Q. What was there noticeable in his appearance and manner?—A. Well, I noticed that he was not steady on his feet, but it was not as apparent as the first time I saw him.

Q. What was there as to his condition at that time?—A. Well, I should say that he was under the influence of intoxication—I can't explain it on any other hypothesis.

Q. Now, can you take the next time at which you noticed him and tell us of it.—A. Well, there was one time, I think it was a holiday, when I came home in the afternoon, and the judge was on the car at that time, and what attracted my attention at that time was I looked back as he got off the car and tried to cross the track—I noticed that he was very unsteady on his feet, so much so that I was afraid that he might fall on the track.

Q. How far did you watch him go after he got off the car?—A. Well, I saw him cross the track toward the sidewalk.

Q. Did you notice him on the car also on that occasion?—A. Well, I don't know whether I did or not; I noticed him getting off the car, walking toward the rear, but I didn't notice him until just about the time he departed from the car.

Q. In your opinion what was the cause of his condition, as you saw it?—A. Well, my impression was that he was intoxicated.

Q. Now, the fourth time you mentioned, when was that?—A. That was in the evening.

Q. How long ago, if you know?—A. Well, I should judge something like two years ago.

Q. Was this also on the street car?—A. Yes, sir.

Q. Tell the circumstances.—A. Well, I noticed him on the car, and the car was very crowded, so that I didn't notice him until we got within four or five blocks from his home when most of the crowd

was off the car. I noticed him toward the front, and I noticed that he was dozing, but not in such a condition that apparently—well, he didn't—well, apparently he was awake, but just sort of drowsy, and I noticed him get off the car.

Q. Now, on any of those occasions if his condition attracted the attention or was the subject of comment by people on the car, you may state that.—A. On one occasion I remember that there were some people looked at each other and smiled; made significant motions of their face.

Q. Do you remember any of the persons you saw on the car on those occasions?—A. No, sir.

Q. Do you remember whether you knew them at the time?—A. No, sir; I have no recollection of any—there might have been, but I have no recollection of it.

Q. Have you, at any other time, seen the judge when you thought he was influenced by intoxicating drinks?—A. No; I have not. I have seen him once or twice in a saloon, but I never saw him intoxicated in any shape or manner.

Q. Drinking?—A. Well, I think he would drink a glass of beer—I don't know—I think that was—I think I saw him drink a glass of beer once.

Q. Have you any personal feeling of any kind against Judge Hanford?—A. No, sir; none whatever.

Q. Have you any relations of any kind with him, business or otherwise?—A. No, sir; on the other hand, I have a deep sympathy for him if it is true what I hear about his family relations.

The CHAIRMAN. Any further questions? Mr. Hughes, do you desire to ask the witness any questions?

Mr. HUGHES. No.

Witness excused.

GEORGE M. JACOBS, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name.

A. George M. Jacobs.

Q. Where do you live, Mr. Jacobs?—A. I live at 4738 Sixth Avenue northeast.

Q. How long have you lived in the city?—A. About 10 years.

Q. What is your business?—A. The real estate business.

Q. Has that been your business during those 10 years?—A. With the exception, possibly, of two years.

Q. Are you in any profession or other business than the real estate?—A. No.

Q. Are you acquainted with Judge Hanford?—A. Yes.

Q. How long have you known him?—A. Possibly seven years.

Q. Is that a personal or a slight acquaintance?—A. Well, I had a sight acquaintance with him some time before I met him with somebody. I had an introduction to him, but I do not remember when or where or how long ago.

Q. Have you at any time seen Judge Hanford when you thought he was under the influence of intoxicants?—A. Yes.

Q. When was the first time, if there was more than one?—A. I think the first time was in the entrance in front of the elevator in the Alaska Building, prior to 1907.

Q. When you say prior to 1907, do you mean a short time before that, or might it be a long time?—A. Well, I only have one way of determining that, and I don't remember the year that Mr. Sullivan, who used to have the bar in the rear of the elevator, was removed, and the Scandinavian-American Bank occupies that space at the present time, and I think I know it was some time prior to 1907, but I do not remember at what time.

Q. What was it that attracted your attention to his condition at that time?—A. Well, I didn't notice his condition at the time; that is, until the party with me called my attention to him. He says, "That is Judge Hanford." That is the first time I had ever seen him, although I recognized him as soon as I turned and looked at the gentleman, because I had seen his picture in the papers prior to that time; and he seemed to be navigating, not just exactly to port—and I said, "What is the matter with him?" and he said, "He is slightly poisoned, I guess." That was the remark he made.

Mr. HIGGINS. Who was it?

The WITNESS. Who was the gentleman?

Mr. HIGGINS. Yes.

A. I don't remember who it was at the time was with me, at that time.

The CHAIRMAN. Apart from what he said to you, give us your own impressions and opinions, if you have any, as to his condition.—A. Well, I don't know that I had much of an impression at that time—I didn't pay much attention to him.

Q. What caused you to ask "What is the matter with him?"—A. Simply his—he seemed to be—well, my impression was that he was drunk at the time.

Q. How long were you with him?—A. That is, at that time?

Q. Yes; how long?—A. How long did I notice him?

Q. How long were you near enough to observe him?—A. Just passing from the entrance of the building to the rear.

Q. Where was he going?—A. He was going toward the front door.

Q. How far did he go while you were looking at him?—A. Probably 10 feet.

Q. Tell the committee about how he walked—whether erect and steady or otherwise.—A. Well, he staggered slightly and walked toward the door—I didn't pay a great deal of attention to him at the time. We were probably within 15 feet of him when he first called my attention to him, and we simply passed him.

Q. Have you seen him on any other occasion when you thought he was under the influence of intoxicants?—A. Yes, I have.

Q. Well, if you can preserve the order of time, tell us when and where the next occasion was.—A. Well, I think the next occasion was at the Saratoga bar, in the Mehlhorn Building, 812 Second Avenue.

Q. Describe for us what you saw on that occasion, Mr. Jacobs.—A. Well, I was standing in front of the Mehlhorn Building, I think in front of the entrance to the office portion of it, and a gentleman came along with whom I had an appointment at some time, but it is not clear to my mind at what time I had that appointment; but he apologized to me for not keeping his appointment and told me he was on the Federal jury and asked me to come in to the bar and take a drink with him; and I went with him, and while we were in there Judge Hanford came in, and he at first—he says, "I am on the Federal

jury, and there is Judge Hanford. I will make my get-away." But prior to that time he had called for Monogram whisky and told me that it was Judge Hanford's special brand. So later he remained, and he and Judge Hanford took a drink together.

Q. Who was he?—A. The gentleman?

Q. Yes.—A. His name was Samuel Fortner; he resides, or he used to, at Edmunds.

Q. Was Mr. Fortner then serving as a juror?—A. Yes; he told me he was.

Q. About when was that?—A. Well, I can't fix the time exactly, but I think it was about three or four years ago.

Q. What was the judge's condition on that occasion?—A. Well, I didn't see anything wrong with the judge at that time.

Q. Did you also drink with them?—A. No, sir; I drank with Mr. Fortner before the judge—before he and the judge drank.

Q. If the judge bought any liquor then it was not drank then and there?—A. How is that?

Q. If the judge bought any liquor at that time which was not drank at the place, but to be carried away, tell us about it.—A. No.

Q. Have you ever seen him buy liquor to be carried away from the place where it was bought?—A. Not to my knowledge.

Q. Well, as I understand you, on this occasion the judge was not intoxicated?—A. He did not appear to be so; no, sir; I should say he was not.

Q. If at any time afterwards you saw him when you thought he was, tell us about that.—A. That is, on the same evening?

Q. That evening or any other—first, that evening, if it occurred that evening.—A. Well, I saw him once after that at the same place, and I think it was around near New Years of the same year, but I won't be positive, when I should say he was intoxicated.

Q. Tell the committee the circumstances, Mr. Jacobs.—A. Well, I had stepped into the bar from the Second Avenue entrance—you will remember, or I should state that there is two entrances to that bar; there is one from the hallway in the rear of the elevator, and there is one that passes in on the south side of the retail house which is directly in front of the bar, the retail liquor house, and there is a little lobby in the bar, and I walked in there, and Judge Hanford was standing at the front of the bar, and I think he was conversing with some one, and he had his elbow upon the bar. I didn't pay any attention to him at that time; I simply passed in, but before I went out I noticed that he appeared to be very much intoxicated.

Q. Did you see him drinking on that occasion?—A. On that occasion I don't think I saw him take a drink.

Q. What was he doing there—standing, or sitting, or talking, or what?—A. I think he was conversing with some one—he was standing up in front of the bar.

Q. What time of the day or night was it, would you say?—A. My memory is not clear as to what time of the night that was, but on the occasion prior to that I should judge it was between 5 and 7 o'clock.

Q. Have you ever seen him on the street car when you thought he was under the influence of liquor?—A. I saw him once; I do not recall what car it was—I use all the car lines at different times in the day; I do not remember, but I saw him once on the car when I thought he was very much intoxicated. I don't remember what car.

Q. Do you remember the hour?—A. It was at night, but I can't tell you what time at night.

Q. Describe his appearance and actions.—A. When I first noticed him he was asleep. Afterwards he waked up and looked out the window and raised partly to his feet and swung around again and sat down.

Q. Do you recall whether there were others on the car?—A. Well, I presume there were, but I don't remember.

Q. Have you a recollection about it?—A. Yes. There were others on the car. I do not remember of seeing anyone else that I knew—that is what I wish to state.

Q. Can you state whether his condition and appearance attracted the attention of others or was the apparent subject of comment by others?—A. Not to my remembrance.

Q. Did you see him get on and off the car on that occasion?—A. No.

Q. How often would you say you had seen Judge Hanford when he seemed to you that he was under the influence of intoxicants?—A. Well, I remember very distinctly seeing him in the Savoy lobby on one occasion, and in the bar on one occasion.

Q. In the Savoy bar?—A. Yes; it might have been the same day; I could not be positive in regard to that, and I should say four or five or six times all told.

The CHAIRMAN. Do you wish to ask Mr. Jacobs any further questions—do you, Mr. Hughes?

Mr. HUGHES. Where is your office, Mr. Jacobs?

A. 815 White Building.

Q. Have you a partner?—A. No, sir.

Q. How long have you had your office in the White Building?—A. A year and a half.

Q. And where prior to that?—A. I beg pardon?

Q. Where did you have your office prior to that?—A. Prior to that time in the Mehlhorn Building about a year, and prior to that I was three years in Judge Burke's building, and then they built nine floors of that building over my head.

Q. Were you alone always in that business?—A. No, sir; I had a partner for some time in the Empire Block, and since that time I have been——

Q. Who was he; who was your partner?—A. His name was J. P. Dooley.

Q. Dooley?—A. John P. Dooley.

Q. And prior to that, you were going to say——A. J. P. Dooley was my partner in the Empire Block. I associated myself with Mr. Ward L. Farnsworth in the Mehlhorn Building, and at the present time I am with the Lucas Building Co. in the White Building, and I have been with them a year and a half.

Q. Are they in the real estate business? Is that company in the real estate business?—A. No, sir; they build on their own property. All the real estate business done in the office I do myself outside of their own property—I do as much of that as possible.

Q. One other question; you spoke of one occasion which you thought was about New Year's day?—A. Yes, sir.

Q. Was Judge Hanford in the Saratoga bar?—A. Yes.

Q. You say you do not recall seeing him drinking anything, but that he was in conversation with some one?—A. Yes.

Q. Will you please state who that was?—A. I don't remember. I didn't pay strict attention to it—to him at the time—I was not interested.

Q. You mean to Judge Hanford—you didn't pay strict attention to Judge Hanford?—A. Well, yes.

Q. Do you mean to say that you would notice Judge Hanford and not notice the gentleman who was with him, although he stood there near enough for you to observe them?—A. Very possibly I glanced at Judge Hanford and simply recognized him as a man that I knew and I passed on.

Q. And that is all you did, you simply glanced at him and passed on?—A. Yes.

Q. Without giving him any further thought or attention?—A. I think so.

Mr. HUGHES. That is all.

Witness excused. Whereupon a short recess is taken.

P. C. MERRIAN, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. P. C. Merrian.

Q. Where do you live?—A. Seattle.

Q. How long have you lived here?—A. It will be nine years this present October since I came to Seattle.

Q. What is your business?—A. At the present time I am timber cruiser.

Q. What does that mean?—A. Or rather if I would use the word to you "estimator," you might understand it better—the eastern expression is timber estimator, and the western term is timber cruiser, but they use the two words for the same meaning as applied to timber.

Q. The work performed by the timber cruiser, or estimator, is going over timber and making an estimate of the number of feet in a given area.—A. Yes.

Q. In whose employment have you been—in the Government employ?—A. No, sir.

Q. Or in the employ of individuals?—A. Private parties; anyone who wishes to secure my services can do so.

Q. Those estimates are made for the purpose of bidding on the timber land, are they?—A. Or, it is more for the purpose of ascertaining the amount of standing timber which would be upon a given area and its kind and quality.

Q. Well, that is done, is it, with a view of ascertaining the value or selling price of the land?—A. Yes.

Q. And bids are made on the basis of those estimates?—A. Yes.

Q. How long has that been your business?—A. Since the fall of 1908.

Q. It is expert work, is it?—A. Well, it is so considered.

Q. How is it acquired—that expert knowledge—is it by study or experience, or both?—A. Both.

Q. Is it taught in the schools in any way?—A. No, sir.

Q. What was your business prior to going into that?—A. From 1905 till 1908—the spring of 1908—I was engaged in the installing and the construction of elevators as passenger and freight machines

in large buildings such as the Washington Hotel and the Empire Building, and the Alaska Building, and such buildings as that.

Q. Was that in reference to any particular motive power, such as electricity, or did it apply to any kind of power?—A. It applies to—or rather I don't quite understand your question.

Q. The elevators which you installed, were they electric—that is, run by electricity or by steam or water?—A. Both. We have—in the elevator construction work we have the two, or rather the three types of machines; one is called the electric and the other the hydro, which is operated by water, and then there is another type which we call the hydraulic plunger, which consists of having a plunger run down into the ground as far as the machine or the cage will go up.

Q. Does that work require special mechanical skill and knowledge?—A. It does.

Q. Mr. Merrian, do you know Judge Hanford?—A. I have known Judge Hanford by sight for approximately four years.

Q. Where have you seen him?—A. I have seen him in the court room and also upon the street.

Q. As far as you can recall, were those the only places where you had an opportunity of observing Judge Hanford?—A. It is.

Q. To what extent have you seen him in the court room?—A. I have been a visitor, or rather a spectator, in his court room on several occasions in cases in which I had somewhat of a curiosity to see how they would result with reference to the trial.

Q. On those occasions have you at any time observed the judge on the bench when he appeared to you to be nodding or napping?—A. Yes; I have.

Q. Describe it to the committee, Mr. Merrian, what you did see.—A. I have saw him lean back in his chair and his body would be in a complete state of relaxation—that is, his arms would be drifting and hanging over the arms of the chair, and his head would be from one side to the other in such a position as that [showing], and his breathing would be, apparently from the distance, it would be from his chair on the bench to the audience, either the first or second seats, would have the appearance of being regular and steady.

Q. To you, what did his condition seem to be on those occasions, with reference to his being awake or asleep?—A. To me, he was asleep.

Q. If, when he seemed to be in that condition, the exigencies of the proceedings before him required his attention, as, for instance, a ruling on an objection by an attorney, what transpired?—A. I remember on one occasion that he was wheeled around, sitting diagonally across—that is, the court room on the other side of the building is arranged just the opposite to what this one is here—that he was sitting as if he—as if that was his chair and the jury box would be over on that side, and the objection was made to a question which came up, and it seemed approximately all of 12 or 15 seconds before he aroused himself to the extent of wheeling around and giving the ruling.

Q. Did he then rule on that objection without further statement or comment by the attorneys?—A. He simply said, "Objection overruled," and seemed to pass it along at that.

Q. Have you at any time seen the judge when, in your opinion, he was under the influence of any intoxicants?—A. I have.

Q. When was that?—A. The particular day and date for that is not fixed in my mind, but I do remember of seeing the judge on Third Avenue going in the direction from Union over toward University. At that time he was walking on what would be the west side of the street and apparently, to use a figurative expression, he wanted a good deal of the sidewalk.

Q. What time of day or night was it?—A. That was along in the evening, about—somewhere along about 7 o'clock, from 7 to 7.30.

Q. The street which you described is on level ground, is it?—A. Yes, sir.

Q. Explain with more detail what you mean by the expression you used, "wanting a good deal of the sidewalk."—A. Well, it is an expression which is applied ordinarily to men who are intoxicated; that when they are attempting to walk they want all the sidewalk.

Q. Do you mean that he wabbled from side to side as he walked?—A. Yes; he did.

Q. State it plainly.—A. You can use that expression—that he wabbled from side to side.

Q. How near to him were you?—A. I was standing what would be about half the width of this Federal building on Union Street when I first observed him, as he was probably 50 or 75 feet from the corner of Union and Third Avenue.

Q. That would be about how many feet from where you were?—A. It would be about—probably about 80 feet; I should judge about that.

Q. Did you have an opportunity to see his face?—A. Only as he passed along the street, as he walked along.

Q. If you have an opinion as to what his condition was on that occasion with reference to intoxication, you may state your opinion.—A. Well, in my opinion, I think he was under the influence of intoxicating liquors.

Q. Have you seen him at any other time when you thought he was?—A. I have.

Q. Please state the occasion, and describe it as well as you can.—A. On another occasion I saw him coming up Union Street and crossing Third Avenue, and coming on up into the building here when he was—well, he was staggering, that is, he didn't wabble, but he was a little unsteady on his feet at that time.

Q. What hour of the day or night was that?—A. That was along in the evening, I should think somewhere about 6.30 or 7 o'clock.

Q. Can you fix the time as to how long ago it was?—A. The only way I can fix the time is that I am usually in the habit of going to the post office to make inquiries for my mail along in the evening.

Q. I do not mean the hour—I mean, rather, the month or the week or the day or the year.—A. The first occasion which I have mentioned was along in the fall of the year, I think it was about a year ago, or it would be last fall I noticed him.

Q. Have you at any other time noticed him when you thought he was more or less intoxicated?—A. During or shortly after the trial on which Mr. C. D. Gilman was tried at, I was standing at the elevator of the building here, and Judge Hanford went—passed by me and he was walking with rather somewhat of a shuffling gait, that is, he didn't stagger any or wabble any—that is, his gait was slightly shuffling, and at that time as he went by me I smelled the odor of liquor.

Q. What kind of liquor?—A. Well, I should judge from the odor that I got that it was whisky. It might have been spirits frumenti, to use the medical term.

Q. Have you seen the judge at other times when he was not in the condition you speak of?—A. I have.

Q. What was the difference in his appearance and his walk and demeanor on the occasions you speak of, and other occasions when you thought he was not intoxicated?—A. Well, when I saw him on occasions when I regarded that he was sober, to use that term—why, he walked with his head up and his shoulders erect and was traveling along at an ordinary gait which a man of 45 or 50 years of age would ordinarily travel—steady.

Q. Did he have the shuffling step which you mentioned a while ago on those occasions?—A. No, I didn't notice it.

Q. Have you told us all the occasions you recall when you saw him when you thought he was under the influence of intoxicants?—A. I believe I have, Mr. Chairman.

Q. Have you had any business relations with him or with his court?—A. Only as a juror in a case which was tried in his court here along about the last of May, I believe it was.

Q. Were you what in my country we call a picked up juror, or were you on the regular panel?—A. No venire, as I understand it, the venire was open, and there were not enough men to fill it, and I was in the courtroom at the time, and I, along with three or four others, who were sitting there, we were picked up and sworn in to serve.

Q. You were called by the bailiff to act in that particular case?—A. Yes; just in that particular case.

Q. Have you any personal feeling of any kind against Judge Hanford?—A. No, sir; none whatever.

The CHAIRMAN. Any further questions of this witness—Mr. Hughes, do you desire to ask him—or you, Mr. Dorr?

Mr. HUGHES. No questions.

The CHAIRMAN. That is all. You are excused.

Witness excused.

JAMES F. NIEMANN, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. James Fred Niemann.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. About 10 years and 2 months.

Q. What is your business?—A. In the employ of the Standard Furniture Co.

Q. In what capacity?—A. Manager of a department.

Q. How long have you been in that position?—A. Ten years and two months.

Q. All of the time you have been here?—A. Yes, sir.

Q. Is it a large or small concern?—A. Large concern.

Q. What is its business?—A. Furniture, stoves, carpets, general house furnishing of all descriptions.

Q. Retail?—A. Retail.

Q. Occupying how large a space?—A. One hundred and eight by one hundred and twenty.

Q. And how many floors?—A. Nine floors and the basement—it is the largest of its kind in the city.

Q. Are you acquainted with Judge Hanford?—A. I am by sight.

Q. How long have you known the judge by sight?—A. About six years.

Q. What opportunity have you had for seeing him?—A. Riding backward and forward on the street car.

Q. At what hours?—A. Usually between the hours of 6 and half past 7.

Q. And sometimes at what other hours?—A. I do not recall any other time but that.

Q. You say usually at those hours?—A. Yes, sir; between 6 and half past 7.

Q. Have you ridden with him at any other hours than those?—A. I do not recollect.

Q. Have you observed him elsewhere than on the street car?—A. About a week ago I saw him walking down Second Avenue, and that was the only time I saw him outside of the street car.

Q. Have you at any time seen the judge when it seemed to you that he was under the influence of intoxicating liquor?—A. It appeared to me at the time that he was.

Q. What time?—A. At the time I saw him.

Q. What particular time do you refer to?—A. Well, I can not recall the date or the time; it was over three years ago.

Q. Where was it you saw him then?—A. It was on the street car.

Q. Where were you going?—A. Home.

Q. And he, of course, was going in the same direction?—A. Yes, sir; going home.

Q. What was there peculiar about that that attracted your attention, if there was anything?—A. Why, the judge had his eyes closed and he was nodding his head and he would wake up with a start, and then start in again to nod his head and close his eyes.

Q. How near to him did you sit?—A. Right across the aisle.

Q. Was there any odor noticeable?—A. I never noticed any.

Q. What was the appearance of his face and eyes, if you noticed?—A. I did not pay particular attention to his face or eyes.

Q. Why did you reach the conclusion that he was under the influence of some intoxicant?—A. Well, he appeared to me like a man that had a little too much intoxicating liquor, and he was—his eyes were weak and he was kind of nodding it off.

Q. Had you seen him on other occasions on the car?—A. Yes, sir.

Q. How did he act on this occasion as compared with his actions on the other occasions?—A. On the other occasions, why, sometimes he would sit up straight like anybody else in the car, with his eyes open, and other times he would have his eyes closed.

Q. On the occasion you speak of were there others besides you and him on the car?—A. Yes, sir.

Q. To what extent, if at all, did his condition attract attention?—A. Well, at one particular instance I remember the man sitting right alongside of me. He made the remark, "That is a nice condition for a judge to be in." He supposed, the same as I did, that the man was intoxicated.

Q. Did you see him on more than one occasion on the car when he seemed to be in that condition?—A. Yes, sir.

Q. How often?—A. I can not recall.

Q. Can you approximate the number of times?—A. Well, I should say half a dozen times.

Q. At what hours?—A. Between 6 and half past 7.

Q. Even later than that?—A. I do not recall an incident later than that.

Q. Upon those other occasions what was his condition with reference to the time you have described?—A. The hours, you mean?

Q. No; his condition.—A. Well, he would be wide awake, like anybody else riding.

Q. Wide awake?—A. Just like anybody else riding home on the car.

Q. Did you say that you saw him or have seen him intoxicated on the car five or six times, or whatever it was?—A. Yes, sir.

Q. Now, you have described one of those times?—A. Yes, sir.

Q. I will ask you how he was on the other occasions, as compared with the time you have described?—A. Well, the condition of the judge would always appear about the same; he always appeared about in the same—the same condition; and it might be doing a man injustice to say that you thought he was intoxicated, but if you saw a man in the street car like this condition and saw him nodding, and it appeared like he can't keep his eyes open, it is the first thing a man thinks of, that the man is intoxicated.

Q. What experience have you had in observing men that were intoxicated?—A. No more than anyone else, only just from the general appearance, that is all.

Q. Well, state to the committee what your best judgment is as to his condition on those five or six times you have spoken of?—A. Well, his condition at that time, it appeared to me that the impression that I gained was that the man was intoxicated.

Q. Do you retain that opinion now?—A. Not exactly; no, sir.

Q. Is that your opinion now?—A. No, sir.

Q. What is your opinion now?—A. My opinion—I would be a little lenient with him now, because I read a good deal in the newspapers and I kind of formed an opinion that the man was probably, to some extent, overworked.

Q. What papers have you read that in?—A. I read that in all the Times and the P.-I.—read from the testimony given here in the court room, that the man possibly had some—that he would appear tired out and worn out when he was not intoxicated. I could not positively say he was intoxicated each time.

Q. Have you any knowledge as to the correctness of the reports which you read?—A. No, sir.

Q. Your opinion is based on the assumption that the reports are correct—that is that they correctly reported the evidence produced, and on the representations you read you think that it might be something else than intoxicating liquors which causes his condition?—A. It might at times; yes, sir.

Q. When did you change your opinion?—A. Well, probably about as soon as I started to read up the case.

Q. Let me ask you, were you glad of the opportunity to find a reason for changing your opinion?—A. No, sir.

Q. You had not any feeling one way or the other, had you?—A. No, sir.

Q. How do you account for the difference in the judge's appearance and conduct on the occasions when you thought he was intoxicated and the occasions when you thought he was not?—A. Just account of him being wide awake and having his eyes open. I don't believe there was any difference in the facial expression at all at neither time.

Q. Have you ever seen him drinking or in any drinking places?—A. No, sir.

Q. Is your experience limited to what you saw in the street car.—A. Yes, sir.

The CHAIRMAN. Any further questions of the witness?—Mr. Hughes, have you any questions?

Mr. HIGGINS. I would like to ask you this, Mr. Niemann. If, at the times when you saw Judge Hanford and you say that you thought he might be intoxicated, was his appearance when dozing in the car any different from that of a man of 60 or 65 of years of age sleeping in a street car?

A. Well, that is a pretty hard thing to answer. It would appear if a man were sleeping in the street car and nods his head, why that is the natural sleeping condition.

Q. Is that all the answer you wish to make?—A. Yes.

Witness excused.

The CHAIRMAN. Are there any other witnesses present who were ordered to be here—if so, you will please rise.

No response.

Whereupon a recess was taken until to-morrow morning at 9.30 o'clock.

TWELFTH DAY'S PROCEEDINGS.

THURSDAY, JULY 11, 1912—9.30 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

E. E. CUSHMAN, being first duly sworn, testifies as follows:

The CHAIRMAN. State you full name, please.

A. Edward Everett Cushman.

Q. Where is your home, Judge Cushman?—A. My home—I just came from Alaska, and I have hardly established a home, but my official residence is at Tacoma.

Q. You have been living in Alaska, have you?—A. Yes, sir.

Q. How long?—A. The greater part of three years.

Q. What have you been doing there?—A. I was appointed district judge for the district of Alaska, the third judicial division, with the first year serving at Juneau and the next two years at Valdez and Fairbanks.

Q. And now what is your assignment?—A. United States district judge for the western district of Washington.

Q. With headquarters at Tacoma, I understand you to say?—A. Yes.

Q. Prior to your appointment as district judge in Alaska, what were you doing?—A. For about three years I was engaged in private practice, immediately before my appointment.

Q. And prior to that?—A. For, I believe, it was a year and a half—I am not good on dates; I have not refreshed my mind—I was special assistant to the Attorney General.

Q. Located where?—A. My official residence was at Tacoma, but the special work in which I was engaged was trying Government cases before the court of appeals in San Francisco from the ninth circuit, including the States and Territories of Alaska and Hawaii. There were certain special cases assigned to me aside from the court of appeals work that took me into the district and circuit courts.

Q. I assume that you are acquainted with Judge Hanford.—A. I have been acquainted with Judge Hanford since 1893.

Q. To what extent have you been with him, or associated in your work since that time?—A. Up to 1900—or I should say up to 1898, no more than any other member of the bar. In 1898 a partner in our firm, Mr. Claypoole, was appointed assistant United States attorney, and we moved our offices into the Federal offices of the court at Tacoma, on which floor the court room was and the judge's chambers near our offices. From that time to this I have been, I consider, intimately acquainted with Judge Hanford.

Q. To what extent have you practiced or been in his court while he was sitting there?—A. Before 1898 very seldom; after 1898 to 1900 infrequently; from 1900 to 1906 I consider that I was in his court more than any other lawyer probably in the district. Since 1906, as much as the ordinary lawyer, up to 1909.

Q. And since that not at all?—A. And since that not at all, though meeting him on my vacations when I came out of Alaska.

Q. To what extent were you in society when he was not in court during those years—let me add to that question—in his society or having an opportunity to observe him?—A. I would say very good. I do not mean by that socially, particularly, but our offices being in the same building, that is, the United States attorney's offices. I did not state to you, I believe, that from 1900 until my appointment as special assistant attorney general I was assistant United States attorney in this district, that is, for about four years or four years and a half, and during that time our offices being near together, the judge worked nights, I would say, on average of about four or five nights a week, and I worked myself generally at night, and the doors of our offices being within 20 feet of one another and his library containing books that mine did not, I would say that I was almost hourly in his presence in the court room during the daytime and after dinner at night along from 8 o'clock on through in and out of his chambers and within hearing and almost within sight of where he was at work four or five nights in the week.

Q. Are he and you members of any club, organization, or other social organization?—A. Nothing more, I think, than the American Bar Association and the Bar Association of the State of Washington.

Q. You are not a member of the Rainier Club?—A. No, sir.

Q. Judge, have you observed any peculiarity in Judge Hanford's conduct while presiding in court, with special reference to apparent drowsiness or napping or sleeping on the bench?—A. I have noticed him close his eyes; I would not call it napping. I am no oculist, but I attributed his closing his eyes to a matter of eyestrain. As a man grows older, from reading books and trying to hold his eye on a man 20 or 25 feet away from his, his eyeballs do not respond as they do when younger; I think he closed his eyes sometimes on the bench.

Q. Well, is that the extent to which you have observed the peculiarity which I have referred to?—A. I never noticed it anywhere else except in court, and that is as far as it would go; sometimes closing his eyes and turning half away in his chair, relaxing for a few minutes.

Q. Have you at any time seen him when, in your opinion, he was under the influence of intoxicating drinks?—A. I never have.

Q. Did you ever see him drinking?—A. I have.

Q. To what extent?—A. I do not think I ever saw him drink more than two cocktails on one occasion; by that I do not mean drinking them in quick succession, but at one sitting or one meeting of men.

Q. Did those appear to have any influence on him to the extent of affecting his appearance or demeanor?—A. No, sir. I never saw him affected in his walk or talk, and I never saw his face flush, and I never smelled liquor on the judge's breath, although I have been near him at times when he was drinking or when he had drank.

The CHAIRMAN. Any further questions; Mr. Hughes, do you desire to ask the judge any questions?

Mr. HUGHES. No; I think not.

Witness excused.

The CHAIRMAN. Is Dr. Brown here? Will you please take the witness stand; you have been sworn in this matter already?

Mr. BROWN. I have.

EDWIN J. BROWN, recalled, testifies as follows:

Mr. McCOY. Dr. Brown, to what organizations in Seattle or the State of Washington do you belong?

A. I believe I am a member of the State Bar Association; I hold a membership in the chamber of commerce and in the Commercial Club, the Seattle Athletic Club of this city; I think I am a member of the Y. M. C. A., but I am not positive of that, I think I have lapsed; also a member, if you wish to include political organizations, I am a member of the Socialist Party.

Q. You testified that you were a dentist; what was your dental course and education, and where was it?—A. Three years' course at the Western Dental College, of Kansas City, Mo., with a faculty comprising a full faculty, the dean of which was president of the American—of the association of faculties—the Association of Dental Faculties—Dr. D. J. McMillan.

Q. Elected by what body of men?—He was elected president by the associated dental colleges of the United States.

Q. Did that association comprise many of the leading dental colleges?—A. All of them.

Q. You took a three years' course, you say?—A. A full three years' course, graduated April 2, 1897.

Q. And got your diploma?—A. Yes, sir.

Q. Where did you obtain—what was the standing of the dental college in which you graduated?—A. Well, I would say equal to all others of the universities and associations. I know the dean of our school was called to California and Washington to investigate the College of Physicians and Surgeons at San Francisco, and the North Pacific—what is now the North Pacific Dental College at Portland; it was at that time at Tacoma. Dr. McMillan investigated them and reported favorably, and they were admitted into the association.

Q. What has been your course of study of the law?—A. Upon the question of dentistry I would like to state also that I have been

admitted and have my certificates in Missouri, Texas, California, Oregon, and now in Washington, after a 10-year tussel, or a 10-year contest with the society or board.

Q. Anything else you want to state about the dental side of it?—A. There is, slightly—as I understand, there was some evidence introduced before your committee concerning the question of my standing as a dentist.

Q. First, Doctor, will you answer my question about your education in the law?—A. I began my study of the law in the winter of 1882–3. I took care of a lawyer's horse and cow that winter out in Illinois, and I did some reading. I was a young chap, and did more or less reading until the fall of 1897. I entered the Kansas City School of Law and finished my law course in the fall.

Q. What is the length of that course?—A. Well, at that time it was an 18-month course, but nine months each year—each course. Since then, I think the year after I finished, they made it a three-year course. The requirement now is a three-year course in the Kansas City School of Law.

Q. That school was then and now is a school of recognized high standing?—A. Yes. Mr. Neal, who is the law partner of Gov. Hadley, of Missouri, graduated in my class, and many others that I could name, lawyers of more or less prominence.

Q. And you are a friend of Gov. Hadley?—A. I know Gov. Hadley quite well—that is, I knew him when he was a young man quite well, living in the same neighborhood; I helped to put him in his first public office.

Q. When was it that you came to the State of Washington?—A. The last day of February, 1901.

Q. How soon after that did you take to the practice of dentistry here?—A. I immediately became associated, temporarily, however, with Dr. A. W. Phillips.

Q. In this city?—A. In Seattle, on Pike Street.

Q. Is he a dentist of good reputation and standing?—A. He has since served as president of the dental society of this State—a man that we all consider—we all consider Dr. Phillips as one of our recognized professional men.

Q. And in what capacity were you with him?—A. Just as an operator and assistant.

Q. How long did you stay with Dr. Phillips?—A. Just a brief period. The doctor knew that I had decided to open offices here, and I was just with him temporarily. On the 15th day of July I opened offices where I now have offices, at 713 First Avenue.

Q. The 15th of July—what year?—A. The 15th of July, 1901.

Q. What was the law of Washington at that time in regard to the practice of dentistry?—A. The law of Washington prior to the 18th day of March, 1901, prescribed qualifications for dentists and an examination. On the 18th day of March, I believe it was, the governor signed the present bill, which—or the present law—which had been amended so as to strike out from the law all of the qualifications that were prescribed in the law of 1893 and delegating to the dental board the arbitrary power to say what the examination should be; that is, what the subjects should be.

Q. In other words, the law of 1893 specified in what subjects the applicants should be examined?—A. Truly.

Q. And this law of 1901 did away with that and turned it over to the discretion of the examining board?—A. Yes, sir; the law of 1893 prescribed that the examination should be elementary and practical, but sufficiently thorough to test the fitness of the applicant to practice dentistry and should include the subjects of physiology and anatomy and histology, and so on, but the amendment struck out all reference to what subjects should be included in the examination and merely left it to the satisfaction of the members of the board. By the way, the old law of 1893, under that a man could study under a preceptor for 10 years and then take his examination and be admitted to practice. The idea was to keep the eastern men out of this State, so they amended the law. The dental society got the law amended to provide that "no person shall be eligible for such an examination unless he or she shall be of good moral character and shall present to said board his or her diploma from some dental college in good standing and shall give satisfactory evidence of his or her rightful possession of the same" and should undergo their examination by the dental board, but it doesn't say whether this examination shall be in astronomy or astrology or dentistry or what not.

Q. Why do you say that the object was to keep eastern dentists out? What do you base that on?—A. That was commonly understood, and at the time the dental law was passed it was common among the dental profession that that was the idea of the law—to keep eastern dentists out of this State.

Q. Did you ever hear anyone say so?—A. Yes, sir.

Q. Anyone connected with the dental board?—A. Well, I could not—no; other dentists have come here, though, and called on different members and have told me that they were told that that was the object of the law.

Q. Well, now, the law was amended in 1901. Had you up to that time applied for permission to practice as a dentist?—A. The present law has a saving clause which provides that all persons who are bona fide citizens of the State of Washington and were engaged in the practice at the time of the passage of that act should be given their certificates. I consulted Mr. Walter Fulton when I came here, and Mr. Fulton informed me that under the law I would be entitled to my certificate because I was here in practice. The board refused to issue those certificates, and there was a test case made, and Judge Ronald conducted the test case, and if I remember correctly it is known as the Smith case, and the supreme court affirmed the board's action, and then immediately I went and took an examination on two occasions. If the books of the board were brought here you would find that I was marked O. K. on my practical work, and if my credits were figured honestly on my written examination—but some of them were marked ridiculously low—and some members of the board have since admitted to other dentists that they did me dirt—you would find my written average would be 66 and my practical work was marked O. K., and my grade would at least be 86 or 88 if figured from the standpoint that the present board grades their papers or rates their papers—and they refused to issue me a license. I was unfortunate in the courts; and that warfare has continued until the present time. I went and took my examination here recently, and was admitted to practice, and I have my license.

Q. Did any of those boards before which you took your examination make any requirements of those who had successfully passed the examination before they would admit them, which requirements were not embodied in the law?—A. They did. They have a requirement here, not only before they would admit them, but even before they would admit them to take the examination; that was the intent. I wish to say further that there was an investigation held by the legislative investigating committee, and I believe that my position was practically indorsed. I have here an agreement that was presented to each applicant who appeared for an examination. George Stryker, a member of the dental board, testified that this agreement was drawn up by Mr. Samuel R. Stern, of Spokane. He was the dental board's attorney. And I would have had to sign this agreement in order to have been in the good graces of what I term the dental combine. I am proud to say that I was one alone out of 40 applicants who refused to sign it. The balance of them signed it. Some got their license and some did not, but I refused.

Q. You say there was no requirement in the law for that?—A. No, sir. This is the contract.

Q. What is the book that that is contained in?—A. This is the Sixteenth Annual Report of the Washington State Board of Dental Examiners, reported to the governor of our State for the year ending October 15, 1903. The code of ethics that you were compelled to subscribe to and the contract under which——

Q. What was it that you refused to subscribe; this contract, as you call it?—A. Both the contract and the code of ethics promulgated by what is known as the National Dental Association, which is a little association, or a little wheel within a wheel to manipulate things.

Q. Who were on the board before which you took your examination first, or the board?—A. Dr. M. W. Thurston for president, Dr. J. M. Myer, and Dr. Fishburn. Dr. Seth C. Macher was a member of the board at that time, but did not attend that meeting, so that there was only three members of that first meeting, and that was the meeting in which my practical work was marked "O. K."

Q. Was that the board which was under investigation by the State legislature?—A. That board's acts were under investigation, but those members of the board had retired and new members taken their place.

Q. Have you any report of the legislative committee which made the investigation?—A. I have.

Q. What were the charges, in general, that were made against the board that were being investigated?—A. Well, the charges were substantially, first, that arbitrary and unreasonable examinations are given by the board; second, proceedings of the board have been secret and applicants denied access to records and examination papers; third, examination fees have been collected and certificates issued without examinations having been given; fourth, excessive and unlawful expense accounts.

Q. What are you reading from?—A. I am reading from the report of the legislative investigating committee to our governor, of which Senator P. L. Allen was chairman and H. O. Fishback and Howard D. Taylor, the speaker of the last house, J. C. Hubbell, and W. C. McMaster were members of the committee. The State was represented by the assistant attorney general.

Q. What were the findings of the legislative committee on those charges?—A. I will state that I conducted the investigation for the plaintiff, as I was the plaintiff.

Q. Read the findings on all the charges.—A. The findings are:

1. That the statute creating the dental board makes no provision for the examination of applicants in any certain subjects relating to dentistry, and confers on the dental board unlimited powers as to the scope of the examinations to be given. This portion of the statute is susceptible of abuse, and results in different boards giving different examinations and prescribing different standards and qualifications for the securing of licenses, and the committee feels that the best interests of the State will be subserved by an amendment to the dental law, prescribing the subjects in which applicants shall be examined and the qualifications necessary to pass such examination.

2. That the proceedings of the various dental boards have not been open to public inspection, as provided in the statute, and that applicants taking examinations have been denied access to the papers, records, and files of the dental board, and that the secrecy maintained has given rise to criticism and suspicion which has brought the State dental board into more or less disrepute.

The committee therefore believes that amendments to the dental law should be made requiring the board to keep permanent records of all its proceedings, open at all times to public inspection, together with records showing the grades given applicants in all subjects, which shall be open at all times to the inspection of such applicants.

3. That the dental board in at least one case demanded and received the statutory fee of $25 for an examination which was not given, and later issued a license to the applicant based upon his grades in an examination given six months prior thereto.

The committee considers this unwarranted and reprehensible conduct on the part of the dental board, and mentions this case as additional evidence of the arbitrary and unlimited powers exercised by the board under the present law.

4. That the dental law provides that the members of the board shall receive $5 per day while actually engaged in the duties of their office and all legitimate and necessary expenses incurred in attending to the duties of the board. The financial report for the year 1908 and 1909 presented to the governor shows that each member of the board has charged and received, in addition to the $5 per diem allowed by the law, railroad fare to and from his home to the place of holding examinations, as well as a flat rate of $5 per day to cover expenses. Such practice should be condemned, as in the judgment of the committee it is a violation of both the letter and spirit of the law.

Q. Now, it was this committee which was undertaking to have you comply with what is called its code of ethics.

The WITNESS. There is one more finding that I have not read; but it is immaterial.

Mr. McCOY. This was the examining board that was undertaking to force you to comply with what it called a code of ethics, I think you said?

A. Yes. Now, when I took the second examination in the fall of 1903 some of the same members were on the board who were on the board of investigation and are on the board now—only one or two of them, however—I think one at this time.

Mr. McCOY. You might have marked as an exhibit this so-called code of ethics and agreement—can these remain with the stenographer?

The WITNESS. Yes.

Mr. McCOY. The pamphlet is not paged so that I can't tell which part of it it is.

A. The contract in which the applicant was bound to abide by this code is very amusing.

The document last referred to by the witness is marked "Exhibit No. 60."

The WITNESS. I have the full report here, and I brought it to show that the investigation was rather full and rather complete. I think it required something like 344 pages of typewriting concerning the dental board.

Q. What was the name of the attorney you mentioned here a few minutes ago as the attorney of the board?—A. Mr. Samuel R. Stern, of Spokane.

Q. He is the same man who referred to you the other day as a fake dentist.—A. Yes, I presume so; I was not here, but I understood and I think that would be Mr. Stern's remark. Every lawyer that I have given a whipping to before the courts of this State have called me the same name, and when the dentists get a licking they call me a fake lawyer, I suppose.

Q. Were his services to the State board of dental examiners given free or was he working for compensation?—A. Mr. Stern stated before the Dental Society of Spokane that he would consider it a pleasure and a work of honor to drive all those dentists out of the State, but about the time his work was finished he rendered a bill to the board for something over $2,000 and had a receiver appointed for their funds.

Q. Did he ever state to you how he got about the State on this honorary work?—A. Yes, sir. Mr. Stern told me one time in court that he would not be able to prosecute the cases unless he had railroad passes to ride on. He rides on railroad passes.

Q. You say when he finished the work—did he ever drive the dentists out of the State?—A. No, sir; he never finished that job—no, he never got it finished.

Q. What seems to be the complaint against you, Dr. Brown; is it the kind of a dental office which you run?—A. Why, the complaint is that I refused to join the society and do business under their rules. They have rules there which provide how you shall conduct your business. I thought I was capable of conducting my own business, and still think so, and in order to enforce their rules they invoked the courts; that is to say, I was arrested some twenty times when there was no prosecutions at all. I was arrested and taken and locked up in jail when there was no evidence whatsoever, and the cases were dismissed and never came to trial at all, and I was arrested, I guess, some twenty times. Out of over 100 arrests that Mr. Parker and myself have defended—out of over 100 cases they got convictions in about eight, and four of those were reversed in the supreme court. And my case is now in the United States Supreme Court and probably will come up for hearing this winter.

Q. Does not the complaint against you seem to be that you are rendering services to people who can not afford to pay high prices?—A. Well, that is true. You will find one clause in the code of ethics which provides that when dentists in a certain locality have established a scale of prices or fees that it is dishonorable to depart from that scale.

Q. Not only dishonorable, but the agreement, if you signed it, would have compelled you, provided you kept it, to abide by that scale of charges?—A. Otherwise, under their contract they assumed the power of revoking your license and driving you from practicing in the State. I would say that we dentists have different methods of advertising and my method is in the newspapers and I pay for that—that is my system; my method.

Q. How many dentists are there in your office, working there?—A. I have 11 dentists and 5 assistants and a secretary there.

Q. Are the dentists in your office all graduates of dental institutions?—A. Yes, sir.

Q. All licensed to practice?—A. Yes; all graduates—yes, all finished men.

Q. Have you had any prominent dentists working under you at all?—A. Yes; I had Dr. A. McCullough; used to be a member of the dental board; he associated with me about December 1, 1901. Dr. Seth C. Macher, the former president of the dental board has been associated with me more or less as an assistant for the past six or seven years.

The CHAIRMAN. Any more questions of Dr. Brown?

The WITNESS (continuing). If I might be permitted, I would like to say that so far as my standing is concerned I refer you to Dr. A. W. Phillips and to Dr. Tenny and Dr. Davis and Dr. McGregor; to Dr. Powers, of the dental board; to Mayor Cotterill, to Judge Holcomb, of Adams, Benton, and Franklin County; and his family have been patients of mine ever since I came to Seattle. I done the judge's work myself in 1901. Mr. Stacey, formerly of the Bank of Commerce, and Mr. Charles Miller, one of the presidents of the Bank of Commerce, and Mr. John Moran, a partner of the son of Mr. Samuel R. Stern, in the engineering business. I might refer to any of those gentlemen.

Q. And all reputable citizens?—A. Yes, sir. I wish to say also that while at Spokane one of our oldest and most respected dentists in this State, Mr. Hunt, told me that Mr. Stern had said before the society that he was going to bring a judge over here specially to try those cases, and I wish also to state that it was a peculiar thing that all of those dental cases were tried by nonresident judges. Our home judges for some reason, I don't know why—it may have been an accident or a coninicidence—but every case was tried by a nonresident judge.

Mr. HIGGINS. In the State court?

A. In our superior court, here in the State. We came to a case one day against Mr. A. R. Long, a dentist, and I wish to say this because it has been brought in here—we had been trying cases and we arrived at a time when A. R. Long was in court, and there was a charge against him, and I asked Mr. Stern as an attorney for the other dentists, to try Long's case. Mr. Stern said, "We are not going to try that case. We are going to have it dismissed. He does not do enough business to hurt anyone." And I wish now to read the testimony of Dr. Stiles, simply to show that, if I be permitted——

The CHAIRMAN. Just a minute. Do you consider this material, Mr. McCoy?

Mr. MCCOY. I consider that a wanton attack was made on this witness the other day, and I think he ought to have free scope to put himself on record and get back at the man that made it; that is all—simply a question of fair play.

The CHAIRMAN. What is this testimony about?

Mr. MCCOY. I don't know, I am sure.

The WITNESS. This is merely in regard to a statement made by Mr. Samuel R. Stern to a dentist, and this is a deposition taken before a notary at Portland, Oreg., in which this testimony was given. It is very brief.

Mr. HIGGINS. What was the case in which this testimony was taken?

The WITNESS. This is the case of—a case in which I brought a suit against the dental board.

Mr. HIGGINS. What was the name of it?

A. "Edwin J. Brown, plaintiff, *v.* George W. Striker, J. M. Meyer, A. Stark Oliver, and W. A. Fishburn, surviving members of the board of dental examiners of the State of Washington as constituted in 1903, defendants."

Q. Where was it tried?—A. Tacoma, Wash.

Q. When?—A. In May—April or May, 1904.

The CHAIRMAN. If it is brief, proceed.

Mr. HIGGINS. This is for the purpose of contradicting Mr. Stern's statement that you are a fake dentist?

The WITNESS. Yes.

Q. As all your own testimony has been, as I understand it.—A. Yes.

Mr. MCCOY. Don't you understand, Dr. Brown, that when this case is finally summed up that if you did not come here and give this testimony an argument would have been made against your standing as a witness on the basis of what Mr. Stern said here the other day?

A. Certainly.

Q. And you are now in court to put the record in shape so that people can estimate Mr. Stern's testimony at its right value for the purpose of this record?—A. Certainly.

Mr. HIGGINS. Are we also to investigate into the references which Dr. Brown has submitted and inquire into the statement which he has read and the action of the State of Washington in the enforcement of its dental laws?

Mr. MCCOY. As far as I am concerned it can go just as wide as it pleases so that Dr. Brown may have an opportunity to put the real status before the Judiciary Committee when this gets back to Washington—everybody knows what the attack on him was made for.

Mr. HIGGINS. But we can not do that unless we go into an investigation of the administration of the dental laws of the State of Washington and then call those gentlemen whom he has referred to if we are going into the inquiry, as to his standing or reputation.

Mr. MCCOY. I am quite willing if you want them to come here to examine them.

Mr. HIGGINS. Oh, I have no desire to.

The CHAIRMAN. Proceed, Doctor.

The WITNESS. I am reading from page 8 of the deposition of Albert B. Stiles, sworn on behalf of the plaintiff, testified:

Direct examination:

Q. Do you or do you not know Samuel R. Stern, of Spokane?—A. I do.

Q. Did or did you not have a conversation with him concerning engaging in the practice of dentistry in the State of Washington?—A. I did.

Q. You may state what that conversation was; what Mr. Stern said?

Defendants object to this question upon the ground that it is hearsay, incompetent, irrelevant, and immaterial.

A. I called on Mr. Stern, told him who I was, what my business was, and that I had come to the State of Washington to practice dentistry and was practicing dentistry; that I was traveling on the road, going from town to town, making these towns every so often. Mr. Stern asked me if I was advertising. I told him that I did not advertise except to make an announcement of my coming. He turned to me and says, "You need not be afraid of being troubled or molested by the State board of examiners, or the society; they are not after such as you; we are after the dental advertisers running large offices in the larger cities, and advertising in the newspapers extensively, and we will make life one hell for them before we get through." We had some little further talk, after telling me that I need not worry, that put me on "easy street," practically, and I kept on the work.

That is from page 8 of Stiles's deposition.

The CHAIRMAN. Mr. Hughes, have you any further questions?

Mr. HUGHES. It may enlighten the Judiciary Committee to have your advertisement, since you say your practice is to advertise. Now, I call your attention to this advertisement which appeared in the issue of the Seattle Daily Times, Tuesday evening, June 18, 1912 [showing]. Is that your advertisement?

A. Yes.

Mr. HUGHES. I have torn it out of the paper for the purpose of saving making any unnecessary record. That is a correct copy of your advertisement?

A. That is my advertisemennt.

Mr. HUGHES. I offer this as a part of the testimony.

The CHAIRMAN. Do you require it to be printed?

Mr. HUGHES. I think it ought to be.

The WITNESS. And if I may be permitted to state, that special advertisement is called forth by the fact that I came to believe that a gentleman who endeavors to copy my name, so as to attract my practice to him, was put there, or aided in his going there, by the people who have been in the contest with me.

Mr. HUGHES. Mr. Brown, you have carried that advertisement for a long time just as it is at the present time, with your picture at the head of it?

A. This special one has been there two or three or four weeks.

Q. Well, that or a similar advertisement with your picture on it has been constantly in the papers?—A. Well, I have had patients constantly coming to my office and informing me that they have been falling into this E. J. Brown's office, and I found it necessary to inform my following, so that they would know the difference between the two offices.

Newspaper clipping is received in evidence and marked "Exhibit No. 60."

Mr. HUGHES. Did you ever practice law in Texas?

A. No, sir.

Q. Did you ever practice law in California?—A. No, sir.

Q. Do you practice law here now personally, or dentistry?—A. I have been engaged in the practice of law since 1904 or 1905, with the exception of my general supervision over my other business—I have had diversified interests.

Q. Is it not true that for years past you have employed and had working for you in your office unlicensed dentists?—A. When a dentist presents himself whom the society and dental board have outlawed, I have had such men work for me, but, then, almost every dentist in the city who employs other help has had dentists who were unlicensed, because the law of this State is such that it deprives them of their right, substantially. I have had such men, and so have members of the board had such men in their employ.

The CHAIRMAN. Is that all, Mr. Hughes?

Mr. HUGHES. One moment; how many times were you convicted for violation of the dental laws?

A. I think but one time. My recollection is that one time there was one conviction had, and I was not very well acquainted then, and I found clerks of our court up there serving on the jury and personal friends of my friend Mr. Stern. I was not acquainted those days as

I am now, and they did get one conviction and that was a case where an old lady testified that she gave me her artificial teeth, and I done something with them and gave them back, but, nevertheless, I was convicted, and that case is before the United States Supreme Court.

Q. In all those convictions of dentists for violation of the dental laws which you have defended, there were appeals to the supreme court?—A. Yes.

Q. And were they reversed in the supreme court or affirmed there? A. My recollection is that there were four—eight appeals, and I think four were sustained—four convictions were sustained and we reversed four.

Q. You mean that four were affirmed?—A. That four were affirmed.

Q. And what about the others, were they reversed?—A. Reversed.

Mr. McCoy. How many times have you been under indictment, if you know?—A. I never was under indictment.

Mr. Hughes. We do not have indictments. We proceed here by informations.

Mr. McCoy. How many informations have been filed against you?

A. I think that I have probably been arrested some twenty times in the past eight or nine years—some twenty times.

Mr. McCoy. You maintain law offices in this city, don't you?

A. I do.

Q. Who is your partner, if you have one?—A. Mr. John R. Parker.

Q. Is he a reputable attorney here in the city?—A. Yes, sir; he is recognized as a reputable attorney.

Q. Do you carry your office in your hat or do you have a real office?—A. I have the offices formerly occupied by Mr. Charles Munday and Mr. White, in the Starr-Boyd Building—law offices—we have five offices. I think my library comprises something like twelve or fifteen hundred volumes, containing—I don't know how many books. If there is any question as to that I would invite the committee and Mr. Stern there.

Mr. Hughes. I do not want to protract this examination, but I would like to inquire of the witness—you say you have been arrested——

The Witness (continuing). I would say also that my son and his partner have offices with us. The firm name is Parker, Brown, Metsker & Brown, but my son and his partner have their clientage and run their business and Mr. Parker and myself have ours.

Mr. Hughes. I do not want to protract the examination, but in regard to one of your answers I want to ask you one other question. You say you have been arrested fifteen or twenty times. Those arrests have, some of them, been for a violation of the ordinances of the city for talking on street corners, and things of that kind, have they not? They have not all been for violation of the dental law?

A. Well, I had overlooked those.

Q. That is all I wanted to know, when you spoke of the number of arrests.—A. Yes, sir; I would be pleased to answer that.

The Chairman. You may.

A. That I was honored by being arrested for an attempt to exercise the right of free speech, and the gentleman who enforced the city ordinances at that time over the protest of many of our citizens is now in Walla Walla.

Mr. McCoy. What is Walla Walla?

A. That is the penitentiary of this State. His name is C. W. Wappenstein; he is serving a term for bribery.

Mr. Hughes. You mean the chief of police?

A. The chief of police.

Witness excused.

J. W. McLean, being first duly sworn, testifies as follows:

The Chairman. State your full name to the committee.—A. J. W. McLean.

Q. Where do you live, Mr. McLean?—A. 1412 Third Avenue.

Q. How long have you lived in Seattle?—A. Fifteen years.

Q. What is your present occupation?—A. Pharmacist.

Q. And what has it been?—A. It has been that all my life, with the exception of eight years that I was in the Government service.

Q. In what capacity?—A. Post-office clerk.

Q. In Seattle?—A. Yes, sir.

Q. Mr. McLean, are you acquainted with Judge Hanford?—A. I know him by sight.

Q. How long have you known the judge that way?—A. Covering the greater part of 15 years that I have lived here.

Q. Have you any acquaintance with him other than a slight acquaintance?—A. Absolutely none.

Q. Well, have you seen the judge mostly?—A. I have met him frequently about town, passed him on the street.

Q. Are you associated with him in any——A. In no way whatever.

Q. (Continuing.) In any way?—A. No, sir.

Q. Have you at any time seen Judge Hanford drinking intoxicating liquors?—A. Never.

Q. Have you at any time seen him when, in your opinion, he was under the influence of intoxicating liquor?—A. I thought so.

Q. When was it, Mr. McLean?—A. I never thought that I would have had occasion to remember it, so I could not state exactly.

Q. Can you approximate the time?—A. Well, at various times, generally late at night.

Q. How late?—A. Well, I could not state. I am out pretty late myself nights; my business keeps me until midnight at present.

Q. Do you recall any particular occasion when you saw him in the condition which you referred to, without giving the date or the time of it, do you recall it?—A. I can make the date quite specific; it was within a few days after the Dreamland Rink meeting that I recall.

Q. Do you recall where you saw him then?—A. I can; on the Third Avenue car; I am pretty sure it was the Third—I am quite positive it was a Third Avenue car—I wanted to go to the corner of Westlake and Pine Streets. I was on my way to get my lunch, and I used to eat my lunch in the American Oyster House, quite near there, and when I got on the car I was smoking, and so I sat right where the exit is, right opposite where the conductor is standing, and I noticed Judge Hanford sitting on one of the cross seats—the first cross seat, I think, just opposite me. I was sitting on the end seat, right near the conductor, and the judge was on the opposite cross seat, the first cross seat, and I had noticed that he seemed to be rather sleepy, or was nodding; he had his eyes closed, as near

as I could see, and I could see his head nodding, and the conductor reached over to me and said, "Do you know who that man is?" and I said "Yes," and he commented to me at that time on his appearance and he said he had carried him that way before.

Q. How long had you known him prior to that time?—A. Oh, for years.

Q. From your observation then and your knowledge of him then and before then, what would you say his condition was with reference to being intoxicated?—A. Well, I considered that he was—that was my opinion.

Q. Have you seen him—you have stated that you have seen him at other times—will you please tell the committee some of the other times?—A. Well, the other times were simply on the street, as I say, usually at a late hour at night. I have seen him many times in the daytime, but I do not know that I ever noticed any condition of that sort in the daytime.

Q. Can you recall any of those occasions in such a way as to describe where it was and what his condition was.—A. Well, I never tried to fix those occasions in my mind, and so it would be merely a guess—I could give you an idea. It was on the main streets of the city, perhaps Second or Third Avenue or Pike Street, around in that district, downtown. I do not know that I ever met him in the suburbs, because I am mostly down town myself and very seldom go out there except I take a street car ride, or something of that sort.

Q. Now you can take any of those occasions which occur to you now and tell the committee what it was in his appearance or conduct which led you to think that he was intoxicated.—A. Well, just the general appearance. The condition of his footsteps and general appearance. I never paid special attention—I just merely—it occurred to me then because I had heard conversation on the subject. Of course that is hearsay; you know when anybody is under investigation and under fire there is always more or less talk.

Q. Speak of your own observation, how many occasions would you say you had seen him on the streets of the city nighttime, or any other time when, in your opinion, he was intoxicated?—A. Well, I would not make an estimate, because it covers a period of several years—I would not estimate it—but several times.

Q. Have you ever seen the judge drinking?—A. No, sir; never.

Q. Have you ever had any business in his court?—A. Never, never, sir.

Q. Or any business of any kind with him personally or judicially?—A. No, sir; I never had any dealings with him, and have never spoken to him.

The Chairman. Are there any further questions of the witness?

Mr. Higgins. There has been testimony, Mr. McLean, that at times Judge Hanford, when he was on the street car will close his eyes, and, as some witnesses have expressed it, wobble his head—were those the things which you saw Judge Hanford doing on the car?—A. Well, it was only on that one occasion, and the conductor called my attention to him or I would not have paid special attention to him—I noticed it only that one time—I saw his head nodding and the conductor called my attention to it.

Q. What other things did you see Judge Hanford do?—A. Never—I never saw anything out of the way with him.

Q. Except the nodding of his head?—A. And that was just this one occasion on the car.

Q. And that was the only time?—A. That was the only time I ever recall seeing him on the car that way.

Q. What other times have you seen him that you thought he was under the influence of liquor?—A. Well, at nighttime—I don't know that I ever saw him in the daytime that way.

Q. What did he do then that indicated that to you?—A. Simply his walking and his general appearance, that is all.

Q. Just simply his general appearance and his walking?—A. His general appearance and his walking.

Q. You mean that he staggered?—A. Yes.

Q. Was he alone?—A. Yes.

Q. What time of the night was it?—A. Well, as I say, as I stated before, it was probably quite late at night—that would be the hour I would see him.

Q. Can you fix the time more definitely?—A. I don't know as I could. I know it was always at night when I noticed that.

Q. You can not state the number of times?—A. I would not care to estimate it, no, sir. It covers a period of several years and I noticed it on several occasions.

Q. Did you ever see him when you thought he was not under the influence of liquor?—A. Oh, many times.

The CHAIRMAN. Any questions?

Mr. HUGHES. Do you know him personally?

A. No, sir.

Q. Do you know anything about his personal habits?—A. I do not.

Q. Do you know anything about his peculiarities?—A. Only what I have read in the newspapers.

Q. Did you ever observe his peculiarity of walking?—A. Well, I have on those occasions I spoke of.

Q. Now——A. (Continuing.) Well, it would be different at different times. Those various times I spoke of would be at night time—I have seen him in the day time when I did not notice that.

Q. Well, you observed him in the day time.—A. If you see a man walking at different times and appearing to be under the influence of liquor it would perhaps make an impression on you if he was a man of prominence.

Q. I say, you have no knowledge of his personal peculiarities.—A. No, sir.

Q. You do not know him personally?—A. No, sir; I never saw him drinking.

Q. You do not know him except by sight?—A. Just by sight.

Mr. HUGHES. That is all. What is your present business?

A. Pharmacist.

Q. Where?—A. With the Smith Drug Co., at Second and James, in the Butler Hotel building.

Q. I understood you to say that you were in the postal service?—A. I was for eight years.

Q. Prior to being in the drug business?—A. Yes, sir; prior to being there.

Q. Prior to being or becoming a pharmacist?—A. Oh, no, sir; I had been in the drug business.

Q. Well, when were you in the postal service?—A. I think I was appointed—I think the date was in March, 1903.

Q. And for eight years after that you were in the postal service?—A. Yes, sir. I resigned on the 25th day of October, 1910.

Q. And since then you have been in Smith's pharmacy?—A. Yes, sir. But during the time I was in the postal service I did relief work, during all the time I was in the post office.

Witness excused.

The CHAIRMAN. Are there any other witnesses present who have been subpœnaed or required to attend? If so, please arise.

Mr. HUGHES. In view of the conversation this morning, I asked Judge Griffin to be here and he is here at this time.

The CHAIRMAN. What is the name?

Mr. HUGHES. Judge Arthur E. Griffin.

The CHAIRMAN. On what?

Mr. HUGHES. Well, he was the judge who presided in the Heckman & Hansen case. He was the judge who presided in the Sullivan case, and also has been intimately acquainted with Judge Hanford for many years.

The CHAIRMAN. You wish him examined?

Mr. HUGHES. We desire to have him testify.

The CHAIRMAN. Judge Griffin.

ARTHUR E. GRIFFIN, having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your name.

A. Arthur E. Griffin.

Q. You live in Seattle?—A. Yes, sir.

Q. Have for how long?—A. Since October, 1892.

Q. Are you at this time on the bench?—A. No, I am not.

Q. You have been on the State bench here?—A. Yes, sir.

Q. Of the superior court?—A. Yes, sir.

Q. When was that, Judge, and for how long?—A. From January 9, 1901, to January 11, 1909; eight years.

Q. What are you now doing?—A. Practicing law.

Q. During your residence in Seattle I assume that you have become acquainted with Judge Hanford?—A. Yes, sir.

Q. Ever since you have lived in the city?—A. Practically so.

Q. To what extent have you been associated with the judge?—A. Well, only in appearing before his court, and meeting him casually.

Q. Are you a member of any social organization of which he is a member?—A. I belong to the Arctic Club, and I have frequently have seen the judge there, but I could not say as to whether he is a member of the club or not.

Q. During the time that you were on the bench I suppose you saw him only on special occasions?—A. When meeting him on the street.

Q. You did not, of course, practice law while you were on the bench?—A. No, sir.

Q. And met him, doubtless, at some public functions or on the street?—A. Both, I would say.

Q. Now, give the committee an idea, Judge, of the opportunity you have had to associate with and observe the judge—A. Well, before I went on the bench and afterwards I probably had about the

average number of cases that have come before him for trial, in case of the average lawyer. I have seen him at public meetings occasionally, and I have seen him on the street and have seen him in his offices a few times—or in his chambers, rather.

Q. From what you have stated I assume you are not a member of the Rainier Club?—A. I am not.

Q. Have you at any time seen the judge drinking intoxicating drinks?—A. I never have.

Q. Have you at any time seen him when in your opinion he was under the influence of intoxicants?—A. I never have.

Q. Have you observed the habit which has been testified about, that the judge at times appears to be drowsy or napping or even sleeping on the bench while holding court?—A. I have read of that in the paper, but my own observations have been that I have seen him close his eyes while sitting upon the bench, and which I attributed to the fact that nearly all of the benches in this State, that I know of, are back against the wall and the light comes either directly in font or very near, and both sides, and from my own experience I know it is very hard on the eyes to sit for any considerable length of time in that position, and I attributed Judge Hanford's closing his eyes to the fact that the light was probably irritable.

Q. You speak of seeing mention of it in the papers. Do you mean during this investigation?—A. Yes.

Q. Or before that?—A. During this investigation. I never heard any charges against Judge Hanford that he used intoxicating liquors to any extent until I read in the morning paper of the charges that had been preferred against him by Mr. Perry.

Q. We don't care, as far as the Chair is concerned, to go into general reputation. I didn't ask for the fact you just stated.—A. Pardon me.

The CHAIRMAN. Are there any further questions on that line, gentlemen, with Judge Griffin? Mr. Hughes, do you wish to ask the Judge further?

Mr. HUGHES. Yes.

The CHAIRMAN. Do so.

Mr. HUGHES. One or two along this line: Are you acquainted generally with Judge Hanfo.d's personal pecularities, habits of carrying himself, walking, and so forth?

A. Well, I know that both he and his two brothers that I am acquainted with walk with their heads lower I think than the average individual.

Q. Well, is there anything unusual in their walk as to their keeping step? Did you ever try to keep step with them?—A. No, I don't——

Q. (Interrupting.) With Judge Hanford?—A. I don't know that I ever did. I know that he takes short steps.

Q. As to his appearance and manners, both in the court room and while sitting down or walking, you may state to this committee whether his personal peculiarities are such that those not familiar with him might think that he was under the influence of liquor or ill, or some other cause than a natural one, contrary to the fact?—A. I think that they might do so.

Q. Now, Judge, mention has been made in this case, in the examination of Senator Piles and of Mr. J. B. Howe, of the Sullivan case. Did you preside at the final hearing of the Sullivan case?—A. Yes, sir.

Q. Will you state briefly something about the Sullivan case as it was presented to you?—A. Well, the Sullivan case was a case in which the amount of property involved was very large; the actual trial of the case took 29 days.

Q. The final trial?—A. Yes; 29 days of my time when the attorneys were present. I also took a very considerable length of time after that in checking up the depositions that had been presented and the documentary evidence presented. The trial was almost entirely upon written depositions, and the most of the testimony had been taken in Ireland, by very old people.

Q. You mean testimony of very old people?—A. Yes.

The CHAIRMAN. Given by old people?

A. Yes, given by old people, yes. I remember in regard to the contest a number of things that appeared to me to be controlling as to the decision of the case, if you would care to have those stated.

Q. I don't think this committee cares to go into any particular consideration of that case—I apprehend not—simply as bearing upon the merit or demerit of it, that is all. In other words, there have been inferences and have been publications in magazines that might impugn that case—the merit of it, and your decision of it. I thought you might briefly state the facts to the committee.—A. Well, I never paid any more conscientious and painstaking attention to the trial of any case, and I never tried to decide a case any more accurately than I did that, and after I had rendered my decision I was thoroughly satisfied that it was right and would stand.

Q. And it was sustained, was it?—A. Yes, sir.

Q. Judge, you presided over the equity department at the time of the appointment of a receiver in the case of Curtis against Heckman & Hansen?—A. I believe not. I think that that was the first year I was on the bench, and I think I was in the criminal department that year.

Q. Well, the matter in 1902 came before you for hearing—the charges of Jerold Finch?—A. Well, I think the——

Q. And the approval of the report of the——

A. (Interrupting.) I think practically the entire Heckman & Hansen case in the superior court came before me, but I was not in the equity department during that time.

Q. Oh. Well, how was that case disposed of in your court—how was it handled?—A. Well, disposed of in the ordinary way. A receiver was appointed, and the only exception that I know of was that I appointed in that case the receiver that was recommended by Heckman & Hensen's attorneys, and that was a variation from my custom. I did so because the attorney represented in open court that he was a man—a thorough mechanic, a man who had charge of their yards, and that if anybody could save the estate that he could. I knew of nobody that I thought was competent to take charge of a shipbuilding yard. It appeared to me that it was a matter which should require some person of special knowledge in that business, and I knew of no such person that I could appoint, and upon their recommendation I appointed Mr. Larson.

Q. Some testimony has been offered here indicating that that property was sacrificed, sold for an inadequate price. Please inform this commission what knowledge or information came before you and what were the facts so far as you know them.—A. Well, as I remember—I might be mistaken, but as I remember there was no one objected

to the offers that had been received. The property was put up for sale at private sale, and there was, as I remember, no objections to the bids that had been received by the receiver; and while they may seem low as compared to present valuations, at that time I think that nobody contended before me that the property sold for less than its reasonable value.

Q. Were the values low at that time as yet in the city of Seattle?—A. Very low, indeed.

Q. That was before the beginning of the rapid increase of values of real property?—A. Yes; and following the depression—extreme depression here of 1896.

Q. Mr. Finch appeared before you and filed objections?—A. I think so.

Q. Was he given a hearing, as other attorneys are?—A. Yes, sir.

Q. Was there anything arbitrary or unfair or unjudicial in the disposition of that case before you, Judge Griffin?—A. Not that I know of.

Q. Any appeal taken from your decision in the matter?—A. Not that I know of.

Q. There was an application for a writ of prohibition of some sort, but that was not granted by the supreme court.—A. Well, I don't even remember that.

Q. Well, it would not necessarily come to your attention. I think that is all. That is all.

By Mr. McCoy:

Q. Who were the attorneys who recommended the appointment of a receiver in the Heckman & Hansen case?—A. I think it was Gen. Metcalfe. I think he represented Heckman & Hansen at that hearing when the receiver was appointed.

Q. If you will, I would just like to have you explain the jurisdiction or how the jurisdiction of your superior court is divided. My point is this: Has the probate division of the superior court exclusive jurisdiction of probate matters?—A. No; it has not.

Q. Any action of a probate character can go into any other department?—A. Any other department, any branch of it.

Q. Any question about a will can be raised in any one of the three branches?—A. Well, there is really only the superior court and the supreme court and the justice of the peace court in this State. The superior courts are courts of general jurisdiction and hear all matters of probate.

Q. Well, for instance, the contest of a will which had been admitted to probate, could that be brought in the equity branch of the superior court?—A. Yes; it would ordinarily be brought there before the judge presiding in the equity department at the time.

Q. That would be in the nature of an equitable proceeding?—A. Yes.

Q. And not having to do exclusively with what we know as surrogate practice—— A. (Interrupting.) Yes.

Q. (Continuing.) Necessarily.—A. I will state at the time the Sullivan will case was tried I was presiding in the equity department.

Q. What was the nature of that action that took so long? Was that an action to revoke the probate of the will or set aside the probate?—A. No; it came before me upon the matter of determining as to who were the heirs, the legal heirs, of John Sullivan.

Q. Sort of a probate of heirship then?—A. Yes.

Q. Did it come up in the shape of contesting the ownership of real estate in any way, or was it purely a question of ascertaining who the heirs were, just as a simple question, regardless of the property?—A. Purely a question to determine who were the heirs—the legal heirs and entitled to participate in the distribution, and at the close of the hearing I ordered a distribution of the estate.

Q. Personal estate?—A. Yes; all of the estate, real and personal.

Q. Your decision would affect the real estate as well as the personal property?—A. Yes, sir. There was very little personal property in the estate; practically all real estate.

Mr. McCoy. That is all.

By the Chairman:

Q. Was that proceeding by way of review of the former probate of the will?—A. No. There were certain matters that I had not passed upon; for instance, the claim of Marie Carrau, who was a claimant claiming under a nuncupative will. I didn't have anything to do with passing upon her claim. The matter that came before me was the proof of heirship and the distribution of the property.

Q. How was the probate of the nuncupative will set aside, if it was?—A. That was decided, I believe, by Judge Frater, and afterwards appealed to the supreme court, and his decision sustained.

Q. That branch of it was not in your court?—A. Well, it was all in the superior court, but not in the department at the time I was presiding.

Q. The branch over which you presided?—A. That had been decided prior to the time that I had anything to do with the case.

Q. So that the probate of the alleged will was disposed of before the case came before you?—A. Yes, sir.

Q. There was no will and the question then was as to what disposition would be made of the property of the deceased?—A. Yes, the persons who were legally entitled to share in the property; that was the matter that came before me.

Q. Was it an ex parte proceeding?—A. No, it was a hearing upon full notice and participated in by all of the claimants. An order had been published, which was signed by me, directing the claimants to come in at that hearing, and at that time, and that had been after the parties had gone the second time to Ireland and had taken the depositions in the hearing the second time.

Mr. McCoy. Then there were two sets of depositions taken at different times?—A. Yes, at different times.

The Chairman. Were they on different proceedings or the same proceeding?—A. The same proceedings.

Q. What was the reason for the second set?—A. I think that some of the contesting parties made an application to have the depositions taken, and that matter came up upon notice and hearing, and I think that the application was made by the heirs not represented by the ones that I decided in favor of. They decided to take further testimony, and I think that application was opposed by Mr. Howe; anyhow, I ordered or gave them permission to take the further testimony that they desired, and they went over there and took it.

Q. There are some features of the case still pending?—A. I think not. No, I think that my decision was appealed from and settled

by the supreme court—affirmed by the supreme court, and I don't think that there is anything pending at the present time. One of the heirs subsequently died—Mrs. Callahan—and her estate was subsequently probated.

Q. That would be an entirely different matter?—A. Yes.

Q. Except as her share might be involved in any pending litigation, if there were any.—A. Yes.

The CHAIRMAN. Any further questions with the judge?

By Mr. HUGHES:

Q. The first taking of the testimony in Ireland was at the instance of the heirs represented by Mr. Howe?—A. I think, Mr. Hughes, that came up before I went into the equity department, and I——

Q. (Interrupting.) I was just going to show that. There had been some testimony taken in support of the claim of those heirs, in earlier proceedings?—A. Yes.

Q. Which testimony by stipulation was used upon the final hearing?—A. Yes.

Q. But the adverse claimants, or some of them, applied to you for an order to take testimony in their behalf, and you granted that order, and testimony was taken the second time after the case was under your jurisdiction?—A. I remember Judge Winsor was one of the parties applying for commission to take the testimony the last time before me.

Q. The case was continued for the purpose of having an opportunity to take that testimony, and it was not heard and determined until after that last testimony had been taken in Ireland?—A. That is true.

Q. There were a large number of claimants, weren't there—a great many different attorneys representing different claimants at the final hearing?—A. I still receive letters asking who are the heirs of the Sullivan estate; and during the time that the hearing was on I think that on an average there would be at least three letters a day from different parties asking information in regard to the Sullivan estate.

Q. I did not mean to call out the inquiries made by various persons who imagined they might be heirs. I had reference to those who actually appeared——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Personally or by counsel, or both, and participated in that final hearing. There were a large number of them, weren't there?—A. Well, that depends on what you would call a large number.

Q. Well, a considerable number?—A. Yes; there was a considerable number claiming——

Q. (Interrupting.) The earlier history of the case was not before you as judge?—A. No, sir.

Q. The case, in its earlier history—I mean the nuncupative will; its first probate was before Judge Tallman, I think, wasn't it?—A. I think Judge Frater decided that.

Q. Well, the first probating, which was afterwards set aside and then a hearing had finally upon whether that was a valid will—the contest of that will, that was before Judge Frater?—A. I would not dispute you as to that, because I have not any definite recollection in regard to it.

Q. And some of the proceedings where it came before the court while it was presided over by Judge Bell?—A. I don't recollect whether it did or not.

Witness excused.

GEORGE W. FOSTER, having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your full name.

A. George W. Foster.

Q. I didn't catch the last name.—A. George W. Foster.

Q. Where do you live, Mr. Foster?—A. 208½ Thomas Street.

Q. In the city?—A. Yes, sir.

Q. How long have you lived in the city?—A. I have lived 42 years in this city.

Q. You might be called an old settler?—A. I am a pioneer, sir, of this city.

Q. How large was the city of Seattle 42 years ago?—A. Just a sawmill village; a very small village.

Q. And have you lived in it continuously since?—A. Not exactly, sir. I have been on the Sound all the time, and the last 20 years I have been mining in Alaska—26 years, but I have a home here most always.

Q. How long have you lived in Seattle continuously prior to this time?—A. Prior to this time?

Mr. HUGHES. You mean immediately prior?

The CHAIRMAN. Immediately prior to this time?

A. How long have I lived in Seattle?

Q. Yes; counting back from this time, how long have you been here actually?—A. I have been continually here, with the exception of a year or so at a time in Alaska, the last 26 years continuous—my family is here—make my home here.

Q. What is your occupation?—A. Mining, sir.

Q. Any particular kind of mining—precious metals, or coal, or what?—A. It is quartz mining, sir.

Q. Are you still actively engaged in that work?—A. Yes, sir. I have got a mine in operation there at the present time.

Q. How near to Seattle?—A. It is 800 miles, or about 700 miles to where the mine is.

Q. Are you acquainted with Judge Hanford?—A. Yes, sir; I am acquainted with him for over 30 years; personally acquainted with him and all his family; knew his mother before she died; know all of his children.

Q. To what extent have you seen the judge during the last 8 or 10 years?—A. I meet him most every time I am in Seattle. I sometimes stay here three or four months or six months. I meet him invariably on the street.

Q. Are you in any way associated with him in either business or social matters?—A. Only just a social acquaintance, sir; intimately acquainted with him, with the whole family.

Q. Have you at any time seen Judge Hanford drinking intoxicants?—A. I never knew or ever heard of that man to use any intoxicating liquor until I see it come out in this case at present. My wife, she lived there a year in his house before we was married, and she never knew of such a thing or heard of such a thing.

Q. Never mind about her, Mr. Foster. Let her tell her own story.—A. Well, that is a funny thing that you have those things come up.

Q. Have you at any time, yourself, seen the judge when he seemed to you to be under the influence of intoxicants?—A. No, sir; I never did. I understand they testified here that he was drunk on Decoration Day. Well, I spoke to him in his automobile there in front of the Arlington Hotel when the procession stopped there, with two children and the woman in the automobile.

Q. You mean Decoration Day of this year?—A. Of this year, sir; and he had——

Q. (Interrupting.) Have you any recollection of who it was that testified to that?—A. I only read it in the paper. I only came in here after that remark I see in the paper. That remark, I didn't like the proceedings of those things going on, to testify against an honest man like this.

The CHAIRMAN. Any further questions with Mr. Foster?

The WITNESS. The grandest thing I think I ever saw him do in his time in the court here was the time that he throwed out the Sullivan case out of court.

The CHAIRMAN. Are you a lawyer?

A. No, sir; I am not. I am just a miner and an everyday man.

Witness excused.

The CHAIRMAN. Have you any gentlemen present, Mr. Hughes, that you wish to call?

Mr. HUGHES. I suggest Mr. Powell.

The CHAIRMAN (addressing gentleman who came forward). Are you a witness?

Mr. BANTA. Yes.

The CHAIRMAN. Very well. We will let you get away. Step forward.

FREDERICK BANTA, having been first duly sworn, testified as follows:

The CHAIRMAN. State your name.

A. Frederick Banta.

Q. Have you been subpœnaed, Mr. Banta?—A. What you say?

Q. Have you been subpœnaed?—A. Yes, sir.

Q. When were you subpœnaed?—A. Yesterday.

Q. Where do you live?—A. I live at Bremerton.

Q. What is your business?—A. I am a ship joiner.

Q. Following your trade?—A. At the present time in the employ of the Navy Department.

Q. Where do you work, at the——A. (Interrupting.) At the navy yard.

Q. (Continuing.) at the navy yard there?—A. Yes, sir.

Q. How far is that from here?—A. About 15 miles, I think they call it.

Q. By water?—A. By water; yes, sir.

Q. Are you acquainted with Judge Hanford?—A. I am not.

Q. Do you know him when you see him?—A. I don't think I ever saw Judge Hanford but once and that was when he delivered the memorial address this year.

Q. Have you any personal knowledge one way or the other as to the judge's habits?—A. I have not.

Q. Where was this memorial address delivered?—A. It was delivered in the building they call the Coliseum, on Fourth Street, I believe.

Q. What time in the day was it?—A. Well, I judge it was along about 12 o'clock; in that neighborhood.

Q. Did you speak with him then?—A. I did not.

Q. Just simply heard him make the address?—A. Just simply heard him make the address.

Q. You are yourself a soldier of the Civil War?—A. Yes, sir.

Q. I have not any recollection, Mr. Banta, of any testimony as to the judge's condition on that day, but, to cover the question, if my recollection is not clear, I will ask you if on that occasion in your opinion the judge was to any extent under the influence of intoxicating liquor?—A. I don't think he was.

Mr. HUGHES. What is it?

A. I was not near him; I was back in the audience and he was on the platform, but I would judge from the way he conducted himself that he was sober.

The CHAIRMAN. Are there any further questions?

By Mr. HIGGINS:

Q. When were you summoned?—A. Yesterday.

Q. How?—A. By, I suppose, the bailiff of the court; he handed me this yesterday afternoon.

Q. Left that subpœna with you at the navy yard?—A. Yes, sir.

Q. How far is the navy yard from here?—A. Fifteen miles, they call it.

Q. This is your first day in court in answer to that subpœna?—A. Yes, sir.

Q. Do you know why you are summoned?—A. I don't.

Mr. HUGGINS. That is all.

The CHAIRMAN. Have you talked with anyone about the judge's condition that day?

A. No; I have not. I will state that I stop in town—I come to Seattle every Saturday night and go back Sunday, and this subpœna is marked "Antlers Hotel, Seattle, Wash.," and then "Bremerton Navy Yard." I might have talked with somebody in the Antlers Hotel about the case, about newspaper reports and such things as that, and perhaps they might remember my conversation——

The CHAIRMAN. Well, that is mere speculation.

A. That is all there is to it.

Mr. HUGHES. Mr. Banta, one question: Was there anything in Judge Hanford's address that indicated that he was intoxicated, either in delivering it or in the preparation of it when he was preparing it?

A. Nothing whatever, to me.

Mr. HUGHES. It was intelligible, clear, patriotic?

A. Yes.

Witness excused.

The CHAIRMAN. Are there any other gentlemen present who wish to get away? Mr. Hughes, have you anyone?

Mr. HUGHES. Yes; I suggest Mr. Powell. Mr. Powell and Mr. Turner were both on the committee of the bar which investigated Mr. Finch.

JOHN H. POWELL, having been first duly sworn, testified as follows:

The CHAIRMAN. State your name.

A. John H. Powell.

Q. P-o-w-e-l-l?—A. Yes, sir.

Q. You live in Seattle?—A. Yes, sir.

Q. What is your profession?—A. Practicing lawyer.

Q. For how long?—A. Twenty years.

Q. I didn't catch that.—A. Twenty years.

Q. Mr. Powell, you were a member of a committee appointed by a local bar association to investigate certain charges concerning Mr. Jerold Finch, were you?—A. Yes, sir.

The CHAIRMAN. Mr. Dorr, will you take the witness, or Mr. Hughes?

Mr. DORR. Mr. Hughes had better do it. I think he is more familiar with that than I am.

By Mr. HUGHES:

Q. Mr. Powell, will you go on in your own way and tell this committee what the proceedings were before the special committee of the bar, of which you were a member, and whose report has been introduced in evidence here as exhibit No. "46," and which report is now submitted to you [handing paper to witness]?—A. Well, that was 1904. That was about eight years ago. I can remember, in a general way, about it, but of course I can't remember all the details; I would not pretend to do that. As I recall it, Mr. Finch had made some charges in Judge Hanford's court in regard to some other—against some other members of the bar—Judge Ballinger, I think, and Gen. Metcalfe and Mr. Jones—Richard Saxe Jones, and I think Mr. Reynolds, and I think Judge Hoyt, the referee in bankruptcy; may have been others. There was a meeting of the local bar of that court, called I think by Judge Hanford himself; met in the court room.

Q. The Federal court room?—A. The Federal court room; and that matter was laid before that association, and I think as a result of that meeting that this committee was appointed. I am not sure now just what form it took, but I think it was a question as to whether proceedings should be taken to disbar Mr. Finch—I think that was the exact question—for making these charges, and the committee that was appointed was Mr. Hughes—Mr. E. C. Hughes, who is here before the committee—Mr. L. C. Gilman, Mr. John Arthur, Mr. L. T. Turner, and myself. I think that was in the latter part of July, I am quite sure that it was in the latter part of July, from the papers here, 1904. We held various meetings; I don't know how many, but several. We had the matter under investigation and advisement from the time of the appointment of this committee until the early part of September, when this report was filed. I remember distinctly of several meetings of the committee at which Mr. Finch was present for the purpose of telling the committee what his charges were and what evidence, if any, he had to substain those charges, and the committee itself had procured from the court the files in these various Heckman & Hansen proceedings and we had them; went into them very fully.

Q. We had also the evidence, did we not, that had been taken before Judge Eban Smith?—A. Yes. Yes, there had been some——

Q. (Interrupting). That is, so much of it as had been transcribed?—A. There had been some investigation, I think, of these charges that

Mr. Finch had made before Judge Eban Smith, who was at that time the United States master in chancery, and we had that before us, as I recall it. Well, after we had heard everything that Mr. Finch had to say, and had gone through those papers and examined whatever he had in the way of evidence, we then had before us the other parties—I think we took them one at a time, that is my recollection of it—we had Mr. Jones and Gen. Metcalfe, Judge Ballinger, Mr. Reynolds, I think—I don't have as distinct a recollection of Mr. Reynolds, but I think we had him—and after we had found out everything we could about it that any body could tell us and derived all the information we could from every source that was available, why, we made this report that is filed here. Certainly everybody who had any evidence to offer had a full opportunity to offer it on any of the things that the committee was investigating.

Q. State to the committee how carefully and fully inquiry was made of Mr. Finch on each of the different occasions when he appeared before you to explain his charges, and upon what he based them, if anything.—A. Well, the fact is that there was more than ordinary care taken, the committee really evinced solicitude to see that Mr. Finch was given every opportunity to disclose everything that he had, if he had anything to substantiate his charges. I think there were at least three meetings of that committee at which nobody else was present except the committee and Mr. Finch, so that he would be entirely free from any embarrassment whatever to disclose everything that he had. The committee went into it just as fully as it was possible for us to do. I don't know anything more that I could say about it than that.

Q. When asked what was the evidence upon which he based any of his charges, do you remember what his testimony was before that committee?—A. It would be impossible now, Mr. Hughes, for me to remember with any degree of particularity about that. Of course there were these court records. I do remember this, however, that a great deal of—he relied a great deal upon statements that had been made to him by Mr. Hansen, or Mr. Heckman, not Mr. Hansen—Mr. Heckman; I remember that very distinctly.

Q. Do you remember whether investigation was made as to the credibility and reliability of Mr. Heckman as the source of such information?—A. Yes; there was. I don't have a very distinct recollection, though, as to what those investigations were, but I do remember that there was some investigation made of Mr. Heckman's reliability.

Q. And what was the result of it?—A. Well, it was not favorable to Mr. Heckman.

Mr. McCoy. Mr. Heckman is dead?

A. I can't say as to that, and I don't know whether he was dead at that time. I never saw the man in my life to my knowledge. Of course we were not investigating Mr. Heckman at that time; we were simply trying to find out what basis there was for Mr. Finch's charges against Judge Hoyt, the referee in bankruptcy, Gen. Metcalfe, and Mr. Jones and others, to see if we could find any basis for his charges, and also to determine and recommend what action, if any, ought to be taken in regard to Mr. Finch, or against Mr. Finch in the matter.

Q. The investigation, so far as it affected Mr. Heckman, only related to what basis there was for any charges that were made?—A Yes.

Q. Or what basis in truth or fact there was in any charge?—A. That is all.

Q. Mr. Powell, who was Eben Smith?—A. Judge Eben Smith as I—I think he was master in chancery here for——

Q. (Interrupting.) Appointed by Judge Sawyer, wasn't he?—A. I can't say as to that.

Q. At least he was master in chancery from the time you came here?—A. He was that when I came here.

Q. And down to his death?—A. And down to when he died, which was about, I would say, five or six years ago.

Q. It may be of interest to this committee to know what was the standing and character of Judge Eben Smith as a lawyer and man.—A. Well, I don't think anyone stood higher in this community.

The CHAIRMAN. I don't think we ought to go into that. If you attempt to establish a good reputation for him, you must do it on the inference that it needs bracing, which I think would hardly be a proper inference.

Mr. HUGHES. I do it only because of the accusations that were made in the testimony of Mr. Finch; that is all.

The CHAIRMAN. Every presumption is in his favor, I think, Mr. Hughes, and if you go into it with one witness you would with all, and have you the time?

Mr. HUGHES. I presume not, unless you want to know. It might widen the scope of the inquiry, really.

Q. Mr. Powell, how long have you known Judge Hanford?—A. I have known him practically ever since I came here. I came here in 1890.

Q. Testimony of witnesses has been given before the committee of his appearance and actions, walk, etc., from which those witnesses expressed the opinion that he was intoxicated. Are you acquainted with Judge Hanford's peculiarities as to his manner of movement of walking and of holding his head, sitting in court or upon street cars, etc.? And if so, explain to the committee what his personal idiosyncrasies are.—A. Well, I have not had occasion to see him on the street cars very much, but of course I have observed him in other respects during the time that I have lived here, and of course there is no denying the fact that he has pronounced peculiarities. He has a pronounced peculiarity of walk; he has what you would call a broad walk and——

Q. (Interrupting.) Is his step a regular one, one with which persons walking with him can keep step?—A. No; it is rather a broad, jerky walk.

Q. How about his manner of holding his body, his head, in walking?—A. Well, his head is habitually well set forward. I think that is rather a physical peculiarity of the family.

Q. Well, in sitting—you have met him both in and out of court—what is his frequent habit as to head and facial expression, and eyes, and so forth?—A. Well, Judge Hanford's face is not one that takes on very much expression, and when he is—at least it does not very often—and when he is sitting on the bench he often sits with his eyes closed for many minutes at a time and——

Q. (Interrupting). Well, on or off the bench, is his physical habit one of apparent listlessness or apparent relaxation, physically I mean?—A. Oh, yes, yes. I have often—I won't say I have often,

but I have seen him on the train, for instance, whenever he would get an opportunity he would completely relax.

Q. Have you seen him close his eyes any at the court when he was sitting any length of time and nod?—A. Well, I think I have seen him sleep on the train, in a seat on the train.

Q. Did you ever see him in court sit with his eyes closed?—A. Oh, very frequently.

Q. With his head dropped forward, or back, his body apparently in a state of complete relaxation?—A. Yes; he is much more apt to sit with his head forward—that is, rather on his breast—than he is to throw it back against the back of the chair.

Q. What do you say to this committee whether at such times he has been in fact inattentive, as evidenced by the conduct of the case, rulings made, or other acts done by him judicially in the conduct of the case?—A. Well, I have never seen him when he was not paying attention, myself. I have seen him that way very often, a great many times, and whatever experience I have ever had in his court room he was paying attention to what was going on.

Q. What I want you to state is how you determined that he was paying attention when he was sitting relaxed with his eyes closed.—A. Oh, well, from time to time of course in the trial of a case or in the argument of a case it becomes necessary for the court to make rulings on matters that are coming up, or state to attorneys that he does not care to hear any further argument on this branch or that branch of the question before him, and he would do that from time to time as occasion offered, showing that he was following the drift of the argument and holding it in his mind. But I think everybody that has practiced before him has observed that same condition.

Q. You have met him at the club, have you?—A. Yes, yes.

Q. You have seen him drink intoxicants—that is, cocktails or beer or other liquors?—A. Well, I have seen Judge Hanford take drinks at the club. I never observed close enough to know whether it was beer, cocktails, whisky or what not, but I have seen him——

Q. (Interrupting). You have seen him at banquets, I suppose, too, haven't you?—A. Yes, yes, but I can't say that I remember whether he drank at the banquet or not. I don't know.

Q. You have seen a great deal of him in the last 20 years, so as to be well acquainted with his personal peculiarities, habits?—A. Yes, I think I have seen enough of him so that I know his habits and peculiarities.

Q. In the light of your personal knowledge of Judge Hanford's habits and peculiarities and idiosyncracies, state to this committee whether you have ever seen him when in your opinion he was under the influence of liquor; and if so, when and where?—A. No, I never have.

Mr. HUGHES. I think that is all.

By Mr. McCOY:

Q. Is Judge Hanford a very nervous man, Mr. Powell?—A. No, I don't think that he is. I could not say as to that. I don't think he is abnormally nervous. I think he is about the normal man in that respect.

Q. Mr. Powell, if it were true that a referee in bankruptcy having some jurisdiction of an estate about which there was a dispute in the

bankruptcy court. and about which there was also some dispute in the State court, should be the attorney for the receiver in the State court, or the bonding company on the receiver's bond in the State court, the controversy in both courts being pretty active and serious charges being made, what would you say of his conduct in occupying that dual position?—A. Well, I would not say anything unless I knew a great deal more about the facts than is implied in that question because——

Q. (Interrupting.) That is, you think that——A. (Continuing.) I would have to know more about it than that.

Q. You think that the old saying that a man can not serve two masters is a thing that an attorney can take a risk about?—A. No; not at all.

Q. Well, then, explain what you mean——A. Not at all.

Q. (Continuing.) As to wanting to know what the other circumstances were?—A. Well, it would not be necessary—it would not necessarily follow that his being a referee in bankruptcy would conflict with the fact that his firm was attorney, or he himself was attorney, for the bonding company that was on the receiver's bond. There might not be any controversy at all.

Q. That referee, we will assume, having closed an estate and recommended that the trustee be discharged, and there being a claim in the bankruptcy court that that was a wrongful thing to do, or, at any rate, that the estate ought to be reopened, so that the trustee in bankruptcy could claim assets from the receiver in the State court for whom this referee was attorney, would you say that there was anything reprehensible in his still continuing to act as attorney for that receiver?

Mr. HUGHES. Mr. McCoy, you have spoken of a referee. Haven't you meant receiver?

Mr. MCCOY. No; I am talking about somebody, I think his name was Hoyt, who was a referee in bankruptcy, and who, I believe, is said to have been attorney for the——

Mr. HUGHES. I thought you were confused about it. Mr. Reynolds was attorney for the receiver, and some testimony has been given that he was attorney for the bonding company which was surety upon the receiver's bond.

Mr. MCCOY. Is Mr. Finch in court?

Mr. HUGHES. I don't recall anything of that kind about Mr. Hoyt. I think you are laboring under a misapprehension.

Mr. MCCOY. There is some charge made by Mr. Finch that the referee in bankruptcy was acting in a dual capacity. You may be right about the particulars, but that charge is here.

Mr. HIGGINS. You have got the evidence of Mr. Finch in the court room, haven't you, Mr. Hughes?

Mr. HUGHES. Well, it has not been brought in this morning, and I did not bring my yesterday's copy up.

Mr. MCCOY. Well, I will ask my question in this way, and then we will ask the witness to come back if it is necessary.

Mr. HUGHES. We can find out what the record shows. The reason I interrupted—pardon me, I didn't mean to interrupt for any other reason than I thought you were confused, because I know he made the charge against Mr. Reynolds that he acted in a dual capacity, and I thought you had reference to that.

Mr. McCoy. I know he made that charge, but my recollection was that he did the other thing. Of course, I don't want to go off on an incorrect hypothetical question.

Mr. Dorr. My recollection is, Mr. McCoy, that he involved Judge Hoyt in that charge.

The Witness. I think you are correct about that, Mr. McCoy.

Mr. McCoy. Well, now, then, assuming I am correct in my supposition, do you think that there is anything reprehensible in a referee in bankruptcy taking any such stand in a matter as that?

A. Now, there has been so much interruption I have forgotten the first part of the question, I believe.

Question read.

A. (Continuing.) I think you mean there, do you not, that the referee is attorney not for the receiver in the State court but for the bonding company that was on the receiver's bond in the State court?

Q. Either the receiver or the bonding company while on his bond.—A. Well, I think it would present very different aspects whichever way it was.

Q. That is, you think—now, just let me understand you—do you think it would make a difference whether he represented the receiver or the bonding company?—A. Oh, yes; I think it would.

Q. And why; what difference would it make?—A. The bonding company has only got to answer for the fact that he will turn over the property to whoever is legally entitled to it. That is all.

Q. In other words, the bonding company has to be responsible for the receiver's default?—A. Yes; it is not a question—there is no interest to the bonding company who is entitled to the property, whether the receiver would have to turn it over to the trustee in bankruptcy or not.

Q. Just answer my question. We understand each other. The bonding company on the receiver's bond is responsible for the receiver's default, if any, isn't it?—A. Yes.

Q. What is the receiver responsible for except for his default?—A. Well, I don't think he is responsible for anything.

Q. That is———A. (Continuing). Except to obey the orders of the court.

Q. Yes; and if he does not obey the orders of the court, to the financial loss of anybody in the situation, then he is responsible financially, isn't he, for what the loss is?—A. Yes.

Q. And the bonding company is in exactly the same position, isn't it?—A. Yes.

Q. Very well. Now, then, if a claim is made in the bankruptcy court for a reopening of the case so that the trustee may proceed against the receiver, what is the difference whether the referee is attorney for the receiver or for the bonding company?—A. If he is attorney for the receiver, then he has to contest the question, or confess it, as to whether he as receiver ought to turn that property over to the trustee. He would have to try that question out in court. He could not try it on one side as referee and try it on the other side as receiver, but if he is only bondsman for the receiver he is only interested in knowing that when the order is made after determination of that question, that the receiver will obey that order and turn the property over to the man that the court says is entitled to it. That is the difference.

Q. Let us suppose that the trustee in bankruptcy establishes the fact that the receiver has received a certain amount of money or property and the receiver is ordered to turn it over and he fails to do it, who is responsible under those circumstances, and what is the responsibility?—A. If an order has been made by a court of competent jurisdiction, directing that receiver to turn it over to the trustee, and he does not do it, then he is liable on his bond and his bondsman is liable for his failure to do it.

Q. So that you think that a referee in bankruptcy who has attempted to occupy this dual position can decide, in advance, that perhaps the receiver will not be in default, and therefore if he is merely the attorney for the bonding company he can take a chance on that situation?—A. Well, I think that situation could exist. Of course, Mr. McCoy, I am not yet informed—and when I say that I say it in good faith, because I have not any idea at all—what it was that the bonding company needed an attorney for.

Q. Well, I don't care what they needed him for; I am putting a hypothetical question and getting your views about the situation.—A. I will be very glad to give them.

Q. Now, do you think that there is anything reprehensible in an attorney acting for two parties having adverse interests?—A. Oh, why, certainly there is. That goes without saying.

Q. If you had discovered in the course of your proceeding in regard to Mr. Finch, that after the receiver in the State court had been discharged, and if the facts were that the court discharging him had not allowed him anything for his fees for services as receiver, but that the Scandinavian-American Bank, which had been accused of a conspiracy openly in this matter, had paid the receiver some $2,000, or whatever the sum may be, for his services, would you have said that Mr. Finch had no prima facie case for charging a conspiracy?—A. Well, I can't tell you now what we would have done then if we had found those facts. I don't think they——

Q. (Interrupting.) I ask you what you would do this minute if you ascertained this to be the fact and you were now investigating Mr. Finch what would your advice be as to his having a prima facie case on which to base his charges?—A. Against whom?

Q. Against the Scandinavian-American Bank, or anybody else.—A. Well, if those were the bare facts, and that was all, I suppose he would have a right to complain of somebody.

Q. Suppose that an attorney who has been retained by one man subsequently receives the sum of or a check for $150 from somebody who was opposed to that man, and in making an explanation of what the money was for states that it was for the relief of the client whom I have first mentioned, who is said to have been in distress, and if upon the check appears the memorandum "Heckman & Hansen," or whatever you please, "John Smith, in settlement," and if it further appears that he kept that check, which he claimed was a contribution for the relief of a needy man, alleged to be in serious need, for a year and a half, would you say that a man who made the charge of the check having been received for some other purpose had no prima facie reason for making that charge, the man for whose relief the check was intended being in existence and right in the same city with the attorney who received it?—A. Prima facie evidence for making what charge?

Q. Making a charge that the attorney who received the check was acting for the opponent of the man for whom he was retained, the man for whom he was originally retained being the man who was alleged to be in need.—A. Well, I think that that would be enough to excite his suspicions, perhaps, and whether he would have prima facie grounds for making a charge would depend on whether or not he knew of any explanatory circumstances. It would depend upon what the real facts of it were, of course.

Q. I am assuming that that was in the case, that he would have some ground to——A. (Interrupting.) If that was all there was to it, of course he would have grounds to suspect.

Q. If an attorney who had been acting for certain clients subsequently acts for an opponent of those clients, and in a proceeding for the opponents—a legal proceeding, a suit—garnishees funds of his first client, the existence of wnich he could not have known except by virtue of his retainer for the first client, what have you to say to the right, prima facie, to make a charge against that attorney of unprofessional conduct?—A. Well, I don't think that would be proper conduct.

Mr. McCoy. That is all.

By Mr. Higgins:

Q. Did you find these facts to exist which Mr. McCoy has submitted in his hypothetical question in the investigation that you made?—A. Mr. Higgins, it would be absolutely impossible for me now, at the end of eight years, to remember what we found the evidence to be or what we found it not to be. There was a great mass of it there—this whole Heckman & Hansen business—which we went through from beginning to end.

Q. Did you have the record of the 800 pages of the testimonv taken in the Heckman & Hansen case before your committee?—A. Well, I can't recall that we had any particular number of pages, but I think we had—I am quite sure we had everything before us that there was in that proceeding.

Q. That is, the evidence taken before the referee?—A. Before Judge Eben Smith?

Q. Yes.—A. I think we had that.

Q. How much time, approximately, did you spend in the investigation of the charges?—A. Well——

Q. (Continuing.) In hours or days?—A. That would be impossible for me to state. We had quite a number of meetings. I should say the whole committee met six or eight sessions with witnesses before it; and then, of course, going through this record, we would do that largely ourselves.

Q. Are you able to tell this committee how many witnesses appeared before your investigating committee?—A. I could not do that either with accuracy. I can remember some of them, but whether there were others or not I don't know. I remember Mr. Finch, Gen. Metcalfe, Mr. Jones, Judge Ballinger, Mr. Reynolds. I can't say whether there were any others or not.

Q. Is there any other record of your action other than the report which you submitted to the bar association after you had concluded that investigation?—A. I am quite sure there is not.

Q. Let's see, that was to the Seattle Bar Association or to the King County Bar Association?—A. Well, I could not answer that without looking at it.

Mr. McCoy. It was to Judge Hanford, wasn't it—exhibit whatever the number is [handing paper to witness]?

A. Yes; it is addressed to Judge Hanford. I suppose that was for the reason that the bar meeting was called at his request. I think the committee was appointed by Roger S. Greene.

Mr. Higgins. Well, in the investigation which you made did your committee attempt to go into the issues raised in the Heckman & Hansen case and pass on them before reaching a conclusion?

A. No; only sufficiently to——

Q. (Interrupting.) Determine whether there was bad faith or not, or good faith——A. (Continuing.) To determine what ground there was for these charges of unprofessional conduct that Mr. Finch had made against these parties. We did not attempt to try the Heckman & Hansen case, nor to arrive at any determination as to the merits of that case.

Q. Did Mr. Finch make any complaint to your committee, or has he at any time, that he was not given full opportunity to present the charges?—A. I am quite sure not. I have no recollection of any such complaint, and I am certain that if he had wanted any more time he would have had it.

Q. Do you recall how long after you had heard the witnesses before you made the report?—A. No; I could not remember that now, Mr. Higgins. It is impossible.

By Mr. McCoy:

Q. Did you or any member of your committee, so far as you know, read this six or eight hundred pages of testimony before Judge Smith?—A. I certainly did not myself and I don't suppose that any other member of the committee did. It was simply there to be used as far as Mr. Finch or any other persons there thought it would be material to the inquiry.

Q. Now, in connection with your hearings, you had before you some of the parties who were accused by Mr. Finch—some of the attorneys?—A. Yes, sir.

Q. Was Mr. Finch notified that they were to come before your committee, and was he given an opportunity to be there and hear what they had to say and to suggest questions which you might ask them on cross-examination, or whatever you would call it?—A. I have no independent recollection of that, but I think I would be safe in saying that that was not the case.

Mr. McCoy. Will you let me see the report, please, and I would like to see the resolution under which the committee was appointed?

Mr. Hughes. You have it there [handing paper to Mr. McCoy].

Mr. McCoy. Thank you. I have in my hand Exhibit No. 45 and I am going to read a paragraph from it. It is quoted in the exhibit:

Resolved by this meeting of the bar of Seattle, convened by request of his honor, Judge Hanford, That after hearing the very full statement of all the matters in issue between Mr. J. L. Finch, as counsel on one side, and Richard A. Ballinger, James B. Metcalfe, Richard Saxe Jones, C. A. Reynolds, John P. Hoyt, W. A. Worden, Peter L. Larsen, Eben Smith, A. C. Bowman, and E. F. Fisher, it is the judgment of the bar that each and all of those gentlemen acted fairly in the entire proceedings involved, and are wholly free from blame, and that there is not a scintilla of evidence produced to impugn their motives, or their action, or to sustain any charges brought against them.

Were you present at the meeting at which that was adopted?

A. I think I was present at that meeting, although I would not be sure of that.

Q. Did you consider that as in the nature of instructions to your committee?—A. No; I don't think so. That is not my independent recollection of that.

Q. What do you think of it, Mr. Powell? I am going to ask you now what you think of that resolution under the circumstances?—A. Well, it would depend entirely on how full the statements made were.

Q. Well, then we will go a little further into it. After reciting that Judge Hanford called the meeting, and one or two other things:

> There was then read in the hearing of the meeting the following papers in the case above referred to, to wit, the motion of Mr. Richard A. Ballinger and others for the disbarment of Jerold L. Finch; the petition of Jerold L. Finch, in which charges of unprofessional conduct are made against Richard A. Ballinger and others; the report of Mr. Eben Smith, the United States master in chancery, to whom had been referred by your honor for investigation and findings, certain matters arising in the said cause above referred to touching the professional conduct of the said Jerold L. Finch, Richard A. Ballinger, and others; and the opinion of your honor confirming the report of the said master in chancery. After the reading of the documents above referred to and after some discussion, Mr. John Arthur moved the following resolution:

Then follows what I read a few minutes ago.—A. Yes.

Q. Now, I ask your opinion, as a man and a lawyer, what you think of the resolution that was adopted after what is recited to have taken place at that meeting?—A. I don't see anything wrong with it.

Q. Now——A. (Interrupting.) I am quite sure after your reading that to me that I could not have been present there. I don't remember any of that; I don't recall any of that.

Q. I am asking your opinion, regardless of where you were. I ask it of you now. You see nothing in it that——A. (Interrupting.) I don't see anything wrong with that.

Q. Yes. Now, I notice in Exhibit No. 46, which is the report of your committee, paragraph 4—I will read it:

> From the testimony before us we think that certain remarks made by your honor at the time Mr. Finch applied for an order requiring the Scandinavian-American Bank to produce its books may have induced the belief in Mr. Finch's mind that having taken the order he was then compelled either to maintain his charges or himself suffer disbarment. If such a belief existed in Mr. Finch's mind, which we think probable, it may afford some palliation of his conduct in further prosecuting the matter after the close of the hearing before the master. It would indeed be an unfortunate rule that a member of the bar preferring charges against other members must fully establish them on pain of disbarment, and we do not think that your honor intended to announce any such rule.

Well, I will read it all.

> If the charges made by Mr. Finch had been supported by any reasonable proof, or if the facts before him had after a proper investigation by him justified him in believing that they could be proved, it would have been his duty to promptly lay the matter before the district attorney. The persistency and ability which he has manifested in attempting to establish these charges would have been in that event as commendable as their misuse now is censurable.

Now, you say here, referring to some alleged statement of Judge Hanford that Mr. Finch would be disbarred if he did not prove these charges against these other attorneys "and we do not think that

your honor intended to announce any such rule." Now, I call your attention to this resolution, Exhibit No. 45, and quote:

The report of Mr. Eben Smith, the United States master in chancery, to whom had been referred by your honor for investigation and findings certain matters arising in the said cause above referred to touching the professional conduct of the said Jerold L. Finch.

And then follows the other names. Now, it was obvious, wasn't it, to the lawyers who passed this resolution that his honor, Judge Hanford, did intend just exactly what you say Mr. Finch may well have supposed that he intended, namely, that he was under investigation?

A. I don't know that I get your point, but I——

Q. (Interrupting.) Well, I will make it again —A. All right.

Q. (Continuing). If I can. Referring to the alleged remarks of Judge Hanford——A. Yes

Q (Continuing.) That if he did not prove the charges against Ballinger and others that he himself would be disbarred, you say:

It would be indeed an unfortunate rule that a member of the bar preferring charges against other members must fully establish them on pain of disbarment——

A. Yes.

Q (Continuing:)

And we do not think that your honor intended to announce any such rule.

Here the report of the meeting called by Judge Ballinger says that the matter referred to Eben Smith was the professional conduct of Jerry L. Finch.

Mr. HIGGINS Called by Judge Hanford, you mean.

Mr McCOY. What did I say?

Mr. HIGGINS Judge Ballinger.

Mr. McCOY. Correct it Judge Hanford, I meant.

A. That is the thing that this committee, of which I was a member, was to investigate——

Q. I know.—A. (Continuing) Was Mr. Finch's conduct.

Q. I know it was that that you were supposed to investigate, but when you did investigate and made your report you said that the judge did not intend to announce that if Mr. Finch did not make good he would be disbarred himself; that is what you say in your report, isn't it?—A. No; we didn't say that.

Q. Well, read it.—A. We say we don't think he intends to announce any such rule.

Q. Oh Well, then, you are differing with me on the question of whether he intended to announce any such rule or not.—A. Oh, no; here is what it means, Mr. McCoy—I was present in court when Mr. Finch got that order, and——

Q. (Interrupting.) No; I want to know——

Mr. HIGGINS (interrupting). I think the witness ought to be allowed to state.

Mr. McCOY. If you will just let him answer my question, then he can explain anything he wants to on your questioning. I want to know what that means in that report that you filed.

A. Well, this is what it means——

Q. (Interrupting.) What does it mean?—A. That we did not think that Judge Hanford intended, by what he said to Mr. Finch at the

time, to announce the rule that a man—that an attorney at the bar could not make charges against another attorney at the bar except upon pain of either substantiating those charges or being disbarred.

Q. Well, now, he did say to Mr. Finch that if he did not substantiate the charges he would be disbarred, didn't he?—A. He did in this particular instance.

Q. Very well. Then what you mean is that he said there was no such rule—or didn't intend to announce any such rule—but he intended Mr. Finch should be disbarred in accordance with such rule?—A. I don't know what he intended, but that is what he said, and what we are making clear is that we did not suppose he was going to announce any such rule of conduct for the bar.

Q. Mr. Finch didn't suppose that there was any such rule, but he supposed that he was going to have that particular thing done to him, from the statement that was made, that was all.—A. Well, that accounts for that; he was not disbarred.

By the CHAIRMAN:

Q. Your answers make the impression on me, Mr. Powell, that he was going to apply a rule to Finch which he would not apply to anyone else.—A. No. That is not what I mean.

Q. Is not his case exceptional?—A. That is not what I mean. Judge Hanford had stated that he would give Mr. Finch this order upon Mr. Finch saying that if he got that order that he would produce evidence that would be sufficient to disbar these other gentlemen. Judge Hanford stated to him at the time when he granted him the order, in substance that if he did not make good those charges he would disbar him. Now, what reasons there were in Judge Hanford's mind, what had gone before in the matter that would lead him to believe that Mr. Finch's charges were malicious or reckless, I do not know; but what we were saying there was that we did not suppose that the court was announcing a general rule that a man c uld not make charges against another man—another member of the bar.

Q. But you do not make any objection to his announcement of that measure by which to adjudge Finch, do you?—A. I didn't know anything about that.

Q. You practically say, or at least you leave it to be inferred, that you conveyed to the court the idea "You can do what you please with Finch, but we don't want you to adopt such a rule as that to be applied generally."—A. No; we say in the report there that in our judgment Mr. Finch's charges were not made maliciously and——

Q. But you don't——A. (Continuing.) And we don't say that he ought to be an exception to the rule, that a man can't make charges against another lawyer before the court without subjecting himself to the pain of disbarment if he does not substantiate them.

Q. Was it your purpose in your report to say to the judge, in the quietest possible way, "We think you made a mistake"?—A. Perhaps so.

Q. Sir?—A. Perhaps so.

Q. Well, can you put it stronger than that?—A. Well, personally, my own conviction about the matter was that it was unfortunate that he had attached that condition to the order which he granted.

Q. Why didn't you say so? Why didn't you speak out and say it, that "Your honor is wrong," that that rule was an intolerable

rule and could not be put up with by the bar?—A. I think he so understood it.

Q. Well, it is not in the language you used, is it, anywhere?—A. I think that is plain enough to anyone who does not have to be hit with a club.

Q. Will you point out the language in it that makes it so plain?—A. That last paragraph:

From the testimony before us, we think that certain remarks made by your honor at the time Mr. Finch applied for an order requiring the Scandinavian-American Bank to produce its books may have produced the belief in Mr. Finch's mind that having taken the order he was then compelled either to maintain his charges or himself suffer disbarment. If such a belief existed in Mr. Finch's mind, which we think probable, it may afford some palliation of his conduct in further prosecuting the matter after the close of the hearing before the master. It would indeed be an unfortunate rule that a member of the bar preferring charges against other members must fully establish them on pain of disbarment, and we do not think that your honor intended to announce any such rule. If the charges made by Mr. Finch had been supported by any reasonable proof, or if the facts before him had after a proper investigation by him justified him in believing—

Well, what I have read is the language I have quoted. I think that——

Q. (Interrupting.) I must have been hit with the club, Mr. Powell, because the impression the reading of that makes upon my mind, and the fair inference to be drawn from it as I see it, is this: That a rule is a condition laid down to be of general application; that things which do not come within the rule are known as exceptions to it. The bar in this report spoke of the rule, that is, the standard that was to be of general application, but they nowhere seem to criticize the particular exception which was applied to Finch here, and the inference to be drawn is, it seems to me, "We do not agree with the ruling you have made in the Finch case; of that we have nothing to say, but we do not want that to be established as a general rule or as a rule."—A. Well, of course it is all a construction of the language used there I have not any right to put any construction on it other than what it actually says in black and white, because I am only one member of the committee. I——

Q. (Interrupting.) You also state that——A. (Interrupting.) I have my own ideas of what it means.

Q. You also state that Finch was justified in believing that the judge meant just what he said, that if he failed to secure the disbarment of the gentlemen named he would himself be disbarred?—A. Yes; I think that is a fair inference from the language.

Q. Of course you would be compelled to admit that that language was not only false in principle but extremely unjudicial?—A. I think it was unfortunate that it was used.

Q. Do you agree with the characterization which I have given it?—A. Repeat that.

Q. That it was false and unjudicial?

Question read, as follows:

Of course you would be compelled to admit that that language was not only false in principle but extremely unjudicial?

A. No; I would not agree with that, because I am not——

Q. (Interrupting.) You do not agree with it?—A. (Continuing.) I am not sufficiently apprised of what had taken place between the court and counsel prior to the time.

Q. I am not talking of that, but the announcement by the court as to what he would do; and I assert of it that his announcement that if Mr. Finch failed to convict the gentlemen named he would be himself disbarred is an absolutely false principle, is it not, and would it not result in deterring anybody under any case from making such a charge?—A. Well, in its general application it is not the correct principle.

Q. And the language which he used was unjudicial, was it not?—A. That would depend, of course, as to whether this particular case was one which would take it out of that general rule.

Q. It was the announcement of a rule which you condemn, yourself. How could he make that announcement judicially?—A. It is not an announcement of a principle.

Q. What was it?—A. The court may have thought—Judge Hanford may have thought, and I presume he did—this matter had been before him a great many times, that these charges made by Mr. Finch were malicious and reckless. If he did, I would not say that it would be——

Q. (Interrupting.) He does not give any intimation of that——A. (Interrupting.) Well, I don't know. You see, I don't know.

Q. You are merely seeking for some extenuation of the language used when you say that?—A. Exactly.

By Mr. McCoy:

Q. How many times had this matter been before Judge Hanford when this remark was made?—A. I don't know, I say. It probably was, or I presume it was; I don't know how many times.

Q. The evidence is nothing of the kind.—A. Well, I don't know. I don't pretend to know.

Q. I will state what the evidence is to you, as I recollect it, and I ask Mr. Hughes to correct me if I am wrong about it. Mr. Finch, representing one at least of the bankrupts, applied to the court for an order opening a case in bankruptcy which had been closed, and made certain statements to the judge about certain attorneys at that time, I guess the second—it was the second time it had been before him; he got an order of reference to Judge Smith on those statements, and when they were before Judge Smith there was some question about the production of books, he could not get the production of books, and that it was when he came back to get an order from the court that these books would be produced in some way or other, that this matter took place in court. Now, then, those are the two occasions, as I recollect the testimony, when the matter had been before him previously. Now, what could there have been——A. (Interrupting.) I don't know.

Q. Well, now, let's assume that there was not anything previously happening that was in Judge Hanford's mind and that the only thing before him was the statement of Mr. Finch that if he could get those books he would produce evidence to disbar these other lawyers; assume that for the sake of the question. Now, what do you say about his conduct being judicial or unjudicial?—A. I think that would be erroneous.

Q. Well, that is not the point. It was clearly erroneous, you have admitted that. Was it judicial or unjudicial; was his demeanor judicial or unjudicial?—A. Well, of course, you mean one that is proper conduct for a judge to engage in?

Q. Yes.—A. Of course, it was a judicial act.
Q. Yes.—A. Well, no; I don't think it was.
Q. You think it was improper?—A. Yes, if there was nothing more than what you say.

At this time an adjournment was taken until 2 p. m.

AFTERNOON SESSION.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

FRANK A. PAUL, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee.
A. Frank A. Paul.
Q. Where do you live, Mr. Paul?—A. 403 Terry Avenue.
Q. How long have you lived here?—A. Two years and over.
Q. What is your occupation?—A. Attorney.
Q. When were you subpœnaed, Mr. Paul?—A. This morning.
Q. Have you practiced your profession elsewhere than at Seattle?—A. No, sir.
Q. Are you acquainted with Judge Hanford?—A. Not personally.
Q. Do you know him?—A. Yes.
Q. How long have you known him?—A. Two years.
Q. What has your opportunity been to observe the judge since you have lived here?—A. Well, I have argued a number of motions before him in the district and circuit courts.
Q. Have you had any other work in his court than the argument of motions?—A. Well, I have assisted in the trial of cases, but I never tried one alone so far.
Q. What opportunity had you to observe the judge elsewhere than during the time he was holding court?—A. I have seen him on the streets frequently.
Q. Anywhere else?—A. No, sir.
Q. Have you any social affiliations with him, in clubs or otherwise?—A. No, sir.
Q. Have you noticed any peculiarity in the judge's appearance and demeanor when holding court?—A. Well, it has seemed to me that he was not paying close attention to the testimony and the argument.
Q. What was he doing?—A. He was writing or looking around the room, or dozing.
Q. To what extent did that dozing go, as you saw it?—A. Well, I would only see him from time to time. I was not regularly in the court room, but sometimes he would doze 5 minutes, and sometimes 10 or 15 minutes at a stretch, it seemed to me.
Q. Was there any occasion that came under your observation when you had any proof as to whether he was dozing or not?—A. Well, I could not say that it amounted to proof. I argued a matter at a hearing in June, 1911, in which he seemed to be ignoring both sides—seemed to be tired or preoccupied.
Q. What made you reach that conclusion—give us the facts as you saw them as well as you can.—A. Well, they are not very distinct in my mind now, except that it was a hearing coming before the judge after the master in chancery had passed on a matter and

made a report. It was heard on the objections to the report of the master. The case was entitled the Title Guaranty & Surety Co. against the Seattle School District No. 1, in which there were several labor claimants who had claims for overcharges. It rather seemed to me, although I do not like to make it more definite, that the judge was not paying close attention to the objections and to the versions of the statements of facts that were given in the argument. Several times objections were made to the report of what had actually taken place at the hearing before the master and the objections were not passed on by the judge—he did not seem to hear them.

Q. What was done—did you continue the argument?—A. Well, my argument was a short one—I just finished and then sat around and listened while the other attorneys were arguing—it was finished.

Q. Was the business suspended at all?—A. No.

Q. During the proceeding?—A. No, sir.

Q. Well, what impression did the circumstance create on your mind as to whether or not the judge was cognizant of what was going on?—A. I do not feel that he could be cognizant fully of the entire facts.

Q. With reference to sleeping, what was his condition?—A. He dozed occasionally during that hearing. I don't think he was sound asleep, but I think he did doze.

Q. What time of day was it?—A. This was in the morning about 11 o'clock—from 10.30 to 12 o'clock.

Q. How long did the hearing continue?—A. The better part of the morning.

Q. Did it continue into the afternoon at all?—A. I don't think so.

Q. On any other occasion when you were either actively engaged in court or in court at all, and you observed anything of that character, tell it to us.—A. Well, I have frequently argued motions Monday mornings in the district court, and it seemed to me that the judge was dozing during the motion calendar.

Q. Could you describe, for the benefit of the committee, about what his attitude was and what the circumstances were which led you to come to that conclusion?—A. Well, I have a habit of watching the judge carefully during the hearing, that is all, and I watch any judge—he seemed to be writing—he may have been writing letters or making notes, I could not say from the jury box where I was sitting; but when he was not writing he never seemed to be regarding counsel; he never seemed to be looking at them, and so far as you could judge by eyesight, never seemed to hear them.

Q. Did anything occur which led you to conclude that he was listening—was there any question or objection on those other occasions than the first?—A. Well, I have heard objections and corrections of counsel repeated several times, so that they would catch the attention of the judge.

Q. Did they?—A. They did; when repeated a second or third time they would sometimes catch the attention of the judge.

Q. Have you during any of the trials before him noticed anything of that sort?—A. No; I don't think I have during a trial.

Q. If at any time you have seen Judge Hanford drinking intoxicants, you may tell us of it.—A. I never saw him drinking intoxicants.

Q. If at any time you have seen him when you thought he was under the influence of intoxicants, please tell it.—A. Well, in the spring of 1911, in company with Mr. Van Hurst, at the Butler Hotel,

the judge walked past and it seemed to me—he walked past through the lobby—and it seemed to me that he was either sick or under the influence of liquor—I would not attempt to say which it was.

Q. What was it that led you to that conclusion?—A. He had a slow, faltering step, and as he came down the steps into the Butler Hotel he seemed to be forced to grab the railing—grab the wall in order to get down. He came down one step at the time, placing both feet on each step and moved more slowly and casually than a well man or a sober man would have to.

Q. Have you seen him often on the street at other times?—A. Yes.

Q. What difference was there in his walk and step and appearance then and on other occasions when he seemed normal to you?—A. Well, I did not observe him very closely, but he seemed to walk more briskly than he did on the day I saw him at the Butler Hotel; he carried his head a little higher.

Q. From what you observed of him then at the Butler Hotel, what was your opinion then and what is your opinion now as to his condition?—A. Well, my opinion is that, anyone other than a Federal judge acting that way, I would have regarded as intoxicated—I would hesitate to apply it to Judge Hanford. His actions had all the evidences of a man who was either very sick or else intoxicated—slightly intoxicated.

Q. Well, do I understand you to mean that it is your opinion that he was intoxicated, but that you do not like to say so—is that the state of your mind?—A. Well, I could not swear positively, your honor, that he was.

Q. I am asking you for your opinion?—A. Well, I can not answer that more definitely, your honor; I can not swear positively that he was or was not, but he might have been and act that way.

Q. You have stated that if he was not a Federal judge your opinion would be he was intoxicated.—A. Well, that does not color my estimate of his actions, but I mean that I think the chances are less that the Federal judge would be intoxicated than anyone else.

Q. That you get from reasoning?—A. Certainly.

Q. But I want to know what you get from observation.—A. From observation solely, I should judge that he had been drinking—solely from observation.

Q. To what extent—to the extent of intoxication?—A. Well, you may say incipient intoxication.

Q. Have you seen him on any other occasion than that when you thought he was under the influence of some intoxicant?—A. I saw him about the same time on Cherry Street between First and Second Avenues when he walked very hesitatingly and might have been intoxicated.

Q. What hour of the day was it when you first saw him?—A. I only saw him once; he passed me as I was coming out of the Western Union Telegraph Co.

Q. I mean the occasion when you saw him at the hotel; was it the daytime or the nighttime?—A. Well, it was about half past 5 or 6 in the afternoon.

Q. And on the second occasion, can you tell the committee when you saw him on Cherry Street what hour of the day or night it was.—A. That was about the same time on another day.

Q. Was he alone on both those occasions?—A. Yes, sir.

Q. When you saw him at the hotel when you were in company with some one, did his condition cause any comment between you and your associate?—A. Well, it might be——

Q. I don't ask you what you said, but did you talk about his condition?—A. No.

Q. Do you know whether or not the man that was with you observed it?—A. Well, I could not say. We were busily engaged in conversation, and he was a Tacoma man, and I do not know whether he recognized the judge or not. If he recognized him he would have remembered the circumstance, probably.

Q. On the occasion when you saw him on the street, were you alone or with some one?—A. Well, I do not recall that I was with anyone.

Q. Where is Cherry Street?—A. That is the first east-and-west street north of James Street.

Q. How far from this building?—A. About seven blocks; it runs parallel to Union Street.

Q. In a southerly direction?—A. It is south of here; it intersects Third Avenue about seven blocks from here.

Q. Is it a thickly built-up portion of the city?—A. Yes.

Q. What direction was the judge walking in?—A. Well, he was walking from the west to the east—from Second Avenue to First Avenue.

Q. What was the nature of the ground with reference to being level or otherwise?

Mr. HUGHES. I do not like to interrupt you, but the witness is making an inadvertent statement. He said he was walking from the west to the east from Second to First Avenue. The latter part of his answer would be in conflict with the first, I think.

The WITNESS. Walking from east to west—pardon me—from east to west, and there is a slight grade from Second Avenue down to First Avenue—not a noticeable grade.

The CHAIRMAN. Was there anything in the character of the ground over which he was walking to account for the unsteadiness of his gait?

A. Well, there might have been?

Q. What?—A. Well, the grade is—a man who is not in perfect health and perfectly stable on his feet might possibly be embarrassed by the grade, although it is a very slight grade. I think you can give the judge the benefit of the doubt, in other words.

Q. Well, you are telling of it.—A. Well, he stopped several times, and it seems to me that unless a man had been drinking he would not walk in that way.

Q. Well, it is your opinion that at that time, Mr. Paul, he was under the influence of some intoxicant, and more or less intoxicated?—A. Well, rather less than more; yes, sir.

Q. Enough to make his gait unsteady?—A. Well, that would account for his gait; yes, sir.

Q. Have you on any other occasions seen him when you thought he was to any extent under the influence of an intoxicant?—A. Yes, sir.

Q. Have you any personal feeling of any kind in the matter?—A. No, sir.

The CHAIRMAN. Are there any further questions?

Mr. HIGGINS. What is your age, Mr. Paul?

A. Twenty-six.

Q. How long have you been practicing?—A. Two years.

Q. You have been a member of the bar two years?—A. Yes.

Q. What firm are you connected with?—A. Hastings & Stedman.

The CHAIRMAN. Mr. Hughes, do you wish to ask any questions of the witness further?

Mr. HUGHES. You spoke of being in court on motion days—were there many attorneys in court at the same time?

A. Always quite a few.

Q. Were there many motions disposed of at the times when you spoke of his being apparently dozing or nodding?—A. Yes, sir; there were from six to——

Q. Did he dispose of the motions by ruling upon them at the conclusion of the arguments?—A. I think so; not always the way I approved of, but he seemed to dispose of them all.

Q. You think sometimes that your knowledge of the law was superior to the judge's, did you?—A. I should not say that, Mr. Hughes.

Q. But he decided against you sometimes?—A. Well, against the firms that I was working for, and frequently in my favor.

Q. Against your motion—your argument?—A. Yes.

Q. Did that have anything to do with your thinking he was not paying full attention?—A. Oh, no.

Q. As a matter of fact, he ruled immediately upon the conclusion of the argument, and ruled clearly, so that the attorney could know exactly what was decided and make his record accordingly.—A. Well, he did not rule immediately, Mr. Hughes; sometimes there would be quite a little time elapsing.

Q. No more time than would indicate that he was reflecting upon the matter —A. It might be that.

Q. But when he ruled he ruled clearly and showed a comprehension of the questions which had been presented to him by his ruling, didn't he?—A. I don't think you can say that. He would either overrule or sustain the demurrer without passing on a number of the different points that had been raised during the course of the argument. He would not deliver any oral opinion, but he would simply decide it one way or the other.

Q. That is a very common th ng of the courts in all the courts.—A. Yes, sir, certainly; but I mean you could not judge from his decision whether he heard the whole of the argument or not.

Mr. MCCOY. Is it not the habit for Judge Hanford to rule up sharply, decisively and incisively, and instantaneously on the finishing of the argument?

A. Not always; sometimes he rules so quickly that it will take your breath away, and I think most of the time he is very firm, but there are times when he seems to be gathering his thoughts together after the motion is over—after the argument is over.

Q. Now, you have stated that he ruled occasionally in the way that you did not approve of; did you mean by that that you disagreed with him on the legal conclusion and the soundness of his conclusion?—A. No, I would not assume to do that.

Q. Well, what was it that you did mean?—A. Well, I meant that it seemed to me—it seemed to my immature mind alongside of his mature mind that he had not listened to all the points that had been

made on both sides. That was not true in my motions, except only one or two instances it seemed to be true, usually that in my humble opinion, that he was simply deciding the thing arbitrarily after it was over according to his best lights at the time perhaps, but not with reference to that particular argument; I think he missed the points that had been made during the arguments.

Q. You do not think your mind is so immature that you can not comprehend what is going on?—A. No; I mean that I do not like to sit in judgment on a matter of that kind after such a short period of practice; but I have felt that way and other attorneys have felt the same way and have spoken to me about it, that he was not endeavoring to follow the arguments closely; that was all.

Mr. HUGHES. So far as you know, the man in whose favor he decided thought he decided correctly?

A. No, I would not say that. I think that some of them felt that they had received a rather lucky decision, Mr. Hughes.

Witness excused.

J. C. ZONIG, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. J. C. Zonig.

Q. Where do you live?—A. I live in Seattle.

Q. How long have you lived in Seattle?—A. I have lived here continuously since 1896.

Q. Are you in any business or profession?—A. I am at the present time doing a little brokerage business—in the real estate business.

Q. And have you been in any other business while you lived here?—A. I used to be in the manufacturing tobacco business and manufacturing of cigars.

Q. Are you acquainted with Judge Hanford?—A. I am.

Q. How long have you known him?—A. I have known Judge Hanford since 1888, by sight.

Q. Have you any other than a sight acquaintance?—A. Only in a business manner.

Q. In what way, Mr. Zonig?—A. Why, I had at one time a suit in his court over which he presided.

Q. Were you plaintiff or defendant?—A. I were defending.

Q. How was the suit determined—in your favor or against you?—A. Against me.

Q. Did it involve very much money or property?—A. To my recollection it involved then, about as near as I can get at it, about $600.

Q. Was it a trial before a jury or before the court without a jury?—A. The jury was waived; it was before the court.

Q. Apart from seeing him on that occasion, have you had any other occasion or opportunity to see him while holding court?—A. Yes; I saw Judge Hanford occasionally.

Q. Under what circumstances; what would you be doing in the court?—A. This was out of court, I thought you said.

Q. My question, I think, was whether at any time than during the trial of a case you had a chance to see him in court?—A. No, sir.

Q. If you have had an opportunity to see him elsewhere than in the court, please tell us what it was and where it was?—A. I saw Judge Hanford very frequently.

Q. Where?—A. On the street. I met him a few years ago—I think it is just about two years ago—at the Savoy bar.

Q. Have you ever seen him during the nighttime in the city; and if so, please tell us of that?—A. At nighttime?

Q. Yes; or not at the nighttime?—A. Yes; I have gone out on the Broadway line and I have seen Judge Hanford on the car.

Q. Frequently or seldom?—A. A number of times; yes, sir.

Q. If on any of those occasions, Mr. Zonig, Judge Hanford appeared to you to be under the influence of intoxicants, please tell the committee of it.—A. Well, I seen the judge once; that was about 8 o'clock in the evening. I was going to make a call on North Broadway, and the judge was on the car and the car was very crowded, and he was sitting next to the end seat of the car.

Q. Which end?—A. The end seat.

Q. Which end, the front or rear?—A. To the front—front.

Q. Go on.—A. And when I boarded the car there happened to be a vacant seat right in front of the judge, and I sat in that seat.

Q. Were the seats crosswise or lengthwise of the car?—A. They were crosswise.

Q. Very well. Go on.—A. I noticed—in fact, I hadn't known or I hadn't recognized the judge until after I sat down—that he was sitting right immediately in the rear of me, on account of the very bad odor of liquor, and I looked around and I seen the judge.

Q. What was he doing?—A. Why, he was—he had gone sound asleep and snored and woke himself up, and that was about where the car turned at Broadway and Pike Street, or Broadway and Union, or Broadway and Pine——

Q. What is the situation at that place—Broadway and Union—do they cross each other or is there a bend in the street—you spoke of the turn?—A. The Madrona car goes one way on Broadway and this car turns on the corner of Broadway and Pine.

Q. Very well, go on and tell what happened or what you saw.—A. (Continuing.) And after he aroused himself, why, he evidently was rather choked and he spewed all over his coat lapel.

Q. Do you mean vomiting?—A. Well, I don't know just exactly—no; I don't think that he particularly vomited, but he had a big handkerchief, and I know that he mussed himself to quite an extent, and as the car passed up on Broadway and people got off the car I moved to the opposite direction of the car—the opposite side, and as soon as there were more seats I noticed the ladies—the two ladies—there were two ladies sitting behind him, and they also moved to the opposite side of the car.

Q. Why did you move?—A. Well, it was a very bad odor.

Q. Of what?—A. Why, I should say whisky.

Q. To what extent was he noticed by others on the car on that occasion?—A. Yes, sir; there was a gentleman sitting right next to me; he was talking to me about it. It was too bad that the judge would get in such a shape as that.

Q. Do you know this man who talked to you?—A. Well, I have seen him quite frequently, but I don't remember who the gentleman was now. That is about—well, this was last fall. It was either in September or October.

Q. Which of you got off the car first?—A. The judge got off first.

Q. Did you notice—did he get off of his own accord or did some one call his attention to it?—A. No; he got off on his own account—of his own accord.

Q. Did you notice him as he went from his seat to the end of the car?—A. Yes.

Q. How did he walk?—A. Well, he was very unsteady; very much so; and the conductor helped him off the car.

Q. Have you seen him on the car on any other occasion when you thought he was under the influence of liquor?—A. No; I have not.

Q. Have you seen him elsewhere than on the car when you thought he was more or less intoxicated?—A. No; I have not.

Q. On the occasion you speak of, when you saw him at the Savoy bar, what was he doing?—A. Why, when a friend of mine and myself walked in there he was drinking a highball.

Q. Who was with you?—A. Mr. Drysdale; he is now at Vancouver, British Columbia.

Q. You may give us his full name.—A. D. Drysdale.

Q. What was his business at that time?—A. Why, he is a promoter; he is a—he has considerable stock in the Alaska Packers' Association, and he has a number of other interests.

Q. What was the judge's condition at that time with reference to sobriety?—A. Why, I thought it was all right.

Q. Have you told us of the only occasion when you saw him that you thought he was under the influence of liquor to any great extent?—A. Well, not to any great extent. I have seen the judge one afternoon, or rather one evening, on the corner of Fourth and Madison, right in front of the Young Men's Christian Association Building, coming from the Rainier Club.

Q. Did he come right out of the Rainier Club or come from where the club is?—A. He came from that corner. I imagine that he came from the club, because, of course, I noticed him going in there very frequently; I am in that quarter considerable.

Q. On this occasion, I understand you, you did not see him coming out of the club?—A. No, sir; I did not.

Q. Well, tell what you saw.—A. He was just a trifle unsteady; that is all. He absolutely—it was not very much noticeable in the gentleman.

Q. Were you near to him on that occasion?—A. Well, I was as close to him as I am to you.

Q. That would be about 10 or 12 feet.—A. Yes.

Q. Did you notice any odor of liquor on that occasion?—A. No; I was too far away from him.

Q. Well, what is your opinion as to whether or not he was partly intoxicated at that time?—A. I thought that he had a few more drinks than he probably ought to have had.

Q. Are you familiar with the judge and his manner of walking when he is sober?—A. Oh, yes; very much so.

Q. Was there any marked difference in his manner of walking on this occasion?—A. Yes; quite so.

Q. Than when sober?—A. Quite so.

Q. What was the difference?—A. Why, the judge, he moves about the street with a very steady step, and his step was not steady that day.

Q. What hour of the day was it?—A. It was toward the evening; toward evening.

Q. Passing on now to any other occasions than those two when you thought he was affected by drink.—A. No; I never have.

Q. Has the fact that you lost the suit in his court anything to do with your testimony?—A. Not at all.

Q. Have you any feeling against the judge?—A. Well——

Q. For any reason?—A. Well, I have no particular feelings against Judge Hanford—not Judge Hanford.

Q. You say you have no particular feeling. Now, if there is anything in your mind, let us have it, Mr. Zonig.—A. Well, I say this: That at that particular time, when this suit was pending, a party by the name of Henry Eman—I had furnished him with money and stock to run a cigar business in this town between Twenty-third and Twenty-fourth on Jackson Street. After he had been in business three months Mr. Eman was doing the selling of all them goods, and he was dealing direct with the Government, and three months later he appropriated $450—between $450 and $500 of my money, and he kept out of my road—at least I could not get sight of Mr. Eman for something like two weeks, and it was about the 15th of the month when I called on Mr. Eman in his room at 2 o'clock at night and I asked for some paper and I wrote out a bill of sale, together with a power of attorney, so that I could go to work and conduct that business that Mr. Eman had given bond to the Government for, and after I had run that business for about three months in that way, furnishing the report to the internal revenue department every month—it never had been questioned—but about the latter part of that year—that was in 1899—I was arrested, and it was held that I was manufacturing without first giving bond to the United States Government. I showed the collector this bill of sale from Mr. Eman, together with the power of attorney, which was one instrument; hence this suit in which the judge held that I had violated the internal-revenue law.

Q. And you thought you had not?—A. I pleaded not guilty. I could not see how in the world that could have been a violation there.

Q. What was the penalty imposed upon you?—A. I was fined $100; they confiscated what little property there was, and I was given three months in jail.

Q. Did you serve the time?—A. Yes.

Q. Now, taking all those things into consideration, I will ask you again are the statements you have made with reference to his condition on the street car and his condition when you saw him on the street affected by any feeling you may have as the result of this experience?—A. Not at all.

The CHAIRMAN. Any further questions, Mr. Hughes?

Mr. DORR. Mr. Zonig, is that the suit that you have mentioned first in your testimony?

A. Yes.

Q. You said that it involved about $600?—A. Yes.

Q. That was a criminal proceeding against you?—A. Yes, sir.

Q. You were indicted by the grand jury, were you not?—A. I was indicted—they indicted me at Spokane, if I am not mistaken.

Q. By the grand jury there?—A. Yes, sir.

Q. And then you were brought on for trial before Judge Hanford, and you waived the jury, you say?—A. Yes, sir.

Q. And you submitted your case to the court?—A. Yes.

Q. And the judge found you guilty?—A. He evidently did; yes, sir.

Q. And sentenced you, as you have stated. Now, that is the only experience you ever had in his court?—A. That is all the experience I ever had in any court; that is, in his court.

Q. In his court?—A. Yes.

Q. You have been very active in getting witnesses for this inquiry, haven't you?—A. No, sir.

Q. Haven't you taken any part in that?—A. No.

Q. Sir?—A. No, sir.

Q. Do you mean to say to me that you haven't been assisting in getting evidence here?—A. Mr. Perry asked me to pass the card up; that is all; and I passed his card up.

The CHAIRMAN. You did what?

The WITNESS. I passed his card up to the committee here.

Mr. HIGGINS. What Perry is that?

A. Why, I don't know; he was here the other day.

Q. Is it A. P. Perry, that testified here the other day?—A. I think so; I think that was it.

Mr. MCCOY. Are you sure of that? Isn't it John H. Perry, the lawyer here in Seattle?

A. Well, he testified here the other day; I believe it was the day before yesterday.

Mr. HIGGINS. You mean the man that testified here?

A. The man with the light suit on.

Mr. HIGGINS. That testified that he was a lumber merchant?

A. That's the gentleman.

The CHAIRMAN. Anything further?

Mr. DORR. Nothing.

The CHAIRMAN. You may stand aside.

Witness excused.

L. T. TURNER, being first duly sworn, testifies as follows:

The CHAIRMAN. Will you please state your name to the committee?

A. Leander T. Turner.

Q. You live in Seattle?—A. I do.

Q. You are a member of the bar here?—A. I am.

Q. And have been how long?—A. About 24 years—a little less than that, a trifle.

Q. You were a member of a committee in connection with Mr. Powell and some other attorneys to consider certain charges made against Jerold L. Finch, I believe?—A. I was.

The CHAIRMAN. Mr. Hughes, I think you might inquire, yourself, on that line.

Mr. HUGHES. Will you go on, Mr. Turner, and inform this committee what was done by the committee appointed by that bar meeting, of which you were a member, in the matter of the investigation of the charges made by Mr. Finch?

A. Well, we met first and organized by the election of Mr. Hughes as chairman and Mr. Powell, I think, as secretary, and we then communicated with Mr. Finch and arranged for meetings to be held, at which he should be heard. We requested from the court that we might have the files in the various cases involved in the charges, and they were all sent down to the office where the hearing was held, which was in the Bailey Building—I forget whose office—and we then called Mr. Finch before us and he made a very full statement of his

charges, and as he made them from time to time we inquired of him. He made some statements of what proof they were based upon, what he claimed was proof, and we asked him questions about it and asked him to state to us the proof that he had for the different charges that he made, and he outlined that as the hearing proceeded, and where it seemed essential to us, we examined the portions of the record to which he referred. Of course, I can not remember the details of the hearing.

We met a number of times; I think we held some evening sessions, protracting the meeting until midnight or after, but how many I do not know. I know that Mr. Finch was heard very fully and completely and until he was entirely through. He was permitted to bring before us everything that he thought material, and we examined everything that he submitted to us as material in connection with the hearing. Now, after we were through hearing him we heard some other witnesses, but at the present time, while I see that the report mentions certain of them, I only have an independent recollection of Gen. Metcalfe appearing before us, although I know that we did hear other witnesses, but I do not now recall what others from my own recollection. Then after we had heard the witnesses fully we made our findings and filed them in court.

Mr. HUGHES. Do you remember as to the fact of Mr. Finch coming back before us after we had examined the other witnesses?

A. I have that impression, Mr. Hughes, that we did have him, but it is so long ago that I would not be absolutely certain as to that, but that is the impression that I have.

Q. This action was taken in pursuance to the appointment at the meeting of the bar in the Federal court?—A. Yes, sir.

Q. And was submitted to Judge Hanford as the action—the unanimous action of the committee?—A. Yes, sir.

Q. Were there any disbarment proceedings ever instituted against Mr. Finch?—A. Not to my knowledge. There were certainly none as the result of our investigation, and if there ever were any I do not know of any.

Q. There were none instituted prior to that time or you would know it?—A. Not that I know of, except that there was some motion or something of that kind made prior to that bar meeting. I see in the report a reference to it—I had forgotten it at the time.

Q. There was a motion made before Judge Hanford?—A. Yes.

Q. And then the bar, instance of Judge Hanford taking any action—the bar was assembled at his request and the matter was submitted to the bar at the meeting which appointed us as a committee; is not that correct?—A. That is the way I understand it.

Mr. HUGHES. That is all.

Mr. MCCOY. I would like to see the exhibits in this case, please. [Examines exhibits.] Now, I want the report of the committee—well, here it is. I have it.

Mr. MCCOY. Mr. Turner, what did you conceive your duty to be as a member of that committee?

A. To investigate Mr. Finch's conduct in making the charges, to determine whether they were made maliciously or with no foundation, and as to whether, if they were, any action should be taken by the bar to disbar him.

Q. How long after you were appointed on the committee was it before the committee had any hearings?—A. Well, I would not undertake to say that.

Q. Well, can you give us a guess? Was it a week, or any considerable interval, or at once?—A. Well, I think it was a few days. We got together and organized, and there were a number of busy men on the committee, and I think it was a few days before we held our first meeting at which we heard any statement or testimony.

Q. Now, what did you, as a member of the committee, do before the first meeting of the committee to familiarize yourself with the facts in the case?—A. I can not remember. I do not imagine before the matter was taken up before us by Mr. Finch—I doubt whether I did anything to familiarize myself. I don't think I did, though I may have done so; I don't remember.

Q. Well, did you look through the 800 or so pages of testimony that had been taken before Judge Smith?—A. I did not.

Q. Did you look through the papers that had been apparently made use of at the meeting of the bar at which you were appointed a member of the committee?—A. I can not remember as to that, Mr. McCoy. I was at that meeting of the committee of the bar and I have an impression that some of those papers were read at that meeting, probably the findings of Judge Smith, who had heard the testimony, but I do not know now; I can not remember.

Q. The record altogether, including the charges and those papers referred to in the record of the proceedings appointing you on the committee and the typewritten record here before Judge Smith, were voluminous altogether, were they not?—A. They were.

Q. And Mr. Finch had been living with that case, so to speak, hadn't he?—A. Yes; day and night, I think.

Q. And you were satisfied at the time that there was not anybody else in Seattle who knew more about it than he did?—A. I certainly thought that; and we took his statement and asked him as to the evidence, and where he asked us to look at documents or portions of the record we did so.

Q. Did you conceive that he could be of any assistance to you in examining the hostile witnesses?—A. Well, I can not remember what my conception there was. If I may explain, Mr. McCoy. When Mr. Finch was through with his statement, it seemed to me—I can only give you my opinion as I understand it; that was the attitude of the committee—that he had not produced any tangible proof of wrong.

Q. Why did you call any other witnesses in for, then?—A. I do not remember, Mr. McCoy. There may have been some particular point that we wanted to clear up.

Q. And that is just the point that I am coming to. Did you conceive that he could have been of any assistance to you in clearing up any points in regard to which it might have been necessary, or was necessary, as you looked at it, to call other witnesses?—A. Well, I could only answer that from argument; that if we did not have him there, I presume the committee as a whole must have conceived that he was not necessary or that he could not have been of assistance, but I do not now remember whether he was there when we examined the other witnesses. It is eight years ago.

Q. I was going to ask you—was there any notice given to Mr. Finch that other witnesses who were witnesses against him were to be examined before your committee?—A. I can not remember, Mr. McCoy.

Q. The witnesses who were examined besides Mr. Finch were interested witnesses, were they not?—A. Well, they were not interested in one sense. Of course their case had been passed on before it came to us. We were simply passing on Mr. Finch's case. They were interested in the sense that they were involved in the charges that he was making.

Q. Do you imagine that that gives a man any interest?—A. I have answered your question—that it gives him an interest. I have no doubt that it would affect his testimony, but I did not understand what you meant by the word "interest" there.

Q. What is your recollection of whether or not your committee gave Mr. Finch any notice that these other witnesses would be heard before the committee?—A. I have no recollection on the subject.

Q. Do you happen to know anybody who has any recollection on it, any member of the committee?—A. Except that I heard Mr. Powell testify here this morning, and I should judge that his recollection was that we did not give him notice, but that is all I know.

Q. Is your recollection now refreshed by what Mr. Powell testified about?—A. No, sir; it is not. I have no recollection at all on the subject. I had a lingering impression on my mind that he was there when we examined the others, but I presume I am mistaken; I should not want to say one way or the other.

Q. Well, as you look back at the matter now, would you say it would have been a reasonable expectation on Mr. Finch's part that he should have notice that witnesses of that kind were to be heard before your committee—now put yourself in his place just for a minute.—A. If their testimony was to be considered against him, he certainly would be entitled to be heard before we came to find against him.

Q. Well, you didn't think and you don't think now, do you, Mr. Turner, that their testimony was expected to be in his favor?—A. I don't know about that; I don't remember what they were called before us for. Of course——

Q. Who were some of the people who were called? Was Judge Ballinger called?—A. Well, I don't know. I say I can only remember Gen. Metcalfe. I think probably Judge Ballinger was called.

Q. Gen. Metcalfe was involved in the charges, wasn't he, that Mr. Finch had made?—A. He was; yes, sir. Mr. McCoy, of course this is true; we were simply a committee to investigate to recommend; we were not trying Mr. Finch and had no power to disbar him or to do anything except to determine whether there was sufficient evidence to bring a proceeding against him where he would have ample opportunity to be heard.

Q. Then, why did you call him at all?—A. Because we wanted to get at the facts and he was the man whom we thought had evidence of the wrongdoing of these members of the bar, and we wanted to know whether he did have any such evidence in order to determine whether his charges were based on any evidence or made in good faith.

Q. You say that Mr. Finch made a full statement of his charges before you?—A. Yes, sir. Most of the time of the committee in hearing anybody was given to the hearing of Mr. Finch, nearly all the time. We spent very little time hearing anybody else.

Q. You knew what the charges were, didn't you; you had read them, as a matter of fact, in the papers?—A. Yes, sir.

Q. I mean in the papers in the matter?—A. Well, I suppose I have; yes, sir; it has been a long time ago.

Q. What did you examine those other witnesses about?—A. I can not remember, Mr. McCoy; I suppose about some phase of the charges, but I can not remember.

Q. Were you in court this morning when Mr. Powell was testifying?—A. Yes, sir.

Q. Did you hear all the hypothetical questions which were put to him at that time?—A. I think I did; yes, sir. I did not hear clearly all, but practically all.

Q. Would your answer to those questions be the same as his?—A. I do not like to testify in that way exactly, because I don't know.

Q. I don't want to ask you to, Mr. Turner, if you think it is not right—I can not remember all the questions myself now and I have not got the record.

The WITNESS. I can not follow them, and that is the reason.

Q. But if you are willing to swear on your recollection and testify that way I would like to have you do it—well, I will ask you a question. I would rather have the questions put to me.

What would you think of the conduct of a referee in bankruptcy who in a case where he had reported in favor of the discharge of a trustee in bankruptcy and where an application had been made to the court in bankruptcy to set aside the discharge, so to speak, and reopen the case in order that the trustee might appear against a receiver in a State court who claimed ownership of the property of the bankrupts, should appear in the State court action as attorney either for the receiver in the State court or the bonding company who was on the bond of the receiver?—A. I don't know as I grasp that fully.

Mr. McCOY. Read the question to him again. [Question repeated to the witness.]

A. Well, it is a little hard to express an opinion without knowing all the facts and circumstances. Of course I think it is unwise; in fact, I think it is unprofessional for any judicial officer having in charge any branch of a controversy to represent any party as an attorney on any question that may be in any way involved in that controversy; but of course I do not know just what was involved here.

Q. I didn't say what was involved; I asked you to take as an assumption that the things were involved which are stated in the question and to answer the question as it stands on those facts.—A. Well, how does the referee—on what kind of a hearing does he appear for either one or the other of the parties? What was the question involved in the place where he appeared as an attorney? Was it also involved in a hearing which might be had before him as referee should the case be reopened? If it was, then he ought not to appear; if it was not, it would be perfectly proper for him to appear.

Q. Well, for that idea alone—if the case had been reopened and if the trustee in bankruptcy had gone into some proceeding in the State court against the referee over there and had gotten a judgment against him, that would have been property in bankruptcy of that estate, wouldn't it?—A. Yes, sir.

Q. Now, does that clear away that difficulty so as to make it possible for you to answer the question?—A. Well, I am not—it does not seem to me that there are enough facts put there so that I can

necessarily say that it was proper or improper. If all the facts of the particular case were before me, of course, I could give my opinion as to whether in that case it would be proper or improper.

Mr. McCoy. Well, I do not know all the facts of the case, Mr. Turner, so I ask you to confine your answer to the facts stated or the supposed facts stated in the hypothetical question.

A. I do not think I can answer it without knowing what the controversy was in the State court and how it affected any possible controversy which might come before the referee if it went back to him to be heard, and I do not think anyone could give an intelligent answer without knowing those facts.

Q. In other words, you think that the referee in bankruptcy could take a chance——A. No, sir; I don't think he ought to take chances if there is any reasonable—or any chance of it becoming so involved that his duties as a referee would necessarily involve anywhere where he had appeared as an attorney.

Q. Now, a minute ago you said, when answering my question, that you had to know whether when it came back into the bankruptcy court it would be before that referee in some shape.

The Chairman. I think you are taking up more time than it is worth with it. I understood Mr. Turner to make a hypothetical answer in which he says that if an attorney representing one interest in the case also undertook to represent some other interest which might be adverse to that in the same case that that would be unprofessional conduct.

Mr. Turner. I think so, unquestionably.

Mr. McCoy. And if the facts stated in the hypothetical question states such a case as that, you would agree that such conduct was unprofessional?

A. Yes, sir.

The Chairman. Are there any other questions?

Mr. McCoy. Do you want me to stop?

The Chairman. Well, not on the line that you were going—I would rather you would think of something else.

Mr. McCoy. Do you think, Mr. Turner, that Judge Hanford had announced a rule that where one attorney makes charges against another attorney involving unprofessional conduct that the attorney who makes those charges must do so at his risk of having proceedings prosecuted against him?

A. I do not really think that Judge Hanford intended to announce any rule of that kind; he had expressed something of that kind in connection with Mr. Finch's case, but I think probably it was the result of a little impatience as to what had occurred a little while before in connection with the case; it seemed to me so.

Q. Were you in court when it was made?—A. No, sir.

Q. Then what had occurred to make him impatient?—A. I do not know.

Q. Then why do you think it was the result of something which you don't know anything about?—A. Well, I know something about Mr. Finch, and I heard a good deal about that matter when I was a member of the committee.

Q. In other words, you prejudged Mr. Finch?—A. No; I did not prejudge Mr. Finch. I devoted a great deal of time and attention trying to judge him correctly, and I did not judge him at all until

after we had heard the testimony, and then I thought that his tendency was to believe a great deal of wrong without any foundation in fact. In other words, I thought then that if there was a set of circumstances shown to him which was consistent with both innocence and guilt that he was sure to find guilt. He is naturally a suspicious man—that is what I thought, and I think so still.

Q. Do you think there was anything in that Heckman & Hansen case that had a tendency to arouse anybody's suspicions?—A. Well, undoubtedly there were some single facts taken entirely by themselves that would cause any careful attorney to investigate the facts as representing his client's interests. But I do not think that any man of good sound logical mind would have ever come to the conclusion on such an investigation that any of the charges which Mr. Finch made were justified. That was my conclusion. I still think so.

Q. What charge was it he made in regard to the payment by the Scandinavian Bank of $2,000 to the receiver after the case had all been closed and no allowance made by the court?—A. I do not remember that charge, Mr. McCoy. When I heard you speak of it this morning, it seemed new to me, but of course after eight years I could not be sure about that; I can not remember the details here; I can remember simply the general result, the conclusion.

Q. Did you hear my question this morning about the $150 paid to an attorney?—A. I did; I heard your question about it.

Q. Was there anything in that circumstance to arouse anybody's suspicion?—A. Well, that is one of the things which I think an attorney would investigate. Now, I can not remember what conclusion we came to about that or what Mr. Finch's statement was. Those details have passed from my mind. I can only tell you the general result that we came to after a careful investigation at the time.

Q. Well, if you are going to testify about a careful investigation that is your conclusion—can't you tell me something about the facts—the charges were serious, were they not?—A. The charges were serious. There is no question but what the charges were serious, but the evidence was not serious as we looked at it.

Q. Was the evidence of the payment of $150 at all serious?—A. Well, now, I can not remember the details connected with that matter at this time.

Q. Well, I think I stated them with substantial accuracy as they appear in this matter so far; there may be something on the other side that I do not know.—A. Well, I do not know; I do not even remember just what facts you stated to Mr. Powell; I remember you referred to that; I think you stated that a hundred dollars was paid to some one as attorney for the bonding company, or that the bonding company had paid a hundred dollars.

Q. It is the Scandinavian-American Bank, as I remember it, or some one connected with the bank. I do not know who it was—some one adverse to Heckman & Hansen that paid $150 to his attorney as a charitable donation because the man was in needy circumstances, and the person who got the check kept it for some year and a half without turning it over, and on the check was indorsed "Settlement of the Heckman & Hansen matter," as I remember it.—A. Well, that unexplained would be suspicious.

Q. What explanation did your committee get of that?—A. I do not know; I do not remember; I have no recollection of the details of that at all.

The CHAIRMAN. Any further questions?

Mr. HUGHES. I think, since Mr. Turner is on the stand, I would like to ask him one or two general questions about Judge Hanford.

The CHAIRMAN. Proceed.

Mr. HUGHES. You have been acquainted with Judge Hanford ever since you have been practicing at this bar?

A. I have.

Q. You frequently practiced in his court—that is, you frequently had cases in his court?—A. My Federal practice has not been large, Mr. Hughes, but I off and on do practice here.

Q. Have you ever known of Judge Hanford being intoxicated?—A. I never have.

Mr. HUGHES. That is all.

The CHAIRMAN. You may stand aside.

Witness excused.

Mr. HUGHES. I think before going further we ought to call Judge Hoyt, who was the referee in bankruptcy. His testimony will be comparatively brief, I think.

Mr. MCCOY. Mr. Finch will be back in court, I hope, pretty soon; and if it will not interfere with your course of procedure in the matter, I would like to have you wait until he comes here.

The CHAIRMAN. I think it would be eminently proper for him to be here when Mr. Hoyt testifies.

Mr. HUGHES. Very well, then, I suggest that you call Mr. Ira Bronson.

IRA BRONSON, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee.

A. Ira Bronson.

Q. Where do you live?—A. Seattle.

Q. You are a member of the bar here?—A. I am.

Q. And have been for how long?—A. Twenty-three years this September.

Q. What are your professional connections?—A. General law practice.

Q. Are you associated with others, or are you alone?—A. I am alone. I have clerks in the office, but I am practicing alone.

Q. And your firm?—A. Just my own name.

Q. Your business firm is Ira Bronson?—A. Yes.

Q. Have you at any time been connected with any other lawyers in a firm?—A. I had one or two associations a good many years back.

Q. What were they?—A. Hoge Clark, of Maine—now in the State of Maine—and D. B. Trefethen.

Q. He is still practicing here?—A. Yes, sir.

Q. And the connections you speak of were in Seattle?—A. All of them; yes, sir.

Q. Does your practice extend to the Federal court?—A. Yes, sir.

Q. To what extent?—A. Oh——

Q. A great deal?—A. Quite considerably; I suppose, perhaps, you might roughly say a quarter of it.

Q. How long has that been true?—A. I do not know how long the proportion has been just that, but I have practiced in the Federal court ever since I came to the Territory of Washington.

Q. And mostly before Judge Hanford?—A. Principally, yes.

Q. Of course you are acquainted with him?—A. Fairly so.

Q. Have you any associations of any kind with the judge other than appearing before him in court?—A. Absolutely none.

Q. No club connections?—A. Well, we are both members of the Rainier Club, if you call that a connection.

Q. For how long a time?—A. I have been a member of the Rainier Club, I guess, 14 or 15 years. I do not know how long he has been.

Q. Well, longer than that, anyway?—A. Yes.

Q. Do you meet him there occasionally?—A. Yes; once or twice a week, perhaps.

Q. Do you eat with him there?—A. No, sir; I never have.

Q. Do you drink with him?—A. I never have. Well, I attended one dinner with Judge Hanford, which was given to Judge Greene, of Mississippi, but not at the Rainier Club, but that was the only occasion I remember.

Q. You, of course, have observed the judge a good deal while he was presiding in court?—A. Yes.

Q. You have heard the testimony introduced here as to some peculiarities of his?—A. Yes.

Q. While presiding?—A. Yes.

Q. Have you noticed those peculiarities?—A. I have always noticed those peculiarities; yes.

Q. How did they appear to you?—A. Well, they appeared to me to be the result of personal idiosyncrasy and probably would be the result of a great deal of hard work. I have known of Judge Hanford being a late worker at night. I used to pass his office and see the light in his office many times and I know that he is a hard worker, because I know the work he has done in individual cases and the time that it has covered.

Q. You are a hard worker yourself, are you not?—A. Well, I have been at times. I am not as hard working now as I have been in years past.

Q. You know a number of other men who work hard and work nights?—A. Yes, sir; I have worked probably 12 or 15 hours a day for 20 years myself—that is, without taking account of vacations.

Q. Did it have the same effect on you that it appeared to have on Judge Hanford?—A. Why, I felt very often in the need of some rest, just as he has; certainly. The peculiarities that I have here referred to are those that I have seen—as he sits on the bench he will hold his eyes closed—but I never noticed that he was not ready to rule promptly when a matter came up that called for his attention, and I never noticed any attorney presuming on that apparent inattention.

Q. Was his appearance on those occasions such as to lead a stranger to him to conclude that he was asleep?—A. It might be so.

Q. Was that a frequent occurrence, or only seldom?—A. Well, I think that a considerable portion of Judge Hanford's time might attract a stranger's attention in that respect; he sits very quietly; he does not interfere with the trial, as a rule, unless he is called upon

to do so, and of course, as I say, he has that idiosyncrasy of character that is not common among the State judges.

Q. If at any time you have seen Judge Hanford when, in your opinion, he was under the influence of intoxicants, please tell the committee of it.—A. I think I can say with absolute truthfulness that I never saw Judge Hanford when I thought he was under the influence of intoxicants in any manner whatsoever, and I never heard of it until this proceeding.

Q. To what extent, if at all, have you seen him late at night?—A. I can not say that I have seen him on the streets late at night with any frequency at all. I used to pass his office down in the old Federal building once, perhaps, a week, or something like that, and see the light burning in his room, and that is what I refer to.

Q. And you assumed that he was there?—A. Well, I have known that he was there frequently.

Q. Well, when you did not know personally that he was there, you assumed it?—A. Oh, yes; I assumed that he was there when I saw the light there.

Q. And you assumed that he was at work?—A. Yes.

Q. For all you know he might have been asleep there?—A. He might have been many times, certainly.

Q. Do you know that he had a couch or a sleeping arrangement in the room—did you know that?—A. I am just thinking whether I would be willing to testify—I do not think I could feel sure enough of that to say.

Q. You had some connection with the committee, or the committee's work, in the matter of the disbarment of certain attorneys here, or, in the alternative, the disbarment of Mr. Finch, did you?—A. I was not one of the committee.

Mr. HUGHES. Wasn't it in regard to the meeting of the bar that Mr. Bronson's name was mentioned?

The CHAIRMAN. My question includes that; if he was not a member of the committee, he was connected with the matter.

A. I attended the meeting.

Q. And I believe you made the motion which resulted in the appointment of the committee.—A. I think not.

Q. Did you take any active part in it other than by your presence?—A. Well, I took this action: My action was looking toward the discontinuance of the proceedings against Mr. Finch.

Q. That was the meeting at which the report was made, was it?—A. And Mr. Finch was present, also.

The CHAIRMAN. Mr. Hughes, you are familiar with that and can shorten the examination.

Mr. HUGHES. I would simply suggest to the committee that he be asked to state what part he took in it and what occurred at that time, so far as his own actions are concerned.

The CHAIRMAN. You may act on the suggestion of Mr. Hughes and relate to the committee what part you took.

A. The action I took was a recommendation, or a suggestion, on my part to the meeting that I did not think Mr. Finch was mentally accountable for the real results that he had set in motion; that I did not think he had any comprehension of what he had done, or of the real facts that were involved in his making wholesale accusations, such as he had made without any substantial foundation, and that

I did not believe in disbarring a man who did not appreciate fully all that he had done.

Q. Well, ordinarily, would not that be a very excellent reason for disbarring him if he took such drastic action as that without due deliberation; would not that be a very serious offense?—A. No; I am willing to admit that perhaps it might call for an impartial cold-blooded disbarment proceedings, perhaps, but it would not involve him in the way of punishment—it would be more in the way of simply proving his being perhaps perniciously active to the detriment of clients. I think, perhaps—I still think, perhaps, that we made a mistake in not disbarring Mr. Finch on that ground. Now, I have no personal antagonism to Mr. Finch, though.

Q. In your reference to his mental capacity, do you want us to understand that you thought he lacked intellectual ability?—A. I think I remarked at the time that all the wheels in Mr. Finch's head did not track perfectly, and that expresses the idea. I do not think he is a man of sound common sense.

Q. You thought so then?—A. And I think so now.

Q. And you retain that opinion?—A. Yes.

The CHAIRMAN. Are there any further questions?

Mr. MCCOY. Was that the opinion, Mr. Bronson, which was entertained by most of those at the meeting, so far as you know?

A. I would not want to say, Mr. McCoy, that that was the opinion entertained by most of them, because I did not talk with them; that was the opinion that was entertained by some of them—some who spoke to me about it.

Q. You felt at that meeting that the charges that had been made were unjust, didn't you?—A. I certainly did.

Q. Are you a friend of Judge Ballinger's?—A. I think I am; yes.

Q. And of James B. Metcalfe?—A. Yes; casually so.

Q. And of Richard Saxe Jones?—A. No.

Q. C. A. Reynolds?—A. Only slightly acquainted with him.

Q. John P. Hoyt?—A. I am not a friend of Judge Hoyt's. I have a great deal of respect for him; I only know him in a casual way.

Q. You had not been a particular friend of Mr. Finch, had you?—A. No; nor have I ever had the slightest ill-will toward Mr. Finch at any time and have not now.

Q. And you made your mind up and had made up your mind, either before you came or when you reached that meeting and heard what was stated there, that the charges against the men in here were absolutely unfounded?—A. Yes, sir; I had arrived at that conclusion through various means of information.

Q. What sources of information had you availed yourself of to find that out?—A. I would not want at this distant time to attempt to rehearse all of the means. I read some of the matters; I heard the committee's statement. Mr. Finch was called upon to make any statement that he desired to make, and he declined to do so, or he did not do so.

Q. Do you think there was anything remarkable in his declining to make a statement under those circumstances?—A. Why, certainly; if I had made such charges as he had made against members of the bar of this county and did not substantiate them, I would have withdrawn them and apologized.

Q. But this was before he had any chance to appear before the committee.—A. No, sir; I think the meeting I refer to was after that time.

Q. Then I did not quite understand the testimony. Was that the meeting at which that committee was appointed [showing document to witness]?—A. My recollection is that this was after the committee had reported. I do not remember seeing this document which you have handed me; I do not know what it is, even.

Q. Well, won't you just glance it through and say whether that is the meeting that you had in mind?

Witness examines document.

Mr. McCoy. Was this the meeting which you referred to that you were at?

A. As I said before, I do not want to be understood as testifying absolutely with reference to certain details like that, but my impression is that it was a subsequent meeting, because I know Mr. Finch was present and my impression now is that there had been submitted then to the meeting a statement of the committee who had investigated this matter. I may be, of course, mistaken. It may have been this identical meeting.

Q. Now, Mr. Finch, stand up a minute.

Whereupon Mr. Finch stands up in the court room.

Mr. McCoy. Were you ever present, Mr. Finch, at any meeting of the bar or the bar association other than the one at which the facts in connection with which are reported in this Exhibit No. 45?

Mr. Finch. I was not. There was only one bar meeting and that is the one referred to there. I stated in my testimony that——

Mr. McCoy. Never mind.

Mr. Bronson. I would not contradict Mr. Finch in my recollection as to the meeting; that must be the meeting if he says so.

Mr. McCoy. Is it your recollection that at that meeting Mr. Finch said anything at all?

Mr. Bronson. No; my recollection is that Mr. Finch did not say anything.

Q. Don't you recollect he got up and said he did not want to say anything unless somebody urged him to?—A. Well, I would not want to say from my present recollection that he did not say that, but I do not remember that he did.

Q. Now, Mr. Bronson, let us assume that this was the meeting and the first meeting; would you have expected Mr. Finch to get up in that meeting and justify the making of the charges in regard to which some six to eight hundred pages of testimony had been taken without any preparation of any kind or description?—A. I will say this, perhaps I should answer your question first—I would not expect anyone at that meeting to get up and make an argument upon a statement of a case the facts of which were not in; but my impression is very strongly grounded that it was incumbent upon Mr. Finch, from the position which the meeting took then, to take some position relative to these charges, and that he declined or neglected to do so—would not do so. Now, exactly what the character of his position in that respect is I do not now recall. It is too far back. I only

bear in mind that he had let all of these charges come up to this point and that he refused to take any position which tended toward a substantiation of the charges so far as that meeting was concerned, and it may be that that was the reason that the committee was appointed.

Mr. McCoy. Is that other report here, marked "Exhibit 47"—now, I have here what has been marked "Exhibit No. 47," which appears to be, from a lead-pencil indorsement on it, "Action of the Bar Association of Seattle in re J. E. Finch." Will you look at that, Mr. Bronson, and say whether it was at any meeting where that was made use of that you appeared [handing document to witness]?

A. You mean whether or not I can identify this document?

Q. Well, just the meeting; it may be that that was adopted at some meeting which you had in mind, or possibly that was the only meeting which you attended.—A. It has reference particularly to Mr. Ballinger. No; I do not think so. Perhaps I had better read it a little further, though. [Reading document.] No; I do not think this was taken up, unless it may have been taken up before I came into the meeting, or something of that kind. Of course I have a general knowledge of the things that are stated here from hearsay and from reading the newspapers. I do not mean that I do not know anything about it; but I mean I do not think this was the whole substance, though.

Q. You have no recollection that that paper was before any meeting in which you attended and at which Mr. Finch was present?—A. No, sir; I have no recollection of this particular document.

The Chairman. Is there anything further with Mr. Bronson?

Mr. Hughes. Mr. Bronson, if you have known of Judge Hanford being intoxicated on or off the bench——

A. No; I stated, Mr. Hughes, I never had seen anything in my experience with Judge Hanford to indicate anything of the kind. I never heard of it until this proceeding came up.

Witness excused.

W. A. Simonds, being first duly sworn, testifies as follows:

The Chairman. State your full name to the committee.

A. William A. Simonds.

Q. Where do you reside, Mr. Simonds?—A. Seattle.

Q. How long have you lived here?—A. I have lived in Seattle over four years.

Q. What is your age?—A. Twenty-four.

Q. What is your present occupation?—A. I am reporter on the Seattle Times.

Q. On any special line, are you?—A. At the present time, do you mean?

Q. Generally, or now?—A. At this time I am on the Hanford investigation.

Q. And before that began were you on any special duty?—A. I was on the Federal run for almost a year.

Q. I hand you the issue of the Seattle Daily Times of July 5, 1912, and I call your attention to an article on the last column of the first page extending over to the first column of the second page [showing], and I will ask you to look at it—are you the author of that article?—A. Yes, sir.

Q. Are you the author of the headlines———A. No, sir.
Q. Which precede it in the newspaper?—A. No, sir.
The CHAIRMAN. The article will go into the record as an exhibit.

The newspaper clipping is marked "Exhibit No. 61."

The CHAIRMAN. I call your attention particularly to the introductory paragraph:

That he had been selected by the so-called "white-slave syndicate" as a victim because of his many rigid rulings against its traffic and that the charges caused to be filed against him in Congress by John H. Perry had been actuated by the same syndicate, to-day was the countercharge of Judge Cornelius H. Hanford after a long and careful gathering of evidence by the jurist and his attorneys.

A. What attorneys do you there refer to? I think that the judge could probably better answer that than I could.
Q. But the judge did not write this article—you wrote it—what attorneys did you refer to?—A. I refer to his attorneys—I did not mention anyone by name.
Q. Well, who had you in your mind when you wrote that?—A. I had no particular attorney in mind.
Q. The judge is represented in this proceeding by certain attorneys; are they the ones you intended to include in that statement?—A. No, sir.
Q. Well, can you tell the committee whom you did have in your mind when you wrote that?—A. I had no particular attorney in mind, as I said before.
Q. What is your authority for the statement contained in that paragraph with reference to the white-slave syndicate being the cause of the present investigation?—A. Do you mean for the statement that Judge Hanford believed it was the cause?
Q. The statement that you make here.—A. Yes—that he believed that it was the cause of the charges—that was the statement that is contained there.
Q. Is your statement based on the statement made to you by the judge?—A. It is.
Q. Have you any other basis than that for the making of this statement?—A. Purely such observation as I might have made myself and from things that I might have gathered outside, but the immediate foundation for this story was an interview with the judge.
Q. Was the use of the words "his attorneys" based upon what the judge said to you in that interview?—A. I gathered in the interview with him that he had not been alone in his investigation, but I did not know who else was associated with him, so I stated "his attorneys."
Q. You do not quite answer responsively to my question. Please read it to him.

Question repeated to the witness.

A. Was not my answer satisfactory?
Q. I do not think it is quite responsive. I would rather have a more specific answer.—A. I would not say that the judge himself told me that his attorneys had been assisting him; he did not use that specific language.
Q. Well, what was it he said that induced you to use that phrase?—A. He said nothing. It was the evident amount of material which he

had gathered that led me to infer that there had been other people engaged with him.

Q. You spoke about your own observation as a part of the basis for the statement with reference to some one connected with the white-slave traffic being behind this prosecution or behind this investigation; strike out that word prosecution.—A. Yes.

Q. You can give that observation.

Mr. HIGGINS. That is, you said, as I got your testimony, "things observed outside," I think the language was.

The WITNESS. Yes, sir; that was it. It was things that I observed during the time that I have been on this run.

The CHAIRMAN. Do you mean during the investigation?

A. No, sir; entirely outside this investigation.

Q. I think the committee would like to know what you have observed which led you to conclude, in whole or in part, that the persons in any way behind the white-slave traffic were also behind this investigation.—A. Well, I do not mean to infer that my own observations would lead me to that conclusion without any other thing in addition to it, but they would tend to corroborate it in my mind.

Q. I think the committee would like to have the observation—would like to know about what are the things which you observed which helped to produce and bring about that conclusion in your mind.—A. During the last year which I had been engaged in this circuit, particularly in the latter part, there had been more prosecutions begun under Judge Hanford against the white-slave traffic, I think, than at any other time. I know that the last grand jury returned more indictments against white-slave traffickers, or people engaged in that business, than any other Federal crime, and I know from records, as I have gone into them from time to time; I found where the judge at one time instructed the grand jury at about the same time that the white-slave act was passed—gave them carte blanche to go into the white-slave traffic wherever and whenever they could get any evidence, of their own initiative, and to prosecute it fearlessly. I know, also, that there has been published by an eastern concern a book entitled "Fighting the White Slave Traffic," and in that volume it states a good many instances of where girls have been brought into this country, taken under the interstate commerce in violation of the Federal statutes, and it states, among other things, in describing the white-slave syndicates, that it was devoting particular attention to Seattle and to the State of Washington and to Alaska, where it was supposed that the business of that character was most prolific. Judge Hanford has, in my mind, as I have observed, stood out prominently in the country at the same time in favor of the upholding of that statute and the prosecution of white slavers, and, whenever they have been found guilty, sentencing them as much as he believed they deserved, without any appearance of clemency whatever. I have seen a great many white slavers sentenced in his court, and I have heard remarks made by the judge at that time, and those facts led me to suppose—that is, outside of anything that the judge ever said to me—that if there ever was a prosecution attempted against the judge it would be brought, if by anyone, by people interested in the furtherance of the white-slave traffic; that would be among the principal observations that I have made outside of what may have been told me by the judge.

Q. The only observations you have told us of are your observations concerning the prosecution of so-called white-slave cases in the judge's court. All the rest that you have told us is mere inference, is it not, and not observation?—A. I told you of having heard of the instructions given by the judge to the grand jury.

Q. That was a part of what you heard in the court proceedings. All the other things which you have stated, I repeat, appear to me to be merely inferences and not observation.—A. Well, I should——

Q. (Interrupting.) Now, have you observed anything else than you have told us which justified the conclusions which you have reached—if you have observed anything else, tell us what it is, fully.—A. I have seen letters which Judge Hanford has received, both since this investigation began and prior to that time, which would tend to strengthen that belief.

Mr. HIGGINS. What were they?

The CHAIRMAN. Were they signed or anonymous letters?

A. They were anonymous letters.

Q. How many of them have you seen?—A. Between 5 and 10.

Q. Have you possession of any of them?—A. No, sir.

Q. Well, have you anything else than anonymous letters and the court proceedings which you observed as a foundation for your conclusion?—A. I was here in Seattle and working on the Times at the time that the newspaper which is actively engaged in prosecuting the judge began its attack on the House of the Good Shepherd, which is a rescue house for young girls.

Mr. HIGGINS. Won't you name that paper?

A. The Seattle Star. And I know that paper has been very active in its antagonism toward the judge. I know that that paper wantonly attacked that institution, which is devoted, as I said before, to rescuing young girls, and that might tend to influence me still further.

Q. Do you mean that the Star was interested in this traffic? Is that the inference we are to draw from your remark?—A. That was the inference that I myself drew from the attack. I would not want to accuse it of it.

Q. Well, was that a part of the observations and the reasons you had for writing the statement which appears in this article?—A. The only reason that I wrote the article was that the judge gave me the interview and I printed it as a matter of news.

Q. He gave you what inference?—A. What do you mean? What interview?

Q. You said interview, did you?—A. Yes.

Q. Well, was this statement you have made about the Star the result of the interview, or part of it?—A. No, sir; that happened some time before. It happened last fall, I believe.

Q. I assume that you know that the action of Congress in ordering this investigation to be made was based in an official way on a resolution by Congressman Victor Berger, and perhaps in part by certain statements filed with the Committee on Judiciary by Mr. John H. Perry, of this city.—A. I know that.

Q. You knew both those facts?—A. I knew both those facts.

Q. In your statement in the paper did you mean to include either of those as being connected with the white-slave traffic?—A. In the statement I merely included the parties that Judge Hanford had included in his statement to me.

Q. We ought to know who they are.—A. They are stated here, and John H. Perry is among them. It did not mention Mr. Berger, but I understand that Mr. Berger got his evidence from Perry.

Q. Well, have you observed any other facts which in any degree entered into your conclusion?—A. The only possible other fact that I might mention—and I could not say that I have observed any other facts of my own accord that I recall at this moment. It has always seemed to me that there must be some motive behind the prosecution, as I have studied it, by these people in Seattle who first began it, and it always seemed to me that this was a very logical explanation of their action.

Q. Your answer last made leads to the further question why it seemed so to you? And that is why I have asked you to give us every fact which made it seem so to you—we want every one.—A. It has seemed to me that there must necessarily have been some money behind the prosecution—it required money to engage the detectives.

Q. Just a moment there—is that pure inference, or have you observed anything which justifies this conclusion?—A. I have observed that the detectives have worked on the case, and I have observed that it is usually customary to pay them.

Q. But what connection is there between detectives working on the case and white slavers employing them to do it?—A. I hadn't got to that yet.

Q. Well, go on.—A. The fact that there is considerable money needed leads me to consider in my own mind who was furnishing the money, and it did not seem to me that the Seattle Star had the money to pay for the investigation.

Here there is a disturbance in the room.

The CHAIRMAN. Gentlemen, you will have to be in order or we will have to insist upon it.

A. (Continuing.) And I also did not believe that Mr. Perry had the money to conduct the investigation, and I looked for some one behind it, and in view of the conduct of the Star—of the attack on the House of the Good Shepherd and Judge Hanford's attitude toward the white slavers, in my mind, before I received the interview, I was convinced that part of the money had been furnished by people who were interested in furthering that traffic.

Q. That traffic, I might say, known as the white-slave traffic, can only be prosecuted in the Federal courts, and unless——

The CHAIRMAN (interrupting). That we know quite well—you state that as, in your belief, neither the Star nor Mr. Perry had the money to employ detectives, some one interested in the white-slave traffic must have done it—have you anyone in mind?

A. No, sir.

Q. Nobody?—A. Not a soul.

Q. Whatever?—A. Not a soul.

Q. Have you any other reasons—especial reasons based on observation—on the facts which are within your knowledge for the conclusion you reached—we want you to exhaust your information on that point?—A. If you will excuse me, I will look over the article for a moment.

Q. Very well.

Witness examines the newspaper article.

A. I take it that you do not care to have me go into any details regarding the white-slave prosecution which has been carried on in the Federal court?

The CHAIRMAN. You have given us that, I think, sufficiently fully.

A. There was one other matter—there was a letter. There was one other thing I have not mentioned. It was the letter which Judge Hanford received about two months before the investigation began, which had considerable to do with the white-slave idea.

Q. Do you mean by that that in your opinion it had considerable to do with the institution of this investigation?—A. It had considable to do with the opinion that I formed that the white-slave syndicate might have had considerable to do with the prosecution of Judge Hanford.

Q. Explain how—I will ask you first, was it a signed letter?—A. I do not recall. The letter is in the possession of the post-office inspectors. The letter accuses the judge of a very filthy crime—a crime that could only be considered as of the white-slave character, and it was—the letter was so filthy——

Q. What was the word you used; was so what?—A. Filthy—filthy and dirty, that no other mind than that of a white slaver could ever have written it. I say that because I have seen—I have seen letters—I don't know how many, but hundreds of letters, written by white slavers.

Q. And is it from your experience with letters written by them that you conclude this letter to which you refer was written by one of them?—A. Yes, sir.

Q. What knowledge had you that any of those letters were written by white slavers?—A. Merely by their character; their contents and their similarity to other letters that I have seen.

Q. Did it ever appear from any evidence that any of those letters to which you referred were actually written by persons engaged in that traffic?—A. By evidence—you mean in court?

Q. Yes.—A. The letters have never been used as a foundation for any charges—the judge's letters.

Q. Did you have other evidence outside of the court that they were written by white slavers?—A. Not those to the judge; no, sir.

Q. Have you any other reasons to give or facts to state?—A. I do not recall of any.

Q. As a foundation for your conclusion?—A. No, sir.

Q. Near the bottom of the column, on page 1, I read:

> Judge Hanford and his attorneys made the announcement of their belief only after they had acquired evidence which they plan to sift and draw together for presentation to the congressional investigating committee or to Congress as a body.

On what authority did you make that statement?

A. Which part of it do you mean?

Q. What I read to you.—A. But I mean which part of the statement? The announcement of their belief?

Q. "Judge Hanford and his attorneys made the announcement of their belief"—to whom did they make that announcement?—A. If I wrote that "Judge Hanford made the announcement of his belief," that would be more correct.

Q. But you wrote those words with clear knowledge of their meaning at the time, didn't you?—A. At the time I understood that Judge

Hanford's attorneys were familiar with the matter; I do not know that they are.

Q. Would not the fair inference from that language—the almost necessary inference—be that Judge Hanford and his attorneys had made this announcement in your presence or to you?—A. That would be a fair inference; yes, sir.

Q. Is that inference correct?—A. Hardly.

Q. Is is nearly?—A. No, sir.

Q. Did you hear Judge Hanford's attorneys say a single word on the subject?—A. No, sir.

Q. In the next paragraph I will read——A. (Interrupting.) Just a moment—would you consider his son his attorney?

Q. His son is a lawyer, is he not?—A. Yes.

Q. I would consider, yes, that he is acting as one of his attorneys in this proceeding; what of that?—A. His son was present at the time that the statement was made by his father.

Q. Did he participate in the statement other than by his presence?—A. He made some comments; I do not recall to what extent.

Q. In order to be perfectly explicit, and for the reason that I think it is due to the other attorneys that they should be named specifically—Mr. E. C. Hughes, C. W. Dorr, and Harold Preston have been acting here as attorneys for Judge Hanford—were any of those gentlemen present, or so far as you know did they know anything whatever of this matter?—A. So far as I know they knew nothing of it.

Q. The next paragraph reads:

> It is their belief—

Meaning, I presume, Judge Hanford and his attorneys—

> that the expenses of the Burns investigation concerning the jurist which still is going on, according to Judge Hanford's attorneys, are being paid indirectly by this syndicate.

Had you any authority whatever for writing that statement?

A. The authority for that statement which I had was the judge's belief that the expenses were being paid by them.

Q. When you used the phrase "It is their belief" to whom did the pronoun "their" refer?—A. It referred grammatically to Judge Hanford and his attorneys?

Q. Well, apart from the grammatical side of it, to whom did it refer—grammatically it referred to all of them?—A. Yes.

Q. But to whom in fact did it refer?—A. To Judge Hanford.

Q. It had no reference whatever, had it, to Mr. Hughes or Mr. Dorr, or Mr. Preston?—A. No, sir.

Q. And they had no knowledge that such thoughts or expressions or sentiments were being attributed to them?—A. Not that I know of.

Q. That is what I mean, of course, so far as you know.—A. Yes, sir; so far as I know.

Q. The article goes on to state:

> It is their contention that the attempt to remove the jurist by impeachment proceedings has been made because he is regarded as an enemy of the traffic.

To whom does the word "their" refer in that connection?—A. To Judge Hanford.

Q. And to him alone?—A. Just a moment, until I read it. I could not say that it referred to him alone. In this connection it refers to him alone.

Q. I am asking you about the word "their" now in the middle of the third line before the end of the first column.—A. Yes, sir. Well, in that connection, it referred to him alone.

Q. But any ordinary reader would conclude from it that it included the judge and his attorneys.—A. So I thought at the time.

Q. Did you intend deliberately to include the attorneys in it at that time?—A. I did.

Q. Well, has anything occurred to cause you to change your mind?—A. Well, I have since learned that the attorneys were not familiar with the facts which the judge himself had gathered.

Q. Did you at the time of the interview believe that they had the knowledge and the intention which you here attributed to them?—A. I inferred that no person in the position which the judge now holds would give out a statement under an inquiry like this without fully consulting his attorneys, and for that reason I placed it in there.

Q. When the statement was given to you was it known to the judge that it was for publication?—A. I believe so.

Q. Do you know whether the article as published was submitted to the inspection of the editor of the paper?—A. Before it appeared in the paper?

Q. Yes.—A. It was submitted in the usual form, to the city editor and from him to the assisting managing editor and possibly to the managing editor.

Q. And would that be the last person having the right to supervise it before publication?—A. Why, the editor in chief would have the right, and the managing editor would have the right, but it is very seldom exercised.

Q. Please give the names of each of those who would have the right to supervise it—to read it, and supervise it after you handed it in.—A. To begin with, the city editor; his name is William Chandler; the assistant managing editor's name is Chauncey Rathbun, the managing editor's name is Clarence B. Blethen.

Q. He is the responsible person, I suppose, and the one whose word ultimately goes?—A. I am not familiar as to the division of the prerogatives. The editor in chief is, of course, the head of the paper—I have not given his name yet.

Q. What is his name?—A. His name is Alden J. Blethen.

Q. Well, now, how many of those was the article submitted to to your knowledge?—A. The only person that I know of—the only persons that I know are the city editor and the assistant managing editor.

Q. Mr. Simonds, I want to read a little more of the article to refresh my recollection of it, and in the meantime I would suggest to you that you prod your recollection as much as you can and if you can recall any other facts or observations of yours on which your conclusion as to the first paragraph was founded you will have an opportunity to state them.

The CHAIRMAN. Now, Mr. Simonds, if you have any additional facts or observations to add to those you have given, you may do it.

A. I don't recall a single one.

The CHAIRMAN. Mr. McCoy, have you any questions?

By Mr. McCoy:

Q. Had you any intention, in making the statements in that article, of accusing John H. Perry of being in any way a backer of the white-slave trade?—A. No, sir.

Q. Had you any knowledge that it was he who was employing the Burns detectives, or at any rate who had seen them with reference to the employment?—A. I heard the manager state, on the witness stand, that Mr. Perry had employed them.

Q. And you thought that they were employed in the interest of the white-slave traffic?—A. I thought nothing as I wrote the article. I wrote merely what was told me.

Q. Why did you use Mr. Perry's name in the article at all?—A. Because the judge had the belief that Mr. Perry was involved.

Q. And you intended, in writing the article, to convey that belief to the mind of anybody who might see it, didn't you?—A. I intended to convey the belief, Mr. McCoy, that Judge Hanford had charged purely what is stated there in the paragraph. I myself had not accused him or convicted him of it.

Q. Is there any rivalry between the Seattle Daily Times and the Seattle Star?—A. No, sir.

Q. Has the Seattle Star ever taken occasion to criticize any of the owners or proprietors of the Times since you have been here?—A. Why, I presume so. I don't recall any specific occasion.

Q. You say you don't recall any specific time?—A. I very, very seldom read the Star.

Q. Now, there is no occasion to evade the question——A. (Interrupting.) No.

Q. (Continuing.) Mr. Simonds. Do you recall, or did you ever hear of any specific case in which the Star undertook to criticize the Times or its proprietor or owner or any stockholder in it?—A. I recall that at the time when the mayoralty recall was going on, that there were some criticisms made, but just what they were I don't recall.

Q. Criticisms of whom?—A. My impression is that it was the Times Printing Co., the concern that prints the Seattle Times.

Q. That is the only thing, is it?—A. That is the only thing that I recall. There may have been other things.

Q. So you never knew of any other occasion since you have been here during which the Seattle Star has undertaken to criticize the owner or proprietor of the Times in any way, shape, or manner, for anything?—A. As I said, I very seldom read the Star.

Q. Did you ever hear of any such?—A. No, sir.

Mr. McCoy. That is all I want to ask.

By Mr. Higgins:

Q. How long has the Star been published in Seattle?—A. I don't know the exact date. It is not very long, however.

Q. Does it belong to what is known as the Scripps-McRae syndicate?—A. Yes, sir.

Q. Which is an association of papers on the Pacific slope and in the Middle West?—A. Yes, sir.

Q. Do you recall ever seeing the Star take a pronounced attitude against the white-slave traffic?—A. I don't recall, of my personal knowledge. I recall having heard it discussed among Government officials, whose names I am not at liberty to give.

Q. You don't know what their attitude was, then, on that?—A. I know from that incident that the Scripps-McRae syndicate did take a pronounced stand against the white-slave syndicate several years ago—how long, I don't recall; three or four—and then suddenly dropped the whole matter. That was particularly noticeable in Spokane, when a woman writer on the Scripps-McRae syndicate—for the Spokane paper and, I believe, the Seattle paper and Tacoma paper—had gone as an investigator down into the employment agencies in Spokane, who were supposed to be carrying on that business under the name of employment agencies. This woman writer had gotten considerable evidence and appeared as a witness at that time for the Government; but the whole matter, according to the information I have received, was dropped by the Scripps syndicate.

Q. Is that all you care to say?—A. Yes, sir.

Q. Do you know that the Seattle Times, at the time or about the time, of the Dreamland Rink meeting, urged the impeachment of Judge Hanford and has been ever since?—A. Do you mean the Star?

Q. The Star; yes.—A. Yes, sir.

Q. Do you know, of your own knowledge, whether they did prepare a petition and urge signers asking for the impeachment of Judge Hanford?—A. I know there was such a petition circulated in the Star.

Q. And what do you know about what followed the meeting at the Dreamland Rink, if you know it of your own knowledge?—A. I know that the only thing that I can give you is evidence which has been given to me and can be offered here if necessary.

Q. Was the editor or owner of the Seattle Star brought into Judge Hanford's court as a result of what happened at the Dreamland Rink meeting?—A. Oh, I had something else in mind. Yes; the editor of the Star was brought into Judge Hanford's court.

Q. This young man that sits there, with the long black hair and with the glasses on, is he the owner of the Star or is he a reporter on the Star?—A. He is a reporter on the Star.

Q. What is his name?—A. Hurwitz.

Q. What is the name of the owner of the Star?—A. Le Roy Saunders is the editor. The Scripps-McRae people own it, I understand.

Q. It is owned by the Scripps-McRae people, which is a syndicate?—A. Yes, sir.

Q. You spoke of having something else in mind, Mr. Simonds, when I asked you about the Dreamland Rink meeting?—A. I know that the effigy of Judge Hanford, which was strung up at the Dreamland Rink meeting, was in the composing room of the Seattle Star before it was taken out to be strung up, and that the editor of the Star painted the face on the effigy.

Q. Do you know that of your own knowledge?—A. No, sir.

Q. How do you know it?—A. I have been told that by the gentleman who saw it.

Q. What is his name?—A. I pledged to him that I would not reveal it unless absolutely necessary. I can write it down and hand it to you.

The CHAIRMAN. That will be sufficient.

The WITNESS. That will be sufficient.

Mr. MCCOY. I suggest that if the witness has made the pledge, and as we can find it out from the owner or editor of the Star, we do not ask him to break his pledge.

The WITNESS. That would be much more satisfactory.

Mr. HIGGINS. You may write the name down and hand it to me.

The witness here wrote the name on a piece of paper and handed it to the chairman of the committee.

Mr. HIGGINS. Have you told now, to this committee, all of the facts and circumstances and conditions which led you to write the article which the chairman has interrogated you about?

A. Yes, sir.

Q. Both as to local conditions, as you have observed them——A. (Interrupting.) Yes, sir.

Q. (Continuing.) And as to your sources of information upon which you based the article?—A. Everything that I can recall.

Mr. HIGGINS. That is all.

By Mr. McCOY:

Q. Were you acting as a reporter in court during any of these white-slave proceedings before Judge Hanford?—A. I have for the last 10 months.

Q. That is, as a reporter for the Times?—A. Yes, sir.

Q. Did the Times report them fully?—A. The Times, as I recall it, printed everything that I wrote about it.

Q. What was its editorial position in regard to the matter?—A. Its editorial position was that the disagreeable features should not be put into the homes of the readers, and therefore they were left out.

Q. Well, what remained except disagreeable features?—A. Occasionally there was a story which could be told in such a way as to bring out the bad effects of the traffic, but——

Q. (Interrupting.) I don't mean so far as your reporting is concerned, but I mean if there is any crusade on the part of the Times, editorially, against the white-slave traffic?—A. I would have to leave that to the editor of the paper, I could not——

Q. (Interrupting.) Well, you read the paper, didn't you?—A. You mean the Times?

Q. Yes.—A. Yes; but I could not pretend to speak of its editorial policy toward it.

Q. What did you gather about it from reading its editorial?—A. I gathered that it is opposed to it.

Q. Very strongly?—A. Very strongly. The traffic known as the white-slave traffic; that, I presume, is what you refer to.

By the CHAIRMAN:

Q. Mr. Simonds, do I understand from you that there was any sort of connection between the Dreamland Rink meeting and the action which followed it and the white-slave traffic?—A. I didn't intend to convey that. What I intended to convey was that the—you mean the effigy in the Dreamland Rink?

Q. The whole proceeding; yes.—A. And the white-slave traffic. The only thing I intended to convey was that the Star had been largely instrumental in the Dreamland Rink meeting and had previously attacked the House of the Good Shepherd. Those were the only two facts that I put together.

Q. Do you want the committee—you want the committee to draw some inference from your statement, otherwise it would not be worth making—do you want the committee to infer from your statement of those two facts that the white-slave traffickers had something to do

with the Dreamland Rink meeting?—A. I would not say that they did not. I can't say that they did. I don't know.

Q. Could you name the persons who took a leading part in that meeting?—A I can name some of them.

Q. Do it.—A. Mr. Saunders, the editor of the Star; Mr. Erickson, a councilman; Mr. Fawset, I think he is Tacoma——

Mr. McCoy. What is he?

A. I don't know what he is doing, I think it is real-estate business.

Mr. McCoy. Was he mayor of Tacoma at one time?—A. I think so.

The Chairman. Who else?

A. Paul K. Mohr I can name.

Q. Who?—A. Paul K. Mohr. He is a baker at the county jail, I think. And there are others whose names have slipped my mind. Mr. Canfield, the business manager of the Star, was included in the arrest of Mr. Perry. I don't know that they took a part in the meeting.

Q. It seems to me I recall the names of some attorneys who were acting at that meeting. Am I right about that?—A. Turner?

Q. Yes.—A. I don't recall that.

Q. Horner?—A. Horner. Oh, yes; he was there, too.

Q. Do you recall any others?—A. I don't recall any others.

Q. Do you wish the committee to infer from your statements that those men, or any of them, were in any way connected with the white-slave traffic?—A. I would not myself accuse them of it; no, sir.

Q. I want you to make an explicit statement without ifs or ands about it.—A. You see, Mr. Chairman, you are assuming that I myself made the accusations contained in the article.

Q. I am assuming that you wrote the article.—A. Yes, sir; but I would not—I do not pretend to stand responsible for the accusations that are in it.

Q. And I am assuming that you know what it means to write and publish an article, and that you assume at least some responsibility for what you write and put in the paper.—A. Yes, sir. Well, I will assume the responsibility——

Q. (Interrupting.) Those assumptions are good, aren't they?—A. I will assume the responsibility that the judge believed that.

Q. Do you disclaim all further responsibility and publish it practically as his article, rather than your own?—A. No; I—I would publish the article as the judge's statement, told as I best could.

Q. But in the article, you write in the first person, practically, don't you?—A. I don't think so; no, sir.

Q. Well, waiving that and coming back to the question which I think you did not quite answer: Do you wish the committee to infer that the gentlemen whom you name as being active participants in the Dreamland Rink meeting were in any way connected with the white-slave traffic?—A. I have no such desire to—no desire to convey that inference at all.

Q. Well, do you by your answer mean to indicate that somebody else, whose information you are giving us, has so stated to you?—A. No, sir; not to my own knowledge.

Q. The reason I ask you is because of your connecting up the Dreamland Rink meeting with the white-slave traffic, which we have been discussing. I wanted to get you ideas about it quite clearly.—

A. Yes, sir. My idea was that it really started the prosecution; that was the only idea.

Q. Have you any further statement that you desire to make, Mr. Simonds?—A. No, sir; I have no statement that I wish to make.

By Mr. HIGGINS:

Q. When you speak of the prosecution, you refer to this present investigation?—A. Well, taking it all the way through. This investigation here is merely, you might say, the culmination of what came before it here in Seattle.

The CHAIRMAN. Are there any further questions?

By Mr. McCOY:

Q. Did Judge Hanford intimate in any way that he believed that Mr. Erickson and the other gentlemen whom you have named as being greatly interested in the rink meeting were in any way connected with or instigated by white slavers?—A. The only name that Judge Hanford mentioned to me was that of Mr. Perry, and that was the only name I used, I think, in the article.

Q. Did he mention his name as, or express his belief, that Mr. Perry was connected in some way with that traffic or was acting in its interests?—A. Yes, sir; that was his belief. I don't know that he could prove it.

The CHAIRMAN. Any further questions with Mr. Simonds, gentlemen?

You are entitled to claim your attendance fees, Mr. Simonds. That is all.

Gentlemen [addressing counsel], I think it is substantially agreed among us we will hold an evening session this evening. In view of that, would there be any objections to adjourning a little bit earlier?

Mr. HUGHES. I think it would be a very wise thing to do, Mr. Chairman.

The CHAIRMAN. The committee will be in recess until 7.30 o'clock this evening.

EVENING SESSION.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

The CHAIRMAN. The committee will be in order. Gentlemen, is there anything special that you want to take up at this hour?

Mr. HUGHES. I thought, Mr. Chairman, that we would go on at this hour with testimony relative to the Heckman & Hansen controversy. We have Judge Battle here, and Mr. Metcalfe, this evening.

The CHAIRMAN. He is here, is he?

Mr. HUGHES. Judge Battle and Mr. Metcalfe are both here.

The CHAIRMAN. Very well, we had better use them while they are here. Who shall we have?

Mr. HUGHES. I should say Mr. Battle.

ALFRED BATTLE, having been first duly sworn, testified as follows:

Mr. DORR. I would like to show Mr. Battle the paper that he was looking for, to see whether this is it.

The WITNESS. That is the paper.

By the CHAIRMAN:

Q. Give your full name, Mr. Battle.—A. Alfred Battle.

Q. You live in Seattle?—A. Yes, sir.

Q. And have for how long?—A. A little over 24 years.

Q. You are engaged in the practice of the law?—A. Yes, sir.

Q. How long have you been at the bar?—A. Bar of this State and Territory?

Q. Yes.—A. Since 1888 in this State and Territory; came here in 1888 and was admitted in 1888.

Q. You have lived all of that time in Seattle, have you?—A. Yes, sir.

Q. Mr. Battle, were you one of the attorneys connected with the Heckman & Hansen matter?—A. Yes, sir.

The CHAIRMAN. Then I will just ask Mr. Hughes to go on with the examination and bring out such facts you desire.

Mr. HUGHES. I think the simplest way, Mr. Chairman, would be to ask Judge Battle——

The CHAIRMAN. You may do so, Mr. Hughes.

Mr. HUGHES. I will do so now.

Go on and state what are the facts, detailing them in your own way, relative to the Heckman & Hansen receivership in the State court, and then follow it with an explanation of what transpired in the bankruptcy proceedings relative to the state of that firm in the Federal court.

A. Prefacing my statement, or, rather, answering the question, I will state that personally, while, although a member of the firm of Ballinger, Ronald & Battle at the time of this litigation, that being the then name of the firm, I did not attend personally to the suits known as the suits by the Scandinavian-American Bank against Heckman & Hansen, nor personally did I attend to any matter that may have arisen in what is known as the Curtis suit, or what may have arisen in the bankruptcy suit. I knew in a general way about those suits and proceedings had in them. My familiarity and knowledge regarding all these matters arose after the reference made by Judge Hanford of the petition to reopen the proceedings in bankruptcy to the master in chancery, Mr. Eben Smith, or Judge Eben Smith, it having been referred to him as special referee. All of these matters and all of these preceding suits and litigation were gone into in that hearing and in that proceeding, and I personally was present, in the capacity of the attorney of the Seattle Shipyards Co., and participated at the entire hearing of this matter before Judge Smith, Mr. Finch representing the petitioners and myself representing the Seattle Shipyards Co.

Permit me to state in this connection, if I may have page 1313 to 1319 of the proceedings before the committee, being the testimony of Mr. Finch——

Mr. MCCOY. Before the committee here, you say?

Mr. HUGHES. Before this committee.

A. This committee.

Mr. MCCOY. In these proceedings?

A. These proceedings; yes, sir. Mr. Finch testified, on page 1319, saying:

> I challenged them all down the line as to whom they represented, and I do not think that ever had come out at all.

Another question:

Did it ever transpire whom they claimed to represent?

Answer:

It never did.

Now, on page 68 of the testimony that was taken before Judge Smith in the matter of the reference on this petition to reopen——

Mr. McCoy. What page?

A. Page 68, Mr. Finch speaking:

Then, I think this is a good place to inquire who Judge Battle does represent.

Mr. Battle. The present owners of the property.

Mr. Finch. He told us the other day that he represented the purchaser of the property, who was Mr. Mayhew.

Mr. Battle. The owners of the property. You misunderstood me. If I was put upon oath, sir, I could not tell you who did purchase the property. I was not present, had nothing to do with that matter at that time, don't know who purchased it, even, except somebody may possibly have told me Mr. Mayhew was a purchaser. I don't know anything about that, but my understanding is he does not own it now; that the Seattle Shipyards Co. or some such company own it, and it is for that company that I appear. I do not know whether or not Mr. Mayhew even has any interest in that company or not, and don't care.

Now, that occurred about the first day of the six-months period that was consumed off and on in the hearing of this matter before the special referee. Mr. Finch was notified at that time for whom I appeared and represented.

Mr. McCoy. Was that the only appearance in the case in which it was stated who the party appearing represented?

A. I am not sure, Mr. McCoy; but possibly this will be found in the record also, that—I know if it is not in the record I so stated during that proceeding, whether formally in the matter of the hearing or informally—with these different members of the bar and gentlemen who had been assailed by Mr. Finch in this petition—that I stated to them that I was there for the purpose of seeing that all the evidence that existed was produced and brought out and that I was there representing the Seattle Shipyards Co. and would see that a full hearing was had and full evidence produced in reference to the issues presented by that petition for rehearing. I in no sense understood myself as formally representing anybody other than the Seattle Shipyards Co.

Mr. McCoy. If you don't mind the interruption——

A. None at all; no, sir.

Mr. McCoy. What was the interest of the Seattle Shipyards Co. in the matter at that time?

A. The Seattle Shipyards Co. was the owner of this property, it having acquired the same either as the original purchaser through Mr. Mayhew, through the receiver's sale that was made, or by subsequent purchase from him. I will touch upon that a little later in the development of the facts.

Mr. McCoy. Was it a creditor at any time of Heckman & Hansen?

A. The Seattle Shipyards Co.?

Mr. McCoy. Yes.

A. No, sir.

Mr. McCoy. Well, what was its standing in the bankruptcy proceeding?

A. It was the owner of the property that had been purchased.

Mr. McCoy. But did anybody assail the ownership of it?

A. Well, I assume that the petition to reopen the case necessarily assailed all the proceedings, the title to the property that was acquired under the proceedings.

Mr. McCoy. Well, I won't interrupt you. I will ask you those questions later, unless you prefer to go on with it now. If you think this is the best place, I will finish up on it.

A. Well, I think probably as I develop the general central points of the matter, as I understand them, that it will probably serve to explain more fully the situation.

Mr. McCoy. All right, Mr. Battle.

The Chairman. Proceed.

A. The plant known as the Heckman & Hansen shipyards plant was formerly owned and operated by a man named Henneger. Before 1900 Heckman or Heckman & Hansen had purchased from Henneger Henneger's one half interest in the property, the other half interest being owned by the Henneger children, who were then minors. The matter of that half interest was necessarily pending in court—in the probate court. Mr. Heckman desired likewise to purchase that half interest. In fact, it was in a manner if not advisable—if not essential, highly advisable—that Heckman & Hansen acquire the other half interest. Mr. Heckman himself stated in the matter of this hearing before the special referee these facts: That the half interest of the minors Heckman & Hansen desired to purchase; that he, Heckman, had had a talk, arrangement, understanding, or agreement—it is not made very definite which—with Henneger, the guardian of the minors, that the firm of Heckman & Hansen would like to and would purchase the half interest of the minors in the property; that the firm did not have the money with which to make the purchase. It was estimated that purchase price would be between $4,500 and $5,000. That the arrangement——

Q. (Interrupting.) For a half interest?—A. For a half interest. That the arrangement that Heckman had had with Henneger was that Heckman & Hansen were to pay of that purchase price cash $2,000. Now, I am telling you what Mr. Heckman himself testified to before the special referee, that they were to pay cash to the guardian, $2,000, and that they were to pay $100 per month until the balance of the purchase price was paid in full, and that the balance of the purchase price of the property was to be secured by a mortgage upon the property. Now, I mention that, may it please the committee, for this reason: Mr. Finch has sought to, as I gather it from his testimony—to complain that Judge Ballinger, acting under power of attorney, gave a mortgage upon this property. Now, Mr. Heckman furthermore in his testimony stated that he and Judge Ballinger took up with the bank the matter of the bank advancing the money to use in, in effect, in substance—as near as possible in his language—that the bank was to step into the shoes of the guardian of the minors as contemplated in his purchase from the guardian had it been carried out with the guardian and the money not otherwise raised. Now, Mr. Heckman testified that when it was contemplated by him that he was to leave for Alaska that he gave to Judge Ballinger a power of attorney. That is true that he did give such power of attorney. Now, that power of attorney authorized Judge Ballinger not only to execute an obligation by way of a promissory note, but,

if necessary, either chattel or real-estate mortgage. Now, Mr. Heckman in a portion of his testimony, when read from one light, expressed some surprise that a mortgage had been given upon this property to the bank, and I call your attention to his testimony, because he stated that he was to give to the guardian a mortgage and that the bank was to take the position of the guardian.

Mr. HIGGINS. What page does that appear on?

A. You will find that on page 635.

Mr. HIGGINS. Of the testimony taken before the master?

A. Yes, sir. I do not desire to take any more time in detailing this matter than necessary; in fact, I desire to hurry through. I don't know whether or not the committee or anyone desires to have me read this.

The CHAIRMAN. Is it voluminous?

A. Not very.

The CHAIRMAN. Use your judgment.

A. Yes, sir. On page 635 of the testimony given by Mr. Heckman before the special referee the following questions and answers were propounded and made:

By Mr. BATTLE:

Q. Mr. Heckman, when your firm was about to purchase the interests of the Hennigar minors, which consisted, as I understand, of an undivided one-half of the Hennigar property, you desired to borrow $5,000?—A. Yes, sir.

Q. What officer of the Scandinavian-American Bank did you talk to relative to borrowing this money?—A. At first I did not think it was necessary to borrow the money, but in a conversation with Judge Ballinger, on account of Mr. Hennigar's going around the yard considerably, and he was more or less of a nuisance and sooner than to have him to deal with on account of doing business with the bank, I thought it would be better to deal with the bank as Ballinger said. Ballinger said that if he suggested and recommended it, why the bank would take over the obligation of Hennigar, if I would sooner deal with the bank than Hennigar personally, which I suggested, and at the time we went down to see Mr. Grondahl and Mr. Soelberg, I think we saw both of them.

Q. You do not mean to say that you were going to purchase the interest of the minors on credit and give your obligation to the guardian of the minors?—A. The time when we purchased the property—it was understood the first deal when we purchased the one-half that we were to pay so much for the whole property if we had put in a bid.

Q. But you understood that the interest of the minors was to be sold under the order of the probate court?—A. Yes, sir.

Q. And you did not understand that you were going to give the guardian of the minors a note and mortgage upon the property for the purchase price?—A. The contract that we were to have with them was that $2,000 paid down, and, I think, $100 every month except the last month, when it was paid in full. That was the contract that we were to act on, or that is the bid which we turned in to them. I haven't seen it since, but it was sent in. That the first payment was to be secured, of course, upon this property. The payment was to be secured upon the property or the contract of payment, the same as I bought the other property.

Q. Exactly; but it was to be secured by mortgage upon the property, you so understood it?—A. Why, it was to be secured by contract of payment or mortgage, or whatever you call it.

Q. In other words, the property was to be held as security for the payment of the balance of the purchase price?—A. Why, certainly.

Now, also, you will find this carried out on pages 436, 437, and 438 of the testimony.

I have no personal knowledge as to what transpired between Mr. Heckman and Judge Ballinger when Mr. Heckman executed to Judge Ballinger the power of attorney under which Judge Ballinger executed to the bank the $5,000 note and mortgage. Of course I only knew that as hearsay, I know it simply——

Mr. McCoy (interrupting). The power of attorney is the one that was admitted in evidence here?

A. Yes, sir. I would like to state to you gentlemen that this testimony—I think you fully understand that already—only represents the testimony that was taken before the special referee by witnesses produced by Mr. Finch. In addition to those witnesses, numerous witnesses were produced or called by myself, representing the Seattle Shipyards Co. Among the witnesses were Judge Ballinger, Mr. Reynolds, Judge Hoyt, and numerous other witnesses. Now, to fully state this so far as I——

The Chairman (interrupting). Mr. Battle, were there any others called on that side of the case than those who had been accused by Mr. Finch?

A. You mean any other witnesses?

The Chairman. Yes, sir.

A. Oh, yes. For instance, I answer that this way: I say "Oh, yes" because I am morally certain, without refreshing my recollection, that was the situation, because it was not merely to call those who had been accused but also any witnesses who might know anything regarding any of the facts involved, the issues, or any fact that would be pertinent to the issues involved. The report, I may say, of the special referee gives a full list of the witnesses, and this testimony will give to you the name of the witness whose testimony was brought up. But the report of the referee gives a full list of all the witnesses.

The Chairman. Proceed, Mr. Battle.

A. Now, therefore, detailing the matter in somewhat of a chronological order, and of course giving it to you gentlemen only as I know it from the testimony produced before the special referee, the situation regarding that matter was that Mr. Heckman, intending to make a trip to Alaska, and inasmuch as this bid had been put in to the court, for the interest of the Henneger minors, and anticipating that the matter may arise to be closed up in the event there were successful bidders during his absence, he left with Judge Ballinger a power of attorney. That power of attorney—I will simply verify what has already been stated here—is in the handwriting of Mr. Tennant, who was then a clerk in our office. The major portion of it is a printed power of attorney, but the use of the words "me" and "my" and the name of R. A. Ballinger is written in.

Mr. Hughes. It would be well to state that Mr. A. J. Tennant is now deceased.

A. Yes, sir; Mr. Tennant died about a year ago. It developed in the hearing, by Mr. Tennant and Judge Ballinger, before the special referee, that Mr. Heckman came into the office and desired that this power of attorney be prepared for him to execute to Judge Ballinger, Judge Ballinger at that time knowing nothing about it—if present in the office was busy, engaged with some client. It was drawn up by Mr. Tennant, pursuant to Mr. Heckman's instructions and request, and was by Mr. Heckman taken and delivered by him to Judge Ballinger, saying that he had prepared and desired to leave with him a power of attorney, in order to carry out the matter of the consummation of the purchase of these properties and the securing of the money from the bank, pending his absence in Alaska. That there was no arrangement made with any official of the bank that a $5,000

loan was to be obtained running for a period of five years; that there had been some talk about whether or not Heckman & Hansen, provided they could secure the half interest—the remaining half interest in this property—could get financial accommodation at the bank, and, beyond their being reasonably assured that they could not get such accommodation, there was no arrangement made as to any period of time that the obligation when executed was to run.

By Mr. McCoy:

Q. Was this $5,000 to be used to purchase the half interest from the Henneger minors?—A. Yes; so understood even by the bank people, and everybody, that was what the money was wanted for.

Mr. Higgins. Does that appear in the testimony before the master?

A. Yes, sir; I take it—I don't think there is any dispute whatsoever regarding that question. Now, in reference to——

Mr. McCoy (interrupting). You say it appears in the testimony; you mean that it did appear in the testimony, or does it appear?

A. It does appear in the testimony.

Q. In this typewritten transcript?—A. It appears even by Heckman's own testimony that it is what they wanted the money for and why he wanted to arrange for the money. In other words, this man Henneger, they could have purchased it, if the committee please——

Q. (Interrupting.) I understand, I just wanted to know——

A. (Interrupting.) But they did not want to deal with Henneger, they wanted to get him out of it. Some disagreeable features connected, according to Heckman's contention, with his having to deal with Henneger.

Now, in referrence to the chattel mortgage that was taken up by the bank, that chattel mortgage was given by Heckman & Hansen to a party whose name I do not now just call to mind, nor is it material, for some machinery that had been furnished to the firm of Heckman & Hansen. Heckman & Hansen wanted the money to take up that mortgage and carry it or take it up. Heckman, on page 580 of the testimony, testified in answer to the following question as follows:

> Q. I wish you would tell the court how the bank came to have the $650 mortgage on your property?—A. I purchased some machinery up in North Seattle, from a man named G. N. Wheeler, and at the time the property was transferred there was a $650 mortgage held by a man by the name of Fossman. He wished the money paid over and I made that arrangement with Mr. Grondahl, at that time vice president of the Scandinavian-American Bank, to take up that mortgage which he did.

I mention that so as to show to the committee that the bank was not going out buying up any claims against Heckman & Hansen, but that Heckman & Hansen, being a customer of the bank, and desiring the bank to take this note and mortgage, that it was at their request and their request only that the bank did so.

This brings me to the note and mortgage referred to as the $3,000 note and mortgage. Now, this note and mortgage is dated toward the latter part of November of 1900, after the $5,000 note and mortgage had been given and executed. This $3,000 note and mortgage was executed by Heckman & Hansen personally, and also by Heckman or Hansen acting for the firm; Judge Ballinger, in other words, did not execute that note and mortgage, but it was executed by Heckman & Hansen personally. Now, I refer to that matter for

this reason: That $3,000 note and mortgage represents this: There was what was known as the Winsor property. The Winsor property was a piece of real estate that adjoined the Heckman & Hansen plant. They desired to purchase also that property, just as they desired to purchase the half interest of the minors. Now, I am giving you what Mr. Heckman himself says about this. Mr. Heckman said that he wanted to know whether or not if he bought that property the bank would finance him; in other words, carry them for it. Mr. Grondahl or Mr. Soelberg—and I am using his own testimony in this matter—you will find it at page 548—I think that is the page—Mr. Grondahl or Mr. Soelberg, whichever it was, stated to him that the bank would advance him the $3,000 or the money to purchase the Winsor property, provided Mr. Chilberg would go out and look at the property and report favorably. Mr. Heckman says that Mr. Chilberg, pursuant to instructions given to him by Mr. Soelberg or by Mr. Grondahl, did go out to Ballard—you gentlemen, I think, understand this property is located at what we call Ballard——

The CHAIRMAN. It is an addition, an old addition to the city?

A. Yes, sir; now in the corporate limits, but not so at that time. Mr. Chilberg—J. E. Chilberg—did go to Ballard, looked over the property and Mr. Heckman says that in a day or two thereafter that either Mr. Grondahl or Mr. Chilberg, I don't know which he states, telephoned to him to come in, that Mr. Chilberg's report was favorable and that they would let him have the money. He went in and Heckman & Hansen, acting through one or the other for the firm, and then Heckman & Hansen also individually, executed this $3,000 note and mortgage to the bank, which represented the purchase price of the Winsor property. Now, as stated, that note and mortgage was dated on the 22d day of November, 1900; the other note and mortgage being dated October 31, 1900.

In this mortgage that was executed by Heckman & Hansen themselves they remortgaged or mortgaged over the same property that is covered by the $5,000 mortgage, plus the Winsor property. They also state in this mortgage as follows:

> This mortgage is made subject to that certain indenture of mortgage heretofore made and executed by and between the parties hereto on the 31st day of October, 1900, upon description No. 1 above and recorded in volume 175, page 401, of Mortgages of the records of King County, Wash., and also that certain mortgage made by the parties of the first part to Carstens & Earles (Inc.), on the 15th day of November, A. D. 1900, upon description No. 2 above, recorded in volume —, at page —, of Mortgages, and is expressly given as subsequent and inferior to said mortgages above described.

I call attention to that because they in this second mortgage, executed personally by themselves, recognize fully the first mortgage, states that this is a second mortgage upon that property, etc.

Mr. MCCOY. You haven't any knowledge whether that was ever read to them, I suppose, or whether they read it?

A. No; I don't. I was not present when it was executed.

Mr. HUGHES. Was that signed by Heckman & Hansen each individually?

A. Each individually.

Q. And the note also?—A. The note also.

Q. Would it not be well to explain about the Carstens & Earles mortgage—what that was?—A. Well, there was what is known as the Carstens & Earles mortgage, which was a prior mortgage, or then

existing mortgage, upon this Winsor property, as I understand it, and it was still on there when Heckman & Hansen purchased the property from whoever they did. It was known as the Winsor property. I don't know who the deed came from. In other words, they still took it subject to the Carstens & Earles mortgage.

Q. Do you remember the amount of the Carstens & Earles mortgage?—A. I don't, but it seems—I have an indistinct recollection that it was two or three thousand dollars. Now, this completes a statement to the committee of the execution of these matters so far as the notes and mortgages are concerned, coupled with the chattel mortgage.

Now, it may not be out of order to state what brought about this litigation. The schooner *Alice* was put in the shipyards of Heckman & Hansen for some repairs, the exact nature of which I am not familiar with, nor do I think it very material. The bank claimed that Heckman & Hansen had arranged with them to borrow the money to carry them to enable them to go ahead in making these repairs and allow them to overdraw. They did overdraw. The exact amount I do not call to mind. I believe it has been stated here between six and seven thousand dollars, or possibly more.

Mr. McCoy. You mean that the bank claimed that they overdrew and they claimed that they did not overdraw?

A. Well, I don't mean to say that I am stating—I am merely stating the claims of the parties in that respect. The bank claimed that it was an overdraft. I can not state to you just what Heckman & Hansen have claimed in reference to it.

Mr. McCoy. Well, didn't they claim that the bank held a mortgage on the *Alice* at that time?

A. I don't know that the bank held any mortgage, but if the bank did—but I am not stating definitely that it did or did not—I believe that the bank did hold a mortgage, either of $15,000 or $20,000, upon the boat, and it stood in the name of some officer of the bank, but, of course, probably was the bank's property.

Mr. McCoy. Yes. Well, now, that is just the point.

Mr. Hughes. You mean the loan or the ship?

A. Oh, I mean the loan. I don't mean the ship.

Mr. McCoy. What is that?

A. I mean the loan stood in some officer's name for the bank when I say——

The Chairman (interrupting). We understood it.

A. Yes.

Mr. McCoy. And was not the claim that Heckman & Hansen made, or Heckman, that, having the mortgage on the ship, the bank wanted to have it repaired, and that they went to the bank with Mr. Ballinger, or without him—I don't remember which—and made the arrangement by which they should make the repairs and the bank put up the money for them as the repairs were made; wasn't that the controversy between the parties, the bank claiming, on the other hand, that—but it was further arranged, as I remember their contention, that Heckman & Hansen could draw on the bank as they went ahead doing the work on the *Alice*, and then a time came when the bank contended that those were overdrafts which they made?

A. I have heard that stated by Mr. Finch in his testimony before this committee, and I don't say that it was not—maybe have so been contended before. You gentlemen understand this testimony was

taken back in—taken a number of years ago, and while I have undertaken, in the time at my command, to familiarize myself with it as much as possible, I have not been able to thoroughly refresh my recollection in all of its details. I do not call to mind definitely that that matter was ever made an issue in any respect, that I had to do with this matter. I can only answer it, Mr. McCoy, that way. Yet, upon the other hand—I will not state, because my recollection I don't like to trust to—that it was not so contended before the referee.

Mr. HIGGINS. What is the fact, if you know?

A. Beg pardon?

Mr. HIGGINS. What is the fact?

A. Well, I think the undoubted fact is that the bank allowed them to overdraw—in other words, they were financing them; it was a debtor and creditor relation that existed.

Mr. MCCOY. Well, what is the fact as to the existence of a contention between the bank on the one hand and Heckman & Hansen on the other?

A. You mean as to the contention?

Mr. MCCOY. Yes.

A. Well, I would like to be able to answer, Mr. McCoy, your question more definitely than I am able to, but I am not, and I do not like to venture my memory on this thing unless I had had a greater length of time to look over this evidence.

Mr. HUGHES. May I ask him a question or two?

The WITNESS. I repeat, I don't call to mind that, at any phase of this matter that I had to do with it, that that question arose.

Mr. HUGHES. I think if I were to ask a question or two here it might show the immateriality of the subject of inquiry.

Q. The schooner *Alice* was abundantly good for the repairs, was it not?—A. Not only was abundantly good, but Heckman & Hansen then proceeded to libel the boat.

Mr. MCCOY. Well, you have heard——

Mr. HUGHES. Had, in admiralty, a first lien for the repairs upon the vessel?

A. Yes; and received, as the result of the proceeding in admiralty, their entire claim.

Mr. MCCOY. Now, Mr. Battle, let me ask you a question.

A. Yes, sir.

Mr. MCCOY. Do you conceive that it made any difference to a firm which was borrowing money, as you have testified, whether or not they were called upon to pay $6,000 as an overdraft or were forced to rely upon the establishment of a lien in a lawsuit in admiralty?

A. Why, I suppose it would make a difference to the borrower. Now, in this connection, what in a large measure precipitated or brought about this litigation: On June 12, 1901, the bank desired to have Heckman & Hansen execute this paper. It is dated and reads as follows:

SEATTLE, WASH., *June 12, 1901.*

The undersigned, Heckman & Hansen, a copartnership composed of A. Heckman and M. Hansen, for value received, hereby sell, transfer, assign, and set over unto the Scandinavian-American Bank of Seattle all that certain claim and demand now owned and held by the said Heckman & Hansen against the American schooner *Alice*, her tackle, apparel, and furniture, together with their maritime lien against said schooner for material and labor furnished in her repair and for moneys advanced to said vessel, as is more particularly shown by the statements hereto attached and made a part hereto, amounting to the total sum of—

That was left blank as the paper was drawn, and in lead pencil I find here "$8,017.26." I don't know who put it there. I suppose it probably represents the correct amount of the overdraft or advances. [Proceeding to read:]

And the undersigned hereby assign any and all right to enforce such claim and lien by libel or otherwise against said vessel, her owner or owners, and hereby authorize said Scandinavian-American Bank, in their names or in the name of said bank, to bring such suit or action as may be necessary to enforce the claim and demand aforesaid, together with the maritime lien or liens hereto connected. This assignment is made as collateral security to the said bank for obligations and overdrafts now held by the said bank against said Heckman & Hansen, and the undersigned hereby authorize said bank to apply on their indebtedness to said bank any and all sums received by virtue of this assignment. In witness whereof said Heckman & Hansen have hereunto set their hands and seals the day and year first above written.

Heckman & Hansen refused to execute this paper. Then for the first time is where the matter of differences came between the bank and Heckman & Hansen. The bank was not longer to——

Mr. McCoy (interrupting). May I ask right there who was the attorney for the bank at that time?

A. Ballinger, Ronald & Battle.

Mr. McCoy. And they drew that paper?

A. I think so; yes, sir. I say I think so, because I have no absolute knowledge; but I think that was the fact.

The bank was not willing to let this matter remain with their continual overdrawing, and about this time, or if not preceding this time, the matter had reached an issue between Heckman & Hansen and the bank as to whether Heckman & Hansen's obligations were one of overdraft or whether it was simply one of advancement by the bank upon its own property.

By Mr. McCoy:

Q. Then that answers the question I asked some time before; that was the contention, wasn't it?—A. I say I suppose that that was the situation.

Q. I understood you to say——A. (Continuing.) Because——

Q. I understood you to say just now, positively, that that was the first time——A. (Interrupting.) That is my understanding, Mr. McCoy. I say my understanding, I know that simply—I was not present when any of these matters occurred or transpired, and therefore I have to use the word understanding as distinguished between something that I absolutely know. I understand—I want to make that clear that I understand that that was the issue.

Now, then, it was that Heckman & Hansen employed Messrs. Metcalfe & Jurey, attorneys, a law firm then and now in this city, to represent them, and the libel suit against the schooner *Alice* was instituted and the boat libeled.

Q. In other words, Metcalfe & Jurey by libeling the boat abandoned any claim that Heckman & Hansen might have made that the bank had been making advances to them?—A. I suppose that that would probably be the practical effect or result. Whether or not it would be an estoppel against Heckman & Hansen as a legal proposition I would not like to state.

Q. Well, if Heckman & Hansen had previously claimed that the money paid by the bank to them on these drafts was a payment for work, labor, and services on this boat, and if later they did libel the

boat, they could do it only on the ground that they were not paid, couldn't they?—A. Well, Heckman & Hansen would have a right to libel in the boat in any event, because they furnished the labor and the material.

Q. They would have a right to libel a boat for a claim that had been paid to them?—A. No; not for a claim that had been paid to them.

Q. They contended that this money which was paid to them on these drafts was in payment for that work on the boat?—A. Well, I——

Q. (Interrupting.) And if they were right, then they had been paid and they could not thereafter, except as anybody can file a paper—they could not successfully contend that they had a lien against the boat when they had been paid for the very work this the libel——A. (Interrupting.) I fully understand that, but just what their contention is, Mr. McCoy, I would not like to undertake to state, because I was not personally at any conversation.

Q. I am not trying to aid you to that at all. I say if that is the case——A. Yes.

Q. (Continuing.) They did practically, by filing a libel suit, abandon any right to contend that they had been paid by the bank; that would be so, wouldn't it?—A. Well, I am inclined to think as a practical proposition, as I say, it would be so construed. Whether or not they would be estopped afterwards on claiming that it was not true, I doubt that as a legal proposition, because estoppel would have to be mutual; there is nothing there that would estop the bank.

Q. I don't mean that. It would be practically an estoppel?—A. Yes; I think that is true.

Mr. Hughes. Mr. Battle, if the bank, simply holding the mortgage upon the schooner *Alice*, advanced money to Heckman & Hansen, and that was understood between the bank and Heckman & Hansen as advances in payment for the repairs upon the schooner *Alice*, the bank would have no recourse whatever for the recovery of its money and no lien in admiralty against the schooner, would it?

A. None at all; none whatsoever.

Mr. McCoy. Well, that might easily happen. It would just simply show that the bank was not shrewd enough to get the security before it made the advance.

The Chairman. Wasn't it likely, on that theory, that the arrangement that was made between the bank and Heckman & Hansen was that the money should be advanced only as the work was being done, so that the bank thereby by that arrangement secured proper application of the money?

A. Oh, no; I take it——

The Chairman (continuing). Whereas if it was a loan they would not have taken such precaution?

A. I take it that in the matter of financing a concern that way that they simply advanced the money just as the borrower would overdraw or ask for the money; they would not make the loan in one total amount, because it would be an indefinite amount, in a large sense.

Mr. Hughes. What I meant by my question is this: Without an assignment such as you read a moment ago from Heckman & Hansen to the bank, the bank, if it made advances upon the theory you say Heckman & Hansen claimed, would have had no recourse against the schooner *Alice?*

A. None whatsoever.

Q. And it was demanding this assignment so that it would have the admiralty lien for the repairs made by the proceeds of the moneys advanced Heckman & Hansen?—A. That would be the effect of it. That is what the instrument says.

Mr. HUGHES. Now, proceed, Mr. Battle.

A. Now, I think—and I don't do it in any respect whatsoever in a desire to criticize anybody, and I don't state it in that intention or with that view at all, but for you gentlemen to understand fully this matter I think I ought to state that Mr. Heckman was a man very litigiously inclined; he was impatient, disposed to look at things in a suspicious viewpoint. That will be disclosed, I think, from different matters as I proceed in developing the statement of these outlying facts. Now, this demand was made in June, 1900, and in July, 1900, the bank brought suit to foreclose these mortgages.

Mr. HUGHES. Before or after the suit in admiralty by Heckman & Hansen against the schooner *Alice?*

A. Before, you say?

Mr. HUGHES. Before or after? I ask you which.

A. After, as I understand.

Mr. MCCOY. That would be July, 1901, wouldn't it?

A. July, 1901, I should say; yes, sir. I stand corrected—July, 1901. I think it was on the—[referring to paper]—July 5, 1901.

Mr. MCCOY. What do you say happened then, Mr. Battle—they brought suit?

A. The suit was brought by the bank to foreclose these mortgages. Now——

Mr. MCCOY. Excuse me; the mortgage securing the $5,000 note and the $3,000?

A. The $3,000 note and also the chattel mortgage. Shortly thereafter the Curtis suit was brought, namely, on July 11; that followed about four days after the filing of the suits by the bank.

Mr. HUGHES. To make it clear, the Curtis suit was a suit by a creditor by the name of Curtis on a claim of about $1,600, in which application was made for the appointment of a receiver and in which suit Peter L. Larsen was appointed as receiver?

A. He was appointed as receiver, and he was appointed as the friend, and because he was the friend and was desired to be appointed by Heckman & Hansen.

By Mr. MCCOY:

Q. Judge Griffin stated this morning that he was appointed because he was the best man for the place?—A. Yes, sir; the judge thought so.

Mr. HUGHES. Judge Griffin——

A. (Interrupting.) And I have no doubt he was a good man for that place, but what I mean to say is he was a friend of Larsen's—or of Heckman & Hansen.

Mr. HUGHES. He testified, Mr. McCoy, that he was appointed partly for that reason but because he was recommended by counsel for the plaintiff.

Mr. MCCOY. I understand.

Mr. HUGHES. And because he had been foreman.

Mr. MCCOY. I simply thought Mr. Battle had laid certain emphasis on the fact that he was a friend of Mr. Heckman's. I just wanted to

put into the record right there what Judge Griffin said this morning, so that they could go together; that is all.

A. In fact, the bank——

Mr. McCoy (interrupting). I would like to ask you a question right there, Mr. Battle, about the law here in Washington. I understand that this Curtis suit was a suit on an account stated?

A. I so understood.

Q. Is there any statutory provision for the appointment of a receiver at the commencement of a suit of that kind in this State?—A. Oh, yes, sir. A suit of any nature or character, a receiver may be appointed upon proper allegations being made.

Q. That is, before judgment and just on the beginning of suit?—A. At the beginning of a suit.

Q. In the nature, practically, then, of an attachment?—A. Yes, sir; to take hold of and conserve and preserve the property and to administer it pendente lite.

Q. And that is regardless of nonresidence of the defendant or anything of that kind?—A. Well, yes. Of course it would have to be such a suit as the court would have jurisdiction of or——

Q. (Interrupting.) I mean that, of course, but I mean there is no—as in other States, for instance, in order to get an attachment at the beginning of a suit there has to be some ground for it, like that of the defendant being a nonresident——A. (Interrupting.) Yes.

Q. (Continuing.) Of the State. But here, as I understand you, the law is that simply on beginning your action on a mere contract obligation a receiver is appointed, as a matter of course, on putting up the necessary bond?

A. Well, it is generally upon hearing and notice given to the other side.

Q. Yes. Well, I mean——A. Yes.

Q. (Continuing.) That being done?—A. Yes; that being done.

Q. And does it make any difference how large the amount of the claim is as compared with the value of the property taken into possession by the receiver, or does the receiver simply take all the property of the defendant?—A. It would not make any difference, Mr. McCoy, as to the amount sued on, provided it be the receivership is sought particularly on the score that either the institution is insolvent or threatened with insolvency, because then that would embrace other claims beside that of the plaintiff, as a practical legal proposition.

Q. Then does that allegation of insolvency or threatened insolvency have to be made before you can get a receiver?—A. If that be the ground of the receivership, yes; but the receivership may be granted under the statute of this State in case, for instance, of a partnership disagreement.

Q. That is nothing peculiar to the law of Washington; that is true of the law of any State.—A. I am giving you the statutory provision, is all.

Q. But what I don't get yet, and I presume it is my fault, is this: Can you get the appointment of a receiver in the State of Washington on a suit on a promissory note which merely alleges that the man made the note and that it has fallen due, and he has not paid it, and you demand payment?—A. Not at all; no, sir.

Q. You have to go in court on affidavits?—A. Affidavits, or upon a hearing the complaint may be taken as an affidavit, if it is sworn to.

Q. Yes; the complaint may be, but what is there in addition to a mere cause of action—the statement of a mere cause of action in the complaint—that you have to allege in order to get a receivership?—A. Well, now, as applied, for instance, to this particular situation——

Q. (Interrupting.) Well, if you don't mind, I would like to have—I just want to find out what the law is so that I can understand the situation.—A. Well, there may be a great many—a great many different causes or reasons in law that would authorize the appointment by the court of a receiver.

Q. Well, then, I see of course my question covered too much. Assume that in this case a cause of action had been stated merely on the ground stated——A. Yes.

Q. (Continuing.) Nothing else in the complaint; that there had not been a single affidavit filed in that court, but that the plaintiff had gone into court on that complaint stating merely a cause of action on a contract, could he have had a receiver appointed?—A. No; not upon simply stating the account.

Q. Then in addition to that, in a case like this, or, to take this case, it was necessary to allege there was insolvency or threatened insolvency?—A. Yes, sir.

Q. Is that right?—A. Yes, sir.

Q. Now, then, is the receiver appointed for the purpose of conserving the property, or for winding up the affairs of the alleged debtor?—A. A receiver is appointed to conserve the property, look after the property; and as to whether or not the receivership is to continue and let the litigation continue, to see whether or not the receivership will work out its indebtedness, or whether it will be ordered to be sold immediately, is a question solely in the discretion of the court after hearing the evidence and the proofs on that subject.

Q. Well, then, in order to warrant the sale of property taken into the receiver's possession in this matter, it was necessary for somebody to go into court and allege that there was no use going on with the business; that it was substantially a hopeless situation; is that right?—A. No. The court, in the absence of anyone coming in with a contrary showing and showing to the court that they can immediately—practically immediately—I mean as a practical proposition immediately work out its indebtedness, or will be able to finance the indebtedness, the court will take the position, ordinarily, under our practice here, that it will not simply run a receivership as a business proposition.

Q. But if there is not any showing made that the business can be run and the indebtedness worked out, is the property then sold just in the ordinary course of procedure, or is there a further application to the court?—A. Well, it will be sold in ordinary procedure, but—that is, the court could do it on its own motion, but——

Q. (Interrupting.) But do they?—A. But ordinarily a motion is made asking for a sale of the property.

Q. I have here Pierce's Washington Code, edition of 1905. Mr. Dorr has called my attention to section 575. Are these the provisions of your law here in regard to the appointment of a receiver?—A. Yes, sir; that is the statutory law of the State.

Mr. McCoy. I would like to have that copied in at the proper place.

A. And you will notice the particular language in the sixth section there.

Q. I have not read it all at all.—A. Yes.
Q. I just wanted to have it.
Mr. McCoy. You can copy that in later on.
The Witness. I don't think there had been any amendment to the law.
The Chairman. What section do you want copied there?
Mr. McCoy. Section 575.

Section 575 of Pierce's Washington Code reads as follows:

A receiver may be appointed by the court in the following cases:
1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim.
2. In an action between partners, or other persons jointly interested in any property or fund.
3. In all actions where it is shown that the property fund or rents and profits in controversy are in danger of being lost, removed, or materially injured.
4. In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had.
5. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.
6. And in such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties, provided that no party or attorney or other person interested in an action shall be appointed receiver therein.

The Witness. Now, the bank, believing of the close friendship and relation existing between Receiver Larsen and Heckman & Hansen, started a movement with a view of having Larsen removed as receiver. I was just stating that the bank believed that so close was the relation and friendship between Receiver Larsen and Heckman & Hansen that they inaugurated a proceeding to have Larsen removed as receiver. I don't think—I know that affidavits were prepared to that effect, I think I prepared one myself that I call to mind. I don't believe, however, the matter got as far as being filed in court.

Now, you will find in the record that Heckman criticizes Larsen, the receiver, in his testimony and in all these after proceedings. Larsen says that that was because he, Larsen, when receiver, was forced to remove Heckman from the premises. On page 93 of the testimony, in speaking of removal of Heckman from the premises:

Q. Is it not a fact that you had to take proceedings in court to get him out of your house?—A. Yes, sir.
Q. File affidavits and get an order of the court directing him to move?—A. Yes, sir.
Q. And after that, up to the present time he has been against you in everything, has he not?—A. Yes, sir.

Now, then followed the bankruptcy proceedings. Of course, this was a voluntary proceeding in bankruptcy by Heckman & Hansen. Now, listening to Mr. Finch yesterday, as he gave his testimony, or day before, he stated to you, intending it evidently as some reflection upon Judge Ballinger, that a Mr. Brightman, who was a clerk in Judge Ballinger's office, had a claim assigned to him; that a Mr. Larrabee, who was in Judge Ballinger's office, had a claim assigned to him; that a Mr. Conover, who was then and had been a clerk in our office, had a claim assigned to him. Now, Mr. Finch knew then, or ought to know, what were the facts regarding that matter, because he brought out all of that evidence himself in the hearing before the

special referee. Now, Mr. Tennant testified, and there was no testimony to dispute him at all, there was no one who would undertake to dispute him, because he was telling and narrating unquestioned facts——

The CHAIRMAN (interrupting). Without comments as much as you can, Mr. Battle, and shorten your story as much as you can.

A. Yes; I will. That he had understood that Heckman was going to seek to control the election of a trustee in bankruptcy by the assertion of a fraudulent claim that, as we all know, number and amount control in bankruptcy proceedings in the election of a trustee. It was done then—being done now, I think, as far as I know, generally over the country.

Mr. MCCOY. Now, as a matter of fact, Mr. Battle, it does not control, does it?

A. Yes, sir; it does.

Q. Do you mean to say that a referee can not appoint anybody trustee he wants to?—A. Why, the creditors have a right to elect.

Q. I wish you would look at the bankruptcy law and see what it says about that.—A. Well, I know that is our practice here.

Mr. HUGHES. That is what it says, too.

A That is what it says, as I understand the law, "that the creditors in number and amount."

Mr. MCCOY. All right.

A Now, that is, I repeat—it is not uncommon occurrence now and probably will continue to be for a certain number of the creditors to unite in the election of a trustee. It is a common thing in our practice here, and it is probably the same elsewhere.

Q. Suppose the creditors would choose some man who was not a proper man. Has the court got to have him because the majority in amount and number elect him?—A. I don't know, Mr. McCoy, whether it has—the selection has to be approved by the court—or not Possibly so, possibly so..

Q. Well, absolutely so.—A. Yes.

Q. There is not any question of possibility?—A. It ought to be. I have no objection to saying it ought to be.

Q. Creditors don't control a certain thing?—A. Well, they control—they certainly control in this jurisdiction. I don't know of a single instance where the court has refused to confirm.

Q Well, I have; but that may be the practice here, I don't know; but it is generally——A I don't know of anybody who has been elected who was not a suitable person, and I don't know of a single case where his election has not been confirmed.

But, in any event, now, that was the purpose of it. Mr. Tennant details that; that these gentlemen had these claims assigned to them in order that a capable, efficient, and honest trustee could be elected. Mr. Tennant didn't know Mr. Fisher at that time and so stated to Mr. Finch in answer to his question, that at the time Mr Fisher was elected Mr. Tennant didn't know him even Mr. Larrabee didn't, and Mr. Conover didn't, and these other gentlemen, but it was one of—it was a defensive move, pure and simple, because Tennant had understood that Heckman had gotten a trumped-up claim, a fictitious claim, and that claim was presented, and upon a contest being made upon that claim it was rejected Now, those are the facts.

Q. Who presented the claim, what attorney?—A. I don't know. I will read you what Mr. Tennant says about this.

Q. Well, unless he tells who the attorney is, it won't answer my question.—A. Maybe he does; beginning on page 192 he says:

We had received information——

Q. (Interrupting.) I will take it for granted that he says what you say, Mr. Battle.—A. I will see, Mr. McCoy, if I can——

The CHAIRMAN (interrupting). Does it give the name of the attorney?

Mr. MCCOY. I want the name of the attorney.

A. "State whether or not"—oh, he mentioned the name of the claimant.

The CHAIRMAN. Please find the answer, if you can, Mr. Battle.

A. But the name of the attorney. I am trying to find the name, if I can, of the attorneys.

The CHAIRMAN. Do it, though. That is the objection.

A. Well, it is known as the Sturn claim.

Mr. HUGHES. Known as what claim?

A. Sturn, I think, is the name that is spelled—Sturn claim.

Mr. MCCOY. Maybe Mr. Finch can help us out on that. Who presented that claim, Mr. Finch; do you know?

Mr. HUGHES. Have you got the claim itself, Mr. Dorr?

Mr. DORR. Yes.

Mr. HUGHES. Well, then, you had better show him the claim.

Mr. FINCH. The claim that I think he referred to was the Fred Sturn claim, and my recollection is that it was presented by John B. Van Dyke.

Mr. DORR. That is correct. Here is the record.

Mr. MCCOY. My question is answered.

The CHAIRMAN. Proceed.

The WITNESS. And was rejected, wasn't it?

Mr. DORR. Yes.

The WITNESS. Mr. Tennant says it was.

Now, in reference to what has been said about criticisms of Gen. Metcalfe, Mr. Richard Saxe Jones, and others in re this litigation: As I have stated, these suits were brought in July, 1900. Now, the Curtis suit was brought——

Mr. DORR (interrupting). 1901.

A. 1901. The Curtis suit was brought largely for the purpose of counteracting the matter of the situation of these suits, and particularly to counteract the effect or the execution of any judgment that may be rendered therein, because under our practice in this State, when property goes into receivership the claims follow it into court, and the court will order, in the receivership, the property sold instead of permitting it to be sold in the foreclosure of a mortgage or the levy of an execution.

Mr. HUGHES. Mr. Battle, allow me to interrupt. I do not know that this is a proceeding in which we are aiming to study law, but some question has arisen as to what the bankruptcy act of Congress provides in respect to the election of a trustee, and I call the attention of Mr. McCoy to section 44 of that act.

Mr. MCCOY. I do not need it, Mr. Hughes; I know what the law is about it. It provides that the trustee shall be elected by a majority in amount and number, but it is always open to the control of the court. I don't need any instruction in the bankruptcy law in Washington.

Mr. HUGHES. It is not in Washington; it is an act of Congress.

Mr. MCCOY. You suggested that we were studying law. I wanted to impress on you that I was not.

Mr. HUGHES. Well, I think the law reads a little differently from the way it has been stated. I do not think it is very material, however.

The CHAIRMAN. Proceed, please.

The WITNESS. Now, I submit to the court—or to the committee—that when Metcalfe & Jurey procured from Ballinger, Ronald & Battle a stipulation that no proceedings—that an order of sale that had been obtained in the suits that had been brought be stayed until February 1, 1902, that they were not only not subject to criticism by reason of that fact, but that they thereby procured something that they could not possibly have procured as the result of a contest, because judgment and decree had been rendered on December 18, 1901, in that litigation.

Now, then, after the expiration of February 1, 1902, within which it was stipulated that all proceedings be stayed, they went into court and over our objection and protest the court granted them a further stay of 30 days and ordering the staying of the execution of this order of sale for a period of 30 days. Now, I mention these matters because Mr. Finch, as I understand his testimony, has sought to convey the impression that those gentlemen were not only negligent but possibly guilty of something of a graver nature in re their conduct of this litigation. Now, then, the court in the receivership case ordered the sale of the property. I heard, yesterday I believe it was, Mr. Finch's testimony in reference to that, and the entire remarks, some on the part of Mr. McCoy, I believe, of the committee and counsel in the case, as to what the effect of that sale was, as to whether or not it was or was not free from existing encumbrances. The committee had before them the entire record—I think the entire record of that, and I know I never had any question in my mind, nor do I know of the question ever having been seriously raised until Mr. Finch raised it in his brief before Judge Hanford in the matter of the petition to reopen the bankruptcy proceedings.

Mr. MCCOY. Would you like to thrash that out again, Mr. Hughes?

Mr. HUGHES. What is it?

Mr. MCCOY. I say, will we have another legal discussion?

The WITNESS. But I want to state this, that during the forenoon—this morning I did undertake to see what the author of Cyc. had to say upon the subject.

The CHAIRMAN. What who had to say?

A. Cyc.

The CHAIRMAN. Oh, an authority.

A. And I want to submit this to the consideration of this committee.

The CHAIRMAN. Just make a reference to it, Mr. Battle. That will be sufficient. If you want attention called to it, do it by reference.

A. I don't—it is the volume of Cyc. containing the subject of receivers.

The CHAIRMAN. What I mean is that we don't want you to recite to us now what Cyc. says about it.

A. No, sir; I am not going to do so.

The CHAIRMAN. Very well.

A. But I want to call attention to this, that whatever construction may be given the effect of these reports, these sales, and these proceedings the creditors acted under that sale in the particular of receiving their money.

Mr. McCoy. Sure. Why shouldn't they?

A. Yes, sir.

Mr. McCoy. That is what any creditor is looking for.

A. No, sir; not if he was not entitled to participate in that he could not participate in it, and if he did participate in it he would waive something that he had.

The Chairman. Now, please leave out the discussion. You may go on.

A. But even for the purpose of the argument, and solely for the purpose of the argument, let it be admitted that the sale was subject to these encumbrances. The committee will bear in mind that this sale was made by the Federal court in the bankruptcy proceedings, but by the State court in the receivership proceedings, and if there was any money the result of that sale coming to anybody it was the business of that party to go into that court for it.

The Witness. Now, the property was sold, and this brings us to the subject of who were the purchasers. The facts are as follows: Mr. J. E. Chilberg, Mr. Kelley, and a Mr. Grondahl arranged for a credit at the Scandinavian-American Bank to the extent of $30,000 to provide a fund with which Mr. Mayhew, acting for them, was to bid at the sale of this property.

The Chairman. How many of them were officers and employees of the bank?

A. Probably all of them; if not officers, at least stockholders. Mr. Mayhew did put in a bid and was the successful purchaser of the property at the sale. Now, I would not undertake to consume the time of the committee in a discussion of the proposition as to what the books of the bank show or do not show. I will only state this, that if the committee will take this record that Mr. Finch himself has made and read the testimony of Mr. Lane, the assistant cashier at the bank; of Mr. Soelberg, who was then the cashier, there will be explained, I think, to your complete and entire satisfaction, every criticism that Mr. Finch has made of that matter.

Mr. McCoy. One criticism that he made, as I remember it, was that some one of those officers of the bank, or some one who appeared on their side of the proposition, denied any knowledge of who Mr. Mayhew was or what his interest in the property was.

A. Yes, sir; he did, and I want to show this committee what the facts are——

Mr. McCoy (interrupting). Now, wait a minute. Did you answer my last question that some one in the bank did deny that the bank, or any of its officers, or anybody on that side of the proposition, had anything to do with Mr. Mayhew?

A. They never denied it; but I will show and demonstrate to this committee as completely as two and two make four—pardon this positive statement, however—in that respect. Now, to turn to Mr. Finch's testimony——

Mr. McCoy. Who was Mr. Finch?

A. Mr. Finch, who has just testified before this committee. Now, he testified, on page 1314 of the record, as follows: This is the testi-

mony given by Mr. Finch on the day before yesterday before this committee, and the following questions and answers were made——

Mr. HIGGINS. You are reading now from the testimony before the master, are you?

A. No, sir; from the testimony before this committee.

Mr. MCCOY. This proceeding that is pending now?

A. Yes, sir. [Reading:]

Q. Go ahead. You were testifying as to what you offered to show.—A. I offered to show the connection of the bank with the present physical possession of the property which was then being held through this man Mayhew, or a person, or a corporation that was organized about that time named the Seattle Shipyard Co.

Q. You mean that Mayhew, or the corporation, purported to hold the title to the property of your clients, which had been sold by the receiver in the State court?—A. Exactly.

Q. And they claimed under the sale?—A. Exactly; I offered to show that this man Mayhew, or the corporation, as the case might be, was simply the agent of the bank. When we undertook to do so, several of the members of the bank's directorate—I think Mr. Soelberg and Mr. Grondahl and Mr. Chilberg, I believe it was—testified that the bank had nothing to do with the obtaining of the property; that they did not know the man Mayhew and were not interested in the property in any way.

Now, then, what are the facts? The facts are, in answer to Mr. Finch's own questions by these gentlemen as to whether or not they knew Mr. Mayhew when Mr. Finch was interrogating them a number of years ago before the master in chancery in regard to this identical matter to which he himself refers in the following transcript——

Mr. MCCOY. Now, let me ask you whether that happened before or after Mr. Finch came before Judge Hanford and asked for the production of the books?—A. So far as it occurred in the particular of interrogating these gentlemen as to whether or not they knew Mr. Mayhew, it occurred before—that is to say, when Mr. Finch came to Judge Hanford for this order he had only examined one officer, namely, Mr. Soelberg, and Mr. ——

Q. (Interrupting.) Now, if you are answering my question, all right, but if you are not, I would like to ask it over again.—A. There was only one witness who had been examined by him at that time and that was Mr. Soelberg, and here is his question to Mr. Soelberg and here is Mr. Soelberg's answer [reading]:

Q. Or was it in the same year—in the fall of 1901?—A. It was.
Q. Do you know M. H. Mayhew?—A. Yes, sir.

Now, he says before this committee that they told him they did not know Mayhew.

Q. Was there any testimony in the proceedings before Judge Smith, before Mr. Finch came into Judge Hanford's court and asked for the books?—A. Yes, sir; that preceded it.

Q. (Interrupting.) Wait a minute—to the effect that the bank or its officers did not know who Mayhew was in the transaction, regardless of their acquaintance with him?

The WITNESS. I am going to take his testimony, and wherein he says——

Mr. MCCOY (interrupting). You can quote several places in there, and I know positively nothing about it, and I should not know where to look for anything else—I want to know where there was any such testimony.

A. There was none, excepting testimony the reverse of what he says.

Q. In other words——A. (Interrupting.) And that occurred before he applied to Judge Hanford for the order.

Q. (Continuing.) In other words, so far as any inquiry about Mr. Mayhew was concerned——A. (Continuing.) Before Judge Smith?

Q. (Continuing.) Before Judge Smith—that was the only inquiry that was made before he came into Judge Hanford's court?—A. Just so—absolutely the only thing—and here he said before this committee that they told him that they did not know Mayhew, and I have just read to the committee where Mr. Soelberg said and told him he did know Mayhew.

Q. I thought you said Mr. Finch was the only one who was examined?—A. No. The situation is this——

Mr. McCoy. I see that I am mistaken in that—Mr. Soelberg did testify and he said he did know Mr. Mayhew?

A. Yes.

Q. Did he at that time explain Mr. Mayhew's connection with the matter?—A. He did. I think so. There is the testimony in full, and I think in that testimony—you see he was afterwards put on the stand—I know he did then or thereafter, and I think at that time.

Q. Didn't you have a moment ago the place where he testified about his knowing Mr. Mayhew?—A. Yes, sir; it is on the second page of his testimony.

Q. Can not you find there whether he testified that Mayhew was acting for the bank officers?—A. He testified he was not acting for the bank officers.

Q. Who did?—A. Mr. Soelberg.

Q. I thought you said just now that he said he was, as a matter of fact?—A. No, sir.

Q. Didn't you say that Mr. Soelberg and Grondahl and somebody else, officers of the bank, got together and put up $30,000?—A. I didn't say they were acting for the bank, but the reverse of it. They testified they were not acting for the bank. The bank had nothing to do with it, and they make that positive and clear in that testimony.

Q. Then we are making the distinction here between the bank as a corporation and these officers of the bank.—A. No, sir; not at all. An officer may perform an act, and because he performs an act and happens to be an officer of a bank it does not follow that that act has anything to do with his official capacity.

Q. Surely not; and I say we are making a distinction now, in talking about it, between the individuals and the officers.—A. Certainly. They did not act as officers; they acted as individuals, and the testimony of everyone who testified in reference to the matter so shows.

Now, then, so that when Mr. Finch made this statement he had only examined Mr. Soelberg; but he does not make that impression on this committee in this answer to this question. On page 1314 he says [reading]:

> And Mr. Chilberg, I believe it was, testified that the bank had nothing to do with the obtaining of the property; that they did not know the man Mayhew and were not interested in the property in any way.

And yet every one of them—Mr. Chilberg, Mr. Soelberg, Mr. Orondahl, and Mr. Lane, and every one of them—testified in answer to his own question that they did know Mayhew.

Mr. HUGHES. That appears in what record?

A. It appears in the record that I hold here, that was taken before Judge Eben Smith.

Mr. MCCOY. You are quite positive that those questions referred to a mere personal acquaintance with Mr. Mayhew, are you?

A. Yes, sir; absolutely so.

Q. You are absolutely——A. (Interrupting.) I will read it from the record itself.

Q. All right.—A. The first is that of J. E. Chilberg, on page 311 of the record, after first asking him what his occupation is, etc. Then on page 312 there is this question—this is by Mr. Finch to Mr. Chilberg:

Q. Do you know M. F. Mayhew?—A. Yes, sir.

And then, following that up, he asks him:

Q. Where did you first meet him?—A. In Seattle, about 20 years ago.

And then, on page 404——

Mr. MCCOY (interrupting). He did not examine him in regard to his connection with this matter.

A. Yes; he did.

Q. You do not think there was any possibility of an interpretation of any of the examination which would lead you to think that Mr. Finch meant "Do you know him in this transaction?"—A. No, sir; Mr. Finch meant to tell this committee that these gentlemen denied personally knowing Mr. Mayhew. That is the interpretation I put on his testimony, because he afterwards interrogated Mr. Chilberg and all the others as to who was connected with this matter and all about it. On page 404 Mr. Orondahl is being examined by Mr. Finch, and he is asked this question, among others, of course:

Q. Do you know M. F. Mayhew?—A. Yes.
Q. How long have you known him?—A. I have known him about two years.
Q. Do you remember the circu rstance of Mr. Mayhew purchasing the property of Heckinan & Hansen from the receiver appointed by the State court?

And then he proceeds on with that matter. Then on page 358 J. F. Lane, who was one of the officers of the bank, being interrogated by Mr. Finch:

Q. Do you know M. F. Mayhew?—A. Yes, sir; I do.
Q. Do you remember the circumstance of Mr. Mayhew being at the receiver's sale of the property of Heckman & Hansen some time in March, 1902?—A. Yes, sir; I know that he bought the property at that time.

And then he goes on with that matter. Now, that is the situation——

Mr. HUGHES. Mr. Battle, it may be clear to the committee, but it is not to me. You refer to the testimony of Mr. Soelberg in one of the exhibits filed here and then you refer to this volume of testimony again in reference to testimony that was taken subsequently. Is it the fact that this first testimony was taken before the special referee prior to the application to Judge Hanford for the order?

A. Yes, sir; it was, and that is my understanding——

Mr. HUGHES. Wait a minute. And the other testimony contained in this volume, spoken of as being a volume containing 886 pages, was taken after the order of Judge Hanford requiring the production of the books?

A. Yes, sir.

Q. So that to get all of the testimony you have taken the two reports?—A. Yes, sir; in other words, that first part of Mr. Soelberg's testimony is not in the volume containing the 886 pages.

Mr. HUGHES. You would have to take the two?

A. Yes, sir; you would have to take the two.

Mr. HUGHES. To take all the testimony?

A. Yes, sir. That arose this way: Mr. Soelberg was being examined; Mr. Finch wanted him to bring all the books of the bank up to Judge Smith's office. I objected, because there were a good many hundreds of pounds of books, and the bank was carrying on its daily business, and I told him he could go down there and have free access to every book in the bank, but that we objected to lumbering them up to Judge Smith's office. Well, he insisted upon having them there, and Judge Smith took the position that he would not order the bank officials to bring all their books up to his office, as they needed them momentarily in their business. Well, Mr. Finch thereupon proceeds to take such portions of Mr. Soelberg's testimony, he being the only witness then examined, and going before Judge Hanford and made his application and gets this order compelling the bank to produce all its books. Now, that was how this matter arose. He got his order, but Judge Hanford made a statement to him at that time to the effect and substance which I believe has already been stated before the committee.

Q. But he did get the order that he asked for?—A. I think he did; yes, sir. I know that he had us bring book after book there, and I know that he got every access to every book and every paper and document that he wanted at the bank.

Mr. MCCOY. Apparently Judge Hanford did not think the request unreasonable, because he gave him the order to have the books he wanted brought up there.

The WITNESS. He didn't think it unreasonable, or at least he gave it to him.

Q. Did it interfere with the business of the bank very much?—A. It would have if he was disposed to insist on their being brought there all at one time; but I want to say for his credit that he did not insist on our bringing them all up there at one time, and finally, I think, he accepted my proposition—that he should go down to the bank and examine them to his satisfaction and ad libitum.

The CHAIRMAN. Well, the business of the bank went on all the time, just the same?

A. Yes, sir; the business of the bank went on all the same.

Q. Go on.—A. Now, then, I want to make a further statement in reference to a criticism which Mr. Finch has made of some of these gentlemen; for instance——

Mr. HUGHES. Mr. Battle, before you go on: In reference to the first report of the evidence, and which, as you say, preceded the volume containing 886 pages, was the demand of Mr. Finch and your response to it, whatever controversy there was, properly recorded in there?

A. Yes, sir.

Q. So that they need not be left to the memory of Mr. Finch or yourself?—A. Yes, sir; or anybody else.

Q. But the Judiciary Committee can find what the facts are as recorded in the testimony?—A. They can.

Mr. HUGHES. I suggest, then, that the testimony——

The CHAIRMAN. Is that it in your hand?

Mr. HUGHES. I suggest that it go with the other volume and should be treated as a part of the entire testimony.

The WITNESS. Now, for instance, Mr. Finch stated to this committee and in this proceeding that the bank had paid C. A. Reynolds $150 and that he had not accounted for that money to Mr. Hansen, and I believe that matter was again referred to this morning in the investigation. Now, speaking of the $150 paid to Mr. Reynolds. Now, Mr. Reynolds was one of the witnesses who testified before Judge Smith, but his testimony is not in this volume of 886 pages; that is true of a number of other witnesses. Now, after Mr. Finch sought in that proceeding, as he has in this proceeding before this committee, to cast a reflection upon Mr. Reynolds anent this matter of the $150, I sent for Mr. Reynolds and put him on the witness stand and took his testimony. Now, Mr. Finch knows that because he was present and participated in the examination of Mr. Reynolds. What were the facts? Mr. Reynolds testified, just as Mr. Mayhew did in this testimony which Mr. Finch read from his testimony the other day—that $150 had been given to him, Reynolds, as a contributribution for Mr. Hansen, because of Mr. Hansen's affliction and then needy condition, and because he was the attorney of Hansen; that he notified promptly Mr. Hansen of the receipt of that money or the payment of that money to him for him, Hansen. Now, I am stating entirely from memory, and I understand Mr. Reynolds himself will be here in a day or two, and when he comes, if I make any mistake he can correct it, because, as I repeat, I am testifying from my memory as to what he testified to, but which matter, however, I mention, because Mr. Finch ought to remember and ought to have told this committee, as I am now proceeding to tell you, that Mr. Hansen, among other things, refused to receive that money because it might prejudice some right he had.

The CHAIRMAN. Where is that testimony?

A. That, I say, was the testimony as I call it to mind, of Mr. Reynolds, taken before Mr. Smith in the presence of J. L. Finch.

Q. Is there a record of it?—A. Unless the stenographer has it, there is not. Now, that is my recollection.

Mr. MCCOY. That $150 was given to Mr. Reynolds in some sort of a check or other, wasn't it?

A. I do not know how the testimony showed it was paid.

Mr. MCCOY (addressing the stenographer). Have you got the exhibit here—now, just a minute——

Q. Now, I show you Exhibit No. 48 in this proceeding; Mr. Finch testified yesterday that that was the $150 that was given to Mr. Reynolds. Did Mr. Reynolds undertake to explain what the words "Hansen settlement" on it meant?—A. I think he did.

Q. What explanation did he give of that?—A. I would not like to undertake to state, because it has just been called to my attention, and I have had no time to brush up my memory.

Q. Well, you brushed up your memory, Mr. Battle, on——A. No, sir, I beg your pardon.

Mr. MCCOY. I beg your pardon—you undertook to testify as to Mr. Reynolds's explanation.

A. So I did, Mr. McCoy.

Q. Now, why didn't you get your memory refreshed on the whole proposition?—A. Because I knew nothing about it until you just handed it to me as a matter of refreshing my memory in reference to——

Mr. HIGGINS. Is that a check, or is it a photograph of a check, Mr. Battle?

A. I could not tell; so far as I know, it is.

Mr. HIGGINS. It is not the original check, is it?

A. I would not like to undertake to state. I would not like to undertake to state whether it is or is not.

Mr. MCCOY. I do not say that it is. I say Mr. Finch testified that it was, or it was admitted here as such; I don't know what it is.

The WITNESS. But I do know this, gentlemen, that Mr. Reynolds appeared before Judge Smith and gave a detailed and complete statement and answered every question propounded to himself by myself and by Mr. Finch.

The CHAIRMAN. Have you any recollection of his explaining what the notation on that check meant? And if you have, tell us what it is.

A. I do not; I do not call to mind what this is, for I do not remember; I do not remember. This is a long time ago.

The CHAIRMAN. Well, pass on.

The WITNESS. Again, Mr. Finch stated before this committee, either yesterday or the day before, that when he procured from Judge Hanford an order directing the special referee, Eben Smith, to send up the testimony that he, Finch, in behalf of his clients taken, that we or the attorneys noted that same afternoon the motion that had been filed to confirm the referee's report. Now, the facts as shown by the record of the matter are that the referee's report was filed January 25, 1904; not until May 10, 1904, nearly four months thereafter, was a motion made to confirm that special referee's report; and on May 10, when the motion was made to confirm that report along with that motion—and there it is among the files—was a notice that was served upon J. L. Finch that on May 14, 1904—and there is his acceptance of service upon it [showing]—the matter of the hearing of this motion would be brought on for hearing before Judge Hanford. Now, on page 1322 of his testimony, made before this committee he says as follows, commencing at the bottom of page 1321:

> Q. Just a minute before you come to that. He gave you an order on Judge Smith to return the testimony?—A. Yes. The same evening that he gave me the order on Judge Smith to return the testimony, about 4.30 in the afternoon I received a notice from Ballinger, Ronald & Battle's office that the whole matter would come before Judge Hanford for final disposition the next morning at 10 o'clock.
>
> Q. Had the testimony at that time been transcribed into typewriting?—A. No; it had not. I came into court the next morning and myself started the proceedings. I suggested to Judge Hanford that I had been served with a notice that he was going to or would take up that morning the exceptions of the bankrupts to the referees report and also the motion of my opponents to confirm the report, and said that, of course, the matter could not come on this morning.
>
> Q. Now, was that morning the same morning on which you were notified to appear in response to this motion or notice which you have read?—A. Yes, sir. Let me make you understand it. I got the order for the testimony one morning at 10 o'clock; that same afternoon I had the matter noted for the next morning on me.

Now, as a matter of fact, under his own signature, on May 10, 1904, we served notice on him that we would bring up that matter for hearing on May 14. Now, the matter was not heard in point of fact until June 8. Now, why—possibly Judge Hanford may

have been out of the city; possibly because of the pendency of other matters before the court, that it could not be heard on May 14; but that I was present on May 14 is a certainty and I think Mr. Finch was there—now, what occasioned the matter to be postponed I do not know, but I complain of this, that the reading of this testimony would make the impression on this committee that he got an order from Judge Hanford to bring up this matter before the court on the very day that we served him with a notice calling up this matter for hearing. Now, that is not the fact, but the facts are as I have stated to you gentlemen. Now, then, the chances are, gentlemen, furthermore——

Mr. McCoy. Just a minute. Did the matter come up for hearing before Judge Hanford on the day after that on which Mr. Finch got his order for the testimony?

A. More than likely it did, if the record so shows it was heard on that day, but I am proceeding to state that more than likely——

The Chairman. Now, Mr. Battle——

The Witness (continuing). Now, the matter having gone over for one reason or another from May 14 the court not having been in the city, or for some reason or other, or Mr. Finch asking for something, I do not know what—I know it was not heard, that is a certainty.

The Chairman. It is not very edifying to hear you, a lawyer of your experience, testifying as to why or what possibly might happen and all that—that is not very convincing.

The Witness. I can not—to make it plain.

The Chairman. That does not make it plain; what possibly might happen?

A. Then I will omit it. It was not heard; therefore, I want to repeat this, that in all probability that before Mr. Finch applied to Judge Hanford to get that testimony he knew that this matter would come up on June 8 for hearing, and therefore, if the impression is sought to be given when he applied to Judge Hanford we noted this matter for hearing, it is an absolutely false impression that was given.

Mr. McCoy. Did you argue the motion of the 8th?

A. I did.

Q. Was that point raised at that time?—A. About the notice?

Q. About not having the testimony.—A. It was raised only in this way, that Mr. Finch stated he did not have the testimony, as I call to mind. I stated to the court that this report had been filed on January 25; that we had not made our motion to confirm until May 10, nearly four months thereafter, and I did not know why Mr. Finch had not got his testimony if he intended to get it there, the report being adverse to him.

The Chairman. Did you read his reason why he did not?

A. I heard his testimony.

Q. Well, do you know anything other than as he stated?—A. As to why he did not bring it up?

Q. As to why he did not bring it up.—A. I do not know of any reason to the contrary—I do not know.

Q. Proceed.—A. But what I have stated is that the testimony was not there; the matter had been pending then for over four months. I wanted to close it up some time and I brought on the matter for hearing—not that day, as he would have tried to give the impression, but on May 10 I initiated it—I argued it. I do not call to mind that

he argued, orally, the matter before Judge Hanford; he may have briefly argued it, but it was briefly, but thereafterwards he filed his supplemental briefs in writing.

Mr. FINCH (speaking from the audience). Would you like me at this time to call attention to the fact that within eight days after this 8th day of June, I, in my written argument, called Judge Hanford's attention and this witness's attention to that very fact about which I complained?

The CHAIRMAN. I think it would be orderly if you would give your version of it when Judge Battle has finished, rather than at this time.

Mr. FINCH. Very well.

The WITNESS. I do not know what statement Mr. Finch has reference to, and therefore I can not answer it.

The CHAIRMAN. Do you want to get the thread of the testimony? If so, read it to the witness.

The STENOGRAPHER. Do you want me to read——

The CHAIRMAN. Give Mr. Battle the thread of his narrative.

The WITNESS. I have the thread of that—I thought you had reference to Mr. Finch's statement.

The CHAIRMAN. No; that will come up later. We would not get far if we had interjections of that sort in the testimony.

The WITNESS. Now, gentlemen, I have undertaken simply to give an outline, and while it has taken a long time to give an outline, it is a long story in the sense that there are a great many minute details that I could go into that I believe would hardly be fair to the committee when it is all a matter of record here, and I have stated what I have stated simply to give in a summary way as possible and in an outline way what I regard as the substantial features connected with this entire proceeding. Now, you take up, for instance, the matter of any claim that the books of the bank show some—even a suspicion of fraud, or lack of fair dealing in the matter of that sale and distribution of the funds—why, a reading of the testimony of these witnesses will clear up anything in that respect.

The CHAIRMAN. Mr. Battle, did not the testimony of Mr. Finch state very specifically that he made no question about the distribution of the funds?

A. Well, he sought, as I understood in his testimony, to imply that the bank had been paying Larsen, the receiver; had been paying Reynolds, the lawyer, and others.

Mr. MCCOY. Does any order of the court show how the receiver got his compensation?

A. Any order of the court?

Q. Yes.—A. I so understand, that the record of that case fixes the receiver's compensation and that of his attorney.

Q. Payable out of any fund in court?—A. To be payable, I presume, out of the proceeds of the sale, perhaps. So that what I am undertaking to state is this, that any of these matters that are apparently not clear will be all cleared up by reading the testimony, because it was all gone into. I say that for this reason, may it please the committee, when Mr. Finch brought this case, made his exceptions to the special receiver's report, I was perfectly content that he take his own testimony and try it out on that. I did not care what testimony of any witness he took, because his own testimony of his own witnesses make clear all this matter, and I did not even bring——

Mr. McCoy (interrupting). Then, why did you take all the rest of the testimony?

A. Why didn't he?

Q. Why did you take any more testimony after he got through?—A. Simply because as a matter of justice to those people that some matters be explained. You take that matter of Reynolds, and you take the matter of this power of attorney that was given to Judge Ballinger.

Q. I understood you to say just now that the testimony which was presented by Mr. Finch's witnesses in itself exonerated everybody.—A. No, sir; I did not use the word "exonerated." I meant answered all the substantial issues and questions which could arise in the hearing of this petition to reopen. There were some personal matters largely with the gentlemen assaulted, so to speak, who owed it to themselves and to the court to give their testimony to Judge Eben Smith. Now, he exonerated them in his report; it was necessary for me to bring them up there to testify before Judge Smith, but it was not necessary for me to take their testimony up to the court; if they wanted to question it, let them bring it up.

Q. Why did Mr. Finch testify?—A. Why did he?

Q. Yes.—A. I never have been able to find out.

Q. Who called him?—A. He called himself, I think; that is my impression. The record will show [refers to record]. It says, "J. L. Finch, called as a witness in behalf of petitioners." I do not know who could have called him unless he called himself. Now, that is also true of Judge Hoyt; as I call to mind I put Judge Hoyt on the witness stand before Judge Eben Smith and had him explain the criticisms that Mr. Finch was making of him here about acting as referee in bankruptcy while he claimed he was attorney for the American Bonding Surety Co., or some company. Now, he explained all of that. I won't take the time of the committee; I think he is here intending to detail that matter fully to this committee. And so it was, gentlemen, with all those matters. Now, I can not say anything in reference to this matter——

The Chairman. Were you through now with your statement?

A. Except to reenter upon other features of this matter which have been testified about by Mr. Finch, which would consume some time, and unless there is some special matter that the committee desires to have me testify concerning, or the attorneys, I can only conclude by stating that the committee, in reference to all these other matters complained of by Mr. Finch, will find the matter fully covered by the testimony that is before the committee in the way of this testimony taken before Judge Eben Smith.

The Chairman (addressing Mr. Finch, who is examining the volume of testimony taken before the master in chancery). Mr. Finch, have you examined that testimony to your satisfaction?

Mr. Finch. Yes, sir; I have, Mr. Chairman, and I have noted——

The Chairman. I mean the small volume.

Mr. Finch. I know what you mean.

The Chairman. The testimony handed you awhile ago.

Mr. Finch. I note that in the evidence returned by Judge Smith, the large volume that is referred to——

Mr. McCoy. What was taken after the order for the production of the books?

Mr. FINCH. Yes, sir. At page 335—what ought to be 335—is a notation by the stenographer who got out this testimony to the effect that pages 335 to 357, inclusive, containing the testimony of A. H. Soelberg, was filed with the master in chancery. That refers, then, to this other paper which you just had in your hand and that should be, as a matter of fact, incorporated in this book at that page.

Mr. HUGHES. I thought it was taken before the rest.

Mr. FINCH. No; it was not the very first. I think that it was taken at about the relative place which you find it referred to by the stenographer in the book; I think that is what the stenographer meant. I know that we had gone quite awhile before that matter came up.

Mr. HUGHES. At any rate, that is the point at which this order was applied for?

Mr. FINCH. Yes.

Mr. HUGHES. It is conceded that it was at that point this order was applied for, and what was taken after that was taken subsequent to the order, and so it is immaterial where it goes in.

The CHAIRMAN. I will make this matter right in the record. Mark this volume as "Exhibit A" for identification, and the paper portion inside it, mark that "Exhibit A–1," as a part of "Exhibit A," from pages 235 to 257.

Mr. Finch's brief, or argument, submitted to Judge Hanford, is "Exhibit B" for indentification. His supplemental brief, filed with Judge Hanford, is "Exhibit C" for identification, and the printed brief filed with the circuit court of appeals which form a part of the evidence to be taken along to the committee, but not a part of our record, will be marked the consecutive letters following those, for identification. They may be marked consecutively in the order of their filing for identification, and that will cover all that is to be marked for identification.

The printed briefs referred to by the chairman are marked, respectively, "Exhibit D" and "Exhibit E" for identification.

Mr. DORR. I would like to state, Mr. Chairman, in this connection, for the record——

The CHAIRMAN. Is it for the record?

Mr. DORR. Yes, sir. In pursuance of a suggestion, made by Mr. McCoy I think, Mr. Finch and I are going over these numerous exhibits together and we will mutually agree on those that we think should go in relative to the Heckman-Hansen litigation.

Mr. MCCOY. I do not think, Mr. Dorr, then, that we can get together on that. Mr. Finch was reading yesterday a long list of papers that he thought ought to go in and I simply asked for an agreement on that list, not as to what ought to go in—they all did go in.

Mr. DORR. There are some more than those Mr. Finch mentioned that he wants to put in, and there are a few more that we would like to have go in.

Mr. MCCOY. If it is not a question of cutting out any, then you can put in what you want to; I thought you were going to exclude some of those that we had mentioned.

Mr. DORR. It is not a question of reducing the list, but rather of increasing it, and when we are through we will submit it to the committee for their approval.

Mr. McCoy. That is satisfactory.

The Witness. With the consent of the committee, there is one brief matter that I would like to talk about.

The Chairman. You may do so.

The Witness. Mr. Heckman knew at all times that Judge Ballinger was a director of the Scandinavian-American Bank at the times referred to here relating to the execution of this note and mortgage and the giving of that power of attorney, and had been and was then a director, and that the firm of Ballinger, Ronald & Battle were the attorneys of the bank at that time, and were the attorneys at the time that these differences arose.

The Chairman. Mr. Hughes, do you desire to ask the witness anything further at this time?

Mr. Hughes. The power of attorney which you have referred to, given by Heckman to Judge Ballinger for the purpose of making the loan of $5,000 to pay the purchase price of the Henneger children's interest—on that there appears the name of Nellie Heckman as a witness; who was she?

A. A sister of Heckman. She came to the office with him and signed this power of attorney as a witness at the time.

Q. Was this power of attorney executed for any other purpose than to carry out the making of the loan to pay for the interest of the Henneger children?—A. No other purpose whatsoever.

Q. Was there any other property embraced in this shipbuilding plant at the time when Heckman & Hansen acquired their interest than that of the original Henneger plant?—A. Not so far as I know.

Q. Do you know whether they had borrowed from the bank at the time when they purchased the first half interest, shortly before buying the interest of the children?—A. I am not able to definitely answer that question. I do not think much, if any, they had borrowed prior to that time.

Q. Do you know whether the evidence in this case disclosed the total purchase price by them of that plant?—A. Yes, sir. I think Mr. Heckman's own testimony gives it.

Q. Well, you have referred to the price of the half interest as being $5,000 and also have quoted some testimony to the effect——A. No; the whole of the Henneger interest cost $9,000; half of that, $4,500, was for Mrs. Henneger's interest and $4,500 for the minor's interest.

Q. $9,000 was the price paid?—A. Yes, sir.

Q. And subsequently they bought another piece of property which was subject to the Carstens & Earles mortgage——A. $3,000.

Q. And which they paid $3,000 for.—A. Yes, sir.

Q. Do you know whether they borrowed any money from the bank at the time they purchased the first half interest of Henneger? A. No; I do not. I have no knowledge in regard to that.

Q. But they did borrow the price paid for the second half interest.—A. Yes, sir.

Q. And $500 more?—A. Yes.

Q. And they borrowed the price paid for the Winsor property?—A. Yes, sir; for the Winsor property.

Q. And when this controversy arose——A. (Interrupting.) It was a very small plant; it was only situated on the waterway there that a ship of very light draft only could reach it.

Q. When this controversy arose was in the spring of 1901, wasn't it?—A. Which controversy?

Q. I mean beginning with the repair of the *Alice* and the libeling of the *Alice,* and so on.—A. Well, it arose, I should say, in the summer of 1901, in the early part of the summer.

Q. June, I think, was the date you mentioned?—A. Yes.

Q. It was in 1901?—A. Yes, sir.

Q. And the purchase of the interest of the children was in the fall of 1900.—A. Correct.

Q. And also of the Winsor property was in the fall of 1900.—A. Yes, sir.

Q. Do you recall when the purchase of the Henneger half interest had taken place?—A. Why, it was purchased along about October 31, 1900.

Q. Do you mean that they had purchased from Henneger shortly prior to that?—A. Oh, in regard to the Henneger interests, I do not know when it was acquired—I never knew.

Q. Were you familiar with the fact or the testimony relative to the value of this property as to whether the price received by the receiver was a reasonable price or not?—A. Why, that is my best information and my best belief, Mr. Hughes, that it was the fair and reasonable value of the property; in fact, it appears from the record in the receivership case that R. S. Jones stated to Mr. Heckman that if he could get anyone who would bid even $100 more than had been bid by Mr. Mayhew that they would throw open the sale to further bids, and they were never able to produce anyone who would give any more than Mayhew bid. I would like to state this furthermore: Mr. Finch made the statement that, as I call to mind, that this property at this time is worth $200,000. It is easy to get witnesses to appraise it, but what I want to state is this, that at the time the sale of this property by the receiver at receivership sale it was a small plant. When the Seattle Shipbuilding Yards Co. was organized, the testimony of Mr. Chilberg will show that was taken before the referee, that they had to expend between $50,000 and $60,000 to put it in condition.

Q. To make a shipbuilding plant of it?—A. Yes, sir.

Mr. McCoy. They made an arrangement with the bank for $30,000 to handle these properties with, didn't they?

A. Yes, sir.

Mr. Hughes. You mean they made an arrangement, the shipbuilding company, to borrow $30,000 for the purpose of making improvements?

A. No, sir. Childberg, Kelly & Grondahl arranged for a loan at the bank of $30,000 to furnish Mayhew to bid for the property.

Mr. McCoy. In other words, they thought there was a fair prospect that they might have to bid up to $30,000?

A. They did not know what it might be; that was the limit—that was the limit of the price that they were willing to bid—the maximum amount. It did not follow from them, I want to state, that they were willing to bid any $30,000. That was a line of credit to that amount that had been arranged not to exceed that. As to what was to be bid for the property, in all probability, was a matter that would have to be determined by finding out what the property was worth before they put in any bid.

Mr. Hughes. I think that is all.

Mr. McCoy. I wish you would state again, Mr. Battle, what the arrangement was that had been made or was about to be made with these Henneger heirs for the purpose of this half interest.

A. I think I read from Mr. Heckman's own statement of it, Mr. McCoy, if I am not mistaken.

Q. If you can state it, substantially, please do so.—A. In substance, it was that Heckman & Hansen were to pay $2,000 cash for the minors' interest and $100 a month thereafter, and secure by mortgage upon the property the unpaid balance.

Q. Now, had Mr. Heckman made this arrangement?—A. Yes; he had made that arrangement; that is to say, he made the arrangement so far as it could be made legally.

Q. It had to be affirmed by the court——A. Yes, sir.

Q. (Continuing.) In order to be made good?—A. Yes.

Q. And then he went to Alaska, leaving a power of attorney?—A. Yes, sir; he left the power of attorney.

Q. You testified, as I remember it, that the arrangement was that the bank was to step into the shoes of the guardians in regard to this arrangement?—A. No. To use his language, as I stated at that time, that he stated that he, Heckman, stated that he had arranged with the bank to take over the matter as the guardian was to have it; to use, as nearly as I can, his own language—that is, that was his statement.

Q. Your statement was, as I recall it and I think I have a memorandum of it, that the bank was to step into the shoes of the guardian? A. That is what Heckman testified; yes, sir.

Q. That is what he supposed?—A. That is what he testified he did, but Judge Ballinger and the bank officers say that Mr. Heckman never arranged and they never agreed to let him have $5,000 or any other amount for a period of five years, or any other amount except that the matter was one to arrange to get the money. They would make a 30-day loan or a 90-day loan, and would not make any other.

Q. Why did not Heckman go ahead with the guardian?—A. Because Mr. Heckman did not want to have any dealings with Henneger. He makes that clear in his own testimony.

Q. Was Henneger the guardian?—A. Yes.

Q. Of those children?—A. Yes; it so appeared from his testimony; that is all I know about it. I did not go into it.

Q. So instead of making an arrangement by which he would pay $2,000 in cash and the balance of the purchase price at $100 a month, he stepped into the bank and authorized the giving of a $5,000 note for 90 days—is that what the contention is—or at 90 days, I should say, not for 90 days?—A. Well, the contention is simply this: I do not suppose that Heckman & Hansen had any $2,000 to pay to Henneger if they had made that arrangement; in all probability they would have to get it at the bank.

Q. I have no doubt they would have to borrow that somewhere, according to your contention.—A. Yes.

Q. But that was the arrangement, that they were willing to substitute for the obligation which they could pay off at the rate of $100 a month running through—I don't know how long—whatever it was, we will say 25 months, we will assume that the $4,500 was the purchase price, then he substituted for that an obligation to the bank for the full amount payable in 90 days?—A. Yes; and Hansen, you understand, was present; in other words, the way this matter arose—to make this matter clear—Mr. Heckman, it so developed in the hearing, impressed on Judge Ballinger that they wanted that

property; it was essential to that plant that they have it, they did not want to lose it, they had a half interest and it stood them in hand to get the other half interest. He wanted them to get this property to put it in this boat. Now, when he wanted to get the money he could not get it on any better terms than the bank would let them have it. Hansen was present and they could not get the money except on a 90-day loan. That was all there was to it. There was no other way of getting it. You could not go out in the market and have gotten a hundred-dollar loan on a hundred-dollar investment. It was simply not a proposition that anybody except a bank, in the accommodation of a customer, would have entertained at all. No one in the loan market or the real estate business would have made any loan upon it, except, probably, $2,000 or $3,000 at the farthest.

Q. You say that Heckman & Hansen got back their money in the admiralty suit or the libel suit against the *Alice*?—A. Yes, sir; so Capt. Larson testified—that is his testimony as found in this book, and more besides.

Q. They made a stipulation in regard to the whole matter, didn't they, and signed it and had it approved by one of the judges of the superior court?—A. Stipulation in reference to what feature of it, Mr. McCoy?

Q. I mean the sale of the *Alice*, how it should be sold and what should become of the money?—A. They probably did. All I know is, reading his testimony here, Capt. Larson says he got the money.

Q. And more, too?—A. And more, too—to use his language.

Mr. McCoy. Let me have that stipulation, Mr. Finch, will you?

Here Mr. Finch hands document to Mr. McCoy.

Mr. McCoy. I should like, Mr. Chairman, to have this in evidence. Mr. Finch, this is a copy of the stipulation filed in the superior court and approved by the judge, is it?

Mr. Finch. It is a certified copy—you will find the certificate on it.

Mr. McCoy. It is the stipulation in regard to the *Alice* signed by the Scandinavian-American Bank and others, and approved on September 3, 1901, by George Meade Emory, judge. I simply offer it in connection with Mr. Larson's testimony that the receiver got more than the money that was paid under the libel.

Document marked "Exhibit No. 61."

Mr. Battle. I will read what he testified in regard to that.

Mr. McCoy. I take your word that he testified that way, and I have put this stipulation in in connection with his testimony, and not with yours—I take your word for it.

The Chairman. Any questions, Mr. Hughes?

Mr. Hughes. When this loan was made of the $5,000 by the Scandinavian-American Bank for the purpose of purchasing the half interest of the Henneger children, and the note was signed by Hansen on the firm of Heckman & Hansen, and the mortgage also, had Hansen received the injury which has been spoken of in the testimony?

A. No, sir; I think not. I think that he received that injury some while afterwards.

Mr. Hughes. That is all.

The CHAIRMAN. Is there anything further, Mr. Battle, you wish to say?

The WITNESS. I should like to read what Mr. Larson said about that for a minute. I want to be absolutely accurate, particularly when I am undertaking to quote.

The CHAIRMAN. Very well; you can have a lawyer's minute.

The WITNESS (reading):

Q. Something was said about the sale of the schooner *Alice*. As a matter of fact, did one dollar change hands in the sale of the schooner *Alice*?—A. No, sir; I understand not.

Q. Is it not a fact that under the orders of the court you offset the overdraft of the Scandinavian-American Bank against the schooner *Alice* and made a profit for Heckman & Hansen by doing it?—A. Yes, sir.

Mr. MCCOY. Now, the exhibit which has just been put in evidence absolutely contradicts Mr. Harson's statement that he made any profit. It provides in there that any surplus shall go to Mr. Tennant.

The WITNESS. "And made a profit for Heckman & Hansen by doing it." Is that the part you refer to?

Mr. MCCOY. Yes.

The WITNESS. Now, how it came I do not know.

Mr. MCCOY. If you read the stipulation, it provides in there expressly that if there was anything over the amount of the indebtedness claimed in the libel that surplus was to be paid to Mr. Tennant.

A. It may be. I do not know what he just simply means by the word "profit." He may have had something else in mind.

The CHAIRMAN. That is all, Mr. Battle.

Mr. HUGHES. It appears from the record in this case that the Winsor loan was made, I think, 22 days after the $5,000 loan.

A. Yes, sir.

Q. Had Heckman returned at the time of the Winsor loan?—A. He had returned from Alaska.

Q. Did he personally sign the note and mortgage in the Winsor loan?—A. He did.

Q. And does the mortgage in the Winsor loan expressly refer to the prior mortgage of $5,000?—A. It does.

Q. And ratifies it?—A. Yes, sir; it says it is subject to it.

Mr. HUGHES. That is all.

The WITNESS. Now, furthermore——

Mr. MCCOY. I beg pardon.

The WITNESS. You will find in the testimony here of Mr. Heckman, taken before Judge Eben Smith, that when he returned from Alaska and says he found out about this mortgage he made some complaint, and I would rather the committee would read to see just what his complaint is, but I think I am fair in saying that his complaint was that the mortgage had been given. At least in one place I was reading about it he makes no complaint about the period of time of it, but the fact of the giving of a mortgage at all, and yet he had left the power of attorney for the purpose of closing it up, according to his own statement, by the giving of a mortgage to take the place of the mortgage that was to be given to the guardian.

Mr. HUGHES. I think you have already explained that in the first part of your testimony.

Mr. MCCOY. Now, Mr. Battle, I ask you whether that is a copy——

Mr. DORR. That is an original.

Mr. McCoy (continuing). The original order containing the petition of the bankrupt to reopen the estate of Heckman & Hansen, which was argued on the 8th day of June, 1904 [showing]?

A. So far as I know, I believe it is, Mr. McCoy.

Mr. McCoy. Mr. Dorr says it is.

A. So I have no doubt of it.

Mr. McCoy. I will take Mr. Dorr's word.

The Witness. I have no doubt of it.

Mr. McCoy. Was that prepared in your office?

A. In all probability I prepared it myself.

Mr. McCoy. Well, it reads, so far as I shall read it:

On the 8th day of June, 1904, at 10 o'clock in the forenoon, this matter coming on to be heard on the motion of Seattle Shipyards Co. et al. on the report of the special receiver heretofore to be made in this case be confirmed and that Jerry L. Finch be disbarred, and also at said time coming on the exceptions of said bankrupts heretofore filed to said reports, which matters coming on for hearing pursuant to notice served on said bankrupts on June 7, 1904.

Now, in view of that, do you wish to make any other statement about Mr. Finch's claim that it was noticed on the day before it was heard?

A. No; except to emphasize what I have said. Now, to explain to the committee what would be natural and is our practice.

Mr. McCoy. I don't want what would naturally be your practice, Mr. Battle.

The Witness. In all probability it was this, because I want to be fair to the committee.

Mr. McCoy. I do not want, so far as I am a member of the committee, that you shall give us anything about what probably was or anything of the kind—did the order recite the fact?

A. It recited the facts so far as stating that notice was served on him on June 7, because it was not necessary to recite everything in the order; but it is a fact, undisputed, I take it, or ought to be, because there is his own signature, that Mr. Finch was served with notice on May 10 that this matter would be brought on for hearing on May 14.

Q. He never disputed it?—A. No, sir; I don't think he could, for there is his signature. Now, it not having been brought on, for some reason or other, on May 14, and it may be more than likely that I understood that Judge Hanford would be here on June 8, that I would naturally prepare and send over to Mr. Finch's office merely, gentlemen, as a reminder, as a matter of courtesy, pure and simple, that I would bring it up the next day. But when he seeks to make the impression on this committee that the fact that he moved to get this record up here and that was what induced the noting of this matter—if that be his purpose, then he is seeking to attempt to make an impression on this committee that is not true, if that be his purpose in making that statement.

The Chairman. Any further questions?

The Witness. I do not know what his purpose was.

Mr. McCoy. Is that order in evidence?

Mr. Dorr. No; it has not been put in evidence. It was one of the things I was going to marshal with these other exhibits.

Mr. McCoy. All right, Mr. Dorr.

Mr. Dorr. I will see that it goes in.

Whereupon a recess is taken until 9.30 o'clock to-morrow morning.

THIRTEENTH DAY'S PROCEEDINGS.

FRIDAY, JULY 12, 1912—9.30 O'CLOCK A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will be in order. Are you ready to proceed, Mr. Hughes?

Mr. HUGHES. Yes. Do you want us to suggest a witness?

The CHAIRMAN. Yes.

JAMES B. METCALFE, having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your full name.

A. James B. Metcalfe.

Q. Where do you reside, Mr. Metcalfe?—A. City of Seattle.

Q. Have lived here for how long?—A. About 30 years.

Q. You are a lawyer by profession?—A. Yes, sir.

Q. Engaged actively in the practice of your profession?—A. Yes, sir.

Q. Have you any association with any other lawyer?—A. Not at the present time.

Q. Or are you alone?—A. I am alone at present. I have been for the past two years.

Q. And before that what was your firm connection?—A. Metcalfe & Jurey for about three or four years before that; Metcalfe, Turner & Bailey during about 10—a little more than 10 years ago; 15 years ago.

The CHAIRMAN. Mr. Hughes, perhaps you had better conduct the examination yourself. You can get more directly at the things you want.

By Mr. HUGHES:

Q. General, your connection with the receivership case of Curtis against Heckman & Hansen has been the subject of testimony and become involved in this hearing. Will you go on and explain in your own way to the committee what are the facts respecting that case, so far as your connection with it was concerned or your knowledge growing out of that connection, doing that in your own way? I think it will save time and record.—A. I will endeavor, Mr. Hughes, not only to save the time of the committee but make as brief a statement as I can. I don't think there is a great deal to be said. You have asked but about one case, and there were two. It was a libel of the schooner *Alice*, I think, first——

Q. (Interrupting.) Did that antedate the bringing of the receivership case?—A. That is my remembrance of it.

Q. I think you should refer to that. Go on and state what are the facts.—A. It has been nearly 11 years since I had anything to do with it and I would have to begin according to my recollection. I have none of the records by me, or files of court. Mr. Heckman was a man of exceedingly nervous temperament and full of nervous energy; had his little shipyard out here at Ballard. He came to me one morning at my office and stated that he had a cause of grievance against the Scandinavian-American Bank and Judge Ballinger; I think Judge Ballinger was mentioned at the time. He stated that Judge Ballinger had signed a promissory note for $5,000, and, among

other things, that he had been engaged upon repairs to the schooner *Alice* at Ballard, at his little shipyard there; that he had an arrangement, as I understand it, and my recollection of it was, with the bank that they should advance to him certain moneys for the repairs of this ship, in the payment of these repairs; that the bank had started a foreclosure suit against him, if I remember aright, on his property, and he wanted to know what to do. I examined, as far as I could from the statement that was made to me at that time, and advised him first, if my recollection now is correct, to libel the schooner *Alice* for the moneys due him for material and labor put into the schooner *Alice;* that that in my judgment was a superior lien to any mortgage that they might have upon it, and they would be compelled—the bank would be compelled—to give him, Heckman, whatever his material, the labor, and the whole bill would be according to the labor and material put in. I did that, and the schooner was libeled and the case tried out, went to a decree, and the sale ordered of the schooner. At the date of the marshal's sale I went out and there were a number of bidders—I don't know how many, five or six or more—and I continued to bid that schooner up to the limit of that decree in order that Mr. Heckman might have the advantage of what he claimed and what the decree allowed him as against the bank's—or the mortgage, or whatever it was—the bank's claim. That was done. That——

Q. (Interrupting.) Were you the successful bidder, or did some one bid more?—A. Oh, they bid more. I don't know who it was; I don't remember. I haven't the decree by me—I mean the marshal's return of the sale—but I forced them up to the point of fully recovering whatever Mr. Heckman claimed as the amount of his—which had been established by the decree, up to the amount.

Q. Including costs?—A. Sir?

Q. Including costs?—A. That is my remembrance of it.

Q. Was that sum paid in satisfaction of the judgment—of the decree in admiralty?—A. Well, as I understood it, they simply credited him with this amount at the bank; that is, whatever he recovered there in that judgment was credited against his account at the bank.

Q. I think that was covered by a subsequent stipulation?—A. Yes, sir. Now, then, after that the foreclosure suit—I am giving my best recollection now without looking at any of the records in the case, and I have not seen them in 10 or 11 years—when the foreclosure suit against the Heckman & Hansen Shipyard out there was begun I went, I think, to Ballinger, Battle & Ronald and secured from them a stipulation for the purpose of giving Mr. Heckman a chance to finance his properties and get rid of all these obligations. That stipulation expired. I remember that we went about, or he did, and saw numerous persons, doing his utmost to get the money to pay off these obligations and save his shipyard. The idea was this, that here he had the ownership of the upland property which, under the State law, gives him the right to purchase the tideland property, which would greatly enhance the value of that property as a shipyard; and under those conditions that he would present them to his friends and capitalists everywhere. In the meantime I found that the bank had pressed its claim, and he came in one day and I said, "There is only one way in the world that I know by which you can prevent the Scandinavian-American Bank from getting their judg-

ments and recovering whatever judgment they have against your property, and that would be, Mr. Heckman, to have a receiver appointed, because when the State court takes possession of this by a receiver, then all of these suits will be at a standstill and give you that further chance." I said, "Have you any creditors at Ballard?" "Yes, sir," he says, "I have." "Who are they?"

He at that time stated that the largest creditor, I remember, was a man by the name of Curtis; and that if Curtis would sue on his note and apply for a receiver—or not his note—whatever his bill was—an ordinary open account—that it was possible to stand off the bank in order that he might recoup the circumstances in which he was in. He went out to Ballard and brought Mr. Curtis in and the whole situation was talked over there, and he then agreed and thought the best thing—as we all did—that a receiver should be appointed for the purpose of fighting off the Scandinavian-American Bank. We applied to the superior court of King County for a receiver. It was granted. Then it was, my stipulation with the bank's attorney having expired, I saw I had the—it would be necessary for me to get a further extension of time to save the Heckman properties. It was in that situation that if he could not get his friends or some one who had the money to loan and pay off this indebtedness, that eventually the matter would have to be closed up in a legal way. That receivership, after being instituted, why, of course all these people drifted and all these cases went right into that receivership case, and we held them up for Heckman's sake until the bank was pressing its claims. They appeared before the judge—I think, Griffin—several times, but the result was that the superior court granted Heckman, I think, or granted us, for Heckman's benefit, 30 more days in which he might have the opportunity to get out and see what he could do to recoup his financial condition. At the end of that 30 days he had not been able to do anything. In the meantime he had been drinking very heavily, and coming into the office he would be in a condition that he would use all sorts of vile language against anybody and everybody connected with the whole matter, and I finally said to him: "Mr. Heckman, I have gone to the fullest extent. I do not believe the superior court will grant us any more time. I don't know where I could be of any service to you unless you can get some of your friends to finance the situation that we have been endeavoring to do for you for the last 40 or 50 days." He became very much—seemed to be offended by it, walked out of the office, and I never heard anything more of him until Mr. Finch took charge. Thereafter I didn't appear in any court. He never came to me for any advice of any kind or character.

Q. Do you recall what attorneys represented the plaintiff Curtis in the suit for the appointment of a receiver?—A. My recollection, Mr. Hughes, is that it was a former city attorney of Ballard. Mr. Whitham, I think he was. Now, a little further in regard to that: At that time and for a long time prior to that time—at that time and prior to that time for a long time Mr. Heckman had a warm personal friend of his, Peter Larsen by name, as his bookkeeper; knew every part of his business, and it was agreed upon if we could get the court to do so by reason of Larsen being so familiar with the details of the shipwrights and of all the properties they had there, that they might conduct their business under that receivership and then still make

money, and he suggested that Mr. Larsen be appointed receiver. We made our suggestions to the court and Mr. Larsen was appointed receiver. After that we had nothing more to do except to look after Heckman & Hansen's business before the receiver. Larsen had Mr.—if I recollect correctly—Mr. Richard Saxe Jones as his counsel. Mr. Jones then represented Mr. Larsen all through this matter. One day Larsen came in to me and he says, "Heckman is drinking so heavily." Larsen at that time was living with his little family upon this property—this little upland piece that we were supposing to make the money out of the tideland interest, and was boarding with Larsen—Heckman was; that he came in so often intoxicated, was so violent in his language, that he could not stand it any longer, and asked me what to do. "Well," I said, "I have nothing—I have no advice to give you, Mr. Larsen. You are in the hands—you are an officer of this court and you have your attorney." Subsequent to that Larsen came and informed me that this thing had been repeated so often until it was unbearable and that he had told Heckman he had to leave the place. I didn't know a thing more about the situation until Mr. Finch came in with his charges before the Federal court. There my relation with the whole thing ceased until I was brought up by the committee to ascertain what I knew about the situation, and I told it then as I have told it now.

Q. Mr. Metcalfe, you have spoken of his expressing dissatisfaction to you. Did he employ some one else to supersede you?—A. If he did, why, the party never came to me. I never saw him afterwards. He left my office and I never knew anything about it until Mr. Finch here came in with his allegations in that celebrated petition.

Q. The record appears to disclose that one C. A. Reynolds represented Heckman after you had represented him for some time?—A. Well——

Q. What do you know about that?—A. It is possible that he did, Mr. Hughes; but Mr. Reynolds never—I never saw Mr. Reynolds, never talked with him about it, nor did my firm.

Q. Did Mr. Heckman, after the time you have mentioned, ever come back to consult you any further about the case?—A. Oh, absolutely not.

Q. Or notify you of your discharge?—A. Absolutely not. I had gone on in so much good faith to try to put that property back, and seen his friends, etc., that I could not—I did not feel as if I was called upon to do any more.

Q. I call your attention to the original complaint in the case of William M. Curtis against C. A. Heckman and M. E. Hansen, copartners, etc., and ask you if that is the complaint that was filed in the superior court upon which a receiver was appointed [handing paper to witness]?—A. Yes, sir; Mr. Whitham——

Q. He was a member of the firm who attended to the matter?—A. Yes.

Q. The firm name on this is Bennett, Whitham & Lund. You say Whitham was the member of the firm who attended to it?—A. Yes, sir.

Q. There appears by this complaint to be no prayer for the appointment of a receiver?—A. Well, my firm had nothing to do with the appointment of a receiver, any further than advising him that it was the only way to prevent the bank——

Q. (Interrupting.) Just a moment.—A. (Continuing.) From swamping him.

Q. I see that the complaint is verified on the 11th of July, 1901. I show you now an affidavit by C. A. Heckman, entitled in the cause of Curtis against Heckman et al., which was verified on the 11th of July, 1901, the paper submitted to you being a certified copy of the original, and ask you if that affidavit was one prepared in your office, verified by Mr. Heckman for the purpose of securing the appointment of a receiver [handing paper to witness]?

Mr. HUGHES. If the committee please, Mr. Finch advises me that all the papers that I am submitting to the witness are copies that are verified by him to be true copies of the originals for the purpose of use here, and the committee can ascertain by Mr. Finch's statement that that is correct.

Mr. FINCH. That is true.

Mr. HUGHES. The originals being files of the superior court?

A. Yes; I think that affidavit was prepared by Mr. Jurey, my partner, for Mr. Heckman, and handed to, I think, Mr. Whitham.

Q. And I show you also a copy which Mr. Finch informs me is a true copy of the original of a motion and of an affidavit for the appointment of a receiver in the cause of William M. Curtis against C. A. Heckman et al., and ask you if the original of that was one of the moving papers at the time of the commencement of the suit of Curtis against Heckman et al., upon which the receiver was appointed [handing paper to witness]?—A. Yes.

Mr. HUGHES. For the sake of brevity and for the information of the committee, I will say that the three papers that I have submitted to the witness are a part of the files which are also documentary proofs in the Federal court, which it is arranged shall be collected in suitable order by Mr. Dorr and Mr. Finch and introduced collectively. So I will not offer them formally at this time, but they will be offered later, it being the intention, as Mr. Finch advises me, and which I approve, to arrange these papers in order so that when introduced they may be introduced in proper order and constitute so much of the files and documentary proofs in the case in this court as is deemed material.

Q. Gen. Metcalfe, were you a witness in the proceedings before Judge Eben Smith as special referee in the matter of the petition to reopen the bankruptcy proceedings instituted by Heckman & Hansen for bankruptcy?—A. I don't recall, Mr. Hughes, that I was a witness there. My only recollection is that I was a witness before the committee of the bar association, but it is possible I was; if it is, why, the record will show. It is 11 years now since I have had anything to do with it.

Q. Did you follow the proceedings in the State court, the receivership proceedings, throughout?—A. I followed it clear through to the time of the sale of these properties, except this: That matter was practically taken out of our hands; Heckman ceased to come to the office, did not consult us any more, and I knew nothing about it, as I say, until Mr. Finch brought his bill before Judge Hanford.

Q. You knew of the order of sale of the property obtained by the receiver?—A. Yes; I knew of the order; yes, sir.

Q. You knew of the fact of the sale and the amount——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Of the purchase price?—A. Yes.

Q. Are you familiar with the properties; had you examined them personally?—A. Yes; I did.

Q. Considering the times, the conditions as they then existed, and the condition of the property and the state of the market, what do you say to this committee as to whether the price received at the receiver's sale was a reasonable price?—A. I believe, Mr. Hughes, that it was a reasonable price. What we tried to do at that time was for Mr. Heckman's sake and Mr. Heckman dead; taking into consideration the upland interest that he had that would hold his interest in the tideland properties, we had regarded it as being worth about $30,000, but times were hard at that time; money was tight, and with all the efforts we could do we could never get any more than what was offered for that property and what it was sold for.

Q. The committee will probably not understand your allusion to tideland interest without some explanation. Had Heckman & Hansen exercised the preference right of the upland owner to purchase the tidelands from the State at that time?—A. Well, I don't know, Mr. Hughes, but I assume he must have done so or we would not have gone on with the idea of purchasing this property; but I don't remember that at all, but we were endeavoring to get the money to perfect that title and present to the bank or present to the capitalist——

Q. (Interrupting.) Be that as it may, for the information of the committee at this point, unless objection is made, I will ask a leading question, because it is a legal question.

The CHAIRMAN. Very well.

Q. The fact was, respecting the law of this State, that the State asserted the title to all lands covered by the ebb and flow of the tide?—A. Undoubtedly.

Q. And by act of the legislature gave the preference right to purchase the land to the abutting upland owner?—A. That is exactly correct.

Q. And those lands were appraised at nominal prices, and the rights were considered valuable rights as appurtenant to the upland because of the preference right given by the State to purchase from the State?—A. Undoubtedly.

Q. So that whether the purchase had actually been consummated, which would depend upon what proceedings had been at that time taken by the State, or not, the right was deemed a valuable part of this property?—A. Yes, sir.

The CHAIRMAN. How long did the owner of the upland have that preferential right?

Mr. HUGHES. My recollection is six months, but it could not be—that is, six months after the lands were surveyed, platted, and appraised, and the time did not run until the State had taken that preliminary action and given the necessary notice, so that no third party could step in and become a purchaser until after the upland owner had permitted that period to lapse.

Mr. HIGGINS. Suppose his right had lapsed; how were the lands then disposed of?

Mr. HUGHES. Then they might be purchased by a third party.

Mr. HIGGINS. From the State?

Mr. HUGHES. At public sale. It was then exposed, whenever the State got around to it, to public sale; and anybody might be a bidder after the upland owner had allowed his preference right to expire.

The WITNESS. I merely mention this to the committee, Mr. Hughes, for the purpose of showing the straitened conditions and the uncertain titles that he had for the purpose of financing his scheme as a shipyard.

Mr. HUGHES. The property was subject to mortgages also?

A. So I understand it; yes, sir.

Mr. HUGHES. Since Gen. Metcalfe is on the stand, and has long practice in this court, I would like to ask him also to testify respecting the personal habits and the judicial conduct of Judge Hanford during the period of his incumbency upon the bench.

The WITNESS. Shall I answer that just without any further questions than that; just tell what I know?

Q. Yes, sir.—A. Well, now, gentlemen of the committee, I have known Judge Hanford 30 years; I have known him intimately; I knew him before he was on the bench, before the Territory became a State, and before he became United States district judge. His life—his private life ever since I have known him—was exemplary. I have always regarded Judge Hanford as being illiberal, almost, in his ideas of the morality of the city.

Q. What's that?—A. What I mean by that? I thought he was strict in his enforcement of all the moral laws that the city had passed, particularly as he had been the city attorney at different times. I thought he was rather severe. When he became district judge—I have practiced now before him ever since that time—I thought the appointment eminently one that would give credit not only to the United States Government itself, but to our city. I have seen him almost every month since that time. I have seen him repeatedly, during the weeks of the last three years, coming in on the car with him, and I have regarded his conduct—sat down and talked with him intimately in the seat with him as we came in. Now, that would be as to his private character that my remarks are directed now. I have never seen him intoxicated in my life. I have never seen him under the influence of liquor in my life.

As to his conduct upon the bench, I have had it brought to my mind by one of the supreme justices of the United States Supreme Court, or the justices of the United States Supreme Court, that he regarded his decisions as replete with sound judicial reasoning and logical conclusions, and that he would not be surprised that in the course of the history of the United States that Judge Hanford might be on the Supreme Bench. That was done in Washington City about five years ago. Now, I am merely speaking of my relations with him upon the bench and my opinion of him while there—while on the United States district bench.

Mr McCOY. Who was the justice of the Supreme Court that said that?

A. Would you like to know?

Mr McCOY. Well, I would not ask you if I didn't want to know.

A. Well, the late Stephen J. Field. That conversation occurred with me in his private library on East Capitol Street—21 East Capitol Street.

Mr McCOY. I don't need his address now, as I understand he is dead.

A. Well, that is what I understand. I thought probably you would not be able to get any further than what I am telling you, Mr. McCoy.

Now, is there anything particularly more that you would like to know, Mr. Hughes?

Mr. HUGHES. Well, there has been more or less testimony as to Judge Hanford's nodding in court. Tell what you know about that.

A. Well, yes; I saw that once The judge has a habit sometimes of, when listening to a long, labored argument, to sit back in his chair and close his eyes; but I never saw a man more alert in my life, nor a judge more alert in my life, when we got through, to determine what in his mind was the law of the question submitted to him at that time.

Q Well, Gen Metcalfe, when long and intricate cases have been submitted to him, covering days of time, what has been your experience as to the clearness of his recollection of the facts, the evidence, when he came to analyzing it for the purpose of rendering a decision?—A. To my surprise, when I would see him sitting with his eyes closed—the absolute incisiveness and clearness with which he would grasp the situation and determine it surprised me when I first observed this peculiar habit. Now, if you have got the time I will tell you a little incident which is a little bit amusing. The stampede of the eastern country through the city of Seattle here during the Klondike—the discovery of gold in the Klondike—George Carmack kicked over a cobblestone and set the world afire—there came out from the Eastern States here a vast amount of people with small capital and got together companies, would go to the State and get a corporation formed, and charter ships and send them up north. Well, I happened to be brought in contact with a very severe case at that time I represented the steamship *Progresso*—shall I go any further? It is just merely to show you the particular instance in which I——

The CHAIRMAN (interrupting) If Mr Hughes thinks he wants it.

Mr. HUGHES I don't know whether it will be worth while to take the time or make a record of specific instances, unless the committee wants it

The WITNESS. Well, this is a specific incident that I am speaking of.

Q. Speak of it very briefly, then——A. (Continuing.) In which, after an argument of—oh, I will say an hour and a half or two hours, with Ballinger, Battle & Ronald opposed on one side, on one part of the case, and Piles, Donworth & Howe on the other, that——

Q. (Interrupting.) A three-cornered fight?—A. A three-cornered fight on this ship, and he had listened to their argument. I don't know that he was tired listening to Judge Battle's argument, or Judge Ballinger's, or even Senator Piles's, but at any rate——

Mr. MCCOY (interrupting.) We might let Mr. Battle testify whether the judge was tired listening to him.

A. But, at any rate——

Mr. HIGGINS (interrupting). Did you make an argument there, General?

A. Only one, and I am coming right to that, Mr Higgins. I made one, and mine was the first one, and after they had labored with the situation, why, Judge Hanford got up from his chair and walked around behind his chair and laid his hands on the back of his chair and kind of closed his eyes for a minute and waited until they were through.

Mr HIGGINS. You had the first chance at him, then?

A. I had the first whack at him Then, when he got through—or they got through and sat down, I jumped up immediately, because it was a very important situation to my client, in which I had to give a $70,000 bond, and he sat down and says, "I don't want to hear from you. I have listened to the other arguments," and then gave such incisive and clean-cut decision of the admiralty law that had been appealed to by both parties——

Mr. HIGGINS. In your favor?

A. Yes, sir; sure he did; he knocked the other fellows out. That is the instance that I speak of.

Mr. HUGHES. That is all.

The CHAIRMAN. Anything further, Mr. Hughes?

Mr. HUGHES. No.

The CHAIRMAN. Any further questions?

By Mr. McCOY.

Q. I want to ask one or two. Was the *Alice* sold before or after the receivership proceedings?—A. Well, Mr. McCoy, I don't know that date. I asked yesterday for the papers in the case, from the clerk, in order that I might give those dates, and the clerk informed me, or, rather, the assistant informed me, that the records were up here somewhere, filed up in a disorderly condition, because the United States Government had not provided an appropriation or made an appropriation to give them proper filing facilities, and it would take him a half a day to get it.

Q. We will look out for that when we get back to Washington.—A. Well, we thank you for that.

Q. You say that you went there and bid the *Alice* up to——A. (Interrupting.) Up to the amount of the decree; yes, sir.

Q. Did it sell for more than the amount of Heckman & Hansen claim?—A. Oh, yes; somebody else——

Q. (Interrupting.) What became of the surplus?—A. Well, all I had to do was to force them to allow Heckman's claim. What the surplus was I don't know. The record would show. I say I went there yesterday to get that decree and to get the return of the marshal's sale, and that is just exactly——

Q. (Interrupting.) Isn't it a fact that you did not have anything to do with bidding that ship up at all; that it was all done in pursuance of an arrangement by which the receiver went out there and bid it up?—A. Absolutely not; no, sir.

Q. You are sure of that, are you?—A. Yes, sir.

Mr. McCOY. Let me have that stipulation, please, will you?

The WITNESS. I went out and bid it up for Hansen—personally present.

Mr. HUGHES. For Heckman & Hansen.

The WITNESS. That is my full recollection of it. [Paper handed witness.]

The WITNESS. I don't see where Metcalfe & Jurey appear upon this.

Mr. McCOY. Well, I don't either.

The WITNESS. Well, that is it.

Mr. McCOY. That is what I was getting at.

The WITNESS. Well, I went there to see that they would not permit this thing to be done; in other words, that anything that Heckman

was entitled to by reason of the labor and material put into that ship, he should have the advantage of. Our name is not upon that.

Mr. McCoy. Well, I know it, General; that is just what I am getting at. I don't think you had anything to do with it according to this stipulation.

A. Well, I was present at the bidding.

Q. I don't doubt it. Did you or your firm ever get any fees in payment for your services in this libel against the *Alice?*—A. Nothing except what Mr. Heckman paid.

Q. Is there any deep water out there in front of that property formerly belonging to Heckman & Hansen at Ballard?—A. Well, now, Mr. McCoy, I don't know how much deep water would be there, but the tide ebbs and flows there, I think, about 11 to 14 feet, and he had a little railway with a cradle; he sent it down at low tide and as the ship came in he would float his ship in and then with the windlass would wind his ship up.

Q. Well, I suppose they do that, no matter how deep the water is. I want to know whether the water was deep there.—A. Well, at high tide probably 15 or 20 feet.

Q. What was it at low tide?—A. Low tide?

Q. Yes.—A. Why, I think it was bare; my recollection of it is that it was bare.

Q. You said something about uncertain titles. Was their title to the upland uncertain?—A. Well, the only recollection I have about it is this, that Heckman had told me that he was endeavoring to in some way settle the title of the minor heirs of a man by the name of Henneger.

Q. Your firm were the proctors for the libelants in that libel suit against the *Alice?*—A. Yes, sir.

Mr. McCoy. This was not marked. I would like to have that marked in evidence.

Mr. Hughes. That will go in as a part of the other files.

Mr. Finch. That was marked, Mr. McCoy; that is a part of the record.

Mr. McCoy. I believe I did identify it last evening. It is a stipulation signed——

Mr. Hughes. It will be covered at the time when all the papers are offered.

The paper above referred to was the one heretofore marked "Exhibit 62."

The Chairman. Any further questions with Gen. Metcalfe?

Mr. Hughes. Nothing further.

Witness excused.

The Chairman. Are there any more witnesses present who were subpœnaed who desire to get away quickly? If so, please arise.

[Gentleman stood in the courtroom.]

The Chairman. What is your name?

The Gentleman. Mr. Reinhart.

The Chairman. You may come forward.

Henry Reinhart, having been first duly sworn, testified as follows:

The Chairman. Please state your name.

A. Henry Reinhart.

Q. Where do you live?—A. The street number; house number?
Q. Yes, sir.—A. 1907 First Avenue west, Queen Anne.
Q. In Seattle?—A. Seattle; yes.
Q. What is your business?—A. Manager of the Alaskan Cafe.
Q. What business is carried on in the cafe?—A. Bar.
Q. Where is it?—A. Corner of Third and Jefferson, 501.
Q. How long has that been your business?—A. Three years since I have been there.
Q. Are you acquainted with Judge Hanford?—A. No, sir.
Q. Do you know him by sight?—A. No, sir; I would not.
Q. Would you know him if you saw him?—A. Not as Judge Hanford. I might have served him, but not knowing him by name.
Q. Well, do you know a man who is commonly known as Judge Hanford?—A. I do not, sir.

Mr. HUGHES. We can bring Judge Hanford in.

The CHAIRMAN. We will have to ask you to wait until you have an opportunity to see him.

The WITNESS. Yes.

The CHAIRMAN. So that you may be able to tell us whether you know the man by sight. Have you talked recently with anyone about Judge Hanford?

A. No one whatever, only yesterday afternoon after I was subpœnaed. I didn't know what it was, only the subpœna. Not knowing the man, not knowing the judge, I say, it was a surprise to me.

The CHAIRMAN. Well, you may stand aside and wait. Is the judge in town to-day?

Mr. HUGHES. He is in town; yes.

The CHAIRMAN. You can stand aside and wait until he comes in.

The WITNESS. Yes, sir.

Witness left the stand.

The CHAIRMAN. Mr. Brennan, Judge Hanford is occupied in his business somewhere. Will you go with the witness where he is and point him out to Mr. Reinhart?

Mr. BRENNAN. Yes.

The CHAIRMAN. Mr. Hoyt.

JOHN P. HOYT, having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your name.

A. John P. Hoyt.

Q. You live in this city, Mr. Hoyt?—A. I live—my business is in this city; I live just outside of the city limits.
Q. How long have you lived in or near Seattle?—A. Since 1887, or—yes, 1887.
Q. What is your present occupation?—A. Referee in bankruptcy.
Q. How long have you been referee in bankruptcy?—A. Since the enactment of the—since the statute went into effect.
Q. By whom were you appointed?—A. First by Judge Hanford alone; subsequently by the two judges of this district.
Q. Is there any other referee in connection with the Seattle court?—A. The referees are all appointed in this district for the whole district, but there is no other resident referee here.
Q. Do you act as referee in cases that arise anywhere else than in Seattle?—A. Yes; occasionally.

Q. Where?—A. Well, all over the district. I have had them from almost every county in the district, occasionally, when other referees were disqualified or when the creditors all lived here and made a special showing so that the matter was referred to me; but, of course, ninety-nine one-hundredths of the business I have had comes from Seattle and King County, I suppose.

Q. When you act as referee at some other point than Seattle, who makes the assignment or appointment?—A. The judge before whom the petition is filed; Judge Hanford at times; sometimes Judge Donworth made them—since there were two judges here in the district.

The CHAIRMAN. Mr. Hughes, I merely wanted to ask him questions for identification. Will you proceed?

By Mr. HUGHES:

Q. Judge Hoyt, in the bankruptcy proceeding of Heckman & Hansen, it appears from the testimony in this case that the matter came before you as referee; is that correct?—A. It was referred to me as referee in January—the date I am not certain—1902, I think it was; January, 1902, is my recollection that I received the order of reference.

Q. Now, Judge Hoyt, you may go on and tell the committee what proceedings were had before you.—A. I—of course it is a long time ago—10 years—I have refreshed my mind since last night. I didn't know anything about the testimony that had been introduced here by Mr. Finch, as I understand now, until last evening. I have looked over my appearance docket, which is the only thing remaining in my office, the other papers having been transmitted by me at the time my connection with the case closed, and from that, together with my recollection, I should say that I can say, generally speaking, that the matter reached me in the ordinary course on some time in January, 1902. The order of reference fixed a day, as required by the twelfth order in bankruptcy of the Supreme Court of the United States, when the bankrupts should appear before the referee.

The practice in this district, at least, and in the eastern district of Washington, has been to require of the referee more than simply—to treat the requirement of that order more than simply as a matter of form. It has been the practice to require the referee to orally examine the bankrupt and satisfy himself that the facts necessary to show jurisdiction existed, the judge passing upon that question simply as set out in the petition, and in a few cases it has been found—it was found here, which I suppose led to the judge's requesting that of the referees—it was found that they mistook the terms of the statute which said that the bankrupt—that the court would have jurisdiction if the bankrupt had lived in that district for the greater portion of six months. One petition in particular was filed in Spokane where it appeared upon the examination that he had been there three months and one day, and the referee thought that was not a compliance with the statute, so that led to this practice, and that has continued ever since I have been referee—that the bankrupt should appear and submit to an oral examination before the referee proceeded with the administration of the estate. The order, if I remember rightly, made the return day January—on the 24th, I think, I could not remember that excepting by refreshing my mind, of course, but it was on the 24th of January, 1902, if that was the year. I am not certain about

the year. No appearance was made by the bankrupts, or either of them, or their attorney, until the 14th day of April, 1902, at which time one of the bankrupts appeared with Mr. Finch as his attorney and made proof of the jurisdictional facts as in every case.

Q. In all respects, you mean?—A. What is that?

Q. In all respects?—A. Yes, made the same as in every case, and on the same day I made an order fixing the date of the first meeting of the creditors for the 25th of January.

Q. Of April, wasn't it?—A. Or of April I would say, 25th of April—these dates I might be mistaken as to, but I have refreshed my mind and I think I have them reasonably in mind—and notices in compliance with the order named and a notice published in due course.

Mr. McCoy. It might be the year 1901?

A. It might have been 1901. I would not be—as I say, I would not be certain about the year.

Mr. Dorr. 1902.

A. I think 1902, however. My remembrance is that it is just 10 years ago. That is the way I remember it, 1902.

Mr. Hughes. That is right.

A. On the day named—as I say the notice was published, and on the day named for the first meeting the bankrupt appeared with his attorney and certain creditors appeared. Only one creditor filed his claim at that time, and several other creditors were there who desired to file claims but had not them in form. That was somewhat early in the practice in bankruptcy here and about one-half of the creditors, or perhaps more, would come to the meeting and not understand that they had to put their claims in a particular form as prescribed by the Supreme Court of the United States. So at the request of these creditors, with no objection on the part of the bankrupt or his attorney but simply an objection on the part of one creditor, I continued the meeting for three or four days—I have forgotten the exact number—to enable these creditors who were present to file their claims so as to participate in the election of a trustee. I did not believe it was fair to force an election with one creditor present representing five or six—an alleged claim of $500 or $600, when the schedule showed that the total debts were over $30,000, and for that reason, without, as I say, any objection excepting on the part of that one creditor, the meeting was continued for a few days.

Nothing was said at that time about any objection to the proceeding being had before me as referee, but on the day to which it was adjourned, which I think was the 19th——

Q. (Interrupting.) Of April?

A. 19th day of May, that is my remembrance, the 19th day of May, Mr. Finch appeared and suggested that his client would prefer that the matter should be administered by some other referee, and it was finally by mutual consent agreed, either at that meeting or the next one, I am not sure which, that the matter should be reported back by me, and with the request to the judge that it be—to the judge that it be referred to Warren A. Worden, the referee in bankruptcy at Tacoma; and to enable that referee to proceed without interruption, the meeting was adjourned until the 28th day, I think it was, of May, so that Mr. Worden could proceed with the election of the trustee and the administration of the estate. The matter was closed before me by an order and on the 22d, I think it was, of May, I transmitted all

the papers with a memorandum of the proceedings before me to the clerk of the court, and from that time on I have had no connection whatever with the administration of the estate. There was one other claim filed before me—a small claim, on the meeting I think—the day of the meeting to which the first meeting was adjourned at the first session thereof. Those were the only claims that were filed with me. Subsequently it appeared, and that perhaps had some influence with the referee in adjourning against the protest of Mr. Sturn, who was the only one who had a claim on file at that time, that his claim was not in form and would be objected to, which proved to be true by adjudication, as I have seen from the records—not to personally know it, but I have seen from the records that Judge Worden held the claim to be—first to be imperfectly proven and required its amendment, and when amended sustained objections thereto and the claim was expunged from the record.

Q. That is the claim of this one man who had filed?—A. One man, yes, sir.

Q. Namely, Mr. Sturn?—A. Yes, Mr. Sturn—Fred I think it was—Fred Sturn.

Q. Now, did you have any other connection with that bankruptcy proceeding, Mr. Hoyt?—A. None whatever, excepting I have a—I will be glad to furnish the committee, if it is desired, with a certified copy of the entries in my appearance docket which were made at the time and set out substantially what I have said.

Q. Judge Hoyt, it has been claimed here that charges were made that you had been guilty of acts for which you should be impeached or disbarred as an attorney—impeached as an officer. I want to know whether there is any other fact involving your connection with these proceedings than you have already stated; and, if so, please state it to the committee.—A. At the time the petition was filed for the reopening of this case I prepared an affidavit which——

Q. (Interrupting.) That was at a subsequent time?—A. Yes; a subsequent—long—I knew nothing about it until the petition was filed and a copy of it brought to my office by somebody. At that time I thought, from the charges and insinuations in that petition, that I ought, perhaps, in justice to myself and to the court, to disclose anything—my relations to it in any matter which had been alleged in the petition or otherwise. The only—I judge from—I have not been in this investigation until last evening I stepped in—but I judge from a question put by one of the honorable members of the committee that something had been proven here which I never had heard of before—that is, that as attorney for the American Bonding Co. I had appeared—the referee had appeared—in the superior court and had something to do with that litigation.

That thing—I think that either—that the honorable member must have misunderstood Mr. Finch's testimony, for I don't think—I hardly think he could have testified to that, because he never had suggested that before at any time when I have been present. He did—his grievance which he claimed to me in public and discussed in private with me more or less was that the matter had been delayed from the time when the order of reference reached me until this—for two months—nearly two months, or two or three months before the meeting was called, and he assumed that it had been so delayed by reason of the fact that the bonding company was attorney for—was

security for a certain—upon a certain receiver's bond in a proceeding pending in the superior court. The fact that such a bond existed was never known to me until I read the petition referred to—the petition asking for the reopening of the case—and could have had no influence whatever. I simply allowed the case to take the ordinary course which I have in every case which is pending before me. When the order of reference reaches me, I await an appearance on the part of the bankrupt or some one representing him, or, if he does not appear, some action by the creditors seeking to procure his attendance. In other words, I do not proceed of my own motion until after the bankrupt has appeared, and I did exactly the same in this case as in every case which has been before me since I have been referee in bankruptcy.

Q. Judge Hoyt, what is the fact as to your ever having acted as attorney for the American Bonding Co.; and if so, as to whether you were consulted by that company in respect to the giving of a bond for the receiver, Peter L. Larsen, in the receivership matter in the State court?—A. My relations to the bonding company I set out in that affidavit perhaps more fully than I remember them all now. It is a long time ago; but substantially they were these: I was one of the vice presidents—I presume the honorable members of this committee are familiar with the way these bonding companies do business outside of their home jurisdiction—and I was one of the vice presidents here who was authorized to join in the execution of bonds. The agent and secretary, however, was the only one who knew anything about—who took any active step in the execution of bonds, and the signing by the vice president was purely a formal matter; he kept no record of the bonds signed and made no investigation as to whether or not the bonds—it was simply a formal—the way which the companies, some of them, took—not all of them in the same way, but some of them took of having some little check upon the authentication of bonds by the secretary—local secretary and agent. I had that authority. I received no compensation whatever for it, kept no record of the proceedings, and knew nothing as to the bonds unless the secretary especially saw fit to discuss the matter of whether it was proper to execute a certain bond with me. As to my connection as attorney for the bonding company, as to which something was said before, and I presume has been said here, I was not in any sense the general attorney of the bonding company. I don't think that their practice was to have anyone outside of their secretary.

I was authorized on two or three—in two or three different matters, perhaps more, to appear for them as attorney and either contest claims or in some other matters of litigation. I have forgotten just in detail what they were now, but I think probably on three, possibly four occasions, by special instructions from the home office, an authorization either communicated directly to me or through the secretary here, I was employed as attorney and tried some—one or two cases for the bonding company. Those cases, however, of course had no connection whatever with the Heckman & Hansen matter or with any bankruptcy proceeding. They were claims in admiralty, asserted under the bond executed—I think exclusively were claims upon bonds executed by the charter parties in admiralty. I not only—I didn't—I would not have felt and feel now that I would have been usurping authority had I appeared in any proceeding which the bonding company might have had without such special authority. I

was a stranger to their business excepting, as an attorney, excepting as specially employed in each particular case.

The bond which has since been referred to as the bond given by Peter Larsen I knew nothing whatever about. That didn't—I didn't sign it, and if such a bond—I see by the records that there was probably such a bond given. It was signed by another vice president of the company here instead of by myself, and the first intimation that I had that such a bond was given was, as I stated before, in the petition for the reopening of this case.

Q. Long after your connection with it as referee had ceased?—A. Oh, a year or more, more than a year—a year after. The case was pending before Judge Worden, as I see by the records, for nearly a year, and a trustee in active possession of such assets of the bankrupt as he could reduce to possession. No attempt, so far as I have ever heard, was made by such trustee or by the bankrupts or the creditors to induce action on the part of the trustee to take any steps in the superior court in reference to these matters which have been discussed in this affidavit. The theory—one of the grievances or complaints made by Mr. Finch—seemed to be founded upon his idea that the discharge of the receiver in that matter, and the usual order discharging him and exonerating his bondsmen, relieved the bonding company and the receiver of liability for frauds already committed. I never so understood the law, but it may be. I had assumed that for frauds already committed they were still liable, as though they had never been discharged, but that was simply—that order was for the future they were discharged from further liability for things happening thereafter; so that if there was any liability on the part of the receiver or the bondsmen—I don't think myself—of course that is perhaps a question of law, but I never believed that it affected the liability of Mr. Larsen or the bondsmen in any respect.

Q. Judge Hoyt, when you came to this Territory in 1887, what official position, if any, did you occupy?—A. Judge of the—associate justice of the supreme court of the Territory.

Q. And after the admission of the Territory of Washington to the Union as one of the States, were you one of its first justices of the supreme court?—A. Yes, I was a member of the constitutional convention which formed the constitution, and subsequently I was chosen as one of the judges of the supreme court.

Q. You were president of the constitutional convention, were you not?—A. Yes, sir; I was president.

Q. How long were you a member of the supreme bench?—A. Seven years. In the organization of the court I drew the long term—if I wished to remain upon the bench, unluckily for me, because it expired in 1896, when our Democratic and the Silver Republicans swept the State—and, while I was renominated by acclamation of the convention of my party, I was defeated with the rest of the ticket in 1896.

And I wish to simply say right here that the committee might think that a referee ought not to engage in the practice at all. I would say that when I was appointed referee and up to the time that this Heckman matter was pending, the referee's office—the total emoluments of it—would not exceed, well, it would not exceed anyhow $50 a month, and I think it would not average more than $30 a month, so it would be hardly sufficient for a man to expect to live upon it,

and owing to the panic—the results of the panic and my service in the supreme court—which led to the neglect of my private business more or less, I was in a situation where I had to have further income than could be derived from the office of referee in bankruptcy.

Mr. McCoy. All referees I guess do practice.

A. I think the most of them. Perhaps, owing to my age, as soon as I saw my way clear to obtain enough so that my family could live with reasonable comfort, I withdrew entirely from the practice. First I was selected by the board of regents to lecture as one of the lecturers and instructors at the law department of the university, and from that time on, together with the referee's business, which had grown somewhat at that time, I have not engaged at all in the general practice.

By Mr. Higgins:

Q. Judge Hoyt, as I understand it, the judges of the Superior Court and the Supreme Court of the State of Washington are elected for four-year terms, are they not?—A. The supreme court first—they are elected for a six-year term.

Q. Is that the present law?—A. The present law, as I understand, unless it has been changed since I kept track of those things, is six years on the supreme court, but the first judges—there was five of them, of course, elected at the first election, and they drew lots for terms.

Q. I am speaking of the law as it is to-day.—A. Well, as I understand it, unless it has been changed——

Mr. Hughes. Six years.

A. And I have been informed that it is four years for the superior court judges and six years for the judges of the supreme court.

Mr. Higgins. Are they elected at the general election?

A. Yes. Of course—they are all elected at the general election with the other ticket. Of course two of them have to be elected—I don't know how since they have increased the bench. The bench was only five when I was a member of it, and now there are nine, as I understand. I have not kept much—you see I have been out of the practice entirely now for eight years and I don't know whether rightfully or wrongfully I have contented myself with studying such law books as the attorneys put before me in matters which they were discussing before me. I have not gone into much independent investigation either statutory or common law.

The Chairman. In my State we hold separate judicial elections from the other elections.

A. Yes; we did——

The Chairman. Hold it alone in June.

A. We did in the State of my adoption, not in the State of my birth. The State of my birth was Ohio, but I practiced my profession in Michigan. We had there a spring election at which we elected judges only, and regents of the university—no other officers.

Mr. Higgins. In my State the governor appoints and the legislature elects.

A. Yes.

Mr. McCoy. Mr. Hughes, it is your turn and mine now to discuss a little law.

Mr. Hughes. I tried in my question to avoid that, because it does not seem that we need to supplement the record here.

By Mr. HUGHES:

Q. Judge Hoyt, I don't think I need to admonish you before asking this question to be concise and avoid any unnecessary elaboration, but I think this committee and the Judiciary Committee in Washington would be glad to have such information as you may be able to give them in your experience here and acquaintance with Judge Hanford respecting his personal habits and his judicial habits of conduct and temperament. Do that as briefly as you can.—A. I have felt somewhat delicate about saying as much as I would otherwise, by reason of the fact that I am an appointee of Judge Hanford and his associate judge, but having been called and being asked to testify I must give my ideas.

I have known Judge Hanford for 33 years. I first knew him when I was on the bench and he was assistant United States attorney for this district, John B. Allen—Senator Allen—being then the United States attorney; and I have known him intimately—more or less intimately ever since. I am peculiarly constituted and don't, I am sorry to say, have as many close friends as I would like; that is, men whom I am intimate with. I have an unfortunate temperament in that respect, and while I have a few very warm friends, I don't think—I don't meet people socially as other do. I belong to no clubs. The Grand Army of the Republic is the only—the meetings of that are the only meetings I pretend to attend. I belong to one or two other fraternal organizations that are beneficiary, but simply contribute my assessments for the future benefits. And I have not had the opportunity to meet Judge Hanford in social relations as much as a good many others. But I knew him at first as a most hard-working, painstaking prosecutor for the Government. I have been, of course, from my connection with him, pretty familiar with his conduct on the bench.

I am in the court room sometimes a half dozen times a day and sometimes not for a few days, but average at least once a day that I am in his court room. I am in his chambers repeatedly. Of course, the attorneys all send the orders for disbursement to me to be checked, and I take them as a matter of accommodation to counsel—I take them to Judge Hanford or to Judge Donworth quite often for signature, and I have seen him very frequently for those reasons. I know I never have seen Judge Hanford in the least under the influence of any intoxicant. From what I have said already it would be evident that I could not say that he never was intoxicated, but I can say with the utmost assurance that what I know of him justifies the statement that he never has—that he is no drunkard, even in the most limited sense, and that he has never—that his drinking, if he does drink, has never interfered in the least with the discharge of his official duties. I know Judge Hanford has some peculiarities, like myself. He is absent-minded at times. Before I knew him as well as I do now, sometimes I would meet him and I would think he was offended at me for something; he would not speak to me; he would almost be disposed for a minute to ignore my presence, but as soon as—I would see in a moment that it was because he was absent-minded—was thinking of something else. He has some of those peculiarities that I suppose a very large number of men have. But I consider Judge Hanford—and I have had some little experience with courts—I con-

sider him one of the, among the, able judges of the country, so far as ability and knowledge of the law is concerned.

I consider him without exception the most industrious, painstaking judge that I have ever met. I know something about the care with which he goes into the details of records submitted to him. As I stated a little while ago, I think a court is usually justified, excepting in a matter of public concern, in contenting itself with the examination of such parts of the record and such authorities as counsel point out; but Judge Hanford is never satisfied with that; matters that have gone up from me, his opinions show that he has gone through the record with the utmost care; sometimes surprises me—has surprised me by finding things in the record that, although the matter was heard first before me, had escaped my attention, and I consider him a remarkable man in that respect. Of course, he is wrong sometimes. He has reversed me a good many times, and he must have been wrong then; he could not have been otherwise.

Mr. HUGHES. I think that is all, Judge.

The WITNESS. I would be glad to make any further statement that the committee desires.

The CHAIRMAN. Any further questions with Mr. Hoyt?

Mr. HUGHES. I have nothing further to ask.

The CHAIRMAN. Mr. McCoy?

The WITNESS. I will ask the permission of the committee, then, to file a certified copy of the record—of the entries in my record of bankruptcy proceedings, simply to show——

The CHAIRMAN. You may do so.

The WITNESS. Any further questions?

Mr. HUGHES. That is all.

Witness excused.

HENRY REINHART, being recalled, testified as follows:

By the CHAIRMAN:

Q. Mr. Reinhart, since you were on the stand awhile ago, has Judge Hanford been pointed out to you?—A. Yes, sir.

Q. Have you seen the gentleman so pointed out to you before you saw him to-day?—A. Possibly, but I never recognized him as Judge——

Q. What is your answer?—A. I don't ever remember seeing him or being pointed out to me as Judge Hanford. Possibly I have seen him, but I don't remember.

Q. Have you any recollection of seeing the man who was pointed out to you awhile ago by Mr. Brennan as Judge Hanford?—A. No, sir.

Q. Have you stated to anyone recently that you did see Judge Hanford and that you saw in his possession a bottle of liquor and that it fell on the sidewalk and broke in your sight and presence?—A. Did I state that?

Q. Did you say that to anyone recently?—A. Did I state that?

Q. That is what I am asking you.—A. Oh, no; no, sir.

Q. Do you say that so far as you know you saw him for the first time awhile ago?—A. Yes, sir.

Q. How long have you lived in Seattle?—A. Three years.

Q. Where did you live before that?—A. In Colorado—Nevada from here.

Q. Where is your place of business from the courthouse?—A. From city court?

Q. From this building.—A. Corner of Third and Jefferson.

Q. Tell me some other way; how far is it?—A. Oh, it is about, I should judge, 8 or 9 blocks—squares.

Q. What direction?—A. Toward the city hall.

Q. South?

Mr. DORR. South.

A. South; yes, sir.

Witness excused.

Mr. DORR. Mr. Chairman, I would like to have Mr. Battle recalled for a moment, to identify a further matter that is important.

The CHAIRMAN. Mr. Battle will take the witness stand.

ALFRED BATTLE, being recalled, testified as follows:

By Mr. DORR:

Q. Mr. Battle, when you were on the stand you made extended reference to the testimony taken before the master in chancery, Judge Smith, and returned to Judge Hanford's court at the instance of Mr. Finch. I want you to state now to the committee if you can refer to any portion of that record which shows that Mr. Heckman wrote the power of attorney that was given to Judge Ballinger; and if so, identify it and read that part of the record as a part of your answer.—A. Mr. Heckman was being interrogated by myself in this hearing before special referee, Judge Eben Smith, among other things in reference to this power of attorney that was given by him to Judge Ballinger On page 686 of the testimony that has been heretofore referred to as the testimony of 886 pages——

By Mr. HUGHES:

Q. Taken before the special referee?—A. (Continuing.) Taken before the special referee, Mr. Heckman in answer to the following question propounded to him by myself, in reference to this power of attorney, answers as follows, so far as regards the particular question that is propounded to me. Of course, there is quite a little answering questions in reference to all the phases of the power of attorney and what was done under it, and so forth, but directing my answer to the specific question, the following question was propounded and the following answer made thereto by Mr. Heckman, found on page 686, namely:

Q. You read it [referring to the power of attorney]?—A. I think I read it. I think I not only read it but wrote it.

On page 687 of the same testimony the following testimony was propounded:

Q. And did you write it out yourself?—A. Yes, sir; he dictated it to me, and I think I wrote it out.

By Mr. MCCOY:

Q. To whom does "he" refer?—A. Judge Ballinger; but, as I stated last evening, I think it is clearly a mistake. Judge Ballinger did not write it at all, but Mr. Tennant wrote it, so far as it was written. It is a blank simply filled out.

By Mr. DORR:

Q. You think the power of attorney, the body of it is in the handwriting of Mr. Tennant, now deceased?—A. Undoubtedly; in other words, such portion as is written in this power of attorney that is not printed is in the handwriting of Mr. Tennant, barring of course the signature to the power of attorney of Mr. Heckman, and the witnesses, Nellie Heckman being one of the witnesses. I say undoubtedly; I have not any doubt, and I am familiar with Mr. Tennant's handwriting. I think undoubtedly it is his handwriting.

Mr. DORR. I wish to state to the committee that when I examined this power of attorney, not knowing the history of it, I took it to be in the handwriting of Mr. Heckman, just comparing the style of the writing with the known style of Mr. Heckman.

Mr. MCCOY. You relied somewhat on the testimony, didn't you? Hasn't it been a matter that has been investigated before and it has been testified that it was Heckman's handwriting, and only recently discovered to be the other way?

Mr. DORR. I didn't know that this testimony was in existence when I made the statement the other day before the committee. I did know, however, that it had been charged in the public press that Judge Ballinger had written this power of attorney. That I knew. I think it is generally known to the public.

By the CHAIRMAN:

Q. What was Mr. Tennant's relation to the firm at that time?—A. At that time he was a clerk in the office. He later became a member of the firm.

Q. The signature of Andrew Heckman, as it appears in the power of attorney, bears every evidence of having been written by the same person who filled in the body of the instrument, does it not [handing paper to witness]?—A. I don't think so. If you will observe the name appearing at the early part of this instrument, namely, "Andrew Heckman," and compare it with the signature "Andrew Heckman," you will see very pronounced and marked differences.

Q. Are you familiar with Heckman's own signature?—A. No, sir; only, as I see it here, if this be his signature—and I assume that it was; I don't think there was any dispute about that—the "A," the "H," and other letters, Mr. Graham, I think you will observe, are entirely distinct and different.

By Mr. DORR:

Q. Then you think that Mr. Heckman was mistaken in stating that he wrote the body of the power of attorney?—A. I do; but I am merely stating to you, what he testified, that he wrote it himself.

Q. I notice in the written opinion of Judge Hanford, filed in this matter on July 11, 1904, a finding to the effect that Mr. Heckman wrote the power of attorney. I will ask you whether that question was brought to the attention of the court in that proceeding especially or how it happened to be mentioned as an important finding in this case?—A. I don't call to mind, Mr. Dorr, that there was ever any question of a substantial nature arising in all of this hearing as to who did or did not write that power of attorney; so that what Judge Hanford says about it I do not think arose during the argument—was referred to during the argument by attorneys upon either side—

and he unquestionably, in my opinion, must have read this record to have obtained the information contained in his opinion in reference to that question.

Mr. DORR. That is all I want to ask the witness.

By Mr. McCOY:

Q. Mr. Battle, I do not yet understand what the Seattle Shipyards Co., if that is the name of that concern, was doing in this bankruptcy proceeding, anyhow. What standing had they in bankruptcy?—A. Well, I can only answer, Mr. McCoy, in this way: Here was a petition filed to reopen a bankruptcy proceeding, or proceeding in bankruptcy. The Seattle Shipyards Co., being the owner of the property that had been sold under a receivership in the State court and which property was the property belonging to the bankrupt, undoubtedly had as much right to appear in that proceeding as anyone else.

Mr. McCOY. I do not agree with you at all. I don't know what right anybody but a creditor has to appear. Why should the purchaser of the property appear in there to oppose the appointment of a trustee to contend the right to this property?

A. I didn't understand that there was any proceeding to appoint a trustee.

Q. Wasn't this a matter of reopening the estate?—A. Reopening the estate.

Q. And that would necessarily lead to the reinstatement of a trustee, wouldn't it?—A. Yes, sir; and it would necessarily lead to the clouding of the title to this property.

Q. And how would it?—A. Why, it would be a proceeding necessarily that would arise to reopen a matter out of which proceeding title to property had passed.

Q. But it had not passed out of bankruptcy proceedings?—A. No, sir; but it had passed in this way, that the receivership proceeding and the bankruptcy proceeding were, as a practical legal proposition, coordinate proceedings.

Q. That is, they were synchronous, so to speak.—A. Yes; possibly that——

Q. They didn't have anything to do with each other?—A. They were separate and distinct as legal entities.

Q. Isn't it a fact that this proceeding before Judge Smith was looked upon as a hearing out of which would be determined the question of whether Mr. Finch should be disbarred or not, and is not that one of the things you were undertaking to demonstrate, as attorney in the matter, when you assured these other people who were not in the bankruptcy proceeding at all that you would see to it that they got an opportunity to stay everything?—A. No, Mr. McCoy; it was not for the purpose of disbarring Mr. Finch. I want to say this. I want to say this, that when the bar committee held its meeting, although I had been——

Q. (Interrupting). Mr. Battle, if you will allow me to interrupt, that was long afterwards, wasn't it?—A. No; but I want to seek to answer your question, and answer it fairly, and——

Q. (Interrupting.) All right.—A. (Continuing.) At the same time completely. I was before the master in chancery, or the special referee, upon the one side, and Mr. Finch upon the other, for a period

of approximately six months, off and on, in taking this testimony and the testimony of other witnesses. The hearing on the part of no one, so far as I know or believe, had for its purpose any disbarment or any assault whatever upon Mr. Finch; but, upon the other hand, when the matter arose before the bar association and a committee had been appointed to investigate Mr. Finch, I was never asked as a witness, and glad, gentlemen, that I was not. I never appeared before them, and glad that I was not called upon to appear before them, because I had my doubts as to whether or not Mr. Finch, notwithstanding his reckless and unfounded charges, ought to be punished. Now, if you want me to state what I mean by that, I can do so; but it was never contemplated, Mr. McCoy, in this hearing, anything whatsoever directed against Mr. Finch personally.

Mr. McCoy. Now, Judge Battle, I understand you to say positively that this Shipyards Co. was not, and never had been a creditor of Heckman & Hansen?

A. No, sir; the Shipyards Co. was a corporation that, as I understand, was organized even after the sale had been made of the property. Mr. Dorr hands me these papers [handing papers to Mr. McCoy].

Q. Now, I want to call your attention to this order denying petition of bankrupt to reopen estate, about which we were speaking last night and which is to go into the record. It reads:

On the 8th day of June, 1904, at 10 o'clock in the forenoon, this matter came on to be heard on the motion of the Seattle Shipyards Co. et al. that the report of the said referee heretofore made in this case be confirmed, and that Jerry L. Finch be disbarred.

Now, what was that put into that order for if that was not the proceeding before Judge Smith [handing paper to witness]?—A. The matter of--you asked me the question of the proceeding before the referee and I was directing my answer to that.

Q. Well, now, is not that order entered upon a motion made to confirm the findings of the referee Smith, about whom we have been talking?—A. Yes; but how——

Q. (Continuing.) And is not that the proceeding in which this testimony was taken and in which you appeared as attorney for the Shipyards Co.?—A. Yes; but to get, Mr. McCoy, the matter fairly, let us see how this matter arose. This matter arose on a petition to reopen this estate. That was referred to Special Referee Smith. Now, the matter arose between Mr. Finch, upon the one side, and Judge Hanford upon the other; that brought about the question of the disbarment proceeding—arose after a part of the testimony had been taken before the referee and during the progress of the examination of the witness, Soelberg. So that neither before the matter of the disbarment proceedings arose, nor afterwards, so far as the hearing before the referee was concerned, was the question of the disbarment of Mr. Finch involved in it at all. That is to say, I never put any witness on the witness stand to give any testimony as to whether Mr. Finch ought or ought not to be disbarred, and of course Mr. Finch did not. That had nothing to do with the investigation or the production of witnesses or the taking of testimony anent the issues before the referee.

Q. Well, then why did you put that in the order?—A. Because the matter arose in this way: Mr. Finch asked for this order from

Judge Hanford upon the bank to produce the books. Now, it has already been detailed to this committee what happened—what Mr. Finch said and what Judge Hanford said. Now, when this proceeding was all had before the referee, when all the evidence was taken and all of the books of the bank produced, I was of the opinion, and others were of the opinion, that there was no foundation in the world for Mr. Finch to make the charges he had made; that there was nothing found by him in the books, and he had no right to believe he could find anything in the books that even would reflect upon these gentlemen, and in view of the fact that Judge Hanford had stated to Mr. Finch something the exact nature of which I will not undertake to state at this time, bearing upon proceedings that may be taken as to his disbarment, was the reason why there was incorporated in the motion to confirm the matter of the disbarment of Mr. Finch, because Mr. Finch by his action before the court had made that an issue; in one sense that was in this case.

Q. Well, that is just exactly what I think, it was an issue before the referee.—A. Well, it was an issue in that sense; but, Mr. McCoy, you asked me the question about the hearing before the referee, as to whether or not its purpose was not to disbar Mr. Finch, and I wanted to answer it fairly and completely.

Mr. McCoy. That is all.

The Chairman. That seems to be all, Mr. Battle.

Mr. Dorr. I would like to ask him one further question.

The Chairman. I thought you were through with him.

Mr. Dorr. No; just in answer to something of Mr. McCoy.

The Chairman. I don't want to keep him on all day.

Mr. Dorr. I won't keep him more than a minute or two.

By Mr. Dorr:

Q. I want you to identify the motion that was made to confirm that report of the master in chancery [handing paper to witness].—A. The motion to confirm that report was the motion that was filed in the district court for the western district of Washington, in cause No. 2203, entitled "In the matter of Heckman & Hansen, bankrupts," and was filed among the papers of that cause on May 10, 1904.

Mr. Dorr. That is all.

Witness excused.

The Chairman. Mr. Ross.

H. W. Ross, having been first duly sworn, testified as follows:

By the Chairman:

Q. Give your full name, please.—A. H. W. Ross.

Q. Do you reside in the city, Mr. Ross?—A. I do.

Q. How long have you lived here?—A. In Seattle about four months.

Q. And in the State of Washington?—A. In the State about a year and a half.

Q. What is your present business?—A. Newspaper man.

Q. With what paper?—A. Post-Intelligencer.

Q. In what capacity?—A. I am covering the Hanford investigation right now. A star reporter.

Q. What is your ordinary duty on the paper?—A. I do politics as a rule.

Q. You want to see that they don't do you. I call your attention to the issue of the Post-Intelligencer of July 6, 1912, and more particularly to what occurs at the bottom of the second column on page 4 and continues to the next column of the same page [handing paper to witness]. I will ask you to look at it and tell the committee if you wrote that.—A. I did.

Q. I read, Mr. Ross, from the portion indicated:

A sensational line of defense was suggested by the questions asked of witnesses as to how many white-slave cases have been tried before Judge Hanford. Judge Hanford believes that the white-slave syndicate has singled him out as its victim for the punishment inflicted by him upon the white slavers.

How did you learn the facts stated in what I have read?—A. Why, I heard the first questions asked by the attorney, and, as to Judge Hanford's belief, I was present in his chambers when he expressed that belief.

Q. Were you present at the same time that Mr. Simonds, of the evening Times, was?—A. I was there a part of the time. I was there just for a very short while.

Q. Well, you may state to the committee what you heard Judge Hanford say on that point as to the white-slave syndicate singling him out as a victim because of punishment he had inflicted upon the white slavers.—A. Well, I came in after Mr. Simonds had evidently been talking to the judge for some time, and I didn't stay, but, as I remember it, probably a minute or two, and while I was there Judge Hanford was telling about a letter which he had written to Judge Gilbert, as I remember it, which had been apparently opened in the post office, or had been opened somewhere between here and where it was going to, and it bore evidence of having been opened and later turned back into the post office. As I remember it now, I think that is about all I heard. I went out then. I knew the general fact that Judge Hanford believed that—I knew that before, and I thought I had all I wanted, as long as the Times was going to have first crack at the story; I knew they would play it up and that I would not be able to give it the space that they did.

Q. Did the judge say anything while you were there as to the present investigation being brought about by the action of persons interested in the white-slave traffic?—A. I don't recall his saying anything about that.

Q. In the same article I read:

The syndicate, the accused jurist charges, paid indirectly the expenses of the Burns man.

Did you hear the judge make that statement, or a statement in substance like that?—A. No; I took that out of the Times. I knew Simonds's reputation and followed up his story.

Q. Was anything said by the judge while you were present with reference to his attorneys or expressions of opinion in this matter by his attorney?—A. No; he didn't mention his attorney.

Q. Were any of them present at the interview?—A. There were not, outside of Mr. Hanford, jr., and he was only there, I think, for a very short time while I was there.

Q. You mean Mr. Hanford, jr.. was there but a short time while you were there?—A. Yes.

The CHAIRMAN. Are there any further questions with Mr. Ross?

By Mr. HIGGINS:

Q. Did you ever talk with any of the three gentlemen who appear before this committee representing Judge Hanford about this charge?—A. No; I never mentioned it.

Q. I mean Mr. Hughes or Mr. Dorr or Mr. Preston?—A. No.

Q. You never discussed it with them or interviewed them?—A. No; I never spoke to them about it.

The CHAIRMAN. Any further questions?

By Mr. MCCOY:

Q. Do you know whether, as a matter of fact, Judge Hanford has been particularly comparatively severe in his sentences of white slavers?—A. I don't know that of my own knowledge.

Q. Do you know whether he has had any unusual number of cases, as compared with other judges in the United States?—A. Just from hearsay.

By Mr. HIGGINS:

Q. You state in your article, that "in May, 1910, Judge Hanford gave the grand jury drastic orders to investigate the traffic in girls." Did you get that from the Times, too?—A. No; I heard Judge Hanford speak of that while I was in there, I remember that now, that he also mentioned that, that he had given—I think Mr. Simonds asked him—he said to the judge that he had—either knew or had heard that Judge Hanford had given these instructions to the grand jury, and Judge Hanford said yes, that he had given them carte blanche to go ahead and urged them to make a very thorough and severe investigation.

By Mr. MCCOY:

Q. Is it exceptional for a judge to give to a grand jury carte blanche to go into anything that is alleged to be a crime, or do they generally say. "You shall go so far and then stop?"—A. There are apparently a lot of things exceptional here, Mr. McCoy, but I don't know whether that is.

By Mr. HIGGINS:

Q. Did Judge Hanford refer to the employment of secret-service men to investigate the purloining of the letter mentioned by him, that was sent to Judge Gilbert?—A. Yes; he said that he had notified the department.

Q. That is, the Post Office Department?—A. Yes.

The CHAIRMAN. Anything more, Mr. Hughes; any questions?

Mr. HUGHES. No.

Witness excused.

The CHAIRMAN. We will call a short witness before the noon hour. Mr. Clark.

JAMES J. CLARK, having been duly sworn, testified as follows:

By the CHAIRMAN:

Q. State your name, please.—A. James J. Clark.

Q. Where do you live?—A. In Seattle.

Q. How long have you lived in Seattle?—A. About 21 years.

Q. What is your age, Mr. Clark?—A. Forty.

Q. What is your business?—A. Barber.
Q. Where is your shop?—A. 814 Second Avenue.
Q. How long have you been at that place?—A. Something over four years.
Q. Are you acquainted with Judge Hanford?—A. Not personally; only by sight.
Q. You know him by sight?—A. Yes, sir.
Q. How long?—A. Oh, for possibly 8 or 10 years.
Q. How frequently do you see him, ordinarily?—A. Oh, possibly three or four times a year.
Q. Where?—A. Well, on the street.
Q. Anywhere else?—A. Well, I have shaved him once or twice—a few times.
Q. If in any time you have seen him when, in your opinion, he was under the influence of intoxicating liquor, please state to the committee.—A. Why, once about six years ago.
Q. Where?—A. I shaved him.
Q. What time in the day or night was it?—A. It was along in the evening about 6 o'clock—half past.
Q. What was his condition at that time with reference to sobriety or intoxication?—A. Well, I considered him under the influence of liquor.
Q. How much?—A. Well, of course, I could tell that he had been drinking.
Q. In what way, Mr. Clark?—A. Well, from his actions and from the odor—the breath.
Q. What was the odor—of what kind of liquor?—A. Well, I could not say as to that.
Q. And what were the actions of which you speak?—A. Well, he walked rather—very carefully, like a man that did not have full control of himself.
Q. Was there any other actions to indicate the condition that you speak of?—A. No, nothing; only that he went to sleep while being shaved.
Q. After you had finished shaving him, what took place? Did he wake up of his own accord or did you wake him?—A. Well, I—naturally he wakened up when I tipped him up in the chair.
Q. Well, how was it with reference to his leaving the chair? Tell the committee how he left the chair.—A. Well, about the same as he entered the chair—carefully.
Q. And with reference to being steady or unsteady, how?—A. Well, he was a little unsteady.
Q. Did he have help?—A. No; no help.
Q. Have you seen him at other times when he was not in that condition?—A. Yes, sir.
Q. Well, what do you say, Mr. Clark, as to whether at that time he was intoxicated or not?—A. I should say he was under the influence of liquor.
Q. Have you seen him at any other time in your shop, or on the street, or anywhere, when you thought he was under the influence of intoxicants?—A. No, sir.
The CHAIRMAN. Any further questions with this witness?

By Mr. HUGHES:

Q. Where is your place?—A. 814 Second Avenue, Melhorn Building.

Q. Where the Saratoga bar is?—A. Saratoga bar, next door.

Q. Are you the proprietor of the shop?—A. No, sir.

Witness excused.

The CHAIRMAN. Is there any other witness in the room waiting to be called?

The committee here took a recess until 1.30 o'clock this afternoon.

AFTERNOON SESSION.

1.30 O'CLOCK.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

Mr. HUGHES. Judge Hoyt wants to make one correction in his testimony.

The CHAIRMAN. Very well.

JOHN P. HOYT, recalled, testifies as follows:

The WITNESS. In so long as I have testified at all, I think there was one thing further that I should say. In the first place, I do not think that I stated the fact, which is a fact, that I had never seen Judge Hanford when I thought he was in the least degree under the influence of liquor, notwithstanding I had seen him early and late—I don't think I stated that.

The CHAIRMAN. I think you did, but that is all right.

The WITNESS. I was not sure. I stated it in a general way, my knowledge of his habits; but I do not think I stated that specifically, which I desire to do.

Mr. HUGHES. Very well.

The WITNESS. And one other matter in reference to my own connection with the Heckman & Hansen matter. I submit now a certified copy, a copy of which was permitted this morning, and I wish to say in reference thereto that it appears from the affidavit which is on file here that I was up at the superior court when the matter of the sale came up there at one time.

Mr. HUGHES. Receiver's sale, you mean?

A. Yes, sir; in the receivership proceedings, or the proposed sale. I was there because, for some reason, I do not know why, they served—they left with me a notice of the time of sale—as referee, although the matter was—nothing was being done before me, but I thought in view of that that I would go up there, and that will be seen in this minute of the proceedings, that there is a record made that such a notice had been served with me, and the order; and I wish to say further that the only action I took in it was, as stated in the former affidavit, was as a friend of the court in aid of Mr. Finch's application for an adjournment. Bankruptcy courts, like all other courts, are tenacious of their own jurisdiction; and I wanted that the Federal court, which I deem has the right of final determination before an estate shall be taken possession of by the bankruptcy court—and I wanted that court to have an opportunity to pass upon it before this

sale was made, and for that reason I joined with Mr. Finch, although he may not have understood it at that time, but in fact what I did was in aid of having the matter continued until the question could be presented to the Federal court as to whether or not it should take jurisdiction of the assets that were in the hands of the receiver, and that was the only appearance which I made in the premises. My understanding of the law being then, and now is, that it was a matter of discretion whether the Federal court would take a matter out of the hands of a receiver when the property had once been taken possession of by the receiver in the State court; but I thought that the Federal court ought to have the opportunity to exercise that discretion before the sale was made, and I joined in the request for the continuance for that reason. And I submit a copy.

Now, unless counsel have thought of something that they want to ask me, that is all that I desire to say on my own behalf.

Mr. HUGHES. It was arranged, Mr. Chairman, this forenoon that this document should be received in evidence.

The WITNESS. That is that copy?

The CHAIRMAN. The one which you speak of?

The WITNESS. Yes.

Document marked "Exhibit No. 62."

Witness excused.

JOHN ARTHUR, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. John Arthur.

Q. You reside in Seattle?—A. Yes, sir.

Q. You have lived here a long time?—A. Yes, sir.

Q. You are a member of the bar?—A. Yes, sir.

Q. And you are practicing your profession?—A. Yes, sir.

Q. Are you practicing alone or are you in connection with some other attorneys?—A. I am alone and have been for about three years.

Q. What was your former connection, Judge?—A. The last was Arthur & Hutchinson. Mr. Hutchinson is now in Spokane—went over there with Senator Poindexter, and before that it was Arthur, Lindsay & Kirg.

Q. Are you the same Mr. Arthur whose name is appended to the report in the matter involving Mr. Jerold Finch?—A. Yes, sir.

The CHAIRMAN. Now, Mr. Hughes, you can probably get the questions on the matter you want better than I could.

Mr. HUGHES. Mr. Arthur, will you be good enough to tell the committee what occurred before the committee of the bar of which you were a member appointed for the purpose of investigating the charges against Jerold L. Finch?

A. We met and organized, appointing Mr. Hughes as chairman, Mr. Powell as secretary, and held our meetings for a period covering five or six weeks in the Bailey Building in this city, in the room formerly occupied by United States Senator John B. Allen, who has passed away; and we notified Mr. Finch that we would hear everything he had to say and present, and he appeared before us, made a full statement of his ground for believing the charges which he had made and we went over the records with him, examined him carefully as to his reasons for making these charges, and I think on three separate occasions he and we went over every item of the matter

together that he cared to dwell upon at all, and after we had heard the others—Judge Ballinger, Gen. Metcalfe, and Richard Saxe Jones—we then invited Mr. Finch to come in again and told him at length everything which they had said in the way of explanation, and inquired if he had anything to say in detail as to whether their statements were correct or not. We afforded him every possible opportunity; in fact we were very sympathetic with him, as being a young man and carried away with enthusiasm, as we thought, and rather gullible in taking the suspicions of others, and manufacturing them into facts, and after hearing all parties we came to the conclusion that there was no foundation for the charges; in fact, we came to that conclusion upon Mr. Finch's own statements without calling anyone else at all, for he had no facts or evidence to present to us. He detailed a number of things which, to his mind, were very suspicious looking, but which did not strike us in that way, and then we called him again and again and gave him every opportunity to bring forward anything which he had bearing on the subject. We felt very kindly toward him; some of the members of the committee did—one in particular who knew him better than the rest of us and had such respect for his manifest talent and such a feeling that in time he would get over his extravagances of speech and quit adopting wild suspicions as facts—that we decided to recommend that no action be taken against him, and we made our report accordingly.

And that, in substance, Mr. Hughes, is my recollection of the course of the committee and the course of Mr. Finch. I have not looked into the matter since; I did look yesterday at our report and I feel that that was a very moderate, fair report, and I always felt so; in fact were it not for the sympathy and charity and consideration which a body of lawyers always indulge in in such cases, we might have recommended more drastic action against him, but we felt that he was not long at the practice and he was a promising young man and brilliant to a degree, and that he ought to be given a chance, and that he would overcome the foibles of youth. That, I think, is a fair statement, Mr. Hughes, of the general sentiment of the committee.

Q. Mr. Arthur, how long have you known Judge Hanford?—A. Over 29 years. In my first case in Seattle in 1883 I was associated with him, involving 360 acres of land here in the heart of the city. He represented some Ohio heirs.

Q. I do not think we care for the details of any cases—but you were associated with him in a case of importance which brought you into intimate relations with him?—A. Yes, sir.

Q. And were you thereafter more or less intimately thrown into relation with him while he was at the bar?—A. Yes, sir. We became close friends from the start although he was against me in many cases and fought hard, as he always did, yet we became good, close friends, and for nearly 14 years we lived within a block of one another and were accustomed to walking down town in the morning and walking back in the evening together and meeting on special occasions, and all of that, so I think I may fairly say that I know him very well.

Q. Have you practiced a great deal in his court since he was Federal judge?—A. Oh, yes.

Q. Have you ever known him to be under the influence of intoxicating liquors in all your experience with him?—A. I never have; and, indeed, I may say right here that until the newspaper accounts of this

series of charges against him I never had an idea that anybody considered him subject at all to the excessive use of liquor. I knew that he for 15 or 20 years past took an occasional drink, but before that he was a total abstainer. I never knew him to take a drink for—well from 1883, I think, until 1890, or something like that. He was a very rigid man in his habits in those days, and if the committee will indulge me I would simply give it as a general expression of my feeling that the weariness caused by overwork led him to take an occasional drink. He has no taste for liquor, gentlemen. I know perfectly well that he never manifested any liking for it. Time and again I have gone to his chambers when I felt that he was working overhard and knew that he was working hard and must be tired out, and I would say to him, "Judge, put on your hat," and he would usually say, "Wait until I get through with this bundle of papers." He would read everything through carefully, and I would take him down the street and say to him, "Now, you need a drink; you are working too hard; you will break down one of these days," and I would take him down to Jim Sheehan's, as a rule—he had a respect for Jim Sheehan—it was sort of a gentleman's place opposite the Butler Hotel in those days. I do not recollect a single instance in which he ever took more than two drinks, and those comparatively light drinks. Some men will fill a glass up, you know, and one drink would be enough for three, but his drinks were comparatively light.

Mr. HUGHES. I would not presume that the committee knows anything about that, Mr. Arthur.

The WITNESS. No; I am sure their names would indicate that they are strangers to it.

The CHAIRMAN. You can assume that they have ordinary intelligence and experience without doing great violence to the facts.

Mr. HUGHES. I do presume at once that they have more than ordinary intelligence, but I was not going to presume as to their experience along that line. Now, Mr. Arthur, I do not want you to go into details and I do not think the committee would care to hear them, but will you tell the committee something about Judge Hanford's personal habits and peculiarities and idiosyncrasies of action and of habit and of walk, etc.—A. Well——

Q. And sleep, as well.—A. Well, he is not like anybody else in the world; he is in a class of his own and only himself can be his parallel, Mr. Hughes.

The CHAIRMAN. Sui generis?

A. Yes; he is sui generis. Intimately as I have known him, closely as we have been thrown together in many years, especially being such near neighbors for so many years and fond as I knew he was of me in many ways, he would go along on the street from the courthouse with his head down, half wabbling, and pass me without speaking if I did not say, "Hello, Judge," time and again. He is that kind of a peculiar man; he is absorbed in his own thoughts, and many a time old-time friends of his who knew him even longer than I did have complained to me that Judge Hanford seemed to be very sour and cold; that he passed them by at such and such a time and never spoke to them; and I would explain to them that it was simply his mannerism and way. He is a man who has given his whole life up to toil and an unceasing worker, and he takes not merely a deep interest in every case before him, but he is a close student of public affairs and

has given the people of Seattle and the State many very important and thoughtful addresses on public questions and on civic affairs. In fact, he is generally regarded here as a great citizen.

The CHAIRMAN. Mr. Arthur, I said before, I think, in your hearing, that we would much prefer not to go into general reputation.

The WITNESS. I am sure you do not need that.

The CHAIRMAN (continuing). It is a field which would be very hard to exhaust on either side, and I think we had better avoid it.

The WITNESS. Well, now, I would simply say to the committee that for the past three years I have been practicing alone and very closely confined to the office, and I have not met Judge Hanford so much as I used to, but up to that time I am quite confident in saying that he never was drunk and never under the influence of liquor, for if he had been I would have learned it from somebody if I had not seen it myself, for I know——

The CHAIRMAN. Do you regard that as worthy to put in the record, Judge?

A. Well, perhaps not, Mr. Chairman; perhaps not.

The CHAIRMAN. Then, avoid it.

A. (Continuing.) But, during those past three years I have met him many a time, of course, but did not spend as much time with him as I used to formerly, and I have never observed the slightest trace of intoxication upon him. I remember one occasion when we kept him up until half past 3 or 4 o'clock in the morning at a St. Patrick's day banquet where there was no limitation on a man's desires if he cared to have a jolly time, and he took a sip right along whenever the boys wanted to drink. It was down at the Rainier-Grand Hotel, where we held the banquet, and I had been president of the Celtic Sons of Washington and was chairman of the meeting, and the others would not let him go after the company dispersed. Why, they held him, as he was always a favorite with them, and at half past 3 or 4 o'clock in the morning he was just as sober as any of us here now. Simply would take a little sip occasionally.

The CHAIRMAN. What were your powers of observation at that hour?

A. On account of my being the president and the chairman I was particularly on guard, Mr. Chairman, and I was almost a total abstainer on that occasion.

The CHAIRMAN. That is all. Are there any further questions of Judge Arthur?

Mr. MCCOY. Yes; one question. Mr. Finch was under accusation before the committee of the bar, was he not, on those charges?

A. Yes; he was—well, yes; the matter was referred by a large committee of the bar to this committee to take evidence as to what ground he had for making those charges.

Q. The meeting at which the committee was appointed had already decided that the charges were without foundation, had it not?—A. I do not know what other men thought.

Q. What did the record of the proceedings at that meeting show? Did it not show that it was resolved, practically, that the charges were without foundation?—A. Yes; everybody believed they were without foundation.

Q. Now, you say that you gave him every possible chance. Is not a man who is accused generally given the opportunity to be con-

fronted by the witnesses against him?—A. Yes, sir; but we were not a tribunal authorized to administer oaths. We were simply to inquire from him, as we understood it, what grounds he had for making those charges.

Q. And was not the fact that you were not entitled to administer oaths and that the people could come before you and make whatever statements they pleased an additional reason for notifying Mr. Finch that witnesses against him were to be heard?—A. Well, my impression now is, and I might say my recollection is, that we kept him informed right along of every step we were taking and who we were to call in, but I think he only attended three or four meetings.

Q. What is your observation as to how many drinks are necessary to get a man under the influence of liquor?—A. Well, I take it that that depends on the age. A young man can stand much more than a man who has passed 55 or 60, and I have an idea, too, that a man who all through his youthful life was a total abstainer, like Judge Hanford, never acquired the capacity to assimilate as much as one who has been brought up to it and fed on it, as it were.

The CHAIRMAN. Judge, is not the philosophy of it rather the other way, that a man whose system was not saturated with alcohol in youth could bear more of it in after life than if he had been thoroughly saturated with it always?

A. Well, one might not be thoroughly saturated and yet be a moderate drinker through life. My observation is, Mr. Chairman, that one who has been a moderate drinker all through his life and through his manhood can bear much more and assimilate much more than one who became comparatively recently a tippler.

Q. To what extent have you seen the judge drink?—A I have seen him drink probably, on, I would say, an average of perhaps twice a month for 10 or 15 years

Q Where would you generally see him doing this drinking?—A. Well, there were just two places; yes, there were three places that he would drop into. This James Sheehan's, which I have mentioned——

Q Has the place any concrete name?—A. No; it was James Sheehan & Co.

Q It was not any of the bars which have been named, like the Saratoga or the Butler, or the Seattle, or any of those?—A. No, sir; it was just opposite the Butler Hotel

Q But no name of that kind?—A No, sir; it was simply James Sheehan—just Sheehan's—and the Saratoga bar, which was not then where it is now, but was farther north on Second Avenue, and where he would frequently drop in, or once in a while he and I would go in there together, and his favorite drink was a sherry and egg, and then if he happened to be down on First Avenue and we would run across each other, why it would be at the Rainier Grand bar—the Rainier Grand Hotel bar.

You have been with him at the Butler?—A. I think I never have been with him at the Butler Hotel bar.

Q At what hours did you and he usually irrigate?—A. Oh, there was no set hour Often about 5 or 6 o'clock in the day if I was anywhere in the neighborhood of his court room I would go to his chambers and say, "Judge, put on your hat." I have never known him to take anything in the morning.

Mr. McCoy. Do you mean by "hat," "nightcap?"

A No, sir; just to put on his hat and leave his chambers. That was my favorite expression, and his almost invariable expression was, "Wait until I get through with these papers"

The CHAIRMAN. How long would you be willing to wait for him?—

A I would often wait half an hour or more, and I would never say a word all that time; just remain as silent as a clam until be would get through his examinations.

Q. Do you recall being with him drinking anywhere later than 6 or 7 o'clock?—A. Oh, yes; frequently I have come into his chambers in the evening along about 9 or 10 o'clock and say to the judge, "You are working too hard. Come away from here. Quit; you will have time enough, and let us go down and see Jim Sheehan;" that was my favorite expression. Sometimes he would come and sometimes he would say he could not get away.

Q How late have you drank with him in town at night and not at a banquet?—A. I think it must be two years.

Q That is the most recent time you drank?—A. Yes.

Q But how late at night?—A. Well, I think never later than half past 10 or 11. We would often walk home together. We lived so near each other we walked home.

Q. Do you still live in his proximity?—A. No.

Q How long since you ceased to live close together?—A Since the autumn of 1905.

Q. Since that time have you seen him in town late at night and drank with him late at night?—A. Oh, yes; him and I.

Q But you did not walk home with him?—A. No, sir; no; I could not walk home with him then, because I was in another direction.

Q. Do you represent, as attorney, any of the important corporate interests in and around Seattle?—A. I do not.

Q. Have you at any time?—A. No; I have been regarded as an anticorporation lawyer in a sense, and my living has been made entirely without them, with one exception, that when I came out here first in April, 1883, I came as attorney for the Tacoma Land Co., the owner of the town site there, and made Tacoma my headquarters for four years and then transferred my headquarters to Seattle, but during those four years spending about half the time in Seattle.

The CHAIRMAN. That is all.

Witness excused.

ALBERT H. BEEBE, being first duly sworn, testifies as follows:

Mr. HUGHES. You are a member of the bar of this city?

A. I am.

Q. How long have you been a member of the bar?—A. Since the spring of 1902 or the fall of 1901.

Q. Mr. Beebe, without asking you as to Judge Hanford's conduct and demeanor in court, I want to call your attention more particularly to his habits in going to and from his home on the street car; for that purpose will you state to the committee what your means of observation have been?—A. I reside and did reside for about six or seven years in the same portion of the city that Judge Hanford resided in and in which he now resides; and during that time I traveled to and from my work in the center of the town on the street cars, and in going backward and forward, of course, I came in con-

tact with Judge Hanford very frequently. During that time I frequently was down town in the evening and often went home on the car from perhaps 10 o'clock until half-past 11, and frequently saw Judge Hanford on the car.

Q. That is, both in the early evening when going home to dinner between 6 and 7 and again between half-past 10 and half-past 11?—A. Often.

Q. Now, what have your observations been as to Judge Hanford's appearance and acts and condition?—A. Judge Hanford has a habit on the street car and at other times and places of sitting in a very abstracted attitude, sometimes with his eyes closed as though he were asleep, and when his eyes were open, often of looking directly at a person with whom he is acquainted without recognizing the person at all or giving any indications of recognition. At such times I frequently had occasion to speak to him and found that he was thoroughly alert and that his mind was active.

Q. When you say "alert" you mean mentally?—A. Mentally alert, and often absorbed in thought.

Q. From your acquaintance and observation I will ask you to say whether at any of those times when you saw him in the condition you have described, he was under the influence of liquor?—A. I do not think that I ever saw him when he was under the influence of liquor. At such times I have often spoken to him and conversed with him. At such times he has sometimes spoken to me and I have had frequent occasion to know whether or not he was under the influence of liquor. I never saw him at a time when he was under the influence of liquor, on the street car or at any other place.

Q. At such times, but for your acquaintance and your opportunity to ascertain what was his real condition, might others seeing him think he was under the influence of liquor as an intoxicant?—A. It would be very easy for a person unacquainted with Judge Hanford or who did not know him well, to be misled by his attitude and his appearance at such times.

Mr. HUGHES. That is all.

Mr. MCCOY. Why would other people perhaps be misled as to his condition?

A. Simply on account of his appearance.

Q. Well, what was his appearance which might mislead the ordinary person into thinking that he was under the influence of liquor?—A. The fact that he would go into a street car, would scarcely recognize people that he is acquainted with and must know, and would sit down and sometimes close his eyes and appear to be dozing, which is a characteristic which ordinarily people might misconstrue as a condition of intoxication.

Q. Do not people doze on the street car without being suspected by anybody, strangers or otherwise, of being intoxicated or under the influence of liquor?—A. That is possibly true, men that do not come under the observation of the public quite as closely as a person occupying the position of Judge Hanford.

Q. Well, do you think that because he was occupying a judicial position that people are more likely to think that he was drunk than they would with regard to other people?—A. I think people would be more likely to take notice of that condition in a man who is occupying a public position.

Q. We are talking now about strangers, people who do not even know who he was. I understood you to testify that strangers might think he was intoxicated?—A. Yes; I think that is true.

Q. You say he would sit there and look at people and apparently not see them—was there anything in the quality of his glance or his look that might make the ordinary person think that he was intoxicated—people who did not know who he was, or anything about him?—A. Simply the attitude of the man in ignoring the presence of others. He is not a man who is keen to notice other things taking place around him.

Q. Well, was there anything in his glance or in the way he looked that might make the ordinary person who did not know him think that he was under the influence of liquor?—A. The only way that I can answer that would be that he often has a very fixed glance—a fixed condition of his eye which might mislead a person.

Q. Well, when a man is under the influence of liquor and he sits with his eyes open looking at people, it is what is called the vacant stare, is it not, of a drunken man?—A. It is probably called a vacant stare.

Q. Well, was that the sort of look he had in his eyes?—A. Very frequently Judge Hanford sits with a vacant stare in the street car, and at such times I have frequently spoken to him and found that he was in perfect possession of his faculties and alert and engaged in thought.

Q. Well, have you ever seen a really intelligent man who was under the influence of liquor sit with a vacant stare in his eyes?—A. I think so.

Q. Any others besides Judge Hanford?—A. Well, I do not know that I could name anyone, but it is a condition that a man sometimes drifts into. I think I have seen other people in that condition.

Q. To what firm do you belong, if any?—A. I do not belong to any firm. I am practicing by myself.

Q. What are your business connections in your firm as a lawyer?—A. Well, I have a general practice. I appear very seldom in the Federal court. I have very little business in the Federal court. My practice is chiefly in the State courts.

Q. What is the general line?—A. Chiefly office practice and counseling.

Q. Not litigating?—A. Litigating just as little as I can. I do not care for trial work.

Mr. HIGGINS. Mr. Beebe, have you in your observation of Judge Hanford on the street car noticed at any time that he had a peculiar way of sitting in the car?

A. A peculiar physical attitude, do you mean?

Q. Yes.—A. Why, I would say that he very frequently sits with his head bowed over and his shoulders rather stooped forward. That has been particularly characteristic of him for the last few years, which I think he has aged more rapidly than formerly.

Q. How about the position of his body? You say his head was bent forward—would his body be erect?—A. His body is ordinarily erect, so far as I recall.

Q. My question is whether you have seen him on the car when when it was not?—A. I do not recall ever having seen Judge Hanford on the car when his body did not seem to be perfectly erect. I do

not exactly understand the point of your question, however—I am not sure that I have answered it.

Q. Well, it is clear to you when a man is sitting erect, is it not, in a car or anywhere else?—A. Yes.

Q. Now, my question is whether you ever noticed, in your observations of Judge Hanford in the street car, any peculiarity of manner of sitting in the seat?—A. I do not think I ever noticed any such a peculiarity.

Q. A manner of sitting such as would attract attention or be out of the ordinary way of riding in a street car?—A. No.

Q. I do not mean as applied to Judge Hanford, but as applied to the average normal man?—A. No; I think not.

The CHAIRMAN. Have you ever seen the judge drinking liquor?

A. Yes, sir.

Q. Frequently?—A. Not frequently. I have seen him drink liquor at banquets and once or twice at the Rainier Club.

Q. Are you a member——A. I am not a member of the Rainier Club.

Q. You were there as a guest?—A. I was there as a guest.

Q. What was the occasion? As I understand it, residents here are not entitled to enter there as guests.—A. Frequently at dinners or banquets which are given either by members of the club or by members of the club inviting some society or organization there—and I frequently have been there at the Rainier Club at such times.

Q. At the banquet occasions?—A. Yes, sir. And at such time the guests usually assembled in the general rooms downstairs, and I have been there at such times.

Q. Have you seen him drink at any other place than a banquet?—A. Well, I do not mean to say that at that time I saw Judge Hanford drinking, only at the banquet—I have seen him drink at the Rainier Club downstairs, not in the dining room, but in the little room where liquor is served.

Q. On the evening of banquets?—A. On the evening of banquets.

Q. And before the banquet?—A. I have been at a banquet when he was at the banquet table, but he was in the club as a member.

Q. Have you seen him drink elsewhere than at banquets and at the club, as you have stated?—A. I have seen him drink at the club.

Q. Have you seen him drink elsewhere than at banquets or at the club?—A. I do not think I ever saw him drink outside of the Rainier Club or at banquets at other places.

Q. Have you on any of the occasions you speak of seeing him on the street car noticed any odor of liquor from him?—A. No; I never have.

Q. Anywhere at any time, have you?—A. Well, I would not want to state positively that I never had detected the odor of liquor on Judge Hanford's breath, because I have frequently talked with him, and I know that he drinks moderately, and I may have detected such an odor, but I have no recollection at this time of ever having detected the odor of liquor on his breath.

Q. How do you know that he drinks moderately, except as you have stated?—A. Yes; I should say that I know he drinks moderately. Of course no man can state positively a fact unless he has close relationship with the man that the man drinks moderately without his knowing it, but I have known Judge Hanford quite well—I was never an intimate acquaintance of his, but I have known him quite well

through several sources for seven or eight years—and I never under any circumstances have seen him drink immoderately, or have known of his drinking immoderately, or have seen him under conditions under which I thought that he had been drinking immoderately.

Q. You have told us that repeatedly—now, did you ever see him drink at the Saratoga?—A. Never.

Q. Or Sheehan's?—A. No.

Q. Or at the Savoy?—A. No.

Q. Or at any other place except the Rainier Club?—A. I do not remember of ever having seen him drink any other place except at banquets, as I stated.

Q. Do you mean to include banquets not held at the Rainier Club?—A. Yes; I believe I stated that.

The CHAIRMAN. Any other questions?

Mr. HUGHES. Do you ever drink yourself?

A. Sometimes; very seldom.

Mr. MCCOY. Have you been here before in this court room during these sessions at all when Judge Hanford has been here?

A. I have not.

Witness excused.

WILLIAM H. GORHAM, being first duly sworn, testifies as follows:

The CHAIRMAN. You may proceed, Mr. Hughes.

Mr. HUGHES. Mr. Gorham, give your full name.

A. William H. Gorham.

Q. What is your profession?—A. I am an attorney at law.

Q. How long have you practiced it in this State?—A. Since 1889.

Q. During the past year you have been president of the Seattle Bar Association?—A. I have, up to a week ago yesterday.

Q. And your successor is——A. George H. Walker.

Q. Have you had much practice in the Federal court?—A. Practically all my practice is in the Federal court.

Q. You have had a very extensive admiralty practice?—A. I have my share of it.

Q. And considerable other practice in the Federal court?—A. Yes.

Q. Have you been intimately acquainted with Judge Hanford?—A. For about 29 years I have, yes; since 1883.

Q. Will you tell the committee what are Judge Hanford's habits with respect to becoming intoxicated?—A. I know of no such habit on the part of Judge Hanford. I never saw him intoxicated in my life or under the influence of liquor in my life.

Q. You have seen him take drinks?—A. I do not remember of but one instance that I saw him take a drink. He may have taken a drink at banquets when I was present, but one sitting at a long banquet table would not notice who was drinking.

Q. Now, tell the committee what opportunities you have had to observe Judge Hanford when, if he had been accustomed to becoming intoxicated you would have noticed it. I think I may trust you, Mr. Gorham, to be concise.—A. Well, I have come into personal contact with Judge Hanford during 29 years under all conditions and circumstances that usually surround the legal profession in Seattle. On trains——

Q. (Interrupting.) Particularly in the last few years what have been your opportunities?—A. Well, I have seen Judge Hanford,

possibly once a week in the last 5 or 10 years; on an average of once a week, if not oftener. I have conversed personally with him, and I never saw him when I thought he was under the influence of liquor, or recovering from a condition when he was under the influence of liquor.

Q. Testimony has been offered here as to his appearance and conduct and demeanor in the court room—testimony to the effect that he nods and closes his eyes and, apparently, is asleep, and some evidence of some witnesses who testified he was asleep. Will you describe to the committee what your observations have been in that particular?—A. Well, I have seen the judge throw his head down or back on the back of his chair very often, and close his eyes and be apparently dead to all sensation, but I have heard him rule, when objections have been made, promptly without requiring the reporter to read the questions. I never heard him ask the reporter to read a question in order that he might know what he had to rule upon, under those conditions that I am speaking of. It is a very common occurrence for the judge to close his eyes on the bench and be apparently asleep to those who do not know him.

Q. I wish, because of your somewhat intimate knowledge of Judge Hanford, that you would describe to the committee his personal habits, peculiarities, and idiosyncrasies, particularly physical——A. Well, I do not know——

Q. (Continuing.) From which the inference might be drawn by persons who are not thus acquainted with him.—A. Well, the last witness described his vacant stare. I have seen Judge Hanford with the vacant stare; I have seen other people with a vacant stare who were perfectly sober. That all depends on the degree of abstraction, to my mind. Judge Hanford, on the bench, does not present, in my opinion, the appearance of intoxication to any person. A person who is superficial might say that he was under the influence of some opiate or intoxicant, but that would be only a superficial opinion. They would not have to watch the man long before determining in their own mind that he was not in such a condition. I traveled with Judge Hanford about three weeks ago over to Tacoma on the interurban train. We talked about general subjects of the day, and in a few minutes he began to read a paper, and inside of three or four minutes after beginning to read the paper he fell asleep and his entire body relaxed. Now, I have seen drunken men in that condition, but Judge Hanford at that time was not any more drunk than I, or the members of this committee are now. He may have been asleep and in that relaxed condition for 5 or 10 minutes—he was actually asleep then—and awoke and continued the conversation in a normal condition.

Q. Does not Judge Hanford on the bench appear frequently to be relaxed physically?—A. He does.

Q. So that his muscles are inert?—A. They do; that is his appearance. He relaxes. I think that is when he is taking his rest, his physical rest; he is relaxing.

Q. Is it not true even when he shakes hands, and under all circumstances, that he is relaxing and inert, more or less, muscularly?—A. Well, he is not what you would call a robust man.

Q. I have not reference to being robust or otherwise, but to the habit of inertness physically?—A. Yes, sir; that is correct.

Q. Is that not manifest in his walk?—A. Yes.

Q. Have you observed him enough to describe his unconscious habit in walking?—A. Yes, sir—not to be disrespectful toward the judge—he waddles sometimes—in a perfectly sober condition, I never saw him in any other condition—I have seen him waddle—swing from side to side.

Q. Have you ever walked with him—frequently?—A. Often.

Q. Were you ever able to keep step with him?—A. I take about two steps to his three. He and I belonged to a military organization here in the early days and he was a file closer or ahead of me.

The CHAIRMAN. You must have done some fine marching.

The WITNESS. Well, we confined it to the streets of the city—and he would take three steps to the two steps of the entire organization. I have often remarked that, long before this occurred.

By Mr. HUGHES:

Q. Have you ever seen him on the street car when he would relax in the way you have described, close his eyes and droop his head and let go of himself?—A. That was only on this occasion, about three weeks ago.

Q. That was on the interurban?—A. On the interurban, yes, sir.

Q. Mr. Gorham, what do you say as to the judicial temperament and ability of Judge Hanford?—A. I do not understand the question.

Question repeated to the witness.

A. I think Judge Hanford is a man of preeminent ability, and as to his temperament he is a man who, in my opinion, endeavors to be as just as it is possible to be, from the bench.

Mr. HUGHES. That is all.

Mr. McCOY. Do you consider that the appointment of a United States commissioner by Judge Hanford is a part of his judicial or nonjudicial duties?

A. I should think that it would be a nonjudicial duty.

Q. Well, he has to do it under his oath, doesn't he?—A. He has to do it by virtue of his office as judge.

Q. And under his oath of office.—A. He takes an oath of office before he enters upon the discharge of his duty, I should assume.

Q. There is no use in our sparring about it—do you think that he is bound by his oath of office when he makes an appointment of United States commissioner?—A. I should think so, certainly.

Q. Well, then, what would you think of the judicial temperament of a judge, any judge, who in passing upon the qualifications of a man who was an applicant for the United States commissionership, should allow himself to be swayed by the fact as to whether or not the applicant was in favor of one certain presidential candidate or another, and state so.—A. I don't quite catch your meaning, Mr. McCoy.

Question repeated to the witness.

A. Well, I think a judge who would appoint or refuse to appoint a United States commissioner on account of that reason would be doing wrong, but it would not necessarily follow that he has not a proper judicial temperament. Even Homer nods, and a man might make a mistake once in 22 years.

Mr. HIGGINS. Is it not really a ministerial rather than a judicial action?

A. It is ministerial—it certainly is not judicial.

Mr. MCCOY. On what other occasions besides the time when Judge Hanford is on the bench does he manifest any of those peculiarities of which you spoke, the drowsiness and the peculiarities of which other witnesses have spoken, of sitting with his head drooped forward and his apparently not paying attention?

A. Well, I never have seen the Judge except on the streets or in his chambers or at the bar meetings or in his office when he was practicing law or at his house.

Q. Well, then, would your answer to that—those occasions when he appears to be in this drowsy condition are confined to the times when he is on the bench?—A. Exclusively, so far as I know; so far as my observation has been they have been confined to the times when he is on the bench and on the interurban car, as I stated.

Q. Well, Judge Hanford is a pretty alert man, isn't he?—A. In what respect—mentally or physically?

Q. Physically?—A. No; I should not say he was alert; at times he is heavy—he seems to be weary, physically.

Q. He is a pretty good walker, isn't he?—A. Well, I don't know what you would mean by a pretty good walker; if you mean that he walks 15 or 20 miles a day, I should say no. I never walked much with Judge Hanford, except down town.

Q. Well, he used to, and perhaps now, makes a practice of walking home a great deal, doesn't he?—A. That I do not know, except by hearsay. I never walked home with him.

Q. Don't you know that until he could not find a place to store his bicycle in this Federal Building that he used to ride a bicycle to and from his house?—A. No; I do not believe Judge Hanford has ridden a bicycle since the days of the bicycle rage, and that was a good many years ago; I have seen him on the bicycle during those days, in the nineties.

Q. The testimony before the committee is that Judge Hanford gave to the witness who was testifying as his reason for not riding the bicycle any longer that he could not find a place to store it in this building.—A. Well, I do not know what the testimony was. I am only giving you what I know. I have not seen him riding a bicycle for 15 years.

Q. Is Judge Hanford a nervous man?—A. No; I should say not.

Q. You say he has a limp walk?—A. No; I did not use the word "limp."

Q. How did you describe his walk?—A. I said that the judge at times waddles.

Q. Didn't you say he had—that he relaxed his muscles when he walks?—A. Yes; at times.

Q. What muscles does he relax—the muscles of his legs, when he is walking?—A. A general relaxation—a general physical relaxation—I could not say what muscles they were.

Q. Does he relax the muscles of his legs when he walks?—A. I don't know; I did not feel of them, and I could not tell. I do not know, Mr. McCoy; just a general condition.

Q. You did not feel of his muscles—did you ever feel of any of his muscles?—A. No, sir.

Q. Then how do you know he relaxes?—A. I can tell by general appearance.

Q. Does he relax the muscles of his legs?—A. I could not tell you.

Q. What muscles was it that he relaxed?—A. I could not tell, except as a general physical relaxation.

Q. What do you mean by physical relaxation?—A. A general physical relaxation or a general appearance of being physically relaxed. Now, whether he relaxes the muscles of his body or of his legs I do not know.

Q. Well, a general relaxation would be a relaxation of all his muscles.—A. A general appearance of relaxation, I said—or rather an appearance of general relaxation.

Q. Then, as a matter of fact, you do not know whether he actually relaxes or not—it was only that he appeared to be relaxing?—A. That is what I am testifying, that he appeared to be.

Q. Well, did he appear to relax the muscles of his legs?—A. I could not say as to that, Mr. McCoy; I do not know.

Q. Well, what was there about him that makes you say that he appeared to be relaxing?—A. Just the general appearance—I have said that that was his general appearance.

Q. I did not ask you now whether he did relax the muscles of his legs, but did he appear to be relaxing the muscles of his legs?—A. Well, I could not answer that question; I do not know. I could look at a person and give you his general appearance, but if you asked me what color any particular part of his dress was, I might not be able to tell it. It was the general appearance he had—a general appearance of relaxation. I think it is manifested here in the court room since he has been sitting here.

Q. Now, that is just exactly what I am coming to. Have you noticed Judge Hanford since he has sat here before this committee in a state of general relaxation?—A. At times I have noticed him in a very intense state and at other times in a state of relaxation.

Q. Then you have noticed more than I have.—A. You have been looking at the witnesses, probably, when I was looking at Judge Hanford.

Q. No; I have been looking at him quite a while. What do you mean when you say that the judge waddles—does he waddle like a duck?—A. No; I do not mean to use any such expression as that. I mean to say that he does not walk straightforward; his legs and body swing.

Q. What do you mean; that he stands on both feet and his body swings from side to side?—A. A little, at times; yes.

Q. Does a man stand on both feet and swing from side to side when he is walking?—A. No; he can not walk when he is standing on both feet, if that is what you mean. I do not know what you are trying to get at, Mr. McCoy.

Q. I am not trying to get at anything, except that I am trying to get at what it was you testified about; that is all. You testified in general terms, and I would like to know specifically. That is all.—A. Well, you know what I mean when a man waddles in his walk.

Q. I know what you would mean when you would say a duck waddles, but I do not know what you would mean when you say a man waddles.—A. Yes; I think you do appreciate what I mean—that he does not stand on both feet at once in walking. As he lifts

one foot his body swings one way, and as he lifts the other foot his body swings the other way; and when a man waddles he swings a little more than a man who does not waddle. That is all.

The CHAIRMAN. That is enlightening.

Mr. MCCOY. Did you ever see him walking in a zigzag direction across the sidewalk?

A. Tacking ship? No; I never did.

Q. That is not what you would call waddling, is it?—A. No; I do not mean that at all. I mean a slight movement of the body—a little greater movement than the ordinary person has.

Q. Such a movement as people who are not close observers or who were looking at someone who was an utter stranger to them might say was the result of intoxication?—A. No; I never saw that. No, sir; I do not mean to that extent at all. Such a movement as what you would call a stout party has by reason of stoutness.

Q. Well, Judge Hanford is not so very stout?—A. No; but I am comparing it to that same movement that the stout party has.

The CHAIRMAN. Any further questions? Mr. Hughes, will you step this way, if you please?

Whereupon Mr. Hughes and the members of the committee hold a consultation in regard to a certain document.

Mr. MCCOY. Mr. Gorham, you have been in court while this committee was sitting here quite a little, haven't you?

A. Yes; quite a little.

Q. You have heard a great deal of the testimony to the effect that Judge Hanford was under the influence of intoxicants on the street, haven't you?—A. I have heard some witnesses—I have not been present the last two days. I was present the first few days of the hearing continually, but the last few days I have not been present continually.

Q. Well, you have heard since you have been sitting here quite a little testimony having that general effect?—A. Yes.

Q. Now, when Mr. Hughes was questioning you a few minutes ago and asking you to describe Judge Hanford's walk and general appearance, didn't you take it for granted that he expected you to give testimony which would tend to controvert the inferences to be drawn from the testimony given by those witnesses?—A. I do not know what Mr. Hughes expected, at all. I have not talked with Mr. Hughes about what my testimony would be, or with anybody else. I do not know what he expected.

Q. You have made no guess at all?—A. I do not have to guess. It is not up to me to guess. If you mean to say that my guess of what Mr. Hughes expected of me would influence my testimony, why, then, you are absolutely wrong.

Q. Oh, no; I do not mean that; but what I do mean, since you bring the question up, is this: That you had heard this testimony here.—A. Yes.

Q. And you described a condition and then said it was practically not, in your opinion, due to intoxication?—A. That that I have seen was not due to intoxication to my own personal knowledge. I know when a man is intoxicated.

The CHAIRMAN. Well, in your own mind, on that line, did you intend your description of the judge's walk to be in any degree an

answer to the testimony of those witnesses who said they saw him stagger on the street?

A. None whatever, Mr. Chairman. I was not attempting to meet that at all. I was attempting to testify to the facts as I saw and observed them, and that is what I supposed this committee wanted—the facts as each witness observed them, irrespective of what other facts somebody else may testify about.

Mr. McCoy. Mr. Hughes asked you to go ahead and give a description, as I recollect it, without questioning you particularly.

A. Yes.

Q. Didn't you, in the course of your testimony anywhere, say that certain things that Judge Hanford did in the way of bodily motion, or what not, were not the result of intoxication?—A. I said that what I had observed in that respect was not the result of intoxication, because he never was intoxicated in my presence in the time that I have known him, or under the influence of liquor in any respect during the time that I have known him. That is all I can testify to.

The Chairman. Mr. Hughes, I have exhibited to you a printed copy of a letter dated Seattle, Wash., October 20, 1896, headed "Chambers of United States district judge, district of Washington, rooms 32 and 33, Colman Building," with what appears a facsimile of Judge Hanford's name signed to it—the letters "C. H. Hanford"—and I asked you if this was a correct copy of a letter actually written by Judge Hanford.

Mr. Hughes. At your request I have just submitted it to Judge Hanford, and he informs me that it is.

The Chairman. The letter will go in the record and be marked as an exhibit.

Letter marked "Exhibit No. 63."

The Chairman. Mr. Higgins desires to make it the basis of some questions of this witness.

Mr. Higgins. I just want you to read the letter, Mr. Gorham, and see if you desire to qualify in any way the answer to the question which Mr. McCoy asked you [handing Exhibit No. 63 to the witness].

A. I remember of such a letter as this having been written. There is no reference to parties here. I presume it refers to the Chicago platform of the Democratic Party in the year 1896.

Mr. Higgins. A fair assumption, I think, from the letter.

A. Yes. I did not subscribe to the opinion of the judge, expressed in that letter at that time.

Mr. McCoy. Mr. Higgins's question was whether you, after reading the letter, cared to change your answer to my question as to the propriety, or whatever it was I asked you, as to a Federal judge's attitude.

A. Well, I will qualify it to this extent; I believe that Judge Hanford, at the time he wrote that letter, was doing what he thought was his duty. I believe he always does that. I would not have thought that my duty to do. I disagree with him to that extent, but I do not believe that he was animated by any political or personal reasons for any such a thing. I believe he believed he was doing his duty.

Q. You say you would not have written the letter. Was that because you approved of the Chicago platform?—A. No, sir.

Q. Or because if you were judge you would not have written that kind of a letter, no matter what you thought of the Chicago platform?—A. I mean to say that if I had been a judge I would not have, as I felt about the matter.

Mr. HIGGINS. Perhaps, Mr. Gorham, if you had been a judge you would not, as one of the most distinguished associate justices of the United States Supreme Court did, make a public address which quite directly attacked the Chief Executive of the Nation on the question of new nationalism—I refer to the address of Justice Brewer, made some years ago. Do you recall that occasion, in which he vigorously attacked certain doctrines then vigorously agitated by the then President, Roosevelt; do you recall that occasion?

A. I do.

Mr. MCCOY. Now, if you will be good enough to answer my question. Did I understand that you say you would not have written the letter if you had been a judge, no matter whether you approved of the Chicago platform or disapproved of it? Or supposing it had been the converse; suppose it had been the Republican, or any other political platform.

A. Yes.

Q. Would you have written that letter had you been a judge, no matter what you thought about any political platform?—A. No; because I did not view the platform as Judge Hanford apparently did. Judge Hanford is an intense patriot—an intense patriot. I do not view the red-flag incident as Judge Hanford does. He is doing the best he can. It may be he is right and I am wrong; but I disagree with him.

Q. That is not quite my point—I am not wanting to know the expression of your political views.—A. It does not make any difference what they are.

Q. It does not make any difference, of course.—A. No.

Q. My only point is this: If you had been a Federal judge would you have written, as you look at it now, that kind of a letter about any political platform, whether it was yours or that of the opposing party?—A. No; I would not. But Judge Hanford would, and did; and I believe he did it from a sense of duty, because I know the man.

The CHAIRMAN. Let me get your idea of patriotism, Mr. Gorham. Do you believe it is an evidence of patriotism to refuse the right to hold office to a man who does not agree with you about political matters?

A. Yes, sir; if the man has such a belief contrary to mine that I believe he is not a good citizen.

Q. In other words, if he differs from you you think it is patriotic to deprive him of the rights of a citizen?—A. No; not just because he differs—it depends on what views he holds—not just because he differs.

Q. If he differs from you in such a way that you think he is very wrong?—A. No; I believe I can be tolerant of the other man's opinion.

Q. Let us get to the point here. I will just read the paragraph I have reference to. [Reading]:

I do not usually inquire about the politics of persons recommended for appointment as commissioners, but loyalty and a belief that the National Government may right-

fully exercise its lawful authority in all places are qualifications for the office, and when the time comes for making an appointment I will not regard Mr. Weppler as a suitable person unless I am assured that he is not a supporter of the Chicago platform, or of the candidates for office who subscribe to its declarations.

Now, in your opinion, assuming that you are right and that it refers to the Democratic platform adopted in Chicago in 1896, in your opinion, was it patriotism to take the position that any citizen of good conduct and otherwise without reproach, should be deprived of the right to hold office because he subscribed to the declarations and supported the candidates who stood on a platform adopted by one of the two great national parties?—A. Well, I would not hesitate to appoint him if he had the other qualifications; but I can realize that another person might view the planks of that platform as being inimical to the Government, and if they believed it inimical they certainly would exercise their right in refusing to appoint a person holding inimical views, that is all.

Q. Now, define more particularly what you mean by "inimical," in that sense.—A. Subversive to the best interests of the Government and the people.

Q. Do you believe it to be the duty of a person holding office and having the power to appoint, to decide for himself in an individual way the rights of other citizens according to that standard, and do you think such a course is patriotic?—A. I believe that Judge Hanford felt it to be patriotic; yes, sir.

Q. I am asking for your opinion, that we may get a line on your testimony, you know.—A. I am willing to answer your question, Mr. Chairman, as far as I can, but what my opinion may be I can see cuts but very little figure in this hearing.

Q. It enables us to better understand your testimony.—A. Yes.

Q. To get your viewpoint—now repeat the question to the witness.

Question repeated to the witness.

A. Judge Hanford was not deciding in this instance the right of Mr. Weppler to hold office. He was determining whether in his judgment he would appoint him to an office which was in the power of Judge Hanford—within the gift of Judge Hanford—and Judge Hanford may have desired as an officer of his court a person of his own political party.

Q. You misapprehend what he says here, I think, when you give that answer. [Reading]:

I will not regard Mr. Weppler as a suitable person unless I am assured that he is not a supporter of the Chicago platform or of the candidates for office who subscribe to its declarations.

A. Judge Hanford, evidently, thought that the Chicago platform was subversive of the best interests of the Government. He undoubtedly thought it was, and he acted on that thought.

Q. Now, then, if you were in his place and thought as he did, do you think it would be patriotic to make that a standard for the appointment and the holding of an office?—A. Within my gift?

Q. Yes.—A. If I felt that the principles advocated by some person were inimical to the Government, I would certainly think it a standard to judge of the qualifications of the man for the office that was in my gift.

Q. Now, do you think the judge's holding inimical to the Government in the sense you defined it, of being subversive of the Government, was an evidence of a judicial temperament in the judge?—A. I do not think it was an exercise of judicial temperament at all.

Q. I do not think you deliberately failed to answer my question.—A. I did not—I desire to answer your question as you put it.

Q. I asked you if it was an evidence of it, and in the answer you dodged my question and you state that it was not an exercise of it. There is a vast difference in its being the evidence of it and the exercise of it. Now, please answer it as I intended it and as I asked it, and not as you construed it.

Question repeated to the witness.

A. Was evidence of a judicial temperament?

Q. That is very plain.—A. I don't catch your meaning.

Q. Do you think his action in this matter was evidence that he is possessed of a judicial temperament—can I make it plainer—could anybody make it plainer?—A. Do I think—read that last question, please.

Question repeated to the witness.

A. I do not think it is evidence either way, Mr. Chairman, either for or against his judicial temperament.

Q. Well, that gives us your point of view.—A. Yes.

Q. The weight of the answer, of course, is another matter. Mr. Gorham, have you seen Judge Hanford drinking intoxicants?—A. As I said, once, and that was about 15 or 16 years ago; that is the only time I remember of having seen him take a drink.

Q. So far as you know, in the last 15 years he is a total abstainer?—A. So far as I know; I have no knowledge one way or the other, except hearsay.

Q. You have during these hearings been present in court a great many days, a great deal of the time?—A. No; I have been up here most every day, Mr. Chairman, but not a great deal of the time recently.

Q. Well, within the last two or three days perhaps not, put prior to that?—A. Yes; prior to that.

Q. The judge has not been here much within the last two or three days either, but during the time you were here the judge was here sitting at the table by his counsel.—A. The last two or three days no, but prior to that yes.

Q. You did not see the judge loll his head or seem to nap one second during that time, did you?—A. No.

Q. He was mentally alert, his eyes were bright?—A. Yes.

Q. And he was all ready for action at any monent?—A. Most of the time; yes, but my answer to Mr. McCoy was that I saw him relax.

Q. I did not ask you that——A. (Continuing.) Not about going to sleep.

Q. I did not ask you for your answer to Mr. McCoy—you and Mr. McCoy can settle that.—A. I do not want my answer to the two gentlemen to be inconsistent or appear to be inconsistent.

Q. Well, they are both in and will speak for themselves, as you well know. Did you ever see him for the same length of time prior to this investigation remain without appearing to nap or relax, or

whatever you call it, as long as you did during the investigation?—A. Well, I can not say that I have seen Judge Hanford every day consecutively for 14 days before, every single day, hours at the time; I do not believe I have.

Q. Did you ever see him for a single day remain without relaxing, as he has done all the time you observed him during this hearing?—A. I have.

Q. Often or seldom?—A. Well, I could not say as to that, Mr. Chairman.

Q. The weight of the testimony here seems to be that when on the bench, every day, more or less, he would get into a condition which a person unacquainted with him might mistake for napping or sleeping?—A. Yes.

Q. Is that your experience?—A. Not to that extent. I think my observation and my memory of what I have observed is that he does not sleep as much as he used to in the old building. I may be mistaken, or it may be that I have not seen him as often.

Q. That still might be true, and what I have said also be true. Your answer is not inconsistent with my question, because I am not asking you to compare the judge since he came into this building with himself prior to that time, but did you anywhere, in this building or in the old one, see him for more than the day at the time when he did not indulge in that condition which to the unitiated might seem to be napping or sleeping?—A. Yes; I did.

Q. How many times would you say you observed that occur when he was holding court when that condition was not apparent?—A. I could not say, Mr. Chairman, as to that.

Q. Well, which was the more numerous, the napping or the absence of it, as measured by days?—A. If you will let me explain.

Q. Answer it if you can, and then you may explain.—A. Yes.

Q. That is the ordinary rule?—A. I would say that his alert condition—I have seen him more times in his alert condition than otherwise, for this reason, my business is principally admiralty. All our admiralty cases are tried before the commissioner. The only time we appear before the court in admiralty matters is on motion or admiralty days and upon the day that is set for the final hearing and argument by counsel, so that I have not had an opportunity of observing Judge Hanford during the trial of causes with a jury that I have at other times when there has been no jury; and he had been more alert on motion days and on motion days when I have appeared before him, in common with the other members of the bar on similar business, than I have observed him in the drone of a jury trial. I have been present at jury trials, a large number of them—I have not taken part in very many of them in the last 20 years—but I have noticed that peculiarity when he sits all day listening to the drone of a jury trial, and some of them are drony.

Q. Have you ever seen him in that attitude when evidence was being read to him or arguments being made before him?—A. We do not read the evidence to him in admiralty. The record is filed and we argue orally and file briefs, and he takes the record to his chambers and reads it, and we do not read the evidence to him.

Q. During the argument you have seen him when he seemed to be napping?—A. Yes.

Q. How frequently?—A. Well, I would not say as frequently as I have seen him otherwise.

Q. That sheds no light.—A. Do you mean how many times I have appeared in the court?

Q. Approximate it in some way; give the committee an idea of how frequently you have seen him in that condition?—A. I can not tell. I have been in his court room possibly an average of once a week throughout the year. Part of that time he has demonstrated—he has given evidence of this peculiarity—and other times he has not. I can not tell.

Q. On those occasions how much of the day would you spend in court before him?—A. Sometimes from 10 until 12 in the morning, rarely in the afternoon. In fact, on motion day and admiralty day the motion calendar is exhausted generally in the morning—not always—some cases that require longer arguments go over until the afternoon.

Q. What is the character of your admiralty business; what side of the admiralty cases are you generally on?—A. Generally for the shipowner.

Q. Any well-known shipping concerns who were your clients?—A. Oh, I have a variety of clients, Mr. Chairman.

Q. Sir?—A. Some of my clients do business exclusively in Alaska; the Northern Commercial Co., a very extensive concern in Alaska; the Northern Navigation Co., they own practically the entire fleet on the Yukon River; the Cosmos Line, operating between here and Germany; ocean steamers; and Dodwell & Co. (Ltd.).

Q. What kind of business do they do?—A. They are shipping people and are agents for, or charterers, rather, of ocean-going vessels.

Q. Any others?—A. Some local ship people; the Alaska Barge Co., the Chealey Towboat Co., clients of that character.

Q. All your clients are ship-owning clients?—A. Principally so; yes, sir; what we call the shipowners.

Q. Have you had any cases on the other side, against the shipping corporations or companies?—A. Yes, sir; to some extent, but not much.

Q. Any cases for seamen, sailors, as against the companies?—A. No; not of recent years.

Q. How long has your business been of that character?—A. Of the character I have mentioned?

Q. Yes.—A. Practically all my time here.

Q. And that is practically all of the business you have?—A. Practically; yes.

Q. You do not get into any other line of practice?—A. Yes.

Q. Than the admiralty?—A. Yes.

Q. To any extent?—A. As it comes to the office.

Q. Have you any other corporation clients?—A. Yes.

Q. Who?—A. Mining clients of Alaska and fishing clients.

Q. What kind of mining?—A. Hydraulic mining.

Q. Gold mining?—A. Yes; organizing here and doing business in Alaska.

Q. Will you mention some others?—A. A fishing company organized, or about to organize, for fishing salmon in the Puget Sound.

Q. What is the name of that?—A. Of that Mr. Pharo is the client. I have been his attorney for several years. It is not organized yet.

Q. Is he connected with the syndicate fisheries?—A. No, sir.

Q. Are any syndicate corporations clients of yours?—A. I don't know what you refer to as the syndicate.

Q. The Alaska syndicate.—A. No, sir; I have had suits against them and have yet.

Q. Then, practically all your clients do an interstate business?—A. Most all of them, yes.

Q. And have the right to move their cases to the Federal court or bring cases in the Federal court?—A. Yes.

Q. To what extent have you a State court practice?—A. Very little. I have some cases pending, but very little.

The CHAIRMAN. Any further questions?

Mr. HUGHES. You have also represented sailors——

The CHAIRMAN. He stated otherwise.

Mr. HUGHES. I want to refresh his memory as to that, that is all.

The WITNESS. I do not remember of having had a sailor's case for 20 years; I may have had, but I do not remember it.

Q. Now, Mr. Gorham——A. (Continuing.) I have represented an individual sailor who had a damage cause of action, but not for sailor's wages.

Q. You were here from 1894 to 1896, were you not?—A. Yes, sir.

Q. Do you remember of the Chicago riots and the intervention of President Cleveland and the action of the Federal courts in quelling like riots?—A. Yes.

Q. Do you remember of a similar condition in this State in respect to the Coxey army?—A. Yes.

Q. In this State, as well as other States?—A. Yes.

Q. Do you know that Judge Hanford, at the time of writing this letter which has been submitted to you, understood or placed a construction on the Chicago platform that it reflected upon President Cleveland and his attitude and that of the Federal courts in intervening and quelling the sympathetic strikes in Chicago and the riots caused by the Coxey army people?—A. No; I have forgotten that fact if I ever knew it, Mr. Hughes. I probably knew it at the time, if it was so and the matter was discussed, but I have forgotten it now. It is a long time ago.

Q. A commissioner would be required to issue warrants for the arrest of rioters?—A. Yes, sir.

Q. The commissioner of the Federal court?—A. Yes, sir; in some instances.

Q. If Judge Hanford was of the opinion I have stated respecting the Chicago platform and thought it was the duty of the Executive of the Nation to act as President Cleveland had and of the Federal courts to sustain the policy of the Executive of the Nation in those respects and the administration of the law and the preservation of peace and order, would you consider it an improper act for him to be unwilling to appoint a commissioner who entertained views hostile to the duties he would be required to perform as a commissioner?—A. No.

Q. Do you consider that the question——

The CHAIRMAN. Just a minute here—would you allow me to interject a question here?

Mr. HUGHES. I was only going to ask one more question.

The CHAIRMAN. All right, go ahead.

Mr. HUGHES. Do you consider that the question that the judge would have to consider in that connection would be one of the exer-

cise of judicial functions or the exercise of what appeared to him a sound discretion and a patriotic duty in the determination of the character of the man he should appoint to fill an office?

A. I would not consider it was the exercise of a judicial duty. I have already stated that I did not question Judge Hanford's motive.

The CHAIRMAN. The question did not include the word "judicial" at all.

The WITNESS. I thought it did.

The CHAIRMAN. No; Mr. Hughes very carefully excluded it and put in "discretion" merely.

Question read to the witness.

The WITNESS. The word "discretion" was in it, and so was the word "judicial."

The CHAIRMAN. But the word "judicial" used in the question was limited by the word "discretion."

A. My answer was, I do not consider it a judicial function, but the exercise of his discretion in the appointment of officers to his court.

Mr. HUGHES. That is all.

The CHAIRMAN. The effect of your answer would be to disqualify 6,000,000 Americans from holding office at that time, would it not?

A. Judge Hanford might disqualify; I would not.

Q. Well, the effect, then, of his action, if followed, would have been to disqualify 6,000,000 American citizens, voters, from holding office?—A. Not necessarily.

Q. Explain why not.—A. Because every man who voted the particular ticket supported by that platform did not subscribe to the platform.

Q. How do you know that?—A. Because I voted that ticket myself, and I did not subscribe to the platform.

Q. Then you know of one exception?—A. Yes.

Q. But the other 5,999,999 you do not know anything about?—A. I do not know anything about them, no, but I know that, of common knowledge, as the chairman does, that heretofore our political platforms have not stood for very much with either party.

Mr. MCCOY. The more reason for the judges not attaching such importance to them.

The CHAIRMAN. Without in any sense agreeing with you in that regard, I might renew the question; if you think, in view of all the circumstances, that a man who took that position, made a statement which if applied would disfranchise almost half the American people, is likely to be a man who has a judicial mind, and whether such a man would be able to fairly and equally administer the law against persons whom he thought were tending to subvert the Government?

A. The question is involved. I do not know what would likely follow; but I do know that, notwithstanding that letter, it is a fact that Judge Hanford has a judicial temperament, and is fair in the administration of justice in his court, and my own personal experience demonstrates that to me.

Q. You have been successful in his court?—A. And otherwise.

The CHAIRMAN. Any other questions?

Mr. HUGHES. That is all.

Whereupon the witness is excused, and a short recess is taken by the committee.

M. A. MEAD, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name.

A. Minor A. Mead.

Q. Where do you live, Mr. Mead?—A. 1409 North Forty-first.

Q. Seattle?—A. Yes, sir.

Q. How long have you lived in the city?—A. Five years.

Q. What is your business?—A. Police officer.

Q. Where are you stationed?—A. Down on Washington Street now.

Q. What particular duty; is it patrolman or crossing man?—A. Patrolman.

Q. How long have you been a policeman?—A. A year ago the 24th of last April.

Q. What were you doing before you became a policeman?—A. I was a gripman on the James Street cable.

Q. For how long?—A. Three years and four months.

Q. Do you know Judge Hanford?—A. I would not know him if I would meet him on the street.

Q. Do you know him by sight?—A. No; not to say that "There goes Judge Hanford"; I don't know him.

Q. Have you seen him?—A. Well, I expect I have hauled him up the hill a good many times, up to the courthouse on the line, but not that I knew him.

Mr. GRAHAM. If Judge Hanford is not busy in his chambers, I would like to have this witness see the judge. Will you please go with the officer?

Whereupon the witness was excused.

A. H. MACKINNON, being first duly sworn, testifies as follows:

The CHAIRMAN. What is your full name?

A. My name is Alexander H. MacKinnon. I am an attorney at law.

Q. You live in Seattle?—A. I live in Seattle, at Rainier Beach.

Q. Are you practicing your profession?—A. I am practicing my profession.

Q. How long have you practiced law here?—A. Since 1901.

Q. Are you acquainted with Judge Hanford?—A. I have been acquainted with Judge Hanford in a general way since 1893. I first met the judge, or saw the judge, in a suit for personal injuries brought by my mother against the Oregon Improvement Co.

Q. You were not then an attorney?—A. I was not an attorney.

Q. Is there anything in connection with that matter which you wish to tell the committee?—A. I think they ought to know it.

Q. Tell it—first, when was it?—A. The suit originated in Skagit County. My mother was landed on one of the docks of the Oregon Improvement Co. at 4 o'clock in the morning, on which there were 400 tons of iron rail and no lights whatever. In attempting to make the gangway up to the road or street she went over the end of the dock, and was so seriously injured that her life was dispaired of for three days. Suit was brought in the superior court of Skagit County and subsequently removed to the Federal court, which was then held in the Colman Block.

Q. Now, tell it as briefly as you can, so that the committee may know from the outline of it whether they deem it worthy of further investigation. We will see how pointed and brief you can be.—A. I

thought at that time, and I think still, that Judge Hanford erroneously charged the jury.

Q. Is that all there is to it? Don't you know of many judges who erroneously charge a jury?—A. Yes.

Q. Is there anything more than the mere error in the charge to the jury of which you complain?—A. Yes; I think there was a lack of judicial temperament shown.

Q. Well, you may go on and tell us what you complain of.—A. Mr. Andrew F. Burleigh was attorney for the Oregon Improvement Co. at that time. I heard him remark while he was getting his shoes blacked that that lady was evidently very much injured.

The CHAIRMAN. Mr. MacKinnon, not knowing anything of the matter in your mind, I think it would be much wiser for the committee to hear you when not sitting, and we will determine from your story then whether we think it is necessary to take your testimony in regard to it.

A. That is satisfactory. I wish to state, however, that I am an involuntary witness; I am not a voluntary witness nor a Socialist.

Q. You have been subpœnaed?—A. Yes, sir; I have been subpœnaed.

The CHAIRMAN. At any event, I think the course I suggest is the wiser and better one—if you will stand aside.

Witness excused.

M. A. MEAD, recalled, testified as follows:

The CHAIRMAN. Mr. Mead, was Judge Hanford pointed out to you since you were on the stand a while ago?

A. Yes, sir.

Q. Do you know Judge Hanford by sight?—A. I have seen him before; yes.

Q. Where?—A. On the street car.

Q. When?—A. It was when I was gripping on the James Street line. I hauled him up the hill a few times.

Q. How often do you recall noticing him?—A. That would be pretty hard for a gripman to say—how often when you see a man——

Q. Give us some idea of whether it was frequently or only seldom.—A. Well, it was not very often.

Q. If, at any time, you saw him when he seemed to you to be under the influence of intoxicating liquor——A. No.

Q. (Continuing.) Tell us.—A. I never noticed him to know whether he drank at all or not.

Q. Did you at any time help him on or off your car?—A. No, sir.

Q. Was there anything in his conduct which attracted your attention while he was on the car?—A. No, sir.

Q. Since you have been a policeman have you seen him?—A. I have not seen him since I have been on the police force.

Q. Have you at any time seen him when, in your opinion, he was under the influence of an intoxicant?—A. I have not.

The CHAIRMAN. You are excused. Are there any other witnesses who wish to get away? Is Mr. Jacobs in the room?

Witness excused.

GEORGE M. JACOBS, recalled, testifies as follows:

The CHAIRMAN. You have been sworn as a witness, if I am not mistaken?

A. Yes, sir.

Q. Well, that oath still remains good in this matter. What is your full name?—A. George M. Jacobs.

Q. You testified in this room in this matter a day or two ago?—A. Yes, sir.

Q. What date was it?—A. The day before yesterday, I think.

Q. Since you testified on that occasion has anyone spoken to you regarding your testimony? If so, state the fact whether they did so or not, without telling what it was.—A. Well, yes, sir; there was.

Q. Where was it?—A. It happened in the Lumber Exchange.

Q. Who was it who spoke to you?—A. The gentleman's name?

Q. Yes; I think you ought to give it.—A. I would prefer, Mr. Chairman, to write it and hand it to you, if you would permit that.

The CHAIRMAN. I think you ought to tell it.

A. Mr. Kerrigan.

Q. What is the first name?—A. W. S. Kerrigan.

Q. Who is Mr. Kerrigan?—A. W. S. Kerrigan.

Q. Who is he?—A. Well, he is a broker that I have known for several years here in the city.

Q. Do you mean a real estate broker or a pawnbroker, or both?—A. He is a real estate broker, selling real estate and hotels.

Q. You may state what occurred.—A. Well, I believe he started out the conversation by saying that I was a fine one—that was the first remark he made.

Q. How soon was this after you had testified?—A. It was along in the evening, about, possibly 7.30. I asked him what he meant by that. He said "What did you testify about in the Hanford matter?" And I said "I testified to the truth. I simply answered the questions that were put to me and I went there by subpœna." He says, "Don't you know that you will be ostracised"—I believe was the word he used; at least, that is my remembrance now—"by many of the business men in the city of Seattle"? He says, "I know that you have had a hard enough time in the last four or five years in getting through what we all lived through." Well, I said, "Do you mean that they will make it harder for me?" He said, "I certainly do." Well, I said, "I only told the truth, anyway, and answered the questions put to me." I said, "Do you mean that I should not have done so?" Well, he said, "I would have avoided it." I said, "I did avoid it as long as I could." I said, "I could not do anything else only tell what I knew." Why, he said, "I never saw Judge Hanford take a drink." I said, "You never saw him take a drink?" "No." Well, I said, "You have cruised around this town about as much as I have. I will tell you what I will do." Well, I remarked to him first that it was a notorious fact all over the city, and then I said, "You have cruised around this town about as much as I have. I will tell you what I will do. We will go over to the Rathskeller"—which is immediately opposite, or almost opposite, the Lumber Exchange—"we will go over to the Savoy bar; we will go to the Saratoga, the Stratford, Sullivan's bar, in the Alaska Building; Goldie's bar, immediately across from the Butler; we will go to the Butler, the Seattle, or the Mecca. I will go in first and you can bring your friend with

you, and I will call for a 'Hanford Martini,' and if he does not ask me to explain what I mean I will pay for the drinks, providing—and if he doesn't ask me to explain and they give us a dry Martini with an onion in it in place of a stuffed olive, you pay for the drinks," and he said, "All right," and we gathered up another friend as we were on our way across to the Rathskeller, and he paid for the drinks.

Q. What do you mean by that?—A. I mean by that that they gave us a dry Martini with an onion in it, without asking any questions whatever.

Q. What did you say?—A. I simply asked for a Judge Hanford Martini—nothing further.

Q. What else?—A. Well, owing to the fact that the remark was made that everybody didn't like Martinis, I told him that they might ask for his special brand of whisky, and if they didn't produce Monogram whisky that I would still pay for the drinks.

Q. Were others with you and this man?—A. There were. There was Mr. Kerrigan and a gentleman—I know his name, but I can't just recall it now—who works for the Republic Tire people on Pike Street, and we picked up Mr. McGinnis on the way over there, whom I am acquainted with, or else after we got over there, I can't say which—after we arrived at the Rathskeller.

Q. What is Mr. McGinnis's first name?—A. I beg pardon?

Q. What is Mr. McGinnis's first name?—A. I think it is A. McGinnis.

Q. Do you know his address?—A. I think it is 517 Eighteenth Avenue north.

Q. Well, did this first man, Mr. Kerrigan, make anything in the nature of a personal threat against you, or did he merely express his opinion as to what might happen to you generally?—A. He expressed that opinion that I would be practically out in the cold hereafter as far as a great many of the business men in the city were concerned.

Q. Have you told the whole of the incident?—A. With the exception that I told him that it was a well-known fact among all the bartenders in the city, or a good many of the bartenders, what he drank, which led to my making the bet. I think he told me prior to that that some bartenders had testified that they never had seen Judge Hanford drinking, nor under the influence of liquor.

The CHAIRMAN. Are there any further questions?

Mr. HIGGINS. You told Mr. Kerrigan that there were many bartenders in the city that it was a well-known fact among them that Judge Hanford drank?—A. Yes, sir; that is what led to the making the bet. That is after he made his remark to me.

Q. I wish you would now furnish to the committee the names of the bartenders who know that fact.—A. Well, who have knowledge of that—he made the remark——

Q. I understand you stated to him that you knew that there were in this city many bartenders who knew that Judge Hanford drank?—A. Yes, sir.

Q. And drank at their bars?—A. Yes, sir.

Q. Now, I ask you to give the names to the committee, or furnish them at any time later on during this investigation.—A. I have already given you the name of the bar where I was willing to stake my money—and I never stake on anything else only a sure thing—

and they had their choice of choosing what bar I went to and I had my choice of picking the bartender which I knew had been there three or four years.

Q. In other words, when you told Mr. Kerrigan of the large number of bartenders in the town who served drinks to Judge Hanford, you were not quite within the truth, were you?—A. No, sir; I didn't tell him a large number of bartenders—I named the particular saloons.

Q. Will you name any bartenders who have not testified, or those that have testified in this investigation that you know who have served Judge Hanford drinks, or have seen him in an intoxicated condition?—A. I will name the bars where you may subpœna the bartenders who have been there three or four years.

Mr. HIGGINS. We have already done that. But can you furnish this committee the names of the bartenders?

A. Well, I don't think the committee should ask me to do that.

Q. I ask you to do it, in view of your testimony, if you are able to do it.—A. If you can make that incumbent upon me to do that without going out of my everyday business—if it will meet the ends of justice I would like to do it.

Q. Are you able to do it now?—A. I would be within an hour, if you will give me that length of time.

Q. Well, I will ask you to do it within an hour. Who did you relate this circumstance to after it occurred, Mr. Jacobs?—A. Who did I relate it to?

Q. Yes.—A. Well, I don't think it was talked over at all—I don't think I talked it over to anybody except to—we talked it over this morning—at least I made the remark about it in Mr. Kerrigan's office, and later on I spoke to Mr. Chairman—to Mr. Graham—in regard to it.

Q. I did not get you—you testified as to the number of bars you visited.—A. We visited one bar. They concluded, after they had to pay once—I would have gone with them very cheerfully to all the others if they had gone there.

Q. And that was the Butler bar?—A. No, sir; it was the Rathskeller.

Q. That was the only bar you went to on that occasion?—A. Yes.

Q. On that bet?—A. Yes, sir. They were the quitters, however. I didn't care for what I was going to get to drink.

Q. You will furnish the committee—now it is five minutes past 4—the names of other bartenders that you say you know who know Judge Hanford has drunk at their bar.—A. If the committee will require that of me, I will furnish the names, although I would rather not do it.

The CHAIRMAN. An hour from now will be about our adjourning time, and it will do in the morning.

The WITNESS. What time?

The CHAIRMAN. Well, we convene at 9.30—by that time.

The WITNESS. I would like to request, Mr. Chairman, that since I named the bars that it is easy for this committee to find out the old employees of those bars. I think it would be a very easy matter to find out the names without my assistance in that matter, although I am perfectly willing to give it, if you request it.

Mr. MCCOY. Mr. Chairman, I think the witness's position is a perfectly reasonable one. If we want to know the names of all the bartenders in all these saloons, the proprietors of the saloons will give them to us.

Mr. HIGGINS. I do not think it is, Mr. Chairman, in view of the testimony which he has given. He claimed that he knows the names of the numerous bartenders that have served Judge Hanford and are acquainted with his habits.

The CHAIRMAN. I didn't understand him to say that he knew them.

Mr. HIGGINS. I ask him to furnish the names; that is all—to get them for us.

The WITNESS. I will make a statement here. I can't furnish the names at this time. I know the people personally. I know them from year to year as I have occasionally seen them, and some of them I know their names.

Mr. HIGGINS. Well, will you furnish the names of those you know?

A. Within the time stated; yes.

Q. That is, to-morrow morning at 9.30.—A. 9.30.

The CHAIRMAN. As a matter of law, the committee has the right to know from you the names of those whom you know, of those whom you have spoken of, as a matter of law——

A. Yes.

The CHAIRMAN. But as a matter of law the committee has no power to make you go out and inquire and find names and hunt them up. I want to be frank with you. It is your duty to give us the names of those whom you know and whom you can recall by thinking. We can not make you give your time to hunting them up.

The WITNESS. Well, I do not request that. I named those bars, not because I was personally acquainted; that is, that I was acquainted with them except as to knowing them when I see them in their place; but I knew the bars where I knew that Judge Hanford was wont to drink and I heard the remarks.

The CHAIRMAN. Very well. Report to the committee to-morrow morning.

Witness excused.

The CHAIRMAN. Have you anything else to suggest now, Mr. Hughes, as to how we can utilize the time from now until we adjourn?

Mr. HUGHES. I think it would be well if we would take up one of the records. Mr. Preston is wanting in the clerk's office.

Mr. DORR. Mr. Chairman, there are two suspended matters that were to go back to the committee under the instructions, as I recall them—one was the warrant and complaint issued for the arrest of Mr. Erickson and others, which he said he would bring in later.

Mr. MCCOY. Who is Mr. Erickson?

Mr. DORR. Mr. Erickson, when he was on the stand, said he would turn those in. Has that been returned by Mr. Erickson?

The CHAIRMAN. Not to my knowledge.

Mr. DORR. The other item that I have in mind was the date and the name of the person who registered at the Hotel Washington Annex as testified to by Mr. Charles S. Peterson. He volunteered to give that information and bring it in so that we might have the date fixed. Has that come in yet?

The CHAIRMAN. Not to my knowledge.

Mr. MCCOY. What would Mr. Erickson have in his possession in that matter—I mean what papers would have been served on him, in the ordinary course of business?

Mr. DORR. The warrant and the information, I think.

Mr. McCoy. That was my point, whether if he brought what was served on him it would do any good and whether we could not get what is in the court filed.

Mr. Dorr. Well, we can get it from the court files, I suppose.

Mr. Hughes. I think the matter was the information before the commissioner, and probably it is not in the court files.

Mr. Dorr. It is not in the Federal court files—it was before the United States commissioner. We would have to go to his records.

Mr. McCoy. What sort of a record does the commissioner make in those cases?

Mr. Hughes. I think he keeps a docket of some kind—I don't know.

Mr. Dorr. I remember that Mr. Erickson, I think in answer to your request, Mr. McCoy, said that he would bring that paper in.

Mr. McCoy. Yes; I have a recollection of his saying something like that.

Mr. Dorr. We can get it, of course, from the commissioner, or some other source.

The Chairman. Those who are present in the court room, I might announce to them that there will be no more testimony taken this evening. The committee will have what will practically be an executive session, dealing entirely with documents at the table down here, and I take it that that would be of no interest to you. If you wish to leave you can do so now so that we can work without interruption.

AFTER RECESS (2 O'CLOCK P. M.).

The Chairman. The committee will please be in order.

Mr. Preston. At your suggestion I have examined the files in two cases known as the Fishery cases. The first one I might say was the main one, being the case of the Colonial Trust Co. and the Rudolph Pfeiffer Co. against the Pacific Packing & Navigation Co., No. 1081. I have here a full statement that I made up. The files in that case are very voluminous; my notes on them cover ten or a dozen pages.

The Chairman. What would you propose that we should do now that you should recite this?

Mr. Preston. I can recite from the paper that is given here with a brief statement of its contents. Many of them would not interest you.

The Chairman. Oh, well, you can just check them off on your paper those that are not needed.

Mr. McCoy. Perhaps the better way would be to check off those that we do need.

The Chairman. Suppose we start in and see how it goes.

Mr. Hughes. Wouldn't it be entirely sufficient for your purpose to have Mr. Preston give a brief synopsis of each paper and then only put in such papers as you may think worth while, after he has given a brief history of the case?

Mr. Preston. I understand you are examining the case with a view to taking into consideration the allowance made to the attorneys and the receivers.

The Chairman. And the distribution of the assets generally and what went to the creditors.

Mr. Preston. I can make you a general statement of that.

To start with, the receivers handled $3,255,880. The total allowance to receivers and their attorneys was $87,885, which equals 27 mills on the dollar of the cash handled.

Mr. McCoy. What was the allowance to each?

Mr. Preston. I will come to that in detail later. This is a general statement to start with. The creditors were paid 27 mills on the dollar, or 2.7 per cent. The creditors received 7 and a fraction cents on the dollar, but the assets were taken over by a reorganization composed of a very large per cent of the creditors and the stockholders.

Mr. McCoy. The stock was issued, I presume.

Mr. Preston. In the reorganization?

Mr. McCoy. Yes.

Mr. Preston. I do not know; that will show here.

Mr. Higgins. That is entirely separate from the receivership proceedings.

Mr. McCoy. Not necessarily; it might have been on a court order.

Mr. Preston. No; it did not appear in the court proceedings at all; it simply appears that there was a reorganization committee composed of the creditors, etc., and something over $2,000,000 of the creditors were present in court when the fees were fixed.

Bills filed March 3, 1903.—The Colonial Trust Co. is a small contract creditor. Its cocomplainant, Pfeiffer, was a stockholder. The basis of the claim was the insolvency of the defendants.

Mr. Hughes. The basis of the action of proceeding?

Mr. Preston. Yes; a large amount of outstanding claims and fisheries contracts which I can explain to you from reading this.

Fisheries are operated by Chinese contractors contracting in advance of the season to supply necessary labor for each cannery, and they gave them a guaranty of so much of a run, and these contracts had been made in advance for the coming season of 1903, but the company did not have means to carry them out and continue its pack, or its operation, I should say; and that the assets would be dissipated by suits being brought against the company for debts it was unable to pay in different jurisdictions. The complaint asks for the appointment of McGovern & Hallock, or alleges, I should say, the appointment of McGovern & Hallock as receivers by the United States court in New Jersey, and asking that they be appointed here with J. A. Kerr. On the same day the answer of the defendant is filed admitting allegations of the complaint. On the same day an order is made appointing those three receivers, they to be subject to removal by this court and required to report to this court. On the same day the oath and bond of Kerr was filed.

March 5 Kerr petitions for leave to pay pay roll of $6,600 and insurance premiums that were passed due, amounting to $9,120; and an order was made granting the petition.

On the next day, March 6, the Seattle Hardware Co. petitions, alleging that it has sold and partially delivered a large bill of goods in ignorance of the insolvency, and asks to have them set aside and kept separate from the assets, or that provision be made to pay for them in cash.

On the same day Kerr petitions for leave to sign checks and conduct the business alone because his coreceivers are absent from the State, which order was granted.

Mr. McCoy. Where was Hallock?

Mr. PRESTON. Hallock was in New York State, I think, and McGovern in New Jersey.

Mr. DORR. McGovern was in New York and Hallock in New Jersey.

Mr. PRESTON. That is right. I got it down wrong here.

On March 9 Kerr, the receiver, petitions for leave to issue $80,000 of receiver certificates in order to secure supplies and labor to operate the Orca & Kenai canneries for the 1903 season, which order was granted.

On the 13th an order directing the return of the goods to the Seattle Hardware Co.

On the 21st the Pacific Coast Co. asks leave to intervene, setting up a claim of $16,000, and the order is made granting leave to intervene.

The same day McGovern petitions for leave to issue receivers' certificates for one and one-fourth million dollars, $750,000, to be sold now at not less than par, but sets out the necessity for issuing $700,000 in order to operate canneries for 1903, of which I may say, inferentially, there were 2 or 3 in Washington and 12 or 13 in Alaska. Seven hundred thousand dollars would be necessary for cannery supplies, and $750,000 for cannery labor; $13,000 to protect margin on the 1902 pack, which had been hypothecated by the company. I will explain that a little fuller from my memory. It seems that the 1902 pack had been stored and warehouse receipts for the same hypothecated to borrow money with, and that the price of salmon had fallen so that the margin was so close now that the stockholders of the collateral would sell the salmon and nothing be realized from the margin. This petition was granted, but the order required the receiver to redeem the $80,000 previously issued for receiver certificates.

On the 31st petition of McGovern was filed, and April 23 his bid.

April 6 another creditor, the Linen Thread Co., comes in and sets up the same set of facts as the Seattle Hardware Co. did in regard to its goods. That petition was granted. It seems they had sold a bill of goods to the receiver in ignorance of the insolvency.

April 7 the inventory is filed which shows assets of the company of $4,635,827; liabilities, $4,868,973. Of these assets one and a fourth million was said to be in Alaska, $2,000,000 in Washington, and one and a third million in New Jersey; in round figures, $1,330,000. There was 50 pages of this inventory. I have simply brought in the lump of it.

On the 11th of April the National Bank of Commerce petitions to intervene for a preference claim of $25,000 for cash loaned within six months to the receiver to pay supply and labor bills contracted within six months. This petition was granted on the same day and the receiver directed to pay that out of the proceeds of the certificates.

On the 25th of April oath and bond of Hallock was filed.

On the 9th of May petitions of the receivers recited that the New Jersey court and the Alaska court had also authorized a million and a quarter receivers' certificates, reciting sale of $750,000 of them, and asking leave to sell balance, $500,000. Order granted providing they be sold at not less than par and requiring deposit of all cash that the receivers may receive in a bank to be selected by the receivers.

On the 11th of May the plaintiff petitions, reciting that John R. Winn had been appointed receiver in Alaska and New Jersey, and asking that the same be done here, and asking that there may be harmonized action between the different courts so that they would have the same receivers. This order was granted, but the order required Winn to be subject to the orders of this court. Same day his oath was filed, and on the 20th his bond was filed.

On the 25th there was an order made——

Mr. McCoy. Who was this receiver?

Mr. Preston. John R. Winn. He was the attorney in Juneau, Alaska.

On the 25th there was an order made reciting that one of the devices used in canning salmon was protected by a patent, and of some infringement suit pending in which an injunction was asked. This order was that the receivers might give a bond and stay the injunction so as to permit them to use the device which was in dispute.

On the 9th of June, 1903, copy of order of Judge Brown, of the Alaska court, to remove the topping machine from Alaska to Washington.

July 29, 1903, petition of receivers for permission to make good guaranty against swells made to cover the 1902 pack, estimated to involve expenditure of $300, and to make a like guaranty for 1903 pack. Order granting said petition.

July 31, 1903, petition of Johnson and order granting same for leave to sue receivers in justice court for lost baggage.

On the 18th of August affidavit of Receiver Kerr filed showing that there had been an invasion of the fish traps of the company in Whatcom County by fish pirates and setting a contempt case against them for hearing on August 20 requiring them to give bond of a thousand dollars each to appear at that time; but there had been previously on the 7th of August a petition of the receivers for an order on the United States marshal to protect the traps from the fish pirates, and an order made on the same day to the marshal to protect them.

On the 8th of August there was filed a petition for leave to make contract with salmon brokers in England for $500,000 worth of the 1903 pack and to receive advancements on same. Order granted.

September 3 the Alaska Commercial Co. filed a petition for lien on assets of $3,380 for money received from the United States Government on mail contract. It seemed that the Alaska Commercial Co. and the Pacific Packing & Navigation Co. had taken a contract in the name of the Packing & Navigation Co. to carry the mails, and had alternated their steamers, so that the money had come to the receivers—all the money—and they were entitled to half of it. An order was made directing the payment of this.

On the 5th of September there was a petition of the receivers for leave to make proof of loss. It seemed that the Kenai cannery had burned and there was a loss claimed of $77,286.20. An order was made granting this.

On September 30 P. F. Nordby petitioned for an order on the receivers requiring them to pay $227.94 for cash collected, and $110 additional for supplies furnished fisheries.

On November 3 petition of receivers recites that the order for receivers' certificates required net proceeds of the 1903 pack to be deposited to create a sinking fund. By an oversight the gross pro-

ceeds of certain sales of the pack had been deposited there that amounted to $22,000, and which ought not to have been deposited in the sinking fund; and they prayed for an order to transfer it from the sinking fund over to the general deposit; and this was granted on the same day.

On November 27 the receivers' petition recites that out of the proceeds of receivers' certificates $26,940 was used to pay interest on them which should have been paid out of the general funds; that there was $600,000 proceeds of the 1903 pack in the sinking fund and there was $900,000 worth of salmon pack unsold, and they asked a transfer of that amount out of the sinking fund.

The CHAIRMAN. Where are their warehouses?

Mr. KERR. We had a warehouse of our own on the Broad Street dock.

Mr. PRESTON. This was granted.

Then on the 28th of November there was an order permitting $7,800 which had been paid into the sinking fund, which did not come from the salmon pack, to be withdrawn to the general fund.

On the 8th of December an order limiting creditors to a period of seven weeks to present their claims, requiring notices of that limitation to be published for five weeks in the Post-Intelligencer here in Seattle and mailed to all known creditors.

On December 28 a petition for leave to sell for $65,000 the steam schooners *Geanie*, *Newport*, and *Excelsior*, and the two mail contracts which pertained to them, reciting that those were inventoried at $115,000, but that two of them which were in this jurisdiction had been appraised at $39,000; that the other one, the *Newport*, was in Alaska, and they could not get to it to appraise it, but that its invoiced value was only $15,000. That petition was granted.

Mr. HIGGINS. That left the receiver with how many schooners?

Mr. PRESTON. I would have to go to the inventory for that.

Mr. KERR. Only the two power vessels and five or six ships. These power vessels were steamships which were carrying mail and passengers—steam tugs.

Mr. HIGGINS. And which was not a substantial part of the outfit which you used?

Mr. KERR. Those vessels were used in connection with the canneries, but we went out of the ocean transportation business.

Mr. HIGGINS. Those ships were used in connection with fishing?

Mr. KERR. They were used exclusively in carrying passengers and mail—those that we sold.

Mr. HIGGINS. But that left you with no passenger ships.

Mr. KERR. Well, it left us with ships so that we carried a few passengers to the canneries and along the coast, but we did not operate them for the passenger business.

Mr. HIGGINS. That is, you personally went out of the passenger-carrying business?

Mr. KERR. Yes.

Mr. HIGGINS. And did that also dispose of your mail contract?

Mr. KERR. Yes.

Mr. PRESTON. This petition, as I remember it, recites that there is no advantage or profit in the receivers handling that business—that they could conduct the cannery business without them.

Mr. KERR. We carried the mail from Seattle to Valdez and from Valdez to Canaie, and during all the time this contract was in effect, especially in the winter season, you will find that practically every trip we made we ran behind and that we lost money.

Mr. HIGGINS. How about carrying passengers, was that profitable?

Mr. KERR. No.

Mr. HIGGINS. Did you maintain the same rates for carrying passengers after you took charge of the property as was maintained before?

Mr. KERR. Just the same; we did not change it at all.

Mr. PRESTON. That petition was granted.

On the 8th of January, 1904, there is a petition for leave to draw out of the sinking fund $16,207 more; that was not a part of the net proceeds of the pack. That was granted.

On the 18th of January the receivers' petition for leave to vacate their up-town office, saying that it will save $250 a month rent, and to sell the furniture in it for $1,800, and then to move down to Bellingham. That order was granted.

On the 19th of January the Fireman's Fund petitioned to be paid insurance premiums of $14,869. Order granting leave to file petition; and on the 30th of January receivers answered, contesting their right to that money, and they filed a reply to them on the same day.

On the 30th of January the receivers petitioned the court. Petitioner recites operation of the Alaska and Puget Sound canneries and steamers, and that they spent one and a fourth million dollars from receiver certificates and $500,000 from pack and sale of property paid this item of same of property, $82,800 included in the $500,000—that refers to the 1903 pack that was carried on by the receivers themselves; that the pack that year had been disappointing all over the coast, but they had in the sinking fund $640,000, and they had supplies on hand for the next season of the value of $473,500; that the 1903 pack amounted to or involved $800,000 expenses. They advised a continuance of the business another year rather than liquidation; that they be allowed to issue new certificates for $750,000, taking up the outstanding issue of the old out of that; that is to say, they did not have funds in the sinking fund sufficient.

Mr. MCCOY. Was there any profit on the business the first year?

Mr. KERR. About $208,000.

Mr. MCCOY. What was the capital stock of the company?

Mr. KERR. $25,000,000.

Mr. PRESTON. On the same day there is a petition filed by creditors whose claims aggregated two and a half million dollars, asking that that petition of the receiver be granted.

Mr. HIGGINS. How long had the company been in operation when you took it?

Mr. KERR. It commenced operation in the middle of the pack of 1901; 1901 was a disastrous year on the Pacific coast for salmon. About five and a fourth million cases of salmon; they lost the first year they remained in business over $100,000, and the next year was almost as disastrous.

Mr. HIGGINS. What was it the last year?

Mr. KERR. That was the last year they operated.

Mr. PRESTON. On the same day the receivers petitioned for leave to draw $150,000 out of the sinking fund, leaving enough for the purposes of the formal order and to use the $150,000 to pay outstanding

obligations and procure supplies for the 1904 season. That order was granted.

On February 26 there was an order made on the depositary of the sinking fund, which was a bank in San Francisco—I believe the Bank of California—to observe the order of January 30 for taking up the old issue of receiver certificates.

On March 17 petition for allowance of attorneys' fees to Mr. McCord, who appeared as attorney for the receivers from the beginning.

Mr. McCoy. Did that petition have annexed to it any itemized statement of the services rendered?

Mr. Preston. No; it recites that he acted as attorney for more than a year, and there is an order allowing $10,000 to him on account and directing the receiver to pay it on the same day.

March 23 receivers petitioned for leave to sell gas schooner *Duxbury*, reciting that she is 3 years old and that she cost $3,500, and they have a chance to sell her for $2,750, and the order was made granting the petition.

On March 25 there was an order allowing the Fireman's Fund its claim—that was contested as I said before—for $1,108 as a preferred claim and $13,769 as a common claim.

On April 2 the receivers petitioned for leave to sell the small schooner *Maid of Orleans*, inventoried at $5,000, and that they have an offer for $4,800, which petition was granted. On the 2d of April, 1904, the receivers petitioned to sell a vacant tideland lot in Anacortez for $1,000, that being the appraised value of it. An order made directing the master in chancery to sell the same at public auction at an upset price of $1,000.

On the 23d of April there is a petition of Judge Winn asking for an allowance to him on account of services as receiver. There is filed with this an order of the Alaska court for allowance of $7,500, and this order here is confirmatory of that one. Now, that $7,500 I did not take into consideration in counting up the allowance made by Judge Hanford for that reason—it was simply confirmatory of the order of the other court.

On the 3d of May there is a petition filed by a Chinese firm, ay Chinmow, claiming $850 for wages for firemen and testers, and $10,300 for guaranty on the 1903 pack on a contract, reciting that the contract guaranteed them 44,000 cases, and that it had fallen short of this supply to the Nushagak River cannery.

On the 17th of May there is a master's return of sale of the Anacortez lot, $2,200.

On the 24th of May an order for the master's fees and disbursements amounting to $104.70.

On the 27th of May the receivers petition to order deed for the same; and that is granted.

On the 21st of June the master's report of his deed and order that it be without redemption.

On June 23 another Chinese firm, Wing Hong Shing, filed a petition for leave to intervene, claiming part of the money that Shing Mow claimed to be due to him.

On June 27 petition of the receivers to exchange tideland contract they had for warehouse and building near it, reciting that they had no use for the tideland contract and that the warehouse and building would be useful. That is granted.

On the 30th of June there is an intervention of the Federal Insurance Co. having made a preferred claim for $3,581, or for premiums. Order was granted. Then there is an intervention of a company in England for a preferred claim of $181.80, and a common claim of $1,159 for insurance premiums. An order is made granting that.

On July 14, 1904, receivers petition to borrow $125,000 on warehouse receipts for use in putting up 1904 pack. Granted.

I overlooked that on the 10th of May here the receivers petitioned reciting that they need $100,000 to pay bills preparatory to removing offices to Bellingham. That they have on hand at Seattle salmon worth $160,000, in New York salmon worth $235,000, in England salmon their equity in which is worth $200,000—that is, salmon for which they had received an advance under a previous order from the London brokers, and they pray leave to borrow $100,000 on warehouse receipts. That is granted.

On the 6th of September petition of the Chong Fish Co. filed.

On the 1st of October receivers petition to sell bulk of assets. This petition receipts one and a fourth million original issue of receivers' certificates, and that they have been retired, and they have $750,000; that the receivers had operated canneries in 1903, the cannery at Blaine in Washington and 12 canneries in Alaska; packed 386,856 cases of salmon at a cost of $1,200,000, and sold 205,000 cases for $1,000,000 over and above brokerage, transportation, storage, and insurance charges, and also realized $2,900,000 out of sales of assets, most of which was the 1902 pack, including $88,156 under the Alaska court orders; they have on hand of the 1903 pack, in England 125,000 cases pledged for advances, in the East 50,000 cases, in Seattle 25,000 cases; that in the season of 1904 they had operated five canneries in Alaska; the output was 247,000 cases, out of which they have and will realize $1,000,000; that when appointed there were labor claims of $136,000, of which $108,000 were paid; unsecured creditors, $3,400,000; recites that the reorganization committee, composed of stockholders and the large creditors, wished a sale to be made of everything except salmon, receivers' bills receivable, and supplies on hand; that all the costs of the 1903 operation had been paid except $2,000, and that they will be able to pay all expenses and leave a surplus.

Now, this petition describes the assets sought to be sold, divided into 23 groups of 11 pages. Each cannery will constitute a group in itself with the surrounding properties, and then the steamers, etc.; that the cash on hand at the time they were appointed was $38,000; that they made betterments at an expense of $80,000; that they had handled up to February, 1904, which was the close of the 1903 pack business, $3,320,000; that they had expended $3,175,000; that the balance on hand at the end of the 1903 work was $144,600; that they had received as a result of the 1904 operation $753,000, including $144,600 that was on hand; that they disbursed $659,000, and the balance is $94,294; that it would require $350,000 more to close all the accounts exclusive of all the expenses of the receivership; that the net gain of the 1903 operation was $108,000, and 1904 estimate of $112,000, but not including—not deducting the expenses of administration—that means the receiver's compensation.

Now, they suggest that upset price be set upon each single group, and that there be an upset price put on the whole thing in case it should

be sold in the aggregate. When there is on the same day an order to the clerk of the court to pay out of the registry of the court to the receiver the amount received from the sale of the Anacortes lot. On the same day there is an order of sale of the assets excluding the pack on hand, etc., as it excludes it in the petition, two-thirds of the proceeds to go to the Alaska court and one-third to the Washington court.

Mr. McCoy. Why was that?

Mr. Preston. Why, that was recited to be a fair division of the values of the property according to their locations, as I undertand it.

On October 1, 1904, there is an answer filed by the receivers to Shing Mow's intervention, an order of reference on it; an answer to the petition of Wing Hong Shing, an order of reference on it.

On November 3, 1904 ——

The Chairman. Those Chinamen were handling the contract labor?

Mr. Preston. You would call them boss Chinamen; they were contractors.

On November 3, 1904, the receivers petitioned for leave to settle a $5,000 salvage claim made against them for $500. That is granted.

November 18, 1904, they petitioned for leave to sell a $2,800 claim against an insolvent debtor for $750. That is granted.

November 23, 1904, they petitioned for leave to grant order of sale so as to include balance of property because they were not able to effect any sale without it; to permit the creditors to apply—if any creditor is a purchaser—to apply on his bid so much of his claim in amount equal to the dividend which would be coming to him on his claim, and requiring the purchaser if he were a creditor to retire the receivers' certificates. Supplemental decree of sale made on that petition.

On December 19, 1904, the receivers object to the confirmation of sale of certain groups—3, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, and 18.

December 21, 1904 ——

The Chairman. You mean objected to the results of the bidding?

Mr. Preston. To the results of the bidding. I would explain here that this sale was to be made by the master in chancery. He made the same and sold different groups to different people and the receivers object to certain groups.

December 21, 1904, the master's report is filed on groups 4, 9, 10, 11, 13, 14, for $6,600.

December 24, 1904, there is an order of confirmation of the sale of group 6 for $40,000, $1,982, and $25,000, a mortgage taken for $2,200, and a rejection of all other sales—or a refusal to confirm the other sales.

December 30, 1904, the receivers approve the sale of group 9 for $8,500; group 10 for $750, and object to others.

On January 1, 1905, there was a notice filed of the claim of the Pacific Selling Co. That was the one that was subsequently rejected.

January 9, 1905, the supplementary report of the master, showing Alaska sale for $43,375.

January 29, 1905, an order allowing Mr. Kerr $15,000 on account of services as receiver.

February 4 there is a supplemental report.

March 10 the receivers' petition and report claims filed with them of creditors; debentures $1,698,000, unsecured notes $1,215,000, col-

lateral notes $121,000, which collateral will pay, judgments $17,575, general creditors $44,168; total $3,000,097. Their report rejected claims $677,000; contingent liabilities $670,000—that contingent liability is explained more in detail in the report, being the indorsement of this company on the notes of the Pacific American Fisheries Co., an allied company, which was also in receivership at the same time. This company owning all of the capital stock of the other company except either ten or fifteen shares, I forget exactly.

February 15, 1905 there was a lease of the Orca cannery.

February 15, 1905, motion of purchaser of one parcel to shorten the time for confirmation.

February 17, 1905, receivers report recommending acceptance of bid of $205,000 for the large bulk of the groups and the rejection of separate bids, but asking that first notice be given to all the creditors.

February 4, 1905, there is a master's supplemental report of the sale.

February 8, 1905, the receivers' petition to pay $225,000 on account of receivers' certificates out of the sinking fund for interest, reciting that they only got 2 per cent on the deposit and certificates were bearing 6 per cent.

February 14, 1905, receivers object to certain bids and recommend others, and there was an order confirming the sale of those they recommend. Then Humphrey, the purchaser of one of the groups, moves for confirmation of his sale, and his petition that the time for the consideration of the matter be shortened is granted by the order of February 15.

February 17, 1905, a creditor objects to the sale of Humphreys's, and an order then fixing March 6 for the hearing and directing notice to creditors is made.

February 18, 1905, Humphreys again moved for confirmation and gives notice of his motion, and supports it by two affidavits of himself and one or another man. Then the bid of Spencer is received. He is a man who bids $205,000, and he objects to Humphreys's sale.

The CHAIRMAN. What was the amount of Humphreys's bid?

Mr. KERR. $38,000. That was one of the canneries along what we call the westward of Alaska. There was one at Nushigak and one at Karnick and one at Kanai and one at Orca, and we sold to the Northwestern Fisheries Co. all this group at the same time that Humphreys bid on the Orca cannery. [Here Mr. Kerr makes some further explanation which is inaudible to the stenographer.]

Mr. PRESTON. February 21, 1905, there is a motion and affidavit of Humphreys filed; on the same day a man by the name of Talton files objections to the Spencer purchase of groups 2 and 3.

March 2, 1905, Humphreys files a bond. I do not remember what that bond was for.

Mr. KERR. Humphreys got a lease of the cannery, and the bond was to secure the lease to Humphreys.

Mr. PRESTON. On the 2d of March the court makes an order to the receivers to conform to Humphreys' sale.

March 3, 1905, he makes an order for the lease of the Orca cannery to Humphrey. Now, the reason for that, as I gather it from the paper, was that the next season was so close, while that contest was going on for the sale, that they had better lease it for operation. Maybe I am not right about that.

Mr. KERR. That is substantially right. It was leased and subsequently it was sold to him for $40,000. I do not know the exact amount; probably it will appear in there later.

Mr. PRESTON. March 6, 1905, Spencer, a large bidder, files objections to certain of the sales, and then there is an objection to the sale of a certain tugboat to Spencer. Then the tugboat files objections to the Spencer sale, and then the tugboat files a motion against the master's report and asks for a confirmation of the sale made of the group to it; then Humphreys objects to the confirmation of the Spencer sale, and Humphreys files a motion attacking the master's report and asks for the confirmation of the sale to him. Then a man by the name of Field who was a personal-injury plaintiff against the receivers, files an objection against any distribution of the funds of the creditors which would leave him out, and gives notice of hearing, and the receivers give notice of hearing his petition. Then there is a petition of the receivers to settle with a certain creditor who holds $100,000 of collateral and pay $22,500 in cash to the receivers—in other words, discounting $2,500. This is granted on the recommendation of the petitioners.

March 10, 1905, there is a petition to sell the tug *Alice* for $5,150. That is granted.

On the same day the purchaser of the Blaine cannery petitions to be paid $1,700 for missing articles, showing that he bought according to the inventory, and when he came to inventory them that there was that much missing. That is granted, Then there is an order on that date establishing claims of the creditors in accordance with the report of the receivers, rejecting those claims which the receivers rejected.

March 14, 1905, there is an order confirming the sale to Spencer, except the Orca cannery, and insomuch as the Alaska judge is absent from his jurisdiction and they can not have a confirmation of that sale in time for the 1905 season, the receivers recommend that they lease the canneries to Spencer for the 1905 season pending an opportunity to get a confirmation from the Alaska court.

April 1, 1905, order directing the clerk to pay the receivers the proceeds of the Blaine cannery, the master having sold it and having returned the proceeds into the registry of the court.

April 3, 1905, the receipt of the receiver to the clerk for that amount is filed.

April 25, 1905, there is an order to retire the balance of receivers' certificates, $462,500.

May 2, 1905, the master petitions for leave to amend his return of sale, Blaine cannery. That is granted.

May 3, 1905, the receivers petition for leave to sell vessels to Humphrey for $38,500—there is a figure 1/3 in there somehow, and I can not translate it on my memorandum.

May 8, 1905, there is an order confirming the Spencer sale.

May 9, 1905, an order that the balance in excess in the sinking fund, that is to say, that is left after the retirement of the receivers' certificates, be paid over to the receivers.

May 25, 1905, there is a petition of the receivers for leave to sell a yacht which they say was built by the company for a pleasure yacht, and they have no use for it and they can get $10,000 for it, and it costs $15,000. That is granted.

May 29, 1905, an order fixing the master's compensation for the sale and his memorandum of expenditures and costs made in the sale; and then there is an order of the clerk to pay the receivers $29,000 out of the registry, proceeds of one of the master's sales.

June 20, 1905, Humphrey petitions for allowance for shortages on the Orca cannery, $4,454. That petition is the same in effect as the other one for shortages.

June 27, 1905, there is an order exonerating Humphrey from his bond.

June 30, 1905, order to clerk to pay receivers $44,394, proceeds of the master's sale.

August 2, 1905, there is a claim filed by Johnson claiming a preference by virtue of a judgment.

August 21, 1905, there is a stipulation extending time for the proofs in the Chinese cases.

September 11, 1905, the Northwestern Fisheries Co. files a petition reciting that it has become the successor in interest of Spencer & Humphreys in their bids; and it claims a shortage of $3,300; that is granted.

Same date receivers report additional claims of creditors and an order of court establishing those claims. Then there is an order by consent dismissing Humphreys's petition for shortage on his own motion.

October 19, 1905, memorandum decision of 12 pages by Judge Hanford disallowing Chinese claims. I will not go into it except to say that it refers to the merits of their claim of guaranty that they are not entitled to any damages for the breach of guaranty.

November 3, 1905, there is a petition of Drew to correct a difference given him by the defendant before the receivership, reciting that there was an error in the description. That is granted.

November 4, 1905, there is a claim of Griffith Deering & Co. for brokerage, and then there is a claim of Blair on the $5,000 debenture, a claim of Martin on $3,000 debenture—filed.

On November 6 there is a claim of a man named Ross for professional services as attorney rendered the company, he claiming a lien on the papers in his hands so as to entitle his claim to preference. There is a memorandum filed in support of that.

On the same date there is an order made by the court allowing compensation as follows: To Kerr, reciting previous allowance of $15,000 and allowing $20,000 more; to McGovern, reciting previous allowance of $3,759.15—I can not find that in the records, that previous allowance; it may have been back East. For allowance, or payment, or whatever it was, was approved in the order and he is allowed $21,240.85—so much more to bring it up to $35,000, on a par with Mr. Kerr's allowance. Mr. McCord was allowed previously $10,000, and in this order he is allowed $16,000 more, making $26,000 in all.

Now, this order recites an appearance of John P. Hartman and George De Steiquer for creditors whose claims aggregate $1,800,000; and the appearance of Peters and Powell for creditors whose claims aggregate $500,000; of R. A. Ballinger as attorney for the plaintiff; and that these attorneys and the receivers' attorneys have stipulated in open court that the matter be left to the court to decide the amount.

Mr. HUGHES. Is there anything in the record showing any exception to the amount allowed?

Mr. PRESTON. No objection or protest shown. There is a petition filed with the receivers to settle the infringement suit for $1,000 and an order granting that. That recites a very much larger claim for damages on the part of the patentee.

November 14, 1905, the receivers petition to pay out $170,000 to creditors, which equals 5 per cent dividend. That is granted.

November 28, 1905, there is some proof filed in support of the Ross claim. An order allowing it in part as a preferred claim and in part as a common claim.

On December 30, 1905, Knowles files a claim against the receivers for alleged services rendered them—$1,150.

May 7, 1907, receivers petition for leave to correct master's deed to the Anacortes lot for some misdescription, and there is an order directing the present master in chancery to make the correction. The old master in chancery was Judge Eben Smith, who died, and Judge Richard Greene succeeded him.

April 23, 1908, there is a memorandum decision by Judge Hanford disallowing the Knowles claim.

May 5, 1908, there is the receivers' final report showing total receipts, $3,255,880; total disbursements, $3,183,504.98; balance on hand, $72,375.13, which will pay a dividend to creditors of 2.47 or 2.47 per cent. There is an order made directing notice to be given to creditors.

May 22, 1908, proof on the publication of notice is filed and then an order is made directing that 0.0247 dividend be paid. This order bars all other creditors who had not presented their claims and directs the receivers to store away and keep the books and records of the receivership for one year thereafter, then to be disposed of as they see fit. At this time is filed a notice of the withdrawal of certain creditors' claims.

February 23, 1909, the receivers' report; that is, Mr. Kerr makes this report of the filing dividend, showing that there is $1,885 left over; and authorizes an order allowing that amount to Mr. Kerr as additional compensation, inasmuch as he alone had done all the later work of closing up the estate, and on the same day an order was made discharging the receiver.

FOURTEENTH DAY'S PROCEEDINGS.

SATURDAY, JULY 13, 1912.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will be in order. Are there any witnesses present who are under subpœna, or who have been notified to attend?

Mr. DORR. Mr. Kerr is here, Mr. Chairman.

The CHAIRMAN. Are we ready to proceed in that matter, Mr. Dorr?

Mr. DORR. Yes, sir.

HAROLD PRESTON, having been first duly sworn, testified as follows:

Mr. MCCOY. Give your full name, please.

A. Harold Preston.

Q. You are an attorney practicing in Seattle?—A. Yes.

Q. And have been for how long?—A. Nearly 30 years.

Q. You have recently gone through some court records in what are known as the fisheries cases, I believe?—A. Yes.

Q. And what are the titles of those cases?—A. The first case, No. 1079, is that entitled "The Puget Sound Sawmill & Shingle Co., a Washington corporation, plaintiff, *v.* Pacific American Fisheries Co., a New Jersey corporation, defendant."

The other case, No. 1080, is "The Colonial Trust Co. and Rudolph Pfeiffer, complainants, *v.* Pacific Packing & Navigation Co., defendant."

Q. And will you state, Mr. Preston, just what the nature of the work is that you have been recently doing in going through those records?—A. I suggested to you, gentlemen of the committee, that if you desired it I would undertake the work of going through those records and prepare from them a sort of an abstract of them which might be of use to you in examining into the questions relating to them which might interest you.

Q. And those papers consist of the papers which are on file in the United States district court in this district in the course of the receiverships in these two actions?—A. That is correct.

Q. Now, state.—A. I first examined 1080——

Q. That is the——A. (Continuing.) The Pacific Packing & Navigation Co. case. I did that alone, writing out my notes in longhand. I took something over five hours of solid application, and last evening I met with the gentlemen of the committee and one of the stenographers who are reporting this proceeding and from my notes dictated to the stenographer the substance of my notes. That was done last evening, finishing about 6 o'clock, and those notes have not been transcribed, but I think you gentlemen will have them probably in an hour from now.

In the other case I had a stenographer to assist me, and I dictated to the stenographer the same matter from the files in that case, and I have that here. I want to say, however, that since it was transcribed I have not had an opportunity to check back with the papers the figures; there may be mistakes in her transcribing of amounts—figures; it is possible. I simply want to guard against anything of that kind.

Q. Now, in substance what you dictated last evening to the stenographer, when it is transcribed, and the paper which you have there, what will be shown, just in a general way?—A. Well, it will be shown each filing, except præcipes and those inconsequential papers that I passed over. It will show the filing and date of filing of each paper, and, very briefly, what the paper was about. That includes petitions, orders, answers, pleadings, etc. Now, I want to say here that what I dictated to the stenographer last night here before you gentlemen in regard to cause No. 1080 is not complete.

Q. Will you designate those by the name of the defendant?—A. Yes; in case 1080 of the Pacific Packing & Navigation Co. When I started this work I went into the clerk's office and asked for the files in that case, and he gave me a box or drawer full of the files, and I assumed that those were all the files. I learned this morning that in the vault is a large package of papers that I did not see, and those papers—in that package of papers are included the receivers' report that I got no hint of before. Now, I have been over those

receivers' reports this morning and I find that by the reports the total receipts of the receivers in that case run up to $5,330,000, instead of three million and something as I had gathered from the files. What I had gathered from the files had been in the way of recital in some of the pleadings, and I think that I should make that correction of those notes at this time.

Q. Are those the notes which have not been transcribed?—A. Yes, sir.

Q. When those notes are transcribed and you get them, if you will, have the corrections typewritten and made a part of them?—A. Yes.

The CHAIRMAN. If there is any other statement, Mr. Preston, which you wish to make, that would round out the work you have been doing in that regard, make it now.

A. Well, I would only want to say, rather in my own behalf, that you can understand the work was hurriedly done and the only thing I can guarantee about it is that I was trying to get the meat of it. I would not want to guarantee that I had got the exact sense of some of the long-involved papers; I went through them so hurriedly. I tried to get that which I thought would be of aid to you gentlemen, without trying to get too much, and——

Mr. MCCOY. Well, what you have abstracted you believe to be substantially all that would have any bearing upon the question as to the amount of allowance to the receivers and to the receivers' attorneys?

A. I believe that to be true.

Q. Now, the paper that was read last night was in regard to the Pacific——A. Packing & Navigation Co.

Mr. MCCOY. Pacific Packing & Navigation Co. And when that is received it will be marked "Exhibit 64," with the corrections and additions to be made. And then this paper, in what company is this——

A. That is the Pacific American Fisheries Co.

Mr. MCCOY. Pacific American Fisheries. You might as well mark it now. It will go in as the next exhibit.

Paper referred to was marked "Exhibit 65."

Witness excused.

The CHAIRMAN. Mr. Baxter.

SUTCLIFFE BAXTER, having been first duly sworn, testified as follows:

The CHAIRMAN. Please state your full name.

A. Sutcliffe Baxter.

Q. Where do you live, Mr. Baxter?—A. In Seattle.

Q. How long have you been a resident of the city?—A. I have lived in Seattle since 1876; 34—36 years ago.

Q. Are you a member of any profession?—A. No, sir. I have been in business most of the time.

Q. You are not an attorney at law?—A. No, sir.

Q. Mr. Baxter, are you the same person who has been referred to a number of times as receiver in bankruptcy or other matters in the Federal court here?—A. I think so; yes.

Q. Have you at present a recollection of those cases which would enable you to tell the committee the salient points in each case, or

in order to do that would it be necessary for you to consult your papers and files?—A. I should feel safer if I had an opportunity to consult the papers. These things have run over a period of five or six years now—for five years at least, and——

Q. (Interrupting.) Could you give the committee the titles or some brief description of the various cases in which you have acted as receiver in Judge Hanford's court?—A. Yes, sir.

Q. Do so, if you please.—A. The Seattle Paint & Varnish Co. was the first one, about five years ago, now, I think. And the next one was the McCarthy Dry Goods Co., if I remember correctly; that was in 1907.

Q. Was it McCarty or McCarthy?—A. McCarthy—t-h-y.

Q. T-h.—A. The next one was a small jewelry business, on Pike Street here; I have forgotten the party's name. It was only a small affair, at any rate. And the next I think was the William Walker Co.

Mr. PRESTON. What is that, Mr. Baxter?

A. William Walker Co.

Mr. PRESTON. What was the business?

A. It was a dry goods business on Second Avenue. And the next was—I think the Knosher Co. came next.

Mr. MCCOY. Knosher?

A. Yes.

Mr. PRESTON. Dry goods?

A. Yes; also dry goods on Second Avenue.

The CHAIRMAN. Go on, Mr. Baxter.

A. I think the next one was E. G. Ingalls, of Ballard—a jewelry business at Ballard.

Q. The location of it?—A. Ballard, sir—the street in Ballard?

Q. Yes.—A. Really, I can't remember the streets out there. I think it is Market Street.

Mr. PRESTON. A little louder, Mr. Baxter, will you?

A. I think the street is Market Street. I am not very certain about that; but the store was in the center of the town of Ballard out here, a part of Seattle; a little stock of jewelry there, consisting of—oh, some $2,000, I think; something like that.

Mr. MCCOY. Proceed.

A. That is all.

Mr. HUGHES. Western Steel?

A. Oh, yes; Western Steel; that is right; Western Steel Corporation, in which I am now trustee—one of the trustees.

The CHAIRMAN. That makes an aggregate, I think, of seven receiverships?

A. I think that is about right, sir.

Q. Are any of those still open?—A. The Western Steel is still open, the Knosher Co. is still open, and the E. G. Ingalls is still open, but in course of being closed at present.

Q. The committee's purpose in calling you at this time, Mr. Baxter, was to give you an opportunity to consult your papers and files and prepare in each of those cases for the committee or prepare yourself to tell the committee the salient facts in them, such as the date of the adjudication in bankruptcy, the amount of the assets, the bond, and the various more important steps in the receivership up to the distribution and discharge of the receiver.—A. All right, sir.

Q. Whether in each case there was a trustee appointed, and, if so, who he was, and the principal things connected with him, and whether—you can answer now, however, whether you were the sole trustee in each case. Were you?—A. Do you desire me to answer now?

Q. You might do that now.—A. I think—my present recollection is that I was sole trustee.

Q. I said trustee. I mean receiver.—A. Oh. My present recollection is that in each case where I was appointed receiver I was elected trustee. I don't remember of an exception where it went to a trusteeship. I think in one or two instances the cases were not in bankruptcy, and therefore no trustee in bankruptcy was necessary. In all of these cases I was—where I was trustee at all I was sole trustee. In the Western Steel Corporation there are three trustees—myself, Lester Turner, and Edgar Ames.

Q. Give the residences of your cotrustees in that case.—A. They are all in Seattle. I don't know their house addresses, but they are all living in Seattle.

Q. They are all residents of Seattle?—A. Oh, yes.

Q. That is an answer. In the cases in which you were also receiver, of course the committee will want to know whether as receiver you conducted the business, and, if so, how long before you were appointed as trustee.—A. Yes, sir.

Q. In fact, you would know the salient points in each case——A. Yes.

Q. (Continuing.) Quite as well as I could tell you of them.—A. I think I could testify to those parts now, perhaps.

Q. Now, when do you think you could furnish the committee that information?—A. Oh, I suppose in the course of two or three days. I don't know how long it would take, hardly. Some of these papers are——

Q. (Interrupting.) This is Saturday. Do you think you could do it by Tuesday or Wednesday at the latest?—A. I think so. I will endeavor to do it by Wednesday, if you will give me until then.

Q. What is your present occupation, Mr. Baxter?—A. Oh, I am dealing in real estate and mining properties, and, as I stated before, I am one of the trustees of the Western Steel Corporation that is in course of being wound up.

Q. Have you been so engaged; that is, in real estate and things of that character, during the past five years?—A. Yes, sir.

Q. Were you in business in that way alone———A. (interrupting.) Well, not so much in real estate.

Q. (Continuing.) Or in association with someone else?—A. No; alone entirely.

Q. Did you maintain a business office?—A. Yes, sir.

Q. Were was it located?—A. 343 Arcade Annex.

Q. Was your receivership and trusteeship business carried on from your own office?—A. Yes, sir.

Q. You had no office in the Federal Building?—A. No, sir.

The CHAIRMAN. Are there any other questions with Mr. Baxter? If you can have the data which I have referred to ready before Wednesday, we would be glad if you would let us know.

A. I will so report, sir, if I have.

Q. And if possible to have it by Tuesday, we will appreciate it, Mr. Baxter.—A. All right, sir.

Q. Thank you. That is all this morning.

The CHAIRMAN. Did you wish to ask Mr. Baxter?

Mr. PRESTON. Just one question.

The CHAIRMAN. Ask him.

Mr. PRESTON. The chairman asked you if you were sole receiver, and that question has not been answered yet; you went back into the matter of trusteeship.

The CHAIRMAN. I thought he answered, as to both receivers and trustees, that he acted alone. What is the fact?

A. I was sole receiver in all of these cases except the Western Steel Corporation.

The CHAIRMAN. I so understood you to answer.

The WITNESS. Mr. Turner and myself were receivers of the Western Steel Corporation and were afterwards elected trustees.

The CHAIRMAN. Anything further?

Mr. PRESTON. No.

The CHAIRMAN. That is all.

Witness excused.

The CHAIRMAN. Mr. Preston, have you any other witness in connection with the matter of which you told us? If not, I presume we might call Mr. Kerr.

Mr. PRESTON. I think so.

The CHAIRMAN. First of all let me inquire if there are any witnesses in the room who have been called in any way and who desire to get away. Mr. Kerr seems to be next.

JAMES A. KERR, having been first duly sworn, testified as follows:

Mr. MCCOY. Will you give your full name, please, Mr. Kerr?

A. James A. Kerr.

Q. And you are a practicing lawyer in Seattle?—A. Yes, sir.

Q. Or a lawyer practicing in Seattle?—A. Yes, sir.

Q. How long have you practiced here?—A. I have practiced in the State of Washington 22 years. I have practiced in Seattle since 1897.

Q. And prior to that?—A. Practiced in the State of Iowa for eight years.

Q. Did you practice anywhere in the State of Washington prior to to your coming to Seattle?—A. Practiced at Bellingham from 1890 to 1897; then removed to Seattle. Practiced in Iowa from 1882 to 1890.

Q. And your firm is——A. Kerr & McCord.

Q. And has that firm been in existence ever since you have practiced in Washington?—A. Been in existence 21 years.

Q. You were receiver, Mr. Kerr, for two fisheries companies, I believe. What were the names of those companies?—A. Pacific American Fisheries Co.; Pacific Packing & Navigation Co.

Q. Were you appointed receiver in both of those companies at the same time approximately?—A. I was not present, but I think I was appointed in both of them at the same time. I am not certain about that, possibly——

Q. At any rate——A. (Continuing.) Very close together anyway.

Q. (Continuing.) The applications for the appointments of receivers in those two companies were practically simultaneous?—A. Well,

now, I could not tell you, Mr. McCoy, without looking at the record. I was not present when I was appointed. Whether the applications were made the same time or several days intervened I don't know.

Q. Those companies were allied companies, I believe?—A. The Pacific Packing & Navigation Co. was capitalized for $25,000,000; it was organized by the Morgan people in New York for the purpose, as I understand, of combining into one organization all practically of the salmon-packing companies on the Pacific coast. The Pacific American Fisheries Co. was a corporation with $5,000,000 capital stock, all of which, with the exception of a few shares, at the time this receivership was sued out, was owned by the Pacific Packing & Navigation Co. They were both New Jersey corporations.

Q. Do you know what the basis of the receivership was in each case, that is, on what grounds were they placed in the receiverships?—A. Receivers were appointed by the United States circuit court for New Jersey on March 2, 1903, for the Pacific Packing & Navigation Co. by Judge Lanning. Mr. McGovern—Thomas B. McGovern, of New York, George D. Hallock, a member of the firm of Baring, Gould & Co., but a resident of New Jersey, were appointed receivers by the New Jersey court. Receivers were appointed by Judge Hanford the next day, and George D. Hallock, Thomas B. McGovern, and myself were appointed receivers in this jurisdiction. A few days later, a large part of the physical operating properties of the company being located in Alaska, Mr. Hallock, Mr. McGovern, myself, and Judge John R. Winn, of Juneau, Alaska, were appointed receivers by that court. Subsequently the New Jersey court appointed Judge Winn and myself, the Washington court appointed Judge Winn, so that the receivers were the same in all three jurisdictions.

Q. Was that same course pursued in regard to the Pacific American Co.?—A. No; Mr. McGovern and myself, I think, were the sole receivers of the Pacific American Co.; possibly Mr. Hallock, I am not certain, but Judge Winn—none of the properties of the Pacific American Fisheries Co. were in Alaska. They owned a cannery at now Bellingham, South Bellingham, and at Friday Harbor, but they had no properties in Alaska and within the jurisdiction of the Alaska court, therefore Winn was not appointed receiver of that company.

Q. Well, now the basis of the receivership in each instance was the alleged insolvency of the companies?—A. Yes, sir.

Q. Now, in testifying, Mr. Kerr, would it be simpler to take up each company separately or were their affairs so interwoven that the story of one has to be practically the story of the other?—A. Oh, largely the story of the Pacific Packing & Navigation Co., although we operated the properties separately.

Q. All accounts were kept separate?—A. Yes; we kept separate accounts, but by the same set of accounts.

Q. But you can describe the receivership in each one separately, I presume?—A. Oh, yes.

Q. Take up, then, if you will, the Pacific Packing Co. and state to the committee briefly the history of that receivership?—A. First. I don't want to burden the committee with any unnecessary detail, but will say this, that the Pacific Packing & Navigation Co. when it was organized provided for an issue of $6,000,000 of debentures which

they expected to float for the purpose of acquiring cannery properties on the Pacific coast. They were unable to procure properties of the Alaska Packers Association of San Francisco, one of the largest packers on the coast, and they changed their plans and they had $3,000,000 of debentures underwritten by the Knickerbocker Trust Co., of the city of New York. My impression is that from that underwriting they received about $2,700,000. I will state to the committee that I was never able as receiver to procure from the treasurer of the company in the city of New York the stock subscription books or the books that were in the hands of the treaurer, so that I am speaking approximtaely. They came out here and they purchased the stock of the Pacific American Fisheries Co., for which they paid approximately a million dollars.

Q. Cash?—A. In cash. Well, I think that was all in cash. They purchased 17 canneries, 1 in Washington and 16 in the Territory of Alaska, from various owners.

Q. Paying how much for those?—A. Paying for those, as I remember it, and I can only speak approximately, because the books of the receivers—several carloads of them—have remained in storage at Broad Street Dock until January 1, 1910, when they were ordered destroyed by the court. We carried them along as long as we supposed there was any use for them, and I can't have access to them for that reason; they may possibly be there, but I have paid no storage since 1910. I think they paid for the Alaska physical properties, including ships and including a lighterage plant at Nome, including a fresh-fish plant at Seattle, including several salteries, one at Yakatat and some other place, an amount approximating $1,500,000 or $1,600,000. So that they expended practically all of the proceeds of the sale of the bonds in acquiring the properties, and they began—they made their purchases, closed their deals in the middle of the packing season of 1901, taking over the canneries while they were in operation. I might say, for the information of the committee, that the salmon-packing business on this coast commences usually not earlier than the 1st of June, possibly a little earlier at some places in southeastern Alaska, and the red-fish business, which is the principal staple, lasts as a rule only five or six weeks. The fall salmon business may run the canneries into October or the 1st of November; and they took these properties over in the month of August, 1901. They operated them in 1901, putting up a pack of something like 1,300,000 cases, of which about 800,000 cases were what is known as pink salmon, and that year there was packed on the coast about five and a quarter million cases of salmon, when the world's consumption up to that time had never exceeded about three and a half million cases of salmon; and the price of pink salmon went a dollar below the cost of production in the fall of 1901 and involved the Pacific Packing & Navigation Co. in a direct loss of $800,000. They operated in 1902 both on the Sound and in Alaska, and they packed during that year about 1,100,000 cases of salmon, the great majority of which were of the cheaper grade, and were that year also involved in a great loss. Now, in the fall of 1902 the organizers of the Pacific Packing & Navigation Co.—and if the committee will examine the list of debenture vouchers which are found with my reports, you will find who the syndicate were that organized it—undertook to reorganize the packing company.

Q. That is this Pacific Packing & Navigation Co.?—A. Yes; Pacific Packing & Navigation Co. They had outstanding $3,000,000 of 6 per cent unsecured debentures. The Knickerbocker Trust Co. had advanced the money. The subscribers had taken up those debentures to the extent of about $1,650,000 only, leaving an indebtedness to the Knickerbocker Trust Co. of $1,250,000.

Q. You mean that the Knickerbocker Trust Co. had issued them without receiving the money?—A. They had issued them on an underwriting agreement by the subscribers. That is the usual form, I believe, of their trust business back there, and had advanced the money.

Q. That is, the subscriptions were payable by installments?—A. Yes; they were payable on call to the Knickerbocker Trust Co., and those subscribers had taken them to the extent of only about $1,650,000. In the late fall of 1902 they undertook to reorganize by providing for an issue of a million and a half dollars of 5 per cent debentures and for an exchange of those debentures for 6 per cent debentures for the purpose of retiring them, and in addition to the debenture holder taking 50 per cent of the amount of his original debenture in 5 per cent debentures he was to receive 33⅓ per cent in amount of preferred stock and 16⅔ per cent in cash; and that exchange went forward before the receivership ensued to the extent of an exchange of $1,200,000, in round numbers, of 6 per cent debentures out of three million.

Q. Producing a——A. And it involved the company in paying out to the debenture holders, out of the funds they had on hand or could borrow, about $200,000 more.

Mr. PRESTON. How much?

A. $200,000, 16⅔ per cent of $1,200,000.

Q. And netted how much less otherwise than they originally contemplated from the first debentures?—A. Well, it is a mere matter of calculation. It put no money into the company's treasury. It retired 50 per cent of about—or 33⅓ per cent of about $1,200,000 of 6 per cent debentures in exchange for preferred stock.

Q. There was one question I meant to ask you. How much of this $25,000,000 par value of capital stock was ever issued?—A. I will state to the committee, as I said before, I never was able to get the books of the treasurer. I have no knowledge whatever as to the amount of common stock that was issued; but I am satisfied, from information that I had while I was receiver, that a large amount of the common stock was issued to the subscribers for the debentures, not of the $25,000,000, because, as I have stated to the committee, the plan was originally changed. The original plan contemplated the underwriting of $6,000,000, and they reduced that half, so that it probably did not get along to the extent of many million dollars; but I don't know who the stockholders were.

Q. Do I understand you rightly to say that you believe that not a large amount of common stock——A. I mean as compared with $25,000,000. I don't know.

Q. Is your information that that stock was issued as a bonus with the debentures?—A. Well, now, that would just be mere hearsay, because I never saw the books and I don't know. I know this, I will state—

Q. (Interrupting.) You know this, of course: Under the laws of New Jersey, as well as others, capital stock must purport at least to be issued for par value in return for it. Have you any information as to what those stockholders who got the original issue paid for it?—A. That is not my understanding of the law of New Jersey as it was at that time—that it had to be actually subscribed bona fide. I will say this to the committee, that——

Q. (Interrupting.) Well, Mr. Kerr——A. Beg pardon?

Q. When was this company organized?—A. It was organized in the summer of 1901.

Q. Well, at that time the law of New Jersey did provide that capital stock must be issued for actual value at par?—A. Well, if you are right about it, I don't know how it was issued further.

Q. Well, did you as receiver undertake, through any proceedings, to learn what the stock was issued for?—A. I undertook to get from the treasurer, Mr. Carey, who was a nephew of Richard Dellafield, of the National Park Bank, the books, on numerous occasions, to enable me to determine whether there was any stockholders' liability; but the receivers here were never able to get them, and we never have had them.

Q. Did you take any proceedings in the New Jersey courts to reach the books?—A. Well, I was running canneries in the State of Washington and in Alaska, and, while I made two or three trips to New York in connection with financing the matter, I didn't consider that it was my individual business, as a western receiver and representative of the Washington court, to institute any proceedings in New Jersey at all. They had two receivers in New Jersey that were on the ground.

Q. Well, did you ever have any conference with Mr. McGovern, or the other New Jersey receiver, with reference to ascertaining what had been paid for the original issue of the common stock of the company or preferred stock?—A. Oh, I had numerous conferences with Mr. McGovern and made numerous efforts through Mr. McGovern, as well as the New Jersey receiver, to get the books. And I will say this to you, that the creditors of this corporation almost wholly were residents of the city of New York or the city of Boston or the State of New Jersey. They were on the ground. They were the parties that organized this corporation under the New Jersey law, and it was up to them to suggest to the receiver in Washington, if anybody, that the receiver should take steps under the laws of New Jersey, as most of the stockholders and, I suppose, practically all——

Q. (Interrupting.) In other words, Mr. Kerr, you think that when three receivers are appointed they have separate or divided responsibility; is that it?—A. I regarded my duties as receiver out here as requiring me, so long as the creditors wanted these properties operated, to devote my time and attention to the operation.

Q. And you did not conceive that you had any duty toward the creditors aside from running the factories?—A. I conceived that I had a duty to the creditors to get all the money out of the receivership for them that I could, and I undertook to fulfill that duty.

Q. Well, that——A. And if I made any mistakes about it, they were honest mistakes.

Q. I do not question your integrity of mind at all, but I was getting at the question of what steps were taken to ascertain whether

the stock in the original issue was issued for value, so that it might be determined whether or not the receivers could realize from any person who may not have paid full value for his stock.—A. I have answered that as far as I could, that I endeavored to get the books. I was not there when this corporation was organized and I don't know who the stockholders were, and I had no means of finding out until I could get hold of the treasurer's books.

Q. Who was your attorney?—A. Mr. McCord.

Q. Did you confer with him about the matter?—A. Oh, yes; we conferred about it.

Q. What did he advise you about what steps might be taken to ascertain who the stockholders were?—A. Oh, I don't remember what he advised me about it. If I made any mistake in that matter, I don't see how it could affect Judge Hanford.

Q. Well, now, Mr. Kerr, I have not insinuated that you made any mistake. You are here on the witness stand and I am asking you to get information.—A. Well, I will tell you, once for all, that I didn't take any steps in that regard, for the reason that I didn't know who the stockholders were and I could not get the treasurer's books. Now, you have certainly pressed the thing to the limit of my information with reference to it, and if I made any mistake——

Q. (Interrupting.) Mr. Kerr, I am going to press the matter just as far as I please.—A. All right.

The CHAIRMAN. We will pursue it.

A. All right, press it along; but I have answered as fully as I can.

The CHAIRMAN. Well, that is not entirely for you to say, I think, just how far it shall be pressed.

Mr. McCOY. Now, I want an answer to my question. Did you confer with Mr. McCord as to whether or not there was any proceeding prescribed by the statutes of New Jersey for getting at the books of this company and ascertaining all the facts in regard to the issue of the stock?

A. I have no recollection whether I did not.

Q. Is Mr. McCord in town?—A. He is before the court of appeals, or on his way to the court of appeals, at San Francisco. He will be here next week. You can ask him about that.

Q. Now, if you will proceed and tell when you were appointed receiver?—A. I was appointed on the 3d day of March, 1903—2—2.

Q. Did you have an estimation made of the——A. (Interrupting.) 1903.

Q. Did you have an estimate of the assets after that time?—A. I did. I went to Alaska for the purpose of inspecting the properties.

Mr. DORR. Which was that—1902 or 1903?

A. 1903.

Mr. McCOY. I didn't get the date.

A. March 3, 1903.

Q. What was done in regard to ascertaining the value of the properties?—A. We were preparing at the time—or the company was preparing at the time the receivers were appointed to get their vessels away to the canneries in Alaska, for the operation of which a large number of contracts had been made. At the close of business in 1902, in these remote canneries in Alaska—there was some of them we could only get one mail from in the whole summer—the bookkeeper of the cannery, upon his books or in books kept for that purpose,

made up an inventory of the properties at the cannery at the close of business each year. We first availed ourselves of those inventories, together with all sources of information we had as to the floating and other properties connected with the several canneries in Alaska. I was familiar with the canneries in Washington and visited them as well. As soon as we got the ships away from Seattle and on their way to the canneries to the northward—that was back in 1903—I visited all the canneries in southeastern Alaska and made a personal inventory of all of the properties of every character and description at those canneries, including the stores that were operated in connection with them. I first filed a general inventory, that was based very largely upon the report of bookkeepers from the Alaska canneries, and from such records as we could avail ourselves of showing the extent and character of the property of the company, and on my return from Alaska in August, 1903, or in July, I filed an amended inventory, giving the court more definite information as to the extent and value of the property.

Q. Did you have any appraisal made?—A. Any what?

Q. Any appraisal made?—A. You mean in the canneries in Alaska?

Q. I mean of the assets that came into your possession?—A I don't remember whether we did or not I don't think it is customary; never has been in any receivership I have known anything about to make an appraisal of the assets

Q. Did you put a value on them?—A. We did; we put down the book value. We put the canneries in at what—very largely—at an amount approximating what was paid for them. In some instances we knew that the canneries had depreciated very materially and we reduced the amount, because the depreciation is something like 15 per cent on that kind of property in Alaska every year.

Q. Had you had any experience in the fisheries business?—A. Yes. sir; I have.

Q What was your experience?—A I had been interested personally in the fisheries business for a number of years The firm, Mr. Dorr's firm and our own firm, have had practically all of the salmon—legal business in connection with the salmon business in Washington and Alaska for 20 years, and have yet, for that matter.

Q. Were you attorney or was your firm or firms attorneys that represented either of these companies before they went into the receivership?—A. Represented both of them and represented their predecessors very largely.

Q. Was it your firm that made application to put them in the hands of a receiver?—A. We made application to put—there was put—we made application, on telegraphic direction from the New York creditors, the Colonial Trust Co., and other parties who put it in the hands of a receiver in New Jersey, to have it done or to do it.

Q. How much was ever contributed to the capital or to the assets of—well, take the Pacific Packing Co., in the State of Washington or in the West?—A. Do you mean to its capital stock?

Q Yes.—A. In the purchase of several canneries—not very many—the vendors accepted, in part payment for the purchase of the plants, some amount of the preferred stock of the Pacific Packing & Navigation Co. Now, this, the only one that I distinctly now remember, was Mr. William Hedge, who owned a cannery at Fairhaven, that was never operated by the company after it was purchased. I know that

he took a part of his pay for their cannery plant in preferred stock. It is possible——

Q. When the company was organized, did it provide for the issue of common and preferred or only common?—A. Common and preferred. I can give the committee a copy of the articles of incorporation if they desire it.

Q. Was the twenty-five million authorized capital common or did that include the preferred?—A. My recollection is that the amount of preferred stock was nine million; the amount of common stock was sixteen million, although I might be mistaken about it. If it is material at all, I have a copy of the articles in my desk and I can bring it up here.

Q. Do you know whether any of the debentures were sold in the West or were they all taken up by eastern capital?—A. There were a few of those debentures distributed in payment of cannery properties.

Q Do you know to what amount?—A. A small amount, comparatively. I know that—I think, if the committee will pardon me a moment—I think I can get at it pretty quick. I have in some of my reports, if you care to look over them, the exact information in regard to it; but there was a very small amount. I know that Phil Kelly held a few of those (a broker of this city). I am inclined to think that Messrs. Ainsworth & Dunn held a few of those debentures; but I don't believe there was over $75,000 or $80,000, now, speaking offhand.

Q. Have you any idea what capital stock was issued for fisheries properties, roughly?—A. I have not. The only individual that I remember who held any stock at all was Mr. Hedge, and they paid, I think, for that small cannery at Fairhaven something like $75,000 or $80,000, together with certain trap properties, a small tug or two, that went along with it, and I think Mr. Hedge had about $40,000 in amount of preferred stock.

Q. What was the estimated value of all the assets of the Pacific Packing Co., as made by you and the other receivers, when the property came into your hands?—A. Well, as I stated, we made our inventory very largely—our first inventory—on the book value of the property, and it amounted, in round numbers, to a little over $4,000,000.

Q. That is, including everything, real estate——A. Yes.

Q. (Continuing.) Vessels, and all property?—A. Yes.

Q. Included bills receivable and accounts receivable, and everything?—A. Yes, sir.

Q. A little over four million.—A. Yes; a little more than $4,000,000. The indebtedness was a little more than that.

Q. What was the indebtedness?—A. In round numbers it was slightly more than the book value of the assets, and of these assets I want to say to the committee that there was something over a million dollars in amount that had been pledged and were held by creditors who in effect became thereby preferred creditors and absorbed it all. The management had practically put a mortgage on everything they had outside of the mere physical property.

Q. Well, those debts which were secured in that way are included in the little over $4,000,000 indebtedness?—A. Yes, sir. So that we reduced the indebtedness the first year by—or, rather, the creditors helped us reduce it by subjecting collateral about a million dollars.

Q. Did you operate—the receivers operate the companies?—A. Yes, sir.

Q. For how long?—A. We operated the canneries for two years, 1903 and 1904. We operated, in 1903, 3 canneries in Washington, and I think 11 or 12 canneries in Alaska; we employed about 2,500 people. We also operated a line of steamships carrying United States mails between the cities of Seattle and Valdez, Alaska, and Valdez and Unalaska; we operated a fresh-fish plant at Seattle a part of that time; we operated several salteries.

Q. Have you any statement with you by which you can show the amount of money that passed through your hands in the operation?—A. Outside of the final distribution?

Q. Yes; I mean during the course of the——A. (Interrupting.) Up to the time we filed our eleventh report, the receivers of the Pacific Packing & Navigation Co. had received a little over $5,000,000 and had disbursed something like $200,000 less than their receipts.

Q. Well, now, let me see if I understand you. You mean the receipts to include the assets that came into your possession?—A. I mean that is the amount of money that passed through our hands, either from sale of receivers' certificates, moneys that I borrowed from banks in this city and from the Bank of California in San Francisco in excess of their holding of receivers' certificates, the amount of money that passed through our hands from the sale of properties and the sale of pack, and in the regular conduct of the business. The total amount that passed through the hands of the receivers, as I remember it—one of my reports—next to the last one I don't seem to be able to find—possibly the last one—in the court's record—was something approximating $7,000,000 in the two receiverships.

Q. In the two receiverships, you say?—A. Yes; about six million in one and about a million in the other.

Q. Now, does that $6,000,000 include this million dollars of pledged assets which was sold by the pledgees?—A. Well, now, I don't know, Mr. McCoy, whether it does or not. Of course, I could not keep these books. I had accountants to do that work, and they gave me the data very largely for these reports. It is possible that it does—I should rather think it would, because it was—of course, we scheduled all of that indebtedness and we inventoried all of that collateral. In some instances we sold the collateral—I know of a number of instances and applied the money to the payment of debts for which it was pledged. In a great many other instances—for instance we had two ships en route to New York, both of which arrived in New York within 14 or 15 days of the time when the receivers were appointed, with two cargoes of salmon—there had been large advances made to the company upon the bills of lading with sight drafts attached to them; the value of those two cargoes possibly approximated a million dollars, and that product was disposed of either by the New Jersey or New York receivers; at least I had no personal charge of it further than the money passed there and went through our accounts, showing that we had received it, as I suppose, and had liquidated this indebtedness with it.

Q. Where were the receiverships accounts kept, what bank or banks?—A. Well, we kept various bank accounts. We had an arrangement with the Bank of California, at San Francisco, under which we deposited a certain amount of funds into a sinking fund for the

purpose of retiring the receivers' certificates. Our main checking account, I think, was kept at the National Bank of Commerce of this city. Possibly one or two other banks here.

Q. Now, as I have these figures here, Mr. Kerr, there was approximately $4,000,000 in value of assets that came into your hands, and some six million property value passing through your hands in the Pacific Packing Co. Would you say that the difference, the $2,000,000, was practically capital which you used in operation of the company?—A. I should think so.

Q. Is that a fair statement?—A. I should think so; yes.

Q. That is, you received and disbursed in running the company some $2,000,000?—A. Well, Mr. McCoy, the only way I can get at it: The first year we borrowed on receivers' certificates $1,250,000; we borrowed, in addition to that, before the vessels arrived here, to be disbursed, from Alaska, in the fall, from the National Bank of Commerce, I think, $225,000. I went to San Francisco and arranged for an additional credit, I think, at the Bank of California for $300,000 or $350,000, all of which we did not use, and our pack each year was of the value of over a million dollars. That was all sold and disposed of. And we realized, I suppose, out of the sales of the property—now just speaking generally, without referring to notes I have before me—a sum in cash approximating $800,000 or $900,000, which of course was distributed. Now, I have not estimated closely what that will aggregate, but it aggregates a good many million dollars—or several million dollars.

Q. Well, now, Mr. Kerr, will you briefly then go through the management of the Pacific Packing Co., just giving us the history of the receivership as concretely as you can, and what you and the other receivers did?—A. The first year of the receivership Mr. Thomas B. McGovern, who had been vice president of the corporation, and who received a salary of $25,000 a year as the head of it in Seattle, together with the general manager, who was paid a salary of $15,000 a year, had operated the canneries. The second year I operated the canneries as sole managing receiver, and I did all the work after the first year practically, in connection with the winding up of the estate—the operation and winding up of the estate of both of these corporations. As I have stated to the committee, we operated in Alaska, the first year, five or six canneries in western Alaska, and I think six or seven in southeastern Alaska. It devolved upon the receivers, of course—and we also operated these steamship lines, fresh-fish plants, etc. We also operated, in connection with Capt. E. E. Cainee, the *Nome City*.

Q. Being a vessel?—A. A steam vessel that plied between the city of Seattle and Nome, Alaska.

Q. But before you go further, Mr. Kerr, you might state roughly how many plants——A. (Interrupting). We had——

Q. (Continuing). Belonged to the company that were kept in operation or the operations of which were discontinued?—A. There were 19 operating salmon canneries belonging to these two companies, 17 to one of them, 2 to the other.

Q. Well, 17 to the Pacific——A. (Interrupting). Pacific Packing & Navigation Co. Those canneries were for the most part of large capacity. One of them is the largest salmon cannery in the world,

with a capacity of 10,000 cases a day. We employed at these canneries—I think at the one at Bellingham we had over 1,100 people at one time. Of course we operated a large number of pound nets or fish traps in connection with that cannery. The labor of outfitting and getting our outfits forward to Alaska for the conduct of the business at the several Alaska canneries, involved a good many employees, and a good deal of activity here. After I got these outfits away for Alaska, I gave my personal attention as receiver, going from Seattle to Bellingham, where our Sound operations—from which they are conducted, and can be conducted more economically. I spent the entire summer away from my family.

Mr. HUGHES. What year was that—the first or second?

A. Of 1904, particularly. I moved the entire business from Seattle up there in 1904—the latter part of 1903 or early in 1904. In the summer of 1903, after I had gotten the outfits away to the various canneries in Alaska, as I have stated to the committee, I personally visited all the canneries in southeastern Alaska. We were operating these lines of steamships and various other enterprises that kept the receivers—both of us—engaged to the utmost limit of time.

Q. That is, you and Mr. McGovern?—A. Yes, sir.

Q. And he was here during the whole of the first year?—A. He was here until the late fall of the first year. After that he never was back here but once, that I remember of. I devoted my entire time for almost three years to the conduct of the business of this receivership. During that time I don't think that I tried, with the exception, possibly, of the third year, a single case, and I usually try from 35 to 50 jury cases a year—and it took all my time. Now, with reference to the Pacific American Fisheries. Those canneries are on the Sound and they operate longer, as a rule, than those in Alaska. Our operations cease, so far as active operations of the canneries is concerned, late in November. Some of our contracts require the Chinese or Japanese or other labor that we had which was employed by the season, to remain with us until December 1. As soon as that work was complete, then the preparation for the next season began. To give the committee an idea of the volume of business, we paid out the first year in insurance premiums alone on our floating and other properties $75,000 in insurance premiums. It takes from the vicinity of $100,000 outside of the usual contracts for labor, etc., to outfit a vessel for one of those canneries in Alaska, and it took generally from about $40,000 to $60,000 in cash to disburse the labor on one of those vessels in the way of fishermen who fish at those various stations when the ships arrive at Seattle from the north. The matter of the detail of insurance. We had a cannery in July, 1903, at Kenai, Alaska, destroyed by fire. I personally gave written instructions to every ship captain, to every cannery foreman, to every bookkeeper in every one of those canneries, calling their attention to the various provisions of the policies of insurance, to the end that we might be protected as against the storage of gasoline and explosives and a great many other things, and while our loss at Kenai was $77,000 and we had a salvage of $2,700, the insurance companies paid our loss to the extent of a little over $75,000, just deducting the amount of the salvage. With that exception, and the stranding of one of the ocean-going tugs, which was rescued later, we had no mishaps in connection with the conduct of the business. I will state further in connection with the

conduct of the business that we conducted it during two of the most unprofitable years that have ever been known in the history of the salmon business on the Pacific coast, and as the result of our operation we showed a profit in Alaska of $108,000 in 1903 and of $112,000 in 1904.

Mr. McCoy. On both or one?

A. Just in the Pacific Packing & Navigation Co. I will state further that the first year our contracts had all been made by the officers of the company. The committee probably do not understand the business well enough to know that our contracts for fishermen, our contracts for Chinese labor in the canneries, our contracts for all kinds of material, are made many months in advance of the time when the vessels go north, so that we are bound by them. For instance, we undertake to pack 30,000 cases of salmon at Nushagak, and we enter into the necessary labor contracts to pack that amount of fish and we guarantee that we will pack it, and we have to pay for them, so far as the labor in the canneries is concerned, whether we pack them or not. The officers of this company had overguaranteed in Alaska to the extent that it fell 100,000 cases short. In other words, our pack fell below their guaranties over 100,000 cases. On Puget Sound they guaranteed a pack in one cannery of 300,000 cases and we packed 135,000 cases and it involved the receivers in a loss of $58,000. I conducted the business the second year myself and exceeded on our guaranties in Alaska 22,000 cases. I exceeded our guaranties on Puget Sound approximately 60,000 cases—no, 30,000 cases, so that the second year we recouped the loss on the Pacific American Fisheries that were incurred by overcontracting in 1903. Now, when we came to sell those properties for which the company paid approximately $2,500,000—and by the way, while operating as receiver I rebuilt largely the cannery at Nushagak, and we added, by way of betterments, $80,000 to the physical property. The properties of the Pacific American Fisheries Co., as well as all other properties, were sold by the master after due notice published, and otherwise, and in connection with a great many of these canneries the receivers themselves wrote many letters to men who had been engaged in the business up and down the coast. The Pacific American Fisheries Co.'s properties sold for $310,000 outside of some of the tugs—that is, the cannery at Bellingham, which was the largest. We paid in that receivership, I think, 38 per cent, a loss as against the purchase price of the properties was practically 66 per cent; the loss as against the amount we received for it, as against the amount that was paid for those canneries. The Pacific Packing & Navigation Co. owed in the city of Seattle and in this vicinity $136,000 for labor, very largely, and some material at the time the receivers were appointed. Outside of a bank or two—one at Portland, I think, that held collateral, and outside of a few individuals who held debentures under an order of Judge Hanford—all the rest of the indebtedness was practically in the hands of the parties who originally foisted the corporation on the country and under an order from Judge Hanford directing the receivers, which I procured, to pay the indebtedness for labor and material incurred within six months. I paid the entire indebtedness as a preferred claim of the Pacific Packing & Navigation Co. and of the Pacific-American Fisheries Co., with the exception of some fees that were due to its attorneys, Mr. McCord

and myself, Judge Winn in Alaska, and Thoburn Ross in Portland, and some disputed transportation claims of the Pacific Coast Co., and some few small merchandise claims that had been in dispute. So that all but about $8,000 and that was principally fees of attorneys for those corporations, had been paid within a year—all the indebtedness was paid here.

Mr. McCoy. You speak about the labor accounts. Just what were those accounts?

A. They were largely accounts for employees upon our operating steamships, men engaged in piling and other material for the contemplated pack. We had, when I took over this receivership, offices in the Globe Building, in which we had over 30 employees. We were paying our office pay roll of the company. When I took it over, it was approximately $3,000 a month, and I reduced it inside of 60 days to less than $1,700 a month. We had these office pay rolls. Mr. McGovern had been struggling in the East with this attempted reorganization and things had drifted along here, and practically none of the ordinary labor of the corporation had been paid for several months past. I do not want the committee to understand that a majority of this $136,000 was labor, because we had on our Broad Street dock a large amount of webbing and a number of those different supplies that were assembled there primarily to outfit the vessels that were to leave in April for Alaska, and that was all paid for, and you will find in Mr. Preston's statement that various petitions had been filed in the receivership by the Seattle Hardware Co. and various parties, claiming preferential payments, and in many of those there were claims that were filed for the material that had been assembled on the dock for the season of 1903 which were covered in Judge Hanford's orders.

Q. What was the basis of their claim for preference on those things?—A. Judge Hanford had made an order in the Northern Pacific receivership many years ago requiring—in a receivership of that kind—requiring all claims for labor and material which had accrued within six months of the date of the receivership to be paid as preferred claims, and that order was made here, and I think it was entered confirmatory of an order in the New Jersey court, but I am not certain about that; but that has been the rule in this court.

Q. Is that a lien, or is that lien or preference a matter of statutory law?—A. It is a matter, as I understand it, of equity practice in the United States circuit court. I think it is a matter that lies largely within the jurisdiction of the United States circuit judge. I am not aware of any statute that is specific on that point.

Mr. Dorr. It was the rule that was established by the Supreme Court of the United States in the case of Fosdick *v.* Shall, reported in the Ninety-ninth United States Supreme Court Reports, at page 235.

Mr. Kerr. Does that fix it at six months or leave it discretionary?

Mr. Dorr. It is what is called "the six months rule."

The Chairman. It is a rule which has been in existence for many years.

Mr. McCoy. On the basis of insolvency?

Mr. Dorr. On the theory, may it please the committee, that the labor and material that have been furnished to a going concern of that kind are necessary to preserve the integrity of the plant, to keep it alive for the benefit of the general creditors, or the mortgage creditors, either. It is what is called the "railroad six months rule." I

think the committee are probably familiar with it. I have had occasion to look it up lately, and in going through a great many cases I find that it is the uniform practice in all of the circuits.

The CHAIRMAN. I know of one instance where a Federal judge allowed a personal-injury claim which occurred before the receivership, on the theory that personal injuries were a necessary part of the running of a railroad.

Mr. KERR. The court refused to do that in this case.

A. (Continuing.) But we had—as the committee will observe from the reading of the data given you by Mr. Preston—we had a great many contests with creditors who were seeking to establish preferred claims—the Federal Insurance Co., Rithett & Co., the Pacific Selling Co., the Fireman's Fund, and a great many others—claims aggregating many thousands of dollars, almost sufficient in amount, if they had all been established, to have absorbed the entire returns that were received from the sale of the property.

Mr. MCCOY. How large, in amount, of those claims were defeated?

A. Practically all of them. I think the insurance claims were allowed in small part as preferred claims and in large part they were defeated, and the court held that they were common claims.

Q. Were there many unpreferred claims made which were contested and defeated?—A. There was a claim of $775,000, I think, in the form of the notes of the Pacific-American Fisheries Co. which were indorsed by the Pacific Packing & Navigation Co. which were asserted against both estates. They sought to get a dividend receivership. That claim was defeated—was resisted and afterwards withdrawn and it simply participated in one receivership. There were a large number of claims that were filed that were contested by the receiver and rejected; some of the contests lasted until away down in the year 1908. I know the claim of Knowles—there was one claim that was litigated through the court of appeals in New Jersey, the claim of Corby *v.* The Receiver. That was decided, I think, by the court of appeals in the latter part of the year 1907—growing out of the sale of a large flock of salmon; that was after the appointment of the receivers in the city of Seattle, and sold to the Northwestern Fisheries. Corby afterwards brought a suit in the New Jersey court claiming that he had brought the receivers and purchasers into communication, not claiming, however, that he had informed the receivers that he had done so, but he made the claim in the New Jersey court that he had himself negotiated with the parties who afterwards purchased in Seattle. We had given Mr. Corby a contract to pay the usual commission for the sale of these salmon in blocks of not less than 5,000 cases, I think, but reserving to the receivers the right to sell them to who ever they pleased without any claim on his part against us for a commission, but he waged that suit before Judge Lanning in New Jersey and finally before the court of appeals in New Jersey. I think that is about all—of course, we had many other contested matters, as far as claims are concerned.

Mr. PRESTON. Mr. Kerr, did not the Chinese contract cases come up also?

A. Yes. We had litigation that was pressed here before Judge Hanford with very much vigor by attorneys from San Francisco as well as local attorneys—Chinese firms, whose names you heard read here, I do not remember them now, which grew out of the contracts

that were made by Mr. Ainsworth, the manager of the company, and myself as attorney for the company in San Francisco in the fall of 1902, for the Chinese labor at the cannery at Nushagak. We had guaranteed, I should say, 80,000 cases at that cannery and they had guaranteed to furnish the company 216 able-bodied Chinese cannery laborers, and the receivers, of course, took over that contract--had to—and when these Chinese arrived from San Francisco to take the ship from Seattle, or from the Sound to the cannery in Alaska, instead of having 216 men, they had 156 men, a force, of course, that was wholly inadequate to enable them to reach their guaranty. We gave them a guaranty of 80,000 cases, and they gave us a guaranty of 3,000 cases a day at the cannery and if they failed to come up to their daily guaranty they are penalized by this contract which we had given them, and if we failed to come to our guaranty to supply them with a pack of 80,000 cases we would have to pay a penalty also, and it grew out of this—these Chinese cases—which were very spirited and protracted in the court and which resulted in favor of the receiver.

Q. What did they claim in amount?—A. Well, there were several amounts claimed; the amount in controversy, I think, ran to approximately fifteen or sixteen thousand dollars, I think in that——

Mr. PRESTON. There is one of them for $14,000.

A. There was one of them for $14,000, I think—I forget the figures. I can get them for the committee if they want them. There was a claim of the Pacific Selling Co. that was contested bitterly, that amounted to $66,000. There was the claim of Corby, which amounted to something like $15,000; there was a claim of Knowles, formerly of the Pacific Steam Whaling Co. of San Francisco that amounted to a number of thousands of dollars, and a good many other claims.

Mr. MCCOY. You had some patent litigation?

A. The patent litigation—we had other clients—the firm of which I was a member—that were made defendants in patent litigation to which I referred yesterday. That litigation was tried out before Judge Hanford and went to the circuit court of appeals. It involved the alleged infringement by a firm of manufacturers at Bellingham—Letson, Burbee & Co.—of the Jensen patent can topper. Letson & Burbee, the Pacific Packing & Navigation Co., and the Pacific-American Fisheries Co. had all used the Letson & Burbee machines, and were sued in the United States court for large amounts of money in the way of damages for the alleged infringement. They all involved exactly the same question. The only case that was tried out, and when that was tried out, of course, the issue was tried out before both these receiverships. It was the case of the Alaska Packers' Association against Letson, Burbee & Co., and was finally decided—I think Judge Hanford held that the Letson & Burbee Co. infringed three of the claims of the Jensen patent, and on appeal to the circuit court of appeals they held that the Letson-Burbee machine infringed five claims of their patent; and after that litigation was determined in the court of appeals the receivers made settlement with the Alaska Packers' Association for the amount of damages on account of the infringement. We paid in this packing and navigation company, I think, $1,000, and we paid in the Pacific-American Fisheries Co., I think, $5,000.

Mr. PRESTON. That is correct.

Mr. MCCOY. Is Judge Hanford the patentee of a can topper, or whatever you call it?

A. I don't think he is. I don't think he is a patentee of any kind of topper. Judge Hanford, I think, at one time designed a can topper, or a machine that he thought would be a can topper, but it never did become one.

Mr. DORR. I think he took out a patent.

Mr. KERR. Did he? I didn't know that. But I know that Judge Hanford designed a machine that was calculated to place tops on salmon cans.

Mr. MCCOY. Well, that was about the time this litigation was going on, wasn't it?

A. Well, do you mean the litigation over the patents?

Q. Yes.—A. It was immediately after that. I suppose Judge Hanford devolved all his knowledge of can toppers from his study of the evidence and issues in that patent litigation—I don't know.

Q. Do you know whether he ever sold his invention to this Burbee concern?—A. I don't know it.

Q. Well, now, go ahead with this Pacific Packing receivership, Mr. Kerr; is there anything further you think of to state about that?—A. Further than this——

Q. I mean up to the time of the final distribution or discharge.—A. In regard to the depreciation of the property. We sold these properties of the Pacific Packing & Navigation Co. through the master in chancery, and they were offered by the master in chancery, I think, four times, and they were sold on the fourth adjournment of the master's sale outside of the cannery at Orca, and I think we had sold a little cannery at Chilcoot, and we sold the cannery at Sitkoh Bay and the machine shop and cannery at Petersburg; the rest of it was finally sold after having been offered at public vendue at four different times for two hundred and five, or seven, thousand dollars, property that cost approximately thirteen or fourteen hundred thousand dollars.

The CHAIRMAN. Had you finished your answer to that?

Mr. KERR. Yes.

The CHAIRMAN. Then we will take a short recess.

After a short recess the witness continues his testimony, as follows:

The WITNESS. I think we sold the cannery at Chilcoot for $10,000; I think we sold the Petersburg shop and cannery at $7,500; I think we sold the Chatham Straits, the Sitkoh Bay cannery to George Myers Packing Co. for, I think, $55,000, and the Orca cannery we sold for $38,500, and there were various troubles over it and litigation.

Mr. MCCOY. How do the prices received on the sale of those assets compare with the valuation which had been set upon them in the books of the company when they were turned over to you?

A. I do not think, Mr. McCoy, that we realized with all our efforts 30 per cent; I do not think we realized over 25 per cent of the actual cost price of those assets. You will understand that the business was absolutely at an ebb, where nobody was making any money in it; there had been absolutely no demand for cannery property for three years. A number of the canneries had not been operated the second year and the depreciation was very great and it was almost an impossible task to find purchasers for it.

Q. You are referring now practically to the real estate assets, at least so I understand—how did, what you might call the quick assets, in the way of stock on hand, realize?—A. Well, the quick assets when we were appointed, were all hypothecated. I think we found about $2,500 in the bank here in Seattle. I think there was a small fund in New York amounting to possibly twenty-seven or thirty thousand dollars, or something like that, but all of the salmon that had been packed had been hypothecated and they were held as collateral.

Q. And all that you had in them was the margin interest, if there was any margin.—A. That is all, and there was not any margin. We had salmon over in Europe against which the agents had made an advance of what was estimated on 80 per cent of their value, out of which we never got anything; in fact the receivers themselves in 1903 shipped 165,000 cases of red fish—the market was glutted in the United States—over to Great Britain, and we never sold a case for 12 months after they arrived there, nor did we have any demand, and the receivers themselves were advanced against them by Griffith, Deering & Co., of San Francisco, English brokers, and all we ever realized, as a matter of fact, out of the sale of this salmon was the amount of actual advances made by the brokers under the permission given us by the court here at the time we put the product on the vessels for shipment to Liverpool.

Q. How did the sale of the floating equipment result, as compared with the pack value?—A. We got better values out of the tugs, the floating properties, than we did out of the canneries. You note in the report which Mr. Preston read you that we had sold several of the small cannery tugs. We had some, probably we had six or seven tugs that were ocean going and we had a number of smaller cannery tenders. In some instances we realized considerably more money than we had inventoried them at. I think out of these floating properties we realized on an average possibly from 60 to 75 per cent of the invoice price. We invoiced them at what they were supposed to have cost.

Mr. Preston. I can't hear you at all, Mr. Kerr, and I want to hear you.

Mr. McCoy. Can you, with any close approximation, give the net results of the sales, as compared with the valuations at which they were taken over?

A. Thirty-three and one-third per cent would be including the floating properties, would be a very close approximation in both receiverships—a very close approximation.

Mr. McCoy. Is there anything further, Mr. Kerr, you want to state?

The Witness. I want to state this, further: We had some very protracted and large litigation that went to the court of appeals on a voluminous record in connection with the operation of the Nome City. You can ask Mr. McCord in regard to that; he took all the testimony and handled that case in the two courts. He can give you full information about it. Now, after we had sold these physical properties there was still left a great many odds and ends in Alaska as well as in Washington that took a great deal of the managing receiver's time here, in fact practically all my time during the year 1905.

Mr. Preston. 1905?

A. 1905. I put all my time in 1903 and 1904 and practically all of it in 1905. I was not able to get some of these contested matters

closed until as late as 1908. The creditors of the packing company were scattered from Seattle to South Africa, all over Alaska, practically all over the world; there were a very great number of them; and the matter of the two distributions that were made by the receivers, small as they were, consumed a very large amount of time, and on my first distribution, after a very large amount of correspondence, there were some claimants that we were unable to locate. There resulted a lot of confusion by the manner by which the promoters down there had manipulated the bonds and had manipulated the notes and there were duplications of proofs and one thing and another, and the last few years the company was run the management simply put out in the hands of brokers in Chicago and in New York notes payable to bearer for $50,000 and $100,000 and paid heavy brokerage fees, and they were negotiated here and there, and some of those we had reason to believe had been retired, and we filed objections to some of them and found that they were retired, but it was not until just the time that the final report was filed and I was discharged that I had been able to perfect the distribution, and even then there were some small claims that were outstanding that could not be located.

Q. Now, were you discharged from both receiverships at the same time?—A. Well, now, I could not tell you without looking at the record, and I have not looked at it. Possibly I was.

Q. Approximately?—A. Approximately, I suppose.

Q. And about when was that?—A. I think it was early in 1909. I know I kept a stenographer for the purpose of taking care of the business of the packing company until some time in 1907.

Q. At what time had the properties of both companies finally been disposed of—I mean so far as the sale?—A. I think—when you say disposed of—the bulk of it was all disposed of in 1906.

Q. I mean the properties, so far as they had to do with the operation of the fisheries business; not the winding up?—A. I understand. Those properties were sold in the late winter and early spring of 1906. We undertook to dispose of them so that the purchasers might be able to operate during the next season and it was in the late fall of 1905; I think after having offered the properties three or four different times; I think probably some of the master's deeds were not made until 1906.

Q. I think that you have not stated the dividend in the Pacific Packing Co. case.—A. The Pacific Packing Co. paid two dividends; the first one of 5 per cent and the last one of 2.47.

Q. Apparently the discharge in the Pacific-American Co. was March 19, 1906.—A. Well, that would be it.

Q. And in the packing company it was February 23, 1909.—A. That is probably right. There were only six or seven creditors of that company, and its property was all here within the jurisdiction of the court, and I remember now that we closed that receivership quite promptly. But in the packing company we had—long after we sold the properties—we had contests with Wilson and somebody at Ketchikan over box shooks, and we had contests with the selling company. Griffith-Deering & Co., of San Francisco—a large claim—and Harry Knowles and a number of matters that I have forgotten, and we also had a lot of bills receivable against citizens of Alaska, parties that had scattered, and we kept after those, and finally I think made a disposition of them, or undertook to, but I don't think we ever got

anything for that, but I kept endeavoring to collect those matters in until June of 1909.

Q. Have you any figures with you which show how many claims there were on open account, unsecured and not preferred?—A. Yes. I think I can give you all that data. I do not find my original inventory here, but my original inventory shows $115,000, and when I filed an amended inventory that was increased to $136,000. My recollection is it was about 135 or 140 individual creditors outside of debenture and note holders, and most all of those were residents here in this Northwest. If that is material I will hunt up my original inventory and give you the names, if you want them. Well, they are scheduled under different heads in this original inventory schedule "M," scheduling some $80,000, but the whole schedule amounted to $136,000.

Q. You say that is exclusive of note holders?—A. Yes; to people to whom the company was indebted on open accounts. The amount of demand notes outstanding was $2,366,261.

Q. Were those secured in any way?—A. No, sir. Well, no; I think those are all demand notes, and those demand notes were held very largely by J. P. Morgan & Co., by the National Park Bank, and, I think, by the Colonial Trust Co., and by parties who in large part held the debenture.

Q. And stock?—A. Well, I suppose the stock—I am sorry I can't tell you about that stock, but I can't.

Q. Of those open accounts, amounting to something like $136,000, were those preferred—many of them?—A. Those are the accounts that I stated to the committee were paid under Judge Hanford's order.

Q. Well, now, were there any open accounts to any considerable amount which were not preferred or secured?—A. No; only about $8,000, and they were principally amounts due to three firms of attorneys.

Q. And then the rest of the unsecured indebtedness consisted of these obligations on the notes which you have spoken of?—A. Of course we had a lot of indebtedness to the banks that held collateral.

Q. Of course I treat that as secured.—A. Now, some of them were not fully secured, but most of them were fully secured—I think Wells-Fargo & Co., of Portland, probably lost a little money.

Q. Have you there a summary of the figures—to put it roughly or inaccurately—in regard to the Pacific Packing & Navigation Co.; have you there a summary statement showing the receipts and disbursements?—A. That is in the eleventh report—well, this is—I will read from the eleventh report—there are two reports subsequent to this. At the time the eleventh report was filed in this court, March 31, 1905, our total receipts had been $5,117,760 and our total disbursements were $5,054,195.97. Our total salmon sales had been $2,293,000, and we had on hand unsold $603,000, making practically $3,000,000 value—value of manufactured product—does that answer your question?

Q. Yes. And practically all of the business outside of some mail-carrying contracts, was this packing business?—A. Our transportation business proved to be a losing proposition, and as quick as I discovered it from the reports that were being made I took the matter up with Judge Hanford and discussed it with him personally, and I

had the auditor provide me figures showing the result of the operations for a number of months, and recommended to the court that we be authorized to go out of the transportation business, and we did. We sold the vessels and stopped the losses and confined our operations to the fishing business.

Q. Now, have you the total of the allowances to receivers—name the receivers and the allowances to each?—A. I can tell you, I think, without referring to any data, about what the costs were. I think the master's fees for the sales of the property of the two corporations——

Q. (Interrupting). Well, Mr. Kerr, if you will give us one at a time, if you can.—A. I was just going to get there. Well, I will get it any way you want it. In the Pacific-American Fisheries the receivers were allowed $17,000 each, Mr. McGovern and myself. The attorneys for the receivers were allowed $10,000. In the Pacific Packing & Navigation Co. case the receivers were allowed $35,000, Mr. McGovern and myself, each. Mr. McCord was allowed $16,000 as attorney for the receiver. The New Jersey court—I will have to speak from memory, because, as I told you, the books are where I can not get at them—the New Jersey court allowed Messrs. Alexander & Green, the New York attorneys of the receivers, for putting the company in the hands of a receiver down there, the sum of $5,000. My recollection is that the New Jersey receiver was allowed by the New Jersey court, I am not sure whether it was $9,000 or $15,000. I have no way of determining because, as I say, the books of the company are where I can not get at them and my report doesn't show it.

Q. In addition to the $35,000 which was allowed here?—A. Yes, sir. Here is what they did. Certain of our bills receivable were sent by me to the New Jersey receiver and they were cashed in there by him and he deducted his attorney's fees and his allowance by the court and sent out to me the balance, and it passed through our accounts, but it did not pass into my account—the account made in New Jersey—and so I can not be sure about that amount. The Alaska court allowed the attorneys for the Alaska receiver $7,500, Mr. Shackleford, and I think allowed Judge Winn $20,000; I am not sure about that, whether it was $20,000 or $25,000, I have been trying to find out. Senator Piles thinks it was $15,000, but that also was paid out of moneys that came into the hands of the receivers up there and did not go through my hands. Now, subsequently, when I came to close up this estate, long after this allowance had been made, we had a lot of matters that had taken up a very large amount of time, and there was left in my hands $1,880. It had taken me months and months to make the distribution, either one of the distributions—and in order that I might close up the estate I made a report to Judge Hanford setting forth, in a general way, the amount of subsequent work that I had been involved in, and the difficulty of distributing that small fund that was left, which amounted in many instances—would not amount to a postage stamp to one of the claimants, and it would have taken years to have distributed it, just as much time as it took to make the other distributions. Judge Hanford allowed me that balance in my hands, making my compensation $53,800 for three years of my time devoted exclusively to the business and additional compensation for work that was done after 1905.

Q. Making four years, approximately?—A. No, Mr. McCoy, I devoted practically three years of my time to the business and after that it was desultory. I discharged the stenographer and I used my own office and stenographic force.

I want to say this to this committee: Neither Judge Hanford or myself wanted the receivership to run the second year. I telegraphed to New York and refused to qualify as receiver. I was not an applicant for it, and I was assured by our clients in New York that the company would be reorganized within 60 days of the time the receivers had been appointed and that the appointment had been made preliminary to reorganization, and I was urged to qualify and to go to New York and undertake to assist in the reorganization, which I did do. I left here in the latter part of April, 1903, at the request of the two committees, one of which was headed by Herbert Satterlee, whom you gentlemen know or know of, for the purpose of attempting to assist in the reorganization of the company, and when I got there the two committees were warring among each other, and they left it to me to outline a plan of reorganization, which I did, and I remained in New York as long as possible, considering the duties I had to perform as receiver, and I notified those committees that they should get together and accomplish something or I would leave New York on a certain Friday and come back, and they never did reorganize, and I therefore remained in and, as I stated to the committee, I did not want to operate in 1904, and again they assured me that they had perfected a plan of reorganization, or it would be perfected if the plants were operated, and that fell through, and so all my time was taken up and I was taken out of my practice.

The CHAIRMAN. What was the amount of your bond?

A. I do not remember, Mr. Graham; it was not very large.

Q. Was it an indemnity company bond?—A. Yes, sir; I do not remember—I gave——

Q. I suppose it was paid out of the receivership funds, was it?—A. I think so; that is the usual custom out here. I do not know whether it was or not, but I suppose it was.

Mr. MCCOY. You have told us what was paid Alexander & Green for their services in having the receivers appointed in New Jersey; what was paid the attorneys here?

A. Nothing.

Q. For that service?—A. I don't think anything; I don't know. I think Judge Ballinger or somebody filed a petition and that we confessed, under the direction of the officers of the company, the insolvency. If anything was paid Judge Ballinger it was a small amount.

Mr. HIGGINS. Speak louder.

The WITNESS. I say, if anything was paid Judge Ballinger for that service I do not think it was over $100; I do not know.

Mr. DORR. If it is important I will look it up for the committee.

Mr. KERR. I will be glad to find it——

Mr. PRESTON. I think I can help you. I think I noticed an order in the Pacific American Co. case allowing Judge Ballinger, I think, either $300 or $500, but there was no allowance in the Packing Co. case.

The WITNESS. I do not remember now, there has been so many years elapsed; I do not remember what was paid; I do not know how that was arranged.

Mr. McCoy. Now, Mr. Kerr, we have gone quite fully into the Pacific Packing & Navigation Co. case; you have not told us and given us the same detail, as I remember it, in regard to the Pacific-American case; do you remember, or have you any memoranda which will refresh your recollection as to the appraised or estimated value of the assets of that company when they were turned over?

A. Well, it was appraised about a million dollars.

The Chairman. Now, keeping that question in mind, we will postpone the answer to it until after lunch.

We will now take a recess until 1.30.

Whereupon a recess is taken until 1.30 p. m.

AFTERNOON SESSION (1.30 O'CLOCK).

Continuation of proceedings pursuant to recess. All parties present as at former hearing. Same witness on the stand, testifies as follows:

Question repeated to the witness.

The Witness. The assets were, as shown by the books of the company, $1,100,000; the liabilities, as far as I have been able to discover them, at the time we filed this inventory on May 11, 1903, aggregated $721,391; my recollection is that there were some other liabilities that developed later, this inventory having been filed about two months after the receivers were appointed, but the liabilities of the company would approximate $800,000 with the additional liabilities that developed.

Mr. McCoy. What was that company capitalized at?

A. $5,000,000.

Q. Had they any bonds outstanding, or debentures?—A. Not at all; that company had nothing except this scheduled indebtedness—there were outstanding notes, $670,000, and certain sundry liabilities, amounting to $46,000 additional, but I would say to the committee that the Pacific-American Fisheries Co. owned and operated a shipyard at Eliza Island; they owned or were interested in a large number of pound-net or trap locations. Those locations were in the name of various subsidiary corporations.

Q. Of which this company owned the controlling interest?—A. Of which this company owned the controlling interest, and that property passed in the sale, including the shipyard and all this stock in these subsidiary corporations, in the sale of the property made by the receivers at $310,000 or $350,000; at any rate the one sale made of the Pacific-American Fisheries Co.'s assets; I can not remember all of its property, except possibly the tug *Alice*—I think she belonged to the packing company—but possibly a small tug or two and possibly a pile driver or two that were sold to outside parties.

Q. Those sales were at auction?—A. They were after advertisement, and made by the master in the usual way in receivership matters, after due notice at public auction; yes.

Mr. Preston. You mean the large sales.

A. Yes; the large sales. Of course the small sales and pieces of individual property like a tug or the tideland lot that we sold at Anacortes, was sold simply at private sale after notice, but not sold by the master—sold by the receivers themselves; but in each of these

individual sales we procured a price approximating the cost of the property.

Q. Did you ascertain in the case of the Pacific-American Fisheries Co. what the stock had been issued for or purported to be issued for?—A. No, Mr. McCoy; I was in exactly the same position with reference to that company—its records were in New York. I never saw the—I do not think during the receivership either the corporate records or the treasurer's records in either of those corporations—they have never been in my possession.

Q. How did the price received for the assets of this company compare with the inventories or appraised price at which you took them over?—A. Well, we realized from the sales of the Pacific-American Fisheries Co.'s assets $310,000, or possibly $330,000 or $340,000 all told. I would have to go through these reports in order to get for you the detail of any small pieces of segregated property that we sold. For instance, I think we had 11 pile drivers, some of them steam drivers of more modern construction. We had, in the way of scows and boats, probably over 100. Our operations were more limited under the receivership on account of the short run of salmon during the years 1903 and 1904. We found on hand a considerable amount of idle property, and occasionally we would have a chance to sell a pile driver or a scow or a boat. I know we sold a couple of scows that went to Alaska, and we converted that into money. But I could not give you the exact amount—possibly it is in this final report of the Pacific-American Fisheries—but I think it approximates $330,000.

Mr. McCoy. If it is in these reports we may get those in later on, but as long as you have approximated it, that is enough for the time being, I think. Now, what was the total amount of the cash handled in that receivership?

A. Approximately a million dollars; $975,000, I think Mr. Preston's figures show, and that omits, possibly, the last report; but it would approximate a million dollars.

Q. I thought you said the amount they were taken over at——A. (Continuing.) That is independent of the amount distributed from the sale—that is in operation.

Q. The total amount that went through your hands.—A. Of course the amount finally distributed went through our hands, and the amount finally distributed was, I suppose, something over $300,000.

Q. And that paid a dividend of approximately 38 per cent?—A. Thirty-eight per cent; yes, sir.

Q. Do you remember what claims there were unsecured or unpreferred in that matter?—A. Well, I think, gentlemen, that we paid under some order that the court made in the packing company case, I think, every dollar of this $46,391 of accounts payable, and I think that was all for labor at the shipyard and labor on tugs, pile drivers, and so forth, and for webbing that had been purchased and delivered either immediately before or immediately after the receivers were appointed. You understand that we purchased—for instance, we operated, I think, 22 traps in 1903, pound nets. It costs an average of about $10,000 or $11,000 to construct and operate one of those pound nets. You know, doubtless, how they are constructed. We have leads not over 2,400 feet in length constructed of wire netting, and there had been a lot of that stuff that was bought; that extends from above the surface of the water down

to the bottom, and the lines of piling are driven out from the shore to reach out into the Sound, and then there is the heart of the trap, that is built also, sometimes of cotton webbing and sometimes of wire webbing, and that inside of that and outside of it is the pot of the trap, which is a large web basket, always made of web; it is supported on piles, and which impounds the fish, and out of which they are taken. I think we had on hand something like 7,000 piling which was used for trap construction of one kind and another, and all of that wire webbing and cotton webbing and rope and stuff of that kind that was necessary for the construction. It is very expensive in the first place, and we had of that kind of stuff $45,365 worth on hand which had been assembled within six months of the date of the receivership yet unpaid for which we were required to pay as a preferred claim under the court's order.

Q. Outside of that indebtedness what was the amount of unsecured indebtedness?—A. $675,000.

Q. That was on open account, unsecured?—A. That was on demand notes.

Q. Were those in any way secured by pledges of product or anything of that kind?—A. No; no security on those at all. To meet that indebtedness and the expenses of the receivership was virtually the proceeds of the sale, $310,000, with the proceeds of the sale of a few scows and possibly one or two pile drivers. My recollection is that we discovered later on, when proofs began to be filed in these receivership matters, of notes that had been issued in New York some additional liability. We had no means when we took possession here, outside of the memory of Mr. McGovern, who had been the head of a corporation here, of ascertaining the exact amount of outstanding paper; it was not shown on the books.

Q. They kept no record?—A. Well, they had kept a record; but, as I explained to you, they had put in the hands of brokers in Chicago and New York a large amount of demand paper for sale, and where ever they could place it; two million and some odd dollars of demand notes were all negotiated in that way and they had not received yet the reports from those various brokers. They knew how much of that paper had been issued, but their books did not show how much of it had actually been placed, and it took some weeks to ascertain it.

Q. Was there any great volume of litigation in connection with the Pacific American Co.?—A. We had some litigation over trap sites, and we have had a great deal of litigation in the last 21 or 22 years here on Puget Sound over the rights secured by the statutes of this State to operators of pound nets, and questions in regard to the abandonment. Nearly all of the statutes of this State, so far as they appertain to the fisheries business, were drafted either by Mr. Dorr or by our firm, I suppose.

Q. Those were disputes over the particular locations, I suppose?—A. Yes, sir; and questions of abandonment. There are a great many trap locations on Puget Sound. They may fish at a profit once in four years. The salmon run, from time immemorial, on Puget Sound has confined itself in the form of an immense run of red salmon one year. Next year will be the large year, and a very moderate run the year following that, followed by another moderate run and preceding the fourth year by a very short run. So that the owners of traps have found it unprofitable and impossible, practically, to operate

many of the traps during the three short years, and under our statute, as it was for a long time, a trap had to be operated or it was deemed abandoned, and at the end of the expiration of the license there was frequently an attempt by various parties to get a location that had not been fished within the 12 months, and we had a great deal of litigation in this State over the fishery statutes, and the litigation that we had for this company was in regard to cases of that kind. We had some trouble with fish pirates that are referred to in this order, men that would go out in the night time—we kept a watchman in the night—and fish in the night when the tide is running. The salmon following toward the Fraser River, they go along with the tide, and, of course, when the tide is running the salmon are in the running tide, and they strike the lead of the trap and run into it; and there was a colony of outlaws out in that region of the State where those fisheries were that rendezvoused about a certain bay near Blaine that would descend on the traps at night, overpower the watchman, and rob the trap. Salmon were worth in the open market about 20 or 25 cents apiece, and they would take away from us in a single night from a single trap possibly salmon worth a thousand or fifteen hundred dollars, and we had those men arrested and brought before the Federal court, and some of them were sentenced to six months' imprisonment for robbing the receiver, and there was a lot of that kind of work.

Q. Where could they dispose of them?—A. I beg pardon?

Q. Where could they dispose of them?—A. They would resell them to other canneries. Every time they were able to take five salmon out of your trap it was worth a dollar to them, and they took as high as $2,000 worth in a single night out of a single trap operated by the receiver. I think only on one occasion they got that much, but we were robbed in the year 1903–4, I suppose, of salmon that in the open market would cost $18,000 or $20,000, and we had continual trouble of that kind. We kept patrol boats running for the purpose of protecting our own property and in conjunction with other operators on the Sound for the purpose of protecting property.

Q. The receivers, as I recollect it, were appointed in the New Jersey court in this matter, as in the other one?—A. Yes, sir.

Q. Was there any receiver appointed in the Alaska district?—A. Gen. Winn was appointed in the packing company in the Alaska district.

Q. In this one?—A. No; this was purely Washington business; it had no property in Alaska.

Q. Was there any New Jersey receiver appointed in that matter?—A. No, sir; I think Mr. McGovern and I, although I think Mr. Hallock was—yes; he was also a receiver of this New Jersey corporation. The receivers of the Pacific-American Fisheries Co. were McGovern, Hallock, and Kerr.

Q. Now, if you will state the allowances of those receivers and where made and also the allowances to the attorneys, if any allowances were made, for acting in the appointment of the receiver—state that, beginning with the allowances, if any, to——A. Do you mean in New Jersey?

Q. Yes; in both courts.—A. I do not know. In New Jersey—I will say to the committee that I filed in New Jersey and also in Alaska duplicate copies of all my reports, 13 or 14 of them. I had

never known—if I had, I have forgotten—whether anything was allowed for the attorney for the petitioners in New Jersey or not; probably there was; but if it was it was paid out of money that came into the hands, incidentally, of the New Jersey receiver, and he simply remitted to me the balance, and it would appear on our books, if I could find them.

Q. Now, about the allowances here.—A. I have not had time to refresh my memory, but I do not know whether any of our reports, gentlemen, would show any allowances made to the attorney for the petitioner or not. Do you discover anything, Mr. Preston, except in the Pacific-American fisheries case?

Mr. PRESTON. There was not anything allowed, that I noticed, in the packing company case at all—in the Pacific-American Fisheries Co. case there was $250—I just noticed it during the recess—allowed to plaintiff's attorneys.

Mr. KERR. I think that that was all that was allowed in either or both of them; but Mr. McCord, when you call him on the witness stand, probably will remember exactly what it was. I know whatever it was, gentlemen, the receivers did not pay it and it was fixed by the court, because I was very careful in paying anything of that kind to protect the receivership by an order of court and to have it submitted to the court in every case.

Q. What were the allowances to the receivers and the receivers' attorneys?—A. In the Pacific-American Co. case?

Q. Yes.—A. Mr. McGovern and I were allowed $17,000 each as receivers; the attorney was allowed $10,000, and I think the allowance that was made for Mr. Hallock by the New Jersey court was made by one order to cover both receiverships; that is my recollection of it. That may be where I am confused as to the exact amount that he was paid.

Mr. PRESTON. To help along the matter at this point, the abstract which I furnished you shows an allowance to Hallock, the receiver, of $3,000, and to Alexander & Green $2,000, under one of the late dates.

Mr. KERR. I guess that is right, then. That would make Mr. Hallock's allowance in the two receiverships $12,000, $9,000 in one and $3,000 in the other one; and Alexander & Green $5,000 in one and $2,000 in the other, which makes $7,000. I think the master's fees in those two cases for a commission on the sales was something like $6,000. I think the clerk's fees of the United States court was something like $4,000.

Q. Who was the master?—A. Judge Eben Smith.

Q. Now, as to the attorneys' allowance in this district, in the Pacific-American Fisheries case———A. (Interrupting.) Yes.

Q. (Continuing.) What were they?—A. I said $10,000 was the amount allowed for the entire service to the Pacific-American Fisheries Co. We were paid a salary by that company of $5,000 a year. We have been paid a salary of $5,000 a year by its successor ever since, and paid it now, as attorney for that corporation.

Q. You mean that before the receivership———A. (Continuing.) Both before and after and ever since we succeeded as attorneys for the purchasers of the plant, who had been the former owners of it. We were stockholders in that property before it was sold to the packing company. That property was owned by clients of ours in Chicago,

John E. Cudahy, Charlie Counselman, Sandecker, Mr. Harris of the Alton Railroad, Deming & Gould. We sold it out to the Pacific Packing & Navigation Co. They purchased it at master's sale from the receivers of the packing company. We had been attorneys for the Chicago parties for some years. They employed us—our firm—subsequently as attorneys for their fishery company, and we have been acting ever since in that capacity.

Q. Did they buy out the assets of both companies or only the Pacific-American Fisheries Co.?—A. That is all; the Pacific-American Fisheries.

Q. Substantially all the assets of that company came into their hands after the sale.—A. Substantially all of it.

Q. How about the property of the Pacific-American Co.; to whom did that go?—A. You mean the packing company?

Q. Yes; the Pacific-American Co.—A. That is the one I just was speaking of. All of its assets went, practically, to these Chicago parties who organized a company known as the Pacific-American Fisheries. Now, the Pacific Packing & Navigation Co. for the most part went to the Northwestern Fisheries Co.; that was one of the subsidiary companies, under the control of the Guggenheims, as I understand it, of which Mr. Eckels, of New York, was auditor; they were engaged in building a railroad in Alaska, operating the Katalla Co. and various companies here, and they purchased those canneries and have operated them ever since under the name of the Northwestern Fisheries.

Q. Then, as I understand it, in both those instances there was nothing like a reorganization, but so far as the receivers were concerned they closed out both businesses, and those people bought them.—A. They did.

Q. And that was a clean-cut transaction—not a reorganization in any way?—A. No, sir. If the packing company had reorganized this company as I originally thought to do in New York, and husbanded its property as it was husbanded, they never would have lost a dollar, notwithstanding the fact that they never had any capital stock. The Pacific-American Fisheries, who bought this property in the year following, which was a large run, paid for the property the first year they operated it; and so in Alaska, on account of the increased demand and the higher price at which the product was sold, the Northwestern Fisheries Co. have gotten, each of those persons, out of their operation, practically all the money that was ever put in them, and they have got the properties yet.

Q. Do you know, Mr. Kerr, to what extent the controlling parties in interest in either of those companies are also the controlling parties in either of the two companies which made this purchase, as you have stated?—A. There is not a man, I don't think, now connected with the ownership of any of these canneries that had anything to do, directly or remotely, with either of the old companies. Those companies were, as I stated to you in the beginning, incorporated by parties in New York for the purpose of consolidating the business on this coast. The Pacific-American Fisheries was owned solely by Chicago parties; they acquired it as a result of the effort of a rather noted promoter out here on this coast by the name of Onffroy, a Frenchman, who got the canneries together and sold them to the Chicago parties that were embodied in the Pacific-American Fisheries

and the Packing Co. The New York people seemingly acquired that company by acquiring the stock, and I do not think there is any of the stockholders of either one of those companies that were there at the time the receivers were appointed that are now interested at all or have been at any time. There may have been some in New York—I do not know. It is possible, because Mr. Herbert Satterlee, who was chairman of one of the committees of reorganization, I know, only by hearsay, however, had some negotiations with Mr. Rosene and Capt. Jarvis, who acted in connection with the Eckels interest in acquiring these properties; so that it is barely possible that one branch of the stockholders of the packing company may have gotten back into the Guggenheim organization, but I do not know. I have not followed that through.

Q. Mr. Satterlee is a son-in-law of J. P. Morgan?—A. Yes, sir.

Mr. HIGGINS. Do I understand you, Mr. Kerr, that the stockholders of the company were its largest creditors as well?

A. Its largest creditors as well.

Q. Who were the largest creditors, then, of the two companies?—A. The largest single creditor, I think, was the National Park Bank.

Q. The National Park Bank—was it a stockholder or its officers were the stockholders?—A. Richard Dellafield, president of the National Park Bank; he was formerly president of Dellafield, Morgan & Co., who were at the bottom of this organization. They held a very large amount of the debentures; my recollection is that he had subscribed $250,000 of the debentures—that is, the underwriter.

Q. How much of its stock did he subscribe for?—A. I do not know. I want to apologize to the committee for apparently losing my head on that matter.

Q. Of course, Mr. Kerr——A. (Continuing.) I do not know who this——

Q. Of course, you understand that if a great deal of stock was issued and was not paid for and no consideration given for it that the duty of the receiver would be manifestly to pursue the subscribers to that stock to pay what they appeared to have paid when they took the certificates.—A. No doubt; that is what we always do——

Q. And, of course, that would have manifestly changed the financial condition of the company if that had been done?—A. No doubt about it at all, and what I wanted to explain to the committee was this: I have here, if you gentlemen care to look at them—here is the final receipts from the holders of debentures, to give you an idea who those parties were—a reference to my schedules here will show you that I think 66 per cent, possibly 70 per cent, of all of the indebtedness was held by the holders of the original debenture or by banks with which the principal holders were connected.

Q. Now, have you any information that those people were also stockholders?—A. I assume that they were. I did not intend to be discourteous to the committee in the beginning. I do not know. I tried to find out. I have felt, with reference to that matter, Alexander & Green, one of the largest, or the largest of the law firms in the city of New York, were acting for the eastern receivers. They were the attorneys, as I understand it, for the company when it was organized. They had organized the company under the laws of New Jersey.

Q. And they have the custody of the books of the company?—A. They had; at least I supposed they had.

Q. And they were the ones that declined to turn them over to the receivers?—A. Well, I made my demand upon the treasurer——

Q. What is his name?—A. He was a stepson of Richard Dellafield. I called his name here this morning—Carey—he lives over in New Jersey—both in person when in New York and by letter, demanding that the books should be sent me. I wanted to find out who the stockholders were, and that was my purpose, and I was never able to get them either upon a personal demand made in New York or by letter. For some reason they withheld them from me.

Q. And of course it would have been your duty to have pursued the subscribers to that capital stock?—A. Absolutely would, and I will say to this committee that I attempted, so far as I was able, to secure a return to the creditors of this concern of every dollar through every available source whatever it may have been, and I did want to know who the stockholders were. Now, I may have been lax in it, but I expected the attorneys who organized the company and was familiar with the New Jersey statute, who were on the ground and attorneys for the principal creditors——

Q. Who were those attorneys?—A. Alexander & Green, of New York.

Q. They organized the company?—A. They organized the company.

Q. And they continued as the attorneys for the receiver?—A. And they continued as the attorneys for the receiver.

Q. And they had the custody of the books?—A. They had, so far as I know. I did not have any custody of them.

Q. Then it appears to me that it would not have been very difficult to get possession of those books.—A. All that I could do—I could not compel them to be delivered.

Q. No; but the New Jersey receiver——A. (Interrupting.) Yes.

Q. (Continuing.) Might have made demand on his own counsel.—A. The New Jersey court could have compelled Carey, who resided in New Jersey, to deliver up the books. I know that I talked to Mr. Deming, of Alexander & Green in New York. I made a number of trips to New York—for the first time in April, 1903, and asked that they get those books and send then out here.

Q. Are Alexander & Green also attorneys for the new company that was formed that took these properties over?—A. No.

Q. Who was?—A. They are a Chicago concern.

Q. Who are the firm?—A. An entirely different set of men.

Q. Will you give the name of the firm—are you willing to——

The CHAIRMAN. He means the name of the attorneys for the new concern.

The WITNESS. Out here?

Mr. HIGGINS. No; the ones that organized the Northwestern Fisheries Co.

A. I do not remember. I think—oh, the Northwestern Fisheries Co.?

Q. Yes.—A. I think Mr. Bogle is the present attorney of the Northwestern Fisheries Co. I think Mr. Bogle has been since it was organized; possibly Mr. Hartman was at one time.

Q. Was that organized under the laws of the State of Washington?—A. Gentlemen, I do not know, I am sure. I have nothing to do with it. I should rather think that it was a Maine or a New Jersey corporation, because it was New York people that controlled it.

Q. Probably New Jersey men, under those circumstances?—A. I should rather expect so.

Mr. DORR. I have a little information on that subject which I can give the committee.

The WITNESS. I had nothing to do with it.

Mr. DORR. The people who acquired this property organized the Northwestern Fisheries Co., sold it out—that is, they sold the capital stock, perhaps a year ago or such matter to an entirely different people who were located in Chicago, and the attorneys for the present company are Winston, Payne, Strong & Shaw, of Chicago, and here in this city of Seattle they have local attorneys; I think Mr. Bogle is the attorney here.

The WITNESS. That is the Booth Fisheries Co., practically.

The CHAIRMAN. Any further questions of Mr. Kerr?

The WITNESS. I want to say to the committee, if you will pardon me, that I have here in my hand a minute book of the Hanford Irrigation & Power Co., and I do not want to leave the stand until the committee has interrogated me with reference to the charge that is made here in connection with the fees that were allowed Mr. McCord and myself, to the effect that it was allowed in pursuance of a prearranged and corrupt plan between us and Judge Hanford to organize some corporation. I had the record here—it does not belong to me—I brought it here.

Q. Who does it belong to?—A. I am ready to answer any questions in connection with that that this committee may see fit to ask me.

Q. Who does the record belong to?—A. The stock of this company is now owned, as I understand it——

Q. (Continuing.) That particular book, if you want to answer.—A. I was saying—I was going to tell you the stock of this company, as I understand it, has been acquired by the American Power & Light Co., and the corporate record was obtained by us from them. That company being now, as I understand it, the holders of the stock.

Q. Then it belongs to the American Power & Light Co.?—A. I think so. But I want to say to this committee now, as a part of my testimony, that that charge is absolutely unqualifiedly false, and I am ready to answer any questions which you gentlemen may see fit to propound to me in reference to the matter.

The CHAIRMAN. It was the intention of the committee to ask you to be kind enough to let the committee have the use of this book and such other books as cover that transaction, that we might go through them at our leisure.

A. I will be glad to do so.

Q. And we will be better prepared to develop that subject in the future.—A. I would be glad to.

Q. Of course it is the committee's purpose to go into it, and we will ask you to aid us in that matter also.

The WITNESS. I will be very glad to, and after a few weeks ago, in noting what those charges were, I sent for this book—this minute book—showing who were connected with it, and the original stock book and the original stock certificate book, and I will be glad to get to this committee any record of any kind that is in my power, in connection with that company, so as to give you every available means of going to the bottom of it.

The CHAIRMAN. The committee will be obliged to you.

The WITNESS. And if you gentlemen care to take this record now I will be glad to leave it with you. I wanted to explain that I borrowed it and I have not the consent of the light company to part with it permanently, but if it is the judgment of this committee that they want to take it to Washington, or any other books, I will get them down there for you.

The CHAIRMAN. I do not think that that will be at all likely.

Mr. MCCOY. You said you got possession of some other books besides this.

A. I have the stock book and the original stock certificate book, but that record shows you from time to time just who the stockholders were, and Mr. Preston, I think, has examined the stock book, but I will bring it up here—the original stock certificates that have been renewed from time to time and canceled certificates and any other records which you gentlemen may want.

Mr. HIGGINS. Is the company still in existence as the Hanford Power & Irrigation Co.?

A. Yes, sir. It has been the purpose to disincorporate it. The American Light & Power Co. did not succeed until within a few weeks in acquiring a small block of stock that was outstanding, and they could not disincorporate the company and formally transfer its property over to the American Light & Power Co., of course, until they acquired all that stock, and I am not certain but what a petition is filed to disincorporate it. But this power plant was acquired by S. Z. Mitchell, who was formerly with the General Electric Co., and, as I understand it, operates the American Light & Power Co. of New York, buying up all of its outstanding stock.

Q. That is the American Light & Power Co. is a branch of the General Electric Co. Is that what you mean to say?—A. No; it is not a branch, but Mr. Mitchell, who is at the head of that, was for many years connected with the General Electric Co. I suppose you gentlemen would know him, because he had been very prominent in electric light and power matters for many years.

Mr. MCCOY. What we would want to do is, if we could get possession of these books up at the hotel to go through them, and that would save a lot of time.

The WITNESS. You gentlemen can look over that record——

The CHAIRMAN. What particular name do you give this record?

A. It is the minute book.

The CHAIRMAN. And what other books of the company can you furnish us?

The WITNESS. Well, that minute book and, of course, the stock journal and the stock books are the only particular records that I know of. The company's accounts, I supposed, were kept at Priest Rapids. I never had anything to do with those. I never had them and I do not know anything about them. If the committee would have to go into the accounts, I suppose you would have to get them from over there. I never was at Priest Rapids myself.

Q. In reference to the acquisition of the property of the company—the real estate by the company—what aid can you give us in that regard?—A. This company?

Q. Yes; the Hanford Irrigation & Power Co.—A. Yes, I can tell you in a general way. We bought real estate from private individuals—the Filey ranch where our headquarters are located. We purchased

part of the property from the Northern Pacific Railway Co.; we purchased the balance of it from the State of Washington. Over at Priest Rapids there is a valley comprising some 26,000 acres of irrigable land and the plan of this company was to develop power by diverting at the rapids part of the Columbia River, and we, of course, obtained the necessary consent of the War Department to do that, and to develop a large amount of power, I think I estimated at one time 30,000 or 40,000 horsepower, but I think the plan developed that we started on was to develop an 8,000 or 10,000 horsepower to pump the water required to irrigate 16,000 acres of land into a canal that was 50 feet above the level of the Columbia River.

Q. To pump the water from the river?—A. To pump the water from the river, the foot of the rapids, to lift it 50 feet and then send it by gravity down the course of the valley a distance of some 12 or 15 miles, and by another series of pumps to elevate the water to a 100-foot level above the mean water of the Columbia River, and by another lateral system of canals to reclaim some 10,000 additional acres of land.

Q. Do you mean by that, Mr. Kerr, that the canal would run the water into a basin, out of which you would pump it onto a higher level?—A. No, sir; we would pick it up, lift it up to a point 100 feet, and then carry our canals along that 100-foot level and water the area of land between our low-line and our high-line ditch.

Q. You would get that from the river, too?—A. We would get that from the river, too; yes, sir. We paid the Northern Pacific Railway Co. $10 an acre for the real arable land. That eastern Washington along the Columbia River is full of basaltic rock; it is the largest region of volcanic rock known in the world, I suppose. We paid $10 an acre, I think, for 7,000 or 8,000 acres that we purchased from the Northern Pacific Railway Co.; and up near the foot of the rapids there is a considerable area of land that has no particular value, that would be traversed by our ditch, and that we paid the Northern Pacific Railway Co. $3 an acre for, for 7,000 or 8,000 acres of that land. We paid the State of Washington $11 an acre—school lands could not be sold for less than $10—they were arid lands, absolutely worthless until there was water put on them. I recollect we bought those lands at public auction at Olympia, after due advertisement, and I think we acquired—I would have to look at the record to tell you the number of acres—but we acquired, I think, some 17,000 or 18,000 acres of land, a considerable part of which would become valuable fruit land when water was put upon it, and we started in to develop this power proposition at an estimated cost of $480,000. We carried the work along with purely local capital here for two or three years, and, like a great many of these enterprises, it developed that the actual cost of carrying them on was very much larger than the estimated cost. We had to resort to—I think we attempted to reorganize and increase our capital twice before the property was ultimately sold, but our theory was that by developing the power at Priest Rapids we could extend a transmission line down the Columbia River and supply the necessary power to elevate the water to the various levels along the river, and that we could develop a large empire of very valuable fruit and agricultural lands along the river, and the company that has purchased it are carrying that plan, and they have spent, I think,

approximating a million and a half dollars since they acquired it in carrying out the plan. But we were not able, with the capital that we had, to do it. I think we had at one time 110 stockholders, local men, in the city of Seattle and the city of Tacoma.

Q. Has the present company begun to receive returns yet?—A. Well, we began to receive returns. We put the water in the lower ditch before we finally sold the stock out to the individual stockholders and began to receive revenues from water rights that were, and we sold a large amount of land with the water rights on it, and those sales were all made with periodical payments, generally on rather long time, because the purchasers were people, as a rule, of small means, and it takes from three to six or eight years to develop an orchard or a grape ranch and to get such return out of that character of land as will enable the occupier to support himself. We have, ourselves, developed 20 acres over there; we have an orchard on it now, I think, four years old. Outside of the cost of the land, I think we spent about $8,000 or $9,000 on that land and had no returns from it yet, but as soon as the fruit is growing probably it will be worth, probably $1,200 or $1,500 an acre.

The CHAIRMAN. There was some legal controversy as to the right of the Northern Pacific Railway Co. to convey the land which you bought. I think you attended to that personally, didn't you, and investigated it and straightened it out?

A. I know, Mr. Graham, that I went on two occasions over to Tacoma and discussed with the land agent of the Northern Pacific Railway Co. questions of obtaining a contract for that land, but I am not certain whether that land has been conveyed yet. I do not remember that there was any controversy with reference to the right of the Northern Pacific Railway Co. to have conveyed it.

Q. Have you any present recollection of any ground of legal controversy with reference to the title?—A. I have not. There may have been, but you see we were attorneys for this company for two years, and then Hughes, McMicken, Dovell & Ramsey became attorneys for it. It may have been that we had some controversy, but I have no recollection of it now.

Q. At a special meeting of the Hanford Irrigation & Power Co., held at the offices of Kerr & McCord, on June 14, 1906, the minutes of which appear in the books that you have handed us, this entry appears:

> The secretary reported that the contract for the purchase from the Northern Pacific Railway of lands applied for had been checked and land descriptions found correct, and Mr. Kerr reported the legal points were as agreed upon.

Does that refresh your recollection any as to those legal points involved?—A. No; I do not remember what they were now. I might by taking——

Q. Later on perhaps you will find something which will call your attention to it.

The WITNESS. If you have anything in mind, suggest it to me; maybe you can refresh my memory about it, but I have no recollection now of any serious question connected with the title.

The CHAIRMAN. I have nothing specifically in my mind about it, only the general impression that there was such a difficulty in the way and that it was removed in some way.

A. I know this, that in the chain of title of the Northern Pacific Railway Co.'s lands there were various bonds issued, trust deeds and so on; that there was some question came up either in this title or in some other that I examined as to whether certain specific land had been released by the satisfaction of the trust deeds in the forms those satisfactions took; possibly that is what I had in mind, because I know that I discussed them with the land agent either in this case or some other case in reference to lands in eastern Washington.

Q. Do you know whether there was any litigation then pending in which the Northern Pacific Railway was a party, relative to those public lands which you received?—A. No; I do not. I have no knowledge of it.

Q. When can we receive the other books you mentioned?—A. They are in my office and I will be glad to let you have them any time you want them.

Q. This afternoon?—A. Yes.

Q. So that we might use them at our leisure?—A. Yes, sir; I will be very glad to let you have them.

The CHAIRMAN. Any further questions with Mr. Kerr?

Mr. PRESTON. I heard Mr. Kerr with great difficulty at several points——

The CHAIRMAN. He seems to let his voice drop so low that it is difficult to hear him.

Mr. PRESTON. There are one or two matters that I would like to inquire about; it is possible that I may be duplicating the record because I did not hear it well, but I will try to be brief in the matter.

The CHAIRMAN. Certainly; proceed.

Mr. PRESTON. The eleventh report of the receivers shows cash received to March 9, 1905, $5,117,760. The twelfth report seems to be missing from the files in the clerk's office. The thirteenth report shows cash receipts from July 11, 1905, to October 23, 1905, $212,297, making a total of $5,330,000, leaving out of consideration the twelfth report, which would therefore exclude the receipts between March 5, 1904, 1905, and July 11, 1905.

Now, my understanding that I gathered from my examination of the papers was that $5,330,000 and whatever more there may have been that would be covered by the twelfth report, included cash receipts from all sources.

A. Yes, sir.

Q. That would include the cash receipts from the master's sales of the assets.—A. If they had been made, it does.

Q. Yes; they were made previously.—A. Yes, sir; that would include them.

Q. So that, as I understand it, that would include the conversion into cash of all the assets of the company.—A. Of that one company; yes, yes.

Q. You spoke in your examination of Mr. McGovern having a salary; I could not understand clearly whether you meant that he had that salary while he was receiver or previous.—A. No, sir; up to the time he was appointed.

The CHAIRMAN. Previous to his receivership, $15,000 a year.

A. He was paid $25,000 a year—the manager was paid $15,000, as I remember it; Mr. Ainsworth was manager—either twelve or fifteen thousand—I think it was fifteen thousand.

Mr. McCoy. Did they get it, Mr. Kerr, or were they suspended like some others?

A. No, sir; they received it; they did not let their salaries get behind six months and more than six months, the way that some of the rest of us did.

Mr. Preston. Now, I understand from these reports that in the Pacific Packing & Navigation Co. there were no allowances out here in this court to Mr. Hallock as receiver and none to his New York attorneys?

A. No; they simply took the funds they had on hand and put the allowance made in New Jersey and took their pay out of it and sent me the balance.

Q. You spoke of the allowance of the receivers in this court being $35,000 each; you mean to confine that to yourself and Mr. McGovern.—A. That is all; yes, sir.

Q. Now, was there not a very large percentage, in amount, of creditors who participated in the receivership proceedings?—A. A very large amount.

Q. Do you remember the amount?—A. Well——

Q. Now, let me ask this question——

Mr. Higgins. They were all holders of debentures, or most of them, these creditors?

A. No. When we operated the second year the signers of the petition to Judge Hanford requested that he permit the receivers to operate the canneries represented in debentures and notes over $2,500,000 at a time when our outstanding indebtedness was a little over $3,000,000. Now, there could not have been all note holders, because we had outstanding in debentures something like $1,200,000 or $1,500,000, so that both note holders and debenture holders petitioned, and they had that petition printed, under the practice of New York, and sent it out here to me. Judge Hanford was in San Francisco holding court, and by telegram they directed me to go to San Francisco and there present the matter to Judge Hanford for the purpose of getting his consent that the receivers might operate in 1904, and I did that. And you will find that was filed here on the 20th of January, I think, 1904. I can tell if I could look—if I had access to the petition—because I know who the debenture holders were.

Mr. McCoy. Your question was a little different from that, was it not, Mr. Preston—your question referred to a different period.

Mr. Preston. My question was general; it covered the entire period of the receivership. I notice in the papers I examined several occasions when there was appearances by creditors in block.

A. Yes.

Q. I mean written appearances, petitions, consents, etc., one block being $1,800,000 and the other block something $500,000.—A. Yes, sir; they appeared here—I was not present when the fees were fixed.

Q. I am not speaking of fees, but other steps in the proceedings; when the petition was made to sell out the assets.—A. Yes, sir; when the petition was made to operate the cannery also.

Q. Now, taking that figure of $2,300,000; about what percentage would that be, in rough calculation, in your mind, of the total creditors?—A. At that time we had an outstanding unpaid indebtedness of $3,100,000. I think it was practically over $2,500,000 in

amount, petitioned to have the cannery operate; leaving only about $600,000 unrepresented, and that was scattered around the East, such places as Boston, and some of it in Europe. I suppose those people who were acting down there did not deem it necessary to go and pick them up.

Q. Do you mean to say that the majority in amount who petitioned for the operation of the canneries were holders of debentures?—A. Yes, sir.

Mr. PRESTON. That is what I supposed——

Mr. HIGGINS. I understand they were both debenture and note holders.

A. They were both, but I understand, Mr. Higgins, the question asked me in my judgment whether the majority of them were debenture holders. I think they were, because I know that the American Bank, I know the National Park Bank and Mr. Dellafield, I know that the Colonial Trust Co. were among the very largest of all the creditors, and other members of the reorganization committee whose names slip me at the moment were all on that petition, and I feel very sure that the petitioners were about equally divided, possibly, between the debenture holders and the note holders.

Mr. PRESTON. Do I understand that you were not present in court when the matter of the final compensation was submitted?

A. No, sir; I never heard any discussion with Judge Hanford or anybody else about what the compensation would be; not a word.

Q. The papers here show that those creditors, $2,300,000 in amount, participated in a submission of the matter of compensation of receivers and their attorneys to the court. Were you a party to that, or have I got to get somebody else who can testify as to that?—A. No, sir; I was not present. All that I know about it is what the records show and what I was told by Mr. McCord. I did not know that the fees were to be fixed at that time, but that the parties had appeared here before the court; that a large percentage of the creditors were represented, and he reported what the court had done in the way of fixing the fees.

Q. Now tell me this, or tell the committee this, was there any criticism or objection made, that you know of, by any creditor or person interested in either of those corporations as to the allowances made?—A. Never. I never received a letter; I never heard a creditor or anybody else ever objected to it. If there were any objections made, they never came to my ears until these charges were made here. I have heard parties outside that were not interested—I remember one local paper here—thought the fees that were allowed were very large and some comment about it.

Q. I am asking you only about those that were interested.—A. (Continuing.) But from the parties in interest I never heard any objection at all.

Mr. HIGGINS. You do not know, I think you said, Mr. Kerr, whether the largest creditors of the company were interested in the Northwestern Fisheries Co. that finally at receiver's sale bought these properties?

A. I really do not know. I never saw the list of the stockholders of the Northwestern Fisheries Co. I do know that Mr. Satterlee, of New York, was chairman of one of the committees for the organization of the packing company. They appointed two committees—they

were in two factions—and I know that Mr. Satterlee, from conversations I had with Mr. Rosene and Capt. Jarvis after the property was purchased, had some sort of relationship with Mr. Satterlee, but so far as I personally know there are no common-stock holders; there may be, but I have no knowledge of it.

Mr. PRESTON. Am I correct in understanding your testimony to be that all of the open accounts for labor and supplies were paid, except some back accounts for attorneys' fees?

A. Yes, sir; and a few small, petty accounts that did not amount to more than $300 or $400 outside of what was due the attorneys—possibly $500 or $600.

Q. I notice among the files an order of Judge Hanford allowing Judge Winn $7,500 on account, and with the order is attached a certified copy of a previous order made by Judge Brown in Alaska to that effect.—A. That was done, Mr. Preston, for this reason: Judge Winn, in Alaska, handled no funds. I had to go to Alaska, get Judge Brown to vacate two orders that Judge Winn had entered up there after we began our operations, one of which was that the receivers were to deposit all funds in the National Bank of Juneau, while under our agreement under which we floated $1,250,000 of certificates—and that order had been made by the Alaska court—we were required to deposit our funds in the Bank of California, and after writing Judge Brown I had to go to Juneau and get that order vacated. So that there were no moneys passed through the Alaska receivers' hands, and they sent down this certified copy of the order from the Juneau court and Judge Hanford confirmed it by order, so that I could pay it out of the funds in my hands.

Q. I understood quite clearly from your testimony that the receivership operations of the canneries were profitable before that, in the years 1903 and 1904 of the Pacific Packing & Navigation Co.—A. They were.

Q. Now, I gathered from the reports that the first year of the operations of the canneries of the Pacific-American Fisheries Co. were unprofitable.—A. The first year they were unprofitable, and we covered the losses the second year and made—I think our report of my auditor shows that there was a profit of something like $8,000 or $10,000 on the two years' operations; but it took pretty hard work.

Q. You speak of the master's fees allowed by the court; are they not regulated by statute?—A. Yes, sir; the master's fees, I understand, are fixed by statute at 1 per cent, and I think the clerk's fees are about a half of 1 per cent.

Q. Am I right in understanding that the first two years, 1903 and 1904, the receivership took up your entire time?—A. My entire time.

Q. And the next year?—A. The next year I kept a stenographer and I also kept in my employ for a considerable time an accountant—I forget what time Mr. Dumar left me and went to Ainsworth & Dunn, but I finally dispensed with the accountant and kept my own accounts, but I kept a stenographer during most of the year 1905.

Q. But the object of my inquiry was to find out whether most of your time, if not all of your time in 1905, or whether any considerable portion of it, was devoted to that work.—A. In 1905 it was very largely devoted to the packing company matter, although I tried several cases during the latter part of that year—I got back into the practice to some extent.

Q. Did you engage in any law practice during the years 1903 and 1904 of your receivership?—A. I don't think I tried a single case—I don't think I did anything in the office.

Mr. PRESTON. Mr. Chairman, was it your purpose to have Mr. McCord testify and have him examined?

The CHAIRMAN. Yes; I think he ought to appear.

Mr. PRESTON. Then that ends my examination. I thought if he was not going to be called I would ask Mr. Kerr some questions as to the legal services.

The CHAIRMAN. I think the record would be more complete if he should appear. Can he appear now?

Mr. KERR. Mr. McCord has an argument to make before the circuit court of appeals on Monday morning and he is on his way to San Francisco, but he will be here, probably, not later than Wednesday evening of next week.

The CHAIRMAN. In view of Mr. McCord's absence from the city, if there are some other matters which you wish to ask of Mr. Kerr——

Mr. PRESTON. No; not if we are going to have him as a witness; otherwise I was going to ask for some description of the work of the attorneys.

The CHAIRMAN. It would be entirely proper they should both do this.

Mr. MCCOY. I would like to make this suggestion, that Mr. Kerr go ahead as far as he can, and if it then occurs to you that there is anything on the legal end of it that should be said by Mr. McCord he can be called, and it is possible we can finish with Mr. Kerr this afternoon.

Mr. PRESTON. Will the committee indicate to-day——

Mr. MCCOY. I would like that you would ask Mr. Kerr along that line.

The CHAIRMAN. If there is anything in your mind——

Mr. PRESTON. I would like you to tell the committee, Mr. Kerr, as well as you can from your memory, the scope of the legal side of the services of the receiver; that is, the services performed by Mr. McCord as attorney for the receiver.

A. The two matters that took up probably the most time in consecutive days of the attorney for the receivers were the Nome City cases, the record of which is in this court and in which a large amount of money was involved and a very large amount of time was consumed. Mr. McCord can give the detail better than I can, because I was not present, except, as I think, that I was a witness in the case. The litigation that resulted over the patent in which I suppose Mr. McCord was acting not only for these two receiverships, but was also acting for a third party—there were some voluminous briefs prepared in that litigation and a very considerable amount of time taken in the trial in both courts taking the testimony. Mr. McCord appeared in a great many contests of one kind and another that came up in the receivership, as well as prepared nearly all the orders and petitions, etc. We had two personal-injury matters. The case of Fielding was reversed after the receivers were appointed. We had a man injured coming down on one of the tugs from the north and a considerable negotiation over the adjustment and settlement with him. We had litigation with the Pacific Selling Co., involving some $66,000, which was spirited. They were claiming a preferred claim against the com-

pany for that amount, the claim being made after the receivers were appointed that in some way they were the selling agents of the packing company. They had allowed $66,000 in amount of warehouse receipts belonging to the selling company to get into the possession of the packing company, and they had sold them and availed themselves of the proceeds. Their claim was finally established as a common claim. Griffith, Deering & Co., of San Francisco, were claiming damages against us on account of the alleged violation of a selling agency contract for certain Alaska canneries, being one of those long-time broker's contracts. I think they were claiming some $40,000 or $50,000. The claim of the Pacific Steam Whaling Co., growing out of transactions with the old company, that company having sold them a large amount of property in Alaska and some canneries, a lighterage plant at Nome, and some steamers of various kinds in the whaling business. There was a contest with several Chinese firms. There were contests or controversies with parties at Ketchikan—a long contest over contracts that the company had for the purchase of box shooks. There was a personal claim of Harry Knowles that was not finally ended by litigation in this court until some time in 1908. There was afterwards a very spirited contest with Corby. While that was tried by other attorneys in the New Jersey courts, of course the burden of the preparation of the defense in the case and the taking of all of the testimony fell upon Mr. McCord here. There were of course a great many—in operating all of these canneries and these various steamship lines we had numerous strikes; the waiters were called off our ships; the engineers were called out; we had labor union delegations to contend with, and Mr. McCord did a lot of that negotiating and was called upon to settle all matters practically where there were legal questions involved. My time was taken up with the operation of the cannery, and, as I stated to the committee, after the first year I was alone in that operation and I had to refer all those matters to Mr. McCord. He prepared all our Chinese and other contracts, and there are a great many of them in the handling of any one cannery. We have Chinese contracts and fishermen's contracts and agreements of one kind and another innumerable that have to be prepared by the attorneys. So that Mr. McCord was called upon by the receivers during the two years of operation almost constantly. I mean by that every week. A considerable amount of his time was taken up in the preparation of petitions and orders and the settlement of details of the business that we settled without getting into any controversy that never ran through our reports at all. We had disputes over purchasers of one kind and another that resulted in negotiations and settlements, such as business men usually have, that do not appear upon our reports because they were worked out successfully without the matters getting into court.

Mr. PRESTON. Let me ask you, too, if you can, to give the committee a rough comparison of the extent of the services performed by Mr. McCord as attorney, as one gathers them from looking through the records in the court and those which would not show up in the records.

A. Well, just to illustrate to you: We are attorneys for a number of those cannery companies now. Most of them retain us by the year. The Pacific-American Fisheries Co., one of those succeeding corporations—in one year they paid us a salary of $5,000 and they did not

have a single litigated case either in the Federal or State court, and so far as that company's record is concerned it might not show that the attorneys did a very large amount of work, but we were called upon in a great many matters as counsel and made various trips to Bellingham—I suppose 15 or 20 during the year—in connection with their business. And so it was with this receivership; the reports of the receivers do not show the amount of time that the attorney put in.

Q. I am asking you to give an estimate, as well as you can, of the extent of the services performed.—A. Mr. Preston, if you were to ask me now how many days' time I put in for any of the numerous companies for whom we were attorneys last year, even if I could go to my books—because we do not keep our fee accounts out here in the West the way they do in the larger cities, where they make a note of every minute's time that has been put in, in consultation or otherwise—it is difficult for me to do so; but, for instance, in operating 15 or 20 canneries, in getting out the contracts, and in the winter we would simply send a memorandum down to the attorney of the payments and the amounts of the guaranties, etc., and direct the attorney to prepare a contract and give the name of the party, and he would have that work to do. There was a great deal of that work that took up a very considerable amount of his time.

Q. I should judge, from my examination of the files in the two cases, that Mr. McCord appeared in court perhaps a couple of hundred times.—A. I think he did. I think that he was before Judge Hanford that many times.

Q. My question is, was the work outside of the office, that does not show upon the papers, do you think, as much as that or less than that?—A. More than that, in my judgment.

Q. I am asking you for a comparative statement and not accurately.

Mr. McCoy. Take it in the litigated matters, how successful was Mr. McCord?

A. The only case that he was unsuccessful in—some of them partially successful only—was the Corby case, which you will find reported in 158 Federal Reporter. That case was lost, although the court work was done, of course, by a New York attorney, by Alexander & Green, in that litigation, although we took the testimony out here.

But in all those matters that we had before the court here I think the attorneys were entirely successful. There were some small allowances made in some insurance controversies we had; with that exception they were all successful. As I say, but for the work of resisting those demands to establish preferred claims we would have had very little to distribute.

Mr. Preston. I think you overlooked, perhaps, the patent cases; you were not successful in those.

A. Oh, yes; the patent cases. In the patent cases I think Mr. Dorr's company was pretty generous with us when they let us off at a thousand dollars. The Pacific Packing & Navigation Co. had been using, in 16 or 17 canneries, the alleged infringed machines and running from two to eight of them in each cannery; but at all events we got out of that after that long litigation at a minimum of expense.

Q. Now, Mr. Kerr, I would like to ask you this question——A. (Continuing.) They were asking, I think, something like $100,000 damages against us.

Q. (Continuing.) Whether or not the fact that you were receiver of those two companies and received thirty-five and seventeen thousand dollars as fees——A. (Interrupting.) $53,800 was the amount I received, and I think I earned it.

Q. (Continuing.) But whether or not that was a profit to you to do that, or whether it would have been more profitable to you if you had been practicing law as before and since?—A. My practice before that and since that has paid me a great deal more than that amount—more than an average of seventeen or eighteen thousand dollars. It has paid the last several years—it has paid practically twice that each year. I gave up my entire practice for the purpose of carrying on this receivership against my will.

Mr. PRESTON. I have no further questions.

Mr. MCCOY. The suggestion has been made about these records, to carry out the plans as adopted in regard to some of these other records, that it is possible to take them—to get an order of the court allowing them to go to Washington. They can be used for any purpose the whole committee sees fit and returned after that.

Mr. PRESTON. Oh, yes; but I think temporarily they ought to be returned to the clerk's office.

Mr. MCCOY. Oh, sure.

The CHAIRMAN. Have you any witness we could proceed with now?

The committee will take a short recess at this time, and we may not be able to resume business for the want of material. During the recess we will ascertain whether we can do something more; if we can we will.

Short recess.

The CHAIRMAN. The committee will be in order.

Mr. HUGHES. We have a witness here now; Mr. Griffiths.

The CHAIRMAN. Mr. Griffiths.

AUSTIN E. GRIFFITHS, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name.

A. Austin E. Griffiths.

Q. Where do you live?—A. Seattle.

Q. You are an attorney by profession?—A. Yes, sir.

Q. Have been how long?—A. Since the summer of 1887.

Q. Are you acquainted with a lawyer in Salem, Oreg., named L. H. McMahon?—A. I was several years ago.

The CHAIRMAN. I think you wish to inquire of Mr. Griffiths concerning the lawsuit which Mr. McMahon testified about?

Mr. HUGHES. Yes.

The CHAIRMAN. Well, you can conduct it more satisfactorily than I can. You know the facts.

By Mr. HUGHES:

Q. Mr. Griffiths, were you the attorney for the defendant in the case in the Federal court in which Mr. McMahon represented the plaintiff?—A. Yes; I was the attorney for both defendants in all that litigation.

Q. There were two defendants, were there? Explain to the committee, briefly, what transpired in those cases, not going into the nature of the controversy further than is necessary to explain what

transpired as involving the conduct of Judge Hanford.—A. I don't know of anything that was——

Q. (Interrupting.) You might state what the action was.—A. I was going to say I don't know anything out of the way, anything exceptional, except in two matters Mr. McMahon was checked in his address to the juries. Those were the only two instances throughout the long litigation that in anywise were different from the ordinary lawsuit, and in that respect no different from a great many lawsuits where attorneys are interrupted during the course of their argument on account of going outside of the record, either by the judge or by opposing counsel.

The first case was nonsuited because it was brought against the wrong defendant. The second case, like the first, was to recover $25,000 damages for personal injury. On the argument of Mr. McMahon to the jury on the second case he was proceeding to tell the jury that employers and capitalists are utterly regardless of the life and limb of their employees and that, for illustration, the owners of the street railways in New York City got together after an ordinance or law was passed requiring fenders to be affixed to their cars and inquired of their lawyers what it would cost to ignore the laws and pay damages to persons injured by cars without fenders, and inquired of their managers what it would cost to equip their cars with fenders in obedience to the ordinance or law; and on being told that it would cost them less to ignore the law and pay damages, by their lawyers, than it would to equip their cars with fenders they said: "The people can go to hades," or words to that effect, "We will ignore the law and pay whatever damages we are compelled to pay." Just about that time Counsel McMahon was interrupted by the court, who said that this case ought to be tried and must be tried, at any rate, in his court, by the record made in this case and not by what men in New York said or did not say. Mr. McMahon apologized and went on with his argument to the jury. That was the only interruption whatever, that I know of, that occurred on that trial out of the usual run of lawsuits.

On a motion for retrial, after the presentation of a lot of affidavits and arguments, the motion was finally granted, something very, very seldom done by Judge Hanford, to grant a new trial; but the ground on getting a new trial was rather exceptional, and the verdict of $7,000 was therefore set aside. Mr. McMahon was assisted in that second trial by ex-Attorney General Stratton, of this city.

Q. Now of this city. He didn't live here at that time, did he?—A. In——

Q. (Interrupting.) At that time did he live in the city of Seattle?—A. Yes.

Q. Yes; I think he did.—A. Yes; oh, yes. The firm was McBride, Dalton & Stratton. Stratton was personally in court. Do you want the grounds of the new trial?

Q. Well, not unless the committee desire it.

Mr. HUGHES (addressing the committee). Do you desire it?

Mr. DORR. If there is anything unusual.

By Mr. McCOY:

Q. Was there some complaint of the judge's action in that respect?—A. No; not that I know of.

Q. Why do you mention it?—A. I just was giving a succinct account of the litigation.

Q. I mean you said it was unusual, or something of that kind.—A. Well, I meant by that that during my experience of perhaps—before Judge Hanford in Tacoma and here—for 15 or 16 years, it is my recollection that new trials were very seldom got.

Q. You mention about the fact that the new trial was granted on affidavits. Was there anything peculiar in that circumstance?—A. No; we frequently get new trials—motions for new trials are supported by affidavits; but this was a peculiar thing about this motion: The defendant introduced in evidence a diagram of the machinery of the mill, its original location, to show that the plaintiff should not have been in that particular part, and so on. Well, in rebuttal the plaintiff's witnesses, several of them, said that we changed the location, and after the trial—and of course that was very serious testimony; you realize that, that that was tantamount to saying that the defendant was deliberately introducing in evidence a diagram to defend a case whereas a matter of fact that part of the mill—that piece of machinery—had been changed in its location and was located at the time of the accident at the place these witnesses said it was. Well, after the trial was over I got these several—two of these witnesses, at any rate—to go on the ground and examine the machinery and the bolting of it, and so forth, and they realized their mistake; and I got other witnesses, new witnesses who had been in the employment of that mill from the time that mill was built past the time of injury down until the time of the trial, who swore that there had never been any such change in location. So that the affidavits of those new witnesses, coupled with two affidavits of plaintiff's own witnesses, showing to the court that they were in error when they testified in rebuttal that we had changed the location of that defective machinery, led the judge to grant us a—I think that was the main reason that led the judge to grant us a new trial.

Q. Was it on any material point?—A. Oh, most assuredly yes; yes.

The CHAIRMAN. How would the change of location be material? Wasn't it in the machine rather than in the location of the machine?

A. Yes; true. In the second trial they testified that this defective machinery or appliance was situated right in front of where the man was required to work as an offbearer by the live rolls, made it appear that it was necessary for him to be there and run the risk of contact with that defect—so with defective machinery; whereas our testimony and the model we introduced, and the diagram, showed that piece of defective machinery was 8 or 9 feet away from where he was supposed ordinarily to stand; and when we introduced that in evidence as a part of our case, in rebuttal these two witnesses said, "You changed it over 8 or 9 feet away" and put it right by where this man ordinarily stood to do his work. Well, when those men went back to the old mill and saw and examined the machinery on the ground, they were satisfied that they were in error, and with other witnesses it was clearly shown to be wrong testimony on their part.

Mr. MCCOY. You are mistaken, aren't you, in saying that they claimed that it was moved into the dangerous place? It was moved the other way, they claimed, wasn't it, or something of that kind?

A. No; no; no. In other words, if I am working out as offbearer on the live rolls here, and there is an imperfectly covered piece of

machinery right in front of me, I am more liable to be injured in contact with that piece of machinery, because I have to work here right by it; but if that piece of defective machinery is back there 8 or 9 feet, or 6 or 7 feet, I am not supposed to be there at all, and there is less liability of my getting injured by contact with it, of course. If you are a juror, the testimony that I am required to work day in and day out opposite—right next to—this piece of alleged defective machinery would make a big difference upon your mind than if the testimony showed that it was 8 or 9 or 6 or 7 feet away, where I am not supposed to be at all. Well, these people said it was here, right by him. The real truth was it was over there, and we showed it to the court that they were mistaken. I think that was the special reason for the granting of a new trial.

On the second trial Mr. Stratton was also present and assisted, and on that second trial a Mr. Reynolds, of Tacoma, assisted me. During the argument of Mr. McMahon to the jury on this second trial, he again, in my opinion, went out of the record in addressing the jury, to inflame the jury against the defendant, and I checked him, and Judge Hanford sustained my exception to his traveling outside of the record. That was the only incident in that second trial out of the ordinary, but that is common to lawyers in the practice of cases.

By Mr. HUGHES:

Q. What was the demeanor of Mr. McMahon throughout these trials, aside from the two matters that you have mentioned?—A. Very—very much interested, of course, very energetic in behalf of his client; nothing out of the ordinary.

Q. What was the demeanor of Judge Hanford?—A. The same as in all cases in which I have observed Judge Hanford.

Q. Mr. McMahon has testified that Judge Hanford during that time was, in his opinion, asleep at times. Did you observe anything of that kind?—A. No, sir.

Q. Did anything of that kind occur?—A. Not that I know of.

Q. Well, engaged as you were in the trial of that case, could it very well have occurred without your knowing it?—A. No, sir.

Q. Mr. McMahon has also testified that in his opinion Judge Hanford was at least slightly under the influence of liquor once or twice in the afternoon after lunch during that trial. Did you observe anything of that kind?—A. No, sir. The first intimation I have ever heard of that in connection with that trial.

Q. Have you, in connection with any other trial, respecting Judge Hanford?—A. No, sir; not until this investigation arose. I never heard a lawyer in all my practice in this State that——

The CHAIRMAN (interrupting). I don't think Mr. Hughes has asked you that question, or a question requiring that answer. We have been avoiding reputation evidence.

Mr. HUGHES. You may state whether you have ever known Judge Hanford to be under the influence of liquor, either in or out of court.

A. No, sir.

Q. You may state whether you have ever known Judge Hanford, in being asleep or otherwise, to appear to neglect or to be inattentive to the business progressing before him when presiding over the court.—A. No, sir.

Q. What can you say to this committee respecting Judge Hanford's judicial ability and his judicial temperament?—A. I have always

regarded the judge as fair-minded and absolutely fearless. I have observed the judge, both here and in Tacoma, in Tacoma before I finally moved to this city, for 15 or 16 or 17 or 18 years; I don't recall the exact number of years, and that has always been my judgment or opinion of the judge, although I may not agree with all his decisions. I have observed the judge in little cases and big cases, admiralty cases and law cases, equity and civil.

Q. Have you ever known of any instance where any discrimination was practiced by Judge Hanford, or shown by Judge Hanford, in favor of one class as against another, or in favor of important interests as against the weak, or in favor of the rich as against the poor?—A. Nothing of that sort whatever in any practice or observation of mine. I could give instances of my own practice, if it were necessary, indicating his interest in cases of small importance apparently and relating to mere individuals.

The CHAIRMAN. Is that all, Mr. Hughes?

Mr. HUGHES. Yes.

The CHAIRMAN. Any further questions? I guess that is all, Mr. Griffiths.

Witness excused.

An adjournment was here taken until 9.30 o'clock next Monday morning.

FIFTEENTH DAY'S PROCEEDINGS.

MONDAY, JULY 15, 1912—9.30 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will please be in order. Gen. Stratton, we will use you at once, as you wish to get away.

W. B. STRATTON, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name, please?

A. W. B. Stratton.

Q. Where do you live, Mr. Stratton?—A. In Seattle.

Q. How long has that been your home?—A. I have lived here about seven years and a half.

Q. You are an attorney at law?—A. Yes, sir.

Q. You are in the practice of your profession?—A. Yes, sir.

Q. Do you know Mr. L. H. McMahon, of Salem, Oreg.?—A. Yes, sir.

Q. Do you recall a case in which he and you were counsel for the plaintiff, which was tried at Tacoma, I think, before Judge Hanford——A. Yes, sir.

Q. (Continuing.) Some years ago?—A. Yes, sir.

Q. The case was heard more than once, was it not?—A. Yes, sir.

Q. How often did you participate in the hearing of it?—A. During the entire proceedings in each of the trials.

Q. There were three trials?—A. Yes.

Q. Have you any recollection of any demeanor of the judge upon the bench during any of those trials that was out of the ordinary?—A. No, sir.

Q. Do you recall at any time the judge apparently being in a state of drowsiness or sleep?—A. No, sir; I don't.

Q. Do you recall anything unusual in his demeanor during that trial?—A. I don't.

Q. To what extent have you practiced law before Judge Hanford?—A. Well, I have been practicing in the State of Washington a little over 20 years, all the time in Judge Hanford's judicial district, and I have had the practice that an ordinary lawyer would have in the courts in his neighborhood. I have tried quite a number of cases before Judge Hanford.

Q. How long ago was the trial to which I have referred?—A. I think—the first trial of that case, I believe, was in 1906, or thereabouts, but I would not be positive about that date; but it was close to that, within a year, anyway.

Q. Have you at any time during your practice in Judge Hanford's court noticed any peculiarity in his demeanor while on the bench?—A. No. I have noticed occasionally during the trial of a long case that the judge would close his eyes, but I never at those times observed his inability to rule clearly if an objection were made at the time that his eyes were closed; he seemed to always know exactly what was going on.

Q. Have you ever observed the judge using intoxicating liquor?—A. I never have. I think I have seen him take a drink of liquor, but never more than one at one time. I have seen him take a drink of what I supposed to be liquor. I never have drank with him myself.

The CHAIRMAN. Anything further, gentlemen?

Mr. DORR. I would like to ask him two or three questions.

The CHAIRMAN. Proceed.

By Mr. DORR:

Q. Referring to the personal-injury case again, Mr. Stratton, do you have any recollection of any incident or incidents in the proceedings on either or both of those trials where Mr. McMahon was reprimanded by the court? If so, state fully what occurred.—A. Well, I would not say that Mr. McMahon was reprimanded during the trial of that case. While Mr. McMahon was arguing the case to the jury, on the second trial, he was discussing New York corporations. I don't know whether the judge of his own motion said to Mr. McMahon that they were not trying New York corporations and this case would necessarily have to be tried upon the evidence and record in this case; I am not sure whether Judge Hanford made that remark on his own motion or on the objection raised by the other side; I don't recall which that was.

Q. Well, was something of that kind said?—A. Yes; but I would not—I didn't consider that the judge's remarks were intended to be a reprimand.

Q. Did anything of that kind occur more than the one time?—A. In the first—in the second trial; that is all.

Q. Mr. McMahon has testified that Judge Hanford was in liquor while on the bench during that trial. What do you say as to that matter, Mr. Stratton?—A. There was not the slightest indication, to me, that the judge was in liquor. I would say that he was absolutely sober at all times.

Q. And was he attentive or otherwise to the trial as it proceeded?—A. I consider that he was very attentive; knew everything that was going on all the time; ruled clearly on all objections that were made.

Q. The statement is also made by Mr. McMahon that Judge Hanford was asleep at one time during one of those trials for a period approximating 15 minutes and he woke up with a loud snore, which was audible all over the court room. What do you say as to that statement?—A. I have no recollection of anything like that taking place in the court room while I was there, and I was there all the time.

Q. Mr. McMahon has further testified that Judge Hanford's rulings were intolerable——

The CHAIRMAN. Mr. Dorr—of course I say it for your account as well as my own—in quoting what some one has testified shouldn't you qualify it somewhat by "as you recall it," or something to that effect? I don't remember whether your language is exactly right or not. It may put you a bit wrong in the record to state it positively as his testimony.

Mr. DORR. Well, I will ask the question in this way, may it please the committee——

The CHAIRMAN. I think it is perfectly proper for you to say "As I recall it, Mr. McMahon testified so and so," but to state it as an absolute fact—you may be right, but I don't know.

Mr. DORR. Whether there was anything in Judge Hanford's attitude upon the bench during those trials, or either of them, that appeared to you to be arbitrary or intolerant in his rulings, demeanor toward the attorneys, or any of them?

A. No; my observation was that Judge Hanford was eminently fair to both sides.

Q. Do you remember the granting of a new trial?—A. Yes; I do.

Q. And do you know on what ground the new trial was granted?—A. Well, in the first trial a voluntary nonsuit was taken because the wrong party had been sued. In the second trial there was verdict, I think, of $7,000 in favor of the plaintiff. The plaintiff's witnesses, most of them, were in the employ of the defendant during those trials. A motion for a new trial was made, supported by affidavits of some of the witnesses of the plaintiff and of other persons. My recollection is that the witnesses who had testified for the plaintiff in the first two trials as to the location of a piece of machinery, I think——

Q. (Interrupting.) The first trial, you mean?—A. First and second; both. A new trial was granted from the verdict in the second trial.

Q. Oh, yes.—A. Those witnesses had testified to the location of a certain piece of machinery, I think a set screw, and the different witnesses denied that the set screw was located at the place our witnesses said it was, and I think two or three of our witnesses made affidavit to the effect that in their testimony they had been mistaken as to the location of that piece of machinery and that since they had testified they had examined the machinery and were satisfied that they were mistaken, and stated that on a new trial they would testify that the machinery or set screw was located at a place other than they had testified to in the first two trials. My recollection is that——

The CHAIRMAN (interrupting). Mr. Kerr, before leaving: In going over the stock book, or really the stock books, which you gave us we find the first one is not among them.

Mr. KERR. The first one?

The CHAIRMAN. Yes.

Mr. KERR. Well, I will state to the committee those are the stock books that they sent. The first one, I think, is a small certificate, and I thought they began with No. 1. I see no stock issued in that matter until, I think, in 1906.

The CHAIRMAN. We are not quite sure, but we had the impression that there was one earlier than those you gave us.

Mr. KERR. I hardly think it.

The CHAIRMAN. And of course if there is we would like to have it too.

Mr. KERR. I will be glad to get it for you. I will state to the committee, while you call my attention to it, Saturday afternoon I went down to my office and I found certain copies of certain contracts with reference to the original organization of the company, and certain maps. Whatever I have I want to tender to the committee, so that they may look them over, and if there is anything they want to examine into they may do so.

If the committee will let me see the—what I thought was the first stock book, I will telegraph to Portland and ascertain.

The CHAIRMAN. Well, you can probably tell by looking at the one we had——

Mr. KERR. I think I can.

The CHAIRMAN (continuing). Whether it is the first. It may be that there was some temporary record before that one.

Mr. KERR. I think, if the committee please, that this book that I hold in my hand, stock certificate No. 1, issued December 19, 1906, I think is the first stock that was issued.

Mr. HIGGINS. Notice certificate No. 2 in the book.

Mr. KERR. The journal?

Mr. HIGGINS. No, Mr. Kerr, the book that you have in your hand now—the certificate No. 2. From the issuance of that certificate it would appear that that certificate was issued in substitution of one that was formerly issued, if you will notice the mark on the stub.

Mr. KERR. Yes, I see; I see. I will find out.

Mr. HIGGINS. And the date which appears on the stub of that stock book does not correspond to the other records of the company.

Mr. KERR. All right; yes.

Mr. HIGGINS. In other words, there is a hiatus of several months.

Mr. KERR. I expect that this was what was done, although I will endeavor to find out. When we incorporated the company, under the laws of Washington all of the stock must be subscribed. My recollection, speaking offhand now, is that the original board of trustees was composed of some 10 or 12—I don't remember the exact number—each of whom had to have a certificate of stock to make them qualified, and, with the exception of Mr. Haines, subscribed for one share of the stock, and Mr. Haines subscribed for the balance of the capital stock.

Mr. HIGGINS. That all appears in the other books of the company.

Mr. KERR. What I am getting at is this: That we probably issued typewritten certificates for that original subscription, which were afterwards surrendered, and that these renewals were taken from the certificates, for example, issued to Mr. Haines. But I will endeavor to find out. If there is any other book, I will get it for the committee.

Mr. HIGGINS. If temporary certificates were issued, those would be preserved, and the natural order of things would be that they would be in the records of the company.

Mr. KERR. I understand; but we haven't had the custody of those since we turned them over to the American Light & Power Co. I will endeavor to get them.

The CHAIRMAN. One more question, Mr. Kerr: Is there any objection to the subcommittee taking those books, temporarily, with them, to submit to the full committee?

Mr. KERR. Temporarily?

The CHAIRMAN. Yes; and they will be sent back to you.

Mr. KERR. I will say this to you: I will get the consent of the American Power & Light Co. that you take these records with you. They do not belong to me.

The CHAIRMAN. If that is done, we will fix it so that you will have a letter in the nature of a receipt and promise of their return.

Mr. KERR. I will write to the manager in Portland to consent to it.

The CHAIRMAN. Proceed now, gentlemen.

Last answer read.

A. (Continuing.) That those were the only grounds upon which the new trial was urged. I argued the motion for a new trial, Mr. McMahon not being present. The court granted the new trial, saying that in his opinion the location of that machinery was a material part of the testimony in the case.

Mr. MCCOY. You thought differently, did you, Gen. Stratton?

A. I argued differently. I would not say that I thought differently. I thought there was—there were—good grounds for my taking the position that it was immaterial where that set screw, or even the machinery, was located, because the man was injured on that machinery unquestionably, but it was a debatable question in my mind all the time. I did not feel that I had been mistreated when the new trial was granted.

The CHAIRMAN. Well, did the location of the set screw—that is, the location upon the machinery in which the set screw was—shed any light upon the question of contributory negligence?

A. Why, I think probably it did. It has been a long time since that case was tried and I never have attempted to refresh my recollection, but McMahon claimed that his duties required him to work close to that set screw, where the screw protruded, and my recollection is that our witnesses fixed the location of that set screw closer to McMahon than the testimony of the defendants' witnesses did.

The CHAIRMAN. Was the plaintiff McMahon?

A. I mean McLean. McLean was the plaintiff.

There is one question that I don't think I answered fully. In the third trial of the case Judge Reynolds, of Tacoma, was with Mr. Griffiths in defending the suit, and during the argument of the case Mr. McMahon made some reference to insurance attorneys defending the suit. I think Mr. Griffiths made an objection to that remark on the ground that under our State supreme court decision the case must be taken away from the jury because it was an improper remark, and the argument was stopped for a little while; and then Mr. McMahon, after consultation with me, admitted to the jury that the defendant in this case was not insured and that he had no intention of biasing the

jury by his remarks, having it inferred that an insurance company was defending the action. Judge Hanford stated that in view—before Mr. McMahon had made the remark—said that in view of McMahon's statement about the insurance attorneys he didn't know whether the case could go to the jury or not, and then Mr. McMahon made the statement that he did not intend to prejudice the jury. After Mr. McMahon and I went into the judge's chambers during a recess with Mr. Griffiths and Mr. McMahon then stated to Judge Hanford that the remark was inadvertent and should not have been made and we did not want another mistrial of the case. We wanted to do whatever was necessary, if it could be done, to cure the slip of the tongue that Mr. McMahon had made with reference to the insurance matters, and I——

Mr. DORR (interrupting). And then his statement was made to the jury as you have stated?

A. Yes.

Q. And the court permitted the case to go to the jury?—A. Yes; yes. I think in the instructions no reference was made to Mr. McMahon's statement before the jury with reference to the insurance attorney.

Q. And a verdict was returned for the plaintiff?—A. For the plaintiff, and afterwards paid by the defendant without an appeal. I think a slight reduction was made in the amount, or a remission of costs, or something of that kind; but substantially the whole judgment was paid.

Mr. DORR. That is all I care to ask.

Witness excused.

The CHAIRMAN. Have you some other witness present?

Mr. DORR. Judge Graves.

CARROLL B. GRAVES, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name, please.

A. Carroll B. Graves.

Q. You live in Seattle?—A. Yes, sir.

Q. What is your present occupation?—A. Attorney at law.

Q. Have you been on the bench?—A. Yes, sir.

Q. On what bench?—A. The superior court of this State.

Q. When was that?—A. For the eight years following 1889.

Q. What is your present professional connection?—A. The firm of Bogle, Graves, Merritt & Bogle.

The CHAIRMAN. Proceed with the witness, gentlemen.

By Mr. HUGHES:

Q. Mr. Graves, have you had considerable practice before the Federal courts in this State?—A. Yes, sir.

Q. And a large part of that before Judge Hanford?—A. The greater part of it.

Q. Will you tell this committee what has been the general conduct and demeanor of Judge Hanford in the dispatch of judicial business before him?—A. I have always regarded Judge Hanford as being a most excellent judge. His characteristics which peculiarly appealed to me were his ready grasp of all the salient points of the case, the retentiveness of his memory touching the evidence given during the

trial of a cause, and the fact that he disregarded both the personality of attorneys and litigants and the causes, and seemed to at all times attempt to decide the cases upon principles of law involved.

Q. Have you ever observed anything to indicate that he was arbitrary or biased in his rulings or in his treatment of parties, witnesses, or counsel?—A. No, sir; nothing more than the peculiarities that attach to any man who is in a position of that character and kind.

Q. Testimony has been offered to the effect that he closed his eyes, nodded his head, and witnesses have testified to his sleeping upon the bench. Tell the committee what have been your observations before Judge Hanford in these particulars.—A. I have noticed those peculiarities after the lunch hour during the trial of a case where we were taking testimony before a jury, but in no instance that ever came under my knowledge or notice was there anything in his actions or manner that took him away from the trial of a case.

Q. By that you mean nothing that indicated that he did not attend closely to all that proceeded in the trial. Is that correct?—A. That is what I mean. Even if his eyes were closed, if any point was raised as to what the witness had testified to, or what the objection was, he recalled it and ruled upon it understandingly.

Q. Have you ever seen Judge Hanford when, in your opinion, he was in any measure under the influence of intoxicating liquors?—A. I never did.

Q. Do you know one L. Frank Brown?—A. Yes, sir.

Q. He has testified that he was once a member of a firm of which you were a member. When was that and for how long a time?—A. That was in the year 1905. The exact length of time that he was in the firm I don't recall. Something approximating a year or a year and a half.

Q. Was that when you first located in this city?—A. When I first came to the city of Seattle.

Q. What was the firm name at that time?—A. Graves, Palmer, Brown & Murphy.

Q. And when he went out of the firm what was the firm name?—A. Graves, Palmer & Murphy.

Q. In other words, he was the member who went out of the firm?—A. Yes, sir.

Q. During the time he was a member of that firm did he ever mention in the firm, to you or in the office in any way, having seen Judge Hanford upon the bench under the influence of liquor?—A. No, sir.

Mr. HUGHES. That is all.

By the CHAIRMAN:

Q. To what extent have you associated with Judge Hanford, Judge, apart from your practicing before him?—A. Before I removed to Seattle in 1905 I had seen Judge Hanford—been in his court, dropped in casually, and I would meet him perhaps once a year at the State Bar Association and other occasions of that character.

Q. Are you a member of any social organization of which he is a member?—A. Yes; I believe, if I am correctly informed he is a member of the Rainier Club. I am also a member of that club, but I have not been in the clubroom for six years.

Q. To what extent have you seen the judge in the city after business hours, after half past 7?—A. After 7?

Q. At night?—A. I don't recall of having seen him except in business connected with his office. I have frequently seen him at his chambers and seen him at the court room finishing cases, charging the jury and receiving verdicts of juries.

Q. Well, those are the only opportunities you have had to observe him?—A. It was largely in connection with the discharge of the duties of his office that I have met him.

The CHAIRMAN. That is all.

Witness excused.

The CHAIRMAN. Is there some one else ready?

RICHARD STEVENS ESKRIDGE, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name.

A. Richard Stevens Eskridge.

Q. Spell the last name.—A. E-s-k-r-i-d-g-e.

Q. Where do you live, Mr. Eskridge?—A. In Seattle.

Q. What is your business?—A. I am a lawyer.

Q. How long have you been practicing?—A. Since 1896.

Q. What is your firm connection?—A. I have none.

Q. You are alone?—A. Yes, sir.

Q. What is the nature of your practice—general?—A. Just a general practice, yes. The last few years I have devoted the most of my time to business rather than law.

Q. Outside business?—A. Yes. I have not given up my whole practice at all, but I mean I am not so extensively engaged as I was before.

Q. You still maintain an office?—A. Yes, sir; I have a law office—a suite of rooms—in the city.

Q. You know Judge Hanford, of course?—A. Yes, sir.

Q. To what extent have you practiced in his court?—A. Very little.

Q. What opportunity have you had for noticing the judge?—A. Do you mean in court or out of court?

Q. In court and out of court, too?—A. Well, I live on the same car line that the judge does and our families have been well acquainted for a great many years.

Q. How long have you lived in his neighborhood?—A. About three years, a little over three years.

Q. To what extent have you observed the judge in the evenings or in the nighttime coming and going from his home?—A. Well, usually I get down in the morning rather early for the judge, but I often go home at night on the same car. My family——

Q. (Interrupting.) At what hour or about what hour?—A. About between 12 and 1.

Q. In the morning you mean?—A. Yes, sir. I will state that my family not being very well often go to California, and during that time I have worked late nights myself; I have remained down town.

Q. How frequently have you seen the judge going home at those hours?—A. Twenty or thirty times.

Q. Have you ever seen the judge when you thought he was under the influence of intoxicants?—A. No, sir; I never have.

Q. Have you ever seen him drink?—A. Yes, sir; I have seen him drink occasionally.

Q. Where?—A. At the Rainier Club.

Q. Are you a member of the club?—A. Yes, sir.

Q. What have you seen him drink mostly?—A. I think he calls for beer with a supper after work at night, with the possible exception of a cocktail.

Q. Have you ever seen him drink elsewhere than at the club?—A. I don't think I ever have.

Q. When on the street car, what was the judge's apparent condition——A. Well——

Q. (Continuing.) Especially with reference to sleeping?—A. The judge is quite a hand for napping on the street cars. After working—which, I suppose, the committee have had sufficient testimony on—late at night he would come down to the Rainier Club often and sit there—the club furnishes a supper for all members—take a supper and sometimes a glass of beer with it, and then he would go to the car, wait until the last car. He would come in the club somewhere after midnight and take the last car home, about 1, and he would sit inside of the car and very soon nod, and off and on during the way would nod. I remember the first time when my family went to California I went out in the last car and the judge was sitting there apparently asleep, and we got out to—a block ahead of his house; that is, this side of his house, and I spoke to the conductor and said, "That gentleman gets off at Galer," and the conductor said, "Oh, he's a wonder," he said. "I never have to speak to him; all I do is call off the street and," he says, "he will be apparently sound asleep and he will get right up and get off the car." The idiosyncrasies of the judge's nature, you might say, or the habit of taking a nap to catch up with the tremendous amount of work he does, might lead, of course, anyone under the circumstances I just narrated to think that the judge was intoxicated; that is, supposing somebody who could detect the odor of liquor from any other odor should get on the car and sit near the judge after working and going and having a supper and a glass of beer at the Rainier Club, and see him nodding on the car, or asleep, that person might easily come to the conclusion that the judge was in a condition of intoxication, whereas those of us who know him would know that that was not the case. I remember when I first went into the judge's court I was very much impressed with the fact that he sat with his eyes closed and rather apparently was not paying attention; but I remember one case—I think Mr. Hughes was in the case, too—Judge E. M. Carr was making an address to the court and Judge Hanford was sitting with his eyes closed and Mr. Carr stopped in the middle of a sentence, looked around the court room, and stopped about three minutes, and Judge Hanford told him to sit down, that he would hear from the other side And Mr Carr said that he had not finished his remarks, and the judge told him that he had waited several minutes for him to collect his thoughts and he could not wait any longer; showing that he was very attentive to the matter in question. He appointed me one time——

Q. (Interrupting) That is the inference you drew from the incident?—A. That is the first time I had ever seen Judge Hanford on the bench, and the inference I drew then was that he was not asleep and not inattentive.

Q. On the street car it is your opinion that he was asleep and that the conductor's call awakened him?—A. No; I can't say that my opinion was that the judge was asleep.

Q. Wouldn't that be a fair inference to draw from your testimony awhile ago?—A. Yes, sir; but from other facts, that having talked to the judge on the street car and looking around and apparently seeing him asleep and then having the judge afterwards take up the subject where I left it and continue with it, I am not sure whether he was asleep or whether it is a habit he has of closing his eyes and nodding his head—sort of a rest.

Q. Do you state that on the occasions you speak of the judge took no more than one glass of beer at the club?—A. No; I will not state that. I think the usual rule they furnish a small bottle of beer, probably a glass and a half, serve that up in bottles.

Q. But members of the club take as much more as they want?—A. Oh, yes; a member of the club could have as much more as he wanted, up to his good behavior, of course, in the clubroom.

Q. And so long as he did not raise any disturbance——A. (Interrupting.) Yes, sir.

Q. (Continuing.) None of the servants of the club would dare refuse him?—A. No, sir.

Q. You stated that the judge's family and yours have been and are very friendly?—A. Yes, sir.

Q. Who are the members of the respective families among whom this friendship exists?—A. Well, I think that all members of both families are decidedly what you might call friendly. It is not an intimate relationship, but it is a friendship that is sort of cemented by the fact of my family having been intimately connected with the history of the State and Judge Hanford having always taken such a prominent part in all public affairs connected with the history of the State.

Q. Have you ever seen the judge drinking anywhere excepting at the club?—A. I don't think I have. When I was called on the telephone I tried to think whether I had ever seen the judge take a drink anywhere else. I think, maybe, I saw him take a drink one time at dinner in Tacoma when we had dinner together, and it was at the dinner table, and I don't remember whether he took one or not.

Q. To the best of your recollection that would be the extent of it, if that happened?—A. Yes; that is, while in my presence at least, he never took—never was in a condition that would attract my attention to the fact that he did take a drink; that is, led me to believe that he took more than enough.

Q. Well, you have no recollection of seeing him drink anywhere except at the club and possibly once at Tacoma at dinner?—A. That is all to my recollection, Mr. Graham.

By Mr. HIGGINS:

Q. What constitutes Judge Hanford's family now?—A. Judge Hanford has two daughters; his son, Mr. Edward Hanford, who has been here, and the other son, who just returned from Cornell—William Hanford.

Q. What are the names of his two sons?—A. Edward and William.

Q. Edward is his full name?—A. I don't know what his middle name is. I think Edward is his full name.

Mr. HUGHES. Edward C.

A. Edward C., maybe.

Q. In going from the Federal building or from the Rainier Club to Judge Hanford's home, how much time is consumed ordinarily in the street car?—A. About 25 minutes—24 minutes on the car—20 to 24, according to how many stops it has to make.

Q. What is the direction from the Federal building?—A. From the present Federal building?

Q. Yes.—A. Why, you go down to Second Avenue, which is one block, to take the car, or you go over to Pike Street and take the car.

Q. Referring to Second Avenue, what street do you go on?—A. Well, the cars now go up to Pine Street and then east on Pine, running on Pine to Broadway; then they go out Broadway to where Broadway diagonals into Tenth Avenue North.

Q. I have noticed——A. That is north.

Q. I have noticed, in the very limited opportunity I have had to observe this city, that there are exceedingly high grades?—A. Yes, sir.

Q. And over these grades cable cars are run?—A. Yes, sir; on some of them.

Q. Now, is that a line, or does the line to Judge Hanford's home go over such grades?—A. No; the line goes up Pine Street and the steepest grade is about 3 per cent, I should say, less than the steepest grade on Madison.

Q. Are the grades steep enough so that a cable is necessary to pull cars?—A. No, sir. No; there is no cable out there. You could go home by cable by getting on at Madison and changing at Broadway and changing again out at the high school, at Broadway and Pine, but that would not be direct.

Q. The ordinary, then, and the most direct way to go from the present Federal building and the Rainier Club to your home or to Judge Hanford's home would not involve riding on a car that had a cable?—A. Well, from the Federal building the most direct way would be on the Broadway car, not going at all to Madison.

Q. I want more particularly about the cable.—A. Well, if you went from the Rainier Club the cable is one block this side of the Rainier Club, and a person could take the cable, as I say, and go to Broadway and then transfer and wait for the Madrona.

Q. They could do it. Would they, if they wanted to go home the most direct way on the street car?—A. Well, they would not if they wanted to go home the quickest way. This other way, if you made connections, would probably be a little shorter, but that is not the way that is usually taken to go out in that part of town on account of two transfers.

The CHAIRMAN. Anything further?

Mr. HUGHES. I would like to ask a question or two.

By Mr. HUGHES:

Q. You frequently visit in Judge Hanford's home?—A. Quite often; yes.

Q. Speaking of your family connections, your grandfather, Gov. Stevens, and Judge Hanford were personal friends, were they not?—A. Well, Judge Hanford, I think, was pretty young for him. You

see, my grandfather left here and was killed in the war, and I don't think that Judge Hanford was much more than just about started at that time.

Q. But the family has all——A. (Interrupting.) Oh, yes; since that time, you know, our family has been out here.

Q. Have you at times when you were riding home with Judge Hanford, when you observed him closing his eyes and nodding his head, entered into conversation with him?—A. Oh, yes. I never let that stop conversation with him, because I have been with him so much on the car that I am convinced now that he hears what you say to him when he is nodding his head and apparently asleep.

Q. At those times can you say to the committee of your own knowledge that he was not intoxicated, from the conversation between you?—A. Oh, I know positively that he never has been intoxicated when he has been in my company; never. I know it because we have had so much to talk over together that I would have observed it immediately.

Mr. HUGHES. That is all.

Witness excused.

C. K. POE, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name.

A. C. K. Poe.

Q. P-o-w-e?—A. P-o-e.

Q. Where do you live, Mr. Poe?—A. I live at 1144 Federal Avenue, Seattle, Wash.

Q. How long have you lived in Seattle?—A. I came here on the 30th day of June, 1907.

Q. What is your business?—A. Attorney at law.

Q. Practicing your profession?—A. Yes, sir.

Q. All of those years?—A. Here; yes, sir.

Q. Are you alone or associated with——A. (Interrupting.) Associated with H. R. Clise.

Q. What is the nature of your firm?—A. Well, general practice of law. We take everything that we get, nearly.

Q. To what extent have you been engaged in the Federal court?—A. Well, not at all; only Mr. Clise has attended to most of it. I have been associated with him in a very important case—the Washington Securities Co. The Government brought suit against the Washington Securities Co. to cancel some land patents. There was perhaps $250,000 involved, and Judge Hanford decided against us. We appealed that case to the circuit court of appeals, and it is going to the Supreme Court of the United States. That is the——

Q. (Interrupting.) Did you participate in the trial?—A. I did not. It was tried by Mr. Charles P. Spooner and we were taken in as associate counsel after.

Q. So that you have not practiced or been very much in the judge's court, have you?—A. I have been up here more or less; yes.

Q. Just present and observed him?—A. Well, I have been associated with Mr. Clise here at different times, but my practice has not been extensive in this court; no, sir.

Q. Have you any acquaintance with the judge otherwise than while he was on the bench?—A. Oh, yes; I know Judge Hanford. And I used to be with Justice Holmes in Washington. I was with him a

great many years, practically lived with him; and when I came out here he gave me a letter of introduction to Judge Hanford; and he didn't know Judge Hanford, but sent me to the Federal judge out here. That I presented and saw Judge Hanford, and he has known my family a considerable time.

Q. Well, where did you see the judge otherwise than in court?—A. Well, I have seen the judge at his house and seen him on the street cars going home from time, and if—there was one particular instance, if you will permit me to tell exactly what happened. I was coming down on the street car with Mrs. Poe one night and Judge Hanford started to speak to her and they conversed for some considerable time, and then all of a sudden Judge Hanford stopped talking to her, and after a moment I said, "It is very queer the way the judge has stopped, is it not?" Mrs. Poe says, "No; I have known him all my life; that is one of his peculiarities."

Q. What did you say about the judge?—A. The judge was talking to Mrs. Poe. I was just as near to him as I am to the stenographer here. We were standing on the back platform. Mrs. Poe didn't feel very well that day and she wanted the air. We were standing on the back platform, so was Judge Hanford. We were coming down town about 8 o'clock. And he started to talk to her, and suddenly he just stopped and I says, "It is sort of queer that the judge stopped that way." She said, "No; that is one of his peculiarities. I have known him for a long time——"

Q. (Interrupting.) You said something to her that elicited that answer from her?—A. I did; yes.

Q. What did you say?—A. I simply said, "Isn't it peculiar that the judge stopped?" And I understand that there has been some question here that people have said they have seen Judge Hanford on the street car and from his manner they judged that he was under the influence of liquor; and I would swear on my oath that he was as sober—well, as I am at this present moment and that if he had had any liquor on him I could have smelled it.

Q. Well, do you mean to have the committee understand you as saying that the judge, in your opinion, went to sleep standing on his feet?—A. He did not. I didn't say that he went to sleep. I said that Judge Hanford just suddenly stopped talking. He was evidently preoccupied, thinking of something. They were merely chatting on the back platform, and that was one of the instances that impressed me very much and led me to believe how some of these people could have testified the way that they did.

Q. How long did he continue in that condition?—A. Well, I would not call it "condition." He was talking there and he stopped for a few moments, and before we got off the car—he got off the car at Third Avenue—Fourth Avenue, evidently coming to the Federal Building, and he said "Good night" to us very pleasantly, and left us.

Q. How would you designate it if you would not call it a "condition"?—A. Well, I simply think that he was thinking of something else; that is all.

Q. But how would you designate it, what would you call it—stopped suddenly conversing and apparently forgot that he had been conversing or that there was anyone near him expecting him to continue the conversation—how would you designate the thing that he did there?—A. I should designate it that he had merely stopped talking and that was all, unless I would call it a condition of silence.

Q. Well, is that habitual with the judge?—A. Why, yes; I have noticed that very often in talking to Judge Handford that he seems to be a man that is preoccupied; he will go along and talk about certain things and then he—he is not a great talker; that is all.

Q. And what he did or did not at that time attracted your notice and caused you and your wife right there in his presence to converse about him?—A. Merely that she made that remark, that she had known him for years and he always had been that way.

Q. And she was quite close to him at the time and had been conversing with him?—A. No; she was not. Judge Hanford was leaning against the forward end of the car, I was standing right next to him, and Mrs. Poe was in the back platform.

Q. She was near enough to talk with him?—A. Oh, yes.

Q. And had been talking with him?—A. Yes; when he got on——

Q. (Interrupting.) And his demeanor—call it what you please, conduct, condition, demeanor, whatever it was—was such as to cause you and her to talk about it?—A. Didn't——

Q. (Continuing.) Right there in his presence?—A. Didn't cause her to talk. I said, "Isn't it funny that the judge stopped?" And Mrs. Poe said "No," that "he has been that way all his life, and I have known him ever since I have been here."

Q. That sounds to me like her talking about him.—A. Well, I am merely telling you exactly what she said; I want to be perfectly fair with the committee and explain why that impressed me at the time, is all.

Q. Yes. Well, have you seen any other peculiarities in the judge at other times?—A. No; I have never seen any peculiarities.

Q. Would you call that a peculiarity or not?—A. Well, really, I have seen so many men that are that way; that when they are detained and they chat for a while, and then they stop and begin to think about more serious things, I should call it. I know that——

Q. (Interrupting.) You would not call it peculiar?—A. Well, I know this: I have known Justice Holmes very intimately, and in my experience with him I have seen him a great many times do the same thing.

Q. What was your relation with him?—A. Well, I practically lived with him when I was there. I hear from him all the time out here.

Q. You were of the family?—A. No, I am not; no relation whatever.

Q. You say you practically lived with him. What do you mean?—A. Well, I was at his house to meals all the time. When I went east a few—last March—he asked me to visit him and I used to take a great many meals with him; nearly every Sunday he, Mrs. Holmes, and myself dined at the Willard.

Q. Well, I want to know what you meant when you said you practically lived with him?—A. Well, I was there in his house some nights; very often all day long.

Q. Well, waiving Judge Holmes and others, do you say that the conduct that you described in Judge Hanford is not a peculiarity?—A. Well, I would call it a peculiarity in a way; yes.

Q. I understood you to say that you knew so many people who had it that you would say it was not a peculiarity, and you left that inference to my mind. Was that inference justified from what you said?—A. No.

Q. Well, now, I ask you again: Did you notice any other peculiarities or any similar conduct, condition, or state in Judge Hanford?—A. Well, Judge Hanford has always struck me as a man that lives with his thoughts a great deal more than a man that is dealing in the lighter things of life that is chatty, and that sort of thing.

Q. Have you ever seen the judge drink?—A. Never.

Q. Have you never smelled liquor——A. (Interrupting.) Never.

Q. (Continuing.) Or the odor of liquor upon him?—A. Never.

Q. So far as your personal knowledge extends, he may not drink any at all?—A. That is as far as I know; yes.

Q. Has your firm had any other business than the case you have mentioned in Judge Hanford's court?—A. Had a great deal. Yes, there are several admiralty cases now that are pending, involving quite a little money, in the court at the present time.

Q. Do you make any specialty of admiralty cases?—A. Well, Mr. Clise has been associated, at least has been general counsel for the Globe Navigation Co. here for a great many years and he has all that business.

Q. What is their line of business?—A. Well, they have several freighters there now. They used to have several large steamships—the *Eureka* and the *Tampeco*. They have since been sold. They now have some schooners. They used to run from here to Alaska and then on the coastwise trade along the Pacific coast.

Q. Any other of those clients——A. Well, no; no other steady clients.

Q. Well, any clients, steady or otherwise——A. Well, Mr. Denman, from California—he is an admiralty lawyer there—sent up a case about a month and a half ago; that is now pending.

Q. What was the concern that was interested in that case?—A. I beg your pardon.

Q. Who was the client interested in the business sent you from California?—A. Well, that I don't know; Mr. Clise had attended to the case exclusively for us. The name of the vessel—is a French vessel. I have really taken nothing up in it at all; I haven't attended to it.

Q. Well, has the firm any other admiralty business of considerable importance than those cases?—A. No, no.

Q. Have you any other clients who have business in the judge's court——A. (Interrupting.) Well, only that Federal cases are apt to come up at all times. We are counsel for the gas company here, and there was some suits stated with regard to their franchise, tax cases; that was some years ago; they have been dismissed and settled. You can't tell when the gas company will be in the Federal court or any other court.

Q. Is the gas company a Washington or foreign corporation?—A. It is a Washington corporation.

Q. Where do the stockholders live?—A. They are all over the country. Mr. Rufus C. Dawes, of Chicago, is one of the stockholders.

Q. Its litigation is mostly in the Federal court?—A. No; in the State court as a rule.

Q. Has it the right to remove cases?—A. Well, not to the Federal court here, because it is a Washington corporation; it is a local corporation.

Q. How many suits have been brought by the stockholders, for instance, in the Federal court——A. (Interrupting.) No.

Q. Have you any other large corporation clients?—A. Well, we are counsel for the Washington Trust & Savings Bank here, which i an affiliated concern with the Dexter Horton National Bank.

Q. With what bank?—A. The Dexter Horton National.

Q. Where is it located?—A. It is located in the New York Block, on the corner of Second Avenue and Cherry.

Q. It is a home corporation too, is it?—A. Yes. It is a national bank.

Q. It has——

Mr. HUGHES. The Trust & Savings Bank——

A. And the Trust & Savings Bank is a local bank; yes.

Mr. HUGHES. A local corporation?

A. Yes.

The CHAIRMAN. And is it a branch of the national bank, or how is it affiliated with it?

A. Well, the two concerns are unified—is the word we used. There really can be no association, except they are under the same roof; their offices are the same.

Q. Have you had any litigation in Judge Hanford's court for the bank?—A. None.

Q. Your firm are the attorneys for the bank?—A. Yes.

Q. Have you other clients of that character?—A. Well, we represented H. O. Shuey & Co., bankers here.

Q. How is the bank organized?—A. Well, that is just merely a local bank, private bank.

Q. A private bank?—A. Yes.

Q. Your partner is engaged more in Judge Hanford's court than you are?—A. Far more.

Q. He attends to most of the business in that court?—A. Yes.

The CHAIRMAN. Are there any other questions?

Mr. HUGHES. I would like to ask one or two questions.

By Mr. HUGHES:

Q. Speaking of this first occasion that you mention, riding down town about 8 o'clock one evening, standing on the platform of the car, that was early in your acquaintance with Judge Hanford, was it?—A. Yes.

Q. And you made the observation to your wife because you were not then familiar with Judge Hanford's ways?—A. That was exactly the idea I was trying to bring out, Mr. Hughes.

Q. I think that you have left the committee in some confusion, perhaps, in your explanation. Was your question addressed to your wife one that would be audible to Judge Hanford?—A. Oh, absolutely; yes.

Q. How?—A. Oh, no; absolutely not. I said to her—I simply said, "Isn't it odd the way that Judge Hanford stopped talking there?"

Q. But naturally this committee would infer that that question, being addressed to your wife, so far as any explanation you have made before them is concerned, right in the presence of Judge Hanford, would be as audible to Judge Hanford as to your wife. What I want to know is what were the facts in regard to that. Was your question put to your wife there on the street car or after Judge Hanford left?—A. Oh, it was right on the street car; but there was a crowd of people got in, Mr. Hughes. It was right at Broadway. They separated—

we were separate and standing; she was at the back and Judge Hanford was leaning up against the forward side of the back platform. Mrs. Poe was at the back. We were talking there. Nobody was in between us when Judge Hanford stopped talking. Of course, I said nothing then. We went on chatting. When they stopped at Broadway to take on some people, Mrs. Poe and I were separated from Judge Hanford, and I simply mentioned it that way. And knowing Judge Hanford, as I have since seen him, I know exactly how it occurred.

Q. Then you asked that question of your wife some little time later and after other people had intervened?—A. Oh, absolutely.

Q. And in a tone of voice which would not be audible to Judge Hanford?—A. Absolutely.

Q. And her answer was likewise given in the same way?—A. Yes.

Q. Now, have you ever observed Judge Hanford, when in a crowded car, get off and walk?—A. Yes.

Q. Before he would reach home?—A. Yes.

Q. Have you ever noticed him when riding in a car close his eyes and nod?—A. A hundred times. I would not say a hundred, Mr. Hughes, but I will say a great many times. I live up the same way.

Q. Have you ever sat down and talked with him or spoken to him during the ride?—A. Yes.

Q. On such occasions as that?—A. Yes.

Q. When you conversed with him after having seen him nod, would he show any signs of any effect of intoxicating liquors by his manner?—A. Never at all.

Q. Or conduct?—A. Never. The judge always struck me as a man that talked when he felt like it and didn't when he didn't, and that was exactly the idea I wanted to bring out.

Q. Whenever you have talked with him he showed an instant appreciation and clearness of observation?—A. Perfectly.

Q. In conversation?—A. Perfectly.

Witness excused.

Livingston B. Stedman, being first duly sworn, testifies as follows:

The Chairman. State your name to the committee, please.

A. Livingston B. Stedman.

Q. Will you spell the last name?—A. S-t-e-d-m-a-n.

Q. Where do you reside?—A. I reside in Seattle, sir; although for the last year I have been over in my country home across the bay.

Q. How long has Seattle been your home city?—A. I arrived in Seattle the first week in August, 1890.

Q. What has been your business or profession?—A. I am an attorney at law.

Q. Practicing your profession?—A. Ever since I have been here. I was not admitted until September after I arrived. I came here immediately from the Harvard Law School.

Q. Are you alone in your practice or are you associated with some one?—A. Associated with H. H. A. Hastings. We have been associated since October, 1893, I think.

Q. What is the general line of your practice?—A. General practice, sir.

Q. To what extent have you business in Judge Hanford's court?—A. I think there has been seldom any time that we haven't had one

or more suits pending here. When I first came to Seattle I was associated with the late Col. J. C. Haines, and his business was largely in the Federal court at that time.

Q. What is the nature of the business you have in that court?—A. Well, we have had some insurance cases that were removed to his court from the State court, pending for three or four years and finally disposed of last summer or fall, and we have had admiralty cases and general cases—damage suit cases and bankruptcy cases.

Q. In the admiralty cases whom did you generally represent—in other words, had you any navigation companies as your clients?—A. Not what you might call regular navigation companies. At one time I personally tried a number of suits for the Oregon Railroad & Navigation Co., suits in admiralty, although I am not their regular counsel; they were sent to me by Mr. Cotton from Portland, and the Port Blakeley Transportation Co. has a few scows on the Sound and a couple of tugboats, and we represented them, but we had no litigation for them in the Federal court.

Q. What other transportation companies that have litigation in his court did you or do you represent?—A. Well, more, I think, individuals than corporations.

Q. What kind of cases, Mr. Stedman?—A. Well, actions to quiet title; we have pending here now——

Q. Real estate?—A. Yes, sir.

Q. What is the nature of the real estate; what is the question involved?—A. It is really not an action to quiet title; it is rather an action for specific performance; it was removed from the State court to this court.

Q. By whom?—A. It was removed by Mr. Bronson—by Mr. Taylor; Mr. Bronson was attorney for H. C. Taylor.

Q. Is he the opposing counsel?—A. He is.

Q. What is the question involved in the litigation?—A. Well, it is an action for specific performance; the question involved is whether the defendant shall be forced to convey to our client this land in controversy.

Q. Seattle real estate?—A. Seattle real estate.

Q. Of course you are acquainted with Judge Hanford?—A. I have known Judge Hanford ever since I have been in the State.

Q. Have you any social or other relations with him than purely professional relations?—A. I have been at his house. I have met him at the University Club; he does not often frequent the club now, but when it was first organized, about 10 years ago, he would be there occasionally; and I know his son, Mr. Edward C. Hanford; and Miss Ada Hanford I have known for years, and she knows Mrs. Stedman, and she has been at our house.

Q. Your folks visit backward and forward?—A. Yes. The intimacy is more between Mrs. Stedman and Miss Hanford, really, than it is between me and the judge.

Q. You are not, I assume, a member of the Rainier Club?—A. I am not now. I was some years ago.

Q. Well, apart from those social or public occasions which you have referred to, to what extent have you been in the company of Judge Hanford?—A. I have seen him as you would meet men every day in business or at the court. I suppose I have seen him hundreds of times in his court room, and I have seen him at chambers. Some 18

years ago I had occasion to go to Spokane, I remember, to get a restraining order from him. He was holding the court there, and I was with him continually in the evening and the following day until I left Spokane to come back. I have been on excursions with him—I ought not to say with him, but on the same train, and we spent the day together at Snoqualmie some years ago. The last few years it has been pretty hard to find Judge Hanford at many social gatherings on account of his duties.

Q. Have you ever seen the judge when, in your opinion, he was affected by or under the influence of any intoxicating liquor?—A. I never have, sir.

Q. Have you ever seen him drink?—A. I have no distinct recollection of that; I may have seen him take a drink at the University Club, but I do not remember ever having seen him drink.

The CHAIRMAN. Anything further with Mr. Stedman?

Mr. HUGHES. You have observed, Mr. Stedman, the habit of Judge Hanford of closing his eyes and nodding his head in the court room or elsewhere, have you?

A. I have, and frequently it has been amusing to myself and the older practitioners at the bar to see the younger practitioners embarrassed by his grasp of the situation when they have thought that he was inattentive.

Q. Have you ever seen him on any such occasion when he didn't rule promptly upon motions and also clearly, showing a complete grasp of all that had transpired, either motions or objections or on the close of an argument?—A. I never have.

Q. You have tried a great many cases in his court, have you not?—A. Cases and motions.

Q. A great many matters?—A. A great many matters before him.

Q. For more than 20 years?—A. For more than 20 years. When I was with Col. Haines, I was young in the practice and was sent very frequently on preliminary matters into court and, as I say, his practice was largely in the Federal court. He represented—he was general counsel for the Oregon Improvement Co. at that time, an Oregon corporation that had most of its practice in the Federal court.

Q. Ever since that time the firms with which you have been associated have always had some business pending in the Federal court which brought you into that court?—A. I do not remember a time when we did not have cases pending before Judge Hanford.

Q. Have you ever observed any incidents occurring in Judge Hanford's court when he appeared to you to have lost any part of the proceedings transpiring in his court before him?—A. I never have.

Q. Have you ever seen him when he exhibited an arbitrary or biased attitude toward the parties or counsel?—A. I never have. I have seen him sometimes when attorneys were going too far in cross-examination and harassing the witnesses stop them rather abruptly.

Q. Rather peremptorily?—A. Yes; or when they tried to improperly influence the jury in introducing testimony that ought not to be introduced, or any side play before the jury, I have seen him—I do not remember the instances now, but I have seen him reprove counsel. But it always seemed justified and merited when I have seen it.

Q. Did you ever enter into conversation with him after noticing him, out of court, sitting with his eyes closed and head drooped, to

find out whether his mind was alert and active and clear when you entered into conversation with him?—A. Well, I never did it for that purpose, Mr. Hughes, but I have known of that habit of his and I have often conversed with him. Of course, I have known that while he might appear inattentive, yet it is merely appearances. Now, the occasion which I spoke of when I was at Spokane with Judge Hanford, I was young in the practice then and I never had been in Spokane before, and after I obtained the order I missed my train back to Seattle, and all that evening I was with Judge Hanford and with Judge Hermon and with Mr. and Mrs. Edwards, of Spokane, and we were playing cards the whole evening, and the next morning the judge had very little business in court—just the sentencing of of some Indians—and he said if I had nothing else to do that he would take me around Spokane, and we took street-car rides about the city, and nobody could have been kinder or more attentive to me than he was on that occasion, and yet a week afterwards I passed him right on the street and he was engrossed and apparently did not see me.

Q. He did not speak to you?—A. He did not speak to me, and now when I pass him on the street if I speak he will immediately respond, but frequently, unless I take the pains to speak to him, he will not notice me, although I have known him all these years.

The CHAIRMAN. Anything further?

Mr. HUGHES. A young man by the name of Paul testified that he was in your office, he testified in these proceedings—and also that he was an employee in your office, and he testified to certain instances that he had observed in Judge Hanford's court when attending here to motions representing your firm. Did he ever make any complaint to you of Judge Hanford being asleep or not attentive or not understanding what was going on?

A. Never.

Q. Did he ever make any complaint or make any statement to you to the effect that he had ever seen Judge Hanford under the influence of liquor?—A. Not before he testified here the other day.

Witness excused.

JAMES B. MURPHY, being first duly sworn, testifies as follows:

The CHAIRMAN. State your name to the committee.

A. James B. Murphy.

Q. Where do you live, Mr. Murphy?—A. In Seattle.

Q. How long have you lived in Seattle?—A. Twenty-two years.

Q. What is your business?—A. Lawyer.

Q. Have you been practicing your profession during your residence in Seattle?—A. I have.

Q. What are your firm connections, if any?—A. I am associated with J. P. Wall, under the designation of Murphy & Wall.

Q. What is the nature of your business, Mr. Murphy?—A. General practice.

Q. To what extent do you practice in the Federal court before Judge Hanford?—A. I have had quite a number of cases before him.

Q. Have you any regular clients whose business is usually or always transacted in his court?—A. Early in my practice here I had a great many matters where claims were presented against steamboats; that is, cross libels and libels for repairs and supplies. I have

had none of that work for a number of years—and sort of collection work. Later I was associated with Messrs. Preston, Carr & Gilman, who represented a number of insurance companies that requires Federal jurisdiction.

Q. Nonresident companies?—A. Nonresident companies.

Q. Fire, or life, or marine?—A. Principally fire; and later I have represented certain bonding companies and nonresident companies who use the Federal jurisdiction.

Q. Do you still represent those?—A. I still represent the American Bridge Co., of New York—I think its treasurer's department is in Pittsburgh—it has a great deal of work in the Federal court, being a nonresident. I represent the Title Guaranty & Surety Co., of Scranton, Pa. I have represented them for 10 or 12 years, and they have a great deal of work here. I did represent the United States Fidelity & Guaranty Co., of Baltimore. They had a great deal of work in the Federal court. I represented the Ætna Indemnity Co.; the Philadelphia Casualty Co. until it became absorbed by the Baltimore company, or some other company.

Q. Was it usual for parties suing them to bring the cases into the State court in the first instance?—A. It was.

Q. And you would remove it to the Federal court?—A. Yes; and then we invoked the Federal court in one line of cases, at least—we had been invoking the Federal court for a number of years in cases where public contracts were involved and the contractor failed, but during the performance of his contract he assigned the funds coming due under the contract, both under the Federal statute—well, there is no State statute prohibiting the assignment of funds—but seeking to establish the right of the surety prior and paramount to the assignment of claims, or the assignment of funds due under the contract, of the contractors to banks and other persons who financed them.

Q. To what extent have you participated in bankruptcy proceedings?—A. Well, not to any considerable extent; just as a general practitioner would. We have had a number of cases here. I attended to some of them personally—very largely by young men in the office. We have had several matters before Judge Hanford on appeal.

Q. Have you quite a number of cases of one sort and another pending before him now?—A. Yes, sir; I have some.

Q. How long have you known Judge Hanford? I assume since you have lived in Seattle.—A. Yes; I was admitted to his court immediately on coming into the State 22 years ago.

Q. You noticed the peculiarities of which we heard in the judge, while presiding in court, with reference to apparent napping or slumbering?—A. Yes; I have.

Q. When did you begin to notice that, Mr. Murphy?—A. I do not recall; it is probably as soon as I came here. That is my recollection. I mean—I am not clear upon it and I may not be correct.

Q. Have you noticed any change in the judge in that regard?—A. I have not. I have noticed none; that is, I am not conscious now of having noticed any; there may have been changes. I never saw the judge when I regarded him napping, in the popular sense of that term. I have often seen the judge when he was apparently resting overworked eyes, or something of that kind.

Q. Was his condition such as would justify the belief in the ordinary person unacquainted with him that he was sleeping?—A. I don't know—possibly, I being familiar with him—that is, familiar with that habit, and acquainted with him, it would not so impress me, and I scarcely noticed it, but I think, possibly, when I first discovered it, whenever that was, that it was noticeable. I never did see the judge when I thought he was asleep. I have seen him during almost the entire argument, at times, when I have been presenting some matter, have his eyes apparently closed, or his head down—that is, not looking me in the eye and not apparently attentive to what I was saying.

Q. Are you a member of any social organization of which he is a member?—A. None that I know of, except the Rainier Club.

Q. Do you meet him there frequently?—A. Well, not very frequently in the last year. I lived there for three or four years, possibly five—commencing—well, I moved away from the club onto the hill about two years ago. For a long time prior to that time—I think, possibly five years, I think, I lived there—I may be mistaken as to time.

Q. What five, approximately?—A. The five years preceding the last two years.

Q. What opportunity have you had to notice the judge elsewhere than in court and in the Rainier Club?—A. I have had very little—that is, I have observed him very little. I have been on one or two excursions that he attended; the annual bar association banquets where there was an outing and refreshments served. Aside from that I do not recall any occasion where I attended any social function when the judge was present, except at the Rainier Club.

Q. Have you seen the judge drinking intoxicants, and if so, to what extent?—A. Just before I answer that, I would say that I have met him on the street very often as men living in the same city would meet, but we just speak, and sometimes we do not do that.

Question repeated to the witness.

A. I have seen the judge drink a glass of wine or take a very small bottle of wine with his dinner occasionally at the Rainier Club; nothing further.

Q. With meals?—A. With meals only. I was trying to recall as I sat at the table whether I ever saw him sitting at the table taking a drink before meals. It seems to me that I saw him once or twice take a cocktail before going up to the dining room at the Rainier Club, but I am not clear as to that. I can not say that I ever saw him at a table taking a drink. If so, it was simply a cocktail before lunch or dinner.

Q. Have you ever seen him drinking in any public drinking places?—A. I never have.

Q. Have you ever seen the judge when, in your opinion, he was under the influence of intoxicants?—A. I have not. I never saw him when he even showed the effect of liquor.

Q. Are you the Mr. Murphy who was a member of a firm of which Mr. L. Frank Brown was also a member at one time?—A. I was associated with Mr. L. Frank Brown in the practice of law for, I think, approximately two years, under the designation of Graves, Palmer, Brown & Murphy.

The CHAIRMAN. Are there any further questions with Mr. Murphy? If so, proceed.

Mr. HUGHES. Mr. Murphy, did Mr. Brown ever report in the office in your presence, or to your knowledge, that he had seen Judge Hanford on the bench under the influence of intoxicating liquors?

A. He did not.

Q. Did he ever report to you or in your office, to your knowledge, that he had ever seen Judge Hanford intoxicated in any measure?—A. He did not. On the contrary when we were together his comments upon Judge Hanford were always very complimentary as to his being an able jurist—that was Mr. Brown's conception of him, I am sure.

The CHAIRMAN. It is the most singular thing that when lawyers get on the witness stand they ignore all the rules of evidence. Your answer was not responsive to the question and it was improper besides—that is, the latter part of it.

The WITNESS. Well, have it stricken out then.

The CHAIRMAN. I am calling your attention to it as a matter of curiosity rather than for any other purpose.

The WITNESS. That is probably true.

Mr. HUGHES. Mr. Murphy, when Mr. Brown went out of your firm did the firm otherwise change?

A. It did not.

Mr. HUGHES. I do not want, Mr. Chairman, to indulge in any unpleasant feature of the examination, but I would like to ask this witness, without reference to any intentional falsehood, or the want of it, to state to the committee whether Mr. Brown's observations and conclusions would be reliable as a basis of determining ultimate facts.

The CHAIRMAN. The Chair hardly thinks that question should be gone into. If you wish to impeach Mr. Brown, I do not know just what the committee would say about that—the committee would have to confer, and of course he would have the right to have an opportunity to defend himself, but this sort of inferential or indirect impeachment the Chair thinks would be improper. Mr. Brown might come back at Mr. Murphy and attack his judgment.

Mr. HUGHES. I am quite willing to have him go into that question or to have you go into it.

The CHAIRMAN. Well, we are not willing to go into it.

Mr. HUGHES. Do you know anything about Mr. Brown's career at the bar after he went out of your firm? Has he practiced much since that time?

A. No, I think not. He went into the real estate business after leaving the firm.

Q. And a part of the time was not engaged in any business?—A. He was not; no.

Q. Do you know where he was during that time?—A. He was in the city here a part of the time, living at Three Tree Point, a part of the time too, about halfway between here and Tacoma.

Mr. HUGHES. That is all.

The WITNESS. There is one answer that I want to clear up, if I may. I made the statement in response to an inquiry as to whether Judge Hanford was in the habit of nodding or sleeping or apparently so. I said that I noticed on occasions he would assume that attitude during the entire argument. I think it is proper for me to say that on none of those occasions did he show any want of knowledge of the

point involved, but he showed the clearest comprehension of all that I had said whenever he reviewed my remarks, and often he would, showing that while his attitude may have been one apparently of inattention he heard all that was said.

Q. While you lived in the Rainier Club, you very frequently saw Judge Hanford at the club, didn't you?—A. Yes, my impression is that he was there daily and took his evening meal there—his dinner. Q. Frequently?—A. Possibly half the time, and yet I am not clear on that; it would seem that he did, as I look back at it, and yet the picture that it leaves was that he dined there about half the time, but I think I am probably mistaken.

Q. You have seen him on your return to the club after working at nights—you have seen him return as late as 11 o'clock at night when you returned to retire at night after your work in your office.—A. Oh, yes; he usually went home about the time I came in. I don't say usually went home, because he usually went home earlier than that, but he did very often—he went home about the time that I came into the club to retire—that was about 10 o'clock or a little after, or 11 o'clock. I have seen him very frequently at that time of the evening.

Q. Have you ever on any of those occasions or at any time seen him when the thought ever was presented to your mind that he was or might be in any measure under the influence of intoxicating liquor, basing your conclusion upon your knowledge of the man?—A. Never.

Witness excused.

WINFIELD R. SMITH, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee.—A. Winfield R. Smith.

Q. Where do you reside, Mr. Smith?—A. Seattle.

Q. And you have for how long?—A. Approaching 21 years.

Q. What is your business?—A. Lawyer.

Q. And you have been a lawyer how long?—A. For between 21 and 22 years.

Q. All of your Seattle life?—A. All of it.

Q. Are you practicing alone or in connection with some one else?—A. Shank & Smith—with Corwin S. Shank.

Q. What is the character of the firm's business?—A. A general civil practice.

Q. What portion of it in Judge Hanford's court?—A. A moderate amount; not a very large amount.

Q. What kind of business is that?—A. We have had litigation for nonresident parties, both plaintiffs and defendants, and we have had some connection with receivership proceedings before him.

Q. In what matters?—A. Well, I recall notably a street-car receivership quite a number of years ago.

Q. What street railway company was that?—A. That was particularly the Front Street cable, which is now merged as a part of the general system, and we were representing in that Washburn and Mowen & Co. We represented large claims for steel cables which had been furnished to the company.

Q. Was it a bankruptcy matter?—A. No.

Q. Just a receivership without a bankruptcy proceeding?—A. Yes, sir; that was prior in time to the bankruptcy act.

Q. What other cases do you recall that you have had in his court, or what class of cases?—A. We have had some, a few, insurance cases, and a few admiralty cases.

Q. Whom did you represent in the insurance cases?—A. I would say more often the company; although we sued in one instance I recall—We sued a bonding company on a bond given by them in which we represented a local concern.

Q. Where did you bring your suit, in the superior or in the Federal court?—A. I have really forgotten in this instance whether we began in the Federal court or whether it was transferred.

Q. It did get into the Federal court?—A. In the Federal court? It did get into the Federal court; yes.

Q. And in the admiralty cases whom did you represent?—A. More—I do not think that in more than one or two instances did we represent the vessel. More often claimants of one sort or another—libellants. We haven't had a great deal of admiralty practice.

Q. Have you cases pending in his court now?—A. Yes, sir.

Q. Many?—A. No; two or three; perhaps four.

Q. Who are your clients, or at least what is the class to which they belong? Are they corporations or individuals?—A. Both. For instance, we are representing a defendant, a local corporation here, in a patent infringement case in which we are sued; there is no prevailing rule about it either now or in times past—now one sort and now another sort of clients.

Q. Your professional activities, then, brought you into Judge Hanford's court a good deal?—A. A very considerable amount, taking the practice as a whole.

Q. To what extent have you been in the society of the judge outside of the court room?—A. A moderate amount during all of that time. Judge Hanford happened to be one of the men whom I met personally almost immediately after locating here, and I have seen Judge Hanford a number of times, and have seen him occasionally, rather rarely, out of an evening socially, and then I have been a member of the Rainier Club for some 15 years, and I have seen him there at various times of the day, and on quite a number of occasions, first and last. Then I have met him other places incidentally. I have been at bar association gatherings and banquets with him that is, when he was also present. I don't mean in company with him.

Q. I understand you—to what extent have you seen the judge drinking intoxicants, if you have ever seen him drinking any?—A. Oh, I have seen him probably take an occasional glass, not sufficiently to ever impress me at all as being particularly at all.

Q. Where have you seen him drink?—A. I would say only at the club, or possibly a social dinner when he would take a glass simply with his dinner.

Q. Have you ever seen him drink at any public drinking places or barrooms?—A. Never.

Q. Have you ever seen him when in your opinion he was under the influence of intoxicants?—A. By no means.

The CHAIRMAN. Are there any further questions?

Mr. HUGHES. Have you ever seen him in court when he was not attending to business before him, as evidenced by his rulings?

A. Never, Mr. Hughes. I have noticed those mannerisms that have been spoken of this morning, in the way of closing his eyes and

rubbing his head, but I have never seen any indication of inattention or loss of conscious, wide-awake alertness.

Q. Have you ever seen any evidence of bias or partiality in his administration of justice?—A. No.

Q. Between counsel or litigants?—A. No.

Testimony of witness closed.

The CHAIRMAN. I have just learned, with some degree of surprise, that Mr. Graves was the attorney for the Harriman interests—that his firm was—and that Mr. Murphy was attorney for the Northern Pacific Railway; those gentlemen had opportunity to state those facts, I think. Why didn't they do it?

Mr. HUGHES. They certainly would have so stated had it occurred to them that it would have been important, or if they had been interrogated in regard to it. Now, the fact is that the firm of which Mr. Murphy was a member were attorneys for the Northern Pacific Railway Co., but Mr. Murphy, I do not think, ever conducted any of their business.

The CHAIRMAN. Well, it comes to the same thing in the end.

Mr. HUGHES. Well, if you had directed their attention to that I am sure they would have so stated. I will be glad to call them back and have you interrogate them in regard to the matter.

The CHAIRMAN. I think in connection with their testimony that it ought to appear.

Mr. HUGHES. It did not occur to me when you were examining them to suggest to you to ask those questions. I am sure that it did not occur to them, because I am sure that if you gentlemen will take pains you will ascertain that neither of those men will withhold any facts from you.

The CHAIRMAN. Undoubtedly it was my fault in not making the questions inclusive enough. I think in justice to them that it should go into the record so that no one hereafter can say they did not tell the whole truth.

Mr. HUGHES. It did not occur to me. I knew that Mr. Graves had represented the Northern Pacific at one time when he was a member of the firm of which Mr. Murphy was a member, although Mr. Murphy was not regarded as the attorney for the Northern Pacific and never attended to any of its business, but Mr. Graves did. Now, in the present firm of which Mr. Graves is a member, I think Mr. Bogle is the man who represented the Union Pacific interests. I do not know whether Mr. Graves has since he has become a member of that firm represented them in any litigation, but I apprehend not. Mr. Graves's health failed him a couple of years ago and he rested for a year or two, and he has only been identified with Mr. Bogle's firm for a little over a year.

The CHAIRMAN. I think the information ought to go into the record in connection with their testimony.

Mr. HUGHES. If there is any thought that their testimony might possibly be influenced by it in any way, I think that they ought to be called back and I will ask them to come back.

The CHAIRMAN. Very well. Who will we call next? If you have not anybody at hand there is a Mr. Adams here who wishes to get away.

WILLIAM ADAMS, being first duly sworn, testifies as follows:

The CHAIRMAN. State your full name to the committee.

A. William Adams.

Q. Where do you live?—A. Seattle.

Q. How long have you lived in Seattle?—A. Since April, 1903.

Q. What is your business, Mr. Adams?—A. At present I am in the butchering business, but before that I was a street car man.

Q. Are you running a business for yourself or working for some one?—A. I am working for the James Henry Packing Co.

Q. And before that?—A. I was street carring in Seattle before that.

Q. In what capacity?—A. Gripman on the Yesler Way Line.

Q. Is that a cable line or a trolley line?—A. That is a cable.

Q. Tell us where that line runs or ran when you were on it?—A. It runs from Second Avenue and Yesler Way to Lake Washington; it is a parallel line, running east and west.

Q. Did you run on any other line than that?—A. No, sir; I never did.

Q. Or any other street car service than that?—A. No, sir.

Q. When was that?—A. Well, I was on there from September, 1903, until February 10, I believe it was, the date.

Q. Are you acquainted with Judge Hanford?—A. No, sir; I am not.

Q. Do you know him by sight?—A. Well, fairly by sight.

Q. How long have you known him by sight?—A. Well, since the time of the exposition here in Seattle; that was in 1909, I believe, or somewhere along there.

Q. Did you know him by sight before that?—A. No, sir.

Q. Only since that time?—A. Well, he was pointed out to me at one time during the exposition as being Judge Hanford.

Q. When he was pointed out and you identified him as Judge Hanford, had you been acquainted with him by sight—I mean, with that person before that?—A. No, sir; I had not. No, sir.

Q. What was the occasion of his being pointed out to you?—A. Well, he alighted from the car at Seventh Avenue; that is just the street going to the courthouse.

Mr. MCCOY. That crosses Yesler Way, does it?

A. Yes, sir; Seventh Avenue. And he appeared to be—his step appeared to be a little unsteady, and a passenger on the car pointed him out and said, "Do you know who that gentleman is?" And I said, "No, sir; I do not." "Well," he said, "that is Judge Hanford."

Q. Where was the car at that time?—A. Going east at Seventh and Yesler Way.

Q. You spoke of his step being unsteady; where was he walking?—A. Well, he had just got off the car and was walking north to the curb; to the side of the street.

Q. Do you know where his home is?—A. No, sir; I do not.

Q. Even by hearsay?—A. No, sir; not even by hearsay.

Q. Was that the only time you saw him riding on the cars?—A. That was the only time to my knowledge. I had never saw the man before, and I would not have noticed him at that time only he was pointed out by another passenger.

Q. Did you notice him on the car at all?—A. No, sir; I did not.

Q. Only after he got off?—A. Only after he got off.

Q. How far did he walk while you were noticing him?—A. Only 10 or 15 feet—not more than that—I was starting my car up at that time.

Q. Tell us a little more, if you please, about the character of the unsteadiness?—A. Well, he seemed to sway from one side to the other—kind of stagger a little—that was, I suppose, why the passenger called my attention to the fact that he was staggering a little.

Q. What time was it in the day or night?—A. Well, it was in the daytime, but I can not recall just the time; it was some time during the afternoon.

Q. Well, did you at any time form any opinion as to what his condition was?—A. Well, I can't say that I really did; but he appeared to be—well, I saw men that were intoxicated that way; of course, I don't know.

Q. Well, at the time you saw him, was that the impression or opinion that his appearance caused you to form?—A. Yes, sir; that was my opinion of it.

Q. Did you reach the conclusion that he was intoxicated?—A. Well, I can't say that. I just would say that I was positive of it, but then that was my impression.

Q. Did you see him at other times elsewhere than on the car?—A No, sir; I do not recall any other time until I saw him here in the court room.

The CHAIRMAN. Any further questions.

Mr. HUGHES. At the time you speak of, that was in the summer of 1909?

A. It was during the time of the exposition.

Q. That would be in the summer of 1909?—A. Well, yes, I believe it would; I am not just positive of that.

Q. Can you give us any idea as to what month it was; the exposition ran from June until September.—A. No; I do not believe I could recall the month exactly.

Q. Could you give us any idea of the time of day?—A. It was in the afternoon sometime, I don't know just what time of day?

Q. About the middle of the afternoon, or was it about 2 o'clock?—A. I can not speak positively as to that; I can not speak positively.

Q. Can you recall the name of the passenger?—A. No, sir; he was a stranger to me also.

Q. But it was he who told you that it was Judge Hanford?—A. Yes, sir.

Q. He got off at Seventh Avenue and walked north, you say?—A. Yes, sir.

Q. That would lead him in the direction of the courthouse of King County, would it not?—A. Yes, sir.

Q. And from the point where a passenger alights from the car Seventh Avenue is quite steep?—A. All the way up the hill from the courthouse; well, after leaving Seventh Avenue; that is, after leaving Yesler Way.

Q. From Yesler Way up it is quite steep?—A. Yes, sir.

Q. And he went up the hill in the direction of the courthouse?—A. I could not say as to that; he had not yet reached the curb on Yesler Way when I started my car away.

Q. I understood you to say that he started up Seventh Avenue north?—A. I say he started in the direction of the courthouse on Seventh Avenue; he was crossing Yesler Way going in that direction.

Mr. McCoy. Mr. Adams did you say that Judge Hanford staggered on this occasion?

A. Well, the man that was pointed out to me as being Judge Hanford, yes.

Q. I mean whoever the man was?—A. Yes, sir; he did.

Q. Just explain what you mean by staggering?—A. Well, he would step this way and stop a bit and then that way; his body would kind of sway.

Q. From side to side?—A. From side to side, to keep from falling, I suppose.

Q. You say you have seen him in court recently?—A. Well, to-day I recognized the man here that I think is the same man.

Q. In this room, you mean?—A. Yes.

Q. Is the man here now?—A. I wouldn't swear to it; no, sir, he is not here that I see. I would not swear positively that it was the man that I saw there, but I rather think it was. I am not sure; not being acquainted with him I could not swear to it positively.

Mr. Higgins. You were the conductor on this car?

A. No, sir; I was running the front end of the car; the gripman.

Q. You were attending to the motor or the cable?—A. Yes.

Q. And did Judge Hanford leave the car from the front or the rear?—A. From the front; yes, sir.

Q. So that he had to pass you?—A. Well, he came out just behind me and left the car.

Q. Was the car full?—A. Well, it was fairly loaded; yes.

Q. Do you recall whether he was going up the grade on Yesler Way or no?—A. How is that?

Q. Do you recall which way your car was going?—A. Well, I was going toward Lake Washington.

Q. Well, that is up the grade?—A. Yes.

Q. And the grade is very steep?—A. Not right at that point it is not steep; it is practically level right there.

Q. Can you tell the committee, Mr. Adams, how long probably your car stayed there?—A. Well, not over a minute.

Q. You lost sight of Judge Hanford as soon as your car started?—A. Yes, sir.

The Chairman. Anything further.

Mr. Hughes. Yes, sir. You operated a car with open front and sides parallel to the gripman's stand in the car?

A. Yes, sir; I did.

Q. That is to say, the central part of the car was closed and the front part of the car had two seats running parallel with the car, sufficient to hold about five people, and you stood between the backs of those people operating the grip?—A. Yes.

Q. And that part of the car was entirely open?—A. On one side only. One side of that car is open and the other side the seat runs from the closed part to the front.

Q. Well, I mean the whole of the front of the car where the gripman stands is open; there are no inclosures around there?—A. It has a vestibute in front; just a wind shield in front of you.

Q. There is a glass front to the car——A. But on either side——

Q. there is a glass front, you mean?—A. Yes.

Q. But it is open on each side?—A. Yes, sir; it is.

Q. And Judge Hanford was sitting on the side seat on the north side of that car, and he got off in the direction of the courthouse?—A. No, sir; I think he was inside the car and came out just behind me and got off.

Q. And he stepped down and got off the car, off the steps of the car, while you paused there?—A. Yes, sir.

Q. Do you know whether any other passengers got off at that time?—A. No; not off the front end; I don't know about the rear.

Q. Your stop there would not be over a few seconds?—A. I say not over a minute.

Q. Well, it would not be over a few seconds.—A. It might have been a minute, but I don't think it was over that.

Q. The steps on those cars were quite high, too, down to the level of the street?—A. No, sir; they are not so very high.

Q. Is it one or two steps?—A. One step.

Q. Are there not two?—A. One step.

Q. How?—A. One step; there is one step between the floor of the car and the ground.

Q. And the running board?—A. Yes, sir.

Q. Do you know how high that running board is?—A. Approximately, it is about 15 inches.

Q. He stepped off from that and stepped away and seemed to have lost his balance?—A. He did; yes, sir.

Q. And you have often seen that with people, haven't you, stpping off those cars?—A. Oh, yes; I see a great many people in that condition.

Q. Have you seen Judge Hanford in this room—the same man?—A. No, sir; I don't.

Q. Have you been here prior to to-day?—A. Yesterday I was here; yes, sir.

Q. Not yesterday, because yesterday was Sunday.—A. Saturday I was here a few minutes.

Q. Did you say you saw the man here whom you took to be the same man?—A. Yes, sir; he resembled the same man—I would not say it was the same man.

Q. Was he here on Saturday when you were here?—A. Yes.

Q. Where was he sitting?—A. Over here.

Mr. DORR. In the jury box? You are pointing in the jury box now.

A. He was right over here in one of these chairs.

Mr. HIGGINS. You mean in one of the empty seats of the jury box back of you?

A. Yes, sir.

The CHAIRMAN. Describe the man who was pointed out to you as Judge Hanford as best you can?

A. Well, he was a man that apparently—well, I don't know how old he was——

Q. How tall was he?—A. Well, I should judge he was close to 6 feet—5 foot 11, perhaps, or 6 feet; of course, I don't know.

Q. Did he wear any beard; if so, tell what kind of a beard?—A. Well, it seemed to me that he had only a mustache at the time—I could not swear positively to that, either. You know, I didn't take particular notice of the man further than to see him walking away, as he was going away, and I noticed this unsteadiness, and I hadn't

a chance to take a good enough look at the man to even swear that he was wearing a beard or not, to tell you the truth about it.

Q. Then, your knowledge depends entirely on the knowledge of this man who told you that it was Judge Hanford?—A. That is it, exactly; yes. I didn't know that it was Judge Hanford until he told me.

The CHAIRMAN. That is all.

Witness excused.

Mr. DORR. Mr. Chairman, I think that in all fairness to the parties concerned, and in order to preserve the record for reference by the entire Committee on the Judiciary, that at the close of Mr. Adams's testimony it should be noted that Judge Hanford had not sat at any time in the jury box or in the place indicated by the witness Adams. Of course, we know that; but I think, for the purpose of the record in all fairness to all parties, that that should be shown.

The CHAIRMAN. I suppose the best way to do that would be to prove it by some one and get it into the record in that way.

Mr. DORR. I think the committee would take judicial notice of that.

The CHAIRMAN. I think that what you have suggested so far as I know, is true.

Mr. HIGGINS. It is true so far as I know, Mr. Chairman. I have not seen Judge Hanford sitting in the place indicated by the witness Adams this morning.

The CHAIRMAN. Nor at any time during the hearings.

Mr. HIGGINS. No.

Mr. MCCOY. I was going to suggest that Mr. Dorr's statement be taken as testimony.

Mr. DORR. If there is any question about it——

Mr. HIGGINS (continuing). He has not been sitting in the jury box, that is a fact.

The CHAIRMAN. I think under the circumstances the record sufficiently shows the fact, but if you wish to put in any evidence formally as to it you can do so.

Mr. DORR. But so long as the committee takes notice of that and we all agree to it, I do not think it need be proven further.

Mr. HIGGINS. If you are satisfied with the statements which each member of the committee has made, is not that sufficient?

Mr. DORR. I am satisfied with that.

Mr. HIGGINS. I mean, so far as the record goes?

Mr. DORR. Yes.

JEROLD LANDON FINCH, recalled, testified as follows:

The CHAIRMAN. You are the same Mr. Finch who testified concerning the Heckman & Hansen matter some days ago?

A. Yes, sir.

Mr. MCCOY. Mr. Finch, were you in court when Mr. Battle was testifying about the Heckman & Hansen case?—A. I was.

Q. And when Gen. Metcalfe—or is it Mr. Metcalfe?—A. Gen. Metcalfe.

Q. Gen. Metcalfe testified? A. I was.

Q. They were the only two who testified about the proceedings, except in so far as the investigation of your personal conduct was concerned, were they not?—A. I think so.

Mr. DORR. No; there were others, Mr. McCoy, as having to do with that case; there was also Judge Hoyt. And also Mr. Powell.

Mr. HUGHES. Mr. McCoy excluded those who were on that committee.

Mr. MCCOY. I mean outside of his own strictly personal matter.

Mr. HUGHES. The other parties that were mentioned by Mr. Finch are out of the city—I do not know whether they have yet returned—I mean Mr. Jones and Mr. Reynolds.

The CHAIRMAN. Do you want them to be present when he is testifying?

Mr. HUGHES. I do not care about that.

Mr. MCCOY. Say whatever you please, Mr. Finch, in regard to the facts about which they testified, or any other branch of the Heckman & Hansen case which seems to you to need further elucidation.

The WITNESS. In the first place, I want the committee to understand Mr. Heckman's side of the controversy with reference to that $5,000 note and whether or not there was to be any security whatever given the bank.

Q. Now, for a minute; are you going to testify as to Mr. Heckman's understanding from what he told you or from what he testified about?—A. From what he testified about.

Q. Before Judge Smith?—A. Yes.

Q. And if you can, when you give his testimony, or what you remember of it, will you refer to the page in the typewritten record offered before Judge Smith?—A. Yes, sir; I will do that. Mr. Heckman testified that he was not to give the bank any security whatever, but that the bank was to take over the title to the property from the Hennegar heirs; they were to take the title to that half interest in themselves and he was to pay them for it at the rate of $1,000 a year and pay it out in five years, and gave that note accordingly. Now, you will find his evidence to that effect on page 542, line 20——

Q. You mean page 542 of the typewritten transcript of the stenographer's notes before Judge Smith?—A. That was given before Judge Smith—page 542, line 20 to page 543, line 1. I will read that, as it is short, and then I will refer you simply to further testimony on the same point. [Reading:]

> Q. What about the security?—A. There was to be a transfer of the children's interest instead of being held by the guardians of the children, it was to be held by the bank, on account of the father, the guardian for the children, was a man that was drinking considerably and done considerable annoyance around the shipyards, and always kept going back and forth more or less and bothering me, so that rather than deal with him, I thought I would deal with the bank, and the bank was to assume exactly the same arrangements which a guardian would assume from the probate court. It was merely a transfer from the guardian over to the bank.

Now the further testimony to the same effect is found at page 639, line 3 to line 14 and page 685, line 6 to line 21.

Q. That is further testimony given by Mr. Heckman?—A. Yes, sir; to the same effect. Now, I want to explain this too. Judge Battle produced a second mortgage on the property to the amount of $3,000 and called the attention of the committee to the fact that that mortgage itself showed that it was a second mortgage and that Heckman had signed it personally. That is true, and his testimony discloses that that was the very time that he discovered that there

was a first mortgage on the property, and it was due to that clause which was contained in the second mortgage that he made the discovery. That is found in the evidence at page 549, line 4 to page 550, line 12. It is so long that I will not read it.

Now, even at that time he did not know, and he testified that he did not know that the note had been changed to read a 90-day note instead of a 5-year note. He discovered about the mortgage first; then he made the discovery about the note being a 90-day note later on when the bank sent him the notice to come in and take care of it. That is found in his testimony at page 550, line 27 to page 553, line 3. Now, you will find from the evidence too that Judge Ballinger and the bank, when their attention was called to the matter, agreed to fix it up——

Q. Where do you find that?—A. That is at the end of the testimony that I have just quoted to you; that is part of what I have just quoted. It was about a month after that that the schooner *Alice* was brought to their yards for repair under the circumstances that I have before related. Then Judge Battle placed in evidence the contract which the bank took out to Mr. Heckman for him to sign and which he would not sign. I think to make the record plain then the letter which followed the presentation of that contract next day should be placed before the committee. That is found on page 554, line 12 to line 18, and reads as follows—this being taken from the citation I have just given you in the referee's report of the evidence. [Reading:]

SEATTLE, WASH., *June 13, 1901.*

Messrs. HECKMAN & HANSEN, *Ballard, Wash.*

GENTLEMEN: Your overdraft at the close of business to-day amounts to $6,917.02, which you will please cover by 12 o'clock noon to-morrow.

Yours, respectfully,

E. L. GRONDAHL, *First Vice President.*

That notification was written to them the next day after they had presented the contract that Judge Battle put into the evidence and which they refused to sign?

Mr. DORR. It was an assignment of their claim against the schooner *Alice.*

The WITNESS (continuing). It is referred to as such, but referred to as an assignment, as collateral security to some claim that the bank had against the firm. Now, the committee has before it, I think pretty well, the story then as to what occurred, namely, the suits that were brought all within a period of two weeks. I then want to call attention——

Mr. HUGHES. Pardon me, had the suit against the schooner *Alice* been brought prior to that two weeks or is that one of the suits?

A. That is one of the suits and it was the first one brought. Then I wish to call the attention of the committee to the schooner *Alice* stipulation. That stipulation in itself looks harmless, but it was the beginning of a general confiscation of the estate of Heckman & Hansen, which was completed a short time afterwards by getting possession of their property over in the State court through the receivership proceedings.

Mr. MCCOY. Now, that stipulation is an exhibit

A. It is already an exhibit in this case.

Mr. MCCOY. What number is it?

The WITNESS. I do not know, and it is not in the room this morning.

The REPORTER. That was marked "Exhibit No. 61½."

Mr. MCCOY. At any rate, it is the stipulation which provided for a sale of the *Alice* and that the receiver in the State court should bid in and for the application of the money.

A. That is it exactly. Now, pursuant to that stipulation all the parties concerned in the schooner *Alice* case enter into a stipulation by the terms of which——

Mr. MCCOY. Excuse me just a minute, Mr. Finch. You do not mean that in pursuance of the stipulation they entered into a stipulation, the terms of which——

A. No; I mean following that as an event immediately following the entering into the schooner *Alice* stipulation as to what was back of things, they went into the schooner *Alice* case and there all parties entered into a stipulation so that Judge Hanford was to render a judgment—that judgment being a foregone conclusion because of the terms of the stipulation, and which was to ultimate in Judge Hanford's rendering judgment that claims be paid in accordance with the order that I have set out at the top of page 9 of the petition in re Ballinger—I do not know what the number of that exhibit is—I would like to read that at this time, because I do not think I shall ask this committee to take with them the files of the schooner *Alice* case, although they were placed in evidence before Judge Hanford.

First. The costs were to be paid, amounting to	$675.15
Second. Heckman & Hansen's claim	7,305.52
Third. Scandinavian-American Bank	275.00
Calhoun, Ewing & Co	634.50
Fourth. Henry B. Klamroth	1,522.37
Fifth. Scandinavian-American Bank	332.50
Calhoun, Ewing & Co	1,667.70
Sixth. Arndt Thiele	66.65
Seventh. Heckman & Hansen	812.78
Total	13,292.17

Now, pursuant to the schooner *Alice* stipulation the receiver of the State court bid in the property at a figure sufficient to get it, but not to cover all of these claims; he got it at $6,000 and then turned it over to the party to be named by the bank in that stipulation, namely, A. J. Tennant, and took from the bank the credit for this overhraft.

Q. Do you mean he bid it in for the even $6,000?—A. No; that is just what I mean—it is my understanding that he bid it in for the $6,000.

Mr. HUGHES. Why do you say your understanding is—would not the record show exactly—do you mean that you are speaking from memory?

A. I think it would show, but I do mean to say just now that I do not recall it, but it is my understanding that that is it.

Mr. HUGHES. You mean by that your recollection?

A. That is what I mean.

Mr. HUGHES. That is what I wanted to get at.

A. (Continuing.) Nevertheless, they dropped—pursuant to that stiuplation—the bank dropped that suit on the alleged overdraft, so that it was equivalent to getting a credit for $7,352.52.

Q. You mean it was the equivalent of offsetting the one claim against the other?—A. That is what I mean to say.

Q. So that, as far as that claim was concerned, Heckman & Hansen's alleged indebtedness to the Scandinavian-American Bank was liquidated and paid?—A. That is true. Now, the last item is No. 7 and it shows that Heckman & Hansen were to have $812.78. That item, by the terms of that stipulation, or because they had entered into that stipulation and the bank had not been forced to bid, as it would have been forced to bid without entering into the stipulation, because of its having a $20,000 mortgage on the boat, this last item was lost to Heckman & Hansen, this $812.78.

Q. You mean that ranked last in the admiralty suit?—A. Yes, sir; and because the boat did not bring enough to pay it it was lost to Heckman & Hansen. The boat, however, would have brought enough had it not been that the bank, which had the $20,000 mortgage, was able to get it without bidding the amount of all the claims against it, and the receiver bid it in, as he did, and simply turned it over to them.

Q. In other words, your claim is that if that sale had been without any stipulation of any kind, in the regular course of procedure, that in order to have saved its mortgage on the boat, the Scandinavian Bank would have to bid enough for the boat to include this $812.78?—A. That is just my claim exactly.

Q. Otherwise it would have lost its mortagge?—A. That is just my claim exactly. Now, at the same time I want to call the attention of the committee to the fact that this $812.78 claim had theretofore been assigned to the Scandinavian-American Bank to secure that $650 item that has been referred to.

Q. Covered by a chattel mortgage?—A. Yes, sir. That is shown by a reference to Mr. Heckman's testimony at page 580, from line 1 to line 29. I call your further attention to the fact that the costs which the stipulation said were to be paid by taking some $889 of Heckman & Hansen's money which had been tied up in a garnishment suit, had already been paid by the receiver in the State court. That is found from the receiver's testimony at page 83, from line 8 to line 16.

Q. That is, the stipulation referred to certain indebtedness to Heckman & Hansen which had been attached or garnisheed by the bank?—A. Yes, sir; and suggesting that that fund be set aside as a special fund and that the receiver of Heckman & Hansen should turn it over to the man who was to get this boat, with which he was to pay Metcalfe & Jurey $200, and was also to pay the additional costs, but those costs, as I have just shown by reference to the receiver's testimony, had already been paid.

Q. This consisted of keeper's hire and all that sort of thing?—A. Yes, sir.

Q. In connection with the care of the *Alice* after it had been libelled?—A. Yes, sir. So that Heckman & Hansen lost that $889 cash that belonged to them. Mr. Metcalfe, the stipulation recites, was to be paid $200 of that sum.

Q. The stipulation recites that the attorneys for the libellants were to be paid that amount.—A. Well, Metcalfe & Jurey were the attorneys or proctors for the libellants. Well, Gen. Metcalfe stated the other day that he was not a party to that stipulation, nevertheless he was a beneficiary under it.

Q. Are you sure that he stated that he was not a party to it? I do not remember that he testified to that.—A. I think he said so on the stand the other day to you.

Q. May be he did; I do not remember it. But he would have to be, naturally, wouldn't he?—A. Yes. When you had that stipulation and had a colloquy with him, I think you referred to the fact that his name was not on it. I have not looked at the stipulation for years, but it is here and it ought to be in the court record.

Mr. DORR. I have that stipulation now.

Mr. FINCH. Let me take it.

Whereupon counsel hands document to the witness.

Mr. MCCOY. Is that an exhibit?

The WITNESS. Yes. 61½. Metcalfe & Jurey are not upon the stipulation, though Gen. Metcalfe's name is appended to it as a witness.

Mr. HUGHES. It is signed directly by the parties, is it not, instead of by their attorneys?

A. No, it was not.

Q. At least by Heckman & Hansen?—A. The Heckman & Hansen interest in it was carried by Larson, receiver, signing it.

Q. Now, I call your attention to the fact that in my colloquy with Judge Hanford I offered or included Gen. Metcalfe as one who I thought should be disbarred. I received the evidence which warranted me in making that statement from his connection with the various suits, and I call the attention of the committee to the fact that when he entered into this stipulation he had done nothing in the case that had been brought against Heckman & Hansen, or for them, except to libel the *Alice*. He was paid a retainer of $350 a year, and yet when he entered into this stipulation, which was followed by others, by which he was to stipulate away all the rights of Heckman & Hansen, he received out of the proceeds at least the $200, and Mr. Jurey, on the stand before Judge Smith, said that they had received upward of $500, but he could not remember the amount.

Mr. MCCOY. Can you refer to the page?

A. I am giving that to you from memory. That is some of the evidence that was offered by my opponents before Judge Smith and which was not returned, but I came before Judge Hanford in this petition relative to the disbarment of these parties, which was filed with him before he had decided the Heckman & Hansen matters, and called his attention to what I have just stated to you in these words at the bottom of page 10:

> Metcalfe & Jurey received upward of $500 out of the deal, but testified that they could not remember how much more.

Q. So you are speaking then, of course, from your recollection of recent testimony—I mean that at that time you were speaking on a recollection of recent testimony?—A. That is true—that is true. Then I called the attention of the committee again to pages 8 to 11, inclusive, of the petition re Ballinger, to show you what I presented to Judge Hanford at that time, and just to make my story complete before the committee I will say that paragraphs 13 and 14 suggested to Judge Hanford that on December 9 following the entering into of this stipulation, the attorneys of record, without Heckman & Hansen's consent or knowledge, stipulated that judgment might be taken

for want of answer in the suit brought for the foreclosure of the $650 chattel mortgage. Now, I have already showed and cited the pages of the record that that $650 mortgage was secured by an $800 claim of Heckman & Hansen against the schooner *Alice* which was practically owned by the bank.

Q. Now, that claim of Heckman & Hansen against the schooner *Alice* for $812.78 arose out of other repairs than the ones that were involved in this $6,000 transaction?—A. That is true, and it was an older claim, therefore, in admiralty proceedings, it came last.

Q. Just as the $20,000 mortgage had to come last?—A. Yes.

Q. When you say it came last, you mean it came last in these claims?—A. In the order of precedence in Judge Hanford's court, and ahead of the $20,000 mortgage.

Q. That claim for $812.78 was a claim and a lien on the boat ahead of the $20,000 mortgage?—A. That is true.

Q. But it was subsequent to these other liens?—A. That is true. Now, all the while let me tell the committee according to the evidence, the bank could have gotten the money that Heckman & Hansen owed to them if it had been willing to take it. Mr. Heckman had a friend—I am giving you now the testimony—had a friend who would advance the amount that was owing to the bank on its mortgages, though it did not include the amount of the alleged overdraft—his name was Pete Norby. Metcalfe & Jurey were apprised of the fact that Norby would pay the bank and would step into the bank's place and would take an assignment of their mortgages, and they wrote the bank accordingly. The bank refused to take its money and made a quibble over the fact that Heckman & Hansen were not paying it and that the bank would have to give an assignment of the claim. Now, that is found in the record at page 644, line 15, to page 646, line 20, and at page 583, line 13.

The CHAIRMAN. Is there other evidence tending to contradict that?

A. No, it was not met.

Mr. MCCOY. It was not met at all?

A. That is my recollection. I am willing to state very positively that it was not met at all. If, for instance, you will refer to page 644 you will find that Judge Battle took that position before the—in his examination before Judge Smith. There you will find he says, "Now, according to my proposition"—now, I am reading from page 644 at line 16.

Mr. MCCOY. That is whose testimony?

A. Mr. Heckman being examined by Judge Battle:

A. Why, according to my proposition, of course, the bank mortgages were to be paid. I offered to pay the bank mortgage several times. Mr. Jurey sent a letter over to the attorneys for the bank, Ballinger, Ronald & Battle, if they wanted to transfer the mortgages, they could get the money, could get the cash.

Q. How much cash?—A. $5,000 cash and $650 and also agree to take up the $3,000 when it came due.

Q. Who was that man?—A. Mr. P. F. Nordby.

Q. And then your attorneys addressed a letter to Ballinger, Ronald & Battle?—A. Yes, sir.

Q. Did that proposition include also that amount of these overdrafts, or claimed overdrafts?—A. Why, it included whatever money there was against the property, whether overdrafts, or mortgages, or whatever it was.

Q. I ask you, Mr. Heckman, you know what the proposition included and it will not suffice us when you say that it included everything against the property. I ask you what was specifically included in that proposition that you say your attorneys de to the bank by letter addressed to Ballinger, Ronald & Battle?

Mr. FINCH. Has not the bank or Ballinger, Ronald & Battle got that letter?

Mr. BATTLE. I do not know.

Mr. FINCH. That is the best evidence.

Mr. BATTLE. But this witness began to testify regarding the matter without the letter and I wanted just to test his recollection relative to the matter.

Then the master gives his direction and then this question:

Q. Now, what I am asking you is, what was embodied in this proposition that you say you stated to your attorneys and which your attorneys presented by letter, in writing, to Ballinger, Ronald & Battle?—A. It was embodied this much, that $5,000 and $650 which at that time appeared to be due, was to be transferred, but on account of my partner's, Mr. Hansen's condition, I could not lift the mortgage, because he was unconscious in the hospital at the time and I wanted it transferred. Then, regarding these other matters of $6,800 that was then pending in litigation on the schooner *Alice*, I was not in a position to touch it.

Q. Then your proposition was not to pay the mortgages, but to purchase them?—A. To transfer them was all that I could do.

Q. Purchase them, was it not?—A. Nordby agreed to take up the mortgages if the bank wanted the money.

Q. In other words, you proposed to purchase and not pay them?—A. Purchase the mortgages or transfer, but I was not to have them transferred.

I will not read further—you catch my point.

Q. In other words, the bank took the position that they would take the money, but that they would not make an assignment.—A. That is true.

The CHAIRMAN. It is clear that we can not conclude your statement, Mr. Finch, before lunch, so we will now take a recess at this time.

Whereupon a recess is taken until 2 p. m.

AFTERNOON SESSION.

2 O'CLOCK.

Continuation of proceedings pursuant to recess. All parties present as at former hearing. Same witness on the stand.

The WITNESS (continuing). In the testimony Gen. Metcalfe and Mr. Heckman agree that Mr. Heckman left his office, and left because he was not satisfied with Gen. Metcalfe's treatment. The immediate cause, or the event which marked the separation occurred on the 10th of December.

Mr. MCCOY. What year?

A. The year 1901. The next day after Gen. Metcalfe had, unbeknown to Mr. Heckman stipulated judgments against him in the foreclosure suits, and it grew out of Mr. Heckman being put out of his home upon an order obtained by the receiver in the receivership proceedings and his taking that matter to Gen. Metcalfe and the general telling him that he could do nothing for him. He then sought other attorneys. Mr. Reynolds was then hired and the situation as it confronted Mr. Reynolds was this, that the parties, the bank over in the State court, or some one in the receivership proceedings, were proposing to sell the property. He then filed the petition in bankruptcy over in Judge Hanford's court and obtained an injunction against the State court proceeding further. I have then related how, a few days later——

Mr. MCCOY. Do not repeat, unless it is necessary to make the connection.

A. No. I only want to get the facts well fixed in mind, that is all. I think likely from your suggestion that the committee is thoroughly familiar then with the story from then on.

I think now I would like to take up specifically Judge Battle's testimony.

Mr. HIGGINS. May I ask you a question in that connection, if Mr. McCoy does not object?

Mr. MCCOY. No.

Mr. HIGGINS. Is there anything which you have or would testify about except what occurred in Judge Hanford's court; what occurred before the committee of the bar association with reference to the Heckman & Hansen case, which does not present to your mind fairly the questions that is not contained in the transcript of testimony which the committee proposes to take with them to Washington?

A. No; if I understand your question I would answer it this way, that I have undertaken to not give a single bit of evidence relative to the case except such as was presented to Judge Hanford and which he had before him all the while.

Q. That is hardly what I want to ascertain. I asked you whether the testimony which you are about to give is not all included in the record of the testimony taken before the master in the Heckman & Hansen case.—A. That is true.

Mr. MCCOY. You were about to testify in regard to Mr. Battle's testifying before this committee.

A. Yes, sir. Now, I propose to—I thought Mr. Higgins directed his questions to what had gone before.

Mr. HIGGINS. No; I was referring to what you were about to testify to.

A. I just now want to take up Judge Battle's testimony that was given the other day in this case where he did not accurately state the facts. I want to call the attention of the committee to——

Q. And you will state the facts as they are contained in the transcript of the testimony taken before the referee.—A. Yes, sir. In the first place I think the first point where we differ, but which is not covered by my testimony heretofore, is his interpretation of the Washington law relative to receiverships. If I understood what Mr. McCoy asked him and his answer, I think that he misstated himself—I think that the judge did—in other words, if he meant to convey that our laws contemplated a receivership upon an account stated, for instance, with no equities whatever stated, I think he is wrong in that. I do not know whether Judge Battle meant to say that or not.

Mr. MCCOY. I think that he cleared that up afterwards; at any rate we can look at the statute

Mr HIGGINS. I do not think he stated that; I think he did at first, and then misapprehended the question and then he changed it later.

Mr. DORR. Was not the receivership statute copied into the record?

Mr. FINCH. Yes, sir; it was, and I see it is here.

Witness has volume of testimony given by Judge Battle before him while he is testifying.

Mr. MCCOY. It was to be, but Judge Battle finally changed his testimony from what Mr. Finch has just been stating.

The CHAIRMAN. He may pass from that incident and take up the next point.

The WITNESS (continuing). On page 864——

Mr. MCCOY. Of the record before this committee?

The WITNESS. Yes, sir Judge Battle referred to the proceedings electing the trustee as a defensive move. The man—Mr. Tennant—who caused the trustee to be elected, says on page 192 of the testimony before Judge Smith, line 29, that the purpose of it was to block Mr Heckman.

Mr. HIGGINS. Is there any other evidence in that transcript on that subject?

A. I beg pardon?

Q Was there any other testimony taken before the master on that question which would controvert that statement of Mr. Tennant's?—A. No; there was not. On page 1867——

Mr. MCCOY. Of the present record?

A. (Continuing) Of the present record Judge Battle refers to Metcalfe & Jurey having obtained a stipulation that no proceedings—or that the proceedings be stayed in the State court until the 1st of February, 1902 I do not know what he refers to there. It was on the 3d of December, 1901, that the order was taken to show cause 10 days later why the property should not be sold, and that matter was to come on about the 14th of January following, and would have come on except for Mr. Reynolds coming into Judge Hanford's court and getting that injunction. So I do not know to what Judge Battle refers.

Q. Gen. Metcalfe, you mean Judge Battle?—A Judge Battle.

Q I think a moment ago you said that Gen. Metcalfe stated that there was a stay until February.—A. Well, I mean it was Judge Battle who stated that. On page 1868 Judge Battle says that he does not know that I ever raised the question as to whether the property was sold subject to encumbrances or not. I raised it at every step where I raised any question; that is, after the property was finally sold. There is one place in the record in which Judge Battle is right and I was wrong in my testimony; that is at page 1870 and a few pages following that. It grows out of my having said here that in the proceedings before Judge Smith all the parties denied knowing Mr. Mayhew. I had said that and added that the bank denied having any part in the purchase of the property I made an error in regard to the parties knowing Mr Mayhew, and it arose this way: In the State court previously when Mayhew purchased the property there were two bids given for it, one was put in by the bank and the other by Mr. Mayhew, the bank's bid being about $14,000 and Mayhew's $24,000. Judge Ballinger, as a matter of fact, had drawn both bids and I was in the room, and there in the room everybody disavowed knowing Mr. Mayhew, and treated him and emphasized the fact that he was a stranger to the record, and then before Judge Smith, I recall, now that he calls my attention to the testimony, I undertook to see if they would still take that position, but they had turned around at that time That was the way I came to make my mistake. I have not seen the testimony for some six years

On page 1872 Judge Battle says that I had only examined one witness when the record was made before Judge Hanford. I do not think that is so very essential, but I will call the attention of the committee to the fact that the certificate from Judge Smith, which you will take

with you and which is to be incorporated as a part of the evidence—you know to what I refer—shows very plainly what the facts were.

Q. It shows that it was taken out of the middle of the record.—A. About the middle, and it shows that several witnesses had testified before and they had all told the story that I was objecting to and which caused the reference to Judge Hanford——

Q. To Judge Smith.—A. No; back from Judge Smith to Judge Hanford. I also protest that the record as made by Judge Battle, and it is followed by Judge Hanford's opinion, that the position taken by those opposing the bringing of these books was because it would inconvenience the bank. That was not mentioned at all. The reason given down there was that they would not show anything contrary to the story that several prominent men in the bank had testified to, and that is shown in the certificate from Judge Smith that I have just referred you to.

Q. How about the testimony that it was offered to you at that time to permit you to go down to the bank and look at the books—now, I am referring to the period before you came back to Judge Hanford for an order that the books be produced—had they then offered to allow you to go down to the bank and look at the books as you pleased?—A. No; they had not done so at that time. They wanted me to go on record before Judge Smith and show specifically what book I wanted and what item in the book I wanted, and then they offered to either bring in that specific item or somebody would come and swear that it was not there. That is contained in the certificate referred to.

About the fact that, as Judge Battle testifies on page 1882, about when he served his motion to confirm the referee's report on the 10th of May and then the notice that it would come on the 14th of May, I wish to add to the record what has not appeared before, that I thereupon took exceptions to the motion on the ground that no party making it had any interest in the proceedings, and so forth, and that was what held it up indefinitely.

Q. And he then claiming that he represented the shipyards company?—A. Yes, sir.

Q. And you made the point that that concern not being a creditor of the bankrupt estate had no status in Judge Hanford's court?—A. That is true. Now, right while I am on that point, I was about to pass over a point that the judge made some time previously in his testimony.

Mr. McCoy. Which judge?

A. Judge Battle. The record that I made before Judge Smith, where I asked that all parties declare whom they represented, was not returned by the stenographer. It was evidently treated as a preliminary matter that was not to be reported. The first reference to the matter subsequent to that is contained on page 409 of Judge Smith's return, where I asked: "If your honor please, I want the record to show the presence of Mr. Jones"—referring to Richard Saxe Jones. Mr. Battle said: "Let the record show that Mr. Jones is present at my request."

Q. Jones being the attorney for the receiver?—A. Yes. At page 67, line 26, I took specific exception to Mr. Jones taking any part in the proceedings, because he did not represent anybody. As a matter of fact, he was present all through the proceedings and took as prominent a part as any attorney there.

Mr. HIGGINS. Well, whom did it appear, from his questions, if he asked any, that he did represent?

A. I beg your pardon?

Q. Who did it appear, from the line of his inquiry, as to anybody that he did represent?—A. His first claim was that he came there one day to represent a witness, being Peter Larson.

Q. And what was his next claim?—A. He never made any more.

Q. Whom did you think that he represented?—A. I thought he represented himself.

Q. Did he have an interest in the result of the receivership or the determination of the affairs of Heckman & Hansen, so far as you knew?—A. He had not financial interest. He had such an interest as grew out of the charges that I have made, and he would want to cover up evidence; that was his interest.

Mr. HIGGINS. You claim, do you not, that after the receivership had been wound up, so far as the final account wound it up, that the Scandinavian-American Bank had given some $2,000 to the receiver, $1,000 or thereabouts of that money going to Mr. Jones?

A. I hadn't made any such claim. I discovered that fact down before Judge Smith.

Mr. DORR. Mr. Peter Larson was the receiver in the State court, Mr. Finch.

The WITNESS. Yes.

The CHAIRMAN. Hurry along, Mr. Finch.

The WITNESS (continuing). In this same connection I will refer you also to page 67, at line 26, to page 71, at line 8. Then I want to add that Judge Battle, at page 1885, was absolutely correct in his assumption that what I meant to convey was that he had noted that hearing or that I had the order for the testimony on June 7 and the order entered, or the hearing of it on June 8 was meant by the parties to have just the effect that it did, a hearing without the evidence. I wish to cite the special referee's, Judge Smith's, report to the committee.

Q. This is the final report?—A. The report recommending that the estate be not opened. At page 5 where he finds the facts relative to the alleged overdraft to be in accordance with the contention of Heckman & Hansen.

Q. Do you mean that he finds the facts to have been that the money was drawn by them on the supposition that they were being paid for their work?—A. Yes, sir.

Q. And not that they were advances?—A. And not that it was in any sense a loan.

Q. Not a loan?—A. No. I wish next to call the attention of the committee to a fact that I overlooked on my previous testimony. You find in my first argument submitted to Judge Hanford—the first two or three pages is devoted to a review of certain matters that had occurred in his court and was meant to establish the fact that I had not falsified in some record and the word "falsified" was put in quotations. The word was put in quotations because I was throwing it back at Judge Hanford—using his own words. When I went before him on the—pursuant to the notice that all matters would be heard on the 8th.

Q. Of June?—A. Of June; yes, sir. He said on that day, in response to a suggestion of mine, when I was arguing that the evidence

was not there and that it would take some little time to get it there, and that the magnitude was due to the fact that certain parties, not parties to the record, had gone before Judge Smith to get in the way of my proceedings down there, and then added that if it had not been for that Judge Hanford would not have heard from the remark that he heard relative to disbarment. He says: "Sir, you are a falsifier. That is not true in any sense of the word." That was one of the reasons that I took for taking an extension of some 10 days. I could not go on any further before Judge Hanford with his mind in that sort of an attitude, and you will find that the first four or five pages of my argument was addressed to him to show that I had not falsified, as he said. Now, I do not know that I have anything more to add, unless the committee care to have me take up Judge Hanford's opinion and show in what regard I think it did not state the facts. I presume you could do it as well for yourselves.

Mr. McCoy. Yes; we will ask you to do that if it seems to be necessary. Now, Judge Hoyt testified about some matters here the other day. What have you to say about his testimony?

A. Judge Hoyt went on the stand seemingly with the opinion that he was controverting some evidence that I had given with reference to him. I do not think that I mentioned Judge Hoyt in my evidence before his appearance. I had undertaken to avoid any reference to him, because my opponents at all times seemed to like to get behind Judge Hoyt. He is a venerable gentleman in this community and it is hard for anyone to believe that he would do anything wrong, and they want to seem to hide behind that sentiment that is here. Now, as a matter of fact, I had complained about Judge Hoyt, and what I said was the truth. I said that over in the State court, in my petition to reopen the estate, I said this, that over in the State court Judge Hoyt appeared there and opposed my proceeding. I was trying to keep that court from selling the property, and he was there, with all the others opposing the proceedings. Then I had also said that back in this court I came to Judge Hanford to get a stay of proceedings from him directed to the State court; that was before I had petitioned to reopen the estate and before it had been closed. On that proceeding in Judge Hanford's own court Judge Hoyt supported Judge Ballinger, and Mr. Jones and I had so stated. Then I made further reference to Judge Hoyt. I had said that when matters came before him as a referee, and when I had tried to set his machinery in motion, there was a certain claim presented to him—Mr. Mayhew presented a claim in the sum of $5,000, and I, jokingly, said to Mr. Tennant, who was representing the claim as an attorney—I says: "Have you brought along your dividend?" and he, not being familiar with the bankruptcy law and not knowing to what I referred, asked what I meant. This was in court. I said: "Have you brought along your dividend—the preference which you got on this claim?" Judge Hoyt then took the matter up and told Mr. Tennant that if he had taken down a dividend over in the State court or taken down any money he had received a preference. Then he asked for an adjournment, so that he could fix up his claim.

At the adjourned meeting he came in, not with Mr. Mayhew's claim again nor any reference to it, but he had the claims of these four little creditors, and I took exception to his change of front, and I asked Judge Hoyt to see the Mayhew claim, and he said it had not been filed. I knew that it had been filed and saw the 15-cent filing

fee paid on it, and I took exception to the proceeding then and the change of record; so I called Judge Hoyt to one side and expressed, not as he says the dissatisfaction of my client with him as a court, but my own dissatisfaction with him, and I suggested that if he would find a way to get it to another referee that I would say nothing more, and from that conversation, without knowing how it occurred, there was a subsequent reference to Judge Worden. Now, those facts I have stated, and I purposely omitted any of them heretofore. I did not care to involve Judge Hoyt, and I did not care anything about it. But those are the facts I had stated, and they are the facts.

Q. Now, you say the notice of motion which was served on you to confirm the report of Judge Smith was served on the 10th day of May, returnable on the 14th?—A. Yes, sir; that is true.

Q. And did you and the attorneys for the moving parties appear in court on the 14th?—A. We did not, and I do not know why. I served exceptions to their appearing in any manner.

Q. You served it on them?—A. On them.

Q. Well, did you appear in court on that day?—A. I do not recall about that specific day, but I know that there was no adjournment to the 8th and that the matter was not held up because of any adjournment of the hearing.

Q. Were there at any time in those proceedings any affidavits filed in reply to your affidavit or your petitions or whatever you filed?—A. None whatever; none whatever. Let me say right there—oh, now I must withdraw my answer, Mr. McCoy; I must explain it this way: When I presented my petition to reopen the estate I presented to Judge Hanford in chambers and told him to look carefully into it. Then I was notified by Ballinger, Ronald & Battle that the matter was coming up for hearing before Judge Hanford on a certain day. Now, in the interim between the time when that was noted for hearing and the day set for hearing there were some affidavits served upon me. I moved to strike them, because they made no issue and because they were not served by any party in interest. That matter was heard before Judge Hanford, and he refused to strike them. Subsequently I wanted to see the affidavits, and I discovered that they had never been filed, and so that occasioned a subsequent proceeding of some sort. I asked Judge Hanford or somebody that they be required to file them, so that I might have the record straight and show just what the affidavits did show or their lack of what they did not show, but they never were filed, and they were lost from the proceedings.

Q. Where is Ballard?—A. It is about 6 miles from here. It is a part of Seattle now. It is on Salmon Bay, a little inlet from Puget Sound.

Q. At the time of these proceedings was it a part of Seattle?—A. It was not.

Q. What industries, if any, were established there at the time of these proceedings which you are talking about?—A. Shipbuilding and lumber, shingle mills, etc. It is the greatest shingle-mill town in the world. It was then.

Q. It was at that time?—A. It was at that time.

Q. How close to those shingle mills or other manufacturing plants was this shipyard of Heckman & Hansen?—A. It joined them. It was right in the midst of them.

Q. And that is the place where the proposed canal from Lake Union is to come out into Puget Sound?—A. Yes, sir; it goes right by the Heckman & Hansen property—the canal does.

Q. Do you know anything about the skill or ability of Heckman & Hansen in the business in which they were engaged at that time?—A. Mr. Heckman I always considered a genius in his line.

Q. What particular branch of business was it that he handled?—A. He had to do with the drafting of plans and such things as that.

Q. Making the contracts, you mean?—A. I mean drafting the plans for the boats and then doing the outside work with reference to the business of the concern—making the contracts and financing the business, etc.

Q. And what was Hansen's part in the business?—A. He was simply doing the work in the yard, being a good shipbuilder and a good, practical man.

Q. Have you looked for that newspaper account in regard to a statement which you testified Judge Hanford made, or is reported to have made, in open court?—A. I have looked for it and, so far, have been unable to find it; but I will find it before the committee adjourns.

Q. Coming, now, to the four hearings before the committee of the bar association, to which was referred the charges against you, were you at any time notified that those who were to testify against you, or presumably were, were to appear, and were you given any notice of the time when they were to appear before the committee?—A. No; there was nothing of that sort. The notice was only a newspaper report that Judge Hanford was going to have a meeting of the bar association and that it was rumored, the paper would put it, that it had to do with the Heckman & Hanson matter.

Q. You do not understand me, I think. After the meeting of the bar was held and the committee was appointed?—A. Yes.

Q. I now refer to the hearings before that committee?—A. Yes.

Q. Were you at any time notified by the committee, or by anyone, that certain parties who would testify to the other side of the case were to appear and testify?—A. No, sir.

Q. In other words, did you have notice that they were to be there and given an opportunity to examine them or to hear what they had to say?—A. No, sir; and it was explained to me that the notification was purposely omitted; that there was so much feeling that the committee felt they should give their testimony by themselves.

Mr. HIGGINS. And you gave yours by yourself, too, didn't you?

A. Yes, sir.

Q. You did have notice, of course, when the committee met?—A. No; only in this way. I would be notified to go up there and see them some evening, in that way.

Q. Well, that is equivalent, in my mind, to a notice. That is all.

Mr. MCCOY. Just on that point what you have testified about now. Is that when you were called up for the purpose of making a statement or giving testimony? You were then notified?

A. Yes.

Q. That does not change your testimony that you were never notified when the others were to appear?—A. It does not change it in the slightest. I never was notified when the others were to appear.

Mr. HIGGINS. And they were not notified when you were to appear, either?

A. That's true.

The CHAIRMAN. Are there any further questions?

Mr. DORR. Mr. Finch, referring to the paper that Judge Ballinger identified, which bears date June 12, 1901, and purports to be an assignment by Heckman & Hanson to the Scandinavian-American Bank for their claims against the schooner *Alice*, which I now hand you [showing document to witness], do you know that Heckman & Hanson refused to execute that document?

A. No, sir; I do not.

Q. It is what I have stated it is, is it not?—A. Yes, sir.

Q. An assignment of the claims of Heckman & Hanson against the schooner *Alice* to the Scandinavian-American Bank?—A. Yes, sir; as security.

Q. As security?—A. For the claim of the bank against Heckman & Hanson.

Q. And authorizing the Scandinavian-American Bank to proceed to collect those amounts either by libel or otherwise?—A. Yes, sir.

Q. You do not know anything about the reason?—A. No, sir.

Q. (Continuing.) Why they refused to execute this assignment?—A. I do not.

Q. Now, the letter which you spoke of this morning which was written on the next day after this instrument is dated, to wit, on June 13, 1901, is the letter that demanded a settlement of their account?—A. That is the letter referred to.

Q. And that was for the same accounts that were involved in this claim against the schooner *Alice*?—A. That is true.

Q. Now, the fact is, then, as I get it, that Heckman & Hansen being requested to make an assignment of their claims against the schooner *Alice* and refusing to do so, then the bank notified them to pay those claims.—A. That seems to be the chronology of the events.

Mr. DORR. In this connection I would like to have these two papers identified as exhibits.

The CHAIRMAN. Identify them.

Mr. MCCOY. You are not going to put those in evidence along with the other papers?

Mr. DORR. I am going to offer them as exhibits.

Mr. HIGGINS. You and Mr. Finch have not agreed yet as to the papers you want to put in.

Mr. DORR. We have practically agreed on all of them.

Mr. MCCOY. Are these the same sort of papers which would be marked as "Exhibits A, B, C," and so forth?

Mr. DORR. No, sir; these should have the serial numbers.

Whereupon the documents are received in evidence and marked, respectively, "Exhibit No. 66" and "Exhibit No. 67."

Mr. DORR. The assignment now being marked "Exhibit No. 66" and the letter of the bank to Heckman & Hansen being marked "Exhibit No. 67."

Mr. MCCOY. That is the assignment which was requested and refused.

Mr. DORR. Yes, sir; the form of the assignment which was not executed.

By Mr. DORR:

Mr. Finch, is it not a fact the schooner *Alice* transaction, so far as the receiver was involved, were all set forth in the second report to the superior court?—A. Oh, it was referred to in there. I have not read that for a long while, but I presume it is in there; yes, sir.

Q. I hand you that report and I will ask you to refresh your recollection and state whether the full history of that matter is not set forth in that report [handing report to witness]?—A. Let me say that the reference made here to that litigation—now, whether it is the full history of that I do not know any more than you do—was something that occurred before my time. I can read it over and give my opinion if you want me to.

Q. So far as you and I could tell at this time it appears to be covered in that report?—A. Yes, sir.

Q. The report shows that the receiver bought the schooner *Alice* for $6,000 at marshal's sale?—A. Yes, sir.

Q. In pursuance of a stipulation that had been made, and that has all been referred to in this hearing?—A. Yes, sir.

Q. And that the bank's claim against Heckman & Hensen for——A. (Interrupting.) Alleged overdraft——

Q. (Continuing.) For overdrafts——A. Had been wiped out.

Q. Had been thereby liquidated?—A. Yes, sir.

Q. And in that way Heckman & Hansen were paid for the amounts they had against the schooner *Alice*?—A. That is true.

Q. For this work?—A. Yes.

Mr. MCCOY. You mean the receiver got it, don't you, Mr. Finch?—A. That is true; that is what I meant.

Mr. DORR. That is what I mean; the receiver got it.

Mr. MCCOY. Yes.

Mr. DORR. And the——

Mr. MCCOY (continuing). Liquidated the claim, as I understand it.

Mr. DORR. It liquidated the claim.

By Mr. DORR:

The schooner *Alice* was afterwards sold by the receiver for $15,000, wasn't it?—A. No.

Q. You say not?—A. I say not.

Q. Are you certain of that?—A. Why, yes.

Mr. MCCOY. I understand it was sold at receiver's sale, and after having bid it in and owning it, it was sold for fifteen thousand.

Mr. DORR. I mean he bought it from the marshal at $6,000, and then liquidated the bank's claim against Heckman & Hansen, and then he, as receiver of Heckman & Hansen, sold the schooner for $15,000.

A. That is news to me, if he did.

Q. You do not know of that?—A. I never heard of it. I would like to have known it if it had been true.

Q. I have a certificate of title signed by the deputy collector of customs of this district showing the entire title of the schooner, and it contains record of sale that I have just asked you about [showing document to witness], P. L. Larson, receiver of Heckman & Hansen, to the schooner *Alice*, incorporated—that seems to be an incorporation—$15,000.—A. Yes, sir; that seems to so state there.

Q. And that is an official certificate of title, is it not?—A. Yes, sir; that is true.

Q. From the customs office of this district?—A. Yes.

Q. That certificate also shows a mortgage of $20,000 on the schooner *Alice*?—A. Yes.

Mr. McCoy. It shows it how?

Mr. Dorr. Just as a recorded mortgage.

Mr. McCoy. You mean the sale for $15,000 was subject to the mortgage, and the mortgage still remained a lien?

Mr. Dorr. That is the way I understand it; yes, sir. I do not understand that any of those sales affected the mortgage.

Mr. McCoy. They won't usually.

Mr. Dorr. If the mortgagee has been a party to the libel proceedings, yes, they would, but I do not understand that the mortgagee was.

Mr. McCoy. Is it not a fact that in admiralty that the man who does the last work on the vessel and libels it or sells it, that that proceeding wipes out all claims?

Mr. Dorr. Provided they are made parties.

Mr. McCoy. Regardless of whether they are made parties; it is a proceeding in rem, in which the parties do not have to be mentioned at all; is not that a fact?

Mr. Dorr. I do not understand it that way, Mr. McCoy. Of course, my understanding may not be correct; but in any event, I do not believe that that is material here, if the receiver bought it for $6,000 and later sold it for $15,000, and then if he in that way received that money to pay the claims which you mentioned this morning.

Mr. Finch. Why, yes; that is, he had an amount that would if he wanted to.

Q. These claims aggregated between $13,000 and $14,000?—A. Yes.

Q. Which you specified this morning?—A. That is true.

Q. Have you any knowledge but what they was done; have you any knowledge but what that was done?—A. Only my knowledge of human nature; that is all.

Q. And that implies that there must have been some crookedness somewhere?—A. Well, I can not imagine why he would make a profit of $7,000 and go and give it to somebody else.

Q. As a matter of fact, Mr. Finch, that when Judge Hoyt appeared in the supreme court in connection with the proposed sale over there that he argued for a postponement of the sale?—A. I am willing to accept it that way; I do not know what his position was, but he never conferred with me and he was conferring with the other parties, and——

Q. Are you sure——A. I mean to say that at that time there was nothing that occurred that indicated that he was friendly to my position at all.

Q. Well, he was there in court with you; made the argument, didn't he?—A. Not in my favor.

Q. He made an argument in favor of postponing the sale?—A. He made an argument of some sort; I do not know what it was, but he was no ally of mine at that time.

Q. I did not ask about that; I am asking if he did not argue asking the superior court to continue that sale until the Federal court could pass upon the question of jurisdiction?—A. Well, I know it was not for that purpose, but I do not know what it was. The Federal court did not have any question of jurisdiction coming up before it.

Q. Why, that was the very question that was before the Federal court; as I understood you, when the Federal court issued the tempo rary injunction it was to determine whether it would take jurisdiction of this property; is that correct?—A. No; I do not recall now what the injunction was.

Q. Well, you have stated the injunction was to prevent the sale in the State court?—A. That is true.

Q. Until a hearing could be had.—A. I do not understand that it was until a hearing could be had.

Q. I understood right along that this hearing was had before the referee, Mr. Bowman, on the question of value.—A. There was no connection between those two things; absolutely none. That proceeding before Mr. Bowman was initiated by Judge Ballinger and Mr. Jones coming into Judge Hanford's court and initiating the proceedings. It had no connection with the injunction.

Q. Well, the injunction remained until the hearing was had as to the probable value of the property in the possession of the State court?—A. That is true.

Q. And after it was determined that the bid of $24,125 was a fair bid, then the injunction was dissolved?—A. That is true.

Q. And the Federal court refused to exercise any further jurisdiction over that property; that was in litigation in the receivership in the State court?—A. That is true.

Q. Now, was it not during that time that Judge Hoyt appeared with yourself and the other attorneys and asked the State court to refrain from making that sale until the matter could be determined by the Federal court?—A. No, sir; it was after the injunction was dissolved. I never got into the case until after that, and it was because of that very thing that it had been dissolved that I was called into the case.

Q. Then, after the injunction was dissolved, is it not true that Judge Hoyt made such a presentation to the State court?—A. Yes, sir. About three days after that, on the 6th of March, and opposed me, but what his argument was I do not recall. It is the fact that he appeared there that I complain about with reference to him.

Q. You are not willing to testify what his position was in that court?—A. I am perfectly willing if I knew, but I do not know.

Q. Well, you do know now if you claim, or do you now claim that the Scandinavian-American Bank received any more money than was proved on its claim?—A. No, sir; I do not make any such claim; I never did.

Q. Is it not customary in the trial of equity cases, admiralty cases, and other cases in the Federal court, where the evidence is taken and transcribed before the master, that the arguments will be had, then the court will read the testimony later?—A. I don't think so.

Q. Have you ever had any experience in that kind of litigation?—A. No, sir.

Mr. DORR. I think that is all, only I would like to have the abstract title of the schooner *Alice* marked as "Exhibit No. 68."

Document marked "Exhibit 68."

The WITNESS. Mr. Chairman, there was one point which I have not touched.

Mr. MCCOY. Make your statement, Mr. Finch, then I will ask you one or two questions.

The WITNESS. In my petition I charged that the Scandinavian-American Bank had conspired with the receiver to get the property, and down before Judge Smith it was incumbent upon me to show the connection of the Scandinavian-American Bank with the property; that is, to show that Mr. Mayhew was in fact the agent of the Scandinavian-American Bank. I have always claimed that I made such a showing there, but I can not very well present that to the committee in any form that I know of short of taking all the evidence that I took down there and arguing it; for this reason, it involves a circuitious system of bookkeeping there in the bank; it involves lots of very peculiar entries there.

Mr. MCCOY. You have submitted to us some books which we are to take with us, and which have, as you testified, some copies of entries which appear in the bank books?—A. Yes; there——

Q. (Continuing.) Just a minute—are those the entries which you say were made circuitously and which need explanation, or are there others?—A. Well, there are some of them—I don't know—I guess there are all of them, only that in the books there is not all the evidence that was given before Judge Smith touching these same items that were entered there. Let me say this, that the story of the bank relative to the financing of the matter in the State court was this, that J. E. Chilberg, J. W. Kelley, E. L. Grondahl——

Q. Who were they—identify them?—A. They were all officers of the Scandinavian-American Bank.

Q. Is that a National or State bank?—A. State bank. They had established a credit—that was their expression—for Mr. Mayhew by giving the bank a $30,000 note, and against which Mr. Mayhew was privileged to draw. That sounded all right, but the note that they put in evidence was one that was dated in January sometime, but never was put in record in the books of the bank until the 3d day of April, when I asked for an order from this court upon the State court that all of the moneys that it had should be brought over here. That note never having gone to record in the bank, I would have to argue, then was postdated and could not be there on the 3d of April. The various items that Mayhew spent—he began spending money in the previous December, and the checks were there, but they had tacked to them a so-called debit slip, which debit slip they said was carried simply among the bills receivable of the bank and no record made of it, and so I had to argue that if those checks of Mayhew and deposit slips, if there had been any attached at that time, were the items of Kelley and Grondahl and Chilberg, they would have been charged to such in the bank. Then, finally, when they were put on record they were charged to the account of the Seattle Ship Yards Co., and it was admitted by Mr. Grondahl there——

Q. In the testimony?—A. Yes—not Grondahl, but Soelberg, or Mr. Lane, that they did not belong to the very account they were charged to. Now, that circumstance, I recall that I stated in my argument to Judge Hanford—I do not have that argument before me, but I can show it to you and cite the record where that is shown.

Q. That argument is in evidence?—A. Yes; that argument is in evidence.

Q. And in it is contained a reference to the pages of the testimony?—A. Yes.

Q. Then, can not the committee by using that argument and having the testimony before it get what you now claim to be the situation?—A. Yes, sir; but I would have to do this then, and it is the wisest anyway. I will have to go to the records in this court here and get the exhibits which were introduced, so that you will understand them better—I think you will have to have the exhibits.

Q. All right. Do that and bring them to the committee. Now, was that all you wanted to add?—A. I might add this one point while I am speaking about that $30,000 credit. The Bowman proceedings—the reference to Mr. Bowman was to determine whether the $30,000 was an adequate price for the property, and Judge Hanford found that it was. Then the proceedings before Judge Smith—the same parties who had gotten Judge Hanford to take that view of it are the same parties who got Judge Smith and Judge Hanford to take the view that they had a $30,000 fund which they were prepared to spend for this property, and Judge Hanford was asked to confirm, and has confirmed both the reports—that $34,000 was an adequate price—at the same time they had the fund of $30,000 to spend if they had to for the property. That is all.

Q. You know who the stockholders of the shipyards company were at the time it was organized?—A. That evidence was taken there. I could get it for you.

Q. Well, if you recollect—do not testify unless you do.—A. I do not.

Q. Was it disclosed that any of the officers of the Scandinavian American Bank were also directors or stockholders or trustees in the shipyards company?—A. Yes; I know that it does, but I can not give you the amount of stock or who they were.

Q. Well, that is all. We will try to find that out in the regular way. Now, calling your attention to these items which you read this morning, giving the total of the claims against the *Alice* and aggregating $13,292.17, I will ask you whether any of those claims were claims solely against the *Alice*, not against Heckman & Hansen personally [showing claims to witness]?—A. I know what the items are, but I do not appreciate your question.

Q. I mean a man who does work on a vessel of any kind subject to the maritime law has a claim against the vessel?—A. Yes.

Q. If he does not satisfy it out of the vessel he has a personal claim against the people for whom the work was done. Now, some of these people may have been claimants against the *Alice* for material furnished Heckman & Hansen?—A. There is nothing of that sort in it.

Q. Now, you look at it carefully and see whether any of those people were those who had furnished labor, material, or services which went into the *Alice* and made a claim for that, which was also included in the Heckman & Hansen claim?—A. There is nothing of that sort involved here. Each one of those claims were claims against the boat, but they did not in anyway involve Heckman & Hansen.

Q. Now, I call your attention to Exhibit No. 66, and you were asked a few minutes ago whether this paper was not presented to Heckman & Hansen, and whether they, or one of them—at any rate, the firm—did not refuse the execute it?—A. Yes, sir.

Q. The paper if executed would have been an assignment of certain claims of Heckman & Hansen against the American schooner *Alice*?—A. That is true.

Q. In lead pencil after the words "total sum of" appears without any dollar mark the figures 8017.36, apparently $8,017.36 between the word "of" and these lead pencil figures, examine the paper and say if there ever were any other figures, and if so whether they now appear to have been erased.—A. Apparently they have been erased.

Q. Did those figures appear to have been in ink or in lead pencil?—A. I think in lead pencil.

Q. Just take a look at it—they do not strike me so—does not the first figure appear to be a seven?—A. It does.

Q. Can you make out what the second erased figure may have been?—A. I should simply guess that it was an eight; I can't make it out very clearly—I don't know what it was.

Q. At any rate there has been an erasure there?—A. Yes, sir.

Q. Do you now say that those figures erased were written in pencil or in ink?—A. I can not tell.

Q. Never mind that, any of us can guess as good as anybody else. It is clear that the first figure of those that were erased was the figure seven?—A. That is true.

Mr. HIGGINS. This is not quite clear to me; I do not see the significance of it.

Mr. HIGGINS. You claim it appears to be?

A. It appears to be.

Q. It appears to me to be a seven—we will get some experts on it with a magnifying glass. Now, in reference to the list of claims aggregating $13,292.17 the first of the claims in favor of Heckman & Hansen against the *Alice* is there stated to be $7,305.52, is not that so?—A. That is true.

Q. Now, you have testified that you believe that the amount $812.17, which was the claim of Heckman & Hansen against the *Alice* arising out of other transactions than the $6,000 transaction was wiped out by these stipulations?—A. That is true; that was my claim.

Q. Did you see anything about this certificate No. 66 that makes you believe that that amount was intended to be included in the assignment, except the lead pencil figures of $8,017.26?

Mr. HIGGINS. Is that the same paper.

Mr. MCCOY. Yes; that is Exhibit No. 66.

The WITNESS. Well, the singular number is used in the assignment. It purports to assign a certain claim and demand—if there had been two that it meant to assign I should have thought it would have said "claims and demands."

Mr. MCCOY. That is all.

The CHAIRMAN. Is that all, all of Mr. Finch?

Mr. DORR. There are two amounts in the lists of claims which you have given that are approximately the same amounts that is written in Exhibit 66 in lead pencil, are they not?

A. Approximately so.

Mr. DORR. Not exactly, but approximately.

Mr. MCCOY. About $100 difference?

The WITNESS. About $100 difference.

Mr. DORR. Yes; that is all.

Witness excused.

The CHAIRMAN. Is there any witness present who is anxious to get away? Is there some one you wish to call, Mr. Dorr?

Mr. HUGHES. We are anxious to take up the Greenwood case, but Mr. Douglas has come in and perhaps we might call him. His testimony will be short.

J. F. DOUGLAS, having been first duly sworn, testified as follows:

The CHAIRMAN. Tell your name to the committee, please.

A. J. F. Douglas.

Q. Where do you reside, Mr. Douglas?—A. Seattle, Wash.

Q. How long have you lived in Seattle?—A. Twelve years.

Q. What is your present occupation?—A. I am secretary and treasurer and manager of the Metropolitan Building Co.

Q. How long has that been your occupation?—A. About five years.

The CHAIRMAN. Is there any particular line you wish to examine Mr. Douglas on?

Mr. HUGHES. He is an attorney also.

The CHAIRMAN. You are an attorney at law, are you?

A. Yes; I am an attorney. I am a partner in the firm of Douglas, Lane & Douglas.

Q. Oh, yes.—A. Senior.

Q. And are you engaged in the active practice of the profession?—A. Well, the firm is actively engaged. I don't do very much business myself.

By Mr. HUGHES:

Q. Mr. Douglas, state briefly to the committee what opportunities you have had, by association with Judge Hanford, to know his personal habits, and whether or not he is addicted to the use of intoxicating liquors.—A. Well, I think I have known Judge Hanford about seven years. I could not be sure of the date, but I think I have been a trustee of the chamber of commerce about that long and I think about the—at the time I first got acquainted with him he was a trustee of the chamber; at least I saw him at a good many meetings about that time, and then I have seen him—well, I think, every few days since I first got acquainted with him.

Q. Well, what other matters have you been associated with him in which would give you an opportunity to know his personal habits?—A. Well, I belong to the Rainier Club and I have—I attend the club pretty regularly, and I have seen him at the Rainier Club and I have seen him on the streets and I have seen him in social functions.

Q. Were you a member of the board of trustees of the Alaska-Yukon-Pacific Exposition when he was a member of that organization?—A. No, sir; I was not.

Q. How?—A. I was not.

Q. Were you a member of the San Francisco relief committee?—A. Yes, sir.

Q. He was chairman of that?—A. Yes; I was chairman of one of the subcommittees, the housing and feeding committee, I believe.

Q. Well, he was chairman of the general committee?—A. The general committee; yes, sir.

Q. Did you have much opportunity to come in contact with him during that period of time for some weeks after the disaster?—A.

Well, I think I saw him frequently all the time that work was going on, which was probably about six weeks, I guess.

Q. Met him by day and by night both?—A. Oh, I have seen the judge frequently by day and by night.

Q. Seen him in the court room?—A. No; I have not seen him in the court room, because I don't practice in court. I don't go to court.

Q. Have you ever seen him when, in your opinion, he was under the influence of intoxicating liquors?—A. I have not.

Q. Have you seen him when he seemed to be relaxed—to close his eyes or nod his head?—A. No; I have not seen that.

Q. You haven't seen it?—A. No.

Mr. HUGHES. That is all.

By the CHAIRMAN:

Q. Do you live in the same neighborhood the judge lives in?—A. No; I don't. I don't consider myself on intimate terms with the judge. I have met him in a business way and I have seen him a great many times, but I never have been in his home and have only known him in a social way when I have attended public functions where he has been present.

Q. And your opportunities to see him—your opportunities were casual merely, you would meet him on the street or see him at some public gathering or something of that sort?—A. Yes; I saw him in the meetings of the board of trustees of the chamber, and I have seen him, it seems to me, very frequently at the Rainier Club.

Q. Saw him there oftener than anywhere else?—A. Yes, sir.

Q. Have you seen him drinking?—A. No; I never did.

Q. As far as you know, personally, he has never drank?—A. No; I would not swear that I never saw him take a drink, but I don't——

Q. (Interrupting.) But you have no present recollection of having seen him?—A. No.

The CHAIRMAN. That is all; you may stand aside.

Witness excused.

The CHAIRMAN. Are there witnesses present who have been subpœnaed or requested to come this afternoon? If so, please arise.

VICTOR CARLSON, having been first duly sworn, testified as follows:

The CHAIRMAN. What is your name?

A. Victor Carlson.

Q. Where do you live?—A. I live on 8002 Seventeenth NE.

Q. How long have you lived in the city?—A. I have lived in the city for since November, 1904.

Q. What is your business?—A. Painting.

Q. Again.—A. Painting.

Q. Painting?—A. Yes.

Q. Are you a painter by trade?—A. Yes.

Q. How long have you followed that trade?—A. About nine years.

Q. Do you do contract work or day work?—A. Contract.

Q. How many men do you employ?—A. One.

Q. Besides yourself?—A. We are two that is contracting together.

Q. Do you do the work yourselves?—A. Yes.

Q. Any particular line of painting?—A. No; housework.

Q. House painting——A. House.
Q. (Continuing.) Or carriage painting?—A. House painting.
Q. What part of the city do you say you live in?—A. It is 8002 Seventeenth NE. It is north of Ravenna Park.
Q. Do you know Judge Hanford?—A. By sight.
Q. How long have you known him by sight?—A. Since—I think it was the year 1907 or 1908.
Q. How did you get to know who he was?—A. I lived on Tenth Avenue and Newton. I generally used to see him on the street car, and I know where he lives—saw him outside his house.
Q. How frequently did you see him during those years?
Mr. McCoy. What do you say—saw him outside in his house?
A. Outside his house.
Mr. McCoy. Outside his house?
A. Well, I couldn't say. I didn't see him so very often; no.
The Chairman. What did you ride with him on?
A. Pike and Broadway
Q. From where to where?—A. From—well, one time I did'nt know when he got on there, but the first—then he went to——
Mr. McCoy. Speak a little louder.
A. Well, I have got an awful bad cold. So I rode to—on Tenth Avenue to Newton; there where I live. I lived there for three years.
The Chairman. How long a ride is that; that is, how long did it take you to go that distance?
A. Oh, it will take about 20 minutes from the city.
Q. Well, from the time——A. (Interrupting.) Twenty or——
Q. (Continuing.) That you got on and saw Judge Hanford on the car until you got off, or until he got off; how long was it?—A. Well, I didn't see Judge Hanford on that car before we got to Prospect. Then he came and wanted to get off the car.
Q. Where at?—A. Prospect and Tenth Avenue.
Q. Is that near his home?—A. Why, that is two blocks away from his home.
Q. Did the car go nearer his home than that point?—A. Yes.
Q. How much nearer?—A. Why, the conductor let him off at Highland Drive; that is a block north.
Q. Whereabouts in the car did he sit?—A. I don't—I didn't see him in the car.
Q. Well, didn't you see him in the car at all?—A. I was standing on the back platform.
Q. Where was he in the car when you first saw him?—A. He just came to the door when I saw him first. I was standing on the back platform.
Q. How near to you was he?—A. About 3 feet.
Q. What was the judge's condition at that time with reference to being sober or not sober?—A. My opinion was that he was drunk.
Q. That he was what?—A. He was drunk; intoxicated.
Q. Why did you think so?—A. Why, he smelled—smelled liquor, and the action, and I saw him after he got off the car, he is walking.
Q. What action do you mean; what do you mean by that?—A. Well, he just came out and he hardly could keep his body straight he got hold with one of his hands and then down on the lower step; he stood there and drawed his water right there.

Mr. HUGHES. I can't understand the witness.

The CHAIRMAN. I don't know what you said after you said he stood there. You said something, but I didn't get it.

A. He stood on the lower step and began to draw his water, and I said——

Q. (Interrupting.) Do you mean that he was standing on the step of the car and started to urinate?—A. Yes, sir.

Q. Was the car in motion?—A. Yes, sir.

Q. Were there others on the platform than you?—A. No, except the conductor.

Q. Well, what happened after that?—A. When he started, the conductor—the conductor stopped the car and let him off, and I said to the conductor, "If that had been a common man," I said, "you would have kicked him off the car," and he says, "no; the judge—I know the judge in that condition," he says.

Q. What did he do after getting off the car; did he stand there or walk on?—A. He walked on toward his home, right in the street.

Q. How far did he walk?—A. In the street?

Q. How far did he walk while you were looking at him?—A. Why, I could not say, but that is only a few seconds. The car was started, and then when we got up to Galer we could not see him any farther.

Q. What time was it?—A. Well, I imagine about 12 o'clock.

Q. At night or day?—A. At night, or after 12.

Q. When he walked on the ground after getting off the car, how did he walk?—A. Very unsteady. Walked with his head away low down and very——

Q. (Interrupting.) Did you see him at any other time on a street car?—A. Yes; I saw him other times on the street car, too.

Q. Did you see him at any other time when you thought that he had been drinking or was under the influence of liquor?—A. No. I saw him when he—one time when he was nodding his head, but I never thought he was—I could not swear to it that he was in the influence of liquor then; no.

Q. You spoke of the odor of liquor from him that night?—A. I did.

Q. What kind of liquor?—A. Why, it smelled very strong. I couldn't really say what kind; maybe it was mixed with both whisky or beer or whatever—it smelled very strong.

Q. Have you ever had any litigation in the judge's court?—A. No, never.

Q. Have you ever had any business transactions with him?—A. No; never spoke a word to him.

The CHAIRMAN. Any further questions?

Mr. HIGGINS. Were you ever in his court?

A. No.

Mr. HIGGINS. As a witness?

A. No. This is the first time I am in.

The CHAIRMAN. Mr. Hughes?

By Mr. HUGHES:

Q. Mr. Carlson, when was this first occasion that you described; when did it take place?—A. Why, I think it was in 1909.

Q. What time in the year 1909?—A. Early in the spring.

Q. Early in the spring. What month?—A. It was in the spring of 1909.

Q. Well, can you give us the month in was in?—A. Why, no; I could not.

Q. Who was the street-car conductor?—A. I don't know.

Q. You rode on the car———A. (Interrupting.) Yes.

Q. (Continuing.) Every day, didn't you?—A. Yes; but I never—it was very late, and I never took any notice to the conductor except that I spoke to him "If that had been a common man," I says, "you would have thrown him off the car." That is all the notice I ever took, and I didn't ride very often after that, either.

Q. What kind of a looking man was the conductor?—A. Well, he is a young man, with a smooth face.

Q. How long had he been on that run?—A. I don't know.

Q. Is he still on that run?—A. No; I don't think so.

Q. You don't think so.—A. But I aint been traveling very much on the Pike and Broadway there for the last two years.

Q. You think that was about 12 o'clock at night?—A. Well, around there. It was very late a night.

Q. The conductor was standing on the rear platform, and Judge Hanford———A. Where I was.

Q. (Continuing.) And Judge Hanford go off the car?—A. He got off the car; yes.

Q. Stopped the car?—A. Stopped the car just when he crossed Highland Drive.

Q. You spoke of Prospect Avenue. Was that where you said Judge Hanford called to him or spoke to him?—A. He came out just when we crossed Prospect, he came out in the back and wanted make—kind of motioned, he never said a word or anything, and he got down on the steps of the car.

Q. He came out at Prospect———A. (Interrupting.) Well, between Prospect and Highland Drive, and the conductor stopped the car and let him off at Highland Drive.

Q. Wait a minute now. He walked back through the car onto the rear platform while the car was going between Prospect Avenue and Highland Drive, the next street to the north; is that right?

Mr. McCoy. Excuse me, Mr. Hughes, that is not what he said. He said he didn't see him until he came out at the door. He didn't say he saw him walk through the car.

A. No, I didn't.

Mr. Hughes. What———

A. (Interrupting.) I didn't see him walking through the car.

Q. You didn't see him walking through the car?—A. No; I never noticed that.

Mr. Hughes. I didn't assume that that was a material fact at all. I thought of course he had to walk through the car to come to the door.

The Witness. But I didn't see him do it.

Mr. Hughes. But you didn't see him until he got to the door?

A. No, I didn't see him before he got out on the platform.

Q. But where was it that you saw him come from at Prospect Avenue? I understood you to say that he walked back there and stepped down on the step between Prospect and Highland Drive; is that right?—A. He came from the inside of the car, but I didn't see him before he went on the back platform.

Q. And that was when you were between Prospect and Highland Drive, while the car was proceeding on its way?—A. Yes.

Q. And he had motioned or spoken to the conductor, which, to stop?—A. He didn't say anything, he just went past the conductor and down on the lower step and stood there and held on with one hand and the other he started to urinate.

Q. Before the car came to a stop?—A. Before the car came to a stop.

Q. Well, did he continue until he was through?—A. He did after he got off the car.

Q. Oh, after he got off the car. The conductor stopped the car——A. (Interrupting.) Before he got to the destination he was going to.

Q. The conductor stopped the car at Highland Drive?—A. Yes, sir.

Q. And that was the street just this side of Judge Hanford's house? He [referring to the stenographer] can't get a nod. "Yes," you mean, don't you?—A. Why, he—by right he lived at Galer. That is one block south of his house, Highland Drive is.

Q. Well, Galer Street does not extend on to the west?—A. Yes; it runs against his fence.

Q. Highland Drive is the first street south of Judge Hanford's house?—A. Yes.

Q. And Galer is nearly opposite, or a little north—a little north of Judge Hanford's house?—A. It runs about against his——

Q. (Interrupting.) His house is between Highland Drive and Galer?—A. Yes.

Q. But nearer to Galer. And he got off at Highland Drive?—A. Yes.

Q. Did the car go on immediately after he got off?—A. Right away.

Q. And you saw Judge Hanford stand there, did you?—A. No; he kept walking in the street toward his home.

Q. How?—A. He walked in the street toward his home.

Q. Toward his home. The streets were brightly lighted there, were they?—A. (Witness nods.)

Q. What is it?—A. Yes.

Q. Bright lights between Highland Drive and Judge Hanford's house, are there; bright street lights at that time in 1909? What is that?—A. Yes. It is light at Highland Drive.

Q. How far did you see Judge Hanford after he got off?—A. Not very far.

Q. About how far?—A. Well, I imagine about six or seven seconds.

Q. Did you have any further conversation with that conductor, so as to fix it——A. (Interrupting.) Not a word.

Q. And you can't give us any more information as to who that conductor was?—A. No.

Q. You can't fix the time any more definitely than you have fixed it?—A. No; I would not do that, because I ain't sure.

Q. You can't remember what you had been doing that evening down town, so that we could fix the time?—A. No; I couldn't.

Q. Where had you been, do you know?—A. Why, no; I don't. I never—really, I just been around the city, that is about all I know. I don't really remember any certain place I been to or anything like that.

Q. Had you yourself been drinking anything?—A. Why, sometimes.

Q. Had you, I say, that evening?—A. No.
Q. I don't care what your general habits are.—A. No.
Q. Had been around the city and had not drank any that evening?—A. No, sir.
Q. Did you ever try to get a job of painting at Judge Hanford's house?—A. No.
Q. Did you ever call up, repeatedly call up, Judge Hanford or his son, on the telephone, about painting his house?—A. Never.
Mr. McCoy. Do you know whether your partner ever did—the man that works with you?
A. I don't know. I don't think so, because he never said anything to me about it.
Mr. Hughes. Is there any other painter in that locality by the name of Carlson?
A. It is another painter in the city; I don't know if he is here——
Q. (Interrupting.) No; in that locality, but in that locality by the name of Carlson?—A. I don't know.
Q. Did you ever ask for the job, urging that you should have it because you lived in that locality?—A. Never.
Q. You never did. That is all.

By Mr. McCoy:

Q. About the street lighting at that time up on this street: What street was it on—Broadway?—A. Tenth Avenue.
Q. Tenth Avenue?—A. Yes.
Q. What about the street lighting there; was it well lighted at that time?—A. Oh, no; I think there was only small lights.
Q. What is that?—A. I think it was—I ain't sure—I could not say that was there only all small lights or if it was arc light.
Q. Electric lights or gas light?—A. Electric.
Q. Electric lights?—A. Yes. Just about them days, the same light now as it was then. It was just before the fair.

Witness excused.

The Chairman. Is there some other witness present? Is Mr. Anderson in the room—Carl Anderson? Is your name Anderson?
Mr. Anderson. My name is Nelson Anderson.
The Chairman. Please come forward. I guess you are the man we are thinking of.
Nelson R. Anderson, having been first duly sworn, testified as follows:
The Chairman. Give your full name.
A. Nelson R. Anderson.
Q. Where do you live, Mr. Anderson?—A. Seattle.
Q. How long has it been your home?—A. Four years.
Q. What is your age?—A. Twenty-eight.
Q. What is your present occupation?—A. Lawyer.
Q. How long have you been practicing law?—A. Four years.
Q. Have you any business connection, or are you alone?—A. I am alone. I am associated with John W. Roberts. I have no connection with him, though.
Q. You are not partners?—A. No.
Q. Are you devoting your time to anything else than the practice of law?—A. I am not.

Q. What is the nature of your practice?—A. Largely commercial law.

Q. Bringing you into what courts?—A. Sometimes into the United States district court; generally in the superior court of the State.

Q. Of course you are acquainted with Judge Hanford?—A. I have had—I have appeared before him two or three times.

Q. How much of the time have you been in his court?—A. I think I have only argued matters before him twice.

Q. What were they—lawsuit or bankruptcy matters?—A. They arose out of bankruptcy matters.

Q. Claims in bankruptcy?—A. Well, one case was a writ of review taken before him from the referee; the other time the issuance of a show cause order; the other time a motion was pending before him.

Q. Is that the extent of your presence in his court?—A. Yes, sir.

Q. To what extent have you had an opportunity to observe the judge elsewhere than in court?—A. None at all.

The CHAIRMAN. Do you wish to ask him?

By Mr. McCOY:

Q. Mr. Anderson, were you attorney for anybody in the matter of the Western Dry Goods Co. in bankruptcy?—A. I was attorney for local creditors and a number of eastern creditors in the case of the Western Dry Goods Co. *v.* Sutcliffe Baxter, which arose out of the Knosher matter.

The CHAIRMAN. How do you spell that name?

A. K-n-o-s-h-e-r & Co.;

Mr. McCOY. That is the Knosher concern was the bankrupt and the Western Dry Goods Co. was the creditor moving in the matter and you represented that——

A. (Interrupting.) They were the creditors; yes.

Q. Now, in that matter an order was made for the sale of the property of the bankrupt. Was that order made by the referee or by Judge Hanford?—A. I think it was made by the referee, although I don't know.

Q. Well, the record appears to show that it was. Is it the practice in this district to have the referee order sales——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Of property in the hands of receivers?—A. Yes, sir.

Q. And is it the practice in this district for receivers to practically wind up bankruptcy proceedings?—A. I have known of some instances in which that has been done. I have a case pending now in which the receiver has made a sale of the assets and that practically winds up the estate.

Q. In those cases does the receiver also make the distribution or is there a trustee elected to make the distribution?—A. The trustee makes the distribution.

Q. So in the cases you speak of the referee, or the receiver rather, does substantially all the work and then turns the assets over to the trustee for mere distribution?—A. It sometimes works out that way.

Q. How often have you known it to work out that way?—A. Well, I have had two cases in which that has been done.

Q. What were they?—A. The case now pending in the matter of Clarence C. Lane, bankrupt.

Q. How much is involved in that case?—A. The assets sold for $1,650.

Q. Did the receiver also continue the business in that matter for any length of time or not?—A. He continued it for five or six weeks.

Q. Who was the receiver?—A. I. H. Jennings.

Q. In this matter of the Knosher bankruptcy, who was appointed receiver?—A. Sutcliffe Baxter.

Q. And did he continue the business of the bankrupt?—A. No, he did not.

Q. Did he claim that he did?—A. He did.

Q. On what did he base his claim?—A. His report is in the record. That report sets out that he had qualified, I think about noon the day of his appointment, which was the 27th day of February, 1911, and that he permitted the store of the bankrupt to continue until that evening, at which time he held a meeting of a number of the creditors and it was then decided to close the store of the bankrupt, whereupon an inventory was taken which occupied the balance of that week. The inventory began on Tuesday and was consummated Saturday, and then he made a sale of the assets along about the 15th of March, I think it was, and on the 20th of March he was elected trustee. It was on those facts that he based his contention that he actually carried on the business of the bankrupt.

Q. And did he contend on the basis of what he did after the first day, in the way of taking an inventory, or on the basis of what he did on the first day in letting the business continue until the close of the day?—A. I don't know that I ever talked with Mr. Baxter himself about it.

Q. What was the claim made in court for him?—A. His attorneys argued that the taking of an inventory and the making of a sale constituted him one carrying on the business of the bankrupt. Before Judge Hanford I am quite positive that they never argued that the mere fact that he allowed the store to remain open the balance of the day that that constituted him one carrying on the business of the bankrupt.

Q. And Judge Hanford's holding was that allowing the store to remain open and taking the inventory and selling the assets together constituted carrying on business within the meaning of the bankruptcy law so as to permit the allowances made under those circumstances?—A. Yes.

Q. That is when a man does run the business?—A. Well, now when the argument was had before Judge Hanford he simply held that Sutcliffe Baxter, as such, on those facts was something more than a mere custodian. He did not hold that he was one actually carrying on the business of the bankrupt until he signed the final order made in that case, in which he so found and held.

Q. And Judge Hanford made an allowance to Mr. Baxter as receiver on the basis of carrying on the business; that is so, is it not?—A. Yes.

Q. And that allowance was $2,500, was it not?—A. Yes.

Q. Does the bankruptcy law provide that before making an allowance notice must be given to the creditors?—A. It does.

Q. Was there any notice given in that case, as a matter of fact, to the creditors?—A. At the time that I first filed objections to the receiver's allowance and to the allowance to his attorneys, there had

been no notice given. At that time $5,000 had been ordered paid and was actually paid to the receiver and his attorney, but no notice had ever been given. After I filed my objections, the court ordered notice to be given and set a certain time at which all parties making objections might be heard.

Q. Well, before you interposed any objection——A. (Interrupting.) No notice had been given.

Q. (Continuing.) No notice had been given of any kind?—A. None at all.

Q. Had the referee in bankruptcy had anything to do with the allowance?—A. Nothing at all.

Q. No application was made to him?—A. No.

Q. But the application came straight to Judge Hanford?—A. It was made directly to the judge.

Q. What is the practice in this district in that respect?—A. So far as I know, it is the universal practice to go before the referee in the first instance.

Q. On notice to creditors?—A. Yes; notice to creditors must be given.

Q. As prescribed by law?—A. Yes.

Q. And the creditors then, of course, have an opportunity to give their views as to the allowance?—A. Yes, sir.

Mr. McCoy. Mr. Chairman, I would like to have marked as an exhibit, No. 2050, being a transcript of record on petition for revision in the circuit court of appeals for the ninth circuit, the Western Dry Goods Co., a corporation, and others, petitioners, against Sutcliffe Baxter, receiver and trustee of the estate of Charles Knosher & Co., a corporation, bankrupt, and John Annisfield Co., respondents, in the matter of Charles Knosher & Co., bankrupt.

The Chairman. Let it be marked.

Document referred to was marked "Exhibit No. 69."

Mr. McCoy. You are familiar, Mr. Anderson, I presume, with "Exhibit No. 69?"

A. I am.

Q. At page 26 is given a summary of cash receipts and cash disbursements in the matter of the Knosher bankruptcy. That is there correctly stated, is it not?—A. I think it is.

Mr. McCoy handed Exhibit No. 69 to witness.

A. I think that is a true copy of the files. That fact is stipulated between attorneys for the petitioners and those representing the receiver.

Q. One item of the cash receipts is merchandise sales, $1,119.08. Were those the sales made on the part of the day during which the business was permitted to run?—A. I would not be able to answer that. I presume that is it.

Q. And another item is "Miscellaneous, $55,931.94." That includes the general sale of the assets?—A. In bulk; yes.

Q. They were sold at auction?—A. Yes, sir—not at auction, but special sale.

Q. I mean advertising and bids being presented?—A. Yes, sir.

Q. And balance cash on deposit in Seattle National Bank of $56,486.17. That includes the proceeds of the sale of the assets?—A. Yes.

Q. Do you know whether or not at any time the receiver had to bring action to collect any of the claims due the bankrupt?—A. I know of none. I don't say that there were never any.

Q. Was Sutcliffe Baxter subsequently appointed trustee?—A. He was elected trustee.

Q. I mean elected. What was the total dividend, percentage dividend, paid in the matter?—A. I think 22½ per cent have been declared up to this time, and probably a further 10 per cent dividend will be declared. I am not sure about the latter.

Q. This estate is not yet closed?—A. Not yet; no.

Q. Apparently you are wrong about the dividends that had been declared. It is 12½, isn't it, instead of 22½?—A. Well, one dividend of 12½ per cent was declared, and later a 10 per cent dividend was declared; I think that is correct. The first dividend declared was 12½ per cent; later a dividend was declared of 10 per cent. I think that is true.

Q. What was the outcome of the appeal to the circuit court of appeals?—A. Well, now, before I answer that, to make a full and complete story I think you should permit me to state that——

Q. (Interrupting.) I wish you would, please, anything you care to.—A. (Continuing.) That the compensation of $5,000 allowed to the receiver and his attorneys——

Mr. PRESTON. If I may interrupt, I have a copy of the opinion of the circuit court of appeals for your record.

Mr. MCCOY. Just as soon as Mr. Anderson gets through that we will put it in.

Mr. PRESTON. He was just telling about it now.

The WITNESS. No; I wasn't telling about that.

Mr. PRESTON. Oh.

A. The compensation of $5,000 originally allowed the receiver and his attorneys——

Q. (Interrupting.) That was equally divided between them?—A. Yes. (Continuing:) After hearing on the objections was cut down by Judge Hanford to $4,401.20, and that sum was made to cover the compensation of the receiver and trustee and the attorneys for the receiver and trustee; three thousand and some odd dollars of that sum was allowed to the receiver and his attorneys on the basis that they had actually carried on the business of the bankrupt as a going concern. On the writ of review the circuit court of appeals cut that allowance exactly in one-half, so that the receiver and his attorneys were allowed fifteen hundred and some dollars, to be divided equally between themselves. The compensation allowed the trustees and his attorneys was not objected to nor was it disturbed. It was properly allowed on the basis that the trustee was an ordinary trustee.

Mr. MCCOY. Now the opinion might go in. Just have it marked as the next number, "Exhibit No. 70." It is the opinion of the circuit court of appeals on appeal from decision of Judge Hanford in regard to allowances to the receiver in the Knosher case and to the receiver's attorney.

Document referred to was marked "Exhibit No. 70."

Q. Have you known of any other case, Mr. Anderson, in which a similar practice has been adopted in this district in regard to allowances to receivers?—A. You mean——

Q. (Interrupting.) I mean the pratice of making an allowance without appliction to the receiver and without notice to creditors.—A. I know of none.

Q. Have you had any other bankruptcy cases in Judge Hanford's court in which you deemed his ruling in regard to allowances either to the receiver of the trustee or attorneys for either receiver or trustee were objectionable?—A. That is the only case that I ever took before Judge Hanford.

Q. Have you been interested for anybody in any way in any such case as that I have spoken of?—A. I have not.

Q. Have you in any way ever represented an assoication in this city—credit men's association?—A. I represented them in this case.

Q. Your client then, although nominally the Western Dry Goods Co., was the what?—A. Was the Seattle Merchant's Association as it was then known, and is now known by the name of Seattle Merchants and Credit Men's Association.

Q. Is that a corporation?—A. It is.

Q. Who is the president of it?—A. E. G. Anderson.

Q. Is he a relative of yours?—A. He is a brother.

Q. Who are the other officers? Name them in the order of their importance as is usually considered?—A. Mr. F. S. Hills is the secretary and treasurer.

Q. And what is your brother's business connection?—A. He is president of the Western Dry Goods Co.

Q. And Mr. Hills' business connection is what?—A. He is the actual manager of this association.

Q. Well, now name the others and give their business affiliations as you do so, including, if you know, any directorates in other companies, banks, or otherwise; we just want to know who they are and what their business standing is.—A. Mr. Morganstern was vice president of this organization, but I think his term of office only lasted two months and another person, whose name I don't recall, was then elected vice president.

Q. Now, this question was meant to be confined to this time, not to the time when the———A. (Interrupting.) Oh, at the time these proceedings were instituted?

Q. No; at the present time, now, while you are testifying, who are they?—A. Well, I have named the officers, president, secretary, and treasurer, and I am not able to recall the name of the vice president.

Mr. HUGHES. Who is secretary and treasurer?

A. The secretary and treasurer is Mr. F. S. Hills.

Mr. HUGHES. Is Mr. O. L. Woods the vice president?

A. I think perhaps he succeeded Mr. Morgenstern, because he is of the Schwabacher———

Mr. MCCOY. Mr. Woods?

A. O. L. Woods.

Q. What is his business connection?—A. He is the credit man for the Schwabacher Grocery Co.

Q. Is that the full name of that grocery company?—A. There is a Schwabacher Hardware Co. I think I gave you the full name—Schwabacher Grocery Co.

Mr PRESTON. No, Schwabacher Brothers & Co. (Inc.)?

A. Is it? Well.

Mr. MCCOY. That is called the Grocery Co.

Q. Well, who are the other officers or directors or trustees, or active men in it; who is connected with it?—A. Now?

Q. Yes.—A. Mr. A. E. Knoff.

Mr. PRESTON. Here is a list of them; perhaps that will help his memory [producing paper].

Mr. MCCOY. Now, if you will just take them up one at a time. Mr. Preston says that is a correct list [handing paper to witness].

A. This is a correct list.

Q. What is it you are undertaking to name now?—A. I am naming the——

Q. (Interrupting.) Trustees?—A. The trustees; the names of the trustees of the Seattle Merchants & Credit Men's Association. I gave you the name of A. E. Knoff. He is of the United States Steel Corporation, a subsidiary corporation called the United Produce Co., I think; I am not sure. Mr. J. W. Spangler, he is connected with the Seattle National Bank in the capacity of vice president, I think. Mr. George H. Black is president of the Black Manufacturing Co.

Q. What is their business?—A. A manufacturer of overalls. Arthur Foster is connected with the Seattle Mattress Co., I think. Le Roy E. De Long is credit man for Julius—the National Grocery Co. H. E. Jones is connected with John B. Agen & Co. H. E. Gaunce is an officer and is the credit man of J. T. Hardeman Hat Co. O. L. Woods is named as credit man for the Schwabacher Brothers Co. (Inc.), and E. G. Anderson, president and treasurer of the Western Dry Goods Co.

Q. Did this association have a dinner or a banquet, or whatever you would call it, recently at the Hotel Washington Annex?—A. I think they did.

Q. Were you at that dinner?—A. I was.

Q. And did you make any statement to the persons who were present at that time?—A. I made a brief statement of the results accomplished in the Knosher case so far as the receiver's allowances were concerned. I didn't go into the other branch of the case.

Q. Is that all that your statement included?—A. What I have testified to here?

Q. Yes.—A. My statement at that meeting——

Q. (Interrupting.) Yes.—A. (Continuing.) Included merely the statement of the results accomplished before the circuit court of appeals, and I believe I made some recommendations to these gentlemen; that is all.

Q. Well, let's see that we understand each other, Mr. Anderson. I am now talking about a statement that you made at this dinner. Did you say anything alse at that dinner except to report the results in the Knosher case?—A. Nothing, except in addition to that I made certain recommendations to this association as to the policy that they might pursue in bankruptcy matters; nothing more than that.

Q. Did you premise your remarks in regard to what policy they might pursue by any statement of facts or matters that had happened in bankruptcy other than those that had happened in the Knosher case?—A. Yes, I believe I did.

Q. Well, now, Mr. Anderson, I don't want to pump you. I was told——A. (Interrupting.) I am willing to state anything.

Q. I was told that you spoke at that meeting.—A. That is correct.

Q. I don't know what you said, and I don't want to corkscrew it. I have asked you whether there was anything and you haven't stated

it, except you now say you premised certain remarks by certain other remarks. Now, it is the other remarks that I want.—A. Well, these other matters were made incidentally. I merely made a statement based on the results accomplished in the Knosher case, and then I made a statement that this case was merely illustrative of the practice in the bankruptcy court, that it was not a sporadic case where excessive allowances were made. I then referred to the McCarthy Dry Goods Co. case, in which I merely stated that there could not sensibly be a different rule in the business world from what there was in the courts, and that it was inconceivable to me that a business man would conduct the business of the McCarthy Dry Goods Co. with the result that something less than 10 per cent dividends were declared, when, as I was informed, they might have realized over 50 per cent had they accepted a bid that was made at the beginning of the bankruptcy proceeding.

Q. Well, now, were you undertaking to state to them what you knew of your own knowledge?—A. No, I was not.

Mr. McCoy. Well, then, I think it would be fair to have this statement that has just gone in stricken from the record. As far as I am concerned it may remain, but I did not want Mr. Anderson, so far as I was concerned, to testify to anything that he did not know something about as a matter of fact.

Mr. Higgins. He is detailing his address at this banquet now.

Mr. McCoy. Well, I am simply saying that I don't want that unless he there stated things which he knew.

Mr. Hughes. You mean not the last statement that he made, but all that he has said relative to his remarks there, aside from the Knosher case; that was what you meant be stricken, was it, Mr. McCoy?

Mr. McCoy. That is what I had in mind.

Mr. McCoy. Had you made any examination in the bankruptcy court of the results in the McCarthy Dry Goods case?

A. None at all.

Q. Who was your informant on whose statement to you you based your statements at this dinner?—A. Mr. Sanford, who was manager of the Seattle Dry Goods Co., a wholesale dry goods store, and Mr. Starr, who is also an officer of that company, told me that they had made this bid.

Q. Now, I don't care for hearsay, but we will go at them. You were simply basing your criticisms on what they had told you.—A. And I have talked with a great many men on that subject, who were interested.

The Chairman. The statement may remain in the record as a guide for future inquiry on that subject, and with it goes the other statement that it is hearsay, and of course its value as evidence will be determined by that explanation. But it may remain in the record.

Mr. McCoy. Well, then, under the circumstances of the record, you might just as well go ahead and state all that you said at that meeting and on what you based your statements in the way of information, or, where you knew of your own knowledge, why, then make it clear what part of it was of your own knowledge.

A. Well, I also referred to the Western Steel Corporation, in which allowances were made, on information furnished me by the referee, and which he told me that ten thousand I believe had been paid the

receivers, ten thousand to the attorneys for the receivers, and that probably the trustee would receive ten thousand and the attorneys for the trustee ten thousand. I had read in the paper, and I am not sure that the referee told me, that he had received six thousand.

Q. The referee himself?—A. Yes; yes. I had also read in the paper, I think, that the attorney for the petitioning creditors had received a thousand dollars and that the attorney for the bankrupt had received five hundred, as I remember, and that totaling those up with the necessary expense of inventorying, appraising, I think I made the statement that the expenses of administration in that case would approximate $50,000. I also made this criticism——

Q. (Interrupting.) Had the Western Steel Co. bankruptcy yet been wound up?—A. I don't think so.

Q. Well, then the $50,000 was the matter of expense up to the point to which it had gone at the time you were talking; is that right?—A. No; I don't think the trustee and his attorneys had been paid at that time.

Q. Well, have they been paid since?—A. I don't know.

Q. Well, what was it——A. (Interrupting.) I made the statement the referee told me that probably——

Q. (Interrupting.) Oh, that they would probably get that.—A. Yes.

Q. All right, if you will finish.—A. I think in that connection I made the crticism that the receiver and his attorneys had been paid their allowances early in the bankruptcy proceedings and at a time when the laboring class at Irondale was in needy circumstances.

Q. Is Irondale where the Western Steel plant was?—A. Yes. That I thought that if there was not enough money to pay all expenses of administration and to pay the laboring classes that the laboring classes should be paid first and that the officers should wait until there was sufficient money to pay them; I thought that was the policy of the law. I think that those are the only two cases that I referred to.

Q. Well, if you know of any other cases in which you think allowances here in bankruptcy have been fairly open to criticism, or any other practices in the administration of the bankruptcy law has been open to criticism, you might state those.—A. I have nothing to state in that connection.

Q. Well, what do you mean by that——A. (Interrupting.) I know nothing.

Q. You don't know of anything else. Now, do you know of any meeting of any committee of this corporation—credit corporation—that has been held since this congressional committee began its work here?—A. Why, I was not present at such a meeting. I understand there was one.

Q. Who were present, so far as you were informed?—A. Well, as far as I know, the only person I talked to was my brother; I don't know that he mentioned anybody who was present except himself, Mr. Klock, and Mr. Goldsmith.

Q. Mr. Klock, you say?—A. Yes; K-l-o-c-k.

Q. Is he one of these trustees whose names you have read?—A. No.

Q. Who is he?—A. Why, I presume he is the Mr. Klock of the Klock Produce Co.

Q. Is he an officer or trustee of the credit association?—A. I think not.

Q. And who is Mr. Goldsmith; what is his name?—A. Why, James Goldsmith. I think he is connected with Schwabacher Bros.

Q. President of what?—A. Beg pardon?

Q. You say he is president of some company?—A. No; I don't know what office he holds. He is one of the officers of that company.

Q. Schwabacher what——A. (Interrupting.) Bros. Co. (Inc.)

Q. Is that the grocery concern——A. (Interrupting.) That is; yes.

Q. What are his other business connections?—A. Why, he is chairman of the transportation bureau of the chamber of commerce. I don't know what other connections he may have.

Q. Were you, after this meeting at this dinner at the Hotel Washington Annex, called into consultation by the credit association, whose name I don't just remember—this corporation, or by any committee of it, or by any of its officers?—A. No, sir.

Q. Then, so far as your knowledge goes, or your information, rather, the only meeting of this association or any committee of it or any of its officers was the one at which your brother was present and Mr. Goldsmith and Mr. Klock?—A. That is all I know of at the meeting.

Q. What is the object of the Credit Men's Association, the one you have been speaking of, so far as stated in its certificate of incorporation or in its practice, do they differ any——A. (Interrupting.) Its object is to disseminate information along credit lines among its members and to secure equality in the distribution of parties who become insolvent and whose assets are wound up outside of court; to prevent unnecessary litigation on the part of certain creditors jumping in and getting ahead of other creditors. That is the principal object of the organization. It is also a member of the National Organization of Credit Men.

Q. Have you ever been present at any meeting or heard of any meeting of the association or its officers or committees at which any policy was discussed, or line of policy, in regard to keeping cases out of the bankruptcy court in this district?—A. No; I never heard the matter discussed at any meeting.

Q. Well, have you ever heard it discussed anywhere in connection with the association or its affairs?—A. Oh, I have talked with the secretary and treasurer and I know that is the principal object for which it is formed, to ask in that manner, not so much to defeat the jurisdiction of the court as to administer the estates economically. They can save the expenses of administration, and I believe that it is also their theory that they can get better prices. Their secretary is supposed to be an expert who is acquainted with parties that might buy bankrupt estates—that is, insolvent estates—and the cost of membership is very small, the charge of the association for handling such matters is extremely small, it hardly pays for itself.

Q. Do you happen to know whether this secretary, this man whom you say is an expert, was consulted in this Knosher case?—A. This party that I have just mentioned, Mr. Hills, has only been in office since June 1. His predecessor was Mr. I. H. Jennings, who has since resigned. He was consulted. The fact of the matter is that is the way I was brought into the case. Mr. Telfer, who was assistant secretary, called me up, stated that the Western Dry Goods Co. was the largest creditor in the Knosher case; that this allowance had been made; that he believed it was excessive, and would I make a report. That is a practice of the association, to retain as the attorney for the association in special matters that attorney who represents the largest

creditor who is also a member of their organization, and so I reported on this case, that the allowances had been made without due process of law and that they were excessive under any interpretation of the act.

Q. Well, was this predecessor of Mr. Hills—what do you say his name was?—A. I. H. Jennings.

Q. Was Mr. Jennings also skilled in appraisals and knowledge of where he could best dispose of bankruptcy estates?—A. Yes, sir.

Q. Or any commercial estate?—A. Yes.

Q. Now, do you know whether he was consulted by the receiver in the Knosher case in regard to the value of the bankrupt's property and to the best method of disposing of it and generally as to getting a good price?—A. So far as I know he was not consulted.

Q. Has the Western Dry Goods Co. ever been in bankruptcy?—A. Oh, no.

Q. That is, still a going, solvent concern?—A. Oh, yes.

Q. What do you know about the McCarthy Dry Goods Co. bankruptcy?—A. Nothing more than I have stated; that at the beginning they were offered a bid that would have paid dividends of 50 per cent and that after the business had been conducted, I believe, for a period exceeding six months it actually paid out less than 10 per cent.

Q. And who was the receiver in that case?—A. Mr. Baxter.

Q. Did he finally sell the assets of the company as receiver or as trustee?—A. Oh, he must have been trustee. He could not have been receiver after that length of time.

Q. He could not have been receiver after six months?—A. No.

By Mr. Higgins:

Q. Did I understand, Mr. Anderson, that you were the general attorney for this association?—A. I was retained as attorney to file the objections to the allowances.

Q. Allowances in what case?—A. In the Knosher case, to the receiver——

Q. (Interrupting.) And what part from the Knosher case? Does the association have a general attorney?—A. No, sir.

Q. Who acts for them in these collection and credit matters and appearances?—A. I think they have a number of attorneys that they refer small accounts to, and following the rule that I have laid down that when a special matter was before the association, they would retain the attorney of the largest creditor.

Q. Have you acted for them, as a matter of fact, in a good many matters in the last few years?—A. Yes; I have.

Q. And are continuing now to act for them?—A. I have represented them lately; yes.

Q. I wish you would fix the date of the meeting at the Washington Hotel Annex, where the banquet was held.—A. Well, it was about the 10th to the 15th of June last.

Q. 1912?—A. Yes.

Q. What was that, the annual meeting?—A. They held a monthly.

Q. That was the monthly meeting?—A. Yes, sir.

Q. You were invited to be present, or did you go as a matter of course?—A. I was invited to be present.

Q. As attorney?—A. Yes.

Q. What subjects were—or what credit subjects were discussed at that meeting?—A. I was called on to make my remarks almost the first—after the secretary had read the minutes of the last meeting I

was called upon to make a brief statement of the Knosher case. Having finished that, I left.

Q. Did you return?—A. No, sir.

Q. I understood you to say that at that meeting you also discussed the McCarthy Dry Goods Co.?—A. I made the statement that I have repeated here at that meeting.

Q. How?—A. I made merely the statement in connection with the McCarthy Dry Goods Co. that I have repeated here. It was all a report on the Knosher case, and, as I stated, I stated to them that the Knosher case was merely an illustrative case of bankruptcy practice.

Q. I understood you to say, further, that you talked about the Western Steel Co. receivership?—A. I received that as among instances in which excessive allowances had been made.

Q. I want to know what you said, Mr. Anderson, with reference to the receiverships and your experience in the bankruptcy court and what information you gave at that meeting?—A. Outside of statements relative to the Knosher case, I made no statements, excepting those which I have here stated regarding the McCarthy Dry Goods Co. case and the Western Steel Corporation case. If you want me to repeat what I said about the Knosher case, I think I can probably do it.

Q. You were called there for the purpose of giving these gentlemen information about the practice——A. (Interrupting.) No; I was not.

Q. What were you invited there for?—A. The circuit court of appeals on June 3 had rendered its decision in the Knosher case, and I went before them to repeat or to give them a statement of what had been accomplished. Now, the Seattle Merchants' Association, or Seattle Merchant and Credit Men's Association, had taken an interest in that case because they went into it not for the purpose of making a reduction in money but to establish a precedent that would be binding on this court, and those men wanted to know what we had succeeded in doing in that respect, so I stated to them that we cut the allowances in half and established a rule that under circumstances similar to the Knosher case the court would not in the future allow double allowances.

Q. Then, in that connection you discussed the Western Steel Co. and the other cases which you have referred to?—A. I made only the statements that I have repeated to you.

Q. How does the Seattle Merchants and Credit Men's Association compare in size with other credit associations in the city?—A. There are no others except collection agencies. This association is made up of the wholesale houses of Seattle, and, as a mere incident and as one of the minor features of that organization, they run a small collection department, handling accounts for their own members only and accepting some eastern accounts which are largely forwarded to them by affiliated members of the credit men's associations in other cities.

Q. Now, from this date in June, which as I recall it you said was about the 10th, you thought——A. Tenth to the fifteenth.

Q. (Continuing.) Tenth of June this year, from that time until the time your brother told you of the meeting with Mr. Klock and Mr. Goldsmith, as far as you know the Seattle Merchants and Credit Men's Association didn't have this matter under discussion?—A. As far as I know they did not.

Q. At any rate they did not call upon you——A. (Interrupting.) They did not.

Q. (Continuing.) For any information?—A. Did not.

Q. Nor notify you to attend any meetings of their officers or committees?—A. No, sir.

Q. And you say your brother is now the president of the association?—A. I do.

Q. And he is connected with one of the largest dry goods stores in the city?—A. Yes, sir.

Q. Who is Mr. Goldsmith?—A. One of the officers of the Schwabacher company—Schwabacher Bros. & Co. (Inc.).

Q. He is a member of the association, is he?—A. Yes, sir.

Q. And Mr. Klock a member of the association?—A. Yes; I think so; I don't know.

Q. And all you know of the conversation between Mr. Goldsmith and Mr. Klock, your brother has told you?—A. That is all I know about it; yes.

Q. You never talked with Mr. Klock?—A. No, sir.

Q. Nor with Mr. Goldsmith?—A. No, sir.

Q. Nor with anybody else?—A. Nobody.

Q. Except your brother?—A. That is all.

The CHAIRMAN. Any further questions, gentlemen?

Mr. PRESTON. I would like to ask Mr. Anderson a few questions.

The CHAIRMAN. Do so.

By Mr. PRESTON:

Q. The report of the receiver in the Knosher case, which is in the printed record there (Exhibit No. 69), contains a statement of the receiver to the court that at the close of the first day's business, after consultation with creditors, it had been decided not to be advantageous to undertake to continue business further. Can you give the committee any information about that?—A. No, sir; I would like to have some. I hope the committee will ask Mr. Baxter when he is on the stand who the creditors were with whom he consulted.

Q. And you have no knowledge of the matter yourself?—A. Absolutely none. I have inquired for it, but never received it.

Q. Now, when you appeared there to move against the allowance that had been previously made to the receiver and his attorneys without notice, did you call the attention of Judge Hanford to the fact that the allowance had been made without notice?—A. Yes, sir.

Q. And he then caused a notice to be given—he then fixed a time for hearing?—A. Yes, sir.

Q. And caused notice to be given to the creditors——A. Yes, sir.

Q. (Continuing.) At that time and place, and at that time and place you were present representing the creditors whom you appear by this Exhibit No. 69 to have represented?—A. I was there with Mr. Dovell, of Hughes, McMicken, Dovell & Ramsey.

Q. I say and representing these creditors?—A. Yes.

Q. Which the Exhibit No. 69 shows you were appearing for?—A. Yes, sir.

Q. Now, was there anything in the nature of a ruling there by Judge Hanford at the close of that hearing other than appears in the printed record No. 69?—A. I don't recall any ruling now. In justice to Judge Hanford I will say this, that when I argued that matter before him he said that he intended that allowance to cover the receivers' allowance and the trustees, and I thereupon called his attention to the fact that the petition which was laid before him

and the order which he signed recited expressly that the allowance was to the receiver and his attorney only, and that at that time the attorneys for the trustee was before the referee petitioning for an allowance to the trustee and themselves as attorneys for the trustee. Of that fact probably Judge Hanford had no knowledge.

Q. The result of that was that Judge Hanford made a reduction in the allowance?—A. He did; yes.

Q. And that order that he made appears here in the printed record, doesn't it?—A. Yes, sir.

Q. Now, you have spoken of the McCarthy Dry Goods Co. matter. My information, Mr. Anderson, is that that was not in bankruptcy, but in equity in the circuit court. Do you know any difference from that?—A. I don't know anything about it except what I have been told.

Q. You supposed it was a bankruptcy matter at the time you made your address?—A. I supposed it was; yes.

Q. If it was not and was in equity in the circuit court, you were misinformed?—A. Yes.

Mr. McCoy. Which one is that, Mr. Preston?

Mr. Preston. McCarthy.

A. However—well, that is all right.

Mr. McCoy. However what?

A. Why, my opinion would not be any different; it had been in the equity department or in the bankruptcy department. The facts are the same. The actual dividends is the only matter I refer to.

Mr. Preston. Who did you get your information from about that McCarthy case?

A. Mr. Sanford, the manager of the Seattle Dry Goods Co., and Mr. Starr, also an officer of that company, who were the parties that made the bid. I have talked with other creditors. I remember at this meeting here—if you want me to go into that?

Q. Well, I was going to ask you a question. I don't care to ask you what other people told you except to get to that particular point.—A. That is all right.

Q. Were you told of the fact, if it be a fact, that the reason why the sale was not made was because the creditors themselves opposed it?—A. No; I never knew that. I never heard that statement made.

Q. You spoke about the allowance to the referee in the Western Steel Corporation case.—A. Yes.

Q. You are quite familiar with the statute——A. (Interrupting.) I think I am; yes.

Q. (Continuing.) Governing bankruptcy proceedings. Is it true, or not, that that statute fixes the referee's fees?—A. It does.

Q. And did you mean to convey the idea at the banquet that that allowance had been excessive?—A. No, no; not at all; not at all.

Q. The fact of the matter is——A. (Interrupting.) The fact is, whenever I have mentioned the referee in any public meeting or in private it has been only to praise him. I don't want to be understood as making any criticism of the referee whatsoever.

Q. Well, that allowance would be made by the court, though, would it not?—A. Oh, yes.

Q. What I want to get at is, the $6,000 allowance to the referee in that Western Steel case was within the statute, was it not?—A. Oh, I always thought it was; yes.

Q. Now, they realized, did they not, something over $700,000 from the assets?—A. I have understood that was the fact.

Q. And what is the referee's allowance by statute?—A. One per per cent, and 25 cents, I believe, for each notice sent out.

Q. You said something at the banquet about the labor claims in the Western Steel Corporation not being taken care of. You had that, I suppose, simply from some general rumor or something of that kind?—A. Well, the thing that called my attention to it particularly was, I was in attendance at the First Presbyterian Church one morning when the Rev. Matthews also made the statement and asked for a collection to take care of the laborers at Irondale, who were in needy circumstances. That was my first information on that point.

Q. Well, do you know whether they were laborers who had claims against the bankrupt estate?—A. I presume that there are no laborers at Irondale except those connected with the Irondale institution. There is no other business there.

Q. Were you advised of the fact that the order of sale that Judge Hanford—or the referee, I don't remember now which it was—made in the Western Steel case, expressly provided that the purchaser must furnish cash enough to take care of the labor claims?—A. No; I don't know anything about that.

Q. Did you make any inquiry at the office of the attorneys for the trustees in the Western Steel Corporation case to ascertain whether the laborers' claims were being taken care of or not?—A. No; I did not.

Q. Did you ascertain, in the course of your investigation of the matter, that the fees in the Western Steel Corporation case that were allowed to the receivers and attorneys and trustees and attorneys were required by the order of sale to be taken care of by the purchaser, the Metropolitan Bank?—A. I don't know whether I had heard that statement before that meeting or not. I have heard the statement, I think——

Q. (Interrupting.) Since then?—A. I don't know whether it was since or before; I don't remember.

Q. You have never examined the files?—A. I never examined the files; no.

Q. Now, at the banquet, in your remarks there, I would like to understand whether you spoke, as you say you spoke, of the Knosher case as a typical case, explaining the meaning to them by using the other two cases as showing that that was a typical case; is that the idea that you conveyed?—A. Yes; I think that is a fair inference; yes.

Q. That the Knosher case was a typical case because these two other cases were like it and made it typical; is that the idea?—A. Well, I didn't mean to convey the idea that they were similar in point that no notice had been given, but merely as far as excessive fees are concerned.

Q. I mean that.—A. Yes; I did.

Q. I believe you said that you had no information about those gentlemen who were present at the committee meeting of the Credit Men's Association?—A. Absolutely not.

Q. So that if I should read you the list of them it would not help you at all?—A. Not a bit.

Q. You just know three?—A. I barely mentioned the subject.

Q. And you know those simply because your brother told you?—A. Just alluded to them.

Q. You spoke of the Western Dry Goods Co. as being the largest creditor. You mean the largest creditor of all the creditors?—A. Oh, no.

Q. Of the resident creditors?—A. The largest resident creditor who was also a member of this association.

Q. Just locally?—A. Yes; just locally.

The CHAIRMAN. The largest in the association?

A. Yes; the largest in the association.

By Mr. McCOY:

Q. Where can I find the date of the appointment or the election of Mr. Baxter as trustee in this matter?—A. Well, you can't find anything in there, I don't think.

Q. Well, do you recollect what the date was?—A. He was elected trustee on March 20.

Q. And what was the date on which he had received those allowances as receiver from the court?—A. That is probably in there. I think it was along about the 13th of March. Maybe the 15th; probably the 15th, along there.

Q. Well, then, how could Judge Hanford suppose that he was making an allowance to cover both the services of the receiver and the trustee if the trustee had not been appointed?—A. Well, I can't explain that. I can't explain that. Nobody else, probably.

Q. Well, let's assume, for the sake of the argument, that the trustee had been elected at that time, but was not in court making application for an allowance, is it customary to anticipate such an application and make it at the time when the receiver is applying?—A No; it is not customary, and if I remember the bankruptcy act at this time it provides that allowances shall not be made until the estates are closed. Now, that is my recollection of the bankruptcy act. It is there in the act, or in the decisions of the courts.

Q. Well, that is, an allowance to a receiver would be made when he closed the receivership?—A. Yes.

Q. An allowance to a trustee when he closed the estate?—A. Yes.

Q. Now, this Knosher Co. was a retail dry goods business, wasn't it?—A. Yes, sir.

Q. And was in active operation on the day when the petition was filed. What was it, a voluntary or involuntary proceeding?—A. Why, on the face of it it appeared to be involuntary. I always considered it a voluntary action, because the brother-in-law of the bankrupt was one of the petitioning creditors. The ground of bankruptcy was an admission on the part of the bankrupt that he was insolvent and willing to be adjudged a bankrupt.

Q. I forget whether the bankruptcy law has been changed so as to permit a corporation to go into voluntary bankruptcy?—A. The law was changed in 1910, permitting a corporation to go into bankruptcy voluntarily.

Q. Without going through that form——A. (Interrupting.) Yes.

Q. (Continuing.) Of admitting that they were bankrupt, in an involuntary proceeding?—A. Yes.

Q. Do you know whether there was any litigation in this matter?—A. None that I know of.

Q. I notice on page 77 of Exhibit No. 69 a statement that McClure & McClure and Leopold Stern were the attorneys for the receiver?—A. Yes.

Q. What necessity, if any, was there for having two attorneys or a firm of attorneys and an individual attorney outside?—A. Oh, there was no necessity. That is nothing unusual. Mr. Stern and McClure & McClure by combining their claims were able to elect Mr. Baxter as trustee. In consideration of that fact he detailed them as his attorneys, but the mere fact that there were two attorneys would not lead the court to increase the compensation.

Q. How can you be sure of that?—A. Well, that is the law. I don't know whether the court took that into consideration. He should take it in, and I should say that he did.

Q. Well, was there in the allowance of this $2,500 to attorneys anything to indicate how much was to go to McClure & McClure and how much to Leopold M. Stern?—A. Absolutely nothing.

Q. You might say the court was encouraging litigation over the fee, then.—A. I might—no; I would not say that.

Q. No; I say you might say, if he put it up to attorneys to divide $2,500 without saying how; there might be some trouble?—A. Oh.

Q. I didn't mean to say or intimate that Judge Hanford was doing that; I only attempted to be facetious——A. I understand.

Q. (Continuing.) And in a way I failed. I meant to say that attorneys might squabble over $2,500 if somebody didn't tell them in advance how to divide it between them, that is all.—A. Yes; I understood that.

The CHAIRMAN. Are there any further questions with this witness? Are you ready for an evening session?

The WITNESS. Mr. Chairman, you haven't touched on the vital point in this case. If you hadn't subpœnaed me, I probably would not have brought it up, but as long as I am——

The CHAIRMAN. Speak it out now, Mr. Anderson.

A. There is another branch of this case in which Mr. Dovell and I brought an action against this John Anisfield Co., asking for an accounting and for an injunction. This petition was laid before the referee in the first instance, because the judge was absent from the jurisdiction. That matter came on to be heard pursuant to a show-cause order. Mr. Preston appeared representing the John Anisfield Co. and entered what were called objections to the jurisdiction, which were in the nature of a demurrer. The referee sustained those objections and on writ of review we laid that before the United States district court. The referee certified to the United States district court four questions, I believe, two of which were important, at least the circuit court of appeals mentions them in its decision, and those were that the petition was not properly brought because the trustee had not brought the action, and secondly, that the court had no jurisdiction to entertain such a proceeding summarily, that it should have been by plenary suit if at all. Those questions were before the court—before the United States district court, Judge Hanford, for decisions. At the same time we had these objections before him to the allowance of Mr. Baxter. The objections first filed were objections on grounds of law only, that the allowance had been made without due process of law and was excessive under any interpretation of the statute.

Having discovered what we believed to have been a fraud practiced upon the receiver and the court in this matter by the John

Anisfield Co. conspiring with the bankrupt and with certain of its employees, we filed a new objection to that allowance, on the ground that the receiver, by his inattention, his negligence, had permitted this condition to exist. To support that allegation we filed a number of affidavits. Those affidavits were served upon the attorneys for the receiver and trustee only; none of them were ever served upon Mr. Preston who represented the John Anisfield Co. Mr. Preston himself never filed any affidavits. Neither Mr. Preston nor Mr. Dovell nor I ever argued the matter to the court. We presumed that the court having had two questions of law certified to him would decide those questions of law, but when the decision was rendered in that case he pretended to decide the matter on the merits. Now, before giving my opinion on those matters, if I could have some one go into the referee's office and get the briefs there I could soon show you that everyone understood that those affidavits were filed for the purpose of sustaining our objections to the allowance to the receiver and not in any way relating to the John Anisfield controversy. Mr. Dovell and I—everyone suspected that the circuit court of appeals would fall for such a decision as that, but in the decision which the circuit court of appeals rendered they said that the United States district judge having, as he did, decided the case on the merits, in which the petitioning creditors participated, they are not now in a position to object, that he decided the case on the merits. Since that decision has come out we have filed a petition before the circuit court of appeals asking for a modification of the opinion in that particular. The decision as it now stands would preclude us from bringing a plenary action against the John Anisfield Co. on the ground stated.

The CHAIRMAN. Could you get those files yourself?

A. They are in the referee's office now.

The committee here took a recess until 7.30 o'clock this evening.

EVENING SESSION.

7.30 O'CLOCK.

Continuation of proceedings pursuant to recess. All parties present as at former hearing. Same witness on the stand.

Mr. MCCOY. Have you had access since the adjournment to the papers you spoke of, Mr. Anderson?

A. Yes, sir.

Q. Now, if you will, make whatever statement you care to about those.—A. [Referring to documents.] I think, first, I will refer to the petition for modification of the opinion, as that relates to the merits of the matter connected with the John Anisfield Co.

Q. Just to get the matter a little clear in my mind: In this petition which you have a copy of, is the situation set forth which you briefly described before the adjournment, namely, that you had raised certain law points which in any way affected the issue which had been made in that particular matter?—A. The issue of fact; yes, sir.

Q. The issue of fact?—A. Yes, sir; this sets it forth.

Q. Now, the issue of fact which was raised was as to whether or not there had been some fraud in connection with the valuation of the assets of Knosher & Co. leading to a lower price than it was contended might have been obtained if the fraud had not existed?—A. Yes, sir.

Q. That was the issue of fact?—A. Yes, sir.

Q. Now, if you will explain the law point which you raised in the matter.—A. The referee certified up four questions of law, two of which only are important. The first question raised by the referee was that the suit should have been commenced in the name of the trustee.

Q. What suit?—A. The suit of the Western Dry Goods Co. and other creditors against the John Anisfield Co., charging a conspiracy to defraud. The second question of law raised was, had the United States district court jurisdiction by summary proceedings to hear the matter. Those questions were pending before the United States district judge at the time he rendered his opinion pretending to decide the case on the merits as if evidence had been submitted.

Q. Now, there are certain affidavits printed in—what is the number of that exhibit?

Mr. PRESTON. Sixty-nine.

Mr. MCCOY (continuing). In Exhibit No. 69 of this proceeding there are certain affidavits charging fraud and other affidavits undertaking to set up facts to disprove the fraud.

A. Yes, sir.

Q. Were those certified up by the referee in bankruptcy?—A. No, sir; those were never filed before the referee in bankruptcy.

Q. They were never filed before the referee?—A. Never.

Q. How did they come to get into these exhibits?—A. An objection made to the allowance of compensation to the receiver and his attorney; it was heard directly before the United States district judge, and naturally he sustained the allegations of those objections, and we filed those affidavits in the clerk's office; so, of course, they were in the same files that the writ of review was found in—all in the same matter. They are not classified differently; they arose in the matter of Charles Knosher & Co., bankrupt.

Q. How was the question raised before the referee on this matter of fraud—how far did that get before the referee?—A. A demurrer was sustained.

Q. Demurrer to what?—A. Demurrer to our petition.

Q. What was the petition?—A. The petition set forth that the bankrupt and certain of his employees and the purchaser at the bankrupt sale had conspired to place a false valuation—false by $30,000 on the assets down there with a view that when the John Anisfield Co., who was a part of the conspiracy, had purchased the property, that the balance was to be turned over to the bankrupt.

Q. Who had filed that petition?—A. Mr. Dovell and I had filed it on behalf of the Western Dry Goods Co., and the Seattle Dry Goods Co., and the creditors named there in the petition.

Q. Who raised the points against it?—A. Mr. Preston appeared for the John Anisfield Co. and filed what he called objections to the jurisdiction, which was a demurrer setting up that the court had no jurisdiction.

Q. And in that document he specified four points practically of lack of jurisdiction.—A. Well, I think he set them up—the referee certified four points—I believe Mr. Preston raised them all; however, it is part of the record—I do not recall it.

Q. And were those legal propositions before Judge Hanford at the time when the question of reviewing the allowances was before him?—A. Yes, sir; at the same time.

Q. They were before him on the certificate of the referee certifying those questions up for decision by the judge?—A. In the Anisfield case.

Q. For a review of the decision of the referee?—A. Yes, sir.

Q. Now, you can go ahead from that point.—A. As I stated this afternoon, none of the affidavits which were filed in that case, with the exception of two affidavits filed at the initiation of the suit, which were for the purpose of obtaining an injunction, had any connection with the petition relating to the John Anisfield Co. as it stood before Judge Hanford. The affidavits that we filed were served only on the attorneys for the receiver and trustee and not on the attorneys for the John Anisfield Co., nor did the attorney for the John Anisfield Co. submit any affidavit on his own behalf, nor was there any argument on the question of the merits or of the law relating to the John Anisfield Co.'s petition before Judge Hanford.

Q. At the time when the question of allowances was up, or at any other time?—A. No; never mentioned.

Q. Now, what took place at the hearing before Judge Hanford?—A. There never was any hearing.

Q. There never was any hearing on the———A. (Interrupting.) Writ of review—it was never argued.

Q. Did anything take place in regard to this allegation of fraud?—A. Just before I pass that—I say it was never argued—briefs were submitted, however, by both parties to the court—now what is the question?

Q. Was there any oral argument?—A. Relating to the John Anisfield Co. petition—never.

Q. Was there any oral argument in regard to these affidavits of fraud?—A. There was argument on that and the affidavits were specifically called to the attention of the court in this way—I told the court that numerous affidavits had been filed and I did not doubt that he would prefer to read those in his chambers and I called his attention to them, that I had filed myself.

Q. What took place on that statement by you?—A. Well, the court did not render any opinion at that time, except to reaffirm what he had said at the former hearing, that he believed that the receiver in this case was something more than a mere custodian; that was all.

Q. I think you stated before adjournment this afternoon that there was something in this opinion of the circuit court of appeals referring to the matter and referring to you in some way or other—is that right?—A. The circuit court of appeals did not make any reference to me. Judge Hanford devoted a paragraph to me, I believe.

Q. In some opinion that he handed down?—A. In this opinion in the Knosher case.

Q. What was it he said?—A. I will have to read that.

Q. Are you reading from a copy of the record in the circuit court of appeals?—A. Yes.

Q. Which is the same as the exhibit which is here before us, No. 69?—A. After referring to, or quoting an affidavit filed here by other parties, he states—do you want me to read this?

Q. Yes.—A. On page 54 of Exhibit No. 69. [Reading:]

To corroborate this information the leading attorney for the objecting creditors has made an affidavit asserting "that he has in his possession what purports to be and is represented to him to be the true and original memorandum and data of the inventory

as taken in certain departments of the store of said bankrupt; that he has compared such memorandum and data with the receiver's report and finds a variance and difference of over 100 per cent in the items covered, aggregating several thousand dollars, and that he is informed by responsible persons in position to know, that this condition was general throughout the store."

Now, skipping the next paragraph, which is not properly in here from the point of coherence, I will come to the next paragraph below that. [Reading:]

The attorney's affidavit above referred to, I must believe, would not have been made by a more experienced lawyer, for it necessarily creates suspicion as to his good faith. If the document which he claims to have in his possession were genuine and of any importance, it should have been presented to the court and an opportunity given for scrutiny instead of making it the basis of an affidavit while kept in concealment.

This opinion was handed down some time in August, or the first part of September, I think.

Q. The leading attorney in the matter referred to in the opinion was yourself?—A. Yes, sir.

Q. Does not Judge Hanford somewhere else in that opinion, part of which you have just quoted, refer to the fact that you had stated in your affidavit that you had certain memoranda which you did not produce—or is that the only place in there?—A. This is the only reference he made to me.

Q. Well, I thought I read it through the other night.—A. Here he attaches an addenda to the opinion which he made at my request. I believe this opinion here was filed on July 18, 1911. The addenda—oh, no, the memorandum decision was filed June—no, July 11, 1911. The addenda was filed on the following day, in which Judge Hanford was very fair to me.

Q. Just read the addenda.—A. (Reading:)

Addenda. The attorney for the objecting creditors referred to in this decision has called upon me and exhibited to me the memorandum sheets to which reference was made in his affidavit, and has shown that he had substantial grounds for not making profert of the same as evidence, although deemed of sufficient importance to influence him and his clients in instituting these proceedings. I am convinced that he acted in good faith, but the result of my investigations as above announced must remain unchanged.

C. H. HANFORD,
United States District Judge.

Q. Now, your comment, or your criticism of both the quotations is this, as I understand it, that at that time the merits of the fraud issue were not before the court.—A. No; never, never.

Q. And that there was no call on the part of Judge Hanford, and no legal reason for construing the merits at that time?—A. Why, he could not construe them—I never presented them.

Q. Consequently the reflections on you were absolutely without warrant in law or in fairness?—A. Well, that is the way I felt about it.

Q. That is the way you feel about it now?—A. Oh, yes; as far as the young attorney is concerned, Mr. Dovell was not so very young, and this affidavit was submitted to him, or at least he read it before it was filed.

Q. And did Mr. Dovell know of the fact that you had this memorandum outside?—A. I think he did. He had never seen them, but I told him.

Q. Now, at any time while the matter was being presented to the court by oral argument, did he comment on the fact that you had been reflecting on anybody; and if so, what did he say, and tell what

it was about?—A. No; he never expressed himself on that point. The opinion here, I should say, lends color to the suggestion carried by your question.

Q. Was there any time during any of those proceedings when the judge indicated from the bench his disapproval, by word or deed, of what you were saying, or the stand you were taking?—A. He never said anything from the bench. I don't know whether he, intentionally or not, but while I was arguing the case he turned his chair around at an angle of practically 180 degrees from where I stood; at least he had his back to the seat in that side of the court room, and he faced in this direction after I was talking—or at least after I commenced and as I concluded.

Q. That is, he turned his back to you?—A. Yes, sir.

Q. And what branch of the matter were you at that time arguing?—A. Well, I was arguing the matter of the allowance—I don't know whether I was referring to the affidavits on file or not. I think I was, because that was the—I am quite sure that was it, because I left that to the last.

Q. Did he make any statement to the effect that the persons charged or any persons charged in the matter were friendly to him or his friends, or anything of that kind?—A. No, no; nothing of the kind; not at all.

Q. Now, what is the status of this issue of fraud now?—A. The circuit court of appeals rendered its decision on July—June 3—and on the 3d of July I filed a petition asking for a modification of the opinion so far as that opinion held that we had—or tried this case on the merits. This petition for the modification of the opinion sets up all these matters, and I referred to them all except the fifth paragraph thereof, which reads:

> That it was never intended by petitioner herein to submit the controversy involving the $30,000 to the court, and it was never understood by any of the attorneys in the case that anything should be presented to the court on the merits.

I based that statement on statements made to me by all the attorneys in the case and on the briefs submitted in the circuit court of appeals.

Q. There has been no decision of the circuit court of appeals?—A. Not on that petition. It was only filed nine days ago.

Mr. McCoy. I now show you a paper marked "Exhibit No. 71" [showing]; have any steps other than those in the district court been taken against the persons charged with the fraud?

A. The Federal grand jury has indicted the bankrupt, E. Libbey, treasurer of John Ainsfield & Co., the purchaser at this sale, and I believe four of the employees of the bankrupt on two counts—conspiring to obstruct justice and conspiring to defraud the United States.

Q. Was there any attorney indicted by the grand jury in this matter?—A. No.

Q. Now, Mr. Anderson, if there is anything else about this Knosher bankruptcy that this committee ought to know, involving irregularity in practice or any other feature of it in any way, bearing on Judge Hanford's dealings with the matter, will you state them?—A. Why, there is nothing of importance. I think this statement has some weight, however. I was told by Mr. Stern, attorney for Sutcliffe Baxter, that Mr. Baxter suggested that they appear before Judge

Hanford and ask him to make this allowance, because the allowances would be larger than if they went directly before the referee.

Q. What is Mr. Stern's name?—A. Leopold M. Stern. And then, about three weeks ago, I was talking to Mr. Walter McClure about this case.

Q. Also of the firm of attorneys representing the receiver?—A. (Continuing.) And he said that Mr. Baxter had been down there rather excited about the fact that the circuit court of appeals had cut the allowance in two, and said that the next time he was appointed receiver of the United States district court that he would conduct the business of the bankrupt long enough so that there would never be any question about his conducting it; Mr. McClure said he would not permit any such practice if he was his attorney. These statements are of some weight as throwing light upon the character of the receivers appointed.

Q. Has the corporation generally described by me as the Credit Men's Association—I do not remember the name of it—ever taken any action looking to the prevention of the appointment of Sutcliffe Baxter as receiver or trustee in bankruptcy?—A. I would not say that the association had. I remember that either on the day that the Knosher Co. was declared bankrupt or within a day or two of that time that the credit man for the Western Dry Goods Co., L. B. Jackson, told me that a number of the creditors had gotten together to protest against the appointment of Mr. Baxter as receiver in the Knosher case. I understood, too, from Mr. D. I. Smith, of Smith, Daniels & Cooler, a local wholesale house, that he had talked with Shank & Smith, who represented the petitioning creditors with a view to having one of the local creditors appointed receiver in this case. That action was taken. I know of nothing further.

Q. What is Mr. Stern's name—Leopold?—A. Yes.

Q. Anything further?—A. Well, I would prefer that you take these briefs—at least those parts of them that relate to this controversy. I do not care to rest the thing purely on my statement. There was never any hearing on the merits. These briefs demonstrate that. I would like to call attention here to—would you prefer that I would call your attention to page 6 of the brief of the petitioners filed by myself and Hughes, McMicken, Dovell & Ramsey?

Q. In what proceeding?—A. In the Knosher matter.

Q. What branch of the Knosher matter?—A. Both branches; but one writ of review was taken. It was not necessary to take two. Mr. Dovell wrote the brief relating to the Anisfield Co. controversy. He says, on page 6:

> The opinion filed by the district judge indicates that the question of whether or not the bankruptcy court had jurisdiction to entertain our petition (which was the question certified up by the referee) was not considered by the district judge, but he, considering only the affidavits which had been filed, assumed to settle the matter upon the merits and dismiss our petition, has not been sustained. We thereupon filed a petition for revision by this court. It will appear, therefore, that this petition for revision presents two questions.

Which I have indicated later under the head of "Argument."

> It is unfortunate that we did not have an expression of the district judge upon the matter which was certified to the court by the referee; that is, whether or not the bankruptcy court had jurisdiction to entertain the petition. It was the view of the referee in bankruptcy, as expressed in his return, that he had no jurisdiction to entertain the petition for two reasons.

I have named those. On page 8 he says:

The referee having given this expression to his views and certified the matter to the district court, we had a right to assume that the court would pass only upon the question of jurisdiction, which had been suggested by the objections filed by John Anisfield & Co., and that if, in the view of the district judge, those petitions were not well taken, the referee would be so instructed, opportunity given to anyone interested in the estate to traverse the allegations in our petition, and that a hearing would then be had at which the petitioner would be given the opportunity to establish by appropriate evidence the allegations of the petition.

And there is a case cited there. And then it goes on:

It appears manifestly irregular that the referee having refused to consider our petition for want of jurisdiction, his action having been certified for review, the district judge should proceed to determine the matter upon the facts. We filed certain affidavits with our petition and in support thereof. We had asked for an injunction order restraining John Anisfield & Co. from selling the remainder of the bankrupt stock, which at that time they were selling at forced sale. The affidavits were filed for the purpose of making a prima facie showing to justify the issuance of such an injunctive order pending the action, and we had no right to anticipate that after the referee had taken the action he had and the matter had all been certified up, the court would permit the filing of affidavits on behalf of John Anisfield & Co. and would determine the matter finally with nothing before it but the affidavit.

Mr. Dovell does not clearly state the facts. He says "affidavits filed by John Anisfield & Co." Now, none were filed. There is no controversy on that point. Mr. Preston will admit it.

Q. Who did file them?—A. Nobody filed them.

Q. There are answering affidavits.—A. Filed by the attorneys of the trustee and the receiver.

Mr. PRESTON. Wait a moment before we pass that; you filed some affidavits in support of your petition.

A. I said that.

Mr. MCCOY. He was referring to the answering affidavits?

The WITNESS (continuing reading):

We assumed, therefore, that the question to be considered by this court is the correctness of the ruling of the referee in dismissing our petition for want of jurisdiction.

That is as far as our brief refers to the matter. Mr. Preston's brief is instructive.

Mr. MCCOY. Have you quoted from this brief now all that refers to this particular matter in regard to the fraud allegations.

A. So far as they relate to the merits.

Q. Would you think it well for the committee to have this brief marked as an exhibit, or simply take it for use if they care to examine it?

The WITNESS. There is nothing else in there that would be of any interest, except it takes up the receiver's allowance and speaks of the law in that particular.

Mr. MCCOY. We will have it marked "Exhibit No. 72." This is in the United States circuit court for the ninth circuit, "Bankruptcy of the Western Dry Goods Co., and so forth, against Sutcliffe Baxter, respondent, in the matter of Charles Knosher & Co., bankrupt. Brief of petitioners on petition for review." That is marked "Exhibit No. 72."

Q. Now, is there anything you would like to say now, Mr. Anderson, in reference to this same matter?—A. Yes.

Q. All right.—A. On page 2 of the brief of the respondent, John Anisfield & Co., the first paragraph on the page reads:

Here the witness reads from the brief of respondent, John Anisfield & Co., the portions referred to.

The WITNESS. I think I will have to modify my statement. I think Mr. Preston's brief would bear me out in the statement that he never held himself out to the upper court as claiming that the case was decided on the merits. I think the upper court might have construed this last paragraph in his brief that he believed that the case was tried on its merits; but I might say in that connection that Mr. Preston told me in his office about two weeks ago that he never understood that we were trying the case on the merits, at which I rejoined that he must think then that Mr. Dovell and I—I think I used the words—were a couple of fools. He said he would not say that, but he said he thought we got our foot into it on the appeal. Even at that time he never stated that he understood that in the lower court we had got our foot into it, but he understood that we had, by appealing two matters together, although he did not elaborate on that suggestion. I might say that I have also spoken to Mr. McClure, who represented the receiver and trustee, and that he stated to me that he always supposed that his affidavits were filed to substantiate the objections that we made to the receiver's allowance. That Mr. Stern, the other attorney for the receiver, had stated to me, calling my attention to the paragraph in the opinion of the circuit court of appeals relating to the contention that the case was tried on the merits; that that was mere dictum; that it was not binding on us, and was not of any weight and a matter of no importance.

Q. In reading the points certified, or the opinion, if that was what it was, of the referee, did not one of the findings, or whatever you call them, of the referee, hold that there was no merit in the contention of the issue of fraud—you just read it from Mr. Preston's points—you read four points, didn't you?—A. The third point suggests something of that kind, but I thought that he meant there that the compliant did not state a cause of action. That is what he orally announced from the bench, and I supposed that is what he meant by that third point.

Q. There were no other affidavits on file in that matter with the referee except the two affidavits filed to secure an injunction which you did secure?—you did get your injunction?—was there any answer to the petition controverting any of the allegations of the petition?—A. Mr. Preston's so-called objections to the jurisdiction.

Q. I mean, there was no action on the facts?—A. No; it was not traversed.

Q. There were special appearances to raise points of jurisdiction.—A. I think that is all.

Q. Is there anything further, Mr. Anderson?—A. I do not recall anything more.

The CHAIRMAN. Any further questions?

Mr. HIGGINS. Mr. Anderson, the records suggest that the Seattle Merchants and Creditmen's Association started to investigate the charges of the trustees and receivers in Judge Hanford's court, and with the view to establishing the fact that the allowances and charges were unreasonable and not within the law, and perhaps to further establish the fact that the same parties frequently occupied these trust positions; and you further stated that when they—by suggestion—when they commenced such an investigation and classification of cases that they stopped—did not continue the investigation. Now, do you know of your own knowledge to that effect? And if so, state to the

committee what the facts are and what you know within your own knowledge.

A. I know nothing of any investigation started or contemplated, of my own knowledge. I might say that at this dinner at the Washington Annex that I recommended to them the appointment of a committee to wait upon Judge Hanford and express the sentiment that they had often expressed among themselves, and that committee was, I believe, appointed to cooperate with Judge Hanford. I told them at that meeting that they were partly responsible for the conditions existing here; that Judge Hanford was approached in these matters only by those most interested in securing large fees. I think at that meeting I called their attention to the Knosher case particularly and stated that the order passed up to Judge Hanford by one of the attorneys for the receiver left blank the amount of the allowance. Now the bankruptcy act pays the receiver or trustee on a percentage basis and it is the practice of the referee to generally figure out those percentages and present them to him and let him see that that is the result obtained. But in this case they presented the petition as they would present a petition where the allowances were wholly within the discretion of the court.

I think that I should say this much in justice to Judge Hanford, that the bankruptcy act had been changed six months prior to the time that this petition was filed before him and it may be that he did not know anything about it. I told them that if they would voice their objections to him that they would probably get some relief, and they appointed that committee, so far as I know from hearsay, and you gentlemen came to the city shortly after that and some of the creditors thought that—well, I don't know that some of the creditors thought it—but it was suggested to some of the creditors that they should cause an investigation to be made of the different allowances in bankruptcy proceedings, and that that matter was laid before this committee which I told you was appointed to cooperate with Judge Hanford. I do not know the results of that meeting, except that I was told there was something in the paper—that the committee had made a statement. I was out of the city at the time.

Mr. Higgins. My question was confined to any knowledge that you had yourself of such an investigation being started and then stopped.

A. I answer you no.

Q. I will ask you if you know of anybody who has any information about that; and, if so, who they are?—A. Well, I suppose the officers of this association have knowledge.

Q. I am not asking you for your supposition—what are the facts—if you know of anybody who has any information on that subject?—A. Well, one member who was present at that meeting and talked with me—that was my brother.

Q. What meeting are you referring to now?—A. The meeting at which this committee met with the idea of considering what position to take with reference to the allowances made in this court.

Q. Was that after this investigating committee had met?—A. Yes, sir; that meeting was held about the 2d day of July and before the 4th, somewhere between the 1st and the 4th day of July.

Q. And it is your understanding that they did not continue any classification or investigation with a view to developing the facts that

the charges made by receivers and trustees were excessive.—A. If you strike out the word "continue" I will answer you "no;" they never started.

Q. Do you know of your own knowledge why they did not start?—A. No.

Q. Do you know of anybody that can inform this committee why they did not start?—A. Well, I told you before one person that I knew that was present at the meeting where the question was at all talked about, and that was E. G. Anderson and James Goldsmith, and I believe, Mr. Clock.

Q. That is the meeting which you have already testified about?—A. Yes, sir.

The CHAIRMAN. Are there any further questions of Mr. Anderson?

Mr. PRESTON. Yes, sir; I would like to ask a few questions.

Mr. MCCOY. The meeting which you have just spoken of was, I understand, not a meeting to carry out the suggestion you made at the dinner, but to carry out a suggestion made by this congressional committee.

A. Well, I don't know whether the committee was appointed or had been appointed at that time; in fact, I am inclined to think——

Mr. MCCOY. The congressional committee?

A. No; the committee representing the association to cooperate with Judge Hanford; at that time, so far as I am informed, they had not been appointed. My brother told me that Mr. Perry had called on him and suggested something of the kind, that they take up the matter, and he said that he had been thinking of appointing a committee to cooperate with Judge Hanford, and Mr. Perry suggested that it might be well to take some position along initiating lines before this committee. I understand that committee then met shortly after, the same day or the next day, and that no action was taken, so far as I know—no affirmative action was taken at least.

Q. Was that at about the time that you were called before this congressional committee and they asked you to get such information as you had?—A. The committee never asked me to get any information for them. Mr. Perry came and——

Q. Did you call on this committee? A. Yes, Mr. Perry came down and told me you gentlemen wanted to see me that evening, that there was going to be before you a body of the business men, and I came up to your hotel that evening in response to that request. I never, however, told you that I was going to take up the matter. In fact I told Mr. Perry that I would not unless this association desired me to take it up, and I would.

Q. And they did not ask you to take it up?—A. I never had any communications from them.

Mr. PRESTON. I think it is proper at this time for me to call the attention of the committee to the fact that at the time of the suggestion by the committee, I secured, upon information, of course, a list of the gentlemen present at that committee meeting that the witness has referred to.

The CHAIRMAN. I wish you would put them in the record.

Mr. PRESTON. I handed them up to you gentlemen and you handed it back to me to get the initials of some of them and I have not had time to get the initials, but it might as well be read into the record. Perhaps Mr. Anderson can supply the initials.

The CHAIRMAN. You might read the names.

Mr. PRESTON. Well, there was Mr. James Goldsmith, of Schwabacher Co. (Inc.); Mr. Hassen of the Centennial Mill Co.—I do not know his initials.

The WITNESS. I do not know either.

Mr. PRESTON. And Perry Polson of the Polson Implement Co., and then there is blank Anderson—that is your brother, I suppose—what is his name?

The WITNESS. E. G.

Mr. PRESTON. And Fred Fischer, of Fisher Bros., wholesale grocers, and blank Black, of the Black Manufacturing Co.

Mr. MCCLURE. I think that is George C. Black.

Mr. PRESTON. And then, blank Klock, of the Klock Produce Co.

The CHAIRMAN. Do you know his initials?

Mr. PRESTON. No, sir; and Willis, of the Seattle Hardware Co., and C. S. Hardeman, of the J. T. Hardman Hat. Co. Now the record is complete.

Mr. MCCOY. What is the first name?

A. James Goldsmith, of Schwabacher Bros. & Co. (Inc.). Now you have the complete information so far as I can furnish it.

Mr. PRESTON. Mr. Anderson, you felt pretty aggrieved about the decision of the referee and Judge Hanford upon the petition to set aside the sale.

A. I did concerning the decision of Judge Hanford; I did not concerning the decision of the referee.

Q. Will you speak a little louder, please?—A. I say, concerning the decision of Judge Hanford, I was sore; I was not about the decision of the referee.

Q. And you are yet, are you not?—A. Yes.

Q. Now, the matter came before the referee upon the petition of your clients, the Western Dry Goods Co. et al.?—A. Yes.

Q. The substance of your allegation was that the purchaser, John Anisfield & Co., had been in collusion with the bankrupt?—A. Yes.

Q. Which had resulted in an under inventory of the stock of goods?—A. Yes, sir.

Q. Now, it appeared before the referee when the hearing came on, did it not, that the sale had been made by the receiver to Anisfield's agent, whatever his name was?—A. Lindstrom—a bill of sale was given to one S. S. Lindstrom.

Q. First it appeared that there had been a sale made for a less sum?—A. Yes, sir.

Q. What was that amount?—A. Something like $48,000.

Q. $48,000?—A. I think so.

Q. And that upon representation to the receiver that more could be realized on a resale, there was a readvertisement and a resale?—A. Yes, sir.

Q. And that at that resale the bid was $57,000?—A. Yes, sir.

Q. And what was the inventoried—the appraised value of the stock that was sold for this $57,000?—A. The appraised value and the inventoried value are two different things. The appraised value was some thing over—something near $42,000—the inventory value was close to $70,000.

Mr. MCCOY. The inventory, you say?

The WITNESS. The inventory was about $70,000 of assets—the appraisement showed about $42,000.

Q. Whose inventory?—A. Well, now, the practice of this court is probably a little different from where you practice. The inventory is made by the receiver or trustee. In this case he employed the clerks of the bankrupt to make the inventory the same as a merchant would make it; the first year they count the merchandise and put down the yardage and put opposite the yardage on each item the cost value, and that is totaled up and presented to the court, and then the appraisers are appointed, who make their appraisement to a very large extent on the inventory as a basis of appraisement in this case showed about $42,000—a little over $42,000.

Mr. PRESTON. Was not the inventory in the neighborhood of $90,000?

A. We alleged that the true inventory was in the neighborhood of $90,000.

Q. This petition alleged that by virtue of that collusion the inventory, which should have been about $90,000, was considerably less?—A. Yes, sir.

Q. It appeared that there had been $57,000 realized on this second sale?—A. Yes.

Q. It appeared, didn't it, that the receiver had reported the sale to the referee; thta he had concluded the sale?—A. Yes.

Q. That the purchaser had paid the money?—A. Yes.

Q. That the referee or the court had confirmed the sale; perhaps both?—A. Yes; both.

Q. Had confirmed the sale; that the purchaser had gone into possession?—A. Yes.

Q. Had sold about one-half the stock?—A. A large per cent, probably close to one-half.

Q. And that a $12\frac{1}{2}$ per cent dividend had been paid out of that money to the creditors?—A. Yes, sir.

Q. Including the petitioning creditors?—A. Yes, sir.

Q. Now, when Anisfield & Co. filed their objection to the jurisdiction before the referee didn't they, in their paper—whatever you call it—also call the attention of the referee to the fact that the purchaser had bought six or seven thousand dollars' worth of new goods and put it into the stock and sold it out in common with the stock?—A. I think you did; yes, sir.

Q. Now, is it not true that Judge Hoyt allowed you and Mr. Dovell to amend your petition twice?—A. Once.

Q. Well, let me see if I can not help your memory. You amended it once when we were arguing and you afterwards came in with a further amendment; don't you remember that?—A. Do you mean when we were arguing here we asked to treat it as if a certain allegation was made and then we would draw the papers.

Q. I am speaking about the time before the referee.—A. I think perhaps that is true. I remember when we served an amended copy on you—I think you must be right about that.

Q. In other words, it is true that after Judge Hoyt had given you leave to amend in a certain respect, you came in there with an amendment in another respect and I called your attention to it, but I did not object to it.—A. I think you are right.

Q. Then the matter came before Judge Hoyt upon the objections. Now, on page 96 of this Exhibit No. 69 is found his return, is it not,

upon your petition for review, the return which he made to Judge Hanford of the proceedings before him?—A. On pages 95 and 96.

Q. Well, 96 is the substance of it.—A. Yes.

Q. He reports there, first as his grounds for his action in refusing to entertain jurisdiction, first, that there is no allegation of any improper conduct on the part of trustee or his attorneys.—A. Yes, sir.

Q. That was true; he was right about that, wasn't it?—A. Yes.

Q. Second, it was not alleged that there had been any demand made upon the trustee or his attorneys by the petitioning creditors that said trustee should proceed against John Anisfield & Co. to obtain the relief sought by said petitioner or any other relief in the interest of the creditors.—A. Yes, sir.

Q. And that statement of his was correct.—A. Yes; certainly.

Q. Then he goes on to say that in his opinion and allegation alleging such misbehavior or request and refusal on the part of the trustee was necessary to authorize any proceeding by the creditors, doesn't he?—A. Yes, sir.

Q. Then he says further that he was of the opinion that under the circumstances shown by the proceedings in the matter and the fact that no want of knowledge on the part of the petitioning creditors was alleged in any of the proceedings, they were not entitled to seek relief against John Anisfield & Co. in the summary proceedings, but should procure the same, if entitled thereto, by plenary action.—A. That is all correct.

Q. Further he was of the opinion that even conceding the jurisdiction of the court to grant the relief prayed for at the expense of the parties seeking it and in a summary proceeding, it would not be equitable for them to be allowed to do so, for the reason that in a plenary action where bonds and counter bonds could ordinarily be given by the respective parties the rights of all could be better protected.—A. Yes, sir.

Q. And then, again, he was further of the opinion that even if jurisdiction could be entertained in the proceeding, neither the petition nor the amended petition, considered in the light of the objections thereto and of the facts disclosed by the record in the bankruptcy proceeding, stated facts sufficient to entitle the petitioner to the relief prayed for, or any other relief, and being advised, as hereinbefore stated, the undersigned made and filed the order sought to be reviewed.—A. Yes, sir.

Q. Is that your third ground?—A. I have not my own before me—I can't say. But this is all correct, you need not ask me about each particular item.

Q. Then the matter came up before Judge Hanford and you took the petition for review?—A. Yes, sir.

Q. And you also brought before Judge Hanford the question of the allowances to the receiver and his attorneys.—A. That was all referred to there.

Q. Well, that was at the same time?—A. Yes, sir; that was at the same time.

Q. We did not argue before Judge Hanford this petition for review orally.—A. No.

Q. But we both filed typewritten briefs, didn't we?—A. Yes, sir.

Q. And the same were submitted to him by our common consent?—A. Yes, sir.

Q. And at the same time there was before him the other matter of the allowance to the receiver and his attorneys, which had been orally argued?—A. Yes, sir.

Q. Now, there was not but the one case, was there—one set of files in the case?—A. That is right.

Q. It was all one case?—A. That is right.

Q. And in that case came up before Judge Hanford your petition filed with the referee and your affidavits that you filed in support of that petition as against my client; that is correct, is it not?—A. Well, there was only two affidavits filed in connection with the suit against you, and that was the two affidavits filed in the initiative proceedings made as a basis for the injunctive relief.

Q. They came up——A. (Interrupting.) With the writ or review; yes, sir.

Q. And the objections of John Anisfield & Co., bringing in this new matter about having bought new stock?—A. Yes, sir.

Q. And Judge Hanford had before him then the two matters, one the question of the allowance for the receivers and his attorneys and the other question between you and I, about the action of the referee in refusing to entertain jurisdiction?—A. Yes.

Q. Those matters were all before him in one case?—A. Yes, sir.

Q. One set of files.—A. Yes.

Q. You and I had never argued before him our matter orally?—A. Not at all.

Q. So that when he came to consider it he had before him our briefs and the files in the case?—A. Yes, sir.

Q. And they were all in one case.—A. Yes, sir.

Q. Now after your petition for review came up to the court—I do not mean on submission, but came into the court, there was filed two affidavits—what were the names of those parties?—A. Mr. Sanford of the Seattle Dry Goods Co. and Mr. Edwin London of the London Co. filed one—those are the two mentioned by the circuit court of appeals, but there were other affidavits.

Q. The Sanford affidavit is in the printed record?—A. They are all in the printed record, every affidavit.

Q. At page 137?—A. Yes, sir; that is the affidavit in question; the other affidavit is on the page opposite to that, page 136.

Q. Now the affidavit of Sanford is to the effect that he is the general manager of the wholesale department of the Seattle Dry Goods Co.; he tells about his experience; that he has read affidavits to the effect that the Seattle Dry Goods Co. or its agents had gone through the stock of the bankrupt, making careful and detailed notes of the stock on numerous occasions; that such statements are untrue; that he was not in the store of the bankrupt to exceed 40 minutes. He further says that he has been employed on many occasions and has qualifications for such work, to fix an estimate of value upon bankrupt stocks and stocks for sale in bulk generally—that is right?—A. Yes, sir.

Q. And that after examining the quality and quantity of merchandise in the store of the bankrupt, that there was at least $80,000 to $85,000 worth of merchandise on hand, and so reported to his firm.—A. Yes.

Q. And that at the time of and for the purpose of making his bid he, or his firm, believed the receiver's report was true and correct report, and made his bid accordingly—that is, he believed it.—A. Yes.

Q. The other affidavit is on page 136.—A. Yes, sir; right across the page.

Q. That is the affidavit of Edwin London. Now, London tells us about his experience; he tells us that he examined the stock, but found it practically impossible to check it up; he estimated then and there that there was from $80,000 to $85,000 cost value of merchandise on hand; that is in that affidavit, is it not?—A. Yes.

Q. So that when Judge Hanford came to consider the matter that you and I had before him and the matter of the allowance of the receivers and attorneys, he had this whole record before him?—A. All of it; yes, sir.

Q. And he rendered an opinion upon the whole matter, didn't he, in one memorandum decision?—A. Yes, sir; that is correct.

Q. In that memorandum decision he reviews the question of whether upon the showing made the sale was an inadequate sale or for an inadequate price, doesn't he?—A. Yes, sir.

Q. At the conclusion of his opinion he says, does he not, as follows:

Without a showing that a better price could have been obtained the court would not have vacated the sale if an application to vacate had been made before the goods had been sold by the purchaser.

A. Yes, sir.

Q. (Continuing:)

When no serious injustice would have resulted. There is no such showing now, and upon the consideration of all the papers filed, including the arguments of counsel, there appears to be no substantial ground, legal or equitable, for granting the extraordinary petition to set aside the sale after a large part of the stock of merchandise has been disposed of at retail and passed beyond the reach of judicial process whereby it might be restored to the court's custody, therefore the order of the referee refusing to entertain jurisdiction will be confirmed.

Isn't that the language of his petition?—A. If you have read it, I have no doubt it is—I was not following you.

Q. Now, it would appear to me, Mr. Anderson, from the reading of this opinion, that what Judge Hanford did was to confirm the order of the referee refusing to entertain jurisdiction—do you take a contrary view of it?—A. Mr. Dovell and I took a contrary view, and the circuit court of appeals.

Q. I am trying to get your opinion, your view.—A. Yes, sir; I do.

Q. You are of the opinion now that that memorandum decision of Judge Hanford's was a decision of that case on the merits, are you?—A. I think that is what it purports to be.

Q. Is that your opinion, I say?—A. That is my opinion.

Q. So that a plenary suit could not be entertained now?—A. That is what I am afraid of—that is what I believe.

Q. You believe that to be true?—A. Yes.

Q. Now, you took an appeal from Judge Hanford's order on both phases of the case?—A. Yes, a writ of review.

Q. You took a writ of review to the circuit court of appeals and went down to San Francisco and argued it, or Mr. Dovell did.—A. Mr. Dovell appeared there.

Q. And as far as Anisfield & Co. was concerned it was submitted on the brief which you referred to?—A. I understand so.

Q. Have you that brief here?—A. Your brief or mine?

Q. My brief.

The CHAIRMAN. Hasn't that been put in evidence?

Mr. PRESTON. No. You will get a really good brief now. I say that because it only contains a few pages.

Q. Now, in your briefs to the circuit court of appeals you complained that that language of Judge Hanford, in his opinion that I quoted to you, amounted to a decision of the matter on the merits. I believe you quoted from your brief?—A. Yes, sir; I said we assumed it, and Mr. Dovell did.

Q. And the circuit court of appeals in its opinion took the position that the case was properly decided on the merits, since affidavits on the merits had been filed by you after the matter was brought before Judge Hanford; isn't that right?—A. That is what they said.

Mr. MCCOY. Was that the fact, Mr. Preston, that affidavits on the merits were filed after it was brought before Judge Hanford, except for the purpose of attacking the allowances to the receiver?

Mr. PRESTON. Well, that is a question; they were there on file before the court, brought there by Mr. Anderson or Mr. Dovell. Now——

The WITNESS. What was your opinion of them, Mr. Preston?

Mr. PRESTON. Well, I am going to tell you my opinion later in the plenary suit.

The WITNESS. Well, I hope we get to bring one.

Mr. PRESTON. I am trying simply to develop the facts of this matter.

The WITNESS. That is all we want.

Mr. PRESTON. All Judge Hanford said about it in his opinion was he reviewed these matters that are shown in these affidavits which he found before him in the files, and reviewing those he came to the conclusion and announced it that the referee was right in refusing to entertain jurisdiction—that is his exact language, is it not?

A. You read it. That is not his language to me since the circuit court of appeals reviewed his opinion. If you want me to testify about that I would like to bring it out.

Q. You have it here in his opinion?—A. Yes.

Q. He says—he uses that language in conclusion?—A. Yes.

Q. "Therefore the order of the referee refusing to entertain jurisdiction will be confirmed." Then the circuit court of appeals went further and held that the matter was decided upon the merits?—A. They affirmed the opinion of the lower court. They are better judges than I am of what he said. I might say that Mr. Dovell and I took the view stated in the brief, that the court presumed and pretended to decide the case on the merits, but neither he nor I believed that the circuit court of appeals would fall for such a decision. We expected the circuit court of appeals would look into the case de novo; we were surprised when the decision was rendered.

Q. Which do you complain of most, Judge Hanford or the circuit court of appeals?

The CHAIRMAN. I don't think you need go into that, Mr. Preston.

The WITNESS. The circuit court of appeals—I will answer the question if you will let me—the circuit court of appeals would never have rendered such an opinion had such a decision never been rendered by the lower court.

Q. The circuit court of appeals had everything before it that Judge Hanford had before him?—A. Yes, sir; they thought Judge Hanford understood the record, and like most appellate courts, they like to affirm the lower court.

Mr. McCoy. Judge Hanford did not have his own opinion before him when he reached this conclusion on this case and the circuit court of appeals did have that?

A. Why, certainly.

Mr. Preston. After the decision of the circuit court of appeals was rendered on that point, you have testified about some conversations you have had with me—I just want to ask you about those—you say that I said that I never intended to bring the matter up on the merits?

A. You said you understood that we never intended.

Q. But I called your attention, didn't I, to the facts that I stated in my brief in the circuit court of appeals, without bringing it up before you—that something of that kind was said?—A. Yes. I had no complaint to make of your conduct or of you.

Q. And that was, I believe, the occasion when you came to me and asked me to stipulate to have that part taken out of the opinion?—A. Well, I don't know that I asked you to stipulate. I asked you whether you would go with me before Judge Hanford and ask him whether he intended to decide that case on the merits, or did he use the language argumentatively, and you said you did not care whether you were there or not, that you were going to make that opinion stick if you could, and I told you I was not there to ask you to take any affirmative action.

Q. I told you that I was going to make the opinion of the circuit court of appeals stick?—A. Sure.

Q. I told you I would go with you before Judge Hanford?—A. Yes, sir.

Q. I told you I would be up there at 9.30 the next morning?—A. But you were not.

Q. I was right here?—A. Not before Judge Hanford—I waited there until half past 9.

Q. I told you I would be up here before the committee?—A. Yes.

Q. Well, didn't I?—A. Oh, yes.

Q. There is one other point I would like to have you enlighten the committee on, and that is this: First, I want to ask you about the injunction—did you get the injunction?—A. That is as I remember it, Mr. Preston, that I got this injunction—I am pretty sure I did.

Q. From Judge Hoyt, the referee?—A. Yes, sir; I am sure. If we got it anywheres we got it from him—I don't know whether the record shows that or not—does it, Mr. Chairman—I can find it in a moment.

Mr. Preston. I wish you would look at me, because my recollection is to the contrary, but I would not be certain.

Mr. McCoy. I do not think there is any of this Exhibit No. 69.

The Witness. Sir?

Mr. McCoy. I do not remember seeing any record of any injunction in Exhibit No. 69.

Mr. Preston. I would be rather surprised to find one in there. Mr. Anderson was quite positive about it, and I thought I might be mistaken.

The Witness. Well, I do not see any order here in that connection; but if you looked at our petition we prayed for an injunction. I will look it up to-morrow in the files. I am quite positive there was one issued. I know that I talked to Judge Hoyt afterwards about it, and he said he doubted whether he had power to issue one; but in as much as the order to show cause was returnable in three days he thought

no damage would be done and you would have ample opportunity to test it if you so desired. I do not see it in the records here.

Mr. PRESTON. I am not going to take issue with you, because I do not remember myself.

The WITNESS. It is a matter of no importance, I presume.

Q. Now, in regard to that sale that was conducted down there at the bankrupt's store on the first day of the appointment of the receiver there was considerable of a sale conducted there?—A. That afternoon?

Q. Yes.—A. I don't know.

Q. Something over a thousand dollars was taken in?—A. Yes, sir; I believe the records show that; but I thought it was all day. I don't know whether it was the afternoon or all day.

Q. A considerable part of it, at least the afternoon part of it, went on after the receiver was appointed?—A. Yes.

Q. After he had filed his bond and qualified?—A. I don't know when he qualified; we always treated the matter as though he qualified at noon and permitted the store to remain open the balance of the afternoon.

Q. You do not know whether he was at the bankrupt's store during the sale in the afternoon?—A. I do not know.

Q. Now, the business of the bankrupt was continuing that afternoon?—A. Undoubtedly.

Q. Who was continuing it?—A. The circuit court of appeals and the employees of the bankrupt were continuing it.

Q. I am asking you?—A. I think that Mr. Baxter continued it without a doubt.

Q. He was the man who was responsible for it?—A. He was the man who was responsible for it; and it don't make any difference whether he was there or not. He had qualified, and it was the same as if he was running it.

Q. So far as that sale was a continuing business, it was done by the receiver?—A. I wouldn't say so.

Q. After Judge Hanford filed his memorandum proceedings, did you ever move to modify it in any respect before him?—A. No. I did, but not along this line—not along this line. I will take this fact. I am referring to the order entered. I never took up with him the modification until the day I spoke to you. I want to say there, now, about continuing this matter, I don't know. I believe it was the first Friday that the committee was in session.

Mr. MCCOY. You mean this committee?

The WITNESS (continuing). I went to see Mr. Preston and I asked him whether he noticed the opinion of the circuit court of appeals, in which it said that the matter had been tried on the merits, and he said that it was, and I told him that we both knew that it had not. I think I put the statement to him that I would ask him to come up before Judge Hanford and just let Judge Hanford go on record as to whether or not he meant to decide the case on the merits or did he use that language argumentatively, as goes to show that the petition did not state facts sufficient to constitute a cause of action. First, Mr. Preston said, I could go up and take the matter up ex parte. Then I told him that I would rather he would be there present, and then he said he would be up here the next morning; and I remember I asked Mr. Preston to be here at 9 or 9.15, before the commission met, before the session opened, and he said he would. I waited in Judge Hanford's

chambers until almost 9.30, when he had said he must appear here, and I told him then that Mr. Preston would not object if I told him the purpose of my mission; and I put it to him plainly: Did he intend to decide that case on the merits, as the circuit court of appeals had it, or did he use the language argumentatively? and he would not say yes or no, saying that it would not be proper in him to express an opinion of what he had held in that case, that it was up to me to bring a plenary action, and that when that plenary action was before him, and that when the issues were joined, whether it was res adjudicata, then he would give his opinion; so that, as far as getting any satisfaction out of Judge Hanford there was none to be had.

Mr. McCoy. In certifying the case up to Judge Hanford on the point raised by Mr. Preston, do I understand you to say that there came up with it some affidavits made on an application for injunction?

A. Yes.

Q. What place had they in that, accompanying that certificate?—A. They had been filed in connection with our petition praying for an accounting from Anisfield & Co., and praying for an injunction against him.

Q. They had to do only with the injunction?—A. They had to do only with the injunction; they stated that on their face.

Q. And they could not be supplemental to the petition?—A. I do not know; the petition might have read "Reference is made to the affidavit hereto attached for the purpose of setting forth more fully the nature of the fraud," as it usually does—it may have been done in this case—I do not know without reading the record.

Q. Now, written arguments were filed by Mr. Preston and yourself—were the merits of the fraud issue argued?—A. I think not—I do not think it ever entered our head that they would be a decision on the merits under any circumstances like this.

Mr. Preston. I have here a certified copy of these briefs which I will present to you, Mr. McCoy.

Mr. McCoy. Those are the briefs which were submitted on the question of fraud?

Mr. Preston. Yes.

Mr. McCoy. Is that what you said you were going to bring out—you were going to bring out something or other—is that what you were just testifying, as to what took place in Judge Hanford's chambers?

A. Yes, sir.

Q. Now, coming to the question of continuing the business; is it not a fact that in Judge Hanford's opinion on the question of allowances that he did not state anywhere that he considered that Mr. Baxter had continued the business?—A. His order allowing compensation, entered on December 23, expressly recites that in his opinion Mr. Baxter had absolutely carried on the business of the bankrupts.

Q. I mean in his opinion?—A. No; I do not think so.

Q. How is that?—A. I think it does not. The fact is that in the oral argument it was never suggested either by the attorneys for the receiver or by Judge Hanford that he had actually carried on the business of the bankrupt—the total argument ran that he was something more than a mere custodian.

Q. Was not the argument further that he had been very successful in getting a high bid for the property and that was the basis on which

the judge thought he ought to have this allowance?—A. That probably had a moral influence.

The CHAIRMAN. What do you understand the facts to be with reference to other proof in support of the question of fraud and the facts shown in the affidavit; is there much proof which you know of aliunde of the affidavit?

A. Yes. One of the conspirators has confessed to the United States district attorney. The bankrupt confessed in the presence of three parties that he understood what was going on and that the purpose of the false inventory was to aid him ultimately. Those facts which had never been developed or put in affidavits for obvious reasons.

Mr. MCCOY. Those facts——

A. Those facts were laid before the grand jury.

The CHAIRMAN. Did you know that at the time the record was made for the appeal?

A. Did I know what?

Q. Did you know what you now state, and did you try in any way to incorporate this additional evidence, by way of exhibits, or by any way—into the——A. (Interrupting.) It was impossible to get the affidavits of those parties who had conferred; they were not very anxious to divulge all that they knew. I tried to get affidavits of these parties without success—everybody was rather reluctant to produce affidavits of that kind.

Q. Did you in any way bring to the attention of Judge Hanford, either before he decided the case or afterwards, although you say you did not ask him to modify his memorandum decision, but did you in any way bring to his knowledge the additional evidence there was in support of the charge of fraud?—A. No; I think not.

Mr. MCCOY. I think perhaps Mr. Graham and you are not together on that—you brought to Judge Hanford's attention the memorandum which you had and——

A. Yes, sir.

Q. (Continuing.) And which you referred to, but you did not incorporate it in your affidavit?—A. Yes, sir; I produced that—I didn't catch the point.

Q. Well, I didn't read the affidavits which you filed with Judge Hanford. Now, is there anything in them which might lead the court to understand that they were filed owing to the merits rather than to the question of jurisdiction?—A. I do not see how he could construe that; when this case was before him for hearing on issues of fact, on issues of law, as to whether or not he had exceeded the bankruptcy schedules, and the other four questions of law certified by the referee for an opinion, that were supposed to be an answer, sent back for further proceedings, if we succeeded in convincing him that we had a good petition.

Q. But was the matter so presented to Judge Hanford at the argument that he understood, or did he indicate that he understood that there were two separate matters before him?—A. No; I could not say that he did. We only argued with reference to one phase of the question before him, and that was the objections to the receiver's allowance. The other was never argued before him except by filing briefs which took up the points of law involved.

Mr. MCCOY. Did you file any affidavits?

A. We never served any of those affidavits on Mr. Preston, who represented John Anisfield & Co., and neither did he serve any affi-

davits on us—there was no exchange of any evidence between him and I.

Q. Did you file separate briefs on each of the points involved—that is, on the question of your petition before the referee, and also on the motion to set aside this allowance?—A. So far as my memory serves me, we filed but the one brief, taking up both phases. Is that right, Mr. Preston?

Mr. PRESTON. There is only one brief I find in the record.

The CHAIRMAN. Are there any further questions? You are excused.

Witness excused.

WALTER A. MCCLURE, having been first duly sworn, testified as follows:

The CHAIRMAN. Mr. Preston, you know better than we do what the witness knows. Do you care to ask?

Mr. PRESTON. Yes; I am perfectly willing to.

By Mr. PRESTON:

Q. Your full name is Walter A. McClure?—A. Yes, sir; Walter A. McClure.

Q. You are a member of the bar of Seattle?—A. I am.

Q. Have been for a number of years?—A. Yes, sir.

Q. Your firm is McClure & McClure?—A. It is; yes, sir.

Q. Who is the senior member of the firm?—A. The senior member of the firm is my older brother, Henry F. McClure. I am the next, and then the junior member is my brother William E. McClure.

Q. The firm name, however, has only two——A. That is all.

Q. (Continuing.) McClure & McClure?—A. Yes, sir.

Q. You have practiced here in Seattle quite a number of years, I think?—A. I have, Mr. Preston.

Q. How many?—A. Since 1897.

Q. Have you during recent years had any specialty in the practice personally?—A. Yes; I have paid a great deal of attention to the commercial law side of our firm.

Q. Have you done quite a large amount of bankruptcy business?—A. A great deal.

Q. Are you familiar with the practice that obtains in this district in regard to allowances to receivers and their attorneys in bankruptcy matters?—A. I am.

Q. What is that practice, having in mind this point, too, the compensation being fixed by the court in the first instance, or by the referee in the first instance; is there any settled practice?—A. There is no settled practice. It is sometimes done by the court and sometimes by the referee.

Q. Is there a distinction about which one of the officers it was that appointed the receiver?—A. Well, in some instances the court or judge has fixed the fees of receivers appointed by the referee, and in other instances the referee has fixed the fees of the receiver appointed by the court.

Q. Calling your attention to the Knosher case; you were interested in that case?—A. Yes, sir.

Q. I notice in the record which the committee has a report by Mr. Baxter, as receiver, that he carried on the business of the bankrupt

for a part of a day the first day of his appointment. Are you familiar with that fact?—A. I am familiar with that fact. It is correct.

Q. Had he qualified at any time during that day?—A. He qualified in the forenoon of that day.

Q. Gave oath and bond?—A. Yes, sir; no oath, but a bond. No oath is required.

Q. Then, do you know whether he went down and took charge of the business?—A. I personally know he took charge about 11 o'clock in the forenoon of the day he was appointed.

Q. And was that sale there for that day conducted under him?—A. It was.

Q. Do you know what the receipts were?—A. The receipts are shown in the papers. My recollection is, to be controlled by the record, that the receipts were about $1,200—$1,000 or $1,200.

Mr. McCoy. That would cover the entire day?

A. The entire day.

Mr. McCoy. Before he went there as well as after?

A. Yes, sir. There was no way of distinguishing between what happened after he——

Mr. Preston. Let me ask you, Mr. McClure: Had not the Union Savings Bank & Trust Co. had a man in the store there taking the cash as fast as it came in before that?

A. They had; yes, sir.

Q. And are you able to say whether the bank got any part of that money that was taken in that day before the receiver came, or not?—A. I am not able to say. They may have, Mr. Preston. I don't know. I can't tell just now. I could determine.

Q. I wish you would tell the committee what your recollection is of the fact in regard to the original order made by Judge Hanford allowing compensation to the receiver and his attorneys, if the matter is within your knowledge and recollection.—A. The application was filed for the allowances and Judge Hanford inquired what notice had been given and directed that notice be given to all parties on the record and the parties in interest, so far as they could be ascertained, and the matter came up for hearing the next day at 10 o'clock.

Q. What notice had been given in the meantime?—A. Everyone was notified whom we could reach. My impression is that I personally attended to the notice. From——

Q. (Interrupting.) Can you recall the different people that you notified?—A. We notified Shank & Smith.

Q. They were the attorneys for the petitioning creditor, were they not?—A. Yes, sir; and it would be impossible for me to say what creditors were notified. I knew afterwards that there were creditors who were not notified, but I didn't know they were at the time the notice was being given, or they would have been notified.

Q. Well, who was present in court when the matter came up?—A. Well, there was Mr. Shank, of Shank & Smith, and Mr. Stern, and myself, and Mr. Baxter, and I don't know whether there were others present interested in the matter or not; there were plenty of people in the court room that morning.

Mr. McCoy. Were Shank & Smith attorneys or creditors?

Mr. Preston. Attorneys for the petitioning creditor that threw the concern into bankruptcy. That is right, isn't it?

A. Yes; that is correct. The record shows that.

Q. Was any suggestion made by or on behalf of the receiver as to the amount of compensation?—A. The court asked for suggestions, and my recollection is that Mr. Stern suggested that $2,500 should be allowed to the receiver for his services, detailing at some length what the receiver had done. The court inquired of me if I had any suggestions to make, and I stated I had no suggestions to make, that the facts had been fully stated by Mr. Stern in his statement and that I would make no suggestion as to what should be done; and Mr. Shank, being interrogated as to what in his opinion should be allowed to——

Q. (Interrupting.) That is by the court, you mean?—A. Yes, sir; by the court—him as attorney for the petitioning creditors, made a statement stating that in his opinion, as I remember, he was entitled to about $300, or $250, I believe, was the figure he named.

Mr. McCoy. That was his own allowance?

A. His own allowance; yes, sir.

Mr. McCoy. Do you mean that he made any suggestion about what allowance the receiver should have?

A. He did not touch upon that.

Mr. Preston. The order was made then allowing $2,500 to the receiver and his attorneys?

A. Yes, sir.

Q. That is, each?—A. Each; yes, sir.

Q. What was the fact, Mr. McClure, as to the success or goodness or want of goodness of the sale made by the receiver, comparing it with anything that had preceded it?—A. Well, I have been connected with sales of, I think, practically all of the large merchandise stocks in the city for a good many years, and with many small ones, and I think that this sale was one of the best that I have ever seen in the city or in the Puget Sound region. It brought a larger percentage, and the assets were not in first-class condition; it brought a large percentage if the lines had all been complete and the goods not shopworn—if the lines had all been up to date. I considered the sale a remarkable achievement on the part of the receiver.

Q. Was that one of the facts stated by Mr. Stern to the judge?—A. It was.

Q. Now, later, some creditors filed objections to that allowance?—A. They did; yes, sir.

Q. And Mr. Anderson has testified that the court then set that for hearing and directed notice to be given to all the creditors?—A. Yes; that is correct.

Q. Was that notice given?—A. It was.

Q. The matter came before Judge Hanford, did it, at the time stated?—A. It did. The notices were sent out by the referee. At the time that these allowances were made, I think, the record ought to show we were not familiar with the amendment of 1910 to the bankruptcy act.

Mr. McCoy. What was that amendment?

A. The amendment was that allowances to receivers should be made only after notice to the creditors as shown by the proofs of debt on file as shown by the schedules.

Mr. McCoy. What was the date when that law took effect?

A. That law took effect in June, 1910.

Mr. McCoy. And what was the date of this application for allowances?

A. I think it was in January or February, 1911. I say that we were not familiar, because while I had read the amendment it had escaped my attention, and I think most everyone in the court room was of the opinion that the former law controlled, although afterwards Mr. Stern and I discussed that.

Mr. PRESTON. What had been the practice before that in regard to making allowances to receivers and trustees and their attorneys before the final winding up of the estate?

A. The course followed was a usual practice.

Q. Now, what happened when this matter came on on the notice—the second notice—to creditors?—A. As I remember the record, the case was continued from time to time; it was continued for several weeks. That, I may say, was partly—I was responsible for that, because I notified one of the counsel for the objecting creditors that I exceedingly disliked any controversy over fees, and I stated to counsel, "Take all the money that we have out of this case and let us out of it and settle the matter up; let's have no controversy over fees in this matter." I was willing to donate my services to the creditors and stop the controversy, and it was stated to me that that settlement could probably be arranged Then afterwards I was advised it could not. I spoke to Mr Anderson about the matter, expressing the same sentiment to him, and he stated that I might make such donation as I desired I said, "What then?" "Well, then," he said, "we will try the case out," and he said he wanted to know what "conducting business" meant. That was the language of the bankruptcy act. It was impossible to arrange any settlement, and so the matter continued

Q. Well, when it came on for hearing, what happened—what contention did you make to the judge about the question of continuing business?—A. Oh, we argued that question to the court The objections as to what Mr. Baxter did were argued to the court, as shown by the record, and there was a record made The affidavits on file—it was heard on affidavits—showed what he did The contention was that he was a mere custodian, and we argued the difference between a marshal or a keeper taking the store and putting a lock upon it and the receiver who went in and took an inventory and rearranged the insurance and obtained additional insurance, because the stock was not protected

Mr McCOY. Did he do that all on that day?

A No, sir. (Continuing) And adjusted claims as to that merchandise; filed a petition for sale; obtained an order of sale; when the bids came in, considered them, and ascertained that a new bid of at least seven thousand—$5,000 could be obtained ——

Mr PRESTON. Five thousand more, you mean?

A. Five thousand more; and obtained an order offering the property again for sale, and obtained a resale for an increased figure of at least $7,000—I think about seventy-five hundred. All of the matters shown by the record were argued before Judge Hanford as to the matter of these allowances, and to my mind it was conclusive that the receiver was more than a mere custodian, and it was conclusive that he had conducted the business, in my opinion, too.

Q Did you argue that to Judge Hanford, that that was a continuing business under the statute?—A. The whole proposition was argued; yes, sir.

Q. Then the other side argued contra to that, I suppose?—A. Yes.

Q. And do you remember what was said by Judge Hanford in announcing his conclusion on the matter?—A. I think that Judge Hanford took the matter under advisement to consider the affidavits that had been filed, and handed down a memorandum decision. The creditors——

Mr. McCoy (interrupting). Excuse me.

A. Yes, sir.

Mr. McCoy. Is that the decision that is printed in Exhibit No. 69?

A. The integrity of the receiver's inventory was attacked and it was attacked on the theory in this proceeding that the receiver had been careless and negligent in permitting his employees to impose upon him with an incorrect inventory, and, of course, we had to defend him against that charge. It was untrue, in my opinion, absolutely. I want to say that the goods in the store—I never saw a stock of goods like it, and I have seen a good many. They were marked with the retail price and that was the only mark upon them. There was no wholesale cost upon the goods, and they were marked with a different proportion. Some of the goods were marked 10 per cent, some 20, and some 25, and 40, and 50, and so on, and it was impossible, from the goods themselves, to determine how the inventory should be taken, because Knosher took his inventory on the retail basis and he had a stock of goods that inventoried, according to his figures, $90,000 or $100,000 That was the retail price. The heads of the departments who had purchased those goods were all there in the store and it was necessary for the receiver to employ those same men to take that inventory, because nobody else on earth could tell how to take it. That is what he did The inventory was taken by the heads of the departments, assisted by their clerks, and the sheets passed in at the close of each day and passed up to the receiver, who went over them.

Mr. Preston. Now, was anything said by Judge Hanford at that time, after you had concluded your argument, about his having made the previous order on the supposition that it covered the entire fees for receiver and trustee and their attorneys?

A. Yes, sir; he asked that question at the time he made that $2,500 allowance, whether Mr Baxter had been elected trustee, and at the time he finally disposed of the matter, as I remember, or at the time of the argument—rather when he took it under advisement, he said that he propounded that question, because he intended that allowance to cover all allowances in the case.

By Mr. McCoy:

Q. That was announced from the bench?—A. At the time the case was submitted, as I recall, Mr. McCoy.

Q. And didn't anybody get up and protest against doing a thing like that?—A. There was no reason to protest. No, sir; they did not.

Q. Against allowances to trustees at that stage of the proceedings?—A. I say that when the matter was argued, after notice had been given to the creditors, the court stated that at the time the allowance was originally made he had propounded that question whether Mr. Baxter had been elected as trustee, for the reason that it was in his mind that that $2,500 should be his whole compensation; he had been elected trustee when the allowance was originally made.

Mr. Preston. He had been?

A. He had been; yes, sir.

Mr. McCoy. Did Judge Hanford know it at the time?

A. I beg your pardon, sir.

Q. I say, did Judge Hanford know at the time when the original allowance was made that Mr. Baxter had been elected trustee?—A. He did. He asked the question and was answered in the affirmative.

By Mr. Preston:

Q. Mr. McClure, were you in the room when Mr. Anderson, who just preceded you on the stand, was testifying to a conversation held with you since the decision in the circuit court of appeals?—A. I heard his testimony this evening; yes, sir.

Q. Well, now, did he give that conversation, or the substance of it, in accordance with your recollection of it or not?—A. Mr. Anderson misunderstood me. That is not correct.

Q. What was the conversation?—A. Mr. Anderson and I were talking about what was "conducting business" and what a receiver should do, and I remarked to him that Mr. Baxter had been in a few days before and Mr. Baxter had stated that he could unquestionably have earned a fee in the Knosher case for conducting the business if he had chosen to do so, because the order of court authorized him, in his discretion, to conduct the business as receiver, and that Mr. Baxter said he would not do such a thing; he would consult the interests of the creditors; and I said, "Of course, you would not; if you did I would not be your attorney."

Q. Now, what do you know, if anything, about Mr. Baxter having consulted the creditors in that case—in that Knosher case—and being advised by them not to continue the business?—A. Just as soon on the day of his appointment as Mr. Baxter could do so, as soon as he had familiarized himself and gotten hold of the reins of that business, he consulted the creditors.

Q. Who?—A. He consulted the bank. I think that Anisfield's representative was here at the time. He consulted Mr. Smith, of Smith, Daniels & Kelleher; he consulted Mr. Stern, who had a number of claims; and I don't know who else, but I know that he consulted a number.

Q. And did he consult you, too?—A. Yes, sir.

Q. Did you have any claims?—A. I had quite a number. I represented a bank's claim which was over $20,000 in cash, and it was agreed by all parties that it was unwise to continue the operation of the store, and the creditors asked him to close it, and he did so. That was his own opinion. Everybody agreed. There was no difference of opinion upon that question. The idea was to close the store and stop the expense. The rent was a large figure. The expenses of the store were two or three hundred dollars a day, and we wished to take an inventory at once and sell the merchandise in bulk, and that was successfully done.

Q. You say it was our wish. Which do you mean by "our"?—A. It was the wish of the receiver and of the creditors.

Q. That is, those creditors who were consulted that day?—A. Yes, sir; yes, sir.

Mr. Preston. I think I have gone over all the field that I know of, Mr. Chairman.

The Chairman. Anything further with Mr. McClure? Do you wish to ask him?

By Mr. McCoy:

Q. Who appointed Mr. Baxter receiver in this matter?—A. Judge Hanford. I would be glad to state the circumstances, Mr. McCoy, if you consider them material.

Q. Well, if there is anything you think we ought to know, Mr. McClure, go ahead.—A. Well, the circumstances were these: We represented a large amount of New York indebtedness; also the claim of the Union Savings & Trust Co. for $20,000. I discovered, to my intense astonishment, on Monday morning—we had had a man in the store for the bank—that a petition in bankruptcy had been filed, and I immediately took a claim that I had—a large New York claim—and filed a petition for the appointment of a receiver. An adjudication had been entered and Judge Hanford appointed Mr. Baxter receiver. The——

Q. (Interrupting.) What showing did you make on the application for appointment of receiver of any necessity to continue the business?—A. I made the showing that a sale—a special sale had been extensively advertised and that as I was advised that morning the store was full of customers attending that special sale; that the goods could thus be disposed of at a percentage considerably above invoice price; that there was a large operating expense and that it would be advisable to keep the good will of the business in order to hand it over to a purchaser, because I knew that McCormick Bros., of this city, were about the abandon the city as a business location on account of the failure of a business location on First Avenue, and that they could be induced to buy that as a going concern more readily than if the store should be closed up and the good will lost, and that added in my opinion at least $10,000 to the value of that store as a going concern, and that was realized when it was sold.

Q. I don't quite understand you, Mr. McClure. The business was closed down on the same day on which the receiver was appointed?—A. Well, we were disappointed in the showing.

Q. I don't understand how anything could have been added to the purchase price of the property by way of good will when the business had been closed down two or three weeks.—A. It was not closed down for that length of time.

Q. The business was closed down, absolutely stopped, on the day when the receiver was appointed, wasn't it, so far as the merchandise was concerned?—A. There were no goods sold at retail after the evening on which the receiver was appointed.

Q. The store was closed?—A. The store—the doors to the store were closed; yes, sir.

Q. Now, then, how do you claim anything was added to the good will, or rather added to the price for which the business was sold by allowing the receiver to continue the business; that is, by the court's allowing him to continue it.—A. Well, of course, when the order was made we were somewhat in the dark, although perhaps I was more fully advised than an attorney ordinarily would be, because of the fact that the bank had had a man in there for a day or two, and if that store had been shut down at once with all those people in it—the class of people that did business at that store—the good will of the business would in my opinion have sustained a severe blow.

Q. Well, was there anything realized for the good will of the business when the sale took place?—A. I think there was.

Q. Who bought the good will?—A. The purchaser.

Q. Was that sale at auction?—A. It was sold on sealed bids, in writing.

Q. Well, I mean——A. (Interrupting.) It was not sold as a separate item.

Q. Was the good will sold as a separate item?—A. It was not.

Q. Was the right to use the words "Knosher & Co." or "Knosher" sold?—A. Not included in the same.

Q. Well, then, what part of the good will was sold?—A. Well, it requires a history of the transaction to understand that.

Q. What is good will? Perhaps we can get together.—A. Good will is the name of the business for square dealing and handling certain articles, and all those intangible evidences which may be an asset of the business which is not in any way in the merchandise and other tangible property.

Q. The name to start with is the principal thing, isn't it?—A. I don't think it, always.

Q. It is one of the principal things?—A. It may be an element or it may not be.

Q. That is the name under which a business is run in your opinion under certain circumstances is no part of the good will?—A. Well, I say it may be or may not be.

Q. Well, will you explain any circumstances under which a large business is run may not be any part of the good will?—A. Oh, I think that if a concern had handled certain goods in an unsatisfactory way, treated its customers in an impolite or unbusinesslike way, that the name of that concern would be a detriment.

Q. Yes. In other words, there would not be any good name.—A. Or the location——

Q. (Interrupting.) I am coming to location. There would not be any good will, then, so far as the kindly feeling of customers toward the personnel of the establisment was concerned; that would be certain, wouldn't it?—A. That is true.

Q. Well, now then, was the location of Knosher Bros. sold, or the right to do business in that location sold by Mr. Baxter?—A. It was.

Q. Was that specified as a part of what was to be sold?—A. Yes, sir; there was a lease.

Q. Didn't you apply later on to have the lease canceled?—A. No, sir; I did not.

Q. Doesn't that appear somewhere in the papers in the record in the circuit court of appeals?—A. Not to my knowledge. I never heard of it before. It is suggested now for the first time.

Q. Well, at any rate, Mr. McClure, you testified a few minutes ago that the rent was pretty heavy, and that was one reason for not going on with the business any longer; is that right?—A. The rent was heavy.

Q. Now, you testified that you brought this matter into court—this matter of the allowances—and that Judge Hanford directed that notice should be given. How did you bring the matter into court the first time; simply come in before the judge?—A. Yes.

Q. And file papers asking for allowances?—A. Yes, sir; that is right.

Q. Do you happen to have copies of those papers?—A. I do not know, Mr. McCoy, whether I have or not. They are in the record.

Q. It had been the practice, under the bankruptcy law, before it was amended—I mean in this district, before it was amended—in regard to notice to creditors on applications for allowances to receivers, to give notice to creditors.—A. Of the allowances to the recei ers?

Q. Of the application. That is, before the amendment of the law.—A. For receivers?

Q. Yes.—A. No, sir; it had never been done.

Q. You simply applied to the court?—A. Yes, sir.

Q. Did you ever apply to the referee; was there any practice of going before the referee?—A. For allowances for receivers?

Q. Yes; before the amendment of 1910?—A. It was done to both, either the referee or the judge.

Q. And you say that it was not the practice to give notice?—A. No, sir; it was never done.

Q. Was it the practice to give notice to attorneys at all?—A. No; it was not.

Q. Well, then, why did Judge Hanford raise the point at the time you applied and ask whether notice had been given?—A. Well, I have always found Judge Hanford a stickler for notices of that kind; he has frequently asked me, when I have presented orders to him, if notice had been given to the other side. He has been careful about that.

Q. The matter was put over for one day so that you could give notice to some creditor; is that right?—A. Yes; that is right.

Q. And to whom did you give notice?—A. I gave notice to the bank and to Mr. Shank, of Shank & Smith, who represented a number of creditors, and I can't tell to whom the other notice was given, because it was done orally, and I deemed the matter of no importance. I paid no particular attention to it.

Q. You were attorney for the bank yourself, weren't you?—A. I was; yes, sir. I deemed it my duty, though, always to notify my client in a case of that kind.

Q. Had any other attorneys than the attorneys for the petitioning creditors, your firm and Mr. Stern, appeared in the matter?—A. No, sir; not at that time.

Q. You say that the court asked for suggestions in regard to the receiver's fees?—A. That is correct.

Q. Did he ask for any suggestions in regard to attorneys' fees?—A. Both.

Q. What suggestions were made to him in regard to attorneys' fees, and who made them?—A. Mr. Stern, I think, made the only suggestion as to amount. He suggested——

Q. (Interrupting.) What did he suggest?—A. He suggested $2,500 to the receiver and to the attorneys of the receiver.

Q. And did the court ask him, or anybody, what the attorneys had done in the matter?—A. I don't remember whether he did or not. I think—my impression is, from the statement made by Mr. Stern, that he was advised as to the entire history of the case.

Q. Now, what was the history of the case so far as the services of attorneys up to that point were concerned?—A. A petition in involuntary bankruptcy had been filed by Shank & Smith.

Q. I mean the attorneys who got the $2,500.—A. A petition—an intervening petition had been filed by us for the New York creditor or creditors to whom I have referred, and——

Q. (Interrupting.) Now, just a minute, please—an intervening petition in involuntary bankruptcy?—A. Yes, sir.

Q. But I understood you to say that the petition was voluntary, and that there had been an adjudication.—A. If you so misunderstood me that was incorrect.

Q. And that to your astonishment, as I remember your testimony, you found that there had been an adjudication, and you immediately took a claim and went into court and got a receivership?—A. That is incorrect. If I stated that I want to correct it.

Q. Well, all right. State what services McClure & McClure and Mr. Stern rendered on which the $2,500 allowance was based to them at that time.—A. That is, as attorneys for the receiver?

Q. Yes; in any capacity—yes; as attorneys for the receiver. It was in that capacity it was allowed?—A. Yes. We drafted the order for the appointment of Mr. Baxter, obtained his bond in the sum of $2,500——

Q. Of course, you filed your petition?—A. Yes.

Q. And drafted the order?—A. Well, then, let me go back to the beginning as I started a while ago. I prepared an intervening petition before adjudication and asked leave of the court to intervene in the proceeding as required by the bankruptcy act. I also filed with that petition a petition for the appointment of a receiver, setting forth facts upon which in my opinion a receiver should be appointed, and I tendered with that petition for the appointment of a receiver a bond of the petitioning creditors for adjudication, which I think the court made $25,000. I furnished the bond.

Q. That was a surety company bond?—A. It was a surety company bond.

Q. Drawn by the surety company?—A. It was prepared by me.

Q. Were you attorney for the surety company?—A. I was not.

Q. All right; go ahead, then.—A. And I won't be certain about the amount of that bond. This testimony will be controlled by the record?

Q. Surely.—A. And Judge Hanford appointed Mr. Baxter, and I submitted the order for his appointment. We put him in charge, and interviewed the heads of the departments down there. And right here now I want to say that I instructed those heads of departments how that inventory should be taken. I told them to take it at the reasonable market value of the merchandise, and in the ordinary case the invoice value, if they could find out what it was. Then the inventory was prepared as fast as possible, and in the meantime I prepared a petition for sale.

On the same day I want to state, although this was a petition, a receiver appointed before adjudication, I conferred with Knosher; I got him on the phone and I said to him "You should consent to this adjudication because this business does not belong to you." And he called up Mr. Shank about the matter, and the result was that he filed an answer and adjudication was entered on that day. An adjudication having been entered and a reference having been made to the referee, a petition for sale was filed with the referee, and an order of sale entered, directing that the property be sold on sealed bids in writing at a certain date, about 10 or 12 days in advance, I don't remember exactly the time. An appraisement was had. Mr. Baxter asked me who should appraise that stock. I said "Get three of the

best men in town to appraise the stock." He asked me to select some one, and I said "Who are the largest creditors?" He said "The Western Dry Goods Co. is, I find, a creditor to the extent of $5,000." I said "Get some one from there," and Mr. Kjos of that company was appointed an appraiser. The other appraiser was Mr. Doheny, of Chaesty's store, and the other appraiser was Mr. Barr, who was in the store. We obtained the appointment of those appraisers. I prepared their oath for them, and instructed them that they should attend at the store on a certain day after the inventory had been completed, and make their appraisement. I want to say at this point that our referee has perhaps stretched the law a little—wisely, too, in my opinion—in order to obtain a prompt sale of stocks of merchandise where the expense runs into the hundreds of dollars every day, and because, theoretically speaking, perhaps a petition for sale could not be filed until the inventory was on file in the office of the referee, but this petition for sale, the inventory being in process of construction, was filed before that time and the appraisement was duly made and filed and notice given of the sale by publication and by mailing to all parties interested and by posting in three or four public places of the city of Seattle, as required by the order, and at the time stated the parties appeared in this courtroom and submitted sealed bids. Those bids were opened. The highest bid was that of McCormack Bros., represented by Judge Fremont Campbell, of Tacoma, and his bid was this, substantially: "The undersigned does hereby bid 65 cents on the dollar for the stock of merchandise, fixtures, store equipment, and all assets of the bankrupt, except cash in the hands of the receiver and the book accounts." That figured up a little over $50,000. The next bid was about $46,000. The receiver and his counsel took the bids under consideration, and Mr. Libby, who was here, was disappointed that so high a bid had been received.

Q. Mr. Libby of whom?—A. Of the John Anisfield Co., because he stated that that $46,000 bid which had been put in, as I remember, in the name of a man named Shinn, would take the stock, and he asked me, outside of that rail, if a thousand dollars would be any object. I said, "No, sir; the well-settled practice of this court on sealed bids in writing is that you must put up 10 per cent more. If you want to put up $5,000 within the rule of Judge Hoyt, I will ask him to offer the property again. Still" I said, "a thousand dollars is some money, and I don't feel like throwing it away, and I will mention it to the court." And before the court adjourned I told the court, in open court, that a thousand dollars had been tendered in excess of the price and that I didn't feel like waiving that sum. Judge Hoyt said that he would not——

Q. (Interrupting.) Excuse me. You mean that he had offered a thousand dollars in excess of this higher of these two bids?—A. Yes, sir. Judge Hoyt said he would not violate the rule. He said, though, "If anybody wishes to put up a certified check for $5,000 in the possession of the receiver, as a guaranty that he will bid $55,000, I will offer the property again for sale at an upset price of $55,000, and everybody can bid." That was done. The property was—the bid was—rejected, the check for $5,000 was put up, and the property was again offered for sale, I think on the second day following, because Judge Campbell desired to go to Tacoma to consult his clients who

had their main store at that place, and on the second day following, McCormack Bros. came back with a bid of $56,500, and Mr. Libby put in a bid of something like $57,000. There were no further increases in the bid, and the property was sold to Mr. Libby, or Lindstrom, or whatever the name was. And right here let me say that if McCormack Bros. had got that stock for $56,500 there never would have been a word about this matter. Now, those were the services that we performed.

Q. Now——A. (Continuing.) By a quick and expedient sale and by increasing the price of that property I considered we saved that estate at the very least $10,000.

Q. How much was saved by the increase in price?—A. Well, there was a saving there of seventy-five hundred or seven thousand, whichever was the increase; but most any other receiver but Mr. Baxter would have taken about 15 or 16 or 20 days to get ready for that sale, and it would have taken—it would have consumed a lot of money in keeping that expensive store there.

Q. Well, now, Mr. McClure, I wish you would point out to the committee what in all that you have told constitutes a legal service to the receiver and not something that any receiver is supposed to do because he is receiver and without legal advice.—A. What is a legal service?

Q. Well, you are an attorney, I believe.—A. Well, I think that the things—with due respect to the committee, you understand—I think that the things I have mentioned were legal services.

Q. Do you think that it is a service by an attorney that a bid is rejected and a higher price is obtained?—A. That is to a certain extent a business question, but there is also a legal question involved.

Q. What was the legal question?—A. The legal question was presented by the instance I have narrated, whether the court would open up the sale, and if so, on what terms, because I think that——

Q. (Interrupting.) I don't quite understand now what the legal question was in that respect.—A. Well, the notice had been given that the property would be offered for sale and sold, subject to confirmation, to the highest and best bidder for cash, on a certain date, and a satisfactory bid had been received at the first and a responsible bidder had appeared offering that sum, and while it is likely true that a bidder has no rights, still we who sell stocks of goods frequently have to recognize, nevertheless, as a business question, mixed with a legal question, that they must be considered and treated fairly.

Q. Did you have to argue that proposition to Judge Hoyt?—A. Not at all. He understands it thoroughly.

Q. Then you did not render any legal service in that respect, did you?—A. Well, of course, it is a matter of opinion.

Q. Well, if you didn't argue anything before Judge Hoyt to get him to do this thing, why, then, you didn't perform any legal service in getting it done, did you?—A. I think I did.

Q. What was it?—A. Just as I stated; I can't state it more fully than I have.

Q. Well, what other legal service was there?—A. Well, to answer the question requires mainly a repetition of what I have already testified.

Q. What, of those things which you have testified to, do you consider such services as a trustee of any kind or description should pay an attorney for instead of doing himself?—A. I have never yet seen a receiver who can prepare a proper order of sale.

Q. Well, then, you consider drawing the order of sale as a legal service?—A. I consider that one of the elements; yes, sir.

Q. All right. What else?—A. Drawing the petition for sale another.

Q. Yes. What else?—A. Advising the receiver as to the conflicting questions as to whose was the merchandise in that store.

Q. And what were the conflicting questions?—A. Creditors all over this country were claiming that the merchandise in the store belonged to them, because Knosher had made such flagrant misrepresentations as to his financial condition that he was indicted and fined in the superior court of King County for those misrepresentations.

Q. Did any of those creditors come in and undertake to reclaim the goods?—A. They did.

Q. Were there reclamation proceedings in court?—A. No, sir; we headed them off.

Q. In what way?—A. We kept every article practically there in the store.

Q. How did you head that off?—A. By simply telling them they could not have the goods, and arguing the questions with them.

Q. And, in other words, these creditors came along claiming the goods, and you sat down and convinced them that they were wrong?—A. Exactly.

Q. Did they come in person or did they come by attorney?—A. Well, there were a great many traveling men here, a part in person and in part by attorneys.

Q. And who were some of the attorneys who claimed——A. (Interrupting.) I can't tell you now, sir.

Q. Were they Seattle attorneys?—A. I think they were.

Q. But no reclamation proceedings were ever started?—A. Well, now, I won't say that. There may be a few shown by the record; I am not sure.

Q. All right, Mr. McClure. Was any reclamation proceeding brought to the point where testimony was taken?—A. I don't remember any, but I would be controlled by the record. You won't make me feel disturbed about this matter, because, as I say, I was willing to donate all the fee that I had, and I would gladly do so to-day. I don't care for the money we got out of this estate; but the other side would simply not recognize anything of that kind. They said, "You donate what you wish, but we will fight you still."

Q. Did you suppose at the time this allowance was granted that Judge Hanford thought or had any reason to think that he was making an allowance to a trustee?—A. I don't know, sir. He asked whether Mr. Baxter had been appointed trustee.

Q. Were allowances to trustees at that time made on a percentage basis?—A. Yes, sir.

Q. That was the law?—A. That was the law; that has always been the law.

Q. That has always been the law?—A. Since the bankruptcy law of 1898.

Q. Did Judge Hanford, at the time when the allowance of twenty-five hundred was made to the receiver, and at the time $2,500 was allowed to counsel, have before him any figures on which he could estimate percentages?—A. Not that I know of. I don't know whether he had or not.

Q. Did he ask anything in that regard that would make it possible for him to estimate percentages?—A. Not that I know of.

Mr. PRESTON. Just a minute. May I ask if he didn't know how much the property brought at the sale?

A. Oh, he was fully informed by the return.

By Mr. McCOY:

Q. Well, did he ever indicate in any way that he had figured out the allowances on a percentage basis?—A. Well, I can't answer that question.

Q. What were the percentages that were allowed at that time to the trustee?—A. Six per cent on the first five hundred, 4 per cent on the next thousand, 2 per cent on the next eighty-five hundred, and 1 per cent on the excess.

Q. How many times had you applied for receivers' allowances up to that date, do you think, in all your bankruptcy practice?—A. Well, that would be a difficult question for me to answer, Mr. McCoy.

Q. Well, just roughly. Had you been in court 50 times since the bankruptcy law went into operation, on the question of allowances?—A. Oh, yes; more than that.

Q. How many times were you in court on that sort of an application in the year 1910?—A. I could not answer that. A great many times.

Q. A great many times?—A. Yes.

Q. How many between July 1, 1910, and the date this application was made?—A. I can't answer that question.

Q. Well, a number of times?—A. I think so.

Q. And had anybody ever raised the question, Judge Hanford or anybody else, in regard to the amendment of the law which fixed the requirement of notice to creditors?—A. Well, I don't know. I don't remember that they had. I don't think they had.

Q. Did you see the amendments to the bankruptcy law in the 1910 amendment soon after they were published?—A. I didn't for quite a while. It is rather difficult to get those things out here.

Q. Well, how long after the law took effect did you see the amendments to it?—A. I think I saw those amendments first late in the fall or early in the winter of 1910.

Q. Well, did you know that the law had been amended, by a newspaper account, or rumor, or in any way?—A. I don't think I did, sir.

Q. That is, you had not heard between the time when those amendments were adopted and June—probably July 1, 1910, and the early part of the winter of 1911, that the bankruptcy law had been amended?—A. Well, I may have heard something about it, but I paid no attention to it.

Q. And you practiced all that time extensively in bankruptcy?—A. Well, I had practiced a good deal. I have matters in other courts as well.

Q. I know, but as a matter of fact you did, during all that interval of six months or so, practice extensively in bankruptcy?—A. I practiced a good deal in the bankruptcy court.

Q. Do you say that it would not have been possible at any time during that interval to buy, in some book store or other place in this city, a copy of those amendments?—A. I don't say one way or the other. I don't know anything about it.

Q. Did you try?—A. I did not try.

Q. Did you try to ascertain where they could be had?—A. I don't know whether I did or not.

Q. You made no effort to ascertain what the provisions were which had been put into the amendments?—A. I can not tell you, sir, whether I did or not.

Q. Were not those amendments on file in Judge Hanford's chambers; didn't he get them?—A. I don't know.

Q. Did Judge Hanford——A. (Interrupting.) I want to say, I am not in the habit of going into the judge's chambers.

Q. Well, it is quite likely that Judge Hanford would have those amendments, isn't it?—A. Well, I don't know. I have never been a judge. I don't know.

Q. And if any attorney in Seattle would want to get them and he could not get them elsewhere, that this building would be the place where he would come to find them, and that probably Judge Hanford, the judge of the court, would be the place in the end where he would go to get them?—A. Well, my experience with the United States Government has been that you generally get things from them last. If you want them, you get them from some private source.

Q. Did Judge Hanford hold at any time that the keeping open of that place of business during the day, the day upon which the receiver was appointed, was doing business?—A. He did.

Q. Where do you find that?—A. Well, it is in the record.

Q. Well, is it in any finding of fact that he made?—A. No, sir.

Q. Memorandum decision?—A. I know of one place where it is. It is in the order of allowances, the final order that was made. Whether it is elsewhere, I don't know.

Mr. McCoy. That is all.

By the Chairman:

Q. Mr. McClure, was the receiver present in person the part of the day that the store was kept open under his management?—A. Yes, Mr. Graham; I think Mr. Baxter was in that store every day during all business hours from the time he took possession at 11 o'clock.

Q. I mean the day it was opened for business?—A. He was. He was there, except as I remember he was perhaps absent from the store during this consultation as to whether the doors should be kept open or closed at the end of that day.

Q. Was there any sign or indicia of any sort showing the change from Knosher to the receiver?—A. There was a sign of some sort placed upon the door the next day. Whether there was one there that day or not I don't recall, but my recollection is there was not.

Q. I am speaking entirely of the day during which he continued it open from 11 o'clock until closing time.—A. I can't tell you, sir. I don't remember.

Q. I think you stated the reason for doing that was that they had a sale?—A. Yes, sir.

Q. And a large number of customers?—A. Yes; the store was full.

Q. There was nothing to indicate to the customers, was there, any change whatever in the management?—A. Well, through—I was there and Mr. Baxter was there, and Mr. Baxter took charge of the business immediately, but how open that was to the customers I can't tell.

Q. There was no written indication, such as "Receiver's sale" or anything of that sort posted anywhere about it, was there?—A. I don't remember that there was.

Q. Well, if there was you would remember it, wouldn't you?—A. I know I prepared a notice that the receiver was in charge of the business, but whether it was that day or the next day I can't tell. I think most likely it was——

Q. (Interrupting.) Notice for what; for publication in the papers?—A. No, sir. Always we put upon the door a notice to the effect that the premises and the assets contained therein are in charge of So-and-so by order of a certain court, and all persons are notified to govern themselves accordingly.

Q. Well, now, what do you say as to whether there was any open notice which the public could see? "Almost" must be during that day.—A. Well, I am of the opinion that that notice was put up the next day; it may have been that afternoon, but I don't think so.

Q. There was nothing at all like a temporary closing of the Knosher business and a reopening by the receiver that day?—A. No, sir.

Q. That was the only occasion on which the receiver openly conducted the retail business there?—A. He didn't retail after the first day.

Q. What was the total amount of insurance on the stock after he had increased the insurance?—A. Why, I think that the receiver carried approximately the inventory value, about $6,500. Those are always my instructions.

Q. Well, have you any special recollection, or are you reasoning toward that——A. (Interrupting.) I am reasoning from a general rule. I don't remember about this particular case. My opinion has always been that a receiver or trustee who did not fully insure the assets he had would be liable.

Q. If Mr. Baxter had not continued the business of the store that day, would you claim that there would be any legal reason or excuse for his getting a receiver's fee?—A. I would.

Q. On what basis?—A. The bankruptcy act speaks of two classes of persons who are entitled to that fee. One is a mere custodian, and the other is one who conducts the business. There is no meaning of the word "custodian" that I know of except one who takes assets and locks them up and sees that they remain in statu quo.

Q. One of your contentions is, then, that if he had closed the store at 11 o'clock and continued in possession of the goods in the store as custodian—as receiver and custodian, so to speak—that he would be entitled to a receiver's fee?—A. Yes.

Q. Is that one of your contentions?—A. Yes, sir; and the amount of that fee would be measured by what he actually did, not to exceed the percentage for receivers or trustees; that is, the maximum amount.

Q. In this case what is the fact as to whether his receiver's fee was based upon the fact that he did run the store for a while?—A. I think that was—entered into the matter, but I——

Q. (Interrupting.) But it was not the exclusive, the full reason?—A. No, sir. I didn't consider that a very strong element. I thought it was much more important that the business, which, of course, was a losing business, should be whipped into shape; an accurate inventory taken for the first time since Knosher had had charge of the business, and so definitely ascertain what was there and the whole

thing rounded in a businesslike shape and presented to purchasers in that manner.

Q. The clerks who were working for Knosher remained during the day the store was open and continued, or at least some of them continued through the work of making the inventory?—A. They did.

Q. The only additional ones were some interested experts chosen by creditors?—A. So far as I know there were no experts there in the store. I was of the opinion that the clerks took that inventory.

Q. I thought you stated that some of the creditors had representatives there during the work of inventorying?—A. Well, I don't understand that that is the case.

Q. Well, was that the appraisement?—A. That was the appraisal; yes, sir.

Q. And the appraising was done by representatives of two of the large creditors and one of the men who had been employed by Knosher?—A. Yes; Mr. Kjos, of the Western Dry Goods Co., represented a creditor, and Mr. Doheny, of Cheasty's, was absolutely independent; Cheasty's were not interested, nor was Mr. Doheny. He was simply an expert whom we employed because of his qualifications.

Q. At what stage was it determined that your firm and Mr. Stern would be the attorneys for the receiver?—A. My impression is that Mr. Baxter employed us the day of his appointment.

Q. At the time of his appointment?—A. No, sir; it was afterwards.

Q. You filed the petition for his appointment——A. (Interrupting.) Yes, sir.

Q. (Continuing.) You stated.—A. Yes, sir.

Q. Did the fact that there were two firms employed to advise the receiver furnish a ground for an increase in the attorneys' fee?—A. I am sure it did not.

Q. What was the reason for the selection of two firms?—A. Well, it was a large store and both firms represented large interests. Of course Mr. Baxter can speak better for that than I can.

Q. You mean both firms of attorneys represented a large number of creditors?—A. Yes.

Q. Or a large amount of claims?—A. Yes. I think—speaking a little off the question upon that very proposition—I think that the rule that you have in the southern district of New York is a much more salutary rule, however it may work out; that it would be advisable that the attorneys of a receiver or trustee should represent no creditor; I think that would be the best ethical rule, but that is not the rule here and never has been and is not the rule anywhere in the West, that I know of. It is the rule on paper in the southern district of New York, but I have always been of the opinion that in that district it is violated in its practical effect, although it is there on paper.

The CHAIRMAN. Any further questions?

Mr. PRESTON. Just one question. I think perhaps there is a misunderstanding. Did the petition for the appointment of a receiver ask for the appointment of Mr. Baxter as receiver, or simply for the appointment of a receiver?

A. For an appointment of a receiver.

The CHAIRMAN. Well, did not the petitioner suggest Mr. Baxter as the man who would be appointed?

A. No, sir; I didn't.

Q. I don't mean in the petition, but outside the petition? A. No, sir; I didn't. I told Judge Hanford frankly what the situation was and how in my opinion our rights were trampled upon, and I asked him to appoint some independent person. And I want to say, for Mr. Baxter, that I have had many receivers, and he is the best one that I have ever had.

Mr. McCoy. How were your rights being trampled on?

A. Well, I didn't know what they were going to do. I found out afterwards that they had this man Smith, of Smith, Daniels & Kelleher, in line for the receivership.

The Chairman. How were the other receivers in the matter of fee allowances?

A. I beg pardon.

Q. You recommended Mr. Baxter. Is it on account of his liberality?—A. In what respect, sir?

The Chairman. In attorney's fees, for instance?

A. Well, I don't see what Mr. Baxter has to do with that. If that is the purport of the question, the answer must be emphatically, no.

By Mr. McCoy:

Q. Mr. Baxter was your client, wasn't he? Wasn't Mr. Baxter your client?—A. At what time?

Q. Well, I mean you were attorney for the receiver, weren't you?—A. I was afterwards; yes, sir; after he was appointed.

Q. I mean during the proceedings; I am not taking any particular time.—A. Mr. Baxter was my client after he had been appointed and after he had applied—had employed me.

Q. Sure; that is what I mean; and from then up to the time when the allowances were applied for he was your client?—A. He was.

Q. And is it your position that a client has nothing to do with fees?—A. Not in a bankruptcy proceeding. It is entirely for the court; absolutely. The act says so and it is interpreted so. The decisions are so.

Q. Do you suppose that if Mr. Baxter in court had suggested to Judge Hanford, "Your honor, I think $2,500 is twice too much to pay in this matter," it would have had any weight?—A. Judge Hanford would have considered that like any other probative fact in the case, if that would be a probative fact. And if you practice before Judge Hanford, you will find he is absolutely independent and has his own opinions about those matters.

Q. So even over a protest from a client he would force a fee, you think?—A. That may be your interpretation, but not mine.

Q. Just one question more. You have had receivers appointed a gret many times, Mr. McClure, haven't you?—A. Well, I have had them appointed——

Q. (Interrupting.) Oh, I mean numerous times?—A. A number of times.

Q. A dozen times, we will say. Have you ever had receivers appointed who did not undertake to run the business of the receivership even for a part of a day?—A. I have.

Q. In what respect did their services as receiver in a general way differ from the services which Mr. Baxter rendered after the day on which he was appointed?—A. I beg your pardon; I don't understand that question.

Q. I say, in what respect do the services which those receivers rendered to their respective estates differ in quality from the services rendered by Mr. Baxter to this estate after the day of his appointment on——A. They differ just as the estates differ. The services of a receiver differ according to the character of the duties he has to perform.

Q. The receiver usually takes an inventory, doesn't he?—A. He should, immediately; yes, sir.

Q. And he usually increases the insurance, if necessary?—A. If necessary; yes, sir.

Q. And has the risk transferred to himself?—A. Yes, sir.

Q. And if he is going to sell the goods, he usually goes about advertising to sell them?—A. He follows the order of the court, whatever it may be.

Q. Yes; whatever it may be, and he finally comes to the point where he disposes of the goods?—A. Yes, sir.

Q. And that was what Mr. Baxter did, wasn't it, in this case?—A. Those were some of the things he did.

Q. Well, what other things did he do besides those things?—A. Well, I have gone over that.

Q. I really don't remember your saying anything else in substance. Of course, you elaborated as to how he had the inventory made and all that sort of thing, but I mean it was an inventory after all.—A. The only purpose of my stating how the inventory was made was that an unjustifiable attack, in my opinion, was made upon it.

Q. I was not thinking about the attack that was made on the inventory, but all I had in mind was the services that the receiver had rendered. That is all.

Mr. PRESTON. In the Knosher case.

The CHAIRMAN. Mr. Anderson, were there any questions you desired asked the witness?

Mr. ANDERSON. I would like to ask——

The CHAIRMAN. We have not been permitting indiscriminate questioning.

Mr. ANDERSON. I only want to ask a question relating to the facts testified to by Mr. McClure.

The CHAIRMAN. Would it not be better if you would leave it to-night and prepare them and submit them, and Mr. McClure could come back in the morning?

Mr. ANDERSON. Yes; I would just simply tell Mr. McCoy.

Mr. MCCOY. What we have done in the way of practice here, Mr. Anderson, is that anybody having a question to suggest could suggest it and it comes through the committee.

Mr. ANDERSON. I see.

Mr. MCCOY (continuing). As a question, instead of letting anybody ask it.

The CHAIRMAN. Mr. Anderson can see that if we began that practice, we could hardly stop them.

Mr. ANDERSON. Yes.

The CHAIRMAN. So that if you will just prepare them and submit them to the committee.

Mr. McClure, you will come back in the morning.

An adjournment was here taken until 9.30 o'clock to-morrow morning.

SIXTEENTH DAY'S PROCEEDINGS.

TUESDAY, JULY 16, 1912—9.40 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will please be in order.

Gentlemen, Mr. Finch states that he is very anxious to leave Seattle temporarily on some business. Now, I suppose if there is anything further on that line in the way of rebuttal that it ought to be produced while here. He is compelled to leave to-morrow, and if there is any further evidence along that line I think you ought to produce it to-day or to-night.

WALTER A. MCCLURE resumed the stand.

Mr. MCCOY. Mr. McClure, you stated last evening that Judge Hanford was a stickler for giving notice to all parties or having notice given in the case of application for allowances?

A. Well, what I meant by that was that was my experience.

Q. Well, of course, you were, I suppose, speaking from your own experience. Now, isn't it true that Judge Hanford entered the order of September 23, making allowances to the receiver, the trustee, and the attorneys, when he knew that the order in question had been changed in two material respects, namely, stating that twenty-five hundred instead of three thousand had been paid the attorneys for the receiver and trustee, and also omitting the paragraph commanding the receiver and his attorneys to repay into the registry of the court the excess sums allowed them for fees, notwithstanding that in his chambers the attorney for the petitioning creditors and yourself had agreed upon this order?—A. What was the question?

Question read.

A. I don't know, sir. My understanding of that matter was that the order as signed was the order agreed upon.

Q. When you were in court, there were some differences between you and Mr. Anderson as to the form of the order, weren't there?—A. Yes. Mr. Anderson desired an order about 10 or 12 lines long, to the effect that the allowances of the receiver and trustee were a certain sum and the allowances of the attorneys of the receiver and trustee were a certain sum; and I desired that the order contained the appropriate recitals.

Q. Well, you did disagree in court as to the form of the order?—A. My impression is, Mr. McCoy, that the matter was taken up in Judge Hanford's chambers, and after we had discussed the matter before the court, the court practically holding a session chambers, we then repaired to the outer room and the order was framed.

Q. That is, you and Mr. Anderson then framed an order——A. (Interrupting.) Yes.

Q. (Continuing.) Which was satisfactory to both of you in form?—A. Yes, sir.

Q. Well, now, after that was done an order was presented by you to Judge Hanford?—A. Yes, sir. I sent Mr. Anderson a copy of it.

Q. Before it was signed?—A. Yes, sir.

Q. Is it true that that order as finally signed was different from the form of order which you and Mr. Anderson had agreed upon?—A. I don't know that it was.

Q. Well, who prepared it?—A. It was written in our office.

Q. Well, didn't you see it before it went to Judge Hanford?—A. I did; yes, sir.

Q. Well, then, can't you say whether or not it was different from what was agreed upon between you and Mr. Anderson?—A. I say it was the order that was agreed upon.

Q. $500 had been allowed at one time to the trustee on account of his fees?—A. And never paid; yes, sir.

Q. And never paid?—A. And never paid.

Q. When was that allowance made?—A. That was allowed by the referee. The referee stated, in making that allowance, that he would take up the case as if it were one in the ordinary course, and make allowances accordingly.

Q. What do you mean by take it up in the ordinary course?—A. Just as if it came to him as an independent proposition.

Q. Had the estate been settled at that time, or was it about to be settled?—A. It was in course of administration.

Q. Is there any provision in the bankruptcy law which permits a trustee to get his allowances in advance of the final settlement?—A. The bankruptcy act provides that trustees shall receive certain compensation based upon the moneys disbursed by them, and it fixes the rate of the compensation. I don't——

Q. (Interrupting.) Isn't it the law, as a matter of fact, that the trustee is not entitled to get his money until he has disbursed the estate or is about to disburse it?—A. Well, the law is as I have stated. It has been interpreted here that an allowance will be made in course of administration, and another allowance will be made at the close of administration. We have never interpreted the law to mean that all allowances must be withheld until the administration was closed. It may be so in other jurisdictions. That is not the rule in this jurisdiction. I think there is any positive provision upon the bankruptcy act as to that matter, since you have brought the matter to my attention.

Q. In this matter, in the Knosher case, what functions had the trustee to perform?—A. Well, the usual functions.

Q. Well, the estate had practically been disposed of, hadn't it, by the time the matter came to the trustee?—A. The stock of merchandise and the store furniture, fixtures, and equipment, and the auto delivery wagon had been reduced to money before the trustee was appointed; yes, sir.

Q. And was there anything which had not been reduced to cash before he was elected?—A. Yes.

Q. What?—A. There was a quantity of real estate, and there were book accounts as well.

Q. Did he sell the real estate?—A. He did.

Q. Now, in regard to this meeting of creditors for the purpose of determining whether to keep the place open, on the day on which the receiver was appointed and Mr. Baxter first reported as receiver, isn't it true that there were no other creditors present except Mr. Libby, representing John Anisfield, and certain attorneys, including yourself and Leopold M. Stern?—A. I can't say, Mr. McCoy. I wish that I could. But my idea was that all parties who were interested should be notified, and I was of the opinion they had been.

Q. Who undertook to notify them?—A. Mr. Baxter, as I understood it.

Q. Well, will you say that no one else was present except those that I have named?—A. I don't understand that there was any formal conference at any one place at any one time.

Q. Aside from the question of formality or informality, will you say that anybody except Mr. Libby and certain attorneys, including yourself and Leopold M. Stern, were at that meeting?—A. I will say that, as my understanding is, there was no particular meeting.

Q. Mr. McClure, you stated, and Mr. Baxter has reported, that he conferred with certain creditors on the day on which he was appointed in regard to the keeping open of the store. Now, I don't care whether you call that a meeting or a conference or a gathering or anything else; will you say that anybody else was present at that time except the people whom I have mentioned?—A. Mr. McCoy, all I wish to do is to give you the facts; I don't wish to conceal anything.

Q. I want you to answer my question. Will you state anybody else was present?—A. My idea of a conference is——

Q. (Interrupting.) I don't care what your idea of a conference is, Mr. McClure. It was stated by you—to repeat, it was reported by Mr. Baxter—that he did have an interview, a conference, a consultation, a meeting, a something or other where people were together, at which they discussed the question of keeping that place open during the day. Now, will you say that there was anybody else present at that except the people who were named—whom I have named?—A. It is impossible for me to answer that question. I would be very glad to explain it. My idea of an interview with a man is to get a man on the telephone line, for one thing.

The CHAIRMAN. I don't think that is important at all, Mr. McClure. Why is it impossible for you to answer that?

A. As I understand the question, Mr. Graham, it is asking for a particular meeting at a particular time. Now, my instructions to Mr. Baxter, and my understanding of what he did is, that he notified, conferred, interviewed all the parties in interest, either personally or by conversation over the phone, or by interviews with their attorneys, or in such other manner, means, or method as would give them the notice of the situation and would obtain from them the advice and assistance and direction he desired.

Mr. MCCOY. Was there any time when Mr. Libby, certain attorneys, including yourself and Leopold M. Stern, were present, at which any such matter was discussed?

A. I don't remember such.

Q. Were you present at all at the appraisement of the assets in the store of the Knosher Co.?—A. I was there when the figures were made.

Q. Is that the only time?—A. About 15 minutes before that time I arrived at the store and remained until the figures were made.

Q. How many appraisers were there?—A. Three.

Q. Were they there at the time you speak of?—A. They were; yes, sir.

Q. Do you know whether or not at that time there were covers over all the goods and that the appraisers did not inspect them at all, or a large part of them?—A. Well, when I went into the store there were the usual dust cloths over the stock of merchandise.

Q. Were those taken off when the appraisers were there at the time you were there?—A. They were not taken off while I was in the store, during that 15 or 20 minutes.

Q. Were you there during all the time when the appraisers were inspecting the goods on that occasion?—A. The appraisers were there when I arrived. I don't know how long they had been there.

Q. Did they leave before or after you did?—A. My impression is that they were there when I left.

Q. Was the bankrupt examined in the usual course of bankruptcy proceedings?—A. He was—that is, the officers, Mr. Knosher and Mr. Tiedeman.

Q. Those men have both been indicted, haven't they, in connection with this matter?—A. I don't know. I have heard so. I have heard that Mr. Knosher was indicted for participating in the conduct of the inventory, when, in fact, he was not in the store at any time that the inventory was taken.

Q. Have you heard, also, that Mr. Tiedeman has been indicted?—A. I think so, yes; I don't know about that.

Q. Who conducted the examination of these two men in the bankruptcy proceedings?—A. The examination was in part conducted by me. I think it was in part also conducted by Mr. Stern. Perhaps representatives of creditors also conducted the examination.

Q. Don't you know whether or not representatives of the creditors conducted the examination at all?—A. I don't remember.

Q. Did you discover, in the course of that examination, any indications that any fraud or irregularity had been practiced?—A. In the conduct of the business?

Q. In connection with the matter in any way?—A. No; I did not, except that there was a gross misrepresentation as to the quantity of assets on hand. My opinion of the whole business was that it might have been likened to a man walking down a crowded street in a city with his eyes shut; they had no more idea where they were going or what they were doing than if they kept no books at all.

Q. The gross misrepresentations were those made to creditors?—A. Yes, sir; yes, sir.

Q. Did you discover any fraud in connection with the making of the inventory or the appraisal, at that examination?—A. I did not.

Q. Or at any other time?—A. No other time. I have never heard anything tangible about that.

Q. Has the estate been closed?—A. It has not.

Q. Have you advised the trustee to proceed in the matter on the basis of any information that you have leading you to think that there was fraud in the matter?—A. I have advised the trustee, and have also repeatedly stated to the attorneys of these creditors that we desired to cooperate fully with them. If there was anything wrong with the inventory or any part of the administration, we desired to lend them all of our energy and knowledge and time, because if any body takes an inventory for me which is incorrect I want to know it and I want to see them punished.

Q. What have you done to find that out—to find out whether or not that is the fact in this case?—A. I have been able to find nothing to work upon, and have done nothing.

Q. What services did Leopold M. Stern perform as attorney for the receiver?—A. Well, he was associated with me in the case and performed, in part, the services I have already testified to. I can not say positively of my own knowledge what he did perform, but I know that he assisted in those services that I have mentioned.

Q. What arrangement did you have with him for division of fees?—A. At the time the order of allowance was made of the $2,500 Judge Hanford inquired from the bench if this allowance was to be understood to go to both attorneys, and he was informed that it was, and that was the arrangement.

Q. Well, when was that arrangement made?—A. I think it was in—there never was any positive arrangement made about it; it was simply sort of a matter of course of understanding; both firms bearing the responsibility of the administration, the compensation would naturally be equally divided.

Q. You consider this matter to have been one of sufficient importance to warrant the receiver in employing two attorneys?—A. When it means no additional expense to the State; yes.

Q. How did he know that it meant no additional expense?—A. I don't know what his knowledge was.

Q. Well, then, your answer is not an answer to my question. In this particular matter do you think that it was one of enough importance to warrant the employment by him of two attorneys?—A. Yes, sir; I think so.

The CHAIRMAN. Are there any further questions with Mr. McClure?

Mr. PRESTON. Mr. McClure, I believe, possesses considerable knowledge in regard to the McCarthy matter that was spoken of by Mr. Anderson in his testimony last evening or yesterday afternoon, and I would like to ask the committee to examine Mr. McClure about that, either now or recall him at sometime, just at your convenience. I mention it.

The CHAIRMAN. I think it would not be best to go into it at this time, to ask him about the McCarthy matter. He will be accessible at any time, and I hardly think we ought to——

Mr. PRESTON. Will you be accessible at any time or are you going away?

A. I want to go down to Colorado, Mr. Preston, about Friday or Saturday of this week for about a week or 10 days.

The CHAIRMAN. Well, we can probably use you in that matter before that time.

Witness excused.

WILLIAM MARQUAT, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name.

A. William Marquat.

Q. Where do you live?—A. 1317 Thomas Street.

Q. What is your business?—A. My business is saloon business, sir.

Mr. HUGHES. Speak a little louder, will you, please?

A. My business is saloon business; 1317 is my place of residence.

The CHAIRMAN. I understood you closed your place to come here this morning; is that correct?—A. No, sir; I didn't have to close it, I have another man there taking my place.

Q. I called you out of your turn on the theory that the business was closed up.

Mr. HUGHES. What is your name?

A. Marquat.

The CHAIRMAN. It would be a calamity to you and to the public to have it closed to-day. What has your business been for the past five years?

A. Same line of business, sir.

Q. At what different places?—A. Well, sir, five years ago I worked for Mr. Southerland, in the Alaska Building.

Mr. HIGGINS. You will have to speak up.

A. I say, five years ago I was in Mr. Southerland's employ in the Alaska Building.

The CHAIRMAN. Where else have you been?

A. Ever since then I have been employed by these same people at 610 First Avenue, with the exception of this last year I have been up here at 219 Union.

Q. The Southerland bar?—A. No, sir; Southerland in the Alaska Building.

Q. Southerland?—A. Yes, sir.

Q. Are you familiar with a drink by the name of Hanford martini cocktail?—A. No, sir; not at all, sir.

Q. Do you know of such a drink?—A. Oh, I have heard it alluded to by just harum-scarum fellows coming in.

Q. If one called for such a drink, would you mix a drink for him by that name?—A. Why, it is customary with all barkeepers to try to accommodate the public.

Mr. HUGHES. How is that? I can't hear.

A. It is customary with all barkeepers, if a man comes in to ask for something—if it was a cocktail we know how a cocktail is made—the component parts of a cocktail. We will make some kind of a cocktail, and if it doesn't suit the patron of course he won't come in again, if we don't make the right kind of a cocktail; but myself I have never made one.

Q. You never made any kind of a cocktail?—A. No; never a Hanford cocktail.

Q. What are the ingredients of it?—A. I could not tell you, sir.

Q. Have you heard it called for by that name?—A. Oh, I have heard it alluded to since the trial by fellows coming in and asking me if I knew how to make a Hanford cocktail.

Q. Did you hear it before this proceeding, this hearing began?—A. I would not like to say. I don't think so.

Q. Why don't you like to say?—A. Well, because I don't know positively. It is a matter of memory, and of course I would not like to say, because I don't think I have.

Q. Well, can you tell what the ingredients of it are, as you have heard it referred to?—A. No, sir; I could not.

The CHAIRMAN. Are there any further questions with this witness?

By Mr. HUGHES:

Q. Where are you working?—A. 219 Union.

Q. What is the name of that place?—A. The Mecca saloon.

Q. The Mecca?—A. Yes.

Q. You say you have heard it called for by harum-scarum fellows coming in?—A. I have heard it alluded to by people coming in since this trial—this investigation has been going on, asking me if I knew how to make a Hanford cocktail.

Q. Did you read the newspaper account of the testimony of one Jacobs?—A. I have read very little. I have had a misfortune with my right eye since the 31st day of last March.

Q. Jacobs——A. (Continuing.) And I have read the paper very little, very little indeed.

Q. Well, a few days ago a witness testified here to having called for a Hanford martini cocktail at the rathskeller. Now, can you recall anyone calling for such a cocktail——A. Not in our place——

Q. (Continuing.) Prior to the last few days while this investigation—since this investigation has been going on?—A. No, sir; I haven't.

Q. You don't know any such a cocktail?—A. I don't; no, sir.

Mr. HUGHES. That is all.

Mr. MCCOY. Just a minute.

The WITNESS. Yes, sir.

By Mr. MCCOY:

Q. How many times since this proceeding has been going on have these harum-scarums come in there and asked for a Hanford cocktail?—A. Well, now, I could not say that—it might be once, it might be five or six times, sir.

Q. Was it five or six times?—A. I would not like to say that. I have heard it alluded to only by——

Q. (Interrupting.) Several times?—A. Yes; I will say several times.

Q. Did you make any inquiry as to how it was made?—A. No, sir.

Q. I thought you said it was the duty of a saloon to cater to the public's demand?—A. Yes, sir.

Q. So when you hear of a new cocktail several times you don't make any inquiry as to the ingredients?—A. Well, I would if the gentleman asked me to make it for him, I would say, "How do you make this cocktail?" But if they simply——

Q. (Interrupting.) What did they say?—A. They simply came in and said, "Can't you make a Hanford cocktail?" I just laughed it off.

Q. You said a minute ago you said, "How do you make this cocktail?"—A. No, sir.

Q. That is what you said just now.—A. I would ask him, if he asked me for the cocktail—particular cocktail.

Q. Well, now, they did ask you for it, didn't they?—A. No; they simply alluded to it, coming into the barroom, just walking by.

Witness excused.

Mr. PRESTON. Mr. Chairman, before we get too far away from the Knosher case I would like to present to you a certified copy of the order reciting the meeting of the creditors and the appointment of Baxter trustee, so as to fix the date, and also that other brief I spoke of [producing].

FRED W. POWELL, having been first duly sworn, testified as followr:

The CHAIRMAN. Give your full name.

A. Fred W. Powell—Fred William.

Q. Where do you live?—A. 2115 Thirteenth Avenue South.

Q. What is your business?—A. Barkeeper.

Q. Where are you working?—A. Saratoga bar, 812 Second Avenue.

Q. How long have you been there?—A. Four years and a half.

Q. Have you ever been called on for a drink known by the name of Hanford Martini cocktail?—A. No, sir.

Q. Do you know of such a compound?—A. No; I don't.

Q. Did you ever hear of it before?—A. I have heard of it lately, yes, sir; the last three or four days.

Q. When did you first hear of it?—A. Oh, it is three or four days ago.

Q. Are you sure that is the first time you heard of it?—A. Yes, sir.

Q. Did you hear of a drink by the name of the Hanford cocktail?—A. No, sir.

Q. Did you ever hear of that?—A. Not previous to the time I speak of, the last three or four days; last week some time.

The CHAIRMAN. Any further questions with this witness?

By Mr. HIGGINS:

Q. Do you know Judge Hanford when you see him?—A. Yes, sir.

Q. Does he come into the Saratoga bar?—A. He has come in there; yes, sir.

Q. How frequently have you seen him there?—A. Oh, I could not say. I have seen him there several times; I would not know how many times.

Q. How often in a week; are you able to say?—A. No; I would not.

Q. When are you on duty in the Saratoga bar?—A. From 12 to 2.30 and from a quarter of 6 to 12 at night.

Q. Can you give the committee any idea of the number of times you have seen him and served him?—A. Why, no; I could not. I have been there four years and a half. I would not venture to say how many times I have served him.

Q. Is it a rare occurrence or a common occurrence?—A. No——

Q. (Interrupting.) Does he come in every night?—A. No.

Q. Or three or four times a week?—A. Possibly three or four times a week. I don't think as often as that.

Q. When he comes, is he alone?—A. Always.

Q. Can you tell the committee what he drinks at your bar?—A. Yes; I have served him with sherry and egg there.

Q. Does he always drink the sherry and egg?—A. I think that is the only thing I ever served him.

Q. Did you ever see him intoxicated?—A. No, sir.

Q. Or under the influence of liquor in any way?—A. Not that I would think so; no.

Q. How?—A. Not that I should judge he was under the influence; no.

Mr. MCCOY. You would not serve a drink to a man who was under the influence of liquor, would you?

A. Not knowingly; no.

The CHAIRMAN. That is all, Mr. Powell.

Witness excused.

The CHAIRMAN. Are there any other witnesses present on this matter now? If there are, they may be called.

W. J. KERRIGAN, having been first duly sworn, testified as follows:

The CHAIRMAN. State your name.

A. W. J. Kerrigan.

Q. Where do you live?—A. Hotel Burlington.

Q. What is your business?—A. Real-estate broker.

Q. Do you know one George Jacobs?—A. I do.

Q. Did you make a bet with him not long ago concerning a certain drink known as a Hanford cocktail or a Hanford Martini, or something of that sort?—A. Mr. Jacobs came in my office and——

Q. (Interrupting.) First, did you make a bet with him involving such a drink?—A. Why, yes.

Q. When was it?—A. Last week.

Q. What was the wager?—A. Why, he said he could go to any bar and call for a Hanford Martini and they would serve him a Martini with an onion in it. I seemed to doubt him. And he said if they did serve it that way when he asked for a Hanford Martini, why, I was to pay for the drinks; if they didn't, he would.

Q. Did he say it about any bar or did he name a certain round of drinking places?—A. He named a number of bars down the street.

Q. Did you go?—A. I went to one bar.

Q. Where?—A. Rathskeller.

Q. And what happened there?—A. Why, they served a drink there.

Q. What did he ask for?—A. A Hanford Martini, if I remember it.

Q. Was it served?—A. Beg pardon.

Q. Was it served by that name?—A. It was; it was served—a cocktail—I don't know whether it would go by that name or not. I think the bartender served a Martini, the way I looked upon it.

Q. Well, the bet—will you tell what the nature of the bet was?—A. Well, he came in the office there and I sort of ridiculed him, and then he started to bet that he could take me to any bar, naming a number of bars, and if he called for a Hanford cocktail they would serve it to him. I looked upon the matter as if he called for a Hanford Martini they would serve him a regular Martini; they always do.

Q. But where did the bet come in?—A. Where did the——

Q. (Interrupting.) You haven't told us yet where the bet came in.—A. Why, he bet that they would serve a Hanford Martini.

Q. Well, the bet, I take it, was that if they did you lost?—A. Yes.

Q. And were to pay for the drinks?—A. That is the idea.

Q. And if they didn't he lost and had to pay?—A. Yes.

Q. Who paid?—A. I paid.

Q. Was there anything said about what was to go in the cocktail in the way of solid matter?—A. He said if an onion went in it was a Hanford Martini; if an olive went in, it was not a Hanford Martini.

Q. What?—A. He said if an onion went in it was a Hanford Martini; if an olive went in, it was not.

Q. And what went in?—A. An onion.

Q. Did you go to any of the other bars?—A. No; that is the only bar.

Q. Well, was it due to your economical spirit or your desire not to drink too much?—A. I just wanted to be satisfied.

Q. Why didn't you go to the other bars?—A. I didn't have time. I had a dinner engagement.

The CHAIRMAN. Are there any further questions with the witness?

By Mr. HIGGINS:

Q. Did you ever have a Martini before at the Rathskeller?—A. Yes, sir.

Q. How often—as you wanted them?—A. As I wanted one.

Q. Did you ever get one served with an olive in it?—A. No.
Q. What did you get served in it?—A. An onion.
Q. Is that the custom and practice of that bar to serve Martini cocktails with an onion in it?—A. Always has since I have been there.
Q. Where did the practice of serving onions in cocktails, which is an innovation to me, come from, do you know?—A. No, I don't.
Q. Do you know whether or not it is due to the influence of Alaska on Seattle?—A. It might be.
Mr. HIGGINS. I have heard that said. I don't know what the fact is. That is all.
The CHAIRMAN. After we leave here they may put in nutmegs.

By Mr. McCOY:

Q. Just a minute. Where is that Rathskeller?—A. It is on Second Avenue, in the Baillargeon Building.
Q. Is that the only place in Seattle that goes by that name?—A. I believe it is.
Q. Have you ever taken dinner there?—A. No, I haven't.
Q. You say that whenever you order a Martini cocktail there you get a cocktail with an onion in it?—A. Yes.

By Mr. HIGGINS:

Q. Well, you do in other bars, don't you, Mr. Kerrigan, in Seattle?—A. I should think so, from what I understand.
Q. How does the Rathskeller compare with your refreshment and irrigation parlors in Seattle?—A. I consider it one of the best bars in town.
Q. Has the reputation of being a first-class place?—A. First class; yes.
Q. Has a very large restaurant on the second floor?—A. Yes.
Q. On the main street of the city?—A. Yes.
Q. And would be regarded as one of the best places of that sort in the city, would it?—A. It would.
Mr. McCOY. If you asked for a dry Martini, or dry cocktail, whatever you would call it, you would get an onion in it then?
A. Yes; I think you would.
The CHAIRMAN. Are there any further questions with the witness?

By Mr. HUGHES:

Q. How long have you known this man Jacobs?—A. Oh, possibly the last three years.
Q. Do you know anything about his habits?—A. You mean his personal habits?
Q. As to drinking?—A. Why, I believe he drinks plenty.
Q. Have you ever drank whisky at a bar with him?—A. I don't believe I have.
Q. Did not also suggest, in this same conversation with you, that if he called for a Hanford whisky you would get Monogram whisky?—A. That is what he offered me.
Q. Do you know whether it is a fact that he frequents the bars that he named?—A. Yes.
Q. Do you know whether or not it is a fact that he always himself drinks Monogram whisky, or generally, at least?—A. I could not tell you that.

Q. Did you know at the time that the Rathskeller bar was accustomed to serving a dry Martini with an onion instead of an olive?—A. I have always seen it served that way.

Q. Did you "fall" for this bet innocently or just good naturedly to treat the man to a drink?—A. Just to buy the man a drink, as a matter of fact.

By Mr. McCoy:

Q. Well, now, a minute. What was it you said to him about his testimony here?—A. Oh, I kind of ridiculed him on testifying against Judge Hanford, because I didn't favor it.

Q. Why didn't you favor it?—A. Because I didn't; that is why.

Q. Well, why not?—A. Well, I would not care to go into details on it.

Q. Well, what did you tell him?—A. What?

Q. What did you say to him?—A. I told him I thought he was very foolish to give up his business to bother with the Hanford trial.

Q. What did you mean by that?—A. Why, I thought that it would be better for him to attend to his own business and let other people take care of——

Q. (Interrupting.) Did you know that he was subpœnaed to come here?—A. He told me; two or three different times I met him he said he had been subpœnaed.

Q. Did you say to him that the fact that he testified here might make it bad for his business?—A. I said I thought it would.

Mr. McCoy. That is all.

By Mr. Hughes:

Q. Why did you think that?—A. What?

Q. Why did you think that?—A. Why did I think it?

Q. Did you think the people of this community would injure any man who was telling the truth, who was a man of character? Did you mean to convey that idea to this committee?—A. A man should tell the truth.

Q. You don't mean to convey——

The Chairman (interrupting). That is not in answer, quite, to the question. The question was, Do you think that telling the truth in this matter would injure him in his business in the community or might do so?

A. No; I don't think so.

Mr. Hughes. You know this man Jacobs pretty well, don't you?

A. Yes.

Q. Are you willing to answer the question that you objected to make the answer or make the answer that you objected to making awhile ago? You said you preferred not to go into the details of your reasons.—A. Well, I will tell you; I didn't go into any details; I just thought off hand, in a way. I haven't read the case deeply, considered it, but, as a matter of fact, I thought he was foolish.

Q. Well, do you care to tell the committee the reasons why you thought so?—A. Well, there were no general reasons; only my personal feeling.

The Chairman. Did you say to him that you thought it would hurt his business, or words to that effect?

A. Words to that effect, in a general way.

Mr. Hughes. Do you know whether he is in business?

A. What is that?

Q. Do you know whether he is in business at all?—A. He always seems to be busy.

Q. Do you know what he does?—A. Yes.

Q. Aside from what you have already told, what does he do?—A. He is a real estate broker.

Q. Have you ever known of his selling any real estate?—A. Well, I think he is working, trying to sell it, trying to trade it.

Mr. HUGHES. That is all.

Mr. MCCOY. Is he a real estate owner?

A. No; an agent.

Q. You don't know whether he owns any real estate or not?—A. I don't know as to that.

Witness excused.

W. E. KEYES, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name to the committee.

A. W. E. Keyes.

Q. Mr. Keyes, you live in the city?—A. I do.

Q. What is your business?—A. Café business.

Q. Where?—A. At 1415 Third Avenue; 1415 and 1417 is the right number.

Q. Were you a party to the bet you have heard mentioned a moment ago?—A. I was not.

Q. Do you know Judge Hanford?—A. I do.

Q. Have you had a call at your place for a Hanford cocktail?—A. Never, that I know of.

Q. Or a Hanford Martini?—A. Never.

Q. Do you know anything of that drink? Did you ever hear of it before?—A. Never until this morning in here.

The CHAIRMAN. Anything further with this witness?

Mr. HUGHES. Where is your place of business?

A. Third Avenue. I presume the questions given was when I was at 812 Second Avenue.

The CHAIRMAN. My question covered everything. Did you have knowledge at that place of a Hanford Martini?—A. Never.

Q. Did you at any time anywhere?—A. Never.

By Mr. HUGHES:

Q. Where is 812 Second Avenue?—A. Mehlhorn Building.

Q. When were you there?—A. Not in the last four months. Previous to that time nearly four years.

Q. What time of day were you on service?—A. Various times, as the shifts were changed from time to time.

Q. Have you ever seen Judge Hanford in that place?—A. I have.

Q. Have you ever seen him there when he appeared to you to be in any degree under the influence of liquor?—A. Never.

Q. Do you know the man named Jacobs, sitting back on the third row?—A. I was talking to him awhile ago. I never knew him as Jacobs before. I have known him a long while.

Q. Is he a patron of the bars where you have been?—A. Yes.

Q. Do you recall what kind of a Martini he drinks?—A. No, sir; I don't.

Q. Do you recall what kind of whisky he drinks?

The CHAIRMAN. The question assumes quite a little, Mr. Hughes.
Mr. HUGHES. Well——
A. Which, Mr. ——
Mr. HUGHES. Have you seen him drink at the bars where you were?
A. Who, Mr. Jacobs?
Q. This man Jacobs; yes.—A. Yes; I believe I have.
Q. Do you recall what kind of whisky?
The CHAIRMAN. It is a pretty strong assumption to assume that he does drink whisky. I have not heard any testimony of that fact.
Mr. HUGHES. Well, a man that drinks at the bar——
A. (Interrupting.) I could not recall any particular time.
The CHAIRMAN. I drink at the bar, but I usually take buttermilk. There is no necessary conclusion from drinking at the bar that he drinks whisky.
Mr. HUGHES. I don't think it would be a very violent assumption that Mr. Jacobs does.
The CHAIRMAN. Well, I think so, because I know nothing of Mr. Jacobs and his habits, and I think he is entitled to the same consideration as any other man.

By Mr. HIGGINS:

Q. Well, does he drink whisky at your bar?—A. I could not tell you, sir.
Q. Do you know what he does drink there?—A. No; I could not tell you. The different times—I presume beer and buttermilk, and I have seen him in there quite a number of times and I know I have served him, but with what particularly I could not tell you.
Q. Did you ever serve him with whisky there?—A. Well, I would imagine so; but I could not swear to it.
Q. What did he call for; do you know? Did he call for Monogram whisky?—A. No; I don't—I would not really remember. At that particular place customers don't ask for any particular brand; they ask for whisky or——
Q. (Interrupting.) How?—A. I don't remember of them calling for any particular thing.
The CHAIRMAN. Anything further?
Mr. MCCOY. Did you see Judge Hanford drink any alcoholic liquor at this place—it is the Mehlhorn, is it?
A. I have served Judge Hanford with sherry and egg, but nothing else ever.
Mr. MCCOY. You would not serve any intoxicants to a man who was drunk, would you?
A. Not if I knew it; no.
Mr. MCCOY. That is all.
The CHAIRMAN. Is there anything further? That is all, Mr. Keyes.

Witness excused.

C. HOLDEN, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name, if you please?
A. C. Holden.
Q. Clarence?—A. Yes.
Q. Where do you live?—A. Burlington Hotel.
Q. What is your business?—A. Automobile tires.
Q. How long have you been in that business?—A. Why, about two months.

Q. Do you recall one night last week being present when a wager was entered into between a Mr. George Jacobs and Mr. Kerrigan who was on the witness stand awhile ago?—A. I do.

Q. Were you present?—A. I was.

Q. Did you witness the bet?—A. I did, yes.

Q. What was it?—A. Why, simply as Mr. Kerrigan stated, that Mr. Jacobs said that he could go in a bar and get a Judge Hanford Martini and it would be served with an onion instead of an olive. Mr. Kerrigan thought that he could not do it, and they went over to the rathskeller and proved it.

Q. Who won?—A. Mr. Jacobs. Mr. Kerrigan paid for the drinks.

Q. Was there anything said about going to the other saloons named?—A. Mr. Jacobs said he could go to any bar that he might want to pick out. He named over something like six or seven bars.

Q. Did they go?—A. No; simply to the rathskeller.

Q. Why, if you know?—A. Well, it was late and we both had to go to dinner. It was simply to settle the question, that was all. It was not for the purpose of drinking.

By Mr. McCoy:

Q. You didn't think it was for the purpose of giving Mr. Jacobs a drink, you thought it was for the purpose of settling the question, did you, on the bet?—A. That is all.

The Chairman. Any further questions?

By Mr. Hughes:

Q. Did you joke with Mr. Kerrigan about his falling so easily for a bet of that kind, afterwards?—A. No; there was not anything said about it, as I can remember.

Q. What?—A. There was not anything said about it, as I can remember. I didn't pay much attention to the bet while it was being made.

Q. Had you ever drank at the rathskeller before?—A. Yes.

Q. Had you ever drank a Martini cocktail there before?—A. No, sir.

Mr. Hughes. That is all.

Witness excused.

Mr. Hughes. You asked to have Mr. Graves come back and I apprehend it is a very short matter. He is a busy man.

The Chairman. Mr. who?

Mr. Hughes. Mr. Graves. You remember you asked to have him come back.

The Chairman. Well, I think this witness will be very brief.

Govnor Teats, having been first duly sworn, testified as follows:

The Chairman. Please state your name.

A. Govnor Teats.

Q. Where do you live, Mr. Teats?—A. In Tacoma.

Q. How long have you lived at Tacoma?—A. About 22 years.

Q. What is your profession?—A. Law.

Q. You have practiced your profession all the time you have been in Tacoma?—A. Yes, sir.

Q. Are you acquainted with Judge Hanford?—A. I am.

Q. How long have you known him?—A. Since December, 1890.

Q. How intimately have you known him?—A. Well, you can't say that I knew him intimately. I have practiced constantly before the court since that time.

Q. Where?—A. Where?

Q. Yes.—A. In Seattle and Tacoma.

Q. To what extent have you had an opportunity of observing the judge elsewhere than in court?—A. Not very much.

Q. Have you noticed any peculiarities in the manner of the judge's presiding in court?—A. Well, he has one peculiarity, of going to sleep.

Q. To what extent does he indulge that peculiarity?—A. Well, sometimes you think he is asleep and think he does not know what you are talking about, or what you are examining our witness on, and then you will find out that he does, and I don't know of only one instance where I knew that he did not.

Q. That he did not follow——A. (Interrupting.) That he went to sleep absolutely.

Q. When and where was that instance?—A. That was in September, 1909, in the trial of a case. I was examining a witness and during the examination a juror wanted to go to the closet. He got up and he says, "I want to go to the closet." I says, "Go on." He went out to the closet. He came back. Just as he sat down the judge woke up.

Q. What effect, if any, did the juror's request have on the judge when he made the request?—A. Well, the judge was asleep. He didn't know anything about it.

Q. And in what tone did the juror speak?—A. Well, the juror was the farthest juror, as I remember, from me, and he would be next to the closest juror to the judge. I think there is a pillar about possibly something like that [indicating], but the juror was in this direction [indicating].

Q. And how far away from him, in feet?—A. Oh, I suppose about 10 or 12 feet.

Q. Did he speak in such a tone that the judge must have heard him had he been awake?—A. No question about it, because he hears everything when he is awake.

Q. How long was the juror gone; that is, how much time elapsed from the time the juror made the request until the judge woke up?—A. Well, I could not say. The juror got up, walked out, like going out of this door, going around to the closet, a distance possibly of 60 or 70 feet, came back out of the closet and back into the juror's seat.

Q. Was it as much as five minutes?—A. I would judge between—about that time. I know that we sat there for the juror to come back.

Q. Why did you interfere, Mr. Teats, and tell the juror to go?—A. Because I saw the judge was sound asleep. I thought so, and if he was not he would wake up and take the matter in his own hands, as he generally does.

Q. Do you recall any other instances when he seemed to you to be asleep, or nearly so, while on the bench?—A. Well, there was a period of time there about that time during that term and for about two or three years, and I asked what was the matter with the judge. I had a great many cases to try. Sometimes I would be before the judge for a month at a stretch, and in the argument of motions for new trial he would seemingly doze off. I thought he was sick. I know he would go onto the bench and try to keep awake, and he was a pitiful sight

to me; and I never saw but this one instance where I really knew that he did not know what was going on absolutely.

Q. Well, if this hadn't occurred would you have known absolutely then?—A. No; I don't think so.

Q. What difference was there in his apparent condition at that time and some of the other times to which you refer?—A. Well, for instance he would come about like this [illustrating]. If I was that way I would not hear very much, but Hanford seems to be a little different; but on this particular occasion, and I saw it in other cases when I was not trying cases and didn't pay any particular attention—it was none of my business—but on this particular occasion he got so sound asleep that his chin dropped down onto his chest.

Q. Have you seen Judge Hanford drink intoxicants?—A. I think once or twice.

Q. Have you ever seen him when you thought he was under the influence of intoxicants?—A. I don't think so.

Q. What time in the day was it that the incident concerning the juror occurred?—A. It was at the time he generally goes to sleep. Right after noon, and I think it was overeating and possibly an indulgence of something else. Generally this sleeping period of his is right after noon; possibly 2, half past 2 o'clock, 3 o'clock.

Q. Have you noticed any change in his condition during the years you have known him in the respect you have mentioned?—A. Yes; now, since that—the last two years I have noticed that he does not doze off like he used to. There was a period there of two or three years that I thought he ought not to sit on the bench at all in the trial of a case, but we didn't have any judges. I thought possibly he was sick or overworked. I am not intimately acquainted; I don't associate with him.

The CHAIRMAN. Are there any further questions?

By Mr. HUGHES:

Q. Mr. Teats, you say you thought he was probably sick and you asked what was the matter with him. Did you find out?—A. Why, I found out from the clerk, who told me that the judge was working pretty hard; that he would overeat at noon and get drowsy.

Q. Didn't you also find out that the judge was suffering very severely from hemorrhoids?—A. No.

Q. Bleeding piles?—A. No; I didn't go into—I asked Sam Bridges, the clerk, I asked him, I says, "What's the matter with the judge the last year? He goes to sleep so much." And he said that he was not well; that he would undoubtedly eat too much at lunch—generally after lunch, you know—and first he would take a cocktail and then—which would whet his appetite up, and eat too much.

Q. Well, did you never in any of those inquiries learn that he was and had for a number of years been suffering very severely with hemorrhoids?—A. No.

Q. So that it was often difficult for him to sit upon his seat?—A. No; I didn't hear of those.

Q. And did you not know that a couple of years ago he had an operation, which accounts for the difference you have described since that time?—A. Well, really, I don't know whether I did or not, Mr. Hughes. Judge Hanford and I have what I call not been very friendly. We haven't been as intimate as other judges. Sometimes

I speak to him and sometimes I don't; sometimes he speaks to me and sometimes he does not.

Q. But that is a habit of his with all attorneys?—A. I don't know whether it is or not. I know it was with me. And I never paid any attention to him, only as a judge. I was not interested in Judge Hanford only as a judge to try my cases.

Q. You usually represented the plaintiffs in personal-injury cases?—A. Always in those kinds of cases. Never the defendant.

Q. You had a very large personal-injury practice?—A. Yes, sir.

Q. Perhaps larger than any man in western Washington, didn't you?—A. Well, I have all I can do.

Q. And that has been a large part of your business, Governor?—A. Yes, sir; in the Federal court.

Q. And that practice has been to represent cases that you believed upon investigation to be meritorious cases?—A. Yes, sir.

Q. Now, Governor Teats, I want to ask you whether in your experience before Judge Hanford the poor have had as fair an opportunity as the large interests or corporations defendants?—A. When we first started out some 14 years ago on these cases, it was a pretty hard proposition to go up against Judge Hanford, and it cost so much to go to the circuit court of appeals, but of late, since the circuit court of appeals has practically abolished the matter of the nonsuit, why, it is not so hard a matter.

Q. Can't you answer my question directly?—A. Well, now——

Q. Have you any reason to say——A. (Interrupting.) Well, now, that is just an opinion.

Q. (Continuing.) That Judge Hanford has not been entirely fair in ruling?—A. He is so considered among people; that is, not fair with the injured poor.

Q. I am asking you as a lawyer, not a layman?—A. Well, I am talking myself; my own sentiment. That is my own sentiment, that you have got to have a mighty clear case before Judge Hanford to get by the court.

Q. He always gives you a fair opportunity to make your record, and rules——A. (Interrupting.) Always.

Q. (Continuing.) According to——A. (Interrupting.) Always, he will——

Q. (Interrupting.) You are satisfied that his rulings are in accordance—pardon my interruption.—A. Always, as far as preparing the record is concerned. He does everything in his power to prepare a record, but, mark you, a record in the Federal court is a different thing than in the State court.

Q. Well, his rulings are according to his convictions as to the law, don't you think? Don't you so state to this committee?—A. Yes—his convictions; yes.

Q. Haven't you been very uniformly successful in his court?—A. Yes, because if there is any way of getting a case out of his court without it is a dead cinch I would not take it there.

Q. But that is not in answer to my question.—A. Yes, it is.

Q. I say, haven't you been uniformly successful?

The CHAIRMAN. He answered "Yes."

A. I said yes; and that was the reason why.

Mr. HUGHES. That is all.

By Mr. McCoy:

Q. What is your experience with Judge Hanford in the matter of new trials where a verdict has gone for the plaintiff in personal injury cases and a motion made by the defendant for a new trial?—A. I have never known him to give a new trial.

Q. You have never known him to grant a new trial. You speak——A. (Interrupting.) That is, in my cases.

Q. You speak about making up the record and say that the record in the Federal court is a very different matter from making up a record in a State court. Will you explain to the committee just what you mean by that?—A. That is a matter of expense—a matter of expense. It costs so much to go to the circuit court of appeals as compared with the State courts. You can take an ordinary case in the State courts for all the way from $50, where there is a record, where there is a trial, to $150. The same cases in the Federal court would cost from three to ten times as much.

Q. Well, now, explain just why, Mr. Teats, will you?—A. Why, it is the printing of the record and the fees that are charged.

The CHAIRMAN. And the distance?

A. Beg pardon?

The CHAIRMAN. Does the distance cut any figure?

A. The distance has nothing to do with it. It is a matter of record.

Mr. McCOY. You are simply speaking of those disbursements which are taxed as costs in the suit?

A. As costs, yes.

Q. Well, now, is there a more voluminous record required in the circuit than in the State court?—A. No, the record is about the same; but in making up my record in the—from the circuit court, I would first get the stenographer's notes. That was the original cost usually; is the original cost in the State court.

Q. Is that more in the Federal court?—A. That is the same in the Federal as in the State. Then I take that and boil it down, and get a synopsis, and Judge Hanford has always maintained that practice. Then that synopsis must be printed, of course. That is extra from the State court, you understand. Then, of course, your briefs are a little bit more.

Q. Well, now, I don't quite understand what you mean by a synopsis. Do you mean that take questions and answers and reduce them to the narrative form?—A. Narrative form and cut out the trash.

Q. And is that not done in the State-court practice?—A. That is not done, because it is more work, and when you have paid for your transcript, that is the end of it; you can just take the whole—the original transcript with the—up to the court.

Q. Printed?—A. Not printed, no.

Q. You simply take your record, typewritten?—A. The typewritten transcript—that is, the transcript of the testimony as gotten out by the stenographer goes to the supreme court in the State court.

Q. Is that the principal thing that makes the difference in the cost? A. I think that is the principal thing—that and the printing and the fee. In the State court it is only $5 for an appellant, $2 for the defendant or respondent, and in the circuit court of appeals—$25, I think, for the appellant.

Q. Who regulates the printing or the place where the printing is to be done of these records?—A. That is regulated here now under the practice.

Q. What is the practice in that respect?

Mr. HUGHES. It is an act of Congress recently passed.

The WITNESS. Yes, a new act of Congress passed regulates it.

Mr. McCOY. Is that covered in the new judiciary law?

A. Yes.

Mr. DORR. No, it is a separate act.

Mr. HUGHES. It is a separate law, which was recently passed.

Mr. McCOY. I supposed they had the same practice here they had elsewhere; that the clerk would make up the record and have it printed.

Mr. DORR. Yes.

The WITNESS. That is the old act.

Mr. HUGHES. The clerk of the court of appeals, under the rules of the Federal court, had the printing done. The local clerk got up the transcript of the record, and it was sent to the court of appeals and the clerk of the court of appeals had the record printed, and the rates were always higher than you could procure it to be done for elsewhere.

The CHAIRMAN. Anything further with Mr. Teats?

By Mr. HUGHES:

Q. Gov. Teats, do you recall a few years ago Judge Hanford appointing a committee to prepare a law to simplify the practice upon appeal and to reduce the very great and unnecessary costs of appeal, particularly in the making up and transscribing and printing of the record and briefs, which law was prepared and submitted to Congress, but which Congress did not pass?—A. No; I don't remember that.

Q. You don't remember that?—A. I was not on the committee and I didn't pay any attention to it at all. You see we have been playing second fiddle, you know, for a long time, on account of having no judge over our way, and matters like that would come up before the bar here, I suppose.

Q. Well, it was a matter taken up by Judge Hanford some five or six years ago.—A. Yes; I know, but generally that would be a matter here locally.

Q. No; it was not, however.—A. Wasn't it?

Q. When was this case that you have spoken of, when the juror went out, when you say Judge Hanford was asleep?—A. That was in September, I believe—September term; the July term was adjourned over to the September term, 1909.

Q. And what was the title of the case?—A. The title of the case was McElwain *v.* The Tacoma Railway & Power Co.

Q. Who was defending them?—A. I really don't know. They were changing lawyers about that time and I don't remember who the lawyer was.

Q. Do you sometimes bring your cases in the first instance in the Federal court, or always in the State court?—A. No. Generally in the—just as I said before, if it is a case where the facts are so plain and the questions involved are such that there would hardly be any question about the Federal court, I would bring them directly in

the Federal court. To try a case I think it costs about the same in the Federal court, possibly a little less. You have no jury fee to pay.

Q. You are governed very largely by in which court the established rules best fit your case, aren't you? In other words——A. (Interrupting.) To a certain extent.

Q. In other words, there is not an entire unanimity of decisions in the Federal court and our State court on certain questions; is not that true?—A. That is true.

Q. In personal injury questions?—A. Yes; that is true.

Q. And you select the Federal court when the decisions upon certain questions that are involved, or the rules of law that are established and govern that court, are more favorable to your client?—A. Yes.

Q. And in the State court, when the rules of law applicable to the particular facts in your case are more favorable in it?—A. You have to do that.

Q. One of the principal advantages to the plaintiff in the State practice, however, is in the fact that it requires only 10 jurors to render a verdict, while in the Federal court 12 are required; is not that true?—A. That is one advantage.

Witness excused.

Mr. HUGHES. Mr. Chairman, since we have requested Mr. Murphy and Judge Graves to come back, upon your suggestion, and as it will take but a moment, I would like to ask that you use them now. They are busy.

The CHAIRMAN. Very well.

CARROLL B. GRAVES, being recalled, testified as follows:

The CHAIRMAN. Mr. Graves, when on the witness stand the other day you gave us a description of a number of your corporate clients. Do you recall whether you told us all of them?

A. I recall that I did not mention any, if I am correct in my recollection.

Q. Well, then I have confused you, Mr. Graves, with some other witness.—A. Yes sir.

Q. Would you tell us now, if you please, what clients in the way of large corporations you have or have had?—A. I never had but one that I recall. For five years I was representing the Northern Pacific Railway Co. in Seattle.

Q. What years?—A. How is that, sir?

Q. What particular years?—A. 1905 to 1910, as I recall it. Then I was out of the practice for about two years and went into the practice last fall with the firm—became a member of the firm of Bogle, Graves, Merritt & Bogle. That firm is—was representing and is now representing the Oregon & Washington Railway Co.—Railway & Navigation Co.

Mr. MCCOY. I didn't hear that.

A. It was representing at the time I went into the firm and is now representing the Oregon & Washington Railway & Navigation Co.—Railroad & Navigation Co.

The CHAIRMAN. What is it, a combined concern having railroad and navigation interests?

A. Well, I really don't know. So far as I know, they only operate a line of railroad in this State, and that is as far as our inquiries go. I don't know whether they operate any boats or not. I have not given that branch of the business any particular attention. We are engaged in a general practice, and that is one of the clients of our firm.

Q. Have you other clients interested in interstate traffic of any kind?—A. I know of one other. I think there are several, but I only know of one other and that is the Alaska Steamship Co.

Q. Is that one of the Alaska syndicate properties?—A. Yes, sir.

Q. Owned by the Morgan-Guggenheim syndicate?—A. That I don't know. I can not——

Q. (Interrupting.) Well, you know it is commonly known by that name, is it not?—A. I am not able to state. I have only been connected with the business for a period of a few months, and I have given my attention chiefly to other matters.

Q. Its business is in the carrying trade between Alaska and the States?—A. Yes, sir.

Q. Were you the attorney for the Northern Pacific when the Hanford Irrigation & Power Co. was organized?—A. No, sir.

Q. Wasn't it organized during the period between 1905 and 1910?—A. Well, it may have been. I may have been attorney—if it was, I was attorney at that time; yes.

Q. As I recall, it appears from the evidence that there was some legal question involved as to the title of certain lands conveyed by the railroad company to the irrigation and power company. Did that matter come under your observation at all?—A. No, sir.

Q. Did you have any knowledge of it?—A. I had no knowledge of any such matter.

Q. On the part of the railroad company who would probably look after that question at that time?—A. Well, if it was a matter of lands it would probably be looked after by the general offices at St. Paul.

Q. Well, do you know the individual who would probably have charge of it?—A. I could not unless I knew the date. It would be probably the land commissioner.

Q. The transfers, I think, had been made in 1906, 1908, and 1909. Would that help you any?—A. No, sir; I know nothing about that whatever. I have no knowledge of it.

The CHAIRMAN. Are there any further questions with Mr. Graves?

By Mr. McCOY:

Q. During the period, Mr. Graves, that you have mentioned, when you were attorney for the Northern Pacific, did that company have any actions or legal matters pending in Judge Hanford's court?—A. Oh, yes.

Q. A great many?—A. Not a great many; not as many as in the State courts, but then a considerable number.

Q. Involving matters of considerable importance?—A. Not very great importance. The cases that I had before Judge Hanford were mostly personal-injury matters. I don't think there was any judgment involving more than about $5,000 that we had before Judge Hanford's court. The most considerable litigation of the Northern Pacific was in the State courts at that time.

Witness excused.

JAMES B. MURPHY, having been recalled, testified as follows:

The CHAIRMAN. Mr. Murphy, when you were on the witness stand a day or two ago, you were asked to tell us about your professional connection with corporations of one sort and another. Did you tell us all your professional connections in that regard?

A. I did not.

Q. What ones were omitted?—A. Why, I don't know what ones were omitted. That is, I don't pretend now to be able to recall all the corporations we may have represented, or that the office may have represented. My attention has been called to the—since I came into the court room—to the Northern Pacific Railway Co. being a client of the office.

Q. At what time?—A. Between 1905, and I think until possibly October of 1911—from the beginning of 1905, I think.

Q. During your connection with the——A. (Interrupting.) Or the fall. I can't say as to the time in 1905.

Q. Do you recall having anything to do with or being consulted about the transfer of certain lands from the Northern Pacific Railway Co. to the Hanford Irrigation & Power Co.?—A. I was not.

Q. Can you tell us who on the part of the company would have charge of matters of that sort?—A. I can not. It would be mere conjecture. If I were to suggest a name, it would be James A. Kerr, of Portland, but that is simply a conjecture. I understood that Mr. Kerr was looking after some land-office matters, and also matters pertaining to interstate commerce.

Mr. HUGHES. Mr. Murphy, let me interrupt.

A. Yes.

Mr. HUGHES. Haven't you got the initials wrong; isn't it James B. Kerr?

A. James B., possibly; yes, James B. Kerr, of Portland, but I knew very little about the matters of the Northern Pacific. To prevent the absorption of the office force by any particular line of work, we found it necessary to divide up the work and Judge Graves and Mr. Palmer attended almost exclusively to the Northern Pacific work. If I gave it any attention it was when those gentlemen were out of the city or when they were unable to give it attention; so I know very little about the Northern Pacific work.

Q. Do you know whether the company maintained a land office or a land agent in this section?—A. I think it maintained a land office or land agent in Tacoma.

Q. And who had charge of it?—A. I don't know.

Q. Is there anything further, Mr. Murphy, that you wish to add in reference to your clientage?—A. Why, nothing suggests itself to me as material. As I say, I have not pretended to give you a list of our clients.

Q. Well, I don't think we intended to ask for that.—A. There may be——

Q. (Continuing.) Except as to those clients who are interested in interstate commerce at one time and another.—A. Yes.

Q. And that had the right to remove causes to Judge Hanford's court or bring them in that court?—A. Yes. Well, I gave you a number of clients that had that power, I recall.

Q. Do you recall others?—A. I recall one instance now where we represented a private individual who was sued in the Federal court,

the plaintiff being a foreigner—that is, in the court in Tacoma—but I do not recall anything now that I didn't give in a general way.

The CHAIRMAN. Any further questions with Mr. Murphy?

Mr. HIGGINS. And were your firm, in 1906, Mr. Murphy, attorneys in Seattle for the Northern Pacific Railway Co.?

A. It was. Judge Graves was looking after it specially.

Mr. MCCOY. Who just testified, you mean?

A. Beg pardon?

Q. Mr. Graves who just testified?—A. Yes.

By Mr. HIGGINS:

Q. Did your firm have more to do than appearing for the railroad in causes which were brought in the State and Federal courts?—A. Well, we had to attend to matters of franchises before the city council, matters of rights of way, but I think little more than that.

Q. At that time was the Northern Pacific Railway Co., do you know, disposing of any of its land grants?—A. I knew nothing of it, if they were.

Q. Well, were you consulted about any disposition of that land grant?—A. I was not; knew nothing of it; didn't know that they were making transfers.

Q. Well, if a transfer of nearly 9,000 acres was made in the State of Washington——A. (Interrupting.) It might have come to my——

Q. (Continuing.) Comparatively near Seattle, you would have known it, wouldn't you, as attorneys for the railroad?—A. It probably came to my attention as a citizen, not noticing particularly about it. Since you have mentioned here the matter of the Hanford Irrigation Co. acquiring land, I do remember the time when it did acquire lands. I was not aware that they were acquiring them from the Northern Pacific Railway Co., and the only information I had concerning it was newspaper reports—that is, from the daily press.

Q. But you did not know that they were acquiring nearly 9,000 acres from the Northern Pacific Railroad?—A. I did not until you now suggest it or until you suggested it a few moments ago. I may have seen it in the paper at that time—that they acquired it from the Northern Pacific. If I did, it passed without particular notice.

Q. If you happen to know, Mr. Murphy, to whom probably of the Northern Pacific Railway Co. would be referred legal questions arising out of the transfer of any of their lands, I wish you would tell the committee.—A. I do not, further than their general officers were at Tacoma. The general counsel for the Pacific coast, or for this division, as I understand it, including Washington—or the western part of Washington, anyway—was at Tacoma.

Q. Who was he?—A. Mr. Grosscup, for some time, and Judge Reid.

Q. Who was it in 1906?—A. I don't know. Judge Grosscup or Judge Reid.

Q. Either one or the other?

Mr. HUGHES. Grosscup.

A. Grosscup in 1906; yes. Mr. Grosscup or Mr. Reid had been general counsel for the Northern Pacific during all of the time we represented——

Mr. HUGHES. General western counsel?

A. Western counsel for the Northern Pacific during all the time we represented it at Seattle. Their main offices were not here; their main offices were in Tacoma.

Q. That is a brother of the late or the former Judge Grosscup of the Chicago district, isn't it?—A. I don't know.

Mr. HUGHES. He is, if you wish to know.

Mr. HIGGINS. Well, I supposed he was. What are his initials?

Mr. HUGHES. B. S.

A. E. S.?

Mr. HUGHES. B. S.

Mr. HIGGINS. Where does he live now?

A. At Tacome; engaged in general practice there.

Q. And is he still general counsel for the Northern Pacific Railway Co.?—A. He is not. Judge Reid now represents them, unless he has been very recently succeeded.

Q. And I understand you to state, from your knowledge as an attorney of the Northern Pacific Railway Co., that matters involved, or any legal question involved, in the transfer of railroad lands to parties would be in the natural order of business submitted to the general counsel for this section?—A. Yes; or to the land-office department of the Northern Pacific, and I state that without any definite information upon the subject. That is just a——

Q. (Interrupting.) Do you happen to know who the general counsel for the Northern Pacific Railroad—I mean, for the entire system—was in 1906?—A. Mr. Law, wasn't it?

Mr. DORR. Charles Bunn.

A. Beg pardon?

Mr. DORR. Charles Bunn.

A. Mr Bunn.

Mr. HIGGINS. How do you spell it?

A. B-u-n-n.

Q. And he was located where?—A. At St. Paul. As I have stated, I had nothing to do with the Northern Pacific business except in emergency cases, and that was very seldom, when everybody else was away. So I am not acquainted with the men who managed the concerns of the company here, nor particularly with the personnel.

Q. And since the Hanford Co. has been referred to this morning, you recall that you did see some mention of it in the local newspapers at the time?—A. Yes.

Q. That is all the information that you have about it?—A. Yes; it is; but I don't recall that the newspapers reported it was purchased from the Northern Pacific. I don't know.

Mr. MCCOY. Were you ever a stockholder in the Hanford Irrigation & Power Co.?

A. I was not; never.

Q. Were you ever asked to become one?—A. I never was. If I was, it was simply in some circular letter that did not attract my attention, but I don't think I was ever asked. I was never approached to buy stock by anyone.

The CHAIRMAN. Any further questions with Mr. Murphy, Mr. Hughes?

By Mr. HUGHES:

Q. Judge Graves was in fact the member of your firm who represented the Northern Pacific Railroad?—A. The Northern Pacific,

and attended to its matters personally when he was present, and after——

Q. (Interrupting.) And no other member of the firm except when he was unable to attend to its business?—A. Well, Mr. Winders attended to a great deal.

Q. Was he a member of the firm?—A. He was not. After Judge Graves became ill in January of 1910 and went to California for his health, from then on, about nine months, I gave the company's business more attention, but placed it on Mr. Winders as much as possible, and then Mr. Winders finally assumed all the work. Mr. Winders——

Q. (Interrupting.) And succeeded Judge Graves when he resigned?—A. Yes.

Q. Now, you are not a partner of Winders?—A. No. Just for a few months, until we got the matters settled and he got his room.

Q. All the business represented by your firm or by Judge Graves, of your firm, was that arising in the city of Seattle, brought in the courts in this city, either State or Federal?—A. I didn't catch your question, Mr. Hughes.

Question read.

A. No; as I understand it our territory included all north of Pierce County to the Canadian line, but——

Q. (Interrupting.) That is, King County and the counties north?—A. North; yes.

Q. Within the northern——A. (Interrupting.) Snohomish, Skagit, and Whatcom.

Q. Within the northern division of the western district of Washington?—A. Yes.

Mr. HUGHES. That is all.

Witness excused.

The CHAIRMAN. Have you anyone to suggest here?

Mr. HUGHES. Yes; Dr. Allen has come here. We want to ask him just one or two questions.

JACK VIDLER, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name.

A. Jack Vidler.

Q. Where do you live, Mr. Vidler?—A. Milton Apartments, Seventh Avenue.

Q. What is your business?—A. Barkeeper.

Q. Where?—A. Rathskeller, on Second Avenue.

Q. Were you in when some testimony was offered a while ago relative to a certain bet——A. (Interrupting.) Yes, sir.

Q. (Continuing.) About what was known as a Hanford cocktail? Were you in the room at that time?—A. Why, I knew nothing of a bet, but I know a Hanford cocktail, a Hanford Martini, was asked for.

Q. That was by Mr. Jacobs and Mr. Kerrigan, was it?—A. Yes; as I see them now.

Q. And which called for the drink?—A. I don't remember which one.

Q. What did he call for?—A. A Hanford Martini.

Q. What did you give him?—A. I gave him a Martini cocktail.

Q. Won't you give us some—I don't want to steal your trade; but tell us, please, the ingredients?—A. Orange bitters, French vermuth, and gin.

Q. Did you hear any discussion there about the nature of the bet?—A. No; I did not.

The CHAIRMAN. Anything further with this witness?

Mr. HUGHES. I would like to ask a question or two.

By Mr. HUGHES:

Q. Was that cocktail any different from the regular Martini cocktail that is served in your saloon?—A. No; it was not.

Q. The Rathskeller?—A. Exactly the same.

Q. Why did you serve that cocktail when he asked for a Hanford Martini?—A. Well, he asked for it; in a laughing way he asked for a Hanford Martini. I never heard of a Hanford Martini, so I simply made him a Martini cocktail. Mr. Jacobs has often called for a dry Martini served with an onion, and I made him the same thing.

By Mr. McCOY:

Q. If any person that you had never seen before came in and asked for a dry Martini, what would you give him?—A. I would have given them the same as I gave Jacobs—vermuth and gin and orange bitters.

Q. With an onion in it?—A. Yes; with an onion in it.

Q. Suppose they asked for a sweet Martini, what would you give them?—A. Well, I would put gum and orange bitters and gin and vermuth.

Q. And an onion?—A. No; I would not serve an onion in a sweet Martini.

Mr. HUGHES. A little louder.

A. No; I would not serve an onion in a sweet Martini.

Mr. HUGHES. A little louder.

A. No; I would not serve an onion in a sweet Martini.

Witness excused.

The CHAIRMAN. Now, Mr. Hughes, who do you want?

Mr. HUGHES. Dr. Allen.

H. E. ALLEN, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name, please?

A. H. E. Allen.

Q. You live in the city?—A. Yes, sir.

Q. You belong to a profession, I believe?—A. Yes, sir.

Q. What is it?—A. Physician and surgeon.

Q. How long have you practiced your profession?—A. This is the fifteenth year; a little over 14 years.

The CHAIRMAN. Mr. Hughes, you had better ask the doctor. I don't know just what you want to bring out.

Mr. HUGHES. I will make it as brief as I can.

Q. Dr. Allen, testimony has been offered here respecting a meeting at the Alhambra Theater at which Dr. McCormick delivered an address, and where, also, Judge Hanford sat upon the platform and made a short talk at the close or near the close of the evening's entertainment at the Alhambra. Were you on the platform?—A. Yes, sir.

Q. Did you see Judge Hanford there on the platform?—A. Yes, sir.

Q. Did you hear him speak?—A. Yes, sir; I did.
Q. After the exercises there the doctors, I believe, went over to the Washington Hotel and had a little supper and an entertainment for Dr. McCormick. Is that correct?—A. Yes, sir.
Q. At the supper table who sat by your side?—A. Judge Hanford was on one side of me.
Q. Did you engage in conversation with him?—A. Yes, sir.
Q. Now, from all you saw of Judge Hanford that evening, state to this committee whether he was in any degree under the influence of intoxicating liquors when he came under your observation?—A. I don't think there was the slightest suspicion of his being under the influence of liquor. I saw no signs of it whatever.
Mr. HUGHES. That is all.

Witness excused.

JOHN C. WHITLOCK, having been first duly sworn, testified as follows:
The CHAIRMAN. Give your name, please.
A. John C. Whitlock.
Q. Where do you live?—A. Seattle.
Q. How long have you lived in Seattle?—A. Nearly 23 years.
Q. What is your business, Mr. Whitlock?—A. Lawyer.
Q. In the active practice of your profession?—A. Yes, sir.
Q. Are you alone or are you associated with some one?—A. Alone.
Q. Have you always been?—A. I have.
Q. To what extent does your practice bring you into the Federal court?—A. Very little.
Q. Has it at any time?—A. It has.
Q. When did you have business in this court?—A. It has been several years now since I have had any; about six years, I think.
Q. What was the nature of the business you had in court?—A. It was a civil action brought against a client of mine. I think now it was transferred from the State court to the United States court; I am not sure about that.
Q. Was your client an individual or a corporation?—A. It was a corporation.
Q. What one?—A. The Calhoun-Kraus Mill Co.
Q. Well, prior to six years ago did you have much volume of business?—A. No, sir.
Q. In Judge Hanford's court?—A. No, sir; I had occasionally business.
Q. You are acquainted with the judge, of course?—A. I am.
Q. What is the nature of your acquaintance with him?—A. Well, I have a speaking acquaintance and I know him, but I am not anyways intimate.
Q. Have you any social connections or relations——A. (Interrupting.) None in the world.
Q. (Continuing.) With the judge?—A. None in the world.
Q. Have you observed any peculiarities in the judge's manner of presiding in court?—A. Why, I can not say that I do. I have never found any fault with Judge Hanford in the decision of his cases which I was interested in.
Q. Have you at any time seen Judge Hanford when in your opinion he was under the influence of intoxicants?—A. Once.
Q. When?—A. This year, some time.

Q. What time, as near as you can fix it?—A. Well, it was in the springtime this year. I can't fix the date.

Q. Where was the place?—A. It was on Second Avenue in the city of Seattle.

Q. On the street?—A. Yes, sir.

Q. Please tell the committee the circumstances.—A. I was coming up north, the east side of Second Avenue going north, and I saw Judge Hanford coming diagonally across the street from the west side of Second Avenue to the east side, and his gait and his looks was so noticeable that I stopped and looked at him; turned and watched him go off down the street.

Q. How near to him were you at any time?—A. Oh, I was as near as that column there.

Q. That would be about how far, in feet?—A. Well, about 15 feet, I should judge.

Q. Describe his appearance.—A. Well, he did not seem to be very steady on his feet, and from his complexion I judge—I would say that he was under the influence of liquor of some kind.

Q. To what extent?—A. Well, I can't state how——

Q. (Interrupting.) Well, what would you say as to whether or not he was intoxicated?—A. I would say that he was somewhat intoxicated.

Q. What time in the day or night was it?—A. It was in the afternoon, as near as I can remember.

Q. Were there other people on the street; and if so, about how many?—A. Oh, there was——

Q. (Interrupting.) Whether there were many or few?—A. A great many.

Q. Do you know whether others noticed him besides yourself?—A. I do not.

Q. How far did he go while he was under your observation?—A. Oh, I suppose he went a half a block. I turned and watched him. It struck me—he struck me——

Q. (Interrupting.) Did you speak to him or he to you?—A. No, sir; neither one.

Q. With reference to his being unsteady on his legs, tell us more fully, if you can, what you mean by that?—A. Well, he did not walk with a firm step.

Q. How was he with reference to going from side to side or walking in a direct line?—A. Why, he did not go from side to side, but he didn't walk as firmly and uprightly as I have seen him.

Q. What was it in his face, if you can tell it, that led you to the conclusion you reached?—A. Well, I can only answer that by saying that from his complexion I judged that he was drinking some. There is something about a man's face when he is under the influence of liquor that is not there at other times.

Q. Have you at any other time seen him when in your judgment he was under the influence of intoxicants?—A. No, sir.

The CHAIRMAN. Any further questions with Mr. Whitlock?

By Mr. PRESTON:

Q. Mr. Whitlock, you said, if I understood you right, that you had no fault to find with Judge Hanford, so far as his decisions were concerned in any case that you had?—A. In which I was interested.

Q. He has decided cases against you?—A. Yes, sir.
Q. And decided them for you?—A. Yes, sir.
Q. And you speak impartially of all of them?—A. I do in that respect.
Q. What is your opinion as gathered from observation as to Judge Hanford's fairness as a judge and his integrity?—A. My own observation of Judge Hanford is that he is fair and that he is upright in his dealings.
Mr. PRESTON. That is all.

Witness excused.

The CHAIRMAN. Have you one that you can call now?
Mr. HUGHES. Mr. Hartman.

JOHN P. HARTMAN, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your name, please?
A. John P. Hartman.
Q. Where do you reside, Mr. Hartman?—A. Here in Seattle.
Q. How long have you lived here?—A. I have lived in this city over 16 years; in the State over 21.
Q. What is your occupation?—A. Lawyer.
Q. In the active practice of your profession?—A. During the time; yes, sir.
Q. And still?—A. Yes, sir; I have been in the active practice for nearly 30 years.
Q. Are you alone now or are you associated with some one, Mr. Hartman?—A. I am alone, and have always been in the practice here, save about two years I had a partner in Tacoma when I first came to the State.
The CHAIRMAN. Mr. Hughes, you know better and can get at it quicker than I what you want with this witness.

By Mr. HUGHES:

Q. Mr. Hartman, I wish you would inform the committee what opportunities you have had for observing Judge Hanford in the court room; that is, the extent of your appearances in the Federal court before Judge Hanford?—A. During the time I have lived in the State, a little over 21 years, I have practically if not all that time had cases pending in the United States court, have been in and out in the various proceedings that might be had in these cases, and had occasion to observe others when I have been in the court room; usually in attendance upon motion days, and not infrequently at Tacoma, as I have some business yet in the term there. I have also seen Judge Hanford off the bench, in social ways or in a passing way about town, on the trains, about the clubs, places like that, or in banquets, so that I have seen I think a great deal of Judge Hanford during the twenty-odd years that I have known him, and that I have had more or less of an acquaintance with him in meeting him in these various ways. I became acquainted with him the first month that I came to the State of Washington, was introduced to him in a way that he remembered me and the acquaintance has grown from that day—not a close intimate acquaintance, but such as a lawyer would sustain with a judge whom he knows in the professional and social capacity.

Q. Some testimony has been offered here as to Judge Hanford's habits upon the bench, his mannerisms and idiosyncrasies. What can you say in respect to them and also as to the attention which he has given to litigation pending before him while presiding?—A. Judge Hanford's attention to business has been all that I could expect of any judge and equal to that of any judge whom I have ever been before. He acts very quickly, with greater dispatch than I think the majority of trial judges and has been uniformly courteous, decides cases with a clearness, or decides points that may be raised emphatically and clearly, and has given, I think, always very careful consideration to both sides in any case that I have had before him. Of course we are not always all satisfied with the rulings, nor I haven't been; I have gone to the circuit court of appeals.

Q. The point I had reference to more particularly was what has been testified to by various witnesses as to a habit of closing his eyes, dropping his head, when on the bench.—A. I have seen Judge Hanford often, very often, apparently go to sleep; that is, he would close his eyes; I would not say it was further than an appearance of sleeping, and, to start with, it was somewhat embarrassing to me, but I soon learned that that did not interfere in any way with the conduct of business, because when the decisions came or the rulings at any time, I became absolutely certain, as Mr. Teats had said, that Judge Hanford knew everything that was going on, and I finally reached the conclusion it was his way of concentrating his mind more perfectly upon the business in hand when he closed his eyes. I have seen him do the same thing in social intercourse, I have seen him do the same thing when listening to speeches at banquets, for instance, and I have become convinced, and am now, that it is his way of concentrating his mind, because Judge Hanford does concentrate remarkably well. I knew also that Judge Hanford worked very late, probably more so than anyone connected with the local profession in this city, and I have known him to work late myself. I do work at nights a great deal and I have often found him working after I would quit myself, particularly when his office was down in the old building; as I would go by that in leaving my own, I have seen him there after midnight at the time when I would quit, often; I have gone in there and seen him; I have seen him come out of his office the same time I would and we have walked around together to our cars, sometimes take a walk to the top of the hill, to Broadway—have done so a great many times with him—get a little exercise after we had worked late.

Q. You have also met him socially at the club and elsewhere?—A. Yes, sir; yes, sir.

Q. Have you ever seen Judge Hanford, either on or off the bench, when in your opinion he was in any degree under the influence of intoxicating liquors?—A. I have never seen Judge Hanford in any way under the influence of liquor, so far as I could observe, and I would observe him probably more closely than I would a man in private life. I have never seen any suggestion of intoxication.

Mr. HUGHES. I think that is all.

The CHAIRMAN. Any further questions with Mr. Hartman?

Have you seen him drink, Mr. Hartman?

A. I have seen Judge Hanford on occasions at banquets and at very few times in other—the club—never anywhere else—take a

drink, I should judge a cocktail. I am not an expert on those matters, but about the same way as most men whom it has been my privilege to know in public life, occasionally drink with a friend.

Q. Have you ever seen him drink anywhere else than at banquets and at the club?—A. I never have.

Q. That was the Rainier Club, was it?—A. Oh, I think, the Rainier Club, and possibly occasionally in the Arctic Club. I have seen him there in the Arctic Club.

Q. Are you a member of both of those?—A. Yes, sir.

The CHAIRMAN. Any further questions? That is all, Mr. Hartman, thank you.

The WITNESS. Thank you, sir.

Witness excused.

ALEX M. WINSTON, having been first duly sworn, testified as follows:

The CHAIRMAN. What is your name?

A. My name is Alex M. Winston.

Q. Were you subpœned as a witness?—A. No, sir; I was requested to come here by Mr. Hughes; that is the message that I got through another lawyer?

Q. Where do you live?—A. I live at Spokane.

Q. What is your business?—A. I am a lawyer.

Q. How long have you worked at your profession?—A. Twenty years.

The CHAIRMAN. Mr. Hughes, you can probably ask the witness better than I.

Mr. HUGHES. Are you acquainted with Judge Hanford?

A. I am.

Q. How long and how intimately have you known him?—A. I have known him well since the fall of the year 1888.

Q. Have you appeared frequently in Judge Hanford's court?—A. Often—the first case I ever tried in my life was tried in his court, in Spokane.

Q. What do you say as to his attentiveness to judicial business being conducted before him?—A. It is remarkable. I know of no judge whose attention seems to be always, to use the common expression, "on the job," or who rules so quickly and fairly as Judge Hanford. He dispenses—I have noticed him—the same amount of business in perhaps half the time that our trial judges do in the State courts.

Q. Have you ever seen him when he appeared to you to be asleep upon the bench or not comprehending the business conducted or prosecuted before him?—A. Oh, yes, sir.

Q. What is it?—A. I have seen him often in that way when it would appear to the ordinary person so, often—his habits—with his head somewhat bent forward and down, seems to be half dozing.

Q. In your opinion was he, in fact, at such times inattentive to what was going on, or asleep so as not to be able to follow the proceedings?—A. He always knew what was going on.

Q. How do you know that; why do you say that?—A. Oh, I can recall one particular instance, in the fall of 1893, when he was in the trial of a case that I was then defending, when that same thing occurred, and the United States marshal testified on the witness

stand that he had given a dollar to an Indian to go and procure whisky for a third person, and when that incident came up in the testimony, Judge Hanford simply raised up and took the examination of the United States marshal, whose name was Klock, as I recall it distinctly to-day, in hand, concluded it himself, and I defended the case, and he won my case for me, I might say, by his examination of this United States officer.

Q. Have you always noticed on such occasions when objections were made, or any occasion arose for the court to rule, whether or not he ruled promptly and with a clear conception of what preceded?—A. Always.

Q. Have you ever seen Judge Hanford when, in your opinion, he was in any degree under the influence of intoxicating liquors; in any measure intoxicated?—A. Never.

Mr. HUGHES. Take the witness. That is all.

Mr. MCCOY. Do you get a great deal into Judge Hanford's court?

A. I used to be considerably in his court when he held court at Spokane, before the creation of the new judicial district.

Q. What line of business?—A. Trial of lawsuits, sir.

Q. I mean what general line of litigation?—A. I am in the general trial of lawsuits. My business, a large part of it, perhaps half of it, is in trying cases for other lawyers.

Q. Counsel?—A. Yes, sir.

Q. Was any one kind of case which you tried more than another—personal injury cases?—A. No.

Q. Personal injury cases?—A. No; I have tried personal injuries, I have tried criminal cases before him, I have defended a couple of murder cases—murders committed upon the Indian reservation—before him. I have been in equity proceedings before him.

Q. Just a general practice?—A. I am just in the general practice. I have no specialty, sir.

Q. Have you had before him any case in which interstate commerce corporations were interested?—A. Interstate—corporations engaged in interstate commerce?

Q. Interstate commerce.—A. Yes, sir.

Q. What?—A. Personal-injury cases.

Q. For the corporation or the plaintiff?—A. Never, sir. I have never had any employment from corporations—I have always been against them.

Q. Always on the plaintiff's end of the case?—A. Always on the plaintiff's end. But I may say that on perhaps a half a dozen occasions I have accepted individual employment in particular cases, but I don't accept retainers from——

Q. (Interrupting.) But at any rate, generally speaking, your practice is not as attorney for interstate corporations at all?—A. I am not now and never have been attorney for any public service or interstate corporations, save in the way that I have said—that I have accepted employment in individual cases.

Q. Not particularly so?—A. No, sir; except it may come and pay me my price, the same as though for a private man.

Q. We all like to get our price?—A. Yes, sir.

Witness excused.

NELSON R. ANDERSON, being recalled, testified as follows:

Mr. McCOY. Mr. Anderson, tell what took place in the Knosher case in regard to the preparation of the form of an order to be entered on the question of allowances, between you and Mr. Walter McClure?

A. Mr. Dovell and I prepared an order to be signed by the court and Mr. McClure prepared one which he thought ought to be signed, and we appeared before Judge Hanford and he was unwilling to sign either one, and we finally agreed upon an order to be signed. We took Mr. McClure's order, struck out certain lines, and then with pencil marks, marked him what we had agreed upon and told Judge Hanford the conclusions we had reached. This was in his chambers and in the anteroom off his chambers. Mr. McClure and I then left the chambers and walked down the street together, and he said that he would prepare the order and we would go up the next morning and have it signed. The order that I had already prepared contained a paragraph that the receiver and his attorneys should repay into the registry of the court all sums in excess of that which the court had finally fixed upon.

Q. In what amount?—A. Well, it was something like $600, I believe. It was about $300 on the part of the receiver and about $800 on the part of the attorneys. The receiver had received $2,500 and the attorneys for the receiver and trustees had received $3,000. I also insisted and Mr. McClure agreed to it in the presence of Judge Hanford that the order to be entered should recite that they had received $2,500 at attorneys for the receiver and $500 as attorneys for the trustee, to which it was agreed between us that those two items, along with the rest of the order, should go into the order to be prepared and signed the next day.

Q. That is, reciting that they had been received and ordering their return?—A. Yes, sir. The next day I heard nothing more of the matter until about 11 o'clock, when the office boy from the office of McClure & McClure gave me a copy of an order which he said had previously been signed by Judge Hanford. I did not look at the order immediately, because I was busy, but about 5 or 10 minutes of 12 o'clock I read the order over, and I noticed that the order had been changed in two respects; that it did not contain the paragraph requiring the receiver and his attorneys to repay into the registry of the court the sums in excess of the amount allowed them by the court, nor did it recite that the attorneys in question had received three thousand, but did recite that they had received twenty-five hundred. I immediately called Judge Hanford up on the phone, and called his attention to those facts, and Judge Hanford said that he would personally see to it that the money was paid back into court, and he further said that the paragraph had been left out by Mr. McClure, and Mr. McClure had called his attention to the fact, and he supposed that it had been left out because Mr. McClure thought it would be some reflection upon him to have such a recital in the order in question. I think that was all there was to it.

Q. Did Mr. McClure or Mr. Stern contend before Judge Hanford that the fees of the trustee should be any larger than the—should be double, for instance?—A. The original order which I have referred to as being prepared by Mr. McClure recited that the trustee was one carrying on the business of the bankrupt, and was, therefore, entitled to double compensation. The trustee performed no functions except

to collect the accounts receivable, to sell certain parcels of real estate, and to disburse the funds on hand, and Mr. McClure thought that those facts constituted him one carrying on the business of the bankrupt as a going concern.

Q. Had there been any order permitting the trustee to carry on the business?—A. Not at all. There was no business in the hands of the trustee. The business had been closed out. The assets of the bankrupts, consisting of a stock of goods, real estate, and merchandise, together with fixtures and leasehold interests, had previously been sold. There was no business.

Q. Do you happen to remember whether the leased premises occupied by the bankrupt was sold at this sale by the receiver, or at any time?—A. I have always understood so. I would not positively state the fact to be so.

Q. Did you know how long it had to run?—A. I am under the impression that it did not run a great while, but I will say this in connection with that, that McCormick Bros., who were the second highest bidders, were very anxious to secure that location, because they were forced to leave their old location on First Avenue, and they were very desirous of getting this location on Second Avenue, and took that fact into consideration in their bid; at least, I had been so informed by Mr. Burke, the manager of the McCormick Bros.

Q. Did Anisfield go into possession of the premises and carry on the business after purchasing it?—A. They did.

Q. Are they still there?—A. They conducted the business about six weeks, I believe, and then sold the store to McCormicks.

Q. Sold the lease, you mean?—A. Sold absolutely everything.

Q. Everything. That is all.

The WITNESS. Now, Mr. McClure was under the impression that the order had not been changed. I would say in that connection that the same afternoon that the order was entered I went to his office and told him I was unable to understand how a man like he was could have an order entered without first serving a copy upon the attorneys for the opposite side, nor could I understand how he would change an order after its having been once agreed upon. Mr. McClure then first stated, as stated here, that the order was not changed, but he afterwards stated that he had called up Mr. Stern and Mr. Stern thought that those were irrelevant matters, and that they decided to leave them out. So I think Mr. McClure understood the facts.

Mr. MCCOY. Yesterday you testified that during a conversation you had with Mr. McClure, with reference to a conversation that he had had with Sutliffe and Baxter. I believe you were in court when he was examined about that conversation?

A. Yes.

Q. You heard his testimony, did you not?—A. I did.

Q. Do you wish to change your testimony?—A. I do not.

Q. In view of what he testified?—A. I do not.

Q. Do you reiterate your testimony?—A. I reaffirm it.

Mr McCOY That is all

The WITNESS It may be, as Mr McClure says, that I misunderstood him, but I can remember now that either the same day or the next day I repeated his conversation to others, and I think put it in the

form of a letter to people that were interested in this matter, in which I stated the matter as I have stated it on the stand

Mr. CHAIRMAN. Any further question?

Mr PRESTON. I would like to ask whether there was any financial difference to the bankrupt estate resulting from the signature on the order as you are testifying to as it was signed than if the one you say you had agreed upon had been signed?

A. No difference, if the attorneys in question refunded the money into court in accordance with the order of the court Judge Hanford said he would personally see to that matter I don't mean that——

Q. (Interrupting.) You have no doubt it has been done?—A. I don't question it. I don't know whether it has been done or not

Mr. McCOY. Now, Mr Preston, these might as well go in, I suppose.

Mr. PRESTON. Yes.

Mr. McCOY. The next exhibit, whatever it is, will be the certificate of John P. Hoyt as referee in the Knosher bankruptcy case, as to the Sutcliffe Baxter as trustee

Paper in question was marked "Exhibit 76"

Mr. McCOY. Then the next exhibit will be the brief of the receiver and trustee in case No. 2050, United States circuit court of appeals, in that same appeal in which the other exhibits, at least the other briefs, have already been admitted

Paper in question was marked "Exhibit 77."

A recess was here taken until 1 30 o'clock this afternoon.

AFTERNOON SESSION.

Continuation of proceedings pursuant to recess All parties present as at former hearing

F. W. BURPEE, being first duly sworn, testified as follows:

The CHAIRMAN. State your full name to the committee?

A. Frank Watts Burpee.

Q Where do you live?—A. Bellingham.

Q. What is your business?—A. Manufacturer—machinery manufacturer.

Q Any particular line?—A Making a specialty of salmon-canning machinery and shingle machinery.

Q How long have you been in the business?—A Since 1896.

Q. Were you ever involved in any litigation over the validity of any of your patents?—A Yes; once

Q Explain the litigation —A. It was the can-topper machine, on which we had a patent. The Alaska Packers' Association claimed an infringement on the patent owned and used by them and brought a suit against us in Judge Hanford's court.

Q. What was the decision in the case?—A They claimed that there were six claims of their patent infringed by us. Judge Hanford rendered a decision that three claims were an infringement by us, and three were not an infringement by us.

Q. How long did he have that matter under consideration after the trial and before the decision?—A As I remember, it was in May the case was before him and he handed down the decision in December, about seven months later.

Q. During that time did he have in his possession any models of your machine?—A. He had a full-sized working machine of ours; he also had a full-sized working machine of the Alaska packers; he also had two full-sized working models of machines prior to the one granted to the Alaska packers that we had put in as exhibits during that time.

Q. Who were the attorneys on both sides of that patent litigation?—A. Kerr & McCord were our attorneys looking after the business interests and M. A. Wheaton, of Wheaton & Kellogg, of San Francisco, was our patent attorney.

Q. You mean that Kerr & McCord appeared of record as your attorneys, but that the case was tried by M. A. Wheaton?—A. Mr. Wheaton acted as an expert in patent cases and John Miller, of San Francisco, was an expert patent attorney, called by the Alaska Packers, and I think it was Dorr & Hadley were the counsel looking after it in the court here. I am not certain about that, but I think they were.

Q. After the decision of the case by Judge Hanford did you have a talk with Mr. McCord in regard to an invention which Judge Hanford had made covering the same line of machinery?—A. Yes, sir. Mr. McCord asked me to drop in and see him, and he told me that during Judge Hanford's consideration of this case an idea had occurred to him by which this work could be done in a different way from what he had seen and a way that would not infringe any other patent, and he had applied for a patent on that, and he wished to see me regarding that.

Q. That Judge Hanford or Mr. McCord wished to see me?—A. That Judge Hanford wished to see me.

Q. Well, what took place?—A. Well, he said he would arrange a meeting that I might see Judge Hanford, and he wished me to come in again. When I called later he said he had word from Judge Hanford. I am not certain whether he said he had a letter or a telephone message, but Mr. McCord had a paper in his hand that he appeared to be reading from, and he said—he made it appear that the judge said: "Of course, I have no use for an invention of this kind, and unless Mr. Burpee wishes to see me with a view to purchase my invention I do not wish to take the necessary time to explain the machine to him." Then Mr. McCord—I tried to find out from Mr. McCord if he knew anything as to the principle upon which the machine worked, and he did not pretend to know very much about it. There is a distinct difference between the machines we manufacture and the machine manufactured by the Alaska Packers, in that our machine was what is called a continuous-motion machine, while the machine of the Alaska Packers was an intermittent-motion machine. In our machine we could do double work than we could do with the Alaska Packers' machine, and I wished to find out whether his machine was on the continuous-motion plan, as ours was, or on the intermittent-motion plan, as was the machine of the Alaska Packers. He said he thought it was the intermittent.

Well, I told him it would necessarily, then, be a slower machine, and I told him the Alaska Packers' patent only had a little over a year to run when the patent would expire, and I did not think I would consider it at all. I told him that I did not think that Judge Hanford, in

his position, would be capable of getting up a machine to do that work, not having had any experience along that line. I did not have any confidence in it at all. And then again I did not think that he should be in that business, and I didn't want to have anything to do with him or his machine, or any part of it. Mr. McCord asked me to go with him to see Judge Hanford in the meantime. I told him also that I had a scheme by which I thought the machine could be made to do the work and would not infringe the claims decided by Judge Hanford as being infringed, and I told him that I had the drawings with me for the change that I proposed to make. So he asked me to go with him to the judge's office and to explain the matter to him. We came into Judge Hanford's office.

Q. Where?—A. I think in this building; I am not certain. This is the Federal Building?

Q. Yes; in the courthouse, at any rate.—A. It was in the judge's office, anyway; it was not in the court room—in his private office, and Mr. McCord did most of the talking. He told the judge about what I had told you now; that I did not care to take up his machine or do anything with it, and he told him also that I had some plans of a change that I proposed to make in my machine, and I took out the plans and the judge looked them over very carefully. He seemed to be considerably interested, but he did not express an opinion one way or the other; he did not show me his machine and did not explain his machine to me at all—he just dropped it.

Q. That was all that took place in that office?—A. That is all I recall to mind just now.

Q. Do you know whether or not Judge Hanford obtained United States letters patent for his invention?—A. Yes, sir; he did.

Q. Have you ever seen a copy of the drawings and specifications?—A. I sent and got a copy of the Patent Office, a copy of the drawings and specifications and I went through it very carefully.

Q. You don't happen to remember the number?—A. No; I do not.

Q. Well, about when was it?—A. Well, about the year 1903–4—it would be one of those two years, probably 1904.

Q. Have you ever seen a model or a sample of the invention which he made?—A. Yes, sir.

Q. Where did you see it?—A. At Bellingham, in the cannery up there. I first saw it in the machine shop of the Pacific American Fisheries—it is the Pacific American Fisheries now—I think it was called the Pacific American Fisheries Co. then. That cannery at that time was owned by the Pacific Packing & Navigation Co., but was in the hands of a receiver.

Q. Who was the receiver?—A. Well, it was Mr. Kerr, and I think there were two others—I have forgotten their names.

Q. McGovern?—A. McGovern.

Q. And Hallock?—A. I have forgotten. I saw the machine there and I saw it in the cannery afterwards, and I saw it in the machine shop of the cannery company, and I saw it in the cannery afterwards, and I saw Judge Hanford in there looking at it at one time.

Q. When it was in the machine shop was it in the process of being manufactured?—A. It appeared to be; yes, sir. There appeared to be something being done to it.

The CHAIRMAN. Any further questions of Mr. Burpee?

Mr. McCoy. Just one thing more. Cross appeals were taken to the circuit court of appeals from Judge Hanford's decision by the litigants?

A. Yes, sir.

Q. And the outcome of that was what?—A. The claims decided against were upheld in the circuit court of appeals, and if I remember right, one claim that was decided not to be an infringement was decided to be an infringement by the circuit court of appeals, making four claims infringed.

Mr. Dorr. That is, Mr. Burpee, your company appealed from Judge Hanford's decision to the circuit court of appeals?

A. Yes.

Q. And the circuit court of appeals affirmed his judgment?—A. Yes.

Q. And even went a step further by including, as you remember, by including one other claim?—A. Yes, sir. The Alaska packers also appealed from Judge Hanford's decision.

Q. As to those claims that were disallowed?—A. Yes.

Q. But Judge Hanford was fully sustained by the circuit court of appeals?—A. Yes.

Q. Now, when was it that the letters patent were issued to Judge Hanford, if you know, with respect to the time of this litigation; was it not away after it was concluded in this court?—A. How?

Q. I say was it not some time after it was concluded in this court?—A. I don't think so; I would not be certain about that, because the litigation started in 1901 and before it got through the court of appeals we applied for a rehearing and did not get it—it was 1904.

Q. I say after it was concluded in Judge Hanford's court—I am not speaking of the appeal to the circuit court of appeals.—A. Well, I don't know as you would just consider it to be concluded in Judge Hanford's court.

Q. After he had rendered his judgment decree?—A. After that I understood that he had to assess the damages.

Q. I understand that, too.—A. Which would not come on until after the court of appeals was through—until after Judge Hanford had rendered his decision. Yes; I know that.

Q. After he had rendered his decision that his patent was issued?—A. Yes, sir.

Q. Do you remember how long?—A. No; I don't remember exactly; it was some months afterwards, anyway.

Q. You do not mean to have the committee understand you as saying that during the progress of this litigation before Judge Hanford's court that he ever tried to sell you his patent, do you?—A. Not until after he had rendered his decision; but after he had rendered his decision I understood he had to assess the damages.

Q. Yes.—A. I didn't like his wanting me to purchase his patent. I had no faith in it—but the thought struck me that it might pay me to do it—it might lessen the amount of the damage.

Q. Did Judge Hanford ever offer that patent to you?—A. No, sir; nothing more than what I told you.

Q. Well, that was what McCord told you?—A. That was what Mr. McCord told me and I came to his office with Mr. McCord on the subject after McCord explained to him that I didn't care to purchase it, and explained to him why I did not care to purchase it.

Q. And this was when and where?—A. Oh, it was a month, I should say, after handing down his decision—it was within a month or two months at the outside.

Q. Where was it?—A. Seattle. I was talking to McCord in his office down on Pioneer Square.

Q. McCord was one of your attorneys?—A. Yes, sir.

Q. And what did McCord say to you?—A. He said that Judge Hanford—in the first place he told me that Judge Hanford wanted to see me regarding his invention. He didn't say what he wanted to see me for, or what it was about, or anything at all about it. When I called the second time he said that he got word from the judge and that the judge did not care—unless I wished to see him with a view to purchasing his invention, he did not wish to take the necessary time to show it to me.

Q. Now, what else—what else was said?—A. Well, I told him, as I have just been telling the committee here, that I did not want to buy his invention at all.

Q. That you did not want to buy it?—A. I did not want to buy it. I didn't think he was competent to get out a machine to do the work.

Q. Was that after Judge Hanford's patent was issued?—A. No; it was before his patent was issued.

Q. Sir?—A. It was before his patent was issued. He told me that the judge had applied for a patent on his invention.

Q. It was after he had applied for the patent, but before it was issued?—A. Before it was issued, yes.

Q. Now, as a matter of fact, the damages which you are talking about had been assessed long before this by stipulation?—A. No, sir.

Q. They were not?—A. No, sir.

Q. You are sure about that?—A. I am sure about that.

Q. When the original injunction was applied for it was then arranged what the damages would be—so much a case?—A. That was to the canneries—we were not packing fish.

Q. To all those who were using the machine?—A. Yes, sir; but the damages which the Alaska Packers sustained by us manufacturing the machine was not assessed.

Q. But Kerr & McCord, as attorneys representing all the defendants, stipulated originally that the damages would be 5 cents a case, didn't they?—A. That was after the time I was talking—that came up after the time I had this talk.

Q. Wasn't that done when the suit was brought?—A. No, sir.

Q. Originally?—A. No, sir.

Q. When the injunction was asked for?—A. There was no injunction asked for—it was a case in equity.

Q. No injunction asked for?—A. Not in the start.

Q. You are sure about that?—A. Absolutely sure.

Q. Absolutely sure?—A. Absolutely sure.

Mr. McCoy. Just a minute—did you ever read the bill of complaint in the suit against you?

A. Yes, sir.

Q. Don't you remember that there was the usual prayer for an injunction in it?—A. There may have been—but there was no injunction—there was no injunction put on it.

Q. Pending the suit?—A. Pending the suit—I may be mistaken about being absolutely sure about the petition being asked for, but there was no assessment beforehand as to any damages that we would be liable to.

Q. You were not enjoined pending the trial?—A. No.

Q. Pending the litigation?—A. No.

Q. There was one suit against you as a manufacturer of the machine?—A. Yes.

Q. And then there was an entirely separate suit against one of these canneries users of it?—A. I do not think that suit was started until after the judge had rendered his decision—I don't think the suit against the canneries was started until after this conversation took place.

Q. At any rate there were two separate and distinct suits——A. Certainly; I think there were more. I think there was a suit for each different cannery, I think. That is my recollection of it.

Mr. McCoy. Mr. Dorr, Mr. Burpee is going to be here until the midnight train, and if you wish to contradict him in any way, or give any different evidence, if it is possible to get Mr. McCord this afternoon to testify on this matter, the committee would like to have you do it.

Mr. Dorr. I understand Mr. McCord is on his way home from California and will arrive here to-morrow evening. He is down in San Francisco engaged in an argument before the circuit court of appeals yesterday. I was informed by Mr. Kerr to-day that he was on his way back to Seattle and would not be here until Wednesday, or late on Tuesday night.

Mr. McCoy. Then my request can not be complied with.

Mr. Dorr. I would like to ask Mr. Burpee if he does not recollect that there were some six or eight of those suits against the various cannery companies?

The Witness. I think there were.

Q. All involving your patents?—A. All involving our patents.

Q. And your company was back of the whole thing?—A. We were manufacturing the machines and selling them to the different companies.

Mr. Hughes. He did not answer your question.

The Witness. No; the companies were not back of the suits—I did not just understand the question—the company was not backing the suit—we paid for all our litigation.

Mr. Dorr. You were back of the patents?—A. We were manufacturing the machines.

Q. That those people were charging you with having infringed?—A. Yes.

Q. Where was this conversation with Mr. McCord and Judge Hanford?—A. In Judge Hanford's office.

Q. Where was the office?—A. I think it was in this building.

Q. What room in this building, if you remember?—A. I could not say that. We came in and we went to his office.

Q. What year was that?—A. January, 1903; January or February, 1903.

Q. Now, was that the time you made an application in court to dissolve the injunction because you claimed you could change your

manufacture?—A. I don't think we made an application to dissolve the injunction.

Q. What was your object in changing your style of manufacture?—A. We did not want to infringe the clause that Judge Hanford had decided was infringed.

Q. You advanced a claim in court, didn't you, that by substituting some other device you could avoid the efficacy of the decision?—A. I think that was brought in among some other cases, but I don't think that was brought in in our case.

Q. Well, you were the manufacturer?—A. Yes.

Q. Well, didn't you advance the theory, at least, that by changing your style of machine you could avoid the infringement?—A. After Judge Hanford had rendered the decision?

Q. At some time in the proceedings, I do not know just when.—A. I don't think so; I think that from his decision we took the appeal to the circuit court of appeals.

Q. But before that, and when the litigation was pending here, didn't you attempt to avoid the effect of Judge Hanford's preliminary injunction?—A. I don't think there was any preliminary injunction granted or given at all. There was no injunction that I know of at all except one injunction enjoining us after Judge Hanford rendered his decision.

Q. Don't you know that there was a conditional injunction that unless the users put up royalties equivalent to the amount of the stipulated damages the injunction would go?—A. Yes, sir; but that came up after this conversation, though; I am certain of that.

Q. After the conversation?—A. Yes. As I remember it, it was the following spring. This was in January or February, and along late in the spring an injunction was applied for to restrain those canneries from using the machine.

Q. That was done when the suit was filed, wasn't it, Mr. Burpee?—A. No, sir; I don't think so. I don't think it was done until after Judge Hanford had rendered his decision.

Mr. McCoy. As I understand it——

Mr. Hughes. Mr. McCoy, will you permit me to suggest that we could get the papers here and let him come back again, and we can get the exact facts from the records.

Mr. McCoy. I do not think there is any question between Mr. Dorr and Mr. Burpee. If Mr. Dorr will indicate what suit he referred to it will be clear enough. The witness testified that in the suit against him there was no injunction pendente litem; now Mr. Dorr is asking him about injunctions in the suits that were brought against the users of the patents, and I think it likely that even if successful in the suit against the manufacturers, and in those suits, that an injunction pendente litem would issue for the asking; but his testimony has been right through that there is no injunction and he is not saying anything different now. He is testifying to his recollection.

Q. Did you hear the trials or proceedings that the canneries were defending?—A. No, sir, I did not.

Q. Did you have anything to do with that litigation except testify?—A. I didn't even testify.

Q. You didn't even testify—you do not remember of the attorneys and do not know anything about the stipulations and had nothing to do with the suit?—A. I knew of it, but it came to me.

Q. I mean, you didn't know anything about it except in a general way——

Mr. DORR. As a matter of fact, your suit was the only one that was ever tried out, was it not? Is it not a fact that that was the one that involved the validity of the patents?

A. Yes, sir, that was tried out; I am not certain of the other suits that I spoke of, though, whether they paid damages or not.

Q. The others were withdrawn or withheld, so far as the final determination was concerned, depending upon the result of your case?—A. Yes.

Mr. MCCOY. So that, pending the result of your case, after the decision and while the appeal was pending——

A. That is what I understand.

Q. (Continuing.) You know whether those other suits were instituted before Judge Hanford's decision in that case?—A. I don't think they were.

The CHAIRMAN. I suggest that we get the records.

Mr. DORR. I do not want to educate this witness. I want to hear from him. I know and I will state to this committee that this witness is absolutely wrong in his statements.

Mr. MCCOY. Then the records will show.

Mr. DORR. Yes, the records will show that, but I do not want to educate him in advance when he states so positively about these things.

The WITNESS. I would like to withdraw that part of my statement that I was positive there was no injunction applied for, but I will say this, there was no injunction granted before Judge Hanford gave his decision.

Mr. DORR. Well, wasn't it because those damages were stipulated? A. No.

Q. And paid?—A. No—you mean damages with Letson and Burpee.

Q. No, I mean damages for the people that were using the machines in the operation of their canneries.—A. You are talking about one thing and I am talking about another.

Q. Those were the only people who were using the machine at that time—canneries—you ceased to manufacture them, didn't you?—A. We changed the machine and we manufactured the machine in a changed form. After the injunction we ceased manufacturing—after we were enjoined—but I do not think we were finally enjoined until the court of appeals rendered their decision.

Mr. DORR. I will try and be prepared later in the afternoon to produce the records in those cases. Will it be possible for you to be here to-morrow, Mr. Burpee, when Mr. McCord returns?

The WITNESS. Yes, sir.

Q. You have heard me state that he is out of the city to-day?—A. Yes.

Q. Will you be here to-morrow?—A. I will, if it is necessary.

Q. Did you come voluntarily or were you subpœnaed?—A. I was subpœnaed. I gave no information to this committee voluntarily.

Mr. HUGHES. What is the last answer?

A. (Read by the stenographer.)

The WITNESS. That is, I am not right in that.

Mr. MCCOY. The committee were informed that you had had some litigation and we wrote a letter to you—well, I won't be sure of that either——

The WITNESS. Well, I got a letter from the committee asking me——

Mr. MCCOY. Asking you for the information, and you gave the information, and then we issued a subpœna?

The WITNESS. That is the idea.

Mr. MCCOY. But who told us that you ever had this litigation? I haven't the slightest information.

The WITNESS. I don't know either.

The CHAIRMAN. Are you through with Mr. Burpee at this time?

Mr. DORR. With the understanding that he will come back.

The CHAIRMAN. You may stand aside. Be here to-morrow after lunch.

Witness excused.

F. H. PETERSON, being first duly sworn, testified as follows:

The CHAIRMAN. What is your full name?

A. Fred H. Peterson.

Q. Where do you live, Mr. Peterson?—A. I live in Seattle.

Q. How long have you lived here?—A. Since April, 1884.

Q. What is your business?—A. Practicing law.

Q. Are you a member of any firm of lawyers, or are you alone?—A. I practice law with Mr. MacBride, Philip D. MacBride. It is Peterson & MacBride is the firm name.

Q. I suppose you know Judge Hanford during the years you have been here?—A. I have known him since April, 1884.

Q. Practicing in his court?—A. Yes, sir.

Q. To what extent?—A. Well, simply like most attorneys do—right along, an admiralty case once in a while, a bankruptcy case or a civil case.

Q. Have you at any time seen Judge Hanford when, in your opinion, he was under the influence of intoxicants?—A. I have.

Q. When?—A. Well, upon a number of occasions. For instance, I have seen him on the Broadway car, that is the car that runs from the center of the city out to where he lives—he was on the car upon several occasions, particularly the latter part of 1910 and also 1911.

Q. Take the first one that you mentioned, in the latter part of 1910 and put your mind on it. What kind of a day or night was it?—A. It was somewhere between 10 and half past 11.

Q. At night?—A. At night; yes.

Q. What direction were you going?—A. Judge Hanford lives somewhere near Galer Street and Tenth Avenue north, and I was going to Tenth Avenue north and Decker Street, which is about six or seven blocks farther north than where he lives.

Q. Which of you was on the car first?—A. My recollection is that I was on the car first.

Q. Were there many others on the car?—A. Yes.

Q. What was it that first attracted your attention to the judge?—A. Well, the judge came into the car, and it was evident that he was under the influence of liquor. He took his seat and went to sleep, and when the car stopped at Galer Street, where he was in the habit of getting off, the conductor waked Judge Hanford, and then helped Judge Hanford off the car, and led him to the entrance to his place.

Q. How far?—A. Approximately 40 to 50 feet.

Q. Did he have to help to get him from his seat to the door of the car?—A. Yes.

Q. Did he need it?—A. I think so.

Q. Did he need any help from the car to the gate?—A. Well, that is a question of opinion; I think as a matter of courtesy the conductor helped him along.

Q. Did you see him after the conductor left him?—A. No; the car went on and it was dark, of course.

Q. Well, what would you say, Mr. Peterson, his condition was on that occasion?—A. Well, he was under the influence of liquor, and considerably so.

Q. I suppose that if a man takes a single drink he would be more or less under the influence of it; but what would you say as to whether or not you would call him intoxicated?—A. Well, of course, there are different degrees of intoxication. Some people think they are not intoxicated unless they have difficulty in lying on the floor without hanging on; he was undoubtedly considerably under the influence of liquor.

Q. Take the next occasion that you have in mind; locate it as nearly as you can in point of time?—A. Well, I can not say the day nor the week, for that matter, but I know that I have seen Judge Hanford on a number of occasions under the influence of liquor when I was going home on the car at night. I lived in that locality for between three and four months, and after that I did not travel on that car late at night.

Q. Could you tell the committee on any of those occasions he attracted the attention of others on the car than yourself?—A. Well, of course, I am not able to say, except that there were others who could see it as well as myself.

Q. Have you seen him otherwise than on the street car when, in your opinion, he was more or less intoxicated?—A. Well, I have; but I think that was generally at bar association meetings, where I think everybody who was a member has a constitutional right to get full if they want to.

Mr. HIGGINS. Well, were they all full?

A. Well, your question is what?

Mr. HIGGINS. Read it.

Question repeated to the witness as follows: "Were they all full?"

A. At bar associations? Oh, no; not all.

The CHAIRMAN. Will you tell the committee about how many times you have seen him on the street car intoxicated?

A. I think I have seen him under the influence of liquor at least a half a dozen times on the street cars.

Q. Within how long a period of time?—A. Within from four to five months.

Q. Have you seen him on any occasion but the first one you have told of, when he had help to get off?—A. Only one occasion that there was any help offered him or accepted.

Q. Had you practiced in his court to any considerable extent?—A. Well, off and on, and several cases went to the circuit court of appeals, and of course there were bankruptcy cases and admiralty cases. I have had a case—an admiralty case—disposed of about six weeks ago here in this court.

Q. The point I want to get at is whether you are familiar with Judge Hanford when he is not intoxicated so that you can compare him with himself?—A. Oh, I have known Judge Hanford for 28 years; I presume it would be safe to say I have seen him on an average of three times a month during all that time, sometimes daily.

The CHAIRMAN. Are there any other questions?

Mr. HUGHES. When did you say you lived out in that locality?

A. In October, from October 16, 1910, until the 1st of February, 1911.

Q. And during that time did you frequently go home late at night?—A. My usual home-going time would be about 9.30 to 10 o'clock; once in awhile I would be attending lodge or some business would keep me late in the office and I would be delayed perhaps until 10.30 or 11 or 11.30.

Q. On several occasions you saw him appear to be asleep in the car?—A. Yes; that, of course, is quite a common occurrence with him—with Judge Hanford—to go to sleep.

Q. Knowing him, did you sit down and talk with him on any of those occasions?—A. I did, upon a number of occasions.

Q. Did you find that he was perfectly alert and clear in his conversation as soon as you talked with him?—A. Sometimes he was all right in every respect and he had no liquor or anything, and at other times, of course, it was different.

Q. When you talked with him, you mean?—A. Yes.

Q. Did he enter into conversation with you as he does at other times?—A. Sometimes; when I would see him there I would take a seat alongside of him and enter into conversation.

Q. Well, he always talked to you intelligently and clearly when you did, didn't he?—A. As a rule, when he spoke he would speak clearly and intelligently.

Q. Who was the conductor whom you have told the committee assisted him on one of those occasions off the car into his gate?—A. I do not know; I did not inquire of any name, nor was I interested.

Q. How?—A. I was not interested in inquiring the name of the conductor, nor did I.

Q. You do not know him—you could not designate the man in any way?—A. I don't know.

Mr. HUGHES. That is all.

Mr. MCCOY. You said, as a rule, Judge Hanford talked in a normal way when you would talk with him on the car—how did he talk when there were exceptions to all the rules?

A. Well, I do not wish to be understood that Judge Hanford is what you call a chronic drunk. I have seen him many a time there when he was perfectly sober, and if he had taken any drink it was not noticeable and I did not know it, so that we would naturally presume that the man had not taken a drink, and at those times he would talk

the same as always. Judge Hanford is peculiar in a way. Now, for instance, he is inclined to go to sleep on the street car; well, I have often done that myself, many times. That is nothing against any man, and yet at other times, and particularly on that one occasion, he was certainly seriously under the influence of liquor, and other occasions where liquor was noticeable; and very frequently when he was sitting alone in the seat I would take a seat alongside of him and sometimes he would continue the conversation and sometimes he would not. However, that is a peculiarity of Judge Hanford, and would not necessarily indicate that there was anything wrong with him. For instance, he and I had offices adjoining from the 1st of January, 1885, until the 1st of January, 1888—three years—and I really never became intimately acquainted with Judge Hanford. I was in his office and he was in my office; I would sometimes, as a matter of courtesy, do notary work for him and he would do it for me, and yet we were always distant in all those years. He is very peculiar in a way, and I have no doubt that some people might think when he was on the car that he was under the influence of liquor when he really was not. And this habit of going to sleep—I say now that I have done that myself on the car—many times have dropped to sleep on the car—that is nothing against the man, but I have seen Judge Hanford under the influence of liquor, and in fact he and I have been in saloons together, and he has taken a drink and I have taken a drink there, but usually I don't take any intoxicating drinks—I take a glass of buttermilk, or a glass of water, or something like that.

Q. You have taken other kinds of drinks with him?—A. No, sir; I have never drank with Judge Hanford.

Q. I thought you just said that you had been in saloons and drank with him?—A. Well, he was drinking by himself, but I would be there with friends for instance; but I never knew Judge Hanford to take a drink with anybody.

Q. You take a drink of liquor sometimes?—A. No.

Witness excused.

Mr. DORR. Mr. Finch is in waiting and owing to the suggestion you made this morning, I would like to put him on the stand for a moment for his accommodation.

The CHAIRMAN. Yes; you may do so.

J. L. FINCH, recalled, testified as follows:

The CHAIRMAN. Mr. Dorr desires to ask you some questions, Mr. Finch.

Mr. DORR. Mr. Finch, you have several times spoken about the Scandinavian-American Bank paying money, or advancing money, that went to the receiver and the receiver's attorneys in the Heckman & Hansen case. I want to be clear as to whether you mean by anything which you have stated or intimated that that was the bank's money that they were paying out to the receiver, or is it money that was deposited by or belonging to the estate?

A. I mean to say that was the money of the Scandinavian-American Bank that was being paid to them.

Q. You mean to say that the Scandinavian-American Bank paid the receiver's fees out of its own funds without recoupment?—A. I

mean to say just this—if you will allow me to take that petition in re Ballinger.

Q. Certainly [handing paper to witness].—A. I mean to say, sir, that out of the sum of $2,006.45 that you are referring to the receiver paid out to various parties a total of $570.30, the parties mentioned being creditors of the receivership, not of Heckman & Hansen, and the balance of that money he divided up between himself and the attorney for the receiver, Richard Saxe Jones, Mr. Jones getting $940 and the receiver himself taking the balance of the fund, which was $496.15.

Q. Well, did that money belong to the estate or was it the bank's money?—A. I can only answer that——

Q. I wish you would answer my question. [Question repeated to the witness.]—A. I can only answer that by giving you the facts about it. I do not know whose money it was. It is a matter of law.

Q. What I am trying to get at, Mr. Finch—I think it will appeal to you very simply—it is the question of whether the money that was paid to the receiver and the receiver's attorney came out of the estate eventually, or did the bank contribute that money?—A. As I said before, I could not answer that question, but I can tell you the exact facts about it and you can draw your own conclusions.

Q. Well, you do not know whether it was money that was paid out by the bank, for which it did not recoup itself, or whether it was money that eventually came out of the estate?—A. No; I can not answer that; not because I do not know the facts, but because you are asking me for a conclusion. I can give you the facts very straight if you want them.

Q. I am asking you now whether there was any of that money paid at any time except by the order of the court?—A. I do not know that either, but I can give you the facts.

Q. Well, on that point could you give me the fact as to whether the money that went to the receiver and the receiver's attorney was ordered paid to them by the superior court?—A. I know that there was an order granted by the superior court that Mr. Larsen should pay his attorney out of the fund that he was supposed to have, but which fund he did not have.

Q. Well, he got it later, didn't he, when the property was sold?—A. Well, I will ask you whether he did. I will tell you the facts and then I will ask you whether he did. I can't answer it any better than that. Will you let me state, Mr. Dorr, that the receiver——

Mr. DORR. I want to interrupt you, Mr. Finch, to make my question clear, if it is not, to you, and it is simply this: I want to know—I want your statement to the committee as to whether any of this money that you say was paid out by the bank to the receiver and the receiver's attorneys eventually was contributed by the bank, or was it money that came out of the estate of Heckman & Hansen and was paid under orders of the court?

A. It is a matter of conclusion; I do not know. I can give you, though, the exact facts and you can determine that for yourself.

Q. Are there any facts in that connection except what you have already given?—A. Oh, yes; there are lots of them. I have explained to you and to the committee that the question of whether or not the Scandinavian-American Bank bought in this property is a matter of argument which would take several days to show from the

evidence that was offered, because it is so involved in intricate bookkeeping.

Q. That is not what I am inquiring about—as to whether the bank's bookkeeping was intricate or not. What I am trying to find out is whether you contended that the bank paid out any money for the administration of this estate, as a bank or otherwise, apart from the funds that were derived from the sale of the property.—A. Well, then, I will answer your question in the affirmative; they did. There were no funds derived from the sale of the property.

Q. You make that statement now, that there were no funds derived from the sale of the property?—A. I put that this way: That when the receiver said he had money he did not have a nickel.

Q. Well, did he have it later at any time?—A. No; he was discharged. But let me explain now. The books in the State court were straightened by the Scandinavian-American Bank going in there after the receiver was discharged and putting in a certain fund to square things there; but the receiver never had a nickel. He didn't have enough to pay the expenses of the receivership.

Q. Mr. Finch, your petition in the Federal court shows that the receiver had on hand $24,000.—A. My first petition, and I gigged back on that on my amended petition when I discovered the facts. I supposed he did, because I relied on the State court records.

Q. Now, let me understand you. You contend that there was no money ever realized by that sale?—A. No, sir; but I claim that the receiver never got a cent of it, and he was discharged before he ever got a cent of it.

Q. Whether he got it himself or not, did not the money go into the registry of the court?—A. It certainly did.

Q. And was not the money paid out under the orders of the court?—A. It certainly was.

Q. And did not those orders of the court include the money that went to the receiver and to the receiver's attorney?—A. No, sir; it never mentioned it; not that amount.

Q. It never mentioned it?—A. Not that amount. I put it this way: I can not recognize it. There is no order that takes cognizance anywhere of an item of $2,006.45 which was paid by the bank to the receiver the day that he was discharged.

Q. Do you want to state to the committee that the bank paid out that two thousand odd dollars of its own funds to the receiver or the attorneys, or don't you?—A. I want you to understand that they paid it to the receiver and then the receiver disposed of it as he saw fit and the bank paid that money out of its own funds.

Q. And didn't get it back?—A. Oh, I don't know what they got back. I don't know. The intricate workings between the parties—I don't know whether they were ever made good or not.

Q. You know the difference between the bank's losing this money and advancing it and recouping out of the funds?—A. Yes, sir; exactly. The bank didn't lose a cent; the bank was a big winner in this matter, if you want to put it that way.

Q. That is your contention?—A. The bank is out nothing.

Q. And in nothing?—A. Oh, it is in a lot.

Q. You stated yesterday that it just collected what was due it.—A. I beg pardon?

Q. You stated yesterday that it just collected what was due it—what was owing to it.—A. I beg your pardon, but I didn't mean to say anything of the sort. I meant to say that after they took all these parties' property they forewent all claims against them; I mean to say in that sense that they collected their money.

Q. That is, by taking the property; that is what you mean?—A. That is, by taking all the property of Heckman & Hansen. They never said another word about what Heckman & Hansen owed them.

Mr. DORR. That is all I wanted to ask you.

Mr. MCCOY. Mr. Finch, what you mean the committee to understand is that the whole proceeding was so manipulated that you were never able to discover the inside of it, do you not?

A. That is true; and I mean to say this: That while I do not know exactly what it was, I know what it was not. It was not a proceeding in good faith.

Q. Now, are you prepared to draw any distinctions—fine distinctions—between the bank and the bank's officers profiting—the bank profiting on one side and the bank officials profiting on the other?—A. Hardly, no; in this case I would be willing to draw this distinction and I would not even say it was a question of the officers profiting—it was the bank itself. They tried to foist upon Judge Hanford and Judge Smith the story that it was the officers of the bank, and I have charged them with perjury in that regard and have been willing to prove it. It was because I said to them before Judge Smith that they were a gang of liars and that I would make them the sickest crowd that ever attempted to foist a job of perjury on the court, and then I asked Judge Smith for the certificate back to Judge Hanford in which he should incorporate my remarks there so that Judge Hanford should be fully advised that we had the fireworks in Judge Hanford's court. Now, you will find that in the certificate which is before you, which is, under your directions, made a part of the evidence of Judge Smith.

Mr. MCCOY. That is all, Mr. Finch, but I wish you would remain in court if there is going to be any more testimony on this matter. Mr. Finch, this matter won't, apparently, come up now, but if you will be where you can be reached if it comes up again—in any event, please be here in the morning at half past 9.

Witness excused.

MANLY B. HAYNES, being first duly sworn, testifies as follows:

Mr. HIGGINS. State your full name.

A. Manly B. Haynes.

Q. And you reside where?—A. Seattle.

Q. How long have you lived in Seattle?—A. Twenty-two years.

Q. You are the M. B. Haynes that was interested in the Hanford Irrigation & Power Co.?—A. I am.

Q. What is your present business?—A. I am in the real estate and land business.

Q. How long have you been engaged in that business?—A. Since 1904—over eight years.

Q. And before that?—A. I was in the banking business.

Q. In Seattle?—A. I was officer in the Seattle National Bank up to that time.

Q. What relation, Mr. Haynes, if any, do you bear to Judge Hanford?—A. I married his daughter.

Q. I want you to tell the committee what Judge Hanford's family consists of at present.—A. Two sons.

Q. What are their names?—A. Edward C. and William B.

Q. Where are they living?—A. Both are here.

Q. In Seattle?—A. The younger one is a college student and has just returned; he has been in Cornell.

Q. Those are the only sons?—A. The only living sons.

Q. And has he any brothers?—A. Judge Hanford has three living brothers.

Q. What are their names?—A. A. E.—that is, Arthur E. Hanford and Clarence Hanford, and Frank Hanford.

Q. They live in Seattle?—A. All live and are in business here.

Q. In Seattle?—A. Yes, sir.

Q. What is their business?—A. Frank Hanford is in the fire insurance business. Cap Hanford is an attorney and an abstract lawyer; Clarence Hanford is a member of the firm of Lowman & Hanford.

Q. What is their business?—A. Wholesale stationery and publishers and printers.

Q. Mr. Haynes, I have before me the minute book of the Hanford Irrigation & Power Co. Were you interested in the formation of that company?—A. I had considerable to do with starting it.

Q. Well, just what did you have to do with starting it?—A. I first visited that district below Priests Rapids, in the valley of the Columbia River, in 1904.

Q. How far is Priests Rapids from here?—A. In an air line 150 miles.

Q. On the line of what railroad?—A. There is no railroad there. The Milwaukee railroad crosses about 11 miles above Priests Rapids—crosses the river.

Q. When did you visit that property—you say in 1904?—A. For the purpose of securing a piece of land.

Q. For yourself?—A. For myself. I was much interested, and became interested with some other owners and through a local engineer.

Q. What do you mean when you say you became interested with other owners?—A. Owners of land.

Q. And did they live in Seattle?—A. Some of them lived here and some in Tacoma.

Q. Who were they?—A. There was E. H. Guye, who took the trip with me, and Dr. Raymond; and there was a Mr. Todd and Mr. Cover, of Tacoma, and Mr. Curtis, of Seattle.

Q. You may continue.—A. Through Mr. Owens a prospectus was drawn up and surveys were made for an irrigation scheme.

Q. Who drew the prospectus?—A. He and I together drew it; he gave the engineering figures and features. That is one prospectus; there were others.

Q. You say he and you—who was the other?—A. Mr. Owens, the engineer.

Q. Where does he reside?—A. He lived here.

Q. Is he here now?—A. Yes, sir.

Q. In Seattle?—A. Yes, sir. He had a profile map of the country. He had a survey of the rapids which he had made when he

was previously in the employ of the Northern Pacific Railroad. We got our data from that and worked on the scheme for a year trying to interest some New York parties to help us promote the irrigation scheme.

Q. When did you complete your prospectus in conjunction with the engineer that you have mentioned?—A. We had one completed in the winter of 1904–5—the one in which we worked with the New York people—it was not successful in dealing with outside people, and I confided the project to Judge Hanford and told him what we had and I asked him if he thought we could not interest local capital and organize a local company.

Q. When was that, if you can fix the date approximately?—A. That was in the fall of 1905.

Q. What did you then, briefly, Mr. Haynes, contemplate doing?—A. Contemplated filing on that water power at Priests Rapids.

Q. You were considering the formation of a corporation, were you not?—A. Yes, sir; for that purpose.

Q. You were, in connection with the formation of that corporation—you were endeavoring to finance it, were you not?—A.

Q. Now, what did you propose to do after you got your corporation organized and financed?—A. We proposed to purchase the land that could be irrigated under the project, build the works, complete the ditch, and sell the land.

Q. Did you take up the financial feature of it with more than one person in New York?—A. Oh, yes; with quite a number of persons in New York.

Q. With more than one or with more than one association of persons?—A. We worked through one broker only.

Q. And upon your failure to arrange with that broker for the necessary funds to finance the company you say you brought it to the attention of Judge Hanford?—A. I did.

Q. And that was in the fall of 1905?—A. 1905.

Q. What did Judge Hanford say to you?—A. He said he thought we could raise the money here at home to at least start the scheme, and we called a meeting and outlined the project.

Q. Called a meeting of whom?—A. Of people whom we thought would be interested.

Q. Where did you hold that meeting?—A. The meeting was first held in Judge Hanford's offices—I think the first one.

Q. In the Federal building?—A. Down in the old Federal building.

Q. Who was present?—A. Myself, the judge, Mr. Owens, Mr. Todd, Mr. Cover, Mr. McCord, and Mr. James B. Howe.

Q. Now, just a moment—is that W. R. Todd?—A. W. R. Todd.

Q. What is his business?—A. He is—at that time he was a merchant in Tacoma. I think he has sold out now.

Q. He is now living in Seattle?—A. He is living in Tacoma.

Q. Well, you and the judge and Mr. Todd and Mr. Owens and Mr. McCord—was Mr. McGraw there?—A. Yes; John H. McGraw was there.

Q. Who else?—A. I can not remember all the names, but the company was started, and the subscription list was——

Q. Just a moment; this was the meeting where you had the general discussion of your plans?—A. That is all.

Q. And the purpose?—A. Yes, sir.

Q. What did that meeting decide to do, if anything?—A. They authorized me to secure title to the water power at Priests Rapids.

Q. Before you had organized the corporation?—A. Before we had organized—well, now, not that; please strike that out; they authorized me to secure an option——

Q. And all of this was before you had made any——A. (Continuing.) On the land.

Q. Before you had made any arrangements for the organization of the corporation?—A. We immediately incorporated.

Q. Well, didn't you, as a result of that meeting in Judge Hanford's office, agree to incorporate?—A. Yes.

Q. And I will read from the minutes of the meeting of the Hanford Irrigation & Power Co. and see if you recall these to be the first articles of association which you entered into [reading]:

We, the undersigned, do hereby agree with each other and promise to become associated together to form a corporation for the purpose of utilizing the water of the Columbia River and the water power at Priests Rapids for irrigation and industrial purposes; that we will subscribe for at least one share of the capital stock of such corporation or such additional shares as may hereafter be agreed upon. Ten per cent of the par value of the stock shall be paid for by the subscribers in cash immediately upon the completion of the organization and the remaining 90 per cent shall be subject to calls from the trustees of the corporation.

Seattle, Wash., October 19, 1905.

Did you sign that, Mr. Haynes? You can look at it if you wish to [showing minute book to witness].—A. Yes, sir; that is my signature.

Q. How long after this preliminary meeting did you sign that agreement that I have just read?—A. I think it was signed at that meeting. I can't tell whether it was signed then or immediately—I think, perhaps, the papers were drawn up later.

Q. Then you had some talk with those men that were at Judge Hanford's office before these articles were signed?—A. Yes, sir; we had worked it up. We had told them what the intention of the company was and asked them to come if they were interested.

Q. You mean you and Judge Hanford, after discussing with Mr. Owens, the engineer, just what your project involved——A. Yes, sir.

Q. Had talked it up with your friends, and as the result of that talk they met in Judge Hanford's office and signed the articles of agreement which I have just read. Is that what you want the committee to understand?—A. That is correct.

Q. Is it a fact that all the persons whose names appear on these first articles of association were present at Judge Hanford's office at that time?—A. I think it is safe to say they were.

Q. I will read them—Kerr & McCord?—A. Yes.

Q. Which one of the firm of Kerr & McCord?—A. Both of them.

Q. They were both there?—A. Both of them.

Q. Had you had some talk yourself before that meeting with Mr. Kerr or Mr. McCord about the company?—A. I don't think that I had talked with them until afterwards. I think the judge asked them to come, and I can not remember talking with them until after that meeting.

Q. C. H. Hanford is the next name which appears there. Of course he was there; it was in his office?—A. Oh, yes.

Q. And W. B. Haynes?—A. That should be M. B. Haynes.

Q. You were active in getting them together at that meeting.—A. Yes.

Q. W. R. Todd?—A. Yes.

Q. His signature appears to be "Per J. W. C."—A. That was his partner, Mr. Cover.

Q. He signed under Mr. Todd and then John W. Cover?—A. Yes.

Q. And Mr. Cover's business was what?—A. He was in the land business.

Q. John H. McGraw—was he in the land business?—A. He was in city real estate business.

Q. What do you mean by being in the land business as being distinguished from being in the city real estate business?—A. His business was more in dealing in lands throughout the State, while Gov. McGraw's was mostly, exclusively city real estate.

Q. And C. H. Smith?—A. He was there.

Q. He was present?—A. Yes.

Q. What is his business?—A. He is the president and manager of the Central Coal Co., vice president of the Washington Trust Co., interested in many companies as a capitalist.

Q. Companies of what nature?—A. Real estate and investment companies.

Q. Land companies?—A. City real estate mostly.

Q. And James B. Howe, that is the attorney?—A. The attorney, Mr. Howe.

Q. The partner of Senator Piles?—A. He was there.

Q. H. K. Owens, that is the engineer?—A. That is the engineer that I spoke of.

Q. And Frank Hanford, that is Judge Hanford's brother?—A. Yes, sir.

Q. And Alfred Raymond?—A. That is Dr. Raymond who had land over there, that I spoke of.

Q. He had a small tract near Priests Rapids?—A. No, he had a half a section and still has it in the district.

Q. Well, you would call half a section a small tract as compared with what you afterwards acquired.—A. Well, there is 320 acres in half a section, and that's quite a good sized piece of land.

Q. But as compared to nearly 20,000 acres—well, I don't care to pursue that matter—G. A. Birch, he was there?—A. He was there.

Q. What is his business?—A. Real estate.

Q. In Seattle?—A. In Seattle.

Q. Does he have any other business?—A. Real estate and insurance.

Q. P. J. Gorman.—A. Mr. Gorman was there.

Q. So it is a fact, is it not, Mr. Haynes, that it was understood at that meeting by all those present just what was proposed?—A. Oh, yes.

Q. And it is not too much to say, is it, that you had met there for the purpose of forming a corporation to develop this power and to irrigate this land near Priests Rapids?—A. That is true.

Q. And the preliminary conferences, which were held before the signing of these articles of incorporation, had occurred some time between the time when you failed to get the New York parties interested and the time when these articles of association were signed?—A. Yes.

Q. I notice, Mr. Haynes, at the next meeting for preliminary organization which follows in the minute book the meeting of October 19, 1905, that Messrs. Kerr & McCord and James B. Howe were appointed to draw up articles of incorporation.—A. Yes, sir.

Q. And by both of those persons the name selected for the company was "Priests Rapids Irrigation & Power Co."?—A. Yes.

Q. That was determined as the name of the corporation at that meeting?—A. We were not allowed to use that name.

Q. That is not what I am asking you, sir.—A. Your record is true.

Q. Now you can make any statement you may wish to make.—A. We were not allowed to use that name because we found that another company had already incorporated under that name.

Mr. HUGHES. May I explain that the law of this State prohibits a corporation to be organized taking a name which has been appropriated by another corporation?

Mr. HIGGINS. Don't you think that most every State in the Union makes similar provision?

Mr. HUGHES. Well, I thought I would call the attention of the committee.

Mr. HIGGINS. Well, the record shows what was done in this case. Now you may make any explanation you may wish, Mr. Haynes. You say that you were not allowed to use the name of Priests Rapids.

A. The name which was first chosen we were obliged to abandon and selected the other name later on.

Q. Well, what was the other name?—A. That name was the Hanford Irrigation & Power Co., after Judge Hanford.

Q. And that name was continued——A. To the present time.

Q. And is the name now of the company which is carrying on the operations there at Priests Rapids.—A. It was.

Q. Where were your offices, Mr. Haynes—your first offices?—A. The first offices in the Alaska Building adjoining Mr. Owens' office; later on we secured temporary offices in the Haller Building and finally the offices were in the Seattle National Bank Building right over the Seattle National Bank on the corner of Columbia and Second.

Q. And later on they were in the Mutual Life Building.—A. No; Columbia and Second, over the Seattle National Bank, that two-story building.

Q. And they never were in the Mutual Life Building?—A. We have our preliminary meetings.

Q. You understand my question. It will shorten the proceedings if you will make direct answers to my questions. I will give you an opportunity to explain afterwards.—A. Meetings were held in the Mutual Life Building in the offices of Kerr & McCord before we had offices of our own.

Q. Following the signing of the articles of associations, Mr. Haynes, the ordinary steps necessary under the laws of the State of Washington were followed, I assume, to prefect your organization, and in December 26, 1905, you subscribed to 2,492 shares of stock [showing book to witness].—A. Yes, sir.

Q. I understand that it is agreed that the committee may take this book with them to Washington, as they have taken a transcript of the testimony, for instance, in the Heckman & Hansen case.

Mr. HUGHES. Mr. Kerr stated that he would get the consent from the present owners of the company.

Mr. PRESTON. It is my understanding that the papers should go, but I got that understanding from you gentlemen.

Mr. HIGGINS. I got it from what Mr. Kerr said here or some others.

Mr. HUGHES. I have no doubt that he has made such an arrangement.

Mr. HIGGINS. At the time, Mr. Haynes, that you subscribed for the 2,492 shares of stock what property did it own in real or personal estate—I mean as nearly as you can recall?

A. What is the date of that subscription?

Q. December 26, 1905.—A. They had no deeds; they had no property, nothing but options.

Q. Well, upon what property did it have options?—A. Two hundred acres near Priests Rapids needed for the power site; a filing on the water in my name and negotiations were begun and finally completed to purchase about 18,000 acres of land.

Q. Let us take up the matter of the options. At that time you say that they had those two options, one for the 200 acres for the power site and the other was what?—A. The other was a water filing. I can say that that was all the assets we had to start with.

Q. You had not at that time taken any steps to secure the unsurveyed island in the Columbia River?—A. It took nearly a year to get that. We did not have that permit at that time.

Q. Which was the first property which you acquired after you had organized?—A. I bought the location which is at present occupied by the power and the canal at Priests Rapids.

Q. That was 200 acres which you had the option on at the time you organized?—A. Two hundred and twenty acres.

Q. There were also a number of individuals who had quarter sections and half sections?—A. There was a great deal of private land; yes, sir.

Q. And when was that acquired; soon after you got the 200 acres?—A. The company did not buy but about 600 acres from individuals. Most of the land was secured from the Northern Pacific Railroad Co. and State.

Q. How was the State land secured?—A. Purchased at public auction.

Q. As provided by your statute law?—A. As provided by law.

Q. That means to the highest bidder?—A. Yes, sir.

Q. Under a sale that is conducted and authorized or advertised as prescribed by your Washington law.—A. In open competition.

Q. Where was the sale held?—A At Prosser, the county seat.

Q. Did you bid the land in?—A. I did.

Q How many bids against you?—A. About 16 bidders.

Q All bidding for the same property?—A No; it was ordered up in 160-acre units The bidders were allowed to purchase or bid, and a great many outsiders bought land at that sale; we bought all the land they didn't buy

Q At the time of your organization of your corporation you knew of this sale of State lands?—A No, sir; that was a year later; we ordered the land up ourselves for sale.

Q So you did not organize your corporation in contemplation of the purchase of the school lands?—A. I don't understand your question.

Q. I want to know the fact.—A. I don't understand your question.

Question repeated to the witness.

A. Yes, sir; that was part of our scheme—was to purchase the school lands.

Q I understood you to say in answer to my question, Mr. Haynes, a short time ago, that you did not know of the intended sale of those school lands at the time that you organized your corporation.—A. I did not say that, Mr Higgins.

Q Well, did you know?—A. We ordered the land up.

Q. How?—A We ordered the land up for sale. We petitioned that it be ordered for sale

Q That was because of my unfamiliarity with your local land laws—won't you explain to the committee what you mean by saying you ordered it up?—A The land, most of it, was under lease, which gives the leaseholder the first permission to order that land up—it amounts to kind of an option. We first purchased these leases from the owners, and then we went to the State land office and filed a petition in regular order, and, after being duly advertised, the land was sold at auction.

Q Under your law do you understand that anybody could have ordered it up except the lessees of the land?—A. They can now, but land that is leased——

Q I want to know what they could do in 1904–5 —A. The terms of the lease provide that only the leaseholder could order it up.

Q And you bought——A We bought those leases

Q And went to the land office in the State of Washington and petitioned for the sale —A. Yes.

Q And what price did you give for that land?—A. The minimum price is $10; some of it was sold as high as $23 an acre.

Q Did you have competition in the sale of that land?—A. Just as I have before stated

Q. For the identical tracts which you purchased were there other people that bid against you?—A. Yes.

Q And that applied to all of the tracts?—A. It certainly did.

Q That you bought from the State of Washington?—A. It certainly did.

Q I have here, Mr. Haynes, a document which Mr Preston has furnished to the committee, a report of the Washington Auditing Co., at 731 Central Building, Seattle, Charles A Johnstone, manager; he made an audit of the books of the Hanford Irrigation & Power Co., didn't he?—A. That was some years later.

Q I don't care when it was; I want to know if that is the fact, if at any time he did it?—A. Yes, sir; I remember it being done, Mr. Higgins

Q. (Showing document to witness) Can you identify that land there as being the land that was sold under the circumstances and at the time that you have told the committee—I am referring now to the land which in the auditor's report is indicated as having been purchased on March 1, 1906, from the State of Washington?—A. I can not follow the descriptions.

Mr. Higgins. Well, I do not expect there is any controversy about the fact—you can not from the memorandum here identify the land?

A. No, sir.

Q. There is no description of the land, only stating the amounts and the average; now, how long were you in acquiring the leasehold interest on that State land?—A. I had options on them before starting in—before this agreement to incorporate.

Q. How long were you in securing those options?—A. It represented over a year's work in securing the options and reports on the State land and on the Northern Pacific Railroad land. I did not work steadily at it but it represented off and on, a year before I had everything secured.

Q. Did Mr. Owens work with you?—A. As engineer.

Q. Did he work with you?—A. He did.

Q. Who else?—A. Mr. Todd and Mr. Cover.

Q. Who else?—A. We did all the work of securing the land.

Q. I am referring now to the work that was done in getting the option—you understood my question?—A. Yes. The judge helped us to get the Northern Pacific Railroad lands—to get an option on them.

Q. My question is, and I think it was reasonably plain, it related entirely to the work of securing the options before you organized the corporations; now I want to know who aided you in securing those options on the leasehold interests?—A. You say on the leasehold interest of the State land?

Q. Yes.—A. You confine it to the State land?

Q. Yes.—A. The names I have given, namely——

Q. You have given so many names, and seem to have been so confused.—A. Mr. Owens, Mr. Todd, and Mr. Cover and myself.

Q. And that covered the period of how long a time?—A. As I say, the preliminary work took a year—it was not all securing options.

Q. What other work was done except securing options in the year before you met in Judge Hanford's office and signed the articles of association.—A. Making the surveys and maps of the land and the contour lines.

Q. You did not have anything to do with that—that was done by your engineer, Mr. Owens.—A. I know, but that all had to be presented to our prospective investors.

Q. Well, the work that you and Mr. Owens and the other two that you have mentioned did was all the work——A. That was all.

Q. In the way of acquiring land, preparing to acquire land, in the way of options, that was done before the first meeting of organization.—A. I have mentioned the names.

Q. You understand my question.—A. I understand the question.

Q. Is that the fact?—A. That is the fact.

Q. Do you happen to remember who the first trustees were of the Hanford & Irrigation & Power Co.?—A. There were nine trustees.

Q. Suppose I read them; it may shorten my inquiry, and I assume they are correct—J. H. McGraw, president.—A. That is right.

Q. W. R. Todd.—A. He was vice president.

Q. He was vice president?—A. Yes.

Q. W. B.——A. That should be M. B. Haynes, that is myself.

Q. James B. Howe, James A. Kerr, H. K. Owens, C. H. Hanford, and George A. Birch.—A. That list is correct.

Q. That is the full board of trustees.—A. Yes.

Q. At the time you acquired the State lands did you take up the smaller holdings of 160 up to 480 acres that were held by individuals? A. We bought only one piece from individuals that I remember.

Q. Well, let me refresh your recollection a little—you bought a piece from William Filly?—A. That is the power site.

Q. And you bought a piece from W. B. Todd.—A. That is the other piece.

Q. You had a piece there in your name in your own name, din't you?—A. I did not sell it to the company.

Q. You had a piece there?—A. I still have it.

Q. It never was acquired by the company?—A. It never was acquired by the company.

Q. And the company never bought any land from you?—A. The company never bought any land from me.

Q. How about I. B. Armstrong?—A. He still has his land, as I remember—now please strike that out—he sold it.

Q. He sold it to the Hanford Irrigation & Power Co.?—A. No, sir; he did not; we did not buy his land.

Q. And A. M. Buck?—A. I do not remember that name; I do not know anything about that.

Q. W. C. Gilbert?—A. I do not remember that name; is he an original owner?

Q. Well, do you remember E. C. Hanford?—A. Yes.

Q. Did he sell some land to the Hanford Irrigation & Power Co.?—A. No, sir.

Q. Why, this report of the auditor, Mr. Haynes—and I am reading from that—shows that lands were purchased from those people during the years 1907 and 1908, and you were then actively identified with the management of the corporation, were you not?—A. I might have been, but I can not remember, Mr. Higgins; if you would give me the descriptions I might know what it was.

Q. Well, there are no descriptions.—A. The amounts.

Q. In this memorandum of land purchases which the auditor of your company made from March 1, 1906, to July 6, 1909—you were with the company in 1909, were you not?—A. Yes.

Q. And what other land aside from the State land and the smaller holdings did the company acquire?—A. It acquired what land there was that belonged to the Northern Pacific Railroad.

Q. And what was that land?—A. It was all arid land. It was classified in three classes—the A class, the B class, and the C class land. The Northern Pacific Railroad gave the company a contract to sell them that land on a payment of one-sixth down and one-sixth each year, providing they would irrigate the land and put in the improvements and irrigate the land, and in case of the failure of the company to do that the land would revert to the Northern Pacific Railway Co. and all payments would be forfeited.

Q. That all appears in the deed from the Northern Pacific Railroad Co.?—A. You have a copy of it, have you?

Q. I am asking you if that does not all appear in the deed from the Northern Pacific Railway Co. to the Hanford Irrigation & Power Co.?—A. It all appears in the original contract of purchase; I don't think it appears in the deed.

Q. Was the Northern Pacific Railway Co. at that time disposing of lands in this section of the State?—A. They would only sell to people

who would agree to improve them on such a contract as I have outlined.

Q. What had been the improvements, before your company was started, near Hanford?—A. Absolutely nothing; there were only about three settlers in the valley.

Q. The nearest improvement and the improvement nearest in point of time to where your company operated?—A. Do you mean in an irrigation scheme?

Q. Yes.—A. The nearest one was Kennewick, 35 miles down the river.

Q. In what direction?—A. Southwest. The Sunnyside Valley is 30 miles to the west of the Hanford Valley; Wenatchee is 60 miles north, in the valley of the Columbia River.

Q. Those were lands all of which had been irrigated before your company had started?—A. All developed, irrigated districts.

Q. That is, before 1905?—A. Oh, yes.

Q. Did you call on the local land agent of the Northern Pacific Railroad about this land?—A. I did.

Q. Tell the committee when and what conversation you had and who you called with and all that occurred at that time.—A. My first call on Mr. Plummer, the Northern Pacific Railroad land commissioner, was unsuccessful. He outlined the policy of the railroad company to aid development companies, and he said if we would form our company and raise a sufficient capital to show our good faith that they would give us a contract to purchase the land.

Q. When did you call on Mr. Plummer first?—A. I can not figure the date; some time in 1905.

Q. Some time after you got your corporation started you called on him at his office in Seattle?—A. His office is at Tacoma.

Q. Who was with you at that time?—A. I was alone.

Q. Did you call as the result of some vote of the board of trustees or were you seeking information?—A. No, sir; I called to get information.

Q. Well, what followed that call on Mr. Plummer?—A. I asked Judge Hanford if he thought that the company could secure those lands.

Q. What did he say to you?—A. And he told me that he would do all he could to help me get them, and I do not remember the judge calling himself.

Q. Well, what did you do after you had this talk with Judge Hanford?—A. After that, myself and Mr. C. J. Smith and Mr. James Kerr made a trip to Tacoma and called on Mr. Plummer, apprising him that the company had been organized and that the capital had been raised and asked him if he was willing to enter into negotiations with us for those lands.

Q. That was sometime in the winter or spring of 1905?—A. Yes, sir.

Q. You are sure about that, are you?—A. I can not be sure of dates.

Q. Well, can you fix the year?—A. It was after the preliminary organization of the company.

Q. Well, that was in October, 1905—now, how soon after that was it that you and the other gentlemen you named called on Mr. Plummer?—A. It was within 60 days after that.

Q. Within 60 days?—A. Yes.

Q. Well, what was the result of your call at that time on Mr. Plummer?—A. Mr. Plummer said that he would draw up a contract, and asked us to go over his reports of the land and to agree on the prices.

Q. Mr. Plummer said he would draw up a contract?—A. A contract of purchase.

Q. A contract of purchase?—A. Yes.

Q. Did Mr. Plummer say to you that he had the power to draw the contract?—A. He did not. He said that that would come from his—from the president of the road or some higher authority, and he afterwards succeeded in getting it ratified.

Q. When did he succeed in getting it ratified?—A. I can't tell.

Q. How soon after?—A. The date of the contract will show when we got it.

Q. Now, Mr. Haynes, we will get along very much better if you will answer my questions.—A. I have not got the correct dates in my memory.

Q. Well, let me refresh your mind a little—the date of the first meeting of the organization of the corporation was in December, 1905, wasn't it?—A. Yes, sir.

Q. And you called upon Mr. Plummer yourself, upon your own initiative, as far as this committee knows, as you have stated, and you were not able to get, or were unable to make an arrangement with Mr. Plummer for a contract.—A. I did not try to; I only called for information.

Q. As soon as you got the information you called upon Judge Hanford?—A. Yes, sir.

Q. Within 60 days after that you called upon Mr. Plummer again.—A. The three of us that I mentioned called on Mr. Plummer.

Q. And Mr. Plummer said to you that the contract of sale could be made—now, was the contract of sale agreed upon with Mr. Plummer in the presence of those three gentlemen at the time you have stated? Was it carried out as agreed in your talk with Mr. Plummer in Tacoma that day?—A. Not in its entire details. We had to have another meeting and agree on prices and on the classifications of the land.

Q. With Mr. Plummer?—A. With Mr. Plummer.

Q. Well, when did you call on Mr. Plummer with regard to the prices and the classification of the land?—A. That was all consummated——

Q. I am asking you when you called—if you didn't call, that is an answer to it.—A. I can not tell those dates. Most of it was done by correspondence. The three of us called once; Gov. McGraw, the president of the company, went to see him once, and it was consummated mostly by correspondence.

Q. But you did call on him again?—A. I called on him several times.

Q. You have named twice; now, when was the third time?—A. I have had business off and on with Mr. Plummer a great many times; I can not tell.

Q. Now, Mr. Haynes——A. I can't tell the dates.

Q. Well, you know whether or not you called on him after everything was arranged but the prices and the classification, don't you?—A. Well, I did not call on him again about that contract until we got the contract.

Q. Nor write to him?—A. I wrote to him very frequently.

Q. Have you got those letters?—A. I have not; I think they are on file. I was the secretary at that time.

Q. They are on file where?—A. With the company's files.

Q. Copies of them were kept?—A. Yes.

Q. Was your correspondence with him after the second meeting with reference to the classifications and prices of the land?—A. Yes, sir.

Q. And was that the only question that was open then between you and Mr. Plummer in regard to the sale of this land?—A. That and the prices was the only question.

Q. There were two questions after you had called on Mr. Plummer the second time with those three gentlemen that were not decided. One was as to the prices and the other as to the classification. Now, were there any other questions?—A. None that I know of.

Q. What report did you make, Mr. Haynes, to the company as the result of your call upon Mr. Plummer?—A. We recommended the purchase of the lands at the best possible terms.

Q. That meeting and the contract for the sale was made as the result of the letters which passed between you and Mr. Plummer. You did not see him about this particular contract after the time that you called on him with the three men that you have named?—A. I don't think that I called at his office again before we got the contract.

Q. How did you arrange about the prices and the classification?—A. "A" class land is considered the best——

Q. I didn't ask you the prices. I say, how did you reach that arrangement?—A. Upon his report and my report. He had his cruisers' report on that land, and I had cruised it all myself, and we agreed.

Q. Who were his cruisers?—A. Regular employees of the Northern Pacific land office.

Q. Who were they?—A. I don't know.

Q. I assumed that they were employees of the Northern Pacific Railroad.—A. I don't know who they were. The reports that he had were made nearly 20 years ago.

Q. And he took those reports?—A. He used them; yes, sir.

Q. Well, who is your cruiser?—A. I cruised it myself.

Q. Alone?—A. Yes.

Q. No one assisting you?—A. Well, I had a driver; one man with me a part of the time.

Q. Well, who were they?—A. A man by the name of McLaughlin and a Mr. Guye, and on another trip Mr. Cover was with me.

Q. I read, Mr. Haynes, from the meeting of the trustees of the Hanford Irrigation & Power Co. on April 3, 1906. The purpose of the meeting, as stated by the secretary, was to have the board of trustees authorize the purchase of the Northern Pacific Railroad land by contract on the following terms:

Five thousand three hundred and eighty acres, at $10 per acre: 8,760 acres, more or less, at $3 per acre, on the 10-year plan—that is, one-tenth down and one-tenth each year with interest at 6 per cent. It was moved by C. H. Hanford that contract on terms stated be approved by the board and the executive committee was instructed to immediately call a stock subscription of 25 per cent to secure funds to make first payment on contract with Northern Pacific Railroad. Motion carried. It was moved by H. K. Owens that Judge Hanford and M. B. Haynes be instructed to open negotiations with N. P. R. R.—

That, I assume, is the Northern Pacific Railroad Co.?—A. Yes, sir.

Q. (Reading:)

for purchase of 8,000 acres of land lying east of the river. Motion carried.

What question was there then to be determined, Mr. Haynes, with reference to the purchase of this land?—A. We did not carry those instructions out.

Q. That is not my question, sir.—A. I didn't hear your question.

Mr. HIGGINS. Then read it, Mr. Reporter. [Question repeated to the witness.]

Mr. MCCOY. Now, what question was there then to be determined with reference to the purchase of this land?

A. The price and the value—I mean the question of the price and the question of the classifications, I want to say.

Q. But both appear to be classified; both the price and the classification appear in the report which you made to the board of trustess. I hand you the minutes [showing] in which you will note that you made a report as to the number of acres and the price per acre. It is stated in there that there is 5,380 acres at $10 per acre and 8,760 acres, more or less, at $3 per acre.—A. We were not able to carry out that contract; that never was carried through; it never was consummated.

Mr. HUGHES. Which contract?

A. This one mentioned there in the minutes.

Mr. HIGGINS. This report which you made to the trustees?

A. The Northern Pacific would not agree to it.

Q. You recall that meeting of April, 1906?—A. Indistinctly; I remember such a meeting was held.

Q. I have allowed you to refresh your recollection by reading the minutes; and you made a report on the number of acres and the price per acre?—A. Yes, sir.

Q. Now, I want you to explain to the committee why at the same meeting that you were reported as to the number of acres and the price per acre of lands to be purchased from the Northern Pacific Railway Co. that you and Judge Hanford were instructed to open negotiations with the Northern Pacific Railway Co. for 8,000 acres east of the river.—A. That is in a different district, this 8,000 acres, and this price was not agreed upon by the Northern Pacific people; they would not accept that proposition.

Q. They would not accept that proposition?—A. No; and they would not sell that land—that 8,000 acres across the river.

Q. Well, I assume that the records are correct; that you and Judge Hanford were appointed a committee to open negotiations for the purchase of that land; now, state to the committee what you did as the result of it.—A. Judge Hanford saw Mr. Plummer and Mr. Plummer told him they did not want to sell the 8,000 acres across the river, and they could not sell it at the price mentioned here at which they authorized us to go ahead.

Q. Did you see Mr. Plummer with Judge Hanford?—A. I did not. I never called on Mr. Plummer with Judge Hanford.

Q. What did you do as the result of the vote of the trustees?—A. Those instructions, you mean?

Q. What did you do toward carrying out the instructions of the trustees in their meeting of April 3, 1906?—A. It is very indistinct

just what I did in following those instructions, but I remember speaking to Mr. Plummer here and he gave me an offhand answer, that we need not apply for the lands across the river. That 8,000 acres east of the river that Mr. Owens referred to was not our original project; it was outside land.

Q. How do you know that Judge Hanford called on Mr. Plummer?—A. He told me that he did.

Q. Did he tell you the result of his talk with Mr. Plummer?—A. He did.

Q. What were they?—A. I beg pardon?

Q. What was it?—A. He said that he refused to sell that land across the river and he refused to sell it at the prices which I have recommended.

Q. What prices had you then recommended for that land?—A. They are mentioned there in that resolution.

Q. I want to know what your recollection about that is, if you have any?—A. $10 for the best land and $3 for the other.

Q. Had you at that time, or had the company, acquired any Northern Pacific land at all?—A. I had bought a piece.

Q. How?—A. I had purchased a piece from them.

Q. My question was if the company had; it may have included you, but I want to know if the company had?—A. The company had not.

Q. What report was made to the trustees, Mr. Haynes, by the committee that was appointed to open these negotiations?—A. I do not remember that any written report was made, except that we found out that they would not consent to it.

Q. That is, following the meeting—after the appointment of the committee?—A. I do not think we made any written report; if we did it should be on the file.

Q. The next meeting of the trustees appears by the minute book was on the 23d of May at 3 p. m. in the offices of Kerr & McCord.

Present: James A. Kerr, C. H. Hanford, James B. Howe, G. A. Birch, H. K. Owens, and M. B. Haynes. It was moved, seconded, and carried that the engineer, H. K. Owens, be authorized to put a surveying party in the field to complete survey of lands to be irrigated.

What lands did that refer to?—A. All lands that could be irrigated, regardless of the ownership.

Q. Regardless of who owed them?—A. Regardless of who owned them.

Q. That is, that would be the Northern Pacific lands or in the neighborhood of Priests Rapids?—A. And the State lands and the private-owned lands.

Q. Then, on June 14, I want you to read the resolution of Judge Hanford.—A. (Reading):

Judge Hanford offered the following resolution, which was seconded and unanimously carried: "*Resolved by the board of trustees of the Hanford Irrigation & Power Co.*, That the contract for the sale of this company of lands, aggregating 12,730.05 acres in Yakima and Benton Counties in the State of Washington, tendered by the Northern Pacific Railway Co. for the aggregate price of $96,063.21 on the terms and conditions set forth in said contract, be and the same is accepted, and that the president of this company be and he is hereby authorized and instructed to sign said contract in duplicate in behalf of this company and affix its corporate seal thereto, and to deliver one of said duplicate copies to the vendor upon the receipt of a copy legally executed by said vendor."

Q. What is the date of that, Mr. Haynes?—A. June 14, 1906.

Q. Then you acquired, or the Hanford Irrigation & Power Co. acquired, on the 22d of June, as appears from the report of the auditor which was furnished us, on the 22d of June, 1906, 12,690.4 acres?—A. That was the first purchase, yes.

Q. That was acquired as the result of this report?—A. Yes; after considerable negotiations that was the final result.

Q. Have you given to the committee now all the negotiations which occurred before the acquiring of this first land?—A. I think as far as I am concerned, I have.

Q. Well, as far as anybody else is concerned that you know of?—A. I remember Judge Hanford telling me that he had called on Plummer once with regard to the instructions of the resolution given in the minutes, and he told him offhand that they did not want to sell that land.

Q. You have already told us about that.—A. That is the only time that I can remember that Judge Hanford told me that he called on Mr. Plummer. I never called on Mr. Plummer.

Q. You have been active in locating the land and active in interesting people in the formation of the corporation and you were then the secretary of the corporation?—A. I was.

Q. And you had cruised the land?—A. I had.

Q. You had estimated the value of the land for irrigation purposes and you were familiar generally and quite specifically with the different questions involved in the acquiring of the land?—A. I was.

Q. What legal question was submitted to Mr. Kerr?—A. Regarding what?

Q. This land.—A. Mr. McCord attended me at the land sale of the State land as my adviser.

Q. I am speaking now of the Northern Pacific Railroad Co.'s land.—A. I never consulted Mr. Kerr—he may have——

Q. What legal question, whether you consulted him or not?—A. I do not know of any, Mr. Higgins.

Q. Then I will ask you to explain this entry in the minutes of June 14, 1906, if you are able to [reading]:

The secretary—

That is you?—A. Yes.

Q. (Continuing).

reported that the contract for purchase from the Northern Pacific Railway of lands applied for had been checked and land descriptions found correct and Mr. Kerr reported the legal points were as agreed upon.

Did you confer with Mr. Kerr at that?—A. It must be I did, although I do not remember it.

Q. The firm of Kerr & McCord were the attorneys for the company at that time, were they not?—A. Yes; I do not know whether he examined the abstracts or not, but he saw that everything was in legal form.

Q. Well, if you do not know I won't ask you specifically.—A. I can not remember.

Q. So you do not know?—A. I can not remember of that, Mr. Higgins.

Q. In your prospectus, Mr. Haynes, which was the basis for the formation of this corporation, how much land did you contemplate

the company's acquiring?—A. At least two-thirds of the land in the district which could be irrigated.

Q. That gives no idea to the committee.—A. In acres, it amounted to nearly 28,000—nearly.

Q. That was your original plan at the formation of your company?—A. Yes, sir.

Q. You acquired this 12,690 acres on the 22d of June. Why didn't you get the balance of nearly 9,000 acres at that time?—A. We did not have the money to buy it with.

Q. You say you did not have the money?—A. The company did not have the money. They got what they could with the money that was appropriated to buy land.

Q. You had, at that time, issued a call of 25 per cent of the stockholders?—A. Yes, sir.

Q. And after you had subscribed to the 2,492 shares that was afterwards distributed?—A. Sold by subscription.

Q. Who sold the stock?—A. I had charge of the subscription list, and all of us worked on it.

Q. Who; Judge Hanford?—A. Judge Hanford and Gov. McGraw.

Q. And Judge Hanford's sons?—A. No, sir; his son was not here at that time.

Q. His brother Frank?—A. Frank and Clarence.

Q. And Gov. McGraw?—A. And Gov. McGraw.

Q. And Mr. Kerr?—A. Mr. Kerr and H. C. Winn and W. R. Rust, of Tacoma. There was a list, finally, of 130 stockholders.

Q. That is to say, the men you have named and as many others as you could get to assist in the sale of the stock were solicited to do it, and they did?—A. They did.

Q. Shortly after that the company considered the making of contracts for the power plant?—A. After they had purchased the land they contracted.

Q. They made contracts after that?—A. They made contracts to do the work; yes, sir.

Q. Did you see Mr. Plummer when the company acquired the second tract of the Northern Pacific Railroad Co.?—A. Please explain what you mean by the "second tract"?

Q. Well, according to your own records, you bought three tracts of land from the Northern Pacific Railway. The first tract was 12,690 acres, on June 22, 1906. Now, is it not true that you bought, at a later time, some additional land?—A. The land was purchased—that was after I had held official position with the company.

Q. When did you cease to be an official connected with the company?—A. I was secretary for the first year only.

Q. Do you mean to say that these other two tracts of land were acquired when you were neither a trustee nor any other official of the company?—A. They were acquired when Mr. Earles was president, during the——

Q. Answer my question directly.—A. No; I was not connected with that sale, and I do not know anything about it.

Q. Were you connected with the company?—A. I had stock in the company.

Q. Were you a trustee?—A. No; I was not a trustee at that time.

Q. How much stock did you have at that time?—A. Eighty shares.

Q. What do you know about the negotiations for the purchase of

the two additional tracts?—A. I do not know. I did not know there was but the one additional purchase; that is, between ten and eleven thousand acres additional.

Q. How do you happen to know that there was one additional?—A. Because I knew that Mr. Earles had purchased it when he was president of the company.

Q. My question is, What do you know about the negotiations for the purchase of that land?—A. I know that in my first negotiations with Mr. Plummer I outlined all the sections which I thought the company ought to buy; and while we never had an option on that additional land, it was later purchased.

Q. That is to say, that the later purchase was included in the negotiations which you had made with Mr. Plummer?—A. My own were not negotiations.

Q. Well, you can characterize them as you want to.—A. I did not agree with him on the prices, or anything of the sort, but I told him that I thought he ought to save them and give the company the first chance to buy them.

Q. Now, tell the committee, Mr. Haynes, what was done after the land was acquired and the contracts were made?—A. They let the contract for building the main canal and the laterals and the pipe lines; they let the contract for putting in the electric-power plant at Priests Rapids. All of it was finished inside of two years.

Q. The town was established?—A. The town site was selected and they began to sell land in 1908.

Q. What was the town?—A. The town was named after Judge Hanford—it is called Hanford to-day.

Q. What is the post office of Hanford?—A. It is Hanford at present.

Q. I notice at a meeting of the 18th of November, 1907, that Judge Hanford reported that it was impossible to secure a post office by that name, but I understand from your testimony that it was afterwards brought about.—A. There was a small post office by the same name which they succeeded in having discontinued and got the name of the post office for this place.

Q. When were the unsurveyed islands of the Columbia River acquired?—A. Immediately following the organization of the company. As I say, it took nearly a year to get our permit from the War Department at Washington.

Q. Who owned the lands and what was done in acquiring them?—A. The rocks in the middle of the rapids were unsurveyed, and to build our dams and wing dams, we had to connect up with those islands, to divert the water into the power canal. To secure our title, to make it satisfactory to the prospective bond buyers, we secured from the War Department at Washington a permit to use those islands for power and irrigation purposes.

Q. And you did get such a permit?—A. The company still has that permit; yes, sir.

Q. Who undertook to get that, Mr. Haynes?—A. Senator Piles assisted us.

Q. Did you have charge of that?—A. As secretary I attended to the correspondence.

Q. And also on the permit for the construction of the dam from the War Department, who looked after that?—A. I conducted the corre-

spondence myself and through the representatives of this State in the Senate.

Q. Who was Mr. William Filey?—A. Filey was the owner of a ranch at the Rapids that we purchased and where now stands the power house of the company.

Q. Did he have any connection with the company as employee?—A. None whatever—he was a settler.

Q. He was there before your company?—A. He was there first and he had a very nicely improved ranch and we had to buy it.

Q. And you did buy it?—A. We bought it and paid $20,000 for it.

Q. You found some difficulty, Mr. Haynes, in financing the company?—A. We did.

Q. What was done by the trustees toward financing the company after they had sold the stock, as you related?—A. The bond issue was authorized and most of it was underwritten—$200,000 of it was underwritten.

Q. By Mr. Chilberg?—A. By prominent men and bankers here in the city.

Q. Was Mr. Chilberg one of them?—A. Mr. Chilberg subscribed to some of the bonds.

Q. And who is he?—A. He is an officer of the Scandinavian-American Bank.

Q. And what other local bankers?—A. Mr. J. W. Clise.

Q. Who is he?—A. He is the president of the Washington Trust Co.

Q. And what others?—A. Judge Thomas Burke subscribed personally, and many other stockholders.

Q. What others, if there were any others—you can refresh your recollection from any memorandum which you have?—A. I have a list of the bond subscription here, if you wish it.

Mr. HIGGINS. I would like it. [Document is handed up.] Now, give me those who undertook to underwrite the issue.

A. Yes, sir.

Q. And were those the original subscribers?—A. Yes, sir.

Mr. HUGHES. I would like to ask whether this inquiry relates to the original bond issue or to the five hundred thousand?

Mr. HIGGINS. I will ask you now, Mr. Haynes, with reference to the first bond issue of the company.

A. There has only once been one bond issue.

Q. Mr. Hughes just was talking about and discussing some other bond issue and you say there was only one.—A. There was only one.

Q. Mr. Hughes was the attorney of the company at one time, wasn't he?—A. No, sir.

Mr. HUGHES. Yes; I was.

Mr. HIGGINS. Are you sure about that—it is not important—but the records of the company appear to show that——

Mr. HUGHES. The reason I made the suggestion was, you asked about the company being in financial difficulties and I understood him to answer your question in regard to the original bond issue.

Mr. HIGGINS. I asked him what was done in the way of financing the company after the stock was sold and then he spoke of this bond issue. Now, I understand from the witness that there was only one bond issue; is that true?

The WITNESS. That is true; only one bond issue.

Mr. HIGGINS. Is that a fact, Mr. Hughes?

Mr. HUGHES. There was an original bond issue, and then the company came into trouble; it was the time when I was attorney and my firm was employed about two years after its organization for a period—I don't remember how long.

Mr. HIGGINS. Well, that is all disclosed by the record, I suppose.

Mr. HUGHES. During that time there was financial difficulties and additional moneys were raised.

The WITNESS. It was raised by increasing the stock and not by an additional bond issue.

Mr. HIGGINS. Who assisted in the sale of the second issue of the stock? Was the stock sold by the trustees or was it sold through brokers or by bankers, or what method was taken to dispose of the second issue of stock?

A. The stock was sold by popular subscription after we had raised nearly half of it, and a commission of 5 per cent was paid on some of the subscriptions; I do not know just how much that amounted to.

Q. When you say it was sold by popular subscription you mean that the officers and trustees and stockholders of the company solicited their friends to buy it?—A. That is what I mean; yes, sir.

Q. What was the amount of the second issue?—A. The second issue was $250,000, and a year later they increased the capital stock to $750,000.

Q. That would be the increase of $500,000.—A. An increase of $500,000.

Q. You continued, Mr. Haynes, as identified with the company until it was disposed of?—A. I was one of the last to sell out; I find that I have no interest at the present time.

Q. Who negotiated with you for the sale of your stock?—A. Parties in New York who purchased it through Mr. McCord.

Q. Of the firm of Kerr & McCord?—A. Of Kerr & McCord; yes, sir.

Q. Who were the parties who purchased it?—A. The parent company is the American Power & Light Co.

Q. Of New York City?—A. Yes, sir.

Q. They are now owning and operating the company?—A. They own and operate the company, and they own all the stock.

Q. What attorneys did the company employ during the time that you were one of the trustees?—A. Kerr & McCord.

Q. What others?—A. Some work was done by A. E. Hanford and Mr. Hughes, I believe, but Kerr & McCord were——

Q. And what others?—A. And Mr. Howe—James B. Howe.

Q. Of the firm of Piles & Howe?—A. Yes, sir.

Q. What others?—A. That is all that I can remember.

Q. And those gentlemen were also stockholders, were they not?—A. All of them.

Q. Judge Hanford, during that time that you served with him on the board of trustees, always attended, didn't he?—A. He was more interested than anybody and never missed a meeting.

Q. He was active both in the development of the company and in the financing of it?—A. He was.

Q. He assisted in the sale of its securities?—A. Yes, sir.

Q. As well as in the acquiring of the lands which you have mentioned?—A. Yes, sir.

Q. Do you happen to know whether Judge Hanford was the manager of the company?—A. I think he was temporarily manager while Mr. Gorman was East at one time; Mr. Gorman was the second president that we had.

Q. And was his son, E. C. Hanford, actively engaged in prosecuting the work of the company?—A. He was the first manager; he served a year.

Q. Who succeeded him?—A. Mr. T. J. Gorman was elected president and general manager the second year.

Q. Who succeeded him?—A. Mr. Michael Earles was president and general manager for two years.

Q. Michael Earles lives here?—A. Yes.

Q. In Seattle?—A. Yes, sir.

Q. What is his business?—A. He is a contractor and lumberman. He built the works at Priests Rapids for the company.

Q. You mean by a lumberman that he operates a mill or sells timberlands?—A. He has operated a mill; he is now a large timber owner in this State.

Q. At time of the organization of the company you had options on the leasehold interest in the State lands?—A. Yes, sir.

Q. I think you stated that those were the only options that you had except on some very much smaller tracts?—A. Except the Filey's land at the Rapids.

Q. So that the State lands and the Filey's land was not Northern Pacific Railroad Co. land; you did not have an option on the Northern Pacific Railway land at that time?—A. No, sir; we did not.

Q. Did you ever have one on the Northern Pacific Railway Co.'s land?—A. No, sir; not until we finally consummated the contract.

Q. The contract was not preceded by any agreement to transfer, though?—A. It was not.

Q. How does the price, if you know, which you were able to get the land at from the Northern Pacific Railway Co. compare with the price which other irrigation companies have had to pay for similar lands in that section?—A. Under many projects the land has been sold for a less price. I do not know of any irrigation projects where land has been purchased at prices exceeding $20 an acre.

Q. Well, had there been some project where a greater price was paid than in this?—A. Only this: I know of a price of $40 an acre having been paid at Richland; that is the highest amount I have known the company to pay—a company to pay.

Q. What company paid that?—A. The Richland—now, just a minute—it was the Lower Yakima Irrigation Co.

Q. And when was that acquired?—A. I think it was in the year 1906.

Q. How much land was then acquired?—A. About 2,000 acres.

Q. Now, this paper which you have handed me, entitled "Bond subscription," is the list of those who subscribed to the bonds of the company?—A. Yes, sir.

Mr. HIGGINS. I think that ought to be marked as an exhibit.

Document marked "Exhibit No. 78."

Q. You acquired, or the company did, 21,450.76 acres of land from the Northern Pacific Railroad Co.; do you happen to remember the

number of acres?—A. That is about right—the total amount purchased, you mean?

Q. Yes.—A. That is about right.

Q. For $1,833,300.03.—A. The records will show. As I remember, that is the consideration.

Q. These bonds were issued and sold, were they not?—A. All of them.

Q. The entire issue?—A. The entire issue.

Q. And sold as the result of subscriptions which you handed to me?—A. Yes.

Q. And the names which appear upon that list took the company bonds and paid the money for them?—A. All of them purchased the bonds. That is not the entire list, but the rest will show later. That is the first underwriting, I think. That is a little over $200,000.

Q. The second underwriting was undertaken by Mr. Chilberg.—A. No, sir; Mr. Earles—his bank took the most of it.

Q. What was his bank?—A. The American Trust & Savings Bank.

Q. Does the contract made for the second issue appear in the minutes of the company—do you happen to know?—A. It must be, but it was during Mr. Earles's administration and he consummated the sale of the rest of the bonds.

Q. Well, I will call your attention to the entry in which it appears that Mr. Chilberg was undertaking to take care of the second issue, although it may have been the first.—A. Mr. Chilberg took the amount he subscribed for and no more.

Q. Is it not a fact that he undertook to take care of the entire issue?—A. No. It may be that he made an effort, but he did not succeed—several did that I know of.

Q. Is it not a fact that he conferred with the trustees about taking the bond issue?—A. I do not remember that he did, Mr. Higgins.

Q. And made a report to the trustees?—A. I do not remember it.

Q. It is my recollection, Mr. Haynes, that that is the fact; and if I can find it or ascertain just where it appears in the record I will call your attention to it—now, who was Mr. H. C. Henry?—A. A railroad contractor that built the Milwaukee railroad.

Q. Built the Milwaukee railroad?—A. Yes, sir.

Q. Lives here in Seattle?—A. Yes, sir.

Q. What bank is he connecteed with?—A. The Bank of Commerce and the Metropolitan Bank.

Q. It appears that he also undertook to assist the company in financing its capital stock?—A. Mr. Henry and Mr. Earles and Mr. Rust, of Tacoma, were the principal subscribers; when we increased the capital stock they took the most of it.

Q. That was underwritten by them, you mean, they agreed to pay the company a certain price and dispose of the stock themselves?—A. Of the balance of the $500,000 of second issue, they took the most of it.

Q. If you can state—and you may have this if you wish [handing book to witness], now answer if you can, if it was as the result of this resolution—I am reading from the minutes of August 3, 1908. [Reading:]

The following resolution was offered by C. H. Hanford:

"*Moved*, That the board of directors accept the proposition made by Mr. H. C. Henry to take the entire issue of increased stock amounting to $500,000 at the price of

60 cents, on or before the 1st day of September, 1908, on condition that Mr. Henry loan to the company $500,000 on bonds of the company to the amount of $10,000 as collateral security; and that the committee be appointed to negotiate with Mr. Henry to allow other stockholders to take part of this issue at the same price that is paid by him and to such amount as they may desire, not exceeding to any one stockholder an amount equal to his present holding of stock in the company; and that the president and secretary call a meeting of the stockholders of this company before the 1st day of September or as soon as such meeting can be held after Mr. Henry has signified his intention to take up the option, to ratify the contract."

Do you recall that resolution?—A. Yes, sir; but it was not carried out on those lines. A different deal was made later on.

Q. And Judge Hanford was a committee to carry out the later deal as appears, I should judge, from the minutes of this same meeting. [Reading:]

Said motion being duly seconded by E. S. McCord, was carried by the unanimous vote of the trustees present. President Gorman then appointed C. H. Hanford and E. S. McCord to act with himself as a committee named in the foregoing resolution.

A. That is true, they worked it together.

Q. But that particular resolution which I read was not carried out?—A. Was not carried out, although they later sold that stock and Mr. Henry was one of the largest purchasers.

Q. Judge Hanford continued his relations with the company up to the time that the American Light & Power Co. purchased the entire company?—A. He was a trustee during all that time.

Q. He was also a stockholder?—A. Yes, sir; he had 10 shares of stock.

Q. He never had any more?—A. No, sir.

Q. Well, you would not say that as against the records of the company, would you, Mr. Haynes—that is your recollection of it, as I understand you?—A. To my recollection that is all he had—that was his original subscription.

Q. Are you able to tell how much his son had?—A. I don't think he ever had any.

Q. I refer to E. C. Hanford.—A. He was not one of the original subscribers and I do not think he ever held any stock.

Q. Is A. E. his brother or son?—A. He is his brother.

Q. Did he have 50 shares?—A. That's right.

Q. And you held 80?—A. That is right.

Q. Hanford & De Veuve—is that the stationery company?—A. No, that is Frank Hanford—that is the insurance company.

Q. That is his brother?—A. That is another brother.

Q. And who is C. Hanford?—A. That is Clarence Hanford, of the firm of Lowman & Hanford.

Q. And what relation is he?—A. A brother.

Q. What other relations of Judge Hanford besides those you have mentioned, and yourself, held either stock or bonds in the Hanford Irrigation Co.?—A. I can not think of any others than those we have given.

Q. Judge Hanford was also a subscriber to the bond issue, wasn't he, in addition to his stock?—A. Yes.

Q. And he assisted in the sale of those bonds with the others?—A. Yes, sir; he was always——

Q. He was always active and enthusiastic?—A. He was always enthusiastic over the development scheme.

The CHAIRMAN. Any further questions?

By Mr. McCoy:

Q. Did the company ever hold any options from the Northern Pacific Railway Co., Mr. Haynes?—A. Not properly speaking, options—they never held any options.

Q. Contracts of sale?—A. Contracts of sale; yes, contracts of sale which resulted in negotiations.

Q. I understood you to say in the early part of your testifying that the conditions of the Northern Pacific Railway Co.'s contract did not appear in the deed which the Northern Pacific Railway Co. made; did I get that right?—A. I said I did not think they did, because the terms says that the land must be watered and the money spent for the improvement of the irrigation before they get the deed—before the railroad company gives the deed.

Q. Well, is that why you believed that the condition did not appear in the deed; that it had to be complied with before the delivery of the deed—is that right?—A. That is my reason; yes, sir.

Q. As I recollect, you testified—you say that Judge Hanford told you only once that he had called on Mr. Plummer, and further, that that was the only call that he had ever told you of his making on Mr. Plummer—did anyone else ever tell you that Judge Hanford had at any other time called on Mr. Plummer; in other words, was that the only call by Judge Hanford on Mr. Plummer that you ever heard of in any way?—A. Well, that was what I intended to say.

Q. That is a fact, is it?—A. Yes; that is true.

Q. Where were these second and third tracts, or, as you seem to remember it, the second tract, which was purchased from the Northern Pacific Railway Co.?—A. It was higher land, above the first ditch.

Q. Which side of the river was it on?—A. The same side of the river.

Mr. Hughes. How?

The Witness. The same side of the river, and higher land above the ditch.

Mr. McCoy. Do you mean on the same side as the 8,000-acre tract?

A. Yes.

Q. You say there had previously been a post office named Hanford?—A. Yes; a post office here in the suburbs had taken that name.

Q. The suburbs of Seattle?—A. Yes, sir; but after extending the city limits they discontinued that post office and we used the name over there.

Q. What was sold by the Hanford Irrigation & Power Co. to the American Light & Power Co.?—A. The stock of the company.

Q. You mean the certificates of stock?—A. They took all the certificates of stock—all the entire issue.

Q. Now, we seem to have some books here which seem to have in them a lot of cancelled certificates which I think the committee understood were those which were surrendered at the time of the transfer to the American Light & Power Co.; is that right—those are the ones?—A. I don't think so—I think those are just transfers. I think they still hold the original certificates.

Q. Did the American Light & Power Co. pay the same price to each stockholder?—A. No.

Q. For one share of stock?—A. No; but it did not vary very much. The largest owners of the Hanford stock took in exchange stock in the parent company.

Q. That is, took stock in the American Light & Power Co.?—A. Yes, sir. Others had the option to do the same or to take the cash; and that was finally consummated; they bought the last piece here less than a year ago, and the average—they paid from 85 cents to par value.

Q. What did Judge Hanford do with his stock?—A. He turned his in to the American Light & Power Co. and, I think, took stock in that company.

Q. What became of the bonds?—A. Some of them are still outstanding.

Q. Did the American Light & Power Co. undertake to buy them in?—A. They have not bought all yet—they have purchased some of them.

Q. They are doing that as you understand it—they are endeavoring to buy in all the bonds?—A. They are not offering anything for them now; they are evidently going to take them all in when they get ready.

Q. Now, what is this document which you have in your hand?—A This is Exhibit No. 78

Q. Being a list of those who took and paid for bonds?—A. A partial list.

Q. A partial list?—A. Yes, sir.

Q. About what time was it when they took and paid for those bonds—about what date was it?—A. This was underwritten—the date is not given here—this was underwritten before the contracts were let, and was called for as they completed the contracts, in the fall of 1907.

Q. About what was the date of the underwriting, regardless of when the money was paid?—A. $200,000 was underwritten before they started in on the work, and that was 1906, in the winter of 1906.

Q. Will you just go right through the list of those matters appearing on that exhibit and give the addresses of the persons there named, respectively, and identify their occupations and callings?—A. A L Flewelling, $10,000; he is an official of the Milwaukee road, located at Spokane; J. W. Clise, banker, Seattle, $15,000; Thomas Burke, an attorney of Seattle, $10,000; M B. Haynes, Seattle, $5,000

Q. That is yourself?—A. That is myself. Kerr & McCord, of Seattle, $5,000.

Q. Attorneys?—A. Attorneys. H K. Owens, engineer, Seattle, $5,000; A. E Hanford, Seattle, $5,000; H. C. Winn, railroad contractor, Seattle, $5,000; Clarence Hanford, Seattle, $5,000; Lester Turner, banker, Seattle, $5,000; J. B. Howe, attorney, Seattle, $2,500

Q Of what firm?—A. Of Piles, Donworth & Howe. C. H Hanford, Seattle, $2,500; J. E Chilberg, banker, $10,000.

Q. What bank?—A. The Scandinavian-American Bank. J. M. Frink, president of the Washington Iron Works, Seattle, $5,000; Hanford & De Veuve, insurance business, Seattle, $10,000; P. J. Gorman, salmon packer, Seattle, $5,000; Gerald Frink, manager of the Washington Iron Works, Seattle, $5,000; Michael Earles, president of the American Savings & Trust Co , Seattle, $5,000.

Q Is Mr. Earles's occupation that of managing a bank as president?—A. No.

Q What is his regular business—he is a contractor, you say?—A He is the contractor who put in our headworks for us and his business has been a lumber man Charles E Patton, lumberman, $5,000; W. D Mackey, real estate, $2,500; Alfred Battle, attorney, $5,000

Q Attorney of what firm?—A Ballinger, Ronald, Battle & Hulbert. J H McGraw, of the firm of McGraw & Kittenger, $5,000, real estate business; W T Dovell, attorney, $1,000

Q What firm?—A Hughes, McMicken, Dovell & Ramsey E C. Hughes, of the same firm, $1,000; Lester Turner, banker, $3,500.

Q What bank?—A He was then president of the First National Bank.

Q And he made that his calling?—A. It always has been; he is retired now. H W. Walthew, $500

Q What was he?—A. He was the auditor of the company. W. R. Rust, manager of the Tacoma Smelter, $12,500; Chester Thorne, president of the National Bank of Commerce, Tacoma, $12,500.

Q Is that his occupation?—A. He is president of that bank

Q He is active in that business?—A. Yes, sir; he is still. Grant T. Hicks, physician, Tacoma, $2,500; Fred T. Fogg, attorney, $1,000; F. S. Blatner, architect, $1,000; H. Winchester, merchant, $2,500.

Q Of Seattle?—A. All this last list that I am giving you here, from Mr. Rust down, are from Tacoma From now on they are in Tacoma C. A Sayer, merchant, $2,500; C. McCutcheon, physician, $1,000; Ellis Fletcher, real estate, $1,000; A. C. McGinnis, real estate, $1,000; William Clark, merchant, $1,000; G. W. Bullard, architect, $500; L D. Campbell, physician, $2,000; G. C. Schlump, merchant, $1,000; George J. Smith, $500.

Q What was he?—A I don't remember. R. J. Davis, merchant, $1,000; J M. Ashton, attorney, $1,000; J. J. Totts, capitalist, $5,000; F. H Huggins, capitalist, $10,000.

Q. That completes the list?—A. Yes, sir.

Q. Now, have you any list of those who subsequently became bondholders?—A. I have not.

Q. Do you know where we can get that?—A. Mr. Earles's bank bought the rest of the bonds—I do not know whether he bought them in the bank's name or not.

Q. You mentioned one name here of somebody who was connected with the Milwaukee railroad, who was that?—A. The first one, Mr. Flewelling—he is now the land commissioner of the Milwaukee.

Q. What is the name of the railroad?—A. The Chicago, Milwaukee & Puget Sound.

Q. Does that road run into Seattle?—A. Yes, sir.

Q. From Milwaukee?—A. Yes, sir.

Q. Or from Chicago?—A. From Chicago.

Q. Was he a stockholder?—A. He had $5,000 worth of stock; yes, sir.

Q. And is there any other, or was there any other railroad official or employee who was a stockholder?—A. No one except Mr. H. C. Henry, the man who built the Milwaukee railroad.

Q. Was he connected with the Milwaukee road except that he practically built it?—A. Not in an official way, except as a contractor.

Q. Was all the stock of the company paid for in cash?—A. The first issue was all paid for in cash at par.

Q. And how about the second issue?—A. The second issue was sold at 60 cents.

Q. You said that the Northern Pacific Railway Co., through Mr. Plummer, stated that it would not sell the 8,000 acres, or any acres on the east side of the river—what led it to change its mind in that respect?—A. They never said they would sell it to us—we applied to buy it.

Q. Well, wasn't it sold to you later?—A. No; that was not the land that was sold to us later. The land that was sold was on the same side and above the present canal.

Q. Where was the land that was bought in the first instance from the Northern Pacific Railway Co.; some 12,000 acres?—A. That is all under the first canal that was constructed.

Mr. DORR. Which side of the river?

A. On the west side.

Mr. MCCOY. Well, the land that was bought on the east side of the river subsequently, the second or third purchase, whichever it was, was included in Mr. Plummer's refusal in the beginning.

A. No, sir; the company never yet have bought any on the east side of the river.

Q. I misunderstood you then—I thought you said they had bought on the east side of the river.—A. That resolution there gave you that idea; but it never went into effect. The resolution was for to try to purchase it because they thought the company could use it in the future and it was a fine body of land, but the railroad would not sell it to us and it was afterwards decided it was inexpedient to purchase it.

Q. You are certain, Mr. Haynes, that all this stock was paid for in cash by the people who appeared to be original stockholders in the company.—A. It was all paid for in cash at par, with the exception of in some cases a 5 per cent commission was paid.

Q. But regardless of the price at which it was sold, it was all paid for in cash by the parties.—A. It was all paid for in cash by the parties. There was no promotion stock. Nobody got any promotion stock.

Q. You paid for your own in cash?—A. I did.

Q. Did you draw any salary from the company?—A. I was paid for my first year's work in assembling the assets and in helping to organize the company, and after that I never held any salaried position.

Q. And what did you get for that?—A. $5,000.

Q. Do you know when that was paid to you?—A. I don't know just the date.

Q. I mean about?—A. It was paid in the winter of 1905.

Q. Do you know whether Anna M. Chilberg is the wife of the Mr. Chilberg about whom you have testified as being a bondholder?—A. I do not know the relation. He bought some for a sister, I think for an investment—he bought some bonds—I don't think it was his wife.

Q. I mean the stock?—A. I don't think—I can not tell you the relationship, Mr. McCoy, of Anna Chilberg to J. E. Chilberg.

Q. The Chicago, Milwaukee & Puget Sound Railroad Co. was an owner of 50 shares of stock, wasn't it?—A. Yes, sir; that was in Mr.

Flewelling's name and afterwards they transferred it to the name of the company.

Q. Do you know when that was acquired?—A. They were one of the first subscribers.

Q. Who is F. M. Crawford—that name appears here in the list of stockholders as of July 1, 1909.

Q. What is the amount, Mr. McCoy?

Q. Ten shares.—A. That is one name that I don't remember—I don't remember who that was.

Q. Who is F. R. Hill, who appears to own 50 shares?—A. He is a physician in Tacoma.

Q. What is Hill's cereal company, which also appears to own 10 shares?—A. That is a concern in Tacoma—run by a brother of this Dr. Hill.

Q. Who is James Reid, 20 shares?—A. I don't remember him, I think he lived in Tacoma.

Q. Do you know whether he is an attorney or not?—A. I think not—if he was I think I would know it.

Q. Who is David Hill, who seems to own 10 shares?—A. I can not remember those names.

Q. Is he a lawyer in Tacoma?—A. I think that there must be—there are some names there that I don't know—some subscribers I don't know—I can't remember ever having met them.

Q. Who is John S. Winn?—A. He is an army officer.

Q. Where does he live?—A. Well, he was stationed in Alaska the last that I heard of him.

Q. Is that the name of one of the receivers of the fisheries companies, John S. Winn?—A. No, sir; he was an Army officer stationed at Fort Lawton at the time he made that subscription.

Q. What is the Independent Improvement Co., 10 shares?—A. It is a company which McClure & McClure held their investments—they are their attorneys.

Q. The attorneys in this city?—A. Yes, sir.

Q. When did they become subscribers?—A. They were among the first subscribers.

Mr. Higgins. Mr. Haynes, I hand you what was given to the committee by Mr. Kerr as the first stock book of the company, which does not appear to be dated until some months after the stock was authorized and the sale of which was solicited—do you happen to know whether there is any other stock book than that—I mean before that one.

A. None before this.

Q. Were there temporary certificates issued?—A. Temporary receipts were given as payments were collected.

Q. And as the stock was fully paid permanent certificates were issued beginning with the book which you hold in your hand.—A. That's right.

Q. Do you know whether or not the corporation, the Hanford Irrigation & Power Co.—whether its corporate existence is still maintained?—A. It is.

Q. Is has an office in Seattle?—A. Portland, now.

Q. Portland, Oreg.?—A. Yes.

Q. Do you know who the present officers are?—A. Guy W. Talbot is president, H. M. Walthew, vice president and manager—I don't know the names of the other officials or officers.

Q. Well, I think there is a young man in the room who can furnish the information, as I am informed.

The WITNESS. I will refer you to Mr. Walthew for that.

Q. Did all the stockholders of the Hanford Irrigation & Power Co. that were associated with you as stockholders sell out about the same time?—A. Not at the same time; it took about a little over a year to consummate the deal before they gathered in all the stock.

Q. The American Light & Power Co., as I understand it, eventually acquired all the stock.—A. It finally acquired all of it.

Q. So the present officers of the Hanford Irrigation & Power Co. are the representatives of the American Light & Power Co.?—Yes, sir.

Q. Acting for them?—A. Yes, sir.

By Mr. McCOY:

Q. What part, if any, did Judge Hanford take in bringing about the sale of the stock of the Hanford Power & Irrigation Co. to the American Light & Power Co.?—A. He had nothing to do with it.

Q. What part, if any, did he take in inducing stockholders to make the sale or transfer?—A. All that I know is that he got up at the annual meeting and said that he favored it and was going to turn over his stock.

Q. When did Richard A. Ballinger become a stockholder in the Hanford Irrigation & Power Co.?—A. He was one of the first subscribers.

Q. What is the firm of M. Francis Ashton, of Tacoma?—Q. I think he has an office of his own. I don't know of any firm.

Mr. HUGHES. I think that the witness is mistaken. I think that is the wife of James M. Ashton, as I am informed by Mr. Walthew; and I think that is correct.

Witness excused. Whereupon a recess is taken until 7.30 p. m.

EVENING SESSION.

JULY 16, 1912.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

MANLY B. HAYNES resumed the stand.

The CHAIRMAN. Proceed with Mr. Haynes, Mr. Hughes.

By Mr. HUGHES:

Q. Mr. Haynes, the property of the Hanford Irrigation & Power Co. is situated how far, or was at the time of the organization of the corporation or the acquisition of its properties, from any railroads?—A. The lower end of the project was 35 miles from the Northern Pacific Railroad; the northern end was a little more than 60 miles from the Great Northern. At the time we started it they were the only two railroads, and the district was between the two.

Q. And what is the length of the project; that is to say, from Priest Rapids to the lowermost region, which would embrace lands acquired

and owned by the Hanford Irrigation & Power Co.?—A. A stretch of about 25 miles.

Q. The pumping station, however, was some miles below the power station, wasn't it?—A. Sixteen miles from the power house.

Q. And the lands lay between there and the 25-mile limit south?—A. Yes.

Q. Or a distance of about 10 miles?—A. We had some lands above the pumping station. The stretch included in the irrigable lands was about 25 miles.

Q. But there were some lands, a few lands, above near Priest Rapids?—A. Yes.

Q. You spoke of other lands that had been purchased at a higher price for irrigation purposes, at Richland. Where is that with reference to the Northern Pacific road and the Yakima Valley?—A. It is at the mouth of the Yakima River, and the water right is right across the river from Kennewick; they take it out at the same rapids. It was started—there was a small ditch in there, but it was promoted a year later than our scheme.

Q. The question I asked you still miss, I think, Mr. Haynes, and that was how near that land was to the Northern Pacific Railroad?—A. Within 8 miles.

Q. All of it?—A. The farthest of it; some of it was within 4 miles of the Northern Pacific Railroad.

Q. And that was a known or tried district at that time, was it?—A. Yes, sir.

Q. There are some districts that are not successful under irrigation and others that are, I believe, in this country; is that true? I mean for fruit purposes.—A. Some places the land is more desirable than others, and you might say that all irrigation schemes are unsuccessful. I make that including the Government schemes. They are not successful from a financial standpoint.

Q. You need not go into that question. I had reference to this question, whether certain places along the Yakima River lands had been tested under irrigation and found to be good fruit lands?—A. Yes, sir.

Q. Also along the Wenatchee River?—A. Yes, sir.

Q. And other lands in other localities, although in the same valleys, tested and found to be unsuccessful?—A. Yes, sir.

By Mr. McCoy:

Q. You mentioned two railroads and said they were the only two there at the time. Has there since been another one built?—A. The Milwaukee road has been built since we started that scheme.

Q. And how close to the Hanford Irrigation & Power Co. property does that come?—A. It crosses the river 11 miles above the power station.

Q. That is the nearest it comes?—A. And they are building at present—building a branch into the district, which is the first railroad that we will have.

Q. That is right into the district of the Irrigation & Power Co.'s property?—A. They are planning to build clear to Hanford; yes, sir.

Q. Do you remember whether or not there was any correspondence between the Northern Pacific Railroad Co. and the Hanford Irrigation

& Power Co.?—A. The deal for the purchase of the land was mostly consummated by correspondence.

Q. With whom in the railroad company?—A. Mr. Plummer's office.

Q. In Tacoma?—A. He is the land commissioner at Tacoma.

Q. You testified that Mr. Plummer that contract would be drawn up, but that it would have to be ratified by the president or some high official of the Northern Pacific. Do you know what official, if any, did ratify it?—A. It was referred to Thomas Cooper. He was then the land commissioner at St. Paul; and I think he conferred with President Elliot about it.

Q. And then the contract was signed?—A. Then it came back approved; yes, sir.

Q. Well, did the Hanford Co. have any correspondence with the St. Paul office of the——A. (Interrupting.) Not directly.

Q. (Continuing.) Or the land office of the——A. (Interrupting.) Not directly.

Q. Do you know whether Judge Hanford saw any of the officials or employees of the Northern Pacific except Mr. Plummer?—A. Not that I know of.

Q. Well, have you heard that he did?—A. No, sir; I can't find out that—the correspondence was mostly with the company direct, and they dealt with us just as they would with any other company after being satisfied that the money had been raised and we were responsible and could put in the improvments. Not until then would they sell us those lands.

Q. Well, was there any correspondence between the Hanford Co. and the Northern Pacific Co., if you know?—A. None that I know of, except through Mr. Plummer. We made our application to him, and further than that I don't know of any other correspondence; and if there was, I would have known of it, I think.

Q. Do you know whether Mr. Plummer has to refer all contracts to the St. Paul office, or are there any contracts which he is authorized to consummate without reference?—A. Yes; I think he can make sales on the schedule price, but for large deals like this I think he always get the approval of his chief, Mr. Cooper.

By Mr. Higgins:

Q. How much power did your company propose to develop?—A. The machinery that was put in first consisted of two 900-kilowatt generators, which is about 2,750 horsepower. The capacity of the canal was such that we could increase that to get possibly 8,000 horsepower. We bought the machinery for two units first, and that was ample for—and its disposition, it is ample to furnish power and water for all the land that has been developed so far and it has operated very—has operated continuously ever since we installed it.

Q. What use is made of that power?—A. The power is used to operate electric pumps 16 miles distant. They raise the water 50 feet into a main canal, and from there a distributing system carries it some 16 miles down the river and irrigates land under that system—under that canal.

Q. Do you also furnish light to the people in the locality?—A. They have their transmission lines all through the district; it furnishes light and power for all uses. The plant has been a success,

as far as the development shows and proves. This is the fourth year that it has operated, and for the settler who had improved land under it the plant has furnished ample water, and results show that it is a success as far as the original scheme was carried out.

Q. Well, the maximum power in the Priest Rapids, as controlled by this company, has not been developed yet.—A. Only a small fraction of it.

Q. And such power as you did generate there was used, and is being used, to furnish power for the pumps to raise the water and to furnish, in addition, lights and power to the people in that vicinity?—A. Yes, sir.

Q. With whom did you have the contracts for the power besides those, the purchasers of the land?—A. You mean for the sale of the power?

Q. Yes.—A. We sold it to nobody but irrigators and settlers in the district, up to the time our company controlled it. The present company, however, have extended out transmission lines to different parts of the State and are selling it for industrial purposes.

Q. That is the American Light & Power Co.?—A. The American Power & Light Co.

Q. The power is conveyed from the Hanford plant to their transmission line and then distributed?—A. Yes; this Priest Rapids power is just one of, I think, four operating power plants that they own, and they are all tied up under one transmission system that extends from Moses Lake, in the Beverly district, on the north, to Pendleton, Oreg., and Walla Walla, on the south, and Yakima district, all of——

Q. (Interrupting.) All, however, plants in the State of Washington?—A. The valley is all included in this State. They have extended, however, their transmission lines to Pendleton, Oreg.

Q. Do you happen to know whether or not they have plants on the Pacific slope outside of Washington?—A. None this side of the Cascade Mountains.

Q. Do they also operate irrigation plants in connection with the power distribution?—A. I think more power is sold for irrigation purposes than any other.

Q. But do they make contracts for electric power?—A. All the——

Q. (Continuing.) Apart from irrigation contracts?—A. All the cities in the valley are served with this power; they are lighted with it. What mills there are there are operated by this company.

Q. What mills there are in Hanford?—A. I mean—there are none at Hanford, but there are at Yakima and Kennewick and Walla Walla.

Q. Are there any industries at all at Hanford?—A. Not yet.

Q. And in contemplation?—A. Nothing but development of the land. There are, I presume, over a thousand settlers in there now.

Q. Did you, while connected with the company, endeavor to get any industries located there?—A. Well, we didn't get that far. We had troubles enough in financing our company and getting it started.

Q. But did you try to?—A. I didn't get that far; no, we didn't—we realized that we could not do that without a railroad, and the next thing was to get a railroad.

Q. So you didn't even consider it?—A. We never tried to sell power for industrial purposes.

Q. That is hardly what I asked.—A. You asked me if we expected to get industries at Hanford.

Q. Exactly.—A. No; we didn't, because we realized that we had to get the railroad first and thought something would come later.

Q. Did the board of trustees never consider, as far as you know, the matter of getting industries to locate there?—A. I don't think they ever did. I don't know of anything of the kind. I know it is impracticable.

Q. If they did you did not know of it?—A. I didn't know of it.

By Mr. McCoy:

Q. Did the company acquire from the Federal Government anything in the nature of a monopoly there?—A. No, sir. They acquired this permit to use the unsurveyed islands in the rapids, which permit was revocable any time that the Government wished to improve the navigation, and it was the same kind of a permit that a company or railroad has to get when they build a bridge across a navigable stream—revocable at any time that the Government saw fit, and that is all the title they have to-day.

Q. Have they, by virtue of their ownership of land, acquired any monopoly—practical monopoly—in the power?—A. They have not. They do not own the land across the river.

Q. Is the land across the river just as available for a power plant as——A. (Interrupting.) It may not be so cheap or convenient, but it is possible to develop much more power by taking and filing and appropriating water on the other side. We chose the side that was the most economical and within the means of the company.

Q. Is there anything like a waterfall there or is it just——A. (Interrupting.) A total fall of 78 feet in about 9 miles—about 8½ miles. It is the breaking of the river through the Saddle Mountain Range. The greatest fall is in the last 2½ miles, and that is where we built the plant. The possible energy of that stream has been variously estimated by the Government engineers as being something over 100 horsepower—I mean 100,000 horsepower—but our scheme has used only a fraction of that.

Witness excused.

The Chairman. Mr. Hughes, who have you here now that we can call?

Mr. Hughes. I believe you wanted to recall Mr. Kerr this evening. He came for that purpose.

The Chairman. Oh, yes; Mr. Kerr is here.

James A. Kerr, being recalled, testified as follows:

By Mr. Higgins:

Q. Mr. Kerr, you were one of the signers of the articles of association in December, 1905, which contemplated at that time the formation of what was then known as the Priest Rapids Irrigation & Power Co.?—A. I was. I drew the articles.

Q. You drew the articles?—A. I did, yes.

Q. You were present when they were signed?—A. I rather think I was. I think I was one of the—possibly one of the incorporators; I am not certain.

Q. Your recollection is that they were signed in the office of Judge Hanford in the Federal building?—A. Well, gentlemen, I have been trying to think where the first meeting was held. Possibly it was at Judge Hanford's office in the Federal building. I never heard of the proposition until—I think it was the day before this meeting was called.

Q. Who called it to your attention then?—A. Well, it was either Judge Hanford or Mr. Haynes, and I am inclined to think it was Judge Hanford asked me if I would not attend the meeting; and at that meeting, when we got there——

Q. (Interrupting.) And told you then, Mr. Kerr, what the meeting was for?—A. In a very general way only. The conversation was very brief. I didn't have any idea of just what it was until the evening the meeting was held, when Judge Hanford made a statement in a sort of informal gathering of some twenty, or between twenty and thirty, I should think, gentlemen, a good many of whom I knew and some few from Tacoma whom I did not know.

Q. Well, who were those that you knew?—A. I think from Takoma there was Mr. Todd and Mr. Cover, whom I had never met up to that time; Mr. Fogg, whom I knew; Dr. Hill, I think. I don't remember the names of the other gentlemen from Tacoma. From Seattle there was Gov. McGraw, C. J. Smith, Mr. Burch, Mr. Owens, I rather think Senator Frink, Mr. Haynes, Judge Hanford, possibly some of Judge Hanford's brothers, I am not certain, and there were—I can't recall the names of all of them. I have tried to remember them, but I don't remember all of them.

Q. Frank Hanford was there, wasn't he?—A. I think he was. I could not be sure about it, but I rather think he was. I think Clarence Hanford was there, at least.

Q. Well, at that meeting, Mr. Kerr, were the general purposes and objects of the corporation explained?—A. I can remember this, gentlemen, very distinctly, about that meeting: When we got to that meeting Mr. Owens, an eminent engineer of quite wide reputation, was there, as I remember it, with a survey—a blue-print map upon which there was located the proposed high and low line ditch, and he had also the document which I handed to the committee or handed to counsel to hand to the committee, which was an estimate of the cost of the installation of this power pumping plant, the construction of the main-line ditches.

Q. You mean something in the nature of a prospectus?—A. It was sort of a prospectus. I suppose you gentlemen have it. I found it among my papers and I——

Q. (Interrupting.) Well, I don't know that we have.

Mr. McCoy. What we had was a black and white print of some kind.

A. Well, I have brought to you gentlemen all the papers that I could find, and I handed to Mr. Hughes a sort of a prospectus; but if you will follow me just a moment I will state what occurred. That was the first knowledge I had of what the real enterprise was.

Mr. Higgins. Who explained it then?

A. Judge Hanford, as I remember, and he explained it in about this way—I can remember some of the things he said: He went on to state to the gentlemen who were assembled there that over at Priest Rapids, or below Priest Rapids, there was a valley containing some 26,000 or 28,000 acres of land that could be readily irrigated

from the Columbia River; that this tract of land was located at an altitude of about 400 feet above sea level; that it was in a sort of a cul de sac; that the Rattlesnake Hills were on one side and White Bluffs—large high bluffs—on the other side of the Columbia River; that the temperature had been kept by a farmer who resided there in the valley. And I was over there once, I remember we stayed——

Q. (Interrupting.) When were you over there?—A. I was over there, I think it was in November. Mr. Hughes was with me.

Q. Of what year?—A. I think it must have been 1905, although I may be mistaken about that. At least it was before any work was done.

Q. If it was November, 1905, that would be the month before this meeting when the articles of incorporation were signed?—A. Well, then, gentlemen, it must have been later than that, because——

Q. Was it before or after this meeting in Judge Hanford's office?—A. Oh, it was long after that meeting, because that is the first time I ever heard of it. He told me that the temperature that was kept there, or at least that the temperature was kept there during the winter for 15 or 16 years and showed that the thermometer in that little valley had never reached zero; it was a very temperate climate in there. That while the snowfall was quite heavy on the hills around Yakima and the surrounding hills that it was a rare thing that any snow fell in there. That the land was peculiarly adapted to fruit raising. I remember that he contended that it was as good fruit land as that at Yakima or that at Wenatchee. He also stated that there could be developed, with great economy, power, by a diversion of the water on the falls—on the rapids—I think 30,000 horsepower was the estimate that was made. I remember he also stated the fall from the head of the rapids down to where the power plant would be built. My recollection now is that was stated eighteen to twenty-three or four feet, I don't remember just the exact amount.

I remember that he explained to the gentlemen who were assembled there that in his judgment and in the judgment of engineers that that work of reclamation and the development of that power could be perfected within a limit of $500,000; that when it was perfected, that by extending a transmission line down the Columbia River there were large areas of rich volcanic ash land along the river that could be supplied with water by pumping, and that the excess power that would be used—that developed under this plan could be used down the river as far down as Walla Walla, I think, about 110 miles, or something like that. I know that Judge Hanford contended that by the expenditure of this amount of money it could not only be invested profitably, but that we could build a sort of a new inland empire along the Columbia River by the reclamation of lands.

Q. This was all explained at the meeting?—A. That was all explained at this meeting. That may not be very material, gentlemen, but that was all gone into. Well, there was a sort of an informal discussion there. My recollection——

Q. (Interrupting.) Have you concluded Judge Hanford's explanation of the proposition?—A. Well, I have not stated all that he said. I can say this, gentlemen, that he was very enthusiastic over the far-reaching possibilities of the development.

Q. What did he say, Mr. Kerr, after discussing the temperature and other things that you have mentioned, as to the acquiring of the

land?—A. I remember that it was explained at that meeting—and I having had to do with securing our rights from the War Department, and so on—it was all verified later—that there were a large number of leases that had been executed by the State of Washington to various parties. I remember that Todd & Cover had a number of these leases. I remember that Mr. Haynes had some of those leases; that a man by the name of Curtis had some of those leases; Dr. Raymond, a surgeon and physician of this city, I think had one of those leases; and that we could acquire those leases, and I learned afterwards that these gentlemen who held these leases were the ones that caused this preliminary survey to have been made and preliminary estimate to have been made.

Q. But you did not expect, in the development of the company, to rely upon acquiring those leasehold interests——A. Not alone.

Q. (Continuing.) And afterwards get lands from the State of Washington, did you?—A. Not alone, gentlemen. Judge Hanford stated also that there could be acquired—I think every other section probably through there belonged to the Northern Pacific, that was all within——

Q. (Interposing.) Was the matter of acquiring Northern Pacific lands discussed at the first meeting?—A. I think it was mentioned at the first meeting that those lands could be acquired. I don't think the price at which they could be acquired was discussed at all, but that it was possible to acquire them. I understood further at that first meeting——

Q. (Interrupting.) But, Mr. Kerr——A. I beg your pardon.

Q. Mr. Kerr, the statement was made that the proposition could be financed for $500,000, you say?—A. My recollection—I am speaking entirely——

Q. Is that true?—A. Yes; that is my recollection of it. But I was going to supplement that by saying to you gentlemen that my recollection is now, speaking from memory, that the irrigation engineer's estimate of the entire cost was possibly $20,000 less than that.

Q. But that was Judge Hanford's estimate of the amount of money that would be needed?—A. Yes.

Q. To perfect this development?—A. Yes, sir; and I have an idea that was based on this estimate. Have you that estimate, Mr. Hughes?

Mr. HUGHES. What is it?

A. Did you give the estimate that I gave you, of Mr. Owens, to the committee?

Mr. HUGHES. I gave all the papers you handed me immediately to the committee; I passed them right up.

Mr. HIGGINS. Well, I have no doubt that we have them, but I don't seem to have it before me now. I have no doubt that we did receive it and it is among these papers on my desk now.

By Mr. HIGGINS:

Q. But, Mr. Kerr, in preparing for the incorporation of a project of that sort, and in making estimates of costs which are worth anything, it would be very necessary to know something about the price at which the land could be acquired, wouldn't it?—A. Now, I am not certain whether that included the price of the land or not. It certainly would, if that included the price of the land.

Q. That would be an essential part of the cost?—A It would.

Q (Continuing) Of an undertaking of that kind?—A Yes; no doubt, if that estimate included the purchase price of the land, and I suppose the estimate of Mr. Owens would indicate to you whether it did or not

Q Well, the facts are that Mr. Owens's maps were maps of land—A Yes Well, they showed, of course, the location of the land; the maps showed the location of the ditches.

Q. Do you remember whether they showed all the lands which were subsequently acquired by the company?—A I suppose so; I think they would, because they—I would think they would necessarily do so.

Q Have you repeated all the statements that you desire to make as to the first meeting?—A. Oh, substantially all that I remember now. In connection with the land, I would like to say, Mr Higgins, that I went to my office to-day and looked through all of my letter files, letter-press copy books, for the purpose of being able to inform the committee with reference to the inquiry you made the other day about the question that was raised about the title Those lands of the Northern Pacific were all a part of the original Northern Pacific land grant. I stated to the committee the other day that I thought the question was raised with reference to the sufficiency of the satisfaction of one of the trust deeds I was unable to find——

Q. (Interrupting) One of the trust deeds?—A One of the trust deeds secured an issue of bonds on the Northern Pacific lands In the chain of title of the property there were put upon the Northern Pacific lands after the land grant and during the building and operation of the Northern Pacific, as I remember it, four different mortgages or trust deeds. I had purchased, with three other gentlemen, a large amount of Northern Pacific land in 1902, and in examining the title at that time Mr Newcomb, an attorney in this city, who was then a clerk in our office, had discovered what he regarded as a serious defect in the form of one of those satisfactions. I remember distinctly now that at the time that record was made and I had learned that the——

Q (Interrupting) What record are you referring to now?—A The record in the minute book that shows that the question of the title of the Northern Pacific lands was referred to me personally.

Q. That is to say, you are referring to the report as to which the minutes of the corporation show a certain legal question?—A That is the one.

Q. The acquiring of the land of the Northern Pacific Railway Co. was referred to you and that you made a report upon it?—A Yes Now, I was trying to find, gentlemen, that report I thought it would be in my letter-press copy book, but in thinking it over I remember distinctly that the question that was raised—that I raised in the meeting and caused that to be referred to me, grew out of the fact that we had had discussion and, as I remember it now, I procured a subsequent instrument of release for some 30,000 acres that four or five or six of us purchased on the same side of the river about 50 miles south, in 1902, and that I went over to Tacoma and talked to Mr Plummer, the land agent of the Northern Pacific Railway, and he satisfied me while in Tacoma that all of that issue of bonds which were issued under Henry Villard had been retired, and while I have been

unable to find the copy of the record, if it was a written report, I know I reported that the title to the lands was unclouded anyhow. I wanted to help the committee get that matter straightened up, and hence I made those efforts to enlighten you in reference to that record. But that, I am sure, is the explanation.

Q. You were the attorney for the company?—A. We were attorneys——

Q. (Interrupting) And drew up the articles of incorporation?—A. Yes; we were attorneys for two years Then I retired from the board of directors, and subsequently, I think the next year, Mr. Hughes's firm were attorneys, and we then again became attorneys; but I——

Q. (Interrupting) And you continued as the attorney?—A. Yes; we continued.

Q. Up to the time that the control of the company passed to the American Light & Power Co.?—A. Yes, sir; and we are still attorneys for the American Light & Power Co., the successors in interest of this company. But I have very little knowledge, gentlemen, about anything that took place in connection with the properties after I ceased to be on the board of trustees. I have——

Q. (Interrupting.) That is, after the American Light & Power Co. acquired the interest?—A. No; after September, 1907. I got into conflict with Mr. Haynes and Judge Hanford somewhat about it and I—Mr. Smith and I became very much alarmed quite early. We spent about $75,000 before we had begun to build any plant, and we got into disagreement with the other members of the board about the expenditures and got alarmed about the finances of the thing, and I retired.

Q. How much stock did you sell, Mr. Kerr?—A. How much what?

Q. How much stock did you sell?—A. Sell?

Q. Yes.—A. Not a share; not a share. I never asked a living soul on earth to buy a share of that stock. I bought and paid for $2,500 of stock in the company originally, and my partner $2,500 originally, but no—never——

Q. (Interrupting.) How many bonds did you sell?—A. Not a bond of any kind. I took no interest whatever in the sale of any stock or bonds. I went into that as I have gone into 40 or 50 other corporations, as an investment, and I got out of it just exactly what everybody else got out of it, with one exception: Some of the people that held on got more than I did. I took a part of my money back and took stock in the American Power & Light Co. for the balance.

Q. Well, you may recoup by your attorneyship in that company.—A. Well, I will try to.

Q. There was a good deal of legal work to it, wasn't there?—A. There was——

Q. (Continuing.) In the beginning of the Hanford Light & Power Co.—or Irrigation & Power Co.?—A. Not much work to do.

Q. There was a good deal to do, wasn't there?—A. Oh, yes; there was some work to do. We had to procure the rights to divert the waters of the Columbia River, from the War Department.

Q. Well, that didn't involve very much, Mr. Kerr?—A. Oh, no; not that alone, but there were——

Q. (Interrupting.) That didn't involve much—telegraphing Senator Piles or your Representatives in Congress?—A. No; it involved more than that. I had had occasion to acquire rights to obstruct

the public waters of the United States and was familiar with the situation and I prepared the petition, a copy of which you have.

Q. But the license which was issued to your company by Assistant Secretary Oliver—Assistant Secretary of War Oliver—was in the regular form, was it not?—A. I could not tell you now, Mr. Higgins, whether it was regular. The department——

Q. (Interrupting.) What was there about that particular thing that required——A. (Interrupting.) Nothing.

Q. (Continuing.) Very much time?—A. It was just one of the details.

Q. That is what I wanted, because I have looked the certificate over.—A. It did not involve us in any great labor.

Q. What else was there that required time?—A. There was some titles and various matters connected with the company. We were consulted about it very, very frequently—drawing contracts for construction and for the purchase of material.

Q. Did you draw the contract of sale between the Northern Pacific Railroad and this company?—A. No, sir; I did not.

Q. Was it submitted to you before it was accepted by the Hanford Co.?—A. I have no recollection that it was, whether we had or just what the contract was, but yet we may have drawn it; I don't know. I suppose the Northern Pacific drew it—their attorney.

Q. That is the usual practice, is it?—A. That is the usual practice.

Q. And it is usual practice also for the grantee to accept their deed or not at all, isn't it?—A. Well, they generally—if you get anything from them you have to take what they give you.

Q. I make that observation as applied to all railroads; not the Northern Pacific particularly.—A. Yes; I think that is true.

Q. Were you consulted by Mr. Haynes at the time he called on the land agent in Tacoma?—A. I have no recollection of it.

Q. Were you consulted by Judge Hanford at the time that he called upon the land agent of the road at Tacoma?—A. No, sir; no, sir; I had nothing to do with securing title to the land.

Q. Or by the man who succeeded Mr. Haynes—I don't just recall his name now—as secretary of the company?—A. Mr. Walthew?

Q. Walthew, is it?—A. Walthew.

Q. Walthew.—A. I have no recollection of it; may have been.

Q. You have stated to the committee all that you can recall which was involved in the legal questions submitted to you with reference to the Northern Pacific lands?—A. Absolutely. Absolutely there was no other question that came up in reference to that title or, in my judgment, that could have come up in reference to it, because there had been no clouds on the title of this land grant of the Northern Pacific.

Q. Who checked the land descriptions, Mr. Kerr?—A. I beg your pardon.

Q. I say, who checked the land descriptions?—A. You mean the school lands or the railroad lands?

Q. The Northern Pacific lands?—A. I don't know. I have no idea.

Q. You don't know?—A. No; no.

Q. That would be the work of an engineer rather than a lawyer, anyway?—A. Yes; I suppose the engineer checked that. I had nothing whatever to do with the acquirement of the lands. I think

Mr. McCord went over at the time the school lands were advertised and sold, but I didn't.

Q. You called on Mr. Plummer once?—A. I called on him with reference to the matter of the satisfaction of the old mortgage made under Villard.

Q. Did you call on any of the other officers of the Northern Pacific Railway?—A. No, sir.

Q. Either in the State of Washington or in any other place?—A. Nowhere. I didn't know them.

Q. What?—A. I was not acquainted with any of them. I knew that attorney for the Northern Pacific, Mr. Grosscup, at Tacoma, and I had met Mr. Plummer several times; I knew him when I saw him; had a very casual acquaintance with him; and I went in to cal on him on this particular occasion, I remember, while in attendance on court over at Tacoma.

Q. Did Judge Hanford, upon his return from calling on Mr. Plummer, make a report to you?—A. No, sir; I don't know when Judge Hanford went to Tacoma. I have no idea when he went to Tacoma.

Q. You know whether he made any report to you about any attempt to purchase the Northern Pacific Railroad lands?—A. He made no report to me that I know of. He made a report, I suppose, to the board of trustees at some time.

Q. You were then a member of the board of trustees?—A. Oh, yes; I was a member of the first board of trustees and the second one also.

Q. Do you recall what the report was, if one was made?—A. I do not. Probably—I have a general recollection that the price that was reported to that meeting was $10 an acre for a certain area of land, and the land up near the headworks—that was rough and where rock was exposed more or less—I think was $3 or something of that kind; and I remember that Mr. C. J. Smith and myself at that meeting of the board of trustees both contended that the price at which that land was quoted was above what it was worth, and I felt so then and I feel so now—above its actual value.

Q. Had you been in irrigation projects before this time?—A. I am interested in the——

Q. (Interrupting.) Had you been before this time, before 1905?—A. I think one. I think I was in one. I am not certain. Let me see. No; not before that; afterwards. I am interested in the Olympic Power Co., which is developing a large power plant now in the Olympic Peninsula at the Elwah, and I am interested in the Horn Rapids Irrigation Co., that succeeded to the Lower Yakima Irrigation Co. at Richland, down the river some 35 miles, I suppose, from this plant.

Q. You can not furnish, Mr. Kerr, any information to the committee relative to the acquiring of the lands of the Northern Pacific by the Hanford Irrigation & Power Co., except as they are contained in the minutes of the company and as you have already stated?—A. That is absolutely all I know about it.

Q. That is to say you state to the committee that you have no knowledge as to how they were acquired, except as the deeds speak for themselves, other than what you have narrated you found when you examined your letter book. Is that the fact?—A. That is all. I have a knowledge, of course, that we did acquire them, but as to

the negotiations I was not present; knew nothing about them whatever. I did examine the titles. I expect I examined the contract.

Q. And you are unable to give this committee any information relative to a discussion in the board of trustees as to the acquiring of these lands?—A. Any further, gentlemen, than I know that the price at which these lands could be acquired was made the subject of discussion in that committee, and that Mr. C. J. Smith and myself both contended that the price at $10 an acre for that land was, in our judgment,in excess of what it ought to be purchased for. I had purchased lands at $2.75.

Q. And you voted for that resolution, didn't you?—A. Well, we were only two gentlemen of nine on that board of trustees and——

Q. (Interrupting.) Well, it appears——A. (Continuing.) And I suppose I did. I generally have yielded in all boards—and I am connected with a great many—to the large majority.

Q. Well, it appears, Mr. Kerr, from the minutes of this Hanford Irrigation & Power Co. that at a number of meetings the trustees had under consideration the acquiring of these lands from the Northern Pacific Railway. It further appears that one resolution was adopted for the acquiring of certain lands east of the river. The fact is, as appears now, that the lands acquired were west of the river.

Q. It further appears that covering quite an extended area that this entire question in its different phases was before the board of trustees, and I ask now for information as to whether or not you are able to give this committee any more information as to the acquiring of that land and as to the negotiations looking toward its acquirement?—A. Gentlemen, I am speaking entirely from memory. I know that at one time the question--that Judge Hanford brought before the meeting the question of acquiring lands on the east side of the river. I know that we did not acquire those lands. I know that Judge Hanford desired that we acquire lands above the 100-foot lift or level, and those lands were not acquired. Now, how many times these land questions were discussed I don't remember, but I know that I opposed personally acquiring any land above a lift of 100 feet, and I opposed also the acquiring of any more lands than were embraced within the original propositions for the reclamation of 26,000 acres of land, and I put it upon the ground that the company that we were investing or seeking to invest local capital in it and that all of these development schemes that I had had anything to do with exceeded in their cost the estimates, and I became alarmed very early about the ability of all of us to finance it. I know I opposed a scheme to build transmission lines; it would cost us $3,000 a mile, first to Pasco and then down to Walla Walla, and got in a rather heated discussion with Judge Hanford and Mr. Haynes both in reference to it. I was looking——

Q. (Interrupting.) But, Mr. McCord——A. Yes.

Q. (Continuing.) The resolution for the acquiring of the land east of the river while it was adopted, as appears by the minutes of the meeting, by unanimous vote, never got beyond that point. Do you know why?—A. I don't. I was not under the impression that we had—that we had adopted a resolution to purchase any lands east of the river. There was lying east of the river a tract of several thousand acres of land, across the river from Priest Rapid. I don't say, Mr. Higgins, that it is not in there. I don't remember it.

Q. I understand you.—A. Because, while I produced those books, I have not read those minutes through to refresh my memory.

Q. I was going to call your attention, if I can find it, to such a resolution. At the meeting, Mr. Kerr, of April 3, 1906, at which J. H. McGraw, U. R. Todd, M. B. Haynes, James B. Howe, James A. Kerr, H. K. Owens, C. H. Hanford, and George A. Burch, trustees, were present, "It was moved by H. K. Owens that Judge Hanford and M. B. Haynes be instructed to open negotiations with the Northern Pacific Railroad for the purchase of 8,000 acres of land lying east of the river."—A. I remember that was up.

Q. I was in error about it, because I think I referred to it as a resolution——A. Passed.

Q. (Continuing.) For the purchase of lands when, as a matter of fact, it was an instruction to a committee to acquire it if possible.—A. Well, I know this, Mr. Higgins, that I opposed that resolution and the purchase of that land. Now, you may find a record made there that I did not vote against it. I probably did not vote at all.

Q. Well, the facts are that a majority of the board and trustees did.—A. They probably did.

Q. Now, do you know why it was not acquired?—A. I don't know, gentlemen, why it was not acquired.

Q. Mr. Kerr, I will ask you one or two more questions in reference to this matter and then you will be excused. Your firm continued as the attorneys for the company until about what time in its history?—A. You mean this company?

Q. For the Hanford Irrigation & Power Co.?—A. Up to the time the stock was finally all acquired by the American Power & Light Co. and then we——

Q. (Interrupting.) No; but in the first instance, in the first instance?—A. Oh, in the first instance. For two years until the second election—that is, September, 1907—I think you will find the record then shows that we dropped out and Messrs. Hughes, McMicken, Dovell & Ramsey succeeded and they served for a year; then we were reemployed; I think served from that time on.

Q. Was your reemployment before or after the company voted an increase in capital stock?—A. I think it was after the—I think it was after the stock was increased, and we kept getting more money into the concern and our work was all costing us—what was estimated to cost us $480,000 cost us three quarters of a million and we didn't have the high line ditch in either. And it kept involving us in more money all the time, so that there was finally—I think we acquired some additional part of that increased stock so that Mr. McCord and I, I am sure, had $26,000 invested in this company at the time the stock was purchased by these other companies.

Q. What was the floating debt of the company, do you remember?—A. Mr. Higgins, I am not familiar with that but I should think it was at least eight hundred—the debt?

Q. The floating debt?—A. Oh, the floating debt. Several hundred thousand dollars.

Q. How was that secured?—A. It was not secured at all, simply carried it along among us.

Q. You were not able to get credit for that amount of money without a note?—A. Oh, I had nothing to do with the manner in which—with the execution of the notes; I was not on the board and

I don't really know how that was carried. I suppose it was carried in the form of notes probably.

Q. Where were the notes discounted, do you know?—A. There was no—I don't think there was any discount on the notes. You see we purchased our machinery from the Allis-Chalmers Co. I know we owed them a considerable amount of money at one time, and we kept cutting them down. I think they had our notes. I think Mr. McCord and I finally settled that matter up as sort of mutual arbitrators between the company and the Allis-Chalmers Co. I don't remember just how it was paid, but it became necessary, finally, for Mr. Michael Earles, who was the contractor that was building—who really took the work on force account—we could not get any contract for the construction of the dam—the power station nor the dam and station, nor the building of the ditches, and we had to let a force contract to Mr. Earles to do that work, and we paid him the cost of the work and 10 per cent, and we became indebted to Mr. Earles in quite a large sum of money and he filed a lien on the property for—I don't know—over a hundred thousand dollars a good deal.

Q. How much?—A. I think one hundred and thirty-five, maybe one hundred and sixty or seventy thousand dollars; quite a large amount. And Mr. Earles was a client of ours, also had been for many years, and Mr. Earles came in with the rest of the gentlemen here who had put their money into it and put his shoulder under the wheel and took a large block of this preferred stock in satisfaction of his claim, and he became in that way a heavy stockholder in the company. It was just one of those matters that a lot of men here and in Tacoma went in. We didn't expect to be involved in a large amount, and we all went out light. We took some money and we took stock in the Power & Light Co. to get out of it.

Q. Were you an indorser on any of the notes?—A. Not at all; no, sir. I never signed a note in my life, I don't think, for anybody.

Q. The indebtedness which you referred to was to the Allis-Chalmers Co.?—A. The Allis-Chalmers Co. and to Mr. Earles?

Q. And Michael Earles?—A. Yes; and Michael Earles. That was the principal indebtedness we had, and this land indebtedness, this land—school land and the railroad land was all bought on—I think payments made so much each year for 10 years possibly. We had those fixed charges to take care of, and under those contracts we would forfeit our payments if we did not keep them up, so we had certain fixed charges of that kind in the way of payments maturing on land that had to be taken care of, and we sold—Mr. Walthew could tell you more about that than I—I know there was a lot of land sold over there and we sold water rights and one thing another, and sold town lots and collected some revenue, but, notwithstanding all that, we became very much involved.

Mr. McCoy. How heavily did you get in this, Mr. Kerr?

A. $26,000, gentlemen, I think is what we got into it finally. That is just about $21,000 more than we ever expected to.

Mr. Higgins. Did one man acquire the options on the stock of the Hanford Co. at the time its control passed to the American Light & Power Co.?

A. I think that stock was bought up by Mr. Talbot, who is the manager of the American Power & Light Co. at Portland, I think

practically all of it at par; that is, they paid either the total amount in money or a large part of it in money and a small part of it in stock with the exception of a block of stock that was owned by Hanford & De Veuve I think, and that was the last block out, and I think they paid more than par for that, but they finally did acquire it all.

Q. Did he acquire this stock himself or through a broker?—A. Oh, now, it was all acquired direct by his dealing with the various stockholders, and I think they were all treated exactly alike. Possibly in some instances they paid all money, par, for the stock, and in other instances some of the stockholders were willing to take part of their—par value for their stock in money and part in stock. I know we took some stock in the American Power & Light Co. that is now quoted at about 75 cents on the dollar.

Q. Do you recall, in connection with the acquiring of the control, a man by the name of Mitchell?—A. Oh, I have known Mr. Mitchell since 1890; yes, sir. Mitchell is at the head of the American Power & Light Co. in New York.

Q. Well, it has been testified that he was active in acquiring this stock?—A. Well, I suppose they meant, Mr. Higgins, that his company was active. They did acquire—his company acquired it all.

Q. But the witness who referred to that, Mr. Kerr, did not even know the name of the company that had acquired it.—A. Mr. Higgins, Mr. Mitchell has not been in Seattle, I don't think, but once in the last 15 years. I was attorney for the General Electric Co. 22 years ago when Mr. Mitchell was then located at Portland.

Q. Are you now the attorney for the General Electric Co.?—A. No, I am not, and I think it was Thomson-Huston Co. then, afterwards merged into the General Electric Co.; but Mr. Mitchell has been in New York for many years and has only been out here at long intervals, and he personally never acquired any of the stock.

Q. Are you the attorney for any of the large eastern electric companies, like the Westinghouse or the General Electric?—A. No, I am not. We are attorneys for—like everybody in the general practice—for a great many corporations and for a great many individuals.

Q. Most attorneys are?—A. Yes. We have a great many companies employing—who pay us a salary, but we are not in the exclusive employ, to take our time, by any one company.

Mr. HIGGINS. I think that is all, Mr. Kerr.

Witness excused.

The CHAIRMAN. Gentlemen, are there any other witnesses that you can use now?

Mr. PRESTON. Mr. Kerr is a witness on the Melovich case. Now, I am disappointed in that record that I brought in to you. I have just had a chance to look it over and it is quite deficient. I am going to satisfy that deficiency some way or other, I won't say how, because I don't know; but at the same time Mr. Kerr is so insistent upon getting away, and he will be so busy to-morrow getting ready to go away the next morning, that I suppose, perhaps, I should suggest to you gentlemen that you put him on in that case now, if you will.

The CHAIRMAN. Have you in mind the things that you desire to ask him?

Mr. PRESTON. I was just going to ask him—I think he understands the grounds of criticism of that case, and I am just going to ask him to tell gentlemen in his own way about the matter covering those points.

The CHAIRMAN. Well, you may do so.

JAMES A. KERR, being recalled, testified as follows:

The CHAIRMAN. Mr. Kerr, he desires to ask you concerning the Melovich case, now that you are here.

By Mr. PRESTON:

Q. Your firm was attorneys for the defendant in the Melovich case?—A. Yes, sir; I tried that case the first time.

Q. Personally?—A. We were attorneys for one of the casualty companies that was the insurer of the Stone & Webster people. We are not attorneys for Stone & Webster. We only appeared on the record in that case as attorneys for Stone & Webster because of the insurance.

Mr. HIGGINS. Who are the attorneys here of the Stone & Webster Co.?

A. I think Farrell, Kane & Stratton, are they not?

Mr. HIGGINS. I don't know.

A. I am not certain. I think they are. I think that is the name.

By Mr. PRESTON:

Well, now, Mr. Kerr, I wish you would tell the committee in your own way, in narrative form, what happened on that first trial in its bearings upon the way the case came up before Judge Hanford upon the motion for a new trial; that is, the motion following the first verdict, the verdict on the first trial.—A. The issue, gentlemen of the committee, in that case, under the pleadings as you will observe them—the issue of negligence was predicated upon the failure of the defendant to have guarded a set of cogwheels. The way the action was originally brought, they undertook to draft the complaint so that they could bring the action under the statute that we have in this State which——

Q. (Interrupting.) Do you refer to the factory act?—A. The factory act, which requires all cogwheels to be guarded. And in the trial of the case they were required to make an election whether they would proceed at common law or proceed under the statute. The appliance that was being used was a machine for washing the gravel that was being used for the construction of the foundation for a power plant at Snoqualmie Falls; it was a detached machine for gravel washing. The same kind of a machine, excepting that it was operated on a railway car, was held by Judge Rudkin, at about the time the case was tried, not to fall within the terms of the factory act. But at all events the plaintiffs therein elected to proceed, upon my motion, at common law. At common law the courts of the several States of this Union and the Federal courts, without a single exception, had held that it was not negligence in the absence of a statute or, in other words, at common law, to operate cogwheels unguarded. I interposed, at the close of the plaintiff's testimony in that case, a motion for a nonsuit or directed verdict—a motion for nonsuit upon the ground, substantially, that the plaintiff had failed in his proofs, in that he had proven no actionable negligence. It was an admitted fact—the admission was made at the beginning of the trial—that the cogwheels were not guarded and that he had assumed the risk, and

upon the further ground, as I remember it, that he was shown to have been guilty of contributory negligence. That was in the middle of a jury term in this court. Judge Hanford had many other jury cases set. Judge Hanford, after I stated to him, as I have stated to you, the rule of law, and after I had requested the court to permit me to read to him a very recent case from the eighth circuit court of appeals an opinion written by Judge Sanborn and concurred in unanimously by the other judges, which held that in the case of a woman 19 years of age, working within 9 inches of open cogs, she could not recover at common law by reason of their not having been guarded, Judge Hanford stated that the rule of law that I invoked was well settled and that he realized that there was not a State court, nor had there been any Federal court—I had decisions from the Supreme Court of the United States—that held that it was negligence at common law to operate cogs unguarded, but that in a case which he cited, which was tried in this district before him and before the court of appeals in this circuit, he thought had virtually held, in this circuit at least, that the question as to whether cogs ought or ought not to be guarded was a mixed question of law and fact upon which a jury might be called upon to pass, and that at all events, having a jury here, he would not take the time to hear me present the authorities but would hear me on motion for a new trial, and consequently overruled my motion for a nonsuit, and we put in our testimony and, as I remember it, I made the usual motion at the close of all the testimony for a directed verdict, which was not discussed, the court having ruled as I have indicated to you.

On the argument of the case, notwithstanding the fact that the sole issue of law was the question of whether we were guilty of negligence in failing to guard the cogwheel, the attorney for the plaintiff had contended before the jury that we were negligent in not having instructed this Slav, who was a man, as I remember it, of 28 or 30, or possibly more years than that of age, and he complained also that we were guilty of negligence because the platform upon which he stood was too narrow and it was too low. The proof showed that this plaintiff had gone up to oil the bearings of the shafting that carried these two cogwheels; that from the edge of the cogwheels out to the bearings on either side there was a distance of 16 inches, and he had stood on the right-hand side, with his face within 8 or 9 inches of the cogwheels, to oil the bearings on one side, and without shifting his position on the platform he had reached his arm over the rope and running cog for the purpose of oiling on the other side, when the cogwheels caught the sleeve of his jumper and took his arm off. I went from the trial of that damage case in this court the next morning into a trial of a damage case in the superior court that took my time for two days. My recollection is that——

Q. (Interrupting.) Let me interrupt you there. I was distracted. Did you tell the committee about the range of argument before the jury?—A. Yes, I have stated that.

Q. Excuse my interrupting you.—A. Now, I directed a clerk in the office to prepare the motion or petition for a new trial. Under our State practice we are required to file that petition within two days, and my recollection is that Mr. Ivey in our office dictated the petition. I am not entirely clear about that, but that is my recollec-

tion. I asked him to prepare the petition upon the usual statutory grounds. I contended, upon the question of damages in my argument to the jury in that case, that under this compensation act of this State, which had been enacted but had not yet been put in force, that the Legislature of the State of Washington had fixed the maximum amount of recovery for that class of injury at $1,500. A verdict was returned in the case for $12,352. I didn't notice until I came to argue the motion for a new trial before Judge Hanford that in dictating the petition they had overlooked the statutory ground that the verdict was excessive.

I contended before the court, in my argument for a new trial in that case, the verdict was over eight times the amount of value of that kind of an injury as fixed by our legislature; that the verdict was grossly excessive; and I contended that under the Federal cases and under the Federal practice, and with the large discretion with which the Federal judiciary were vested, and in the interest of the administration of even-handed justice, that it was the duty of the court, the verdict being grossly excessive, to set it aside. I also contended, in the light of the fact that argument had been made that we were guilty of negligence in not having instructed this man, when that was not an issue, that we were guilty of negligence in not furnishing sufficient or a wider platform, which was not an issue made by the pleadings; that the use of the word by Judge Hanford in his instructions, "If you find the defendant guilty of any negligence," that the jury could have predicated its verdict upon the contention that we ought to have instructed this man because he was a Slav and did not understand the language very well—the English language—or, perchance, that the platform ought to have been wider. This piece of machinery was located—they were building in a canyon of the Snoqualmie River and this particular piece of machinery was elevated above a place where this fellow was running a little motor that was operating it a number of feet. He had to go up a ladder to get to it. And I felt in that case, and I feel now, under my knowledge of the Federal practice and the wide discretion that the Federal courts have, in the light of my belief, that it is the duty of a court of justice to administer even and fair-handed justice in the trial of any case in court to permit us to try that case again.

Now, Judge Hanford made his ruling there and it will be before you, because it was being taken down, and I had a copy of it that I gave to Mr. Preston, and I think he filed it with the instructions that he gave you, but in some way we overlooked that in the exception to the general instructions of the court upon the question of negligence. I overlooked it, I suppose, because of my hurry to get into the trial of the other case, and I overlooked it and took no exception. Now, there is that case, gentlemen, exactly as it was.

The CHAIRMAN. Did you call the court's attention to the word "any" in the instruction given?

A. I did not at the time. In the Federal court we are supposed to enter upon the record our exceptions to the court's instructions immediately after the retirement of the jury, and that was the practice in the State court here for many, many years until the legislature, I think the session before the last, possibly, provided that we could file our formal exceptions to the court's instructions at any time before the motion for a new trial was actually passed on. But I did in my

argument, and not only that, I filed a brief in support of my contention that this instruction was broad, in the light of the argument which had been made and in the light of the actual issue which was being tried. Now, that is all there is to that case.

Q. Was there any evidence offered in support of the proposition which plaintiff's attorney argued as to the insufficiency of the platform?—A. There was evidence offered on that point, as I remember it. The transcript is here somewhere. It was ruled out by the court. It was held to be immaterial evidence, but the argument was still made to the jury.

Q. Was the argument excepted to at the time it was made?—A. I do not remember whether it was or not. I do not believe it was. I very much dislike to interrupt any attorney in the argument to the jury. My recollection is that I did not except to it at the time.

Q. Well, your practice permits of an amendment to a declaration after the verdict, so as to conform to the proof?—A. In equity cases our statute provides for amendments to conform to the proof. I do not remember any provision of the statute which would permit a man after he had got a verdict upon immaterial evidence to amend his complaint so as to make it conform to the proof.

Q. In most of the older States, if the proof is in the record the declaration may be amended at any time before judgment?—A. Before judgment; that is, where there is no exception to it—that is, where there is no objection interposed.

Q. Yes; if the proof went in without objection?—A. Yes, sir; but the straight issue we tried was the issue I have indicated to the court. The case was subsequently tried and a verdict of $4,000 was rendered in it, and I think that is approximately as large a recovery for that kind of an injury as our supreme court will sustain.

Mr. PRESTON. I think that verdict is for $4,200.

The CHAIRMAN. Was the $4,000 verdict permitted to stand?

A. Yes, sir; it was permitted to stand on the second trial of the case; but I think, gentlemen, that the verdict in that case ought not to be allowed to stand. This man was earning, I think, about $2.50 per day, and I can not believe there can be much disagreement about the excessiveness of the verdict.

Q. I am not sure as to the impression I have, but I have the impression that he was earning $3 per day, and that he was 23 years old—I may be wrong——A. My recollection—of course, I have not refreshed it—was that he was 28 years old, and my impression was that he earned $2.50; but even if it was $3 a day. I have tried, gentlemen, a great many of those personal injury cases—30 or 40 of them a year—and I think I know that a verdict of $4,000 in that kind of case is at least an average, if it is not above the average, verdict for the loss of an arm in the case of a man drawing that amount of wages.

Mr. PRESTON. Mr. Kerr, you said there was a transcript of the evidence of that first trial, too, somewhere?—A. I gave the transcript of the evidence. I had it in our office, and I gave it to Mr. Bolster—the transcript of the evidence on the first trial of the case—and somebody has it.

Mr. MCCOY. I think we have it; we have that up at the hotel. I would have brought it down if I thought we needed it.

Mr. DORR. I passed it over to the committee early in the session.

Mr. PRESTON. I just wanted to know where I could get it for you gentlemen. Now, there is here—and I think I have this also for you—an oral decision on motions for judgment non obstante veredicto and for a new trial.

The WITNESS. Yes; that was the character of the motion I prepared in the alternative.

Mr. PRESTON. This is the oral decision, not the motion.

The WITNESS. Yes; but I prepared a motion in the alternative, as I remember it, or directed it to be done.

Mr. PRESTON. I show you this [handing document to witness].

The WITNESS. This is the decision. We have appealed that case to the Supreme Court, and with all due regard to Judge Hanford, if this committee will go over that case you will find that the court of appeals of this circuit—if you will follow this case—they will hold that there is no actionable negligence at all. I felt aggrieved over this case myself.

Mr. MCCOY. When was the occasion when Judge Hanford was said to have stated that the verdict was five times too much?

A. I suppose that was in response, gentlemen, to the argument that I made there that under the compensation act this verdict was three times, practically, the value of that kind of an injury, as fixed by our legislature.

Mr. PRESTON. Won't you tell the committee what that was, and what the occasion of it was—that is what Mr. McCoy is inquiring as to, and that is what I was going to come to.

A. Well, the compensation under the compensation act for that kind of an injury as fixed by our legislature in its wisdom, or lack of wisdom, is at $1,500, and this verdict for twelve thousand and odd dollars and eight times $1,500, and then I think it was $362 in addition to the $12,000, was the amount of the verdict; so that there was that amount added to it over and above of the amount of the recovery as fixed by our legislature.

Mr. PRESTON. The question I asked you I do not think you understand——

Mr. MCCOY. Just while we are on that point. But the compensation act has other features in it which control the amount.

The WITNESS. I realize—this is only a comparison.

Mr. MCCOY. And the theory of it is—I suppose—I never saw your act here—that such losses are industrial losses and should be charged against the business?

A. Yes, sir. I advocated that act myself, and it is working beautifully in this State, too.

Q. So that the fact that the legislature fixed $1,500 for an injury of this kind, taken by itself, has not any bearing on the $12,000 verdict?

The CHAIRMAN (interrupting). That act is intended for and relates to accidents under circumstances where the injury might be entirely the fault of the employee and the employer entirely without blame.

The WITNESS. It is only by rather liberal analogy that it can be used at all; but I think the courts had considered it in connection with those recoveries.

Mr. MCCOY. They ought not to on any logical basis.

The WITNESS. I felt that it was a legitimate matter for the court to consider. Of course, we lawyers disagree about those things sometimes.

Mr. PRESTON. Now, I would like to have you tell the committee what it was that Judge Hanford said on this other occasion. I have heard something said about his using the expression "three or four times too much," but it does not appear in this oral decision—this memorandum decision.

Mr. MCCOY. I am sorry that we have not got it here; but we have up at the hotel; a copy of something or other which I supposed was taken stenographically in the court.

The WITNESS. Well, I can not recall—you have that case, I say, and I can't recall——

Mr. PRESTON. Then, I do not want to ask the question. If we have it in written form I will try to locate it.

The WITNESS. I think the committee have it, because it was exhibited to me; and if Mr. McCoy says he has that stenographic report——

Mr. PRESTON. Well, that was all I wanted to do, gentlemen; I wanted to get it for you, gentlemen. If you have it I do not want to get it from the witness.

Mr. HIGGINS. There is something of that kind appeared here in that Perry affidavit [handing affidavit to witness].

The WITNESS. That is practically what was said. What is stated in this affidavit is practically what Judge Hanford said in ruling on the motion.

Mr. MCCOY. What did Judge Hanford mean, if he is correctly quoted, in saying—he referred to the plaintiff and said, "He was able-bodied and lost his arm, it is true; but in keeping with other cases he got five times as he should." Now, what did he mean by saying "in keeping with other cases"?

A. I do not know, gentlemen, just what that language refers to there. I did not stop to analyze it and I could not tell you what it refers to. The other part of it manifestly refers to the court's view that verdict is excessive.

Mr. HIGGINS. Of course, it ought to appear that that is not Judge Hanford's decision. It is a statement that appears in the Perry affidavit, so that there will not be any confusion in the record.

Mr. HIGGINS. My question was: "If he is correctly quoted."

The WITNESS. I do not know what those words could refer to, gentlemen.

Q. We had some discussion when this case was up once before, Mr. McCoy, as to whether or not on appeal the appellate court does not take into consideration the entire charge and not single out any one phrase or paragraph in the charge, which, considered by itself, might probably be held to be erroneous. Is that the law of this circuit?—A. There is no question in the world but in my view of those instructions, under the authorities that I cited in my brief and in the light of the contention that was made in the argument to the jury, that the use of the word "any" would have been sufficient to set the verdict aside in the court of appeals.

Q. Then, the court of appeals does, I presume, like most courts I have heard of, take into consideration the entire charge and say that if on the whole charge the jury could not have been misled by

this phrase or sentence, they won't set aside the verdict for error. Isn't that the law?—A. Well, I am not advised as to whether all you gentlemen are lawyers or not.

Mr. HIGGINS. We think we are.

The WITNESS. I believe you are; but out in this State, at least, our supreme court has decided for years practically all damage cases upon the peculiar facts of a given case, and if the court, upon the entire record, feels that the verdict is right they generally use some such phrase as that for the purpose of making a disposition of it. In other words, I have tried a good many cases where I would take voluminous exceptions to the instructions of the court, and the supreme court—I remember I have two or three cases in mind now, one in which the court was convulsed with laughter when I read the instructions of one of our trial courts here—and yet the supreme court, on the entire record, held that the case ought to be affirmed, and they found a way to get around without ruling out that instruction. So that you can hardly say in any given case that they will apply it in our State courts. It has been applied in cases that I know of in the Federal court. But I planted myself on the proposition, and I think as a lawyer it is right, that in this first trial of this Melovich case, taking into consideration what occurred on the trial, taking into consideration the excessive amount of the verdict, that the court ought to have set aside that case, that verdict, in the interests of justice. It is not any more unfair to give one party a technical advantage, where the verdict is excessive, than the other, and I have tried a number of cases where the court has set verdicts aside on the ground that the verdict itself was insufficient. That is not as common as where it is excessive, but I have known frequently our superior court to hold, in the last three years, that the verdict should have been greater than it was or none at all, and they have set it aside and given a new trial.

The CHAIRMAN. I think that we are wandering pretty far afield.

The WITNESS. I think so.

The CHAIRMAN. Is there anything else?

Mr. MCCOY. I have no further questions.

The CHAIRMAN. That seems to be all.

Witness excused.

W. T. DOVELL, being first duly sworn, testified as follows:

The CHAIRMAN. Mr. Preston, do you wish to interrogate the witness or not?

Mr. PRESTON. Mr. Dovell, you are a member of the bar here?

A. Yes, sir.

Q. A member of the firm of Hughes, McMicken, Dovell & Ramsey?—A. Yes, sir.

Q. Do you remember the case of Greenwood, a minor, against the Puget Mill Co.?—A. Yes, sir.

Q. Did you represent the defendant upon the trial of that case?—A. I did; yes, sir.

Q. There were how many witnesses in that case on behalf of the plaintiff to the circumstances of the accident?—A. My recollection is that if there was anyone in addition to the plaintiff himself that there were not more than one or two others; I can not be positive

about that, as to how many witnesses there were after the circumstances. There were witnesses, of course, as to his condition; that I remember

Q. Was the testimony taken down in shorthand?—A. Yes, sir.

Q. Would you recognize that [showing] as to whether or not it is a copy of the transcript of the plaintiff's testimony?—A. Yes, sir; I remember that being from my office.

Mr. PRESTON. Gentlemen, I have here a transcript of the plaintiff's testimony in that case; something which you have not had yet.

The CHAIRMAN. Can we have it to use tentatively, as we have taken so much other matter?

Mr. PRESTON. Certainly.

Testimony marked "Exhibit D."

Mr. PRESTON. I have here what purports to be a stenographic report of Judge Hanford's remarks on granting the nonsuit and I wish you would identify that if you can [showing].

A. I presume this is a correct transcript of the remarks of Judge Hanford. I recognize the material portion of it.

Q. I think I have a copy of it which came from your office—perhaps you can recognize that?—A. Well, I recognize the material portion of this as being a specification by Judge Hanford of the grounds on which he granted the nonsuit.

Q. It has been testified here that upon the trial of the case that Judge Hanford was to some extent—I will not say how extensively—inattentive to the case, by being asleep on the bench, or perhaps drowsy—I do not remember the testimony exactly. I want to ask you to tell the committee what your recollection is about that or as to that.—A. That is not true. My recollection is that Judge Hanford was at all times properly attentive. My recollection of the trial is that it only consumed one day, or a portion of one day, and I am quite certain that Judge Hanford was not during any portion of that time inattentive.

Q. Now, you recall, do you, that Judge Hanford granted the order to set aside the nonsuit?—A. Yes, sir; and I recall the circumstances and the reasons for which it was granted.

Q. Those are stated there—what were the reasons? They are not stated there.—A. This states his ruling on the——

Q. On the nonsuit?—A. On the application for the nonsuit. Now, after the nonsuit was granted, a motion for a new trial was filed by the plaintiff and the statement was made to Judge Hanford that if an opportunity were given them to amend, that they could state a cause of action with which they would make their proof consist. I contended, in opposition to that, that there had been, as Judge Hanford ruled, a complete failure of proof—that their action was then entitled to be dismissed.

The said ruling in granting the nonsuit is as follows (Exhibit No. 78½):

It was Judge Hanford's view, which he expressed at the time, that if the action was dismissed, there having been a nonsuit, they could begin an action again that he believed it would be more just to them and more economical if he permitted them to amend their complaint—after he took off the nonsuit—and he granted the new trial, setting

aside the order granting the nonsuit, with the understanding that they would be permitted to amend, instead of having to go out of court and begin an action over again.

Mr. McCoy. He had no right to do that, did he?

A. A perfect right—their suggestion that they could amend their complaint and state a cause of action, and make their proof correspond to that statement.

Q. Didn't they claim at the time the motion was made for a nonsuit, that the complaint should be amended so as to conform to the proof?—A. No; they did not, as I recall it; they did not at that time.

Q. Was the judgment of nonsuit entered?—A. Now, Mr. McCoy, it may be possible that some such suggestion was made at the trial.

Mr. Preston. You mean at the hearing of the motion?

A. Yes.

Mr. McCoy. I am asking you at the trial?

A. It was either one time or the other—it is likely that this record would show, if that suggestion was made. If this record here does not show it, then it was not made at the time of the trial.

The Chairman. Even if it were, the judge controls the judgment of the court and could set it aside during the term.

The Witness. Yes, sir; and the judgment was set aside, of course, during the term in which it was rendered.

Mr. McCoy. Would you consider that as certainly good practice?

A. I was averse to the application of that practice in this particular case, because it was made against me, but I can not say that it is improper practice.

The Chairman. It is not certainly improper, where other rights do not intervene, if the judgment was entered in which rights of a third party were interested, a case might arise of that kind, but ordinarily I think it is true in every jurisdiction that the court controls the judgment during the term.

Mr. Preston. I think in our superior court, where we have no terms, the rule is even broader. We have no terms in our superior court; they are always in session under the Constitution, and the court grants a new trial after a nonsuit or not according to the facts.

Mr. McCoy. For error in the granting of the nonsuit, but not simply to give the man another chance.

Mr. Preston. I think they do that, too. We are pretty liberal on those things in our practice.

The Witness. The representation was made, I recall, to the court that this boy was poor; that he was impoverished and that he lacked the money to begin a new action. I remember that representation being made, and I think it was upon that representation Judge Hanford decided to grant the new trial rather than to send him out of court to begin his action over again. That was my understanding of it.

Mr. Preston. I want to go a little further, if you please. Then, after the order was made granting a new trial, do you recall having interposed a motion for judgment on the pleadings?

A. Yes; after the amended complaint was filed, and the answer was filed to that complaint, then they filed a reply, and before I filed a motion for judgment I demurred to that reply. Judge Wheaton, who was sitting here then, sustained my demurrer to that reply and dismissed the action.

Mr. McCoy. Let me see if I get that. They served this complaint and you answered it, and they served a reply and you demurred to the reply?

A. No, sir; an amended complaint.

Q. They served an amended complaint and you answered it?—A. Yes, sir.

Q. Setting up new matter, and then they replied to the new matter and you demurred to the reply?—A. Yes, sir. That reply contained an admission that this boy had received, I think, $120 which had been used by him, and which was not returned. I demurred to that reply and Judge Wheaton sustained the demurrer and dismissed the action. Now, the rules of the court provide that there shall be, I think it is, three days allowed after the demurrer is sustained for amendment, and Judge Wheaton inadvertently dismissed the case without allowing them the three days to amend. They then made the application to Judge Hanford on his return here to vacate the order of Judge Wheaton dismissing the action, and Judge Hanford did vacate the order.

Mr. Preston. Now, right there, Mr. Dovell; what, if anything, was brought there to the court by the plaintiff's attorneys in regard to his being able to amend his reply further as a reason for urging that the court reverse Judge Wheaton?

A. He urged, as I recall, that he had a right under the rules to amend his reply, and that the action should not be dismissed until he had been given the opportunity. But, then, he filed an amended reply; but my recollection is that it was substantially the same as his former reply and had the same defect, in that it admitted the receipt and the retention of the $120.

The Chairman. But it also showed the nonage of the plaintiff?

A. Yes.

Q. And did you contend that the minor would be estopped from bringing and pursuing his action, his right of action, because the minor had received a sum of money from the defendant?—A. Yes, sir; after the rules laid down by the circuit court of appeals, that was unquestionably the law. In the case, I think it is the case of Price *v.* Conners, my recollection is that in that case the money had been received by a man when he was in an intoxicated condition.

The Chairman. Well, that was a voluntary act of his, for which he was entirely responsible, just as he might be prosecuted for a crime committed in that condition. That is very different from a person who is under a legal disability not of his own making.

The Witness. I am inclined to believe, Mr. Chairman, that the Federal courts fail to make that distinction in our circuit, anyway.

The Chairman. There is a vast difference between a minor and an intoxicated adult as to their legal rights.

The Witness. I think the view taken by Judge Wheaton and the view taken by Judge Hanford in this matter consists exactly with the doctrine laid down in two cases that I now recall by the circuit court of appeals in our circuit.

The Chairman. But that would not represent the weight of authority.

The Witness. It represents the controlling authority in this circuit—I mean the circuit court of appeals of our circuit would be con-

trolling, of course, of Judge Hanford and Judge Wheaton, sitting in this district.

The CHAIRMAN. Yes, if they took the view you expressed, that the same reasoning would apply to a man who was intoxicated and to a person, a minor of tender years, but if I were the court I would make a good, clear distinction between those two sets of facts, so as not to be bound by the circuit court of appeals in the Greenwood case. Proceed.

Mr. PRESTON. After this amended reply was filed, did you renew your motion for judgment on the pleadings before Judge Hanford?

A. Well, I made a motion for judgment on the pleadings then.

Q. And he granted that?—A. Judge Hanford?

Q. Yes. Do you remember anything about his remarks?—A. I remember Judge Hanford said something to the effect that he would follow the ruling of Judge Wheaton inasmuch as he did not believe it proper that one judge should lay down one rule in the court and another judge another rule.

Q. Now, Judge Hanford was criticized by Mr. Brown, a witness here, along this line—he took the position first, or he stated first that Judge Hanford had passed on this question originally, and then Judge Wheaton decided it another way, and then Judge Hanford followed Judge Wheaton—to make myself clear, his point of criticism was that Judge Hanford had ruled on that question in favor of the plaintiff; then Judge Wheaton had ruled on it in favor of the defendant, and then Judge Hanford ruled on it in favor of the defendant. Now, tell the committee, if you will, your recollection as to whether or not Judge Hanford had passed on that question.—A. There was a demurrer to the original reply, which was filed. I am unable to recall now whether or not that was argued, but in any event that first reply did not, as I recall it, set up as clearly the facts as to the receipt and retention of this money by the boy, or his guardian, upon which point the demurrer was finally sustained.

Mr. PRESTON. I think that is all the questions that I have to ask Mr. Dovell in regard to the case.

The CHAIRMAN. Are there any further questions?

Mr. MCCOY. Well, I will ask you, Mr. Preston, are you going to have all the pleadings in this case?

Mr. PRESTON. You have it all—you have Judge Wheaton's memorandum decision, and everything before you.

Mr. MCCOY. We have the complaint and the answer and the reply and the demurrer, then the amended complaint, and the whole business.

Mr. PRESTON. You have everything there was in the clerk's office—you have a copy of it.

Mr. MCCOY. And this paper which Mr. Dovell has?

Mr. PRESTON. This is the stenographer's report of Judge Hanford's ruling, and the nonsuit motion—that has been put in.

Mr. MCCOY. And has the testimony of the plaintiff also been put in?

Mr. PRESTON. Yes; that is marked "Exhibit No. 78." Did you make the testimony which I just handed you an exhibit, also, at this time?

The CHAIRMAN. I do not think it ought to be printed in the record; but it may go in with the others as an aid to the committee.

Mr. PRESTON. I will explain to you why I thought it would be well to have it in, because, as I read the testimony and read the pleadings, there could not be, to my mind, two opinions about its being a case of entire failure of proof and not of variance, and that is why I think it would be material.

Mr. MCCOY. I remember now in going over with Mr. Brown the point. In my mind it was not whether there was a complete variance but whether it had been argued that there was a variance, and Judge Hanford took the view that there was not and practically overruled himself on that.

Mr. PRESTON. His opinion here shows that he regards it as a total failure of proof, and the evidence shows that it was. I have here, in the same action, a certified copy of the petition, the bond of the guardian, and the order appointing the guardian in the superior court, which I will offer in that connection.

The CHAIRMAN. What was the controversy with reference to the facts of the guardianship at that time?

Mr. PRESTON. I will explain it to you, if I may. You will remember that Mr. Brown's testimony was this: First, that the order appointing the general guardian was that because no notice had been given, and I think that is the correct position. Then he made the point, and I remember Mr. McCoy interrogating him along that line, about whether the guardian had authority to make a compromise without the order of the court, and he said that that power did not exist either, and the trend of his testimony, as I have it in mind, was that that settlement, or alleged settlement, for $500 was made without the authorization of the court. Now, these records that I have here show that that was the ground of the appointment of the guardian; that there was a claim which the boy had against the Puget Mill Co., his employers, and that that could be settled for $500 and asking for the appointment of a guardian with power to make that settlement, and that is the materiality of this document. There has been some argument made previously that does not appear in these papers, but Mr. Brown's claim is that the settlement was made on the same day, but before the order was made.

The petition for appointment of the guardian is marked "Exhibit No. 79."

Mr. MCCOY. The plaintiff's testimony in the Greenwood case is to be taken by the committee for such use as the entire Judiciary Committee wants to make of it, including the printing, if they desire to have it printed.

Witness excused. Whereupon the proceedings are adjourned until to-morrow morning, July 17, 1912, at the hour of 9.30 o'clock.

SEVENTEENTH DAY'S PROCEEDINGS.

WEDNESDAY, JULY 17, 1912.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will be in order.

Mr. MCCOY. Here is a transcript of the testimony in the case of Melovich against Stone & Webster Engineering Corporation, to be

taken to Washington under the arrangement previously made, to be used as the while Judiciary Committee sees fit to use it.

Paper referred to was marked "Exhibit G."

Mr. McCoy. And here is what purports to be a copy of those remarks the court made. That could be marked in evidence.

The Chairman. Mr. Preston, have you anything urgent this morning?

Mr. McCoy. Mr. Preston, when you get ready to take up the Peabody case, will you try to have the corporation counsel here?

Mr. Preston. I have him on my list; he and his assistant.

The Chairman. Mr. Baxter, are you ready this morning in pursuance of the request made of you a few days ago?

Mr. Baxter. Yes, sir.

The Chairman. Perhaps you had better take the witness stand.

Sutcliffe Baxter, being recalled, testified as follows:

The Chairman. Mr. Baxter, when on the witness stand before you were requested to make a compilation of summary——

A. (Interrupting.) Yes, sir.

Q. (Continuing.) Of the various cases in which you had acted as receiver——A. (Interrupting.) Yes, sir.

Q. (Continuing.) And as trustee?—A. Yes, sir.

Q. With the knowledge you now have, would you please recite those cases in the order of time?—A. I will commence with the Seattle Paint & Varnish Co., I believe. [Witness refers to paper.] May I just refer to the records?

Q. Yes, sir; you can use your minutes to refresh your recollection, and give a list of the cases at this time.—A. A list of the cases at this time?

Q. In the order of time.—A. Now, let me see. I don't know whether—the Seattle Paint & Varnish Co. was the first; then the McCarthy Dry Goods Co.

Q. What was the second one?—A. McCarthy Dry Goods Co. Emil Carnoil. The William Walker Co. And Alice C. Dowle, I think I omitted to give you the name of Alice C. Dowle in my statement the other day. The Knosher Co., Western Steel Corporation, and C. G. Ingalls.

Q. Making in all how many cases?—A. Eight cases.

Q. Now, going back to the first one of those—A. Yes, sir.

Q. (Continuing.) Give us the results of the summary you have made about it.—A. Shall I give you the date of the appointment of the receiver?

Q. Yes, you might?—A. I was appointed receiver on the 8th of October, 1904. I took possession of the assets of the concern at that time. The inventory at the time—shall I read this off in detail or just give you the aggregate of it?

Q. Just for a moment will you let us look at the paper you are using and see?—A. Yes, sir [producing paper]. I believe I stated to the committee the other day when I was on the witness stand here that in all these cases where I was appointed receiver I had been elected trustee. I find, however, that in this case Mr. Walter McClure was elected trustee. I conducted the business for about three months.

Mr. McCoy. This is a statement of the administration of Sutcliffe Baxter as receiver in the matter of the Seattle Paint & Varnish Co. Just mark that as an exhibit.

Paper referred to was marked "Exhibit 80."

Mr. Hughes. I was just thinking, Mr. McCoy, whether that might not convey an erroneous impression.

Mr. McCoy. I have read the indorsement that he put on it.

Mr. Hughes. Well, it is a statement made by him of the main facts in the receivership.

Mr. McCoy. Yes.

Mr. Hughes. But it might convey the idea that it was his statement as receiver in the case. That is what I was thinking. I know that that was not the purpose.

Mr. McCoy. No; it is the paper which the witnessed produced as the result of our request the other day, giving a summary.

Mr. Hughes. I thought, Mr. McCoy, that it might convey the impression in the record that it was his statement filed in the case as the receiver, but it is all right, I think, with the explanation.

Mr. McCoy. He stated that he produced it.

Q. How long do you say you carried on this business of the Seattle Paint & Varnish Co.?—A. From the time of my appointment as receiver down to the last of December; practically three months.

Q. Was the business carried on at a profit by you?—A. Yes, sir; I think there was a profit there.

Q. About how much profit was shown?—A. I can't say that—there was no inventory taken at the time of my surrender to the trustee. The business had been conducted by the receiver at the request of the creditors, who were trying to reorganize the institution and held it in the hands of the receiver pending their attempts to reorganize. They did reorganize about the last of December and took the property over as a whole.

Q. What did the trustee have to do in the matter?—A. He simply took possession of the property from the receivers and I suppose turned it over to the creditors' committee. I really don't know, I didn't——

Q. (Interrupting.) Did the trustee get any fee in the matter?—A. I don't know, sir.

Q. I notice here an allowance to Metcalfe & Jurey, attorneys for the receiver, of a thousand dollars?—A. Yes, sir.

Q. What services did they render as attorneys, what legal services?—A. They had—they were attorneys for the receiver during the period of the management of the business by the receiver.

Q. What were the services they rendered? Were there any suits out against anybody?—A. No, I think not.

Q. Were there any difficult questions of law in the matter?—A. Nothing that was really difficult, so far as I know.

Q. I notice that R. S. Jones, the attorney for the bankrupt, gets an allowance of $600. What was that for?—A. He was attorney—one of the attorneys in the case. I will state that all those allowances were made by stipulation of all parties in interest.

Q. Yes. I understand that, but what were the services which R. S. Jones, attorney for the bankrupt, rendered?—A. Such services

as were necessary for the attorney of the bankrupt to render. I don't know exactly what he did do.

Q. Did R. S. Jones render any services after you were appointed receiver?—A. Not that I am aware of in particular.

Q. So far as you know, did he do anything except prepare the schedules—was it a voluntary or involuntary bankruptcy?—A. I think it was involuntary.

Q. Who filed the petition of the creditor, do you know?—A. I don't remember.

Q. Was Mr. Jones attorney for that creditor?—A. I think so.

Q. Well, then, why is it he appears as attorney for the bankrupt, did he resist the adjudication?—A. No, sir; there was no resistance of any adjudication, so far as I remember, in the case. It was all done in a friendly manner by the—as I said before, an attempt of the creditors to reorganize it, which they finally did do and took the property over under a reorganization.

Q. And so far as you know Mr. Jones did not do anything except prepare the schedules in bankruptcy?—A. Oh, I don't know anything in particular about what he did further than act as attorney for the parties he was representing.

Q. I notice an allowance of $1,800 to various attorneys stated to be attorneys for petitioners and creditors. Have you the items of those allowances, or of that aggregate amount?—A. I have not got it with me. The items are on file in court in the case, I presume. Those allowances were all agreed to by all parties in interest.

Q. What was the reason for the receiver turning the estate over to a trustee and then having the trustee turn it over to the reorganized organization? In other words, why could not the receiver have turned the property right over to those who had reorganized the business?—A. I believe the purchasers who reorganized to have a trustee's title to it rather than a receiver's title.

Q. They considered a receiver's title somewhat doubtful?—A. I think so. I believe that was the understanding at the time, I think.

Q. Who appointed you receiver in it?—A. Judge Hanford.

Q. You are sure it was not the referee who did it?—A. No, sir.

Q. Has the referee ever appointed you receiver?—A. No, sir; not to my recollection.

Q. Have you a copy of the stipulation by which the allowances were arranged for?—A. No, sir; I have not. It is on file in court, though; I saw it the other day.

Q. Will you kindly get it for us after you get through testifying?—A. Will they allow me to take it out of the court files?

Q. I think perhaps the clerk will allow it to come in here, won't he?—A. Well, perhaps so.

Mr. HUGHES. I will attend to it, if you want it.

Mr. MCCOY. Mr. Baxter said he saw it the other day. He might easily lay his hand on it.

Q. What is the next case?—A. The McCarthy Dry Goods Co.

Q. Have you a similar statement in regard to that?—A. Yes, sir; a summary statement here, I think [producing].

Q. The McCarthy Dry Goods matter was not in bankruptcy?—A. No, sir.

Q. You were appointed receiver in an action in the circuit court of the United States for the ninth circuit, in an action entitled the

H. B. Claflin Co., a corporation, against the McCarthy Dry Goods Co., a corporation?—A. Yes, sir.

Q. You were appointed and qualified as receiver on September 13, 1907.—A. I believe so; yes, sir.

Q. When did you finally account and when were you discharged?—A. In about September, I think, or October, in the following year. I may not have been discharged for some time afterwards, but the business was sold, if I remember correctly, in September.

Q. I notice in the statement you have furnished that you were made allowances in December, 1908, May, 1909, and July, 1909, so I take it that you did not get your discharge until July at any rate, 1909?—A. I presume that is about correct. It took some time to settle up the estate after the stock was finally disposed of.

Q. You think that the stock was disposed of in September, 1908?—A. I think so; that is my recollection of it.

Q. Who were the attorneys for the plaintiff in that matter?—A. McClure & McClure.

Q. And who were the attorneys for the McCarthy Dry Goods Co.?—A. As the corporation or as the receiver's attorney?

Q. No, the company itself?—A. I don't just remember now who the attorney for the company was, but McClure & McClure were the receiver's attorneys.

Q. You have no recollection of who represented the defendant?—A. I don't recall for the moment.

Q. Who was the largest creditor, as you remember it?—A. I think the plaintiff in that case was the largest creditor.

Q. Who was the largest creditor in Seattle?—A. The Western Dry Goods Co., I think. Now, I am testifying from memory about these matters. If you want the facts, I have got them here amongst these figures and can dig them out.

Q Well, I didn't mean to pin you down to an exact figure, but the Western Dry Goods Co. was among the largest creditors in Seattle?—A Yes, sir; I think so.

Q Your bond was $25,000?—A. I think so.

Q Well, now state anything that you care to in regard to the administration of that estate.—A. When I was appointed receiver, we endeavored to dispose of it and it was advertised for sale during the legal time, whatever that was, under sealed bids, and when the time came for opening these bids there was only one bid submitted, that of London—Edwin London—of about $24,000.

Mr PRESTON What is that?

A. Of about $24,000, which we rejected and submitted the matter to Judge Hanford, and he sustained the refusal to sell at that price and stated to us—to Mr. McClure and myself—that if we could get an offer of $60,000 for it he would authorize the sale We got into consultation with Mr. Stone, of the Stone-Fisher Co , who appeared to be rather anxious to buy it but hadn't put in a bid for it at all, and he commenced by offering us, I think it was, $40,000 He finally, after lunching together, increased his bid to $65,000 This we submitted to Judge Hanford, with the recommendation that the bid be accepted. Immediately some of the creditors——

Mr. HUGHES (interrupting). Mr. Baxter, pardon me. The noise is so great that it is difficult to hear. Speak as distinctly as you can. The noise is great.

Mr PRESTON. Before you pass that, would you describe more fully Mr Stone's bid? I think there was some element of contingency in it.

A. Oh, yes. Mr. Stone's bid was for $65,000, $10,000 cash and $15,000 payments every 15 days, I think, thereafter until finally paid for. This was without any security at all. We were expected to turn the stock over to him on the payment to us of $10,000 and take the credit of the concern for the future payments.

Mr. McCOY. Just a minute. Who represented the Stone-Fisher Co. in that negotiation?

A. Mr. Stone himself, but there was a consultation held in Stone-Fisher's office where other persons of the firm were present, or other members of the corporation were present

Q. Well, go on—or before you answer further, what was the business of the Stone-Fisher Co.?—A. The Stone-Fisher Co. are retail dry goods merchants here

Q Similar——A (Interrupting.) A department store. A similar business to the McCarthy Dry Goods Co.

Q All right, go on, Mr. Baxter —A. The bid was submitted to Judge Hanford and objected to by several of the creditors, so Judge Hanford set a hearing for the case for the afternoon of the day I think at 4 o'clock, if I remember correctly, or about 4, and I think in this room, I am not very certain; and at this meeting, Mr. Stone——

Q (Interrupting.) What is Mr. Stone's full name? A. I don't remember it.

Q Well, go on. At the meeting——A. At the meeting Mr. Stone made a statement of why he was anxious to buy the McCarthy Dry Goods Co. I don't think he said exactly that he wanted it as an outlet for some of his own surplus stock, but I presume that was it. However, the creditors opposed the sale—such creditors as were present opposed the sale. Mr. Stern, who represented the preferred stockholders, also opposed the sale, and Judge Hanford refused to have the sale made.

Q. Well, the bid of $40,000 which Stone-Fisher Co. made, was that contingent in any way, or conditional on being allowed to pay down a part and the rest of it by installments? A. It was all installments except $5,000. He proposed to pay five thousand cash on a bid of forty, and the remainder on credit

Q. And you say they wanted to do this without giving any security of any kind? A. Yes, sir.

Q This business was operated at a loss, wasn't it? A. Yes, sir, after the first two months.

Q How heavy was the loss, in merchandise I mean? A. Well, after the Christmas eve business fell off from the rate of sixty-odd thousand dollars a month to less than $20,000 a month, with an expense account during the two months preceding Christmas eve of about, I think, $10,000. After the first of the year the expense account was reduced to something less than eight thousand a month, and with sales running from twenty to thirty thousand dollars a month there was a dead loss staring us in the face every day.

Q. That is, beginning early in the year——A. That is, beginning on the first day of January—1909, is it?

Q. 1908? A. 1908; yes.

Q. Was the business run at a loss every month from that time on until you closed up in September? A. Why, no; I think there was some months where our sales ran up to forty-five or fifty thousand dollars, where perhaps we made a standoff or a small profit.

Q. What was the total loss in the running of the business? A. Oh, is must have been thirty or forty thousand dollars.

Q. While you were conducting the business, did you buy new goods?—A. Yes, sir.

Q. Who did you employ; who was familiar with the dry-goods business under you?—A. I employed the old manager, Mr. Sheehan.

Q. Why did you employ him?—A. Because he was manager when I took possession and I found him a very competent young man, as near as I could judge of him, and he was very highly recommended to me by others.

Q. He had been running the business at a loss before you were appointed receiver?—A. He had only been superintendent there a very short time. They changed superintendents, I think, three or times within the preceding year or a year and a half.

Q. I find from the statement that you have furnished the committee that there was cash on hand, when you took over the business, amounting to $787.42?—A. Yes, sir.

Q. And that including that and up to June 24, 1909, you received in cash altogether $481,531.26?—A. That is correct, I believe.

Q. Does that amount which I have just read include the amount received when you sold the business out in bulk in September, 1908?—A. I think so. I will state that included in those receipts there, in the first month's receipts, is $50,000, is it not, there? That $40,000 of that fifty was money borrowed from the National Bank of Commerce in order to enable me to take up goods that were stopped in transit and lying in the terminals here at the time.

Q. When you took over the business you made an inventory and inventoried the merchandise at $93,562.17, fixtures at $24,948.52?—A. Yes.

Q. Making $118,510.69?—A. Yes, sir.

Q. What other assets were there?—A. That was all except some book accounts. I think there were some book accounts.

Q. There does not appear here to be any statement of book accounts or accounts or bills receivable. Were there any such?—A. There were a few of them.

Q. Well, have you anything in your papers to give the total amount? What I want to know is what the amount of the assets was.—A. Let's see if I can find it here. No; I didn't bring up those inventories. These are copies of the monthly cash reports—cash statements. My inventory, I didn't bring up with me; I didn't know that I would be called upon for it.

Q. Well, I will ask to have you give me that, unless you can state now, with some degree of closeness, what assets there were in addition to the $118,510.69 which I have just read?—A. There was not anything of importance except a few book accounts. I don't know now; it was a small amount, it appears to me, and some insurance policies.

Q. You mean fire insurance policies.—A. Fire insurance policies.

Q. Well, you have to keep those running?—A. Yes, sir; but the unearned portion of the premium was an asset at the time.

Q. Well, the companies earned the premium, didn't they?—A. Later, yes.

Q. So you didn't realize anything on the insurance policies?—A. No, sir.

Q. Well, would you say, then, that the total assets did not exceed $120,000 when you became receiver?—A. What is the total there, a hundred and what——

Q. $118,510.69.—A. Oh, it would be about one hundred and twenty.

Q. What were the liabilities?—A. One hundred and sixty or seventy thousand dollars, I think.

Q. Not to exceed one hundred and seventy, is that right?—A. General creditors, yes. There was a lot of preferred stockholders.

Q. Well, that is not a liability of the company until after the creditors are paid. I mean the liabilities to creditors.—A. I am sorry I didn't bring the inventory up with me. I thought I had them all here, but I haven't. If I would be allowed to run down to my office and get it I can give you the exact figures.

Q. Well, I wish you would, Mr. Baxter, when you get through here.—A. All right.

Q. Now, you received, in allowances for your services as receiver, in all $7,250.45?—A. Yes, sir.

Q. Is that right?—A. Yes, sir.

Q. And there was allowed to the attorneys for the receivers $2,200?—A. Yes, sir.

Q. Do those include all the allowances that were made to anybody in the matter?—A. Includes all the allowances made to myself as receiver and to the attorneys in the case.

Q. Well, were allowances made to anybody else?—A. No, sir; not that I remember.

Q. To any attorneys for creditors?—A. I think not.

Q. The dividend paid in the matter was 3½ per cent; is that right?—A. Yes, sir.

Q. And that is all that the creditors ever realized on it?—A. It is.

Q. Why did you continue running the business after you discovered it was running at a loss?—A. We were endeavoring to sell the business as a going concern, and were in correspondence with a Mr. Strain more particularly, of Great Falls, Mont. He was figuring with us for several months there with a view of buying it, and was over here once or twice, and finally came over some time in—I think during July—when he expected to consummate the purchase of the business as a going concern, and while here he received a telegram from his bankers, he told me, who had promised him the money before he left there, that things were in such shape, had taken a sudden turn in Great Falls, Mont., were in such shape that they could not possibly let him have the money, so that part of the deal fell through.

Q. Had you agreed with him on the price?—A. No, sir; not exactly. We were talking generally about it.

Q. Well, had you approximated a price?—A. Yes; he was going to take it at, I think, 55 or 60 cents, I don't remember, on the inventory to be taken.

Q. What was it that took all those months in the way of negotiation with him? Why couldn't they have been closed up in a month?—A. Oh, simply because he could not come through—could not prepare himself to make a definite offer for it, and we were hoping all the time that things would pick up, but they didn't. As I have stated before, our sales in November were something over $60,000 and in December about $65,000, if I remember correctly.

Q. Sixty-five in November and sixty-one in December.—A. Oh, was that it? Well, it was over $120,000 in that two months, and those—that was down to Christmas eve, and while it takes in the remainder of the month down to the end of December, yet the sales fell off on Christmas eve to—commencing the following day, I think—$400, with an expense account of over three, and the sales continued to fluctuate between about $20,000 and thirty for several months there. I think there was one or two months they ran up to about fifty, perhaps, but in all those months when we were doing a business of less than twenty-five or thirty thousand dollars a month we were losing money very rapidly and could not get out of it.

Q. You closed out the business in September, 1908?—A. Yes, sir.

Q. Did you sell all the assets at that time?—A. Sold the remainder of the stock and fixtures and the unpaid—I suppose the unearned—fire-insurance premiums, and I think all of the property was sold at that time. There may have been some for book accounts; I don't remember. The cash statement on file in court will show, at any rate.

Q. Well, was it the business that was done—did you do business on credit?—A. No, sir.

Q. Hadn't you at that time collected all the outstanding accounts that were in existence at the time when you took it?—A. I think we had collected all that were collectible.

Q. Well, now, when you sold out the business in bulk in September, 1908, what property, aside from the cash receipts, was left in your have inventoried, if we had inventoried it, probably seven or eight hands?—A. Oh, the remnant of the stock there, I suppose it would thousand dollars—nine thousand, perhaps, somewhere along there.

Q. What stock?—A. The remainder of the unsold stock.

Q. I thought you said that in September you closed out everything?—A. We had been running a sale down to the final closing out of it and I sold the remainder of the stock in bulk, with the furniture and the fixtures, the whole thing.

Q. Fix a date at which you had converted all the assets of that company into cash?—A. Why, I can't fix a date without referring to——

Q. (Interrupting.) Fix the month. I don't mean the day, but the month?—A. I have my cash account here for the month, if you would like to have me fix it definitely. I don't remember.

Q. I want you to state to the committee the day or month when you had finally converted all the assets of that concern into cash.—A. (After examining papers.) It was on September 9.

Q. What year?—A. Of 1908.

Q. Well, now, the statement which you have handed to the committee shows cash receipts in October, 1908, $139.20. What was that for?—A. Cash receipts, $139.20?

Q. October, 1908.—A. October, 1908. The balance of cash on hand on the 1st of October, 1908, was $10,231.19. Then I collected balance on safe, $75; interest from M. A. Ward, 40 cents; interest Eaton, Crane & Pike Co., $7.23; H. J. Sheehan, his account in full to date, $8.25.

Q. These were small items of account. Now, the receipts in November, 1908, were $955.28. What was the largest receipt in that aggregate for?—A. Was that in February, did you say, 1909?

Q. No; November, 1908. Just in a general way how did that——A. (Interrupting.) We sold merchandise. Merchandise sold to Stone-Fisher for invoices of George Spire, Harold Leather Goods Co., Eaton, Crane & Pike Co., amounting to $1,304.36; sold to them at 37½ discount less a freight allowance, $755.44.

Q. What were the cash receipts in April for—1909?—A. April, 1909?

Q. Yes.—A. I don't seem to have the cash statement here for April. I don't remember. I haven't got any cash statement here for April, 1909.

Q. Well, it is put down here, cash receipts from February, 1909, to April 30, 1909.—A. Oh. Well, that was included in this November statement, was it not? No cash receipts from November to February, 1909, and I haven't got any statement here apparently subsequent to this of February 8, 1909. If you will let me have that copy, I can probably refresh my memory and I can explain it.

Q. There is nothing stated here except just the amount. Then there is cash receipts from April 30, 1909, to June 24, 1909, $1,500. Do you remember what that was?—A. No, I don't remember.

Q. At any rate those items from September, 1908, to June, 1909, were simply clearing up the tag ends of the business; is that right?—A. That is right, sir.

Q. I find that on December 15, 1908, you were allowed $500; May 13, 1909, a thousand dollars; and July 20, 1909, $2,650.45, for your services?—A. Yes, sir.

Q. How much salary did you pay to this man who was employed by you to run the business?—A. Mr. Sheehan?

Q. Yes.—A. $300 a month.

Q. And what part did you take in running the business?—A. I was in the office, attending to the paying of bills, and superintended the office generally—the correspondence.

Q. Had you any other business at the time?—A. No, sir.

Q. You were giving your time exclusively to this business?—A. Yes, sir.

Q. What experience had you in selling dry goods?—A. I was manager of the largest store north of Seattle, within the boundaries of the United States, on the Pacific coast, from 1870 to 1875—a general merchandise store.

Q. What kind of a business did they do?—A. General merchandise.

Q. Who did they do business with chiefly?—A. With the settles around the country there, and coal miners. I was in the employ of the Bellingham Bay Coal Co. at that time.

Q. In the employ of what?—A. Of the Bellingham Bay Coal Co., as manager of their store there.

Q. Were you ever in the liquor business?—A. Yes, sir.
Q. What?—A. Yes, sir.
Q. When was that?—A. That was in Seattle.
Q. When?—A. Oh, from 1876—commenced business in Seattle in January, 1876, and was in the liquor business several years; I don't really remember how many; five or six years, I think.
Q. Were you ever a settler amongst the Indians?—A. Yes, sir. Not a settler exactly. I was a trader.
Q. When was that?—A. That was in the eighties; I think from about 1880 to 1885 I was a trader on the Neah Bay Reservation.
Q. Was that the time you were employed in this store that you tell about?—A. No, sir.
Q. What was your position in that store that you tell about?—A. At Neah Bay?
Q. No; where you were employed yourself?—A. I was the owner of it, under the name of the Washington Fur Co., a corporation.
Q. Washington what?—A. Washington Fur Co.
Q. Is that the store in which you say you were doing general merchandizing?—A. We were doing general merchandizing there; yes; but the store I was first telling you about was at Bellingham Bay, at a place called Seahome, now the heart of the city of Bellingham.
Q. Who ran that store?—A. The Bellingham Bay Coal Co.
Q. And who did they deal with?—A. With the settlers in the country there, and coal miners. They were running a coal mine and supplied their own employees out of the store.
Q. And that was all, wasn't it, substantially—one of these company stores?—A. Yes; company store; a general country store.
Q. How large a business did they do?—A. They were doing about—we were carrying a stock there of $40,000 to $50,000 and turning it over about twice a year.
Q. And what was your position?—A. Manager.
Q. Did you have the buying of the goods and all that?—A. I had the ordering. The buying was done in San Francisco by the San Francisco office.

Witness was withdrawn for the present.

EUGENE G. ANDERSON, having been first duly sworn, testified as follows:

Mr. MCCOY. What is your full name, Mr. Anderson?
A. Eugene G.
Q. And you live in Seattle?—A. Yes, sir.
Q. And what is your business?—A. The wholesale dry goods business.
Q. How long have you been in that business?—A. I have been connected with this business since January, 1908.
Q. That is in Seattle all the time?—A. Yes, sir.
Q. Are you a member of the Seattle association of credit men—is that the name of the corporation?—A. The Seattle Merchants' Association, an association of credit men.
Q. And what is the purpose or object in general of that?—A. It is to conserve the assets of the men that get their affairs in such a shape, and it is really organized with the idea to keep the accounts out of bankruptcy courts in order to conserve the assets.

Q. What committee or body of that organization is in active management of it, the board of trustess?—A. We have a board of trustees, and then we have an adjustment bureau committee. The board of trustees have charge of the business, but they rather delegate the work, which is handled by a sort of a board or committee to handle those matters; but anything that affects the by-laws of the whole institution, other than the adjustment bureau, is taken up before the trustees.

Q. What office, if any, do you hold in the association, Mr. Anderson?—A. I am president of the association at this time.

Q. Has there been a meeting of the trustees within the last three weeks?—A. No; well, let me see——

Q. Formal or informal?—A. I don't know that there has been a meeting of the trustees.

Q. Well, has there been any meeting of any of the members of that association at which you were present, at which meeting the fact that this congressional committee was here from Washington making an inquiry into charges against Judge Hanford——A. Yes, sir.

Q. When was that meeting held?—A. Well, now, that meeting took place possibly 10 days ago.

Q. Who were present at it?—A. Well, I might say, in explanation of that committee that met, that it was formed under the following conditions: We had our regular meeting at the Washington Annex here a short while ago——

Mr. HIGGINS. That was on the 10th of July?

Mr. MCCOY. June.

Mr. HIGGINS. Tenth of June?

A. Well, it was along about that time. Probably might have been the 7th or 17th; I rather think it was probably the 17th.

Mr. HIGGINS. Some time in June, was it?

A. Some time in June; yes. That was our last meeting for the summer, and we were taking up some matters then in bankruptcy that were of interest to not only the association here but to the credit men throughout the United States, and that is this Knosher case. We had a report from one of our attorneys in that, giving us information regarding the results of our litigation along that line. At that meeting it was suggested by one of our members that a committee be appointed to confer with the judges of the Federal court to see if we could not get closer cooperation and to have a committee of our representative business men appointed, who, if they suggested a receiver for any particular case, or trustee—a man of experience—why, the creditors, naturally, who are interested in the assets of the company to be conserved, would be the men that would be likely to pick somebody that had had experience enough and was capable in conserving those assets and not dissipating them, and with that idea they instructed me, as the president of the company, to select a committee to go before the judges of the Federal court and see if we could not get closer cooperation, and to eliminate the getting men that were not so capable in handling such affairs, and we would thereby get better results. That is what we were after entirely; that is why we conduct that expensive organization down there—merely to conserve the assets and to keep the individual in business.

Now, how this committee happened to be called at that particular time was that I was called as one to come before you—asked, rather,

and inasmuch as this committee had already been appointed, and several of our organization had been called upon under similar circumstances——

Mr. HIGGINS (interrupting). When you speak of this committee, what do you mean, the national committee?

A. The congressional committee. I was called by yourselves, or somebody connected with you, to appear before you and to give some information of some sort, because it was specified, but I felt that inasmuch as a committee of that kind, appointed not in connection with this case or your investigation, but for our individual good or our good collectively, that it was the proper thing to bring it before that committee and to take up the matter and to let them give an expression of what they felt—how they felt about it.

Mr. MCCOY. Well, now, Mr. Anderson, when you met this congressional committee it was suggested to you that we had been told that there were complaints against the results of bankruptcy proceedings, and we suggested to you that you have this committee of the credit men's association compile the figures in regard to such cases as there was serious complaint about and submit the result of your compilation to this committee—that is what we requested, wasn't it?

A. Yes, sir.

Q. All right.—A. However, it was not just that way, because the committee at that time had really not been appointed; I had been authorized to appoint it, but in view of this call from your committee for information, I felt it my duty to name this committee, and I thereby selected twelve or thirteen, I forget how many, I think it was thirteen, really to act on that committee and to meet and to talk over the situation and we met——

Q. (Interrupting.) All the committee you appointed met?—A. The 13? Well, there was a few possibly didn't—one or two or three, I don't remember. Anyway they have the list of the committee as appointed, at the association, and you could get the complete list there if necessary.

Q. That has been submitted to us, I believe, and we have it.—A. I don't know about that. That was my——

Mr. PRESTON. The list of those present was submitted to you?

Mr. MCCOY. I mean those present, yes.

The WITNESS. That was the occasion of the meeting.

Mr. HIGGINS. I want to know who were present. If it already appears in the record, I won't ask you to repeat it.

Mr. MCCOY. We already have in the record, haven't we, the list of those names?

Mr. PRESTON. I read them to you there, I think each one on the committee. You remember we were short some initials.

Mr. MCCOY. Yes.

Mr. PRESTON. I don't know whether they were filled in later or not.

Mr. HIGGINS. Mr. Anderson's brother supplied those initials when he was on the witness stand, as I recall it.

Mr. MCCOY. Now, Mr. Anderson, the meeting was held, was it?

A. Yes, sir.

Q. And state to the committee what took place, what was said, and what if anything was done?—A. Well, it was the general sense of the meeting, to this effect, as I recall the situation——

Q. (Interrupting.) Well, I prefer, if you can, that you will tell us who spoke at the meeting and what was said by each one who did speak?—A. Well, there was considerable talking going on there and I think the expressions were general and I would rather prefer to answer in a general way.

Q. Well, I am sorry that we can't yield to your preference. We would like to have you state specifically what was said. I will ask you, what did Mr. Goldsmith say? He was at the meeting.—A. Well, let me see. I am supposed to answer everything that is asked me, am I?

The CHAIRMAN. It is your duty to do it, if you can.

A. Well, in that conversation in—I just merely ask that—I didn't know but the representative——

Mr. MCCOY. You are here under subpœna, aren't you?

A. Yes, sir.

Q. You did not volunteer to come here?—A. No. I might say, in that regard, I did not volunteer to come, from the fact in presenting the matter—I will state what I presented to this committee, as I am a member of all committees according to the by-laws: I merely told the committee that this matter had been presented and that it might be advisable that we employ an attorney to merely present to this investigation committee the facts in the various cases that they were interested in, and that might be acceptable to you instead of having the individuals themselves.

The CHAIRMAN. The specific question has been asked you, what Mr. Goldsmith said.

A. Yes.

Mr. MCCOY. Well, Mr. Chairman, if you don't mind, I think Mr. Anderson's statement having been preliminary, might better be given further.

A. That is what I thought. And that as far as individuals were concerned that I don't—I didn't believe that it was necessary for the individual to go there without being subpœnaed. If the committee wanted to hear from the various individuals, it would put the individual in a better light and under different conditions if he were subpœnaed and would be called upon to testify. However, it was a matter for the committee to decide whatever action they felt was necessary; that we had some matters that had come up in the bankruptcy court which had not been satisfactorily settled, the assets seemingly have been dissipated instead of conserved, and that was our object—to conserve them—and if we were in a position, as we understood, like the courts in New York were cooperating with the merchants there, to rather get that cooperation and influence of assisting in getting proper trustees, that we could probably overcome a great deal of this. Now, we hadn't tried that and we hadn't even gone before the judges of the Federal court to get that support. The expression of some was to the effect that inasmuch as this was a socialistic movement, been created through that cause——

Mr. HIGGINS. What was that, conserving the assets of the bankrupts?

A. No; inasmuch as this action here of investigation was created through a socialistic movement, that it was unfortunate that possibly the association was called into it, that the socialists would take credit

for any action that might be taken, and that any position that——

Mr. HIGGINS (interrupting). Were those views that you expressed in your preliminary statement?

A. No; pardon me; I am getting into somebody else's views there. Let me see if I can—well, I could not attach that, although that was a part of the—I could not attach that directly to the individual that——

The CHAIRMAN. That is, you don't remember who it was that expressed those sentiments?

A. That expressed them? No; I could not just exactly attach that, but there was a sentiment to that effect, and that the information that we had and the cooperation that we wanted might be better attained after this investigation had been made, and to get this cooperation go before the judges, whatever judges were there, and that was why this committee was formed, not to take any action on this particular condition of investigation but to form for a closer cooperation; therefore that committee seemed to feel that they were not authorized to go ahead and take any action, it was a matter for the individual to use his own pleasure and his own disposition until the committee were called upon to go ahead along the line of their appointment, that is, for going before the judges and asking for this consideration.

Q. That is Harold Remington's suggestion, isn't it?

Mr. HIGGINS. How is that question?

Mr. MCCOY. I say, that is Harold Remington's suggestion that you were acting on there?

A. Well, I think he is probably the cause of that action being taken with the New York merchants.

Mr. HIGGINS. Who is Harold Remington?

A. If I understand, he is quite an authority in bankruptcy matters.

Mr. MCCOY. He used to be a bankruptcy attorney in Detroit, and he is now attorney for the National Credit Men's Association.

A. Yes, sir.

Q. Well, now, come down, Mr. Anderson——

Mr. HIGGINS (interrupting). Just a moment. Do you mean that you were acting under his suggestion when you appointed the committee to confer with the judges?

A. Well, I don't say that; no. I merely state that in the east I got the information through the Credit Men's Association there that they were having—as Mr. Remington is the national—is attorney for the national association and is closely cooperating with the New York association, they have got an understanding with the judges there to the effect that a certain committee appointed by this association, when they suggest a man to take charge of a case in bankruptcy, whether it is receiver or trustee, that the judge is only too glad to cooperate with them, and that he immediately accepts such men as they suggest and they stand responsible for those men being capable.

Mr. MCCOY. Well, now, to get away from that aspect, I want, Mr. Anderson, to come right down to the discussion of the suggestion made by this congressional committee to you and get back to my question. What was it, in detail, that Mr. Goldsmith said at that meeting?

A. Well, Mr. Goldsmith's attitude was this——

Q. (Interrupting.) I don't want his attitude, I want what he said, and I want it in just as close detail as you can remember his words.—A. Well, Mr. Goldsmith merely stated—or went on to explain the great work that Judge Hanford had done here and the great amount of work that he had been compelled to do, which took a great deal of his time both day and night; that the Government had not given him any relief and that there had been times in the history and the life of Seattle when Judge Hanford had stood out as a man in cases here where it required a man of considerable nerve, and I disrecall—I think it was some Chinese affair that was here, and he told them what they could do and what they could not do.

Mr. HIGGINS. At the time of the Chinese riots?

A. I think that was probably it. That was before my time. And that he felt like it would be very unjust in the merchants here to go ahead and to take some position against the judge without having first taken these matters up with the judge, letting him know how the merchants and the individuals feel who are connected with these cases, and asking him for this cooperation, and that he felt that it was not right for us to take the position. I think that is——

Mr. MCCOY. What else did he say about Judge Hanford?

A. Well, he spoke about Judge Hanford's probably going to excess in liquor, that he didn't doubt but what the judge, in order to keep himself physically able to stand the strain, had taken more or less drinks; that he didn't know about, he was just speaking of the matter in a general way—he knew that criticism was up—and he presumed that with all of the terrible strain that he had had to go through with in handling these great cases and the work that came before him, that he might have felt it necessary to take stimulant, as a great many others do when they come to a strain of that kind.

Q. Well, what else, if anything?—A. Well, he stated that he did not take any position that we didn't have grounds that we wanted to take up with the court to try to get improved and more cooperation; he wanted to act on the committee, but he felt that the committee was not called upon to take any action at this time, which it was not. I told him that was a fact, and therefore the matter rested that way. If they were subpœnaed, it was up to the individual to give such information as was wanted in any case, or anything else.

Q. Did he say anything about the possible effect on any individual who might volunteer to give information to this congressional committee?—A. I don't know that Mr. Goldsmith made any statement of that kind. I don't doubt but what there was some expression of that kind given there.

Q. Well, if you remember, who did express any such belief?—A. Well, the expressions were general and they were the—only the general expression made any impression on the individual there, just the general situation. I could not say definitely about anybody making that expression. I don't know that they did. I know the expression was made, but I don't think it was made by one. It may have been made by several, don't you know, but I could not say definitely.

Q. That is your recollection, that it was made by several?—A. Well, I think it could easily be by two or three, but I could not absolutely—I could not say definitely who it was. Naturally I suppose that there may have been a feeling in the minds of everybody to that

effect; that condition was there, but whether it was said or whether it was not said, it is the same thing, it don't make any difference.

Q. I wish, Mr. Anderson, that you would try to give us any definite statement along that line that you heard there?—A. Well, I have certainly given you everything that——

Q. (Interrupting.) I mean along the line of not wishing to cooperate with this congressional committee for fear of consequences. Can't you state some definite statement that was made?—A. Oh, as far as any consequences was concerned, it was merely a matter of an individual coming up voluntarily in a matter of this kind. No, I could not give you anything of that kind. If I could I would give it to you.

Q. Was it stated there, or not, that Judge Hanford was in the habit of resenting any criticism or anything of that kind?—A. No, I think not. I can almost say positively not.

Q. Was there anything said to the effect that he was in the habit of resenting and showing his resentment at any attacks on his friends?—A. I have heard such criticisms.

Q. But was anything said at that meeting to that effect?—A. There may have been, but I could not attach that to anybody there.

Q. You say there may have been. Was there?—A. I could not answer that.

Q. Well, is the impression now in your mind that there was something to that effect said at that meeting?—A. I don't think there was anything said there to—any more than you hear in a general way, and I could not say whether I heard anything of that kind there or whether I heard it just in common expression.

Q. Well, you have no recollection at all as to whether——A. (Interrupting.) No.

Q. (Continuing.) That condition was expressed by anybody or hinted at by anybody at that meeting?—A. I could not say positively about that.

Q. How long did the meeting last?—A. Possibly three-quarters of an hour or an hour.

Q. The net result of that was that that committee decided, as you have stated, not to cooperate in any way with this congressional committee?—A. Not as a committee; no.

Q. Not as a committee?—A. Not as a committee; yes, sir.

Q. That you would leave it to this committee to issue such subpœnaes as they saw fit to?—A. That was the idea; yes.

Q. Was that conclusion based, or stated to be based, upon the fear that any member there that the committee had that unless they were compelled to come by virtue of a subpœna their testifying might result unfavorably to them in any way?—A. Well, I think there was a feeling manifest there to the effect—one of the feelings was, as I indicated in the beginning, that it was a socialistic movement, and there was considerable feeling that Judge Hanford's action, as there is always a conclusion reached, whether it is from newspaper articles or otherwise—to the effect that the judge was right in his decision in this disfranchisement, and there was also that feeling, which you can appreciate, I believe, of the individuals coming out and taking a position in a case of this kind in a matter of this importance.

Q. Now, did your committee suggest or did anybody suggest at that meeting that somebody be sent to this congressional committee

to ascertain whether the committee was appointed merely because of the action of Judge Hanford in the Olsson case?—A. Not to my knowledge.

Q. That is the case involving the disfranchisement?—A. Not to my knowledge. No; I think not.

The CHAIRMAN. Did the committee have knowledge that the congressional committee were instructed to inquire into Judge Hanford's conduct along all lines?

A. I don't know whether——

Q. That it was not confined to the Olsson case?—A. I told them I had gotten the impression that it was to be a general investigation and was not based on that, but there seemed to be an idea there that that would be given credit for it.

By the CHAIRMAN:

Q. Did the committee discuss the question, if they were opposed to socialism, as to whether the best way to oppose it was to deny it apparent justice?—A. I don't think that phase of it went into it. It was just merely that outward condition.

Q. It could not be killed off that way, by denying it a fair hearing or fair treatment—A. Yes, sir.

Q. As I understand you, when the meeting came together in the first instance there was sort of a general understanding that it would take some action in the way of coperating with the congressional committee, but that after you talked the subject over the members of your committee generally came to the conclusion that their individual interest might suffer if they did that?—A. I don't know that; I don't know that that expression was made; it might have been there, but not necessarily made.

Q. It was not a concrete expression, but it was the general understanding there was there. Nobody stated that in that way, but was that the concrete understanding?—A. No.

Q. (Continuing.) That if you did volunteer to aid the congressional committee, you might do it at the risk of your individual interests?—A. No; no. The committee did not feel called upon to take any position, inasmuch as it was appointed for a different object, merely to get cooperation and to intercede with the judge. However, as individuals they were interested and as an organiza ion. Had it been the board of trustees acting in the matter, that question may have come up for settlement and some action taken, but inasmuch as they were merely appointed for a certain purpose that they did not feel called upon to take any action. Therefore——

Q. (Interrupting.) You have already stated, as I understand you, the discussion took the form that such action on your part as was proposed—that is, action volunteering assistance to the congressional committee—might result injuriously to the members of the committee and the association which you represented. I clearly understood the drift of your answers to Mr. McCoy to mean that much. Was I right?—A. I have stated to you the conversation that took place there, and you may be right in some instances, as far as individuals were concerned, but not as a committee.

Q. The interest of the business men is to prevent bankruptcies, if possible?—A. Absolutely.

Q. Every bankrupt estate, if the stock be a large one, demoralizes the trade in the city where it takes place?—A. Well, you have an illustration here of the—not the conserving of assets, just stated prior to my coming to the stand, where they had 80 per cent of assets and they paid us 3½ per cent, and we are trying to eliminate that.

Q. In what case?—A. In the McCarthy Dry Goods Co. I think that was the figures shown there.

Q. Well, I suppose it is a general rule that when there is a large stock of goods in bankruptcy the purchasers of such goods are very apt to go there rather than to the stores that are doing the general business?—A. Well, it all depends on how they are run. Naturally there is a whirlwind to start with, but it usually takes men of experience to operate corporations of any kind.

By Mr. HIGGINS:

Q. How long has your association been organized, Mr. Anderson?—A. Possibly 15 years; I don't know exactly.

Q. How long have you been president of it?—A. I have only been president of the association this year.

Q. It is affiliated with what national organization?—A. Seattle Association of Credit Men.

Q. What national organization? Is that the name of the national organization?—A. No, the national—the association of credit men—National Association of Credit Men.

Q. Is there any other national association?—A. No.

Q. The meeting that was held in June was the regular meeting of the association?—A. The regular monthly meeting, yes.

Q. Had there been notice given to the members of the association that the matter of the appointment of a committee to confer with judges would be considered?—A. No; that was a matter that came up in the meeting.

Q. Who brought that up?—A. Mr. Fred T. Fischer proposed the—I think, however, I suggested the matter to him.

Q. Fred T. Fischer moved the adoption of the resolution?—A. Of Fischer Bros.

Q. Was there a record kept of the vote?—A. Yes.

Q. I wish you would bring that. Have you that vote?—A. Sir?

Q. Have you a copy of that vote with you?—A. Well, it was a majority vote. Well, very much of a majority vote. It carried.

Q. And your secretary recorded the vote?—A. Oh, yes—not by the individual, but as an organization.

Q. I mean the text of the resolution which was adopted?—A. Yes, sir.

Q. It was recorded in the minutes of the meeting?—A. Yes, sir.

Q. And will you bring that to the committee?—A. Yes, sir; I can.

Q. The purpose of that committee, Mr. Anderson, was to act on the suggestion of the national organization to confer with all of the United States judges in this section of the country?—A. Not to my knowledge.

Q. Well, then, what was it?—A. Merely an idea that presented itself there. It was suggested by myself, Mr. Fischer sitting near to me, and after we had heard the expression there of one of our attorneys, in the Knosher case——

Q. (Interrupting.) You mean your brother?—A. Yes. [Continuing:] Why, I leaned over to Mr. Fischer and asked him if it would not be a good plan for us to cooperate here with our judges and try to get a similar arrangement. I told him that this arrangement was in New York and—no; I got up after the report of the attorney.

Q. I think that is exactly what I said.—A. No; you asked whether that was not a suggestion from the national association.

Q. Well, why did you do it?—A. Simply we wanted this cooperation. The attorney gave this report of the Knosher case and what results they had attained.

Q. How did the suggestion come to you that such action should be taken?—A. Well, I got it when I was in New York. I addressed it——

Q. (Interrupting.) You got it from the national association?—A. No. No; this was a meeting of the New York association. I addressed the association there in February.

Q. That is the New York State Association?—A. The New York City, and they told me there that they had this cooperation there. And when the attorney had gotten through talking about this Knosher case, I leaned over to Mr. Fischer and told him the situation they had in New York, and why couldn't we get a similar arrangement here. He thought it would be fine and he said he would bring the matter up and make a motion, which he did.

Q. And you will furnish the committee a copy of that motion, will you?—A. Yes, sir.

Q. Now, you called on the committee at their rooms at the Washington Annex?—A. No, sir.

Q. I mean the congressional committee?—A. No, sir.

Q. You talked with members of the committee?—A. Somebody purporting to have been representing the committee, yes, sir.

Q. And after that talk, Mr. Anderson, what did you do, if anything, toward bringing the matter before this special committee which you appointed?—A. I appointed the committee and called it together, as already stated.

Q. And hadn't the committee been appointed before that time?—A. No, sir.

Q. Hadn't the committee that was authorized in the meeting of about the 10th of June been appointed before this congressional committee came in?—A. No, sir.

Q. Well, so after you had talked with members——A. (Interrupting.) I might say this, the committee was appointed the day we met, called up by phone and got there as an emergency matter

Q. What was the date of that?—A. Whatever the date was. The report of the association will show, if you want that.

Q. When was the committee appointed?—A. At the date we met. I don't know.

Q. But it was after this congressional committee had come to Seattle?—A. Oh, yes, after I had been approached in the matter, and the committee had been called together from the fact at that time that I had been requested to appear before the committee.

Q. You appointed this committee authorized by the motion of the meeting of June 10, after you had conferred with members of this committee or somebody representing them?—A Yes, sir.

Q. And how many meetings has that committee held, Mr. Anderson?—A. Just one.

Q. That is the one that you are relating?—A. Yes, sir.

Q. What action did it take?—A. Merely as I have stated.

Q. Well, was there a formal vote passed?—A. I presume there was; yes.

Q. Who was the secretary? Did you have one?—A. Yes; Mr. F. S. Hills was the secretary and Mr. C. S. Wills, the treasurer of the Seattle Hardware Co., acted as chairman.

Q. Were there records kept of that meeting?—A. Yes, sir.

Q. Will you see that the committee has the record of that meeting?—A. Yes, sir.

Q. Did that committee adjourn without day?—A. Yes, sir.

Q. Considered its duty performed under the resolution?—A. No; the committee is still intact.

Q. How?—A. The committee is intact, to be called at some future date.

Q. So it is——A. (Interrupting.) To act in the matter in which it was appointed to act.

Q. It has not been discharged?—A. No.

Q. Nor made any report to the power appointing it?—A. That was at the meeting.

Q. Well, to the association?—A. The matter is on record.

Q. I didn't get your answer.—A. I say, the matter is on record; what you have asked for here.

Q. Did this committee make a report to any subsequent meeting of the credit men's association?—A. No.

Q. Or the trustees of the credit men's association?—A. No; there will be no meeting until September——

Q. (Interrupting.) Now, what industries, Mr. Anderson, were represented upon that special committee that you appointed?—A. Well, it was pretty general. The manufacturers—shoe manufacturer, he happened to be unable to come; however, he is one of the committee; a mattress and furniture factory, hardware, groceries, wholesale produce; there was kind of a general committee of the representative lines; a banker was on the committee; he was unable to be there, but he was a part of the committee.

Q. Well——A. The idea was to touch all the various branches of our mercantile life.

Q. And it did, in fact, you think?—A. Well, I think it did. That was the object.

Q. Now, at that meeting, as I understand you to say, reference was made to estates which had not been conserved?—A. Yes, sir.

Q. Who brought that before this special committee?—A. That was the object of our association.

Q. I understand; but what member of the committee brought that up for discussion?—A. I don't know. I might have brought it up myself. I would not say. I have brought it up a great many times.

Q. What estates, Mr. Anderson, have not been conserved?—A. Well, naturally we think of the ones that we are particularly interested in.

Q. I wish you would give the committee the names of them.—A. We, as has been stated here, were one of the largest—I don't know, we may have been the largest creditor of the McCarthy Dry Goods Co.

Mr. PRESTON. You mean of the local creditors?

A. Yes. Of course, there were other large creditors—foreign creditors.

Mr. HIGGINS. Give the names of all the estates which you have in mind, which you know as a fact have not been conserved in the administration of the Federal bankrupt law.

A. Well, I would only speak knowingly of two cases and of one only in part, and that is the McCarthy Dry Goods Co. and the Charles Knosher Co. The McCarthy Dry Goods Co. failure took place prior to my coming here to Seattle, but I had all the advantages of the loss after I came.

Q. Those are the two that you had in mind?—A. Yes, sir.

Q. Were there any more that you had in mind?—A. Any more that I knew of, do you mean?

Q. Yes.—A. Anything that I had—it would be just a matter of hearsay.

Q. Well, while that was under discussion in that committee, what other gentlemen mentioned estates that had not been conserved?—A. Oh, I don't know. The discussion came up regarding this Western Steel affair, how the receivers——

Q. (Interrupting.) The committee have the papers and propose themselves to make an investigation, unless you want to state it. It was the Washington Steel.——A. Western Steel.

Mr. PRESTON. You have the papers in that, Mr. Higgins.

Mr. HUGHES. Mr. Preston misunderstood you. You said you had the papers in that.

Mr. HIGGINS. I said we had the papers in that and proposed ourselves to take it up, unless Mr. McCoy wants him to make some statement.

Mr. PRESTON. You have no personal knowledge of the affairs of the Western Steel Co., have you?

A. Only a matter of hearsay.

Q. You are not a creditor of the Western Steel Corporation?—A. No, sir.

Q. You are not a stockholder?—A. No, sir.

Q. Or holder of security?—A. No, sir.

Q. Nor interested in any way?——A. Not at all; no, sir.

Q. (Continuing.) In its affairs, either before the trustee was appointed or after the trustee was appointed, at any time?—A. Not at any time.

Q. I wish you would state to the committee all other estates which you know, either by hearsay or in any other way, were brought to your attention as president of the Seattle Credit Men's Association, or that you heard any members of the Seattle Credit Men's Association, or that you have heard any business men in Seattle, or elsewhere, that were in the jurisdiction of Judge Hanford's court, name the estate that had not been conserved, either of your own knowledge or those that you have heard other business men speak of?—A. Well, the only cases that I know come to my mind particularly——

Q. (Interrupting.) I don't ask you for your own information, but for facts that you had related to you or cases that you had mentioned to you by business men in this community?—A. Of course, the only case that would make any impression on the individual would be the case that he was interested in particularly himself, or

some big case that would rather make an impression from that standpoint, and the only——

Q. (Interrupting.) That is an explanation of your answer. Please answer the question, if you can?—A. Well, that is the only answer I can give you, is the ones I have already named, and this fish concern which I see by the paper you are already investigating. The others were all just a matter of general conditions. I don't know whether——

Q. (Interrupting.) That is, you want to say to the committee that in your position as president of the Seattle Credit Men's Association, and during your association with one of the largest dry goods stores on the coast and in touch with credit affairs of Seattle, that you can only furnish to the committee the names of the three—that is, the Knosher case, the McCarthy Dry Goods, and the Western Steel and the Fisheries proceeding?—A. I think that is all that I can state definitely.

Q. And there were no other cases except those four that have ever been brought before your association?—A. Might have been a great many. We don't take up cases there to——

Q. (Interrupting.) Won't you name them, if they were?—A. If I could I would.

Q. But you are not able to——A. Not able to.

Q. (Continuing.) Name more than four?—A. I would name every one of them if I could give them to you.

Q. You don't favor a repeal of the bankruptcy law, do you?—A. Not in the least. I want it simply cooperated with and acted for the conservation of these estates.

Q. Well, what do you mean by "conservation of estates" and "cooperation"?—A. Well, we want to get something out of them; we don't want them all—we don't want the attorneys and the receivers to get all the money and when it comes down to the people that have got the money in it and are making the loss, to lose it all.

Q. You have the opportunity, you understand, to appear on the matter of allowances?—A. We probably are at fault in some of those conditions.

Q. But you understand that you do have that opportunity?—A. Yes.

Q. And has your association arranged with its attorney or attorneys to appear in all bankruptcy cases?—A. I think they have not; I think probably they have been a little lax in that regard.

Q. That was not what I asked you. I asked you if they did, not why they didn't.—A. I can't say prior to my being in office just what action they have taken. That would be our action from this time on.

Q. Well, do you now; have you since——A. (Interrupting.) What?

Q. Has the association since you have been president?—A. As far as my knowledge is concerned, we have.

Q. In what cases?—A. Well, really I am not interested—I want to give you an explanation——

Q. (Interrupting). I want your best information.—A. Now, of course, you think that my being president, that I am in touch with all of it. We have special committees that handle each case, of the houses interested, and therefore it never comes to my knowledge at all. That is it.

Q. I wish you would suggest to the committee, then, the names of the men in the association who would have a greater knowledge of

particular cases than you would have.—A. Well, any particular case that comes up before the creditors interested, a committee of the three largest creditors have that in charge; they go ahead with their investigation, and the conduct of the assets of that concern or individual, and whatever they do is the best knowledge.

Question read.

A. Well, the secretary. However, we have made a change in secretaries. The secretary would be in touch with all cases.

Q. What is his name?—A. F. S. Hills, the present secretary; the former secretary was Mr. I. H. Jennings.

Q. Anybody else?—A. Mr. George H. Telford, who is the assistant secretary.

Q. Anybody else?—A. Mr. George H. Black, of the Black Manufacturing Co., was the former—he was formerly connected with the association as president. He may know some individual cases.

Q. Anybody else?—A. Mr. Chester E. Roberts was the president prior to that time. He may have some individual cases. Of course, you have got the entire membership there, if you want to—each one may have an individual experience. All the representative houses are——

Q. (Interrupting). Have you stated all that you can—that you think have information of cases where estates have not been conserved?—A. As far as I know, yes.

Q. In the administration of the bankruptcy law?—A. Yes.

Q. It has been suggested, Mr. Anderson, that your committee—and it so appears in the record, perhaps, by suggestion—that your committee, or that a committee of your association, was to present to this congressional committee cases in which they thought that by reason of allowances of trustee fees or attorney fees bankrupt estates had not been properly administered, and that through intimidation or other means that committee was persuaded not to collate those facts, a suggestion, possibly, which might mean something in the nature of a conspiracy on the part of your association to withhold from this committee the true state of facts relative to the administration of the bankrupt law in this jurisdiction.—A. That is absolutely not a fact; no such understanding, or anything else.

Mr. HIGGINS. That is all.

The CHAIRMAN. Any further questions?

Mr. PRESTON. I would like to ask Mr. Anderson a few questions.

The CHAIRMAN. Do so.

Mr. PRESTON. I think I can be brief.

Q. When you had your committee meeting, somebody—I am not clear whether you said it was yourself or somebody else——A. Yes.

Q. (Continuing.) Referred to certain unsatisfactory cases in bankruptcy. Will you tell the committee what cases were there named by name?—A. Well, I think I have spoken of the only ones that came directly to my particular knowledge and the only ones that have been taken up. Of course it had to be a very serious case before we will take up a question and push it to a conclusion.

Q. I don't believe you quite understood me. I asked you which cases were named by name at your meeting.—A. Well, whether there were any particular cases named or not, our association has had up the Knosher case, and possibly that would be the one that would be

named, and also the one of the Western Steel that was named. That is the only one I could say was named at that meeting.

Q. Now, can you state now and will you state the name of any other bankruptcy or insolvency proceeding in Judge Hanford's cour concerning which you have heard criticism, other than the four cases which you have named, the McCarthy Dry Goods case——

Mr. HIGGINS (interrupting). He has already stated that he could not, that all he knew was these four cases; that those were the only cases that he could tell of his own knowledge or of hearsay.

The CHAIRMAN. You may answer Mr. Preston's question.

A. Those are the only ones that I have on my mind. The others would be just passed over, would not make any difference to me one way or the other.

Mr. PRESTON. Well, can you name now any other case——

A. No other.

Q. (Continuing.) That you have heard a cirticism on?—A. No.

Q. Sir?—A. No, sir.

Q. Now, as I understand, the practice of your association is that when there is a failure the three principal creditors interested in that particular failure become the committee to handle it for the association?—A. Yes, sir.

Q. Or rather for the members of the association?—A. For the ones interested.

Q. Yes. So that each failure has its own committee from your body?—A. Yes, sir.

Q. Now, does each of those committees select an attorney for the purposes of that particular case?—A. Yes, sir.

Q. And that attorney acts in the matter, in that particular matter, in court, that particular phase of it.—A. In connection with the committee.

Q. Sir?—A. In connection with the committee.

Q. Is it the general rule or custom that that attorney named by this committee of the case becomes attorney in the case for the trustee, if it is a bankruptcy case?—A. You mean becomes trustee?

Q. Yes.—A. Attorney for the trustee.

Q. No; attorney for the trustee.—A. Well, I think that would naturally follow and usually is the custom.

Q. That is the general rule?—A. Unless there is some reason for change.

Q. Now, I want to ask you about Mr. Goldsmith's attitude, to see if I correctly understood it.

Mr. PRESTON. If the committee will permit me to put the question in that way?

The CHAIRMAN. Go ahead.

Mr. PRESTON. I understood you to say that Mr. Goldsmith in his remarks referred to the public services that Judge Hanford had rendered to the community?

A. The matter of loyal spirit, nothing else.

Q. Also referred to the arduous labors that he had performed—— A. Yes, sir.

Q. (Continuing.) As a matter of common knowledge in the community?—A. Yes, sir.

Q. And then took the position that in so much as your association had never gone to Judge Hanford before the congressional committee

came here to criticise him, that it was not just the right thing to send a committee to go before the congressional committee?—A. Yes.

Q. That is the sum and substance, boiled down, of this attitude, isn't it?—A. Yes, sir. That was the expression he made and seemed to be concurred in by all members of the committee—or, I say all, I mean all but one.

Mr. McCoy. All but one, you say?

A. Yes.

Mr. Preston. Then, as I understand it, the matter was also referred to that this committee had been appointed for the purpose of securing future cooperation?

A. Yes.

Q. And that this particular matter that was then brought before them was outside their functions?—A. Yes, sir.

Mr. Preston. I will ask first if the committee would deem it proper for me to inquire from Mr. Anderson who the gentleman was who approached him, claiming to be your representative. I don't want to ask it if you think it ought not to be asked.

Mr. McCoy. Yes; personally I don't care.

The Chairman. The committee has no objection.

Mr. Preston. Did you understand me, Mr. Anderson?

A. Yes.

Q. Who was it?—A. John Perry—I think it was John—anyway the attorney.

By Mr. McCoy:

Q. What did he say to you?—A. John?

Q. Yes.—A. He merely asked——

Q. (Interrupting.) I mean as far as this committee was concerned?—A. He merely asked if the committee were interested in getting all information regarding cases of all kinds in a general way, that they would be very glad to have an expression from the business men regarding lines that they had heard rumors of in bankruptcy matters. I think I have——

Q. (Interrupting.) Is there a Mr. Klock who was on your committee?—A. Yes, sir.

Q. Was he at this meeting of the committee?—A. Yes, sir.

Q. Well, he had been to the committee, hadn't he?—A. Yes, sir.

Q. I mean he had met with this congressional committee in person and was not approached through Mr. Perry in any way?—A. Yes; as far as I know. I don't know anything about Mr. Perry. He said that he had been here.

Q. Well, at any rate, he had met with this committee?—A. Yes.

Q. And he stated to your committee at that meeting what the attitude of the congressional committee was toward this whole matter?—A. Absolutely.

Q. As nearly as you can recollect, state what he repeated, what conversation he had had with this congressional committee.—A. Well, it was merely to that effect, that they were trying to secure all information they could regarding all matters and that he thought it was the proper time for the business men to come out and give such information as they had, so as to assist the committee.

Q. That is, to assist the congressional committee?—A. Yes.

Q. Was he the man who dissented from Mr. Goldsmith's views?—A. Well, Mr. Klock, as I have stated—there was one that did not have that same feeling as indicated by the meeting and by the various members, and voted no. I think the vote was unanimous, with the exception of the one.

Q. Well, who was he?—A. That was Mr. Klock.

Q. Now, the impression you left on my mind in testifying in answer to my question was this: That Mr. Goldsmith meant to indicate to your meeting there that in view of Judge Hanford's services to the community as he had stated them, it would be a pity for your committee to render any assistance to the congressional committee.—A. No. No; he took the position in the first place that our committee was not appointed for that purpose, therefore we should take no action, and it did not seem to him that as an association that we should take any action, and that was the general expression. But Mr. Goldsmith's attitude was a matter of praise for the service that had been obtained, but it was in no way along the line of intimidating the individual as far as it personally went.

Q. I didn't say "intimidating."—A. Yes.

Q. I wish you would get that out of your mind. I don't presume you gentlemen could be intimidated.——A. No; I didn't mean to infer——

Q. (Continuing.) But what I said was that Mr. Goldsmith said, in substance, that it would be a pity to cooperate with this congressional committee——A. No.

Q. (Continuing.) In bringing out anything that might affect Judge Hanford——A. No.

Q. (Continuing.) In view of his services to the community.—A. No; I could not say that.

Q. Well, then, what connection did his statement of Judge Hanford's services in the community, in the matter of Chinese riots and what not, have to do with the matter at all?—A. A matter of sentiment, I expect.

Q. Isn't that just exactly the point, that it was treated from a sentimental point of view, and the clear intimation was that it would be a pity, sentimentally to do anything that might seem hostile to a judge or a person who had rendered such service to the comminuty?—A. I expect there is a good deal in that.

The CHAIRMAN. Is that all with Mr. Anderson?

Mr. MCCOY. There is just one question more:

Q. You say that you came to Seattle, Mr. Anderson, and inherited the disaster of the McCarthy Dry Goods Co.?—A. Yes, sir.

Q. Do you know anything about—of your personal knowledge that is—about the attempt to get a bid for the assets of that concern?—A. At the beginning?

Q. At the beginning?—A. No.

Q. Do you know anything about the—when was it you came to Seattle?—A. January, 1908.

Q. At that time the business was being carried on by the receiver, wasn't it?—A. The McCarthy Dry Goods Co.; yes, sir.

Q. Well, now, what do you know about the carrying on of the business from the time you came here?—A. Well, I know it was losing money all the time it was run, continuously.

Q. Did you know that from time to time as it was losing money?—A. Why, I think we were aware of that fact.

Q. Did you make any protest against the carrying on of the business?—A. Only with the receiver.

Q. What did you say to him?—A. Well, I had very little connection with the receiver. Of course I was getting in touch with our business at that time, and I found a great many things to take my attention, but I recall one or two occasions where I had a talk with the receiver to the effect that I felt that the business could be disposed of and show a larger return of dividends to the creditors if they would sell it out, dispose of it.

Q. How early after tour arrival in Seattle was it that you made any such suggestion?—A. Oh, along in the spring.

Q. Did you know anything about the attempt to sell the assets to some man from somewhere, Montana or Salt Lake City, or somewhere else?—A. No.

Mr. McCoy. What was his name?

Mr. Baxter. Mr. Strain.

Mr. McCoy. Somebody named Strain?

A. No.

Q. Did you ever hear of that before?—A. No.

Q. Were you ever conferred with about it?—A. No, sir.

Q. Do you know of any creditors who were?—A. No, sir.

Q. Do you know of any other creditors who ever complained to the receiver against continuing the business?—A. No.

Q. Do you know whether the credit men's association, or its secretary, or anybody connected with it, ever undertook to have him discontinue the business?—A. No; not to my knowledge.

Q. Well, have you ever heard that any such thing was done?—A. No, sir.

Mr. Higgins. What business is Mr. Klock in?

A. Produce—wholesale produce.

Q. You will bring the commitete vote, will you, Mr. Anderson?—A. The committee would be—yes; you want the list of the names of the committee that were there?

Q. No; the votes that you took a memorandum of.

The Chairman. The resolution and vote.

A. Merely. Yes; we will be very glad to bring that to you.

Mr. Preston. Roll call?

Mr. Higgins. No; I don't care who voted, but I want to know what the vote was.

The Witness. Yes.

By Mr. Preston:

Q. Mr. Anderson, did the Western Dry Goods Co., your concern, sell the receiver of the McCarthy Dry Goods Co. goods during the receivership?—A. Yes, sir.

Q. A considerable quantity of them?—A. Well, quite a good many, I have an idea.

Q. Forty or fifty thousand dollars in all, perhaps?—A. I would not say.

Q. Give us your best recollection of the aggregate amount.—A. Well, I would not know whether it was twenty or fifty.

Q. It may have gone to 50?—A. Might have; I doubt it.

Q. You were paid spot cash for those by the receiver?—A. Whenever they were due.

Q. You speak of making a protest to Mr. Baxter, as receiver, about longer continuing the business, and you said it was some time in the spring of 1908. Does your memory serve you to make a more definite statement of the time?—A. No; I could not say. I presume it was along anywhere from April to—along about April, I would suppose; along in there somewhere.

Q. Were you two together alone at the time or was some one else present?—A. Well, the vice president of our company at one time was with me when I saw Mr. Baxter, P. J. Smith.

Q. You spoke of making a protest. Did you make more than one?—A. Well, possibly in the way of—I think there was probably twice that we took the matter up.

Q. Once you were alone with him?—A. Well, I would not say whether I was alone or whether Mr. Smith was there both times.

Q. Once Mr. Smith was with you?—A. Once or twice.

Q. Just what did you say to him? You call it a protest?—A. Well, I merely took the position that I thought the assets of the business could be better conserved by disposing of that stock. In fact, we had a party then that might have been interested at a reasonable figure. I think it is—my recollection was that we could have paid about 25 per cent on the liability at that time—the remaining liability.

Q. If you could have sold?—A. Yes.

Q. If the receiver could have sold. Now, does your memory serve you as to Mr. Baxter's response to your protest or suggestion, whichever it may have been?—A. Well, he did not seem to be agreeable to considering a proposition of that kind. That was the——

Q. (Interrupting.) Did he give any reason to you?—A. Well, I suggested to him that might be disposed of, but he thought he could handle it longer and dispose of it to better advantage. That was the conclusion that he reached.

Q. You came here in January, 1908?—A. Yes.

Q. The 1st of January?—A. Twenty-seventh.

Q. How long was it after you came here that the first conversation with Mr. Baxter to which you have referred occurred?—A. Well, I would not say. It was sometime in April or later.

Q. Who was this party that you had in view of buying the stock?—A. Buying the stock?

Q. The possible purchaser of the stock?—A. Why, it seems to me it was a fellow by the name of Hubbell, the Hubbell Bros.

Q. Were they in business up here——A. They were on Pike Street at one time.

Q. Seventh and Pike?—A. Somewhere up in there; yes.

Q. Now, wasn't it possible that that conversation took place in the fall of 1908, instead of the spring, as you say?—A. Well, the assets at that time, as I remember it, would bring about 25 per cent on the price that I thought would be reasonable in the condition of the stock.

Q. Well, now, wasn't it in the fall that that conversation took place?—A. No; I would think it was more, as I have stated, in the spring of the year, along in April or May; somewhere along there.

Mr. PRESTON. I think that is all, Mr. Chairman.

By Mr. McCoy:

Q. You were asked, Mr. Anderson, something about the objections of business men here to the administration of the bankruptcy law. Is not one of your strong objections to this scheme of double administration, where you put a receiver in, or where the court does and the court makes an order that he may run the business, and that he runs the business, and he gets these double allowances of receiver, practically, and then having done all the work practically of the winding up of the estate, except the distribution, he turns the estate over to the trustee, who in a number of instances is himself, and again gets fees out of it as trustee, and that attorneys' fees are paid to attorneys for the receiver, who in turn become attorneys for the trustee and again receive fees in that capacity, although as trustee the individual practically does nothing except take money in one hand and pass it out by the other?—A. Absolutely. That is the abuse that is being made of it.

Mr. Preston. May we have how many cases of that kind you know of?

A. I have already indicated the only ones that I call to mind.

Mr. Preston. That is all.

Mr. McCoy. Well, do you know whether or not that is the complaint which is generally made by business men in the city?

A. That is the—that is the abuse that we all have foremost in our minds when we try to keep it out of these courts; otherwise, we would be glad to put it in the bankruptcy court. That is the natural place for it to go.

Q. Do they make complaint also against the business ability of those who are appointed receivers?—A. Absolutely.

Mr. McCoy. That is all.

By Mr. Higgins:

Q. That is, they want a dry goods man to administer a bankrupt estate of a dry goods merchant?—A. Well, we don't think a man ought to be appointed when he———

The Chairman (interrupting). Will you please answer?

Mr. Higgins. Is that their view?

A. Well, naturally he would be a man of practical experience.

Q. They want a grocer to administer the affairs of a bankrupt grocerman?—A. They want a practical man, business man that———

Q. (Interrupting.) Well, that is the general view of your association?—A. Absolutely.

Q. Do you know of a jurisdiction in the country where it is done?—A. I am not familiar with other conditions.

Mr. McCoy. Well, you would be willing to take a business man in active business and with good experience and ability even if he did not happen to be in the particular line in which the bankrupt was, wouldn't you?—A. If he had shown himself capable and gotten results in a business way, had a good business experience, why, it is a matter of horse sense.

Witness excused.

Mr. Preston. I notice Mr. Goldsmith here in the room.

The CHAIRMAN. It is the sense of the committee that we continue sitting until 1 o'clock and take a short recess at this time.

Short recess.

JAMES S. GOLDSMITH, having been first duly sworn, testified as follows:

Mr. HIGGINS. What is your full name?

A. James S. Goldsmith.

Q. Where do you reside?—A. Seattle.

Q. What is your business?—A. Wholesale grocer.

Q. How long have you been in that business?—A. Twenty-three years.

Q. Are you a member of the Seattle Credit Men's Association?—A. Our firm is.

Q. How long have you been?—A. Since it started.

Q. You were a member of a special committee that was appointed some time in June, at the monthly meeting of the Seattle Credit Men's Association?—A. I was not appointed at the Seattle Credit Men's Association.

Q. Well, I don't keep in mind the name of your——A. I will explain that matter by saying that I knew nothing of the action of the association. The first intimation I had was when Mr. Anderson rung me up on the telephone.

Q. What did he say?—A. Mr. Anderson said that he wanted me to act on a special committee to see if we could not get into closer relations with Judge Hanford regarding trusteeships and bankrupts matters.

Q. Did you tell him first that you would serve?—A. I told him first I would not, would not.

Q. Did you afterwards serve?—A. Yes; I afterwards served with him.

Q. How many meetings did you have?—A. One.

Q. Where?—A. Merchant association rooms.

Q. When?—A. Tuesday, three weeks ago yesterday.

Q. Three weeks ago yesterday?—A. Yes, sir, 5 o'clock.

Q. Who called that meeting?—A. Mr. Anderson.

Q. How was it called?—A. As far as I was concerned, by telephone.

Q. And did Mr. Anderson call your attention to any particular matter that that meeting was to consider?—A. No, sir, except to get in closer relations with Judge Hanford regarding trusteeships and bankruptcy matters.

Q. Well, to carry out the purposes for which you understood this committee was appointed?—A. Yes, sir.

Q. Now, you may state in your own way, if you will, what occurred at that meeting, and what this committee finally concluded, if it considered anything?—A. I went to the meeting at 5 o'clock and was the first one present. The other members gradually came in. I think within 10 minutes they were all there. Do you want the names of the others?

Q. Yes; you may give them. I think they all appear in the record. You heard Mr. Anderson's testimony?—A. Part of it.

Q. Well, you agree with him as to who were present?—A. Well, I don't know who he said were present.

Q. Well, you may state them.—A. Mr. Wills, Mr. Fischer, Mr. Hardiman——

Q. Give the initials, if you can?—A. I haven't them. Mr. Klock——

Q. That is H. L. Klock, isn't it?—A. I don't know what his initials are.

Q. And C. S. Wills?—A. Mr. Anderson, Mr. Hassen——

Q. That is Eugene G. Anderson, president of the association?—A. Yes, sir. Perry Polson, Mr. Black—I don't know his initials—and myself.

Q. George C. Black, isn't it?—A. I think it is. J. S. Goldsmith. I think that we started the discussion really before the meeting opened. Mr. Klock was present and stated——

Q. (Interrupting.) You mean by that that there was informal talk?—A. Yes, sir, before the meeting opened, as they came in. And Mr. Klock stated that this meeting had been called for the purpose of assisting the committee in preferring charges against Judge Hanford. I immediately said that the meeting had not been called for that purpose, and, as far as I was concerned, I was not in it; that if any individual wanted to assist the committee, that they were at perfect liberty to do so, but that as far as I was concerned I wished to take no part in it. Then the discussion went on and Mr. Klock said that while the committee was here he felt it fair to assist them and that something was due the fair name of Seattle to help this committee out. He said that he had talked to the committee regarding this matter and that the committee were quite anxious to get information from the merchants.

Mr. McCoy. You mean the congressional committee?

A. The congressional committee; yes, sir. And I said I didn't see what charges could be brought up against Judge Hanford. And Mr. Klock said there was the case of the Hanford Irrigation Co., that Judge Hanford had obtained this land in a rather secret way. I said—he said that he had furnished a man some money to go over there and buy some of this land.

Mr. Preston. Who had?

A. Mr. Klock had, and then when the man went over there he found he was unable to buy any of this land.

Mr. Higgins. From the Hanford Irrigation Co.?

A. From the State.

Q. Well, are you able to state, from the Hanford Irrigation Co., the railroad, or the State?—A. From the State. And I said I didn't see what Judge Hanford had to do in that matter, that Commissioner Roff, land commissioner of the State, had that in charge, and if there was anything wrong about it, he probably was the responsible man. Well, then he went on about some other matters——

Q. (Interrupting.) This was all in your informal talk?—A. Yes, sir. Then——

Q. (Interrupting.) I wish you would indicate, if you continue, when the meeting was called to order.—A. Yes.

Q. So that we may know what particular discussion was informal and what after the meeting was called to order?—A. When Mr. Anderson suggested that Mr. Wills act as chairman, and that Mr. Hills act as secretary, which was carried. Then the discussion again

was rather informal, everybody saying what they thought about the matter, and I said some more things regarding the whole situation, that I had known Judge Hanford for something like 25 years——

Q. (Interrupting.) Who suggested at that point, Mr. Goldsmith, as I understand him now, after your meeting had organized and the secretary had been appointed, who stated the purpose and object of the meeting called together?—A. Mr. Anderson.

Q. And what did he state them to be?—A. Well, that this meeting had been called for the purpose of working closer on bankruptcy matters and that the committee was out here investigating matters in a general way and that it would be an opportune time for us to take these matters up with the committee.

Q. He stated that this congressional committee, or some one that they suggested, had invited your association to cooperate with them in an attempt to produce the facts?—A. Well, I judged only from my own impression.

Q. Have I stated fairly the substance of what he said?—A. Yes, sir; yes, sir.

Q. You may go on.—A. Well, Mr. Anderson stated the purpose of this meeting, and I said I thought in fairness to Judge Hanford, as long as we never had made any complaint to him, that it would be fair treatment to him, that it would be only right for us to take these matters up with him before taking it up before this committee; that nobody had ever suggested this before, and that as far as acting on that committee I would be only too glad to do so any time that the committee wished to go to see Judge Hanford. I would be glad to be one of them; that I thought it was only a matter of justice to Judge Hanford to approach him on the subject and discuss it with him before going to any one else. I also said that if Judge Hanford was impeached, why it would not be necessary to take it up with him; if he was not impeached I would be glad at any time to go before him and take these matters up with him.

Q. Then what followed?—A. Then general conversation still continued, and I made reference to having known Judge Hanford some 25 years; that his name had always been one of honor in this city; that he had always been considered thorough; that he had a lot of ability, and that the Government for many years had refused to give him any assistance; that one day he had to be an expert in mining law, the next day in criminal law, the next day in admiralty law, and that he had worked practically night and day, and that I had not—I didn't think the Government had treated him fairly in that matter.

Q. You meant what by that?—A. By rendering him more assistance at any time when he needed it here.

Q. You meant an additional judge in this district?—A. Yes, sir.

Q. Continue.—A. Then the matter was discussed along those lines. Finally, Mr. Hassen, of the Centennial Mill Co. made a motion that the committee take no action in this matter. I think Mr. Fisher seconded it. It was carried by a vote of, I think, six or seven to one. I am not sure whether Mr. Anderson voted or not. Mr. Klock voted "No." The balance of the members voted in favor of it.

Q. What was the motion?—A. The motion was made that the committee take no action in this matter.

Q. This matter referred to what?—A. Referred to preferred charges before the congressional committee.

Q. Were Judge Hanford's personal habits a matter of discussion before your committee?—A. Not to any extent. Mr. Klock said the congressional committee were not interested in that part of the matter.

Q. As I recall Mr. Anderson's testimony, it was to the effect that either you or somebody else commented on Judge Hanford being under the influence of liquor.—A. I did not, sir.

Q. Did you hear any one?—A. I don't remember of having heard any one say anything about that.

Q. Now, what was urged, Mr. Goldsmith, as a reason for the committee's presenting facts to this congressional committee?—A. It was urged that as a matter of justice to Judge Hanford that if we had any complaint to make that we should have taken it up with him before or at any time previous to this congressional committee coming out here.

Q. Well, I think you have told the committee about that. There were gentlemen present who took a view contrary to yours, weren't there?—A. I think Mr. Klock did. He was the only man who spoke to any extent.

Q. What did he say?—A. He said that Judge Hanford was not fit to be a judge on the bench.

Q. Well, I want particularly to know with reference to the administration of the bankruptcy law in this district.—A. The question came up about the Knosher case. I said that that was a matter of court records, that that was clearer than anything that we could develop, and if the congressional committee wanted the full record they probably could get it from the circuit court of appeals better than we could furnish it to them; but I had no knowledge of that matter myself, we were not a creditor, not interested in it to any extent, and I knew nothing about it. Something was said about the Western Steel, and I said I knew nothing about that, the details of it, and I think, with the exception of those two cases, they were the only ones mentioned.

Q. Well, was there at that meeting a general discussion about the administration of the bankruptcy law?—A. Not to any extent; no, sir.

Q. What particular cases were discussed in addition to the Knosher case?—A. I think the Western Steel was the only one, and I think there was some reference made to the Northwestern Fisheries Co.

Q. What others?—A. That is all.

Q. Now, I will ask you, Mr. Goldsmith, as a business man of this community for many years, if you will furnish this committee with the names of estates in the bankruptcy court which you think ought to be the subject of investigation by this committee.—A. I do not know of any.

Q. Either of your own knowledge, gained as creditor or as stockholder, or of any that you have heard other business men discuss other than the three cases that you have mentioned?—A. No, sir.

Q. Or the two cases, the Knosher case and Western Steel. You know, at any rate, the McCarthy dry goods case was——A. (Interrupting.) I know nothing about that.

Q. Was it mentioned at this meeting?—A. I don't think it was.

Q. The suggestion has occurred in our records, Mr. Goldsmith, that would indicate, perhaps, that a conspiracy existed on the part

of the members of your association, and the business men in general in Seattle, to suppress the truth with reference to the administration of bankruptcy law. Now, what is the fact, if you know?—A. The fact is that there is absolutely no conspiracy, no attempt at concealment; that half of the time the chief troubles of bankruptcy matters are the result of inattention of the creditors themselves.

Q. What do you mean by that?—A. I mean that they do not take sufficient interest in the bankruptcy matters after it has once passed into the hands of the court to follow it up.

Q. Does Judge Hanford allow creditors to appear in court in hearing on allowances?—A. I imagine so.

Q. Do you know?—A. No, sir.

Q. Did you ever appear?—A. No, sir.

Q. Do you know of anybody that ever did?—A. No, sir.

Q. Do you know of anybody that has ever been refused an opportunity to be here on the question of allowances?—A. No, sir.

Q. Do you know any more, Mr. Golsdmith, about the administration of the bankruptcy law in this district which would give rise to complaint on the part of business men or anybody else as to allowances to attorneys and trustees and receivers other than you have testified to to-day?—A. No, sir; I do not.

Q. If so, I wish you would state it now.—A. I do not.

Mr. HIGGINS. That is all.

The CHAIRMAN. Any further interrogation?

Mr. MCCOY. Yes, sir.

By Mr. MCCOY:

Q. Did you ever hear of any complaint of the administration of any proceedings in Judge Hanford's court?—A. No, sir.

Q. What was your object in narrating to this meeting, if you didn't know, the services of a public nature which Judge Hanford had been connected with or performed in this community?—A. Well, I felt this way about it; that this meeting had been called for a specific purpose, and after I had gotten up there I found that it was the idea of one or two of the members to entirely change the purposes of the meeting; that in a previous matter which I had undertaken I had arrived at the same results as I would in this meeting, and for that reason I felt that having been asked to that meeting for a certain purpose, and then having another matter come up entirely foreign, that I had not been treated entirely fair, and when this question came up of the first charges by the association—this was not an executive meeting, it was a committee meeting called for a certain purpose—that it was not fair to Judge Hanford to take the matter up at that time. Having known him in this community for that length of time, I certainly thought I was justified in saying what I knew about him.

Q. What possible objection could there be to taking up that matter before this committee?—A. Nothing, excepting that I believed that when you have anything to do with a man, to go to that man first before you go to anybody else.

Q. Have you any idea how long it would take to reach the impeachment stage of this matter, if it ever should be reached?—A. I did not give that a thought.

Q. Well, then, when you said, as I believe you say, that you would wait and see whether he should be impeached or not, you hadn't any idea how long that would take?—A. No, sir; because I believed Judge Hanford was working heartily in accord with the merchants of this city, and would be glad to do anything that they recommended.

Q. But your suggestion was that you had better not go to him until it was determined whether or not he was to be impeached?—A. Yes.

Q. That might take a long time?—A. All right; then we could afford to wait. We had waited longer than that.

Q. You say you think that the trouble has been here that attorneys, or creditors, did not take enough interest in bankruptcy matters to protect themselves?—A. Yes, sir.

Q. Why do you think that has been so?—A. Because the way some of the meetings have been attended.

Q. Why do you think it is that they do not take an interest?—A. Simply because of their inattention to those matters.

Q. Well, that is stating the same thing over, that they dont' take an interest because they don't take an interest.—A. Yes.

Q. Why do you think it is that they are inattentive?—A. Well, I can't say that, I can only speak from our own experience, that when a meeting is called you attend it and some other people don't. Now, what their reason for not attending that meeting is, I don't know.

Q. What is the name of your concern?—A. Schwabacher Bros. & Co. (Inc.).

Q. Has it ever been indicted in the Federal court?—A. Yes, sir; twice.

Q. For what?—A. Under the pure-food law.

Q. Both times?—A. Yes, sir.

Q. What was the first charge?—A. I think for adulterated extract in Alaska—shipping some adulterated extracts to Alaska.

Q. What was the outcome of that case?—A. We were fined $25 and costs.

Q. By whom?—A. By Judge Hanford.

Q. What was the second case? But first, was there any trial?—A. It was in open court; the hearing was in open court.

Q. Well, did your firm plead guilty?—A. Yes, sir.

Q. And it was on that plea that you were fined $25?—A. Yes, sir.

Q. What was the second instance?—A. I think for the same reason. They were both technical cases, as most of these pure-food cases are.

Q. And what was the outcome in the second case, did you plead guilty there?—A. We pleaded guilty and were fined $25.

Q. Twenty-five in both cases?—A. Yes, sir. That is the usual fine all over the United States.

Q. What was the maximum penalty under the law?—A. I really don't know.

Q. Is there any provision for imprisonment as well as fine?—A. I could not say.

Q. You are sure that both cases were under the pure food and drug act?—A. I know they were; yes, sir.

Q. How long after the first case did the second case come up?—A. Both at the same time.

Q. And fines were imposed on the same day?—A. Yes, sir.

By Mr. HIGGINS:

Q. What were you charged with?—A. Why the pure food law is so technical that it is almost impossible for a wholesale grocer to comply with it in all cases. We were charged with shipping some—I think some lemon extract to Alaska, when it was not marked properly.

Q. A case of misprinting, was it?—A. Yes.

Q. How long ago was it?—A. I think the shipment occurred about a year ago, but only within the last six or eight months has the Government had some inspectors in Alaska looking up some of these matters.

Q. That is, both of these cases came up within a year?—A. Yes, sir.

Q. Who has been your attorney?—A. Mr. Preston.

Q. Mr. Preston?—A. Harold Preston; yes, sir.

Mr. MCCOY. Was not one of them a case involving the adulteration of olive oil?

A. Oh, I think one was extract and the other probably was some cottonseed oil which was branded salad oil.

Mr. PRESTON. Both cases of misprinting?

A. Yes, sir.

Mr. MCCOY. That is all.

The CHAIRMAN. Do you wish to ask any questions?

Mr. PRESTON. Well, if you please.

Q. The olive-oil case was a case where the department's ruling had been later decided by the court of appeals to be erroneous?—A. Yes, sir.

Q. And shortly after the decision—I don't mean our court of appeals—shortly after that decision the department reversed its ruling and prosecuted a number of merchants in Seattle, wholesalers, in regard to selling cottonseed oil as olive oil.

The CHAIRMAN. Might you not just as well state it into the record. What is the use of asking Mr. Goldsmith those questions. He is not a lawyer, is he?

Mr. PRESTON. Well, he knows those facts, because I went over them with him.

Mr. HIGGINS. There is no objection to your stating them yourself.

The CHAIRMAN. The committee would rather have your statement than his on questions of law.

Mr. PRESTON. Well, my understanding of the matter, then, I will state, if I may.

The CHAIRMAN. Do so.

Mr. PRESTON. That the wholesalers had been doing that and that the department's rulings were favorable to it. Then a case came up—the department's ruling was changed, and a case came up in the Federal court in the East somewhere and there was a specific ruling in that case that the branding of the products of cotton seed as oil, of cotton seed as oil, was a misprinting, the court taking the position that the term "salad oil" had come in the course of years to mean an oil made out of the olive only.

Mr. PRESTON. Now, Mr. Goldsmith, were there not a number of merchants prosecuted at the same time for the same charge here?

A. There were.

Q. Was your company's fine any different from theirs?—A. No sir.

Q. The amount of it?—A. Exactly the same.

Q. At that meeting of the committee, was anything said there by any gentlemen present in regard to the willingness, or unwillingness, of any man present to have Judge Hanford pass upon any case in which he was interested?—A. Yes; I said that so far as I was concerned I would be perfectly willing to have Judge Hanford pass on any case that we were interested in in any way; I had sufficient faith in his ability and justice to think that he would decide the law as he found it. I think the majority of the members there said that they were of the same opinion.

Q. Now, you mention the Northwestern Fisheries. I think you got the name of the company wrong. You refer, do you not, to the Pacific Packing & Navigation Co.?—A. Yes. The Northwestern were the successors to the Pacific.

Mr. HIGGINS. Perhaps it ought to go into this record at this point, so that there won't be any question that that is the fisheries case that the committee have already taken up.

Mr. PRESTON. That is the fact, is it not?

A. Yes; this name that I mentioned was the successor.

Mr. HIGGINS. I presume that you know more about what the committee has taken up than Mr. Goldsmith does.

Mr. PRESTON. The committee examined into the case of the receivership of the Pacific Packing & Navigation Co. and the Pacific American Fisheries Co. and there is evidence before the committee that the properties of those insolvent companies, when sold by the receiver, ultimately become the property of the Northwestern Fisheries Co.?

A. Yes.

Mr. McCOY. The case or action in which Mr. Kerr was receiver?

A. Yes.

Mr. McCOY. That identifies it.

Mr. PRESTON. Now, give the committee a statement, in a general way, of the magnitude of your business—of your concern; the grocery part of it—Schwabacher Bros. & Co., grocers—in comparison with other institutions in the Pacific Northwest, in the same line of business?

A. Well, I think we do the largest grocery business on the Pacific coast—straight grocery business.

Q. Wholesale?—A. Wholesale grocery business.

Q. Have you also a hardware company owned by the same interests?—A. Yes, sir; we have a Schwabacher Hardware Co., with practically the same stockholders as the grocery company.

Q. That is located where?—A. It is located in Seattle.

Q. What kind of business does it do?—A. It does a wholesale hardware business.

Q. Now, one more question: In regard to the statement that was made there to the committee, was it a statement that the association was desired to present all the facts in regard to the bankruptcy matters to the congressional committee, or was it that the association was desired to furnish evidence derogatory to Judge Hanford in that connection?—A. Well, I imagine now——

Q. No; just state what was said. I don't want your imagination about it.—A. Well, the only man who spoke—spoke strongly on this matter—was Mr. Klock.

Q. Yes?—A. He spoke quite strongly on the matter on account of, I thought, having talked to me committee on it, and he felt that it was the duty of the association to bring up all these various charges against Judge Hanford in reference to——

Q. (Interrupting.) Did he so express himself?—A. He so expressed himself in reference to these banruptcy matters. Mr. Anderson was the only other who spoke along the same line, and he talked entirely on the question of the Knosher case.

Mr. PRESTON. I think that is all.

Witness excused.

BENJAMIN S. GROSSCUP, having been first duly sworn, testified as follows:

The CHAIRMAN. Give your full name, Mr. Grosscup.

A. Benjamin S. Grosscup.

Q. Do you live in Tacoma?—A. Yes, sir.

Q. And you are an attorney at law?—A. Yes, sir.

Q. And how long have you lived in Tacoma?—A. 21 years.

Q. Is the Northern Pacific Railroad one of your clients?—A. 22 years.

Q. And have you any professional connection with the Northern Pacific Railroad?—A. I was once counsel for the Northern Pacific Railroad. My first connection with the Northern Pacific Railroad was in connection with the receivership. In 1895, 1894–95. On the reorganization of that company I became western counsel and served in that capacity until November, 1909, and I have no connection with the company now.

Q. When did your connection cease with it?—A. November, 1909.

Q. Do you recall, during your connection with it, any matter of the sale of lands by the Northern Pacific to the Hanford Irrigation & Power Co.?—A. I recall going over a contract and some negotiations connected with it. I did not have—it was not a part of my duty to have anything to do with the sale; merely the legal end of the contract.

Q. Do you remember any question with the road at the time as to the company's title to the land?—A. No; not as to the company's title.

Q. Was there any question of law involved in the transaction which affected the title?—A. No; not as to the title.

Q. What was the question involved?—A. The only questions involved were the mere form of the contract, and as far as I was concerned, the putting in shape what the parties had agreed upon.

Q. Have you a copy of the contract with you?—A. No, sir.

Q. What information can you give us now about the nature and terms of that contract?—A. So far as I recall it was simply a sale of land to the Hanford Irrigation Co., with a condition that they should within a stipulated time, I don't remember how long, irrigate it and put it upon the market. The main point was that it should be irrigated in connection with other lands that were not owned by the company. It was the practice of the company, all the time I was connected with it, to secure the development of desert lands by irriga-

tion; a sale of land was almost universally connected with the condition of irrigation; that is, of irrigation land—irrigible land.

Q. Are you familiar with the prices at which the company was then selling land in that vicinity?—A. I could not say. I know that a sale was made in that same vicinity, farther down the river, of what was known as the Northern Pacific Irrigation Co.'s holdings. The Northern Pacific Irrigation Co. was a company formed by the Northern Pacific and owned exclusively by the Northern Pacific. And about this same time, or a little later they sold the stock of the Northern Pacific Irrigation Co. to Mr. Fector and Mr. Rudkin and some of his associates who are still continuing the business.

Q. Well, when they sold that it was more or less improved, was it?—A. Well, an estimate was made of the value of the stock upon both the improved and unimproved land. There was about 15,000 acres of unimproved land.

Q. Well, had they a fixed price at which to sell unimproved land at that time?—A. No; there was no fixed price.

Q. How was the price determined in any particular place?—A. It was determined by the land commissioner, Mr. Cooper——

Q. (Interrupting.) Do you know of any other sales——A. (Continuing.) Which was conditioned upon the plans of irrigation and location and a thousand and one things that would influence price.

Q. Do you know of any other sales of unimproved land in the vicinity of the Hanford Irrigation & Power Co.'s property at that time?—A. I know of a sale that was made by the Northern Pacific Irrigation Co., after it was purchased by Mr. Fector and Rudkin and their associates—a sale made to Mr. John Davis, Mr. Struve, and Mr. Browns, and some other gentlemen of Seattle, who formed the Lower Yakima Irrigation Co., lands farther down the river.

Q. When was the conveyance made from the company to those grantors with reference to the time of the conveyance to the Hanford Irrigation & Power Co.?—A. I think about two years later, about that.

Q. Was the character of the land substantially the same in both cases?—A. Well, in a general way, yes.

Q. And the facilities for irrigating, were they about alike?—A. In a general way.

Q. What was the price paid by the other parties?—A. I think the price was from $2.50 and $10 per acre, graded, depending upon the character of the soil and difficulty of irrigation.

Q. Was it entirely within the discretion of the land commissioner at what figure any particular land would be sold within those limits?—A. I think not.

Q. How was that determined?—A. Determined by the executive committee.

Q. You mean of the railroad?—A. Yes, by the executive committee, I think. However, as a matter of practice the land commissioner's judgment usually controlled.

Q. Have you some files with you which shed some light on this matter?—No; I haven't. I didn't know I was to be called upon on that subject.

Q. Who is land commissioner who would know?—A. Mr. Thomas Cooper, of St. Paul.

Q. Is there anyone in this State who would have knowledge of that subject?—A. The western land agent, Mr. G. H. Plummer, might know.

Q. At Tacoma?—A. Yes.

Q. Where are the files which would reveal the fact about this transaction?—A. The Hanford Irrigation Co.?

Q. Yes.—A. I think very likely Mr. Plummer would have them, but I am not sure about it. There is no secret about it any where.

The CHAIRMAN. I understand. Anything further?

Mr. HIGGINS. What authority would Mr. Grosscup, as the local land agent at Tacoma, have as to the disposition of these arid lands?

A. In a deal of that magnitude he would merely have clerical authority.

Q. He would simply act as he has been——A. (Interrupting.) Yes; his work would be clerical.

Q. Pass the papers on to some one at the general office?—A. Yes.

Q. He would not be vested with any discretion?—A. I think none whatever.

Q. Either as to price or terms?—A. Or whether the deal would be made at all.

Q. It would all be dependent upon the general officers of the company?—A. Yes, in a deal of that magnitude.

The CHAIRMAN. Do you wish to ask Mr. Grosscup anything?

Mr. HUGHES. Mr. Grosscup, you are acquainted with Governor Teats, an attorney of your city?

A. Yes, sir.

Q. Do you recall defending a case in which he represented the plaintiff in the Federal court, before Judge Hanford, about three years ago, I think?—A. I recall a case which I suppose is the one you refer to, the case of Anna McElroy against the Tacoma Railway & Power Co.

Q. There appears to be some question in the records here as to whether he referred to the case of McElroy—the title McElroy against the Northern Pacific—or McElwain; the defendant was the Tacoma Railway & Power Co. Was there ever but the one case of McElroy against the Tacoma Railway & Power Co.?—A. There is only one McElroy case. I looked over my docket this morning and——

Q. (Interrupting.) What about McElwain?—A. There is a McElvain case, but that has been commenced since my connection with the Tacoma Railway & Power Co. ceased. I have not been attorney for the Tacoma Railway & Power Co. since March 1, 1911, and there was no such case during the time that I was attorney for them.

Q. When was this case of McElroy tried?—Let me ask you if the McElvain case was commenced in the Federal court?—A. I am informed that it was not, but I was not attorney in the case, it is since—the case was commenced in January of this year.

Q. When was that case of McElroy against the Tacoma Light & Power Co. tried before Judge Hanford?—A. The Tacoma Railway & Power Co.?

Q. Yes.—A. Tried in 1909. Commenced the year previous.

Q. Tried before the court and a jury in the year 1909, was it?—A. The Federal court in Tacoma.

Q. Who presided over the court?—A. Judge Hanford.

Q. You defended—you represented the defendant?—A. I tried the case for the defendant.

Q. And Govnor Teats for the plaintiff?—A. For the plaintiff.

Q. Govnor Teats testified that during the trial of that case Judge Hanford fell asleep for some considerable time, the time measured by this event; one of the jurors got up and in a tone of voice which should have been distinctly audible in the court, announced that he desired to go to the closet; that the court did not heed, but was asleep; that Govnor Teats told him to go on, and that he went—told the juror to go on, and that he went to the closet and returned, consuming in all approximately five minutes of time, and that at the time of his return and taking his seat the court woke up. Will you state to the committee what are the facts in respect thereto?—A. I am certain that if anything of that kind had occurred I would have remembered it. I am also certain that I would not have permitted anything of that kind to occur without an exception, while I was defending the case. I have no recollection of anything of that kind occurring, and I am perfectly satisfied that it never did occur.

Q. What happened to that case?—A. That was a very short case, as far as a trial before a jury was concerned. It involved almost entirely a question of the mechanism of some overhead structures, and upon the testimony of an expert witness, direct examination of that expert witness, I looked up at the court and I remember very distinctly what was not infrequent at all with Judge Hanford, that he had his eyes shut and head down. I was examining the witness on cross-examination very carefully and quite anxious that a few things that might not be entirely apparent should not be lost sight of. Being a mechanical case, I made my examination with great care, and also with the intention of disclosing—of concealing from the witness the purposes of some of my questions. At the conclusion of the case I made a motion for a directed verdict, on the ground that the accident was the result, exclusively, of the negligence of a fellow servant. Mr. Teats argued—Judge Hanford announced that he would hear from Mr. Teats. Mr. Teats argued the questions, the motions, and then Judge Hanford reviewed the testimony with entire clearness and fullness and showed that he appreciated every word of the testimony in the entire case. He directed a verdict in the case, which was entered. He subsequently filed a motion for a new trial, or petition for a new trial——

Q. Govnor Teats did?—A. Yes, sir. In the petition for a new trial there is no suggestion of impropriety of the court—I have the record here—and that motion for one reason or another, I can't explain why, has never been disposed of; it is still pending.

Mr. McCoy. What is the title of the case, Mr. Grosscup?

A. McElroy—Anna McElroy against Tacoma Railway & Power Co., case No. 1400 of the Tacoma files. I have the files here. I want further to say—I am going to volunteer this—that I think it is necessary—I think I have been before Judge Hanford 500 times in litigation in western Washington, in court, and I have never seen the slightest indication of intoxication, and I have never known an instance where he did not fully and fairly appreciate just exactly what was going on in court and keep the closest track of it. I have noticed this in the preparation of bills of exceptions and various matters in review and motions for a new trial, and it has been the

occasion of impressing me as peculiar how he kept track from his memory with the testimony of witnesses, and I dare say there is not a lawyer who has practiced before him that has ever been able to impose on him or the opposite party by anything false in a bill of exceptions or in a statement of facts that is to go to an upper court. His memory about cases is perfectly surprising, as you all know, gentlemen.

Q. You have spoken of the court room. Have you ever seen Judge Hanford under the influence of liquor anywhere else?—A. I have not. I have never been an associate of Judge Hanford in a private way and know very little of his private life. We have not been companions at all. As I have said, I don't see how a man could live a dissipated private life and do the thorough work that he has done on the bench. It is utterly beyond my comprehension; and I say this not as a friend of Judge Hanford, because I have never been a friend.

Q. Some mention was made by the committee in interrogating Gen. Ashton when he was upon the witness stand, of a tide-land case tried before Judge Hanford in Tacoma. You were the attorney for one of the parties in that litigation, for the plaintiff, were you not?—A. I was special attorney general in that case, appointed by the Attorney General of the United States, to take care of whatever interest the Government might have in it.

Q. And the decision of Judge Hanford was adverse to the contention of the complainant in that action with whom you were associated?—A. He held that our complaint did not state a cause of action, and our complaint stated all we had to state, so——

Q. (Interrupting.) Mr. Grosscup, to clear up any possible question that might arise, did you defend any other case for the Tacoma Light & Power Co. in the year 1909?—A. The Tacoma Railway & Power Co., you mean?

Q. Tacoma Railway & Power Co., which was prosecuted by Govnor Teats?—A. Oh, I think I did. I defended a good many cases for this company, and he had a good many of them for the complainant.

Mr. HIGGINS. In that connection, Mr. Hughes, my notes taken at the time that Mr. Teats testified show that the case was McElwain, w–a–i–n, I got it, against the Tacoma Railway & Power Co.

Mr. HUGHES. Yes.

The WITNESS. I looked up this morning, Mr. Higgins, I just looked up—I was telephoned to about this matter last night. The McElwain case was commenced in the State court and has never been in the Federal courts, had no connection with it at all, because it was commenced since I left the employ of the company.

Mr. HUGHES. There was no case of Taft or any similar name except the one you have testified to, was there?

A. Well, I deducted my docket and found there is no case of McElwain occurred ——

Q. (Interrupting.) Or McElwain?—A. Or McElwain, or anything of that kind, commenced prior to the 1st of March, 1911.

Q. But there was a case of McElroy?—A. McElroy, yes. That was a case of considerable note, too.

Q. Now, was there ever any case in which Govnor Teats was representing the plaintiff and you the defendants in which any such

an instance as I described a while ago of a juror leaving during the period when the court was apparently asleep and taking no notice of the fact, as I stated a while ago?—A. I am entirely certain there was not.

Q. Such an instance as that would have impressed itself upon your memory?—A. It certainly would.

Q. Has there ever been any instance when there was any evidence afforded by any facts occurring at the trial to show that Judge Hanford, when his eyes were closed or his head nodding was in fact lost in sleep?—A. As I have said, I have never known a time during any proceeding in court when he did not, when it came time to act, show entire alertness. I have seen him lots of times with his eyes shut.

Q. You testified to that. What I meant to call out was——A. (Interrupting.) And I am certain that the incident that you repeat never occurred.

Q. What I meant to inquire about was, whether any extrinsic fact occurred, such as audible sounds from Judge Hanford, or any episode in the course of the conduct of the case, which would evidence that he was asleep?—A. If that sort of thing had occurred, I would have remembered it.

Mr. HUGHES. That is all.

The CHAIRMAN. Any further questions? That is all.

Witness excused.

The CHAIRMAN. The committee will be in recess until 4 o'clock. We hope to sit a couple of hours after that.

AFTERNOON SESSION.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

SUTCLIFFE BAXTER, recalled.

Mr. MCCOY. Do you recollect where you left off in your testimony?

A. I was requested to produce the inventory of the McCarthy Dry Goods Co., that was the last business, I think, that Mr. McCoy asked me about.

Q. That was the last thing in the way of figures that was asked for—what were the figures that I asked for this morning?—A. You asked for the inventory, I think, of the McCarthy Dry Goods Co.

Q. I wanted, not the details, but the footings.—A. The footings of it.

Q. You may read them—what were the assets and what were the liabilities?—A. Do you want me to read them off in detail?

Q. Just the footings.—A. The merchandise inventory footed up $84,022.43, to which was added freight and drayage 10 per cent—$8,422.24; total, $92,467. I want to say, however, that that percentage of 10 per cent added for freight and drayage was an excessive rate. I do not think that the average rates of freight and drayage would exceed 4½ or 5 per cent, but that was the figure they had been carrying it at up to that time.

Q. And the liabilities were how much?—A. The liabilities---I don't know whether I have got the totals here or not—the liabilities were, capital stock, $200,000.

Q. No, I mean the liabilities to creditors.—A. Bills payable, $20,500——

Q. Just the totals.—A. The total liabilities, less that $200,000, would be $117,594.51. And what next—do you want the available assets here?

Q. What is that?—A. $117,594.51. Well, now, that doesn't appear to me to be right—oh, yes, I think it is right.

Q. What is that?—A. $117,594.51 liabilities.

Q. What were the assets?—A. The assets?

Q. Yes; I mean the total valuation of the assets.

The CHAIRMAN. Eighty-seven thousand and something?

Mr. PRESTON. Eighty-four thousand and something.

A. The merchandise assets—the merchandise inventory, rather—the total assets, did you say?

Q. Yes.—A. The merchandise is $92,424.67, to which ought to be added for the cash sales, September 13, 14, and 20, $1,137.50, making a total $93,562.17, inclusive of freight and drayage.

Mr. PRESTON. Inclusive of what?

A. Inclusive of freight and drayage, which I think was a very excessive rate; but that is the rate at which they had been carrying it on their accounts up to that time.

Mr. McCOY. Was that the valuation as contained in the reports which you made to the courts?

A. Yes, sir; those are the copies of the court's report, as far as I know—I made the reports monthly.

Q. The dividend was 3½ per cent?—A. Yes.

Q. Now take up the William Walker Co., Mr. Baxter.—A. All right, sir. Have you got the copy of the William Walker Co. statement there?

Mr. PRESTON [hands document to witness]. There are some pencil memoranda there that I want to call attention to.

Q. Is this a bankruptcy matter?—A. Yes.

Q. Did you carry on the business of the William Walker Co?—A. No, sir.

Q. When was it you were appointed trustee—October 22, 1908?—A. You have the date there; I don't remember.

Q. It is what is stated here?—A. Yes, it is what is stated there—that report's correct so far as I know.

Q. And you were subsequently appointed or elected as trustee?—A. I was subsequently elected as trustee by the creditors.

Q. And discharged as such in November 23, 1909?—A. I presume that is correct.

Q. And what was being done in the estate from October, 1908, to November, 1909?—A. I was thinking of closing up the estate and paying the dividends—we paid two dividends, I think—in winding up the estate under the orders of the referee.

Q. When did you sell the assets of the bankrupt?—A. The inventory was taken, the sale advertised, and the entire property sold, I think, on the 15th or 16th day from the time I took possession.

Q. That would be, approximately, the middle of November, 1908?—A. I presume so.

Q. You said here in this statement which you have handed that the assets were sold to Stone-Fisher Co. for $19,500.—A. Yes, sir.

Q. That you as receiver and trustee, you said here, swelled the total assets coming into your hands as trustee to the sum of $2,177.11; do you mean by that that you, by collections, added that amount to the assets, or that you sold the bulk of the assets for $19,500 and in addition collected about $2,000 more?—A. Yes; part of that was book accounts receivable and there are two or three very small invoices that were sold to the Stone-Fisher Co., and that probably are included in that amount.

Q. Now let us see if you understand me correctly—were the total assets that came into your hands $40,200?—A. Is that merchandise?

Q. For all purposes.—A. If I had a copy of it I could follow it—I could follow this a little better. [Mr. Preston hands copy to witness.]

Q. What was the total amount of the assets which you received in that matter?—A. This statement does not appear to give it. This was prepared last night and I didn't get possession of it until this morning. It was prepared by Mr. Oldham, the attorney in the case, but I have an inventory of it here, I think, and I can show it from the inventory.

Mr. PRESTON. Mr. McCoy, do you mean assets or cash?

Mr. MCCOY. Well, practically I mean cash—what is the total amount of cash that came into your hands?

A. The total amount of cash?

Q. Yes.—A. Would be $21,707.11.

Q. And the liabilities were how much? The unsecured claims $52,038.57.—A. Yes.

Q. How much did the secured claims amount to?—A. I do not think there were any secured claims; that is my recollection of it.

Q. In this allowance I notice that McClure & McClure, the attorneys for the bankrupt, got $200; what is that for?—A. As attorneys for the receiver and trustee—no, that is for attorneys for the bankrupt.

Q. That was for preparing the schedules and filing the petition, I presume?—A. Yes.

Q. And the allowance to the attorneys for the reciever and trustee amounted to $600.—A. Yes.

Q. I notice an item, cash and expense John P. Hoye, referee in bankruptcy, $300.—A. That was the referee's charges and fees under the bankruptcy act, I presume.

Q. Do you mean that under the bankruptcy act the referee in bankruptcy is able to get an increase of payment over his regular fees in the sum of $300 on an estate of $21,000?—A. I suppose so.

Q. Don't you know——A. (Interrupting.) Well, I don't know that it is my business to know—the referee ought to know—I don't realize that it is for me to say whether he is or not.

Q. Don't you think that as receiver of the assets——A. (Interrupting.) The referee under the bankruptcy act is allowed certain compensation stated in the act.

Q. Now, my question to you is this: Don't you ascertain, as receiver, or as trustee, whether the amounts claimed by the referee are the legal amounts?—A. No, sir; it is not part of the trustees' business, so far as I understood it.

Q. Are you not trustee for the creditors?—A. Yes, sir.

Q. Is it not your duty to see that no more money is paid out than the law permits?—A. It is my duty, as I understand it, to pay out

any moneys ordered to be paid out by the court. The referee in this instance being the court.

Q. Suppose, in this case, the referee had allowed himself $10,000, what would have been your duty?—A. Well, I think I probably would have looked into a $10,000 charge.

Q. How is that?—A. I say that probably I would have looked into a $10,000 charge and ascertained whether I was authorized to pay it out or not.

Q. What were the dividends paid in this matter?—A. Two dividends were paid, one of 10 per cent and one of 25 per cent, being a total of 35 per cent.

Q. Now then, I want to know what you were doing between the 22d day of October, 1908, when you were appointed, and the 23d day of November, 1909, when you were discharged as trustee?—A. I was—I paid the two dividends in that time; I do not remember how far apart they were, and the final report and my discharge was not made evidently until that time—I do not know why it should not have been made immediately after the payment of the second dividend and the closing up of the estate. Possibly there was some delay there that I do not know but the dividends were all promptly paid when ordered paid.

Q. Now, the next one that you gave was the Dowell case.—A. Alice C. Dowell; yes, sir.

Q. This was an involuntary bankruptcy.—A. Yes.

Q. And you were appointed receiver on December 1, 1910?—A. I think so.

Q. And on December 31, 1910, you filed your report showing that you had received—that you had sold the goods for $3,915, and that with other receipts that the total that came into your hands was $1,401.22 in cash?—A. Yes.

Q. December 21, 1910, you were allowed $350 for your services as receiver?—A. Yes.

Q. And a like amount was allowed to your attorneys?—A. Yes.

Q. Who were your attorneys?—A. Mr. Stern was the attorney in that case, I think.

Q. What is his first name?—A. Leopold M. Stern.

Q. January 4, 1911, the adjudication in bankruptcy took place—that's right?—A. I suppose so.

Q. Well, I am reading here from your report.—A. That statement is correct, I believe.

Q. January 18, 1911, you were elected trustee and January 19, 1911, you filed your report showing that as trustee there had come into your hands the sum of $3,021.36?—A. Yes.

Q. Later you declared two dividends, 15 per cent each, and the estate was closed?—A. Yes, sir.

Q. February 22, 1911, the trustee received $75 on account of services and commissions as trustee, and on June 20 an additional sum of $26.40 for services and commission, and on June 22, 1911, the attorney for the receiver was paid $125 for his services, and on June 20, 1911, an additional sum of $75 was paid for services as attorney for the trustee and the estate was closed—that is right?—A. That is correct, I believe.

Q. And in this matter when you were elected or appointed receiver you found the goods of the bankrupt in the hands of the sheriff?—A. Yes, sir.

Q. And you persuaded the sheriff to turn over the goods to you as receiver?—A. The sheriff did turn them over to me as receiver under orders of the Federal court here when I was appointed receiver.

Q. You said here that you persuaded him to turn them over to you?—A. Did I use the word "persuaded?"

Q. Yes.—A. Then I would say that there was a deputy sheriff in charge when I went there and I had to have him negotiate with his principal by telephone before he delivered possession to me.

Q. There was a great deal of litigation with the men who had attached the goods in the superior court.—A. Yes.

Q. And which finally resulted in it being found that you were entitled to the goods as receiver?—A. Yes.

Q. The goods in this matter were inventoried at $7,139 and were sold at $3,915?—A. I desire to state in that case——

Q. Well, that was what is stated here.—A. Yes, sir; these figures are right.

Q. All right; now what were you going to say?—A. Mrs. Dowell had undertaken to sell that stock of boots and shoes to a Mr. Greenbaum for $1,200, and put him in possession of it. The creditors attacked the sale to Greenbaum and attached it, and that accounts for the sheriff being in possession. On this stock of shoes that had been sold by the bankrupt for $1,200 I realized those figures that I have testified about.

Q. The Knosher case, we have gone over that, or do you wish to say anything in addition in regard to that?—A. How's that?

Q. The Knosher case has already been taken up by the committee, with Mr. Anderson on the stand. Mr. Preston, do you wish to go further with the Knosher case?

Mr. PRESTON. Offhand, I would say no—I may think of something—yes, sir; there is one matter that I wish to ask about the Knosher case.

Mr. MCCOY. Just one moment. I want to ask a question or two about that. It appears in the papers before this committee, Mr. Baxter, that you claim, in some proceedings in the district court that on the afternoon or on the same day at which you were appointed receiver of the Knosher Co., you conferred with creditors in regard to keeping the business going through that day; will you now state to the committee with whom it was that you conferred?

A. Well, there is a slight mistake in that report. I was not present at this meeting at all, but Mr. McClure and Mr. Stern told me they had been in conference with several of the creditors and reported to me that evening that they had decided to close the store, and on that information the store was closed. I was not present at the meeting at all. There is where those witnesses before, I think, have perhaps made a mistake.

Mr. PRESTON. Did you consult with any persons yourself?

A. No, sir; Mr. McClure and Mr. Stern were the only ones who consulted with the creditors, so far as I remember.

Q. With creditors?—A. Yes.

Mr. MCCLURE. Where were you during the day on which you were appointed?

A. I was in the store all day.

Q. And your testimony is that neither Mr. McClure nor Mr. Stern nor anybody else came around to see you on that day in regard to continuing the business.—A. That day, that evening, just before I closed the store that evening they told me of having been in consultation with those creditors and they had decided the best course to pursue was to close the store, and next to take an inventory, which I did the next morning.

Q. Well, before that interview with McClure and Stern had you had any interview with them previous, on the same day?—A. With Stern and McClure?

Q. With Stern and McClure.—A. I suppose I had seen them during the day, yes. I think they were there when I took possession—my recollection is that they went into the store with me in order to take possession.

Mr. McCoy. That is all I want to ask.

Mr. Preston. Well, that is the same matter I wanted to make inquiry about.

The Chairman. That is all, is it?

Mr. McCoy. Now, take up the Western Steel Co.

The Witness. Mr. Preston, you have a copy there?

Mr. Preston. Yes.

The Witness. I have only that one here and I would like to have it in my possession while I am testifying here.

Mr. McCoy. The name of the bankrupt is the Western Steel Corporation.

A. Yes.

Q. Is that a bankruptcy matter?—A. Yes.

Q. Were you appointed receiver?—A. Lester Turner and myself were appointed receivers.

Q. When was that?—A. I don't think I have got the date here of that appointment.

Q. What year and what month?—A. It was September 13, I think, last year, 1911.

Q. Who appointed you?—A. Judge Hanford.

Q. Did the order appointing you give you permission to carry on the business?—A. Yes, sir.

Q. Was any statement made to Judge Hanford to indicate the advisability, or otherwise, of continuing the business?—A. There was. There has been no continuation of the business. That is the manufacturing part of the business, for the reason that it was closed down at the time of the appointment of the receivers. Mr. Turner and myself went down to Irondale and took possession of the property and commenced to take an inventory there. To that extent the business has been closed down, but to this further extent we have been closing up and winding up its affairs, selling steel and converting the property into cash. We have still got 122 tons of steel on hand unsold yet.

Q. What was the nature of the business carried on by the bankrupt?—A. The manufacture of steel at Irondale.

Q. You said you were appointed when?—A. September 13, I think, or the 12th or 13th.

Q. 1911?—A. 1911; yes, sir.

Q. Has there been any meeting of the creditors of the bankrupt?—A. Oh, yes; there was a meeting of the creditors when the trustees were elected.

Mr. PRESTON. May I interrupt you? The record which you have shows quite a number of meetings of trustees and quite a contest at one time and another.

The WITNESS. There was one or two meetings of creditors, I think, prior to and at the election of the trustees.

Q. When were the trustees elected?—A. The trustees—I do not remember. The record there shows; I haven't got it at all.

Q. In what month?—A. It was within—it must have been the following month, early in October, I think.

Q. That was at a meeting of creditors.—A. Yes.

Q. Who were elected trustees?—A. Myself and Lester Turner and Edgar Ames.

Q. Who is Mr. Turner—where does he live?—A. He lives in the city ordinarily, but he is out of town just now. He is over at Lake Crescent.

Q. And Mr. Ames—who is he?—A. Mr. Ames has lived in town. I don't recall now what business he is in, except that he is connected with some of these tide-flat deals down here, but I don't know to what extent.

Q. Were either of those men connected with the business in any way?—A. No, sir.

Mr. PRESTON. Mr. McCoy, those dates are down there at the bottom of the last page.

The WITNESS (interrupting). The receivers were appointed—may I testify about this now?

The CHAIRMAN. Yes.

The WITNESS. The receivers were appointed October 12 and qualified——

The CHAIRMAN. The receivers or the trustees?

Mr. MCCOY. Qualified October 13, 1912.

The WITNESS. My prior witness was September. I think this is an error here. We were appointed in September, were we not?

Mr. PRESTON. I do not know. The records here will show. I do not know when.

The WITNESS. I think there is an error in the month in this report.

Mr. HUGHES. It was October.

The WITNESS. Then the receivers were appointed October 12, 1911, and qualified October 13. The Western Steel Corporation was adjudicated bankrupt October 26, 1911, and receivers discharged and trustees appointed December 12. 1911.

Mr. MCCOY. I notice in the statement which you furnished the committee that the receivers' certificates were issued amounting to $2,500.

A. Yes, sir.

Q. What were those for?—A. That was to raise money enough to pay the current expenses of the plant at Irondale and to pay the taxes—and the plant at Ashland. Our expenses for the Seattle office at that time were about twelve or thirteen hundred dollars a month, if I remember correctly, and this money was borrowed for that purpose and for the purpose of paying some other claims. I do not remember what now. There was another trustee's certificate issued

on December 28 for the purpose of raising money in order to pay the taxes on the Graham Island property in British Columbia. We borrowed on that certificate $3,000, which, with the money we had already in the bank, enabled us to pay those taxes, amounting to four thousand and some odd dollars. I do not remember the exact amount now. Perhaps it shows here $4,074, which was cabled to Graham Island about the last day we were under an option, or under an extension rather of 90 days, on a payment amounting to $62,000 we were to have paid on the Graham Island property on the 1st of January, and we got the payment postponed for 90 days, bringing it down to the 9th of March. In the meantime we had to raise money to pay the taxes before the 31st of December or the whole deal was off. We tried every bank in this town to raise $4,000 and we could not get it, until finally Mr. Turner arranged it with the First National Bank.

Q. What was the necessity for the receivership in that matter?—A. In the Western Steel matter?

Q. Yes.—A. Why, a suit was commenced in the bankruptcy court, and the custom is always to appoint receivers, I believe, in bankruptcy cases the first thing where there is very much property to be handled.

Q. What are the functions of a receiver under the bankruptcy law?—A. As I understand it, to take possession of the bankrupts' properties and——

Q. In all cases?—A. I think so, under the orders of the court to take possession of the property of the bankrupt's estate.

Q. In other words, do you think that under the bankruptcy law every time there is an adjudication in bankruptcy there must be a receiver appointed?—A. I do not know. That is up to the courts and to the attorneys—that is not for me. I am not a lawyer, sir.

Q. On there was a sale of some of the property of the bankrupt and what was sold was bought in by the Metropolitan Trust Co. Was that the Metropolitan Trust Co. of New York?—A. Yes, sir.

Q. What did that sale include?—A. It included all the properties of the Western Steel Corporation, except the book accounts and bills receivable and some steel lying on the docks here, that was hypothecated to various banks and others in town here.

Q. And was the property sold at auction?—A. Under sealed bids.

Q. What?—A. Sealed bids.

Q. Sealed bids after adveritisement?—A. Yes.

Q. The purchase price paid was cash $80,000 and the balance of the bid, namely, $647,010, was paid by surrender and cancellation of first-mortgage bonds against the property—is that right?—A. Yes, sir; $2,000,000 of first-mortgage bonds were surrendered and canceled.

Q. And that, of course, did not come into your hand as cash at all?—A. This $647,000?

Q. Yes.—A. No, not as cash, no—we did not handle the money.

Q. Between October 13 and December 13 you received on account of compensation as receiver, $500 as receiver, and Mr. Turner received $500?—A. Correct.

Q. I find here an item under those two dates "Administrative expenses; payments made on secured loan and allowances—what

were those allowances?—A. I could not explain them from memory. This statement is "Allowances per contra entries," if you will allow me to go to the court records, the statement is on file in the court.

Mr. PRESTON. I have copies of all these receiver's reports and trustee's reports.

Mr. MCCOY. What I was wanting to find out was whether or not those were allowances to the receivers or their attorneys.—A. No, sir; no part of it.

Q. Under date of December 14, 1911, to January 13, 1912, there are some items, and again the words "as allowances per contra entries"—were those allowances to receivers, trustees, or attorneys?—A. No, sir; no part of it at all. Simply the current expenses of the conduct of the business and such other payments as were necessary to be made, which you will also find in the detail statement filed in court on January 13 of this year.

Q. Then under dates of January 14 to April 2, 1912, I find two allowances, one to Mr. Turner as receiver, $4,500, and one to you as receiver, $4,500.—A. Yes, sir.

Q. Was that estimated on the basis that you had carried on the business?—A. That was the remainder of the allowances made to us by Judge Hanford as receivers with the consent of the bankrupt's attorneys; he allowed us each $5,000. We had drawn $500 prior to this time on account, and after the sale to the Metropolitan Trust Co. we were paid the balance of $5,000—$4,500 each.

Q. What I am asking you is whether that is figured on the percentages specified in the bankruptcy act?—A. I presume it will be when it comes to a final settlement.

Q. Well, this seems to be the balance of your compensation as receivers.—A. Well, there is a question involved there—I do not know whether it was the entire compensation or not. I think it was understood at the time that it was to be the entire compensation, but if it is not in there—if we do not agree to accept it as entire comepensation, we have not received all we are entitled to as receivers' fees under the bankruptcy act.

Q. Those allowances were figured on the basis that you had received and disbursed $647,010, being that part of the bid of the Metropolitan Trust Co., which was met by surrender of the first-mortgage bonds, wasn't it?—A. Yes, sir; including that item we have handled $848,757.80, down to May 31.

Q. I notice here an allowance of a thousand dollars to Leopold M. Stern and A. W. Buddress, attorneys for petitioning creditors—what was that for—drawing petitions and filing the schedules?—A. It was an allowance made to the attorneys representing the parties who commenced this suit against the Western Steel Corporation—the petitioning creditors.

Mr. PRESTON. In order to avoid confusion, Mr. McCoy, the records show that those were only two of the three—the Metropolitan Trust Co. was the third one, and the order allowing compensation to the attorneys for the receiver, who were the same as the attorneys for the Metropolitan Trust Co., contained in it a condition that they should not be paid anything as attorneys for petitioning creditors, so that this item represents the other two petitioning creditors.

Mr. MCCOY. Have all the labor claims against the bankrupt been paid?

A. Not quite all. All have been paid that have been filed and proven to be in proper shape. The total labor claims paid, down to May 31, is $23,602.27. There remain total labor claims filed, unpaid because of defective proof or because of the filing of conflicting claims, eleven, in amount $463.60. The total number of claims filed and payment refused because not entitled to priority under the provisions of the bankruptcy act were twelve, amounting to $2,848.90. Those claims—I desire to state that those claims that are not paid are in the hands of the trustee's attorney and are on file in the referee's court and are awaiting final proof satisfactory to the attorneys and the referee.

Q. This statement which you have furnished us is practically only a cash statement, is it not?—A. That is all.

Q. I understood you to say that you had some tangible assets on hand.—A. We have about 122 tons of steel left unsold yet. We have been selling it as rapidly as we possibly could—we had several thousand tons of it to commence with.

Q. That is all that remains to be converted into cash of the bankrupt's assets?—A. I think it is practically all.

Q. Well, was that the condition of affairs on April 2, 1912, which appears to be the date on this statement you furnished us, when you filed your last report as trustee?—A. I don't understand you.

Q. I say, was that the condition at the time when you filed the report on April 2, 1912, namely, that you had on hand only a little unsold steel?—A. Oh, we had more than that at that time.

Q. I mean a comparatively small amount.—A. At that time we had, on April 2—now, let me see—oh, we must have had five or six hundred tons, perhaps, at that time.

Q. To come down to just what I am after; how much should there be added to the figures here in order to bring this account down substantially to date, namely, the total receipts, $867,114.45—now, what should there be added to that?—A. I could not tell you offhand. We have been selling this steel mainly for account of lienors; it was pledged to the banks here and nearly all of it pledged, and we have now sold enough of it to clear it up—to clear up all our indebtedness to the bank except the Seattle National Bank. The Seattle National Bank stands to lose, I think, twelve or thirteen hundred dollars because of the insufficiency of the security which it took for advances of money to the Western Steel Corporation.

Q. In what shape was the pledge of this steel to those banks?—A. In the form of warehouse receipts, I think—either warehouse receipts or bills receivable; I do not remember; warehouse receipts, I believe.

Q. Well, a warehouse receipt would indicate that they owned it.—A. Well, banks usually do own things until they get their money out of them.

Q. Who had warehoused the goods—didn't it belong to the bankrupt?—A. No; the property belonged to the bankrupt; only the warehouse receipts were naturally offered to the banks as collateral security for loans.

Q. Was that material that they had manufactured and stored in warehouses?—A. Yes.

Q. And held the receipts?—A. Yes, sir.

Q. And then the bankrupt pledged the warehouse receipts to the bank?—A. Yes, sir.

Q. To get the money?—A. Yes,sir; that was all done before the receivership. There was a small lot of steel there—I do not remember how much—something over 100 tons that was not pledged, but all the remainder of it was pledged to some bank or other.

Q. Then, so far as any money which would be coming in to the bankrupt's estate, there would not be any on account of sales of steel between April 2 and date; in other words, whatever you sold was only sufficient to pay in part the claims against it?—A. We estimated when we get this steel all cleaned up we will have a net out of it over and above the liabilities to those various banks of somewhere from two to four thousand dollars; we can not tell until we get it all cleaned up, but there will be a net surplus.

Q. And when you have it cleaned up in that way that cleans up a sale of all the assets, does it?—A. I think so; yes, sir. There are some book accounts yet, perhaps, but they do not amount to much, and since this statement was made we have collected a promissory note from Jamison & Co. of this city for, I think, $6,200, or something like that—$6,200, if I remember correctly, and some interest.

Q. In other words, when you get through, you expect to add about $10,000 to this showing here, being about $4,000 for the steel and $6,000 for the note?—A. Yes, sir; not less than that.

Q. And that will be all?—A. As far as I know at present.

Q. Now, at the meeting of creditors for the purpose of electing a trustee, were you present?—A. Yes.

Q. Was there any discussion over the number of trustees who should be appointed?—A. Yes, sir; it was put to the vote of the creditors present as to whether one trustee should be elected or three. Under the bankruptcy act, as I understand it, it provides that in the event of the election of more than one trustee that three shall be elected, and the creditors by vote decided to have three trustees.

Q. Who held—what attorney held, if he held—any powers of attorney to vote at that meeting sufficient to control the election?—A. I think Bausman & Kelleher really controlled the election.

Q. Who is that?—A. Bausman & Kelleher, attorneys for the Metropolitan Trust Co.

Q. That is, they controlled——A. There were other attorneys here; Mr. Colman from Port Townsend, and I do not remember who now, but there were several attorneys present representing other claimants—labor claims, etc.

Q. Was there any particular protest over the election of three trustees?—A. No, sir; not anything definite.

Q. Well, this statement seems to be in such shape that it can be used as an exhibit, I think. You have not paid any dividends in this matter, or have you?—A. The Western Steel Corporation?

Q. Yes.—A. No, sir.

Q. What are the total liabilities of the company?—A. The company is capitalized at $20,000,000.

Q. I do not mean that.—A. The liabilities—the book liabilities—amounted to something over $1,400,000, inclusive of the $600,000 to the Metropolitan Trust Co. and $350,000 to James A. Moore. The remainder of it is scattered around.

Q. State, if you can, what the secured indebtedness was.—A. The Union Savings & Trust Co. was about $14,000, I think. The Seattle National Bank—I don't know—I think it was about $3,000; I am not certain about that. The Arlington Dock Co. was owed, I think, some four or five hundred dollars for storage and wharfage and labor and so forth, in handling the steel down there on the dock. That was about all the secured creditors that I recall.

Q. Does that include the creditors who were secured by the warehouse receipts?—A. Yes, sir; the Union Savings & Trust Co. and the Seattle National Bank.

Q. In addition to that there was a $2,000,000 mortgage?—A. There was a $2,000,000 mortgage, but the bonds had never sold; the bonds had been issued in New York as collateral security for this loan of $600,000 of the—the loan of the Metropolitan Trust Co.—there never was a bond sold.

Q. Was the total indebtedness under that mortgage then a loan of $600,000 with interest?—A. Under the bonded—under the bonds, you mean?

Q. Yes.—A. Yes; $600,000.

Q. There was a first mortgage securing an authorized issue of $2,000,000 of first-mortgage bonds?—A. Yes, sir.

Q. And the entire issue of bonds was pledged to the Metropolitan Trust Co., of New York, for a loan of $600,000.—A. Yes, sir.

Q. And that, with the interest on the loan, was all that was due to any bondholder and any pledgee under those bonds?—A. Yes, sir.

Mr. PRESTON. Mr. McCoy, there is a fact in the record which is quite significant, which I think you would like me to tell you.

Mr. MCCOY. You may do so.

Mr. PRESTON. It appears that the Metropolitan Trust Co. undertook to foreclose that pledge and did have a sale of the $2,000,000 bonds; it bought them in in the name of an individual, and the Metropolitan Trust Co. undertook to take his place on the basis of a $2,000,000 creditor. More than that, that reduced the $600,000 indebtedness only slightly in making that sale and that matter came up in contest; the trustees filed objections to that sale and that claim and the referee, after a hearing, held that that sale was not a good sale, and thereafter the Metropolitan Trust Co. was treated only as a creditor to the extent of its actual advances.

Mr. MCCOY. In other words, they attempted to claim the deficiency claim, I presume.

Mr. PRESTON. Yes.

Mr. MCCOY. That is, they sold the bonds pledged for some sum?

Mr. PRESTON. Yes.

Mr. MCCOY. Under the terms of the note?

Mr. PRESTON. Yes.

Mr. MCCOY. And left a large deficiency against the Western Steel Corporation and then they undertook to come in and claim under that?

Mr. PRESTON. To claim under the bond issue for $2,000,000 and the deficiency, which was something over $500,000.

The CHAIRMAN. What was the amount at which they bid in the $2,000,000 bond issue?

Mr. PRESTON. $25,000.

Mr. HIGGINS. That was the amount that was realized, you mean, on the sale of the bonds by the Metropolitan Trust Co.

Mr. PRESTON. Yes, sir, but it was ascertained at that hearing that that purchase was made in the interest of the trust company and on the contest it was all wiped out as a sale and when the trust company became a bidder and allowed to apply its indebtedness as cash in the bid, it being a preferred creditor, it was required to surrender not only the note for $600,000 but also the $2,000,000 issue of bonds and they were all canceled. The record shows quite a spirited contest there.

Mr. HIGGINS. The $2,000,000 bond sale was set aside altogether?

Mr. PRESTON. The $2,000,000 sale was set aside altogether and the bonds required, by order of the court, or the referee, I forget which, to be surrendered for cancellation absolutely by the trust company.

Mr. HIGGINS. And that left the trust company a creditor to the extent of about $600,000?

Mr. PRESTON. $650,000. They had some interest upon the $600,000 for nearly a year, I think, and then under the terms of their agreement they were allowed some considerable sum for expenses of attorneys or something of that kind, in the proceeding. I did not examine into the proceedings of it, but I know it appeared as $650,000.

Mr. HIGGINS. Following the figures which Mr. Baxter has gathered, loosely, here is the impression that that made on me—the amount realized from the assets was in the neighborhood of $877,000, and that the amount of the liabilities was $1,400,000; that would make the assets, in the aggregate, 62½ per cent of the liabilities, and it appears that no payment has been made—now why—no dividend.

Mr. PRESTON. Well, I think I can explain that; you see this claim of the Metropolitan Trust Co. absorbed all of the assets. It was a preferred claim. The assets were sold to it. It was the purchaser at the trustees' sale. It was allowed to use as cash this preferred claim of theirs for the full amount of the bid, except that they were required to pay in cash $70,000.

The CHAIRMAN. $80,000.

Mr. PRESTON. Well, I think $70,000 was the correct amount of the first requirement. Then the order also required them to hold themselves in readiness to pay $7,000 more for the purpose of clearing up the expenses of administration and the labor claims—the preferred labor claims—there would be nothing left for the general creditors on the face of the papers as I have acquainted myself with them. The preferred claim had absorbed the assets. I am not speaking of these warehouse receipts as preferred claims here; I am speaking only——

Mr. MCCOY (interrupting). You mean preferred labor claims—when you say preferred claim you mean the trust company's claim?

Mr. PRESTON. Yes, sir. There were some preferred claims here such as the banks which had the warehouse receipts as collateral—I was not referring to them.

The CHAIRMAN. The banks' claims were specific liens on certain property of the steel company?

Mr. PRESTON. That is my understanding of the fact.

The CHAIRMAN. And this specific property was not subject to the lien of the Metropolitan Trust Co.

Mr. PRESTON. No; there was quite a lot of property that was not subject to the lien of the mortgage, which is described in the papers in groups, the mortgage property is included in groups 1, 2, and 3, and

it is the bulk of the property. Then the first order of sale directed a sale only of that property that was covered by the mortgage; then there was a subsequent order of sale made upon petition or recital, I can not state to you definitely now from memory, that they could not make the sale of that alone, but it would be necessary to sell the whole. and then a subsequent order of sale directed the sale of all the property. They were permitted to use the indebtedness, $650,000, or whatever the correct amount might be of it, except that they must bid $70,000 in cash besides and must stand ready to put up $7,000 more in cash. Now, I do not think my statement to you is accurate; it is only a bird's-eye view of it as I gather it.

Mr. McCoy. Well, of course, the net result of the contest against the Metropolitan Trust Co. was not much of anything, because even if they proved their whole claim there would not be anything left to pay it with. [Here Mr. Preston hands document to Mr. McCoy.]

Mr. McCoy. This is a statement of receipts and disbursements of the receivers and trustees in the Western Steel Corporation as per trustees' report filed in the United States district court on April 2, 1912, with other memoranda in regard to the matter on the last page.

Document marked "Exhibit No. 81."

Mr. Preston. I have in the Western Steel Corporation case the same kind of a typewritten review of all the files that I made in the other case. It may be useful to you if you would like to have it to go right with this.

Mr. McCoy. This is a good place to have it go in.

Mr. Preston. I will have to send down to my stenographer for it.

Mr. McCoy. Well, we will call it exhibit No. 83 and it will be the summary statement by Mr. Preston compiled from the papers in the matter of the Western Steel bankruptcy on file in the clerk's office.

Document to be furnished is here given the exhibit number as "Exhibit No. 82."

The Chairman. Anything further on that Western Steel matter?

Mr. Preston. I would like to ask Mr. Baxter to describe to you in a brief way the work which the receivers had to do. I think there was considerable of it, but I am not familiar with the details of it.

Mr. McCoy. Unless they are claiming compensation on the basis of carrying on the business it does not make any difference how much work they did, except that what they did in the matter would have some bearing on the allowances to attorneys, but aside from that the receiver's compensation would be limited to just the straight receivership fees for taking and holding the property and turning it over.

Mr. Preston. Mr. Bausman tells me that it was not based on the theory of carrying on the business.

Mr. McCoy. Do you think it makes any difference what they did then?

Mr. Preston. No; I did not know what the fact was myself until this moment.

Mr. McCoy. Of course, if there is anything to be brought out to show on what basis the allowances to attorneys was made that might be important, but I imagine you have stated now in that contest with the Metropolitan Trust Co. the bulk of the litigation.

Mr. PRESTON. Mr. Bausman is here; he was the attorney and he can be examined. I would not undertake to say what he did.

The CHAIRMAN. If he cares to testify on that and you think it is important.

Mr. PRESTON. I would like to have him do so.

The CHAIRMAN. I think this is the best place to have it go in. You can step aside Mr. Baxter.

Witness excused.

FREDERICK BAUSMAN, being first duly sworn, testifies as follows:

Mr. McCOY. Will you give your full name to the committee?

A. Frederick Bausman.

Q. You are an attorney practicing law in Seattle?—A. Yes.

Q. For how long?—A. Twenty-three years.

Q. You were attorney for the receivers of the Western Steel Corporation?—A. Yes; I was attorney and also attorney for the petitioning creditor, the Metropolitan Trust Co., of New York.

Q. Were you the only attorney, or was your firm the only attorney of the receivers?—A. No, sir; there was a substitution made later, when our interests for the creditors whom we represented began to conflict, and I requested the receivers to get other counsel, and I withdrew. I say now, to be accurate—as the receivers, yes, I was the only attorney for the receivers. What I speak of as a substitution occurred after the trustees in bankruptcy were elected; then I later withdrew from that relation.

Q. What allowance did you receive as attorneys of the receivers?—A. $10,000.

Q. Did you present to the court any affidavit setting forth your services on which that allowance was based?—A. I presented what is called a petition, a short summary petition, stating that I desired to have it fixed at that time. At that juncture we were transferring the assets from the receivership to the trustees, and I desired to have my fees fixed; I think it was about that time. They were not, of course, paid at that time, but they were fixed by the court. In this petition I do not recollect that I set up the nature of my services; I referred to the services as disclosed by the records of the court, and petitioned for a fixed allowance. On that the court fixed an allowance of $10,000, and he made our firm waive all claim to fees as attorneys for the petitioning creditors, which we did. Now, do you wish to know what the services were to the receivers?

Q. Yes; just in a general way.—A. I must give you, first, a brief idea of the estate. This Western Steel Corporation had assets in Canada, in Nevada, and in several counties of this State. Those assets were of a—some of them—very unexplored nature, and some of them a very involved nature. They required a very great deal of examination by counsel. Every day during the period of the receivership from one to two members of our firm were constantly engaged in that business. Now, the concern had offices in Seattle—had a large suite of rooms in a place called the Arcade Annex, on Second Avenue, and there had very voluminous files and documents and title papers, and what not. Those papers had to be examined with a great deal of expedition. We had two principal assets. One was a plant across the Sound here at a place called Irondale, and the

other a tract of land exceeding 20,000 acres on what is known as Graham Island, in British Columbia. That tract was held under option only; the Western Steel did not have the direct option. It owned—the Western Steel did—seven-eighths of the stock of a British corporation known as the Western Coal & Iron Co., Limited, and the Western Coal & Iron Co., Limited, had an option upon all those claims on Graham Island.

Q. Was that property supposed to have any ore in it that was usable by the steel company?—A. It was supposed to have large deposits of coal, which were then, and have been since, entirely unexplored, and it had also what was considered a large tract of timber, the value of which also was unknown. The timber was cruised, but the coal was unexplored. The option rights were in the Royal Bank of Canada, at Victoria, under its terms, an abrupt option by which all rights expired on certain definite dates. We had to make ourselves exceedingly busy to see, first, the chain of title by which, if we made those payments, whether it would be worth while to make them and safe to make them, and, of course, had frequent consultation with the British or Canadian lawyers, as well as investigation on our own account. The receivership lasted from the 12th day of October to the 12th day of December, and then followed the election of the trustees. During this time, I think, the services were exceedingly constant and exceedingly interesting and studious. We did not know where those assets were. We found that the concern had kept no systematic set of books.

During the first two months the Western Steel Corporation kept no books at all; for a year it kept only a check book and some sort of a journal, I believe, and a vast mass of papers had to be examined to see what claims could be collected on, and what the rights of various people were in respect to this property. At Irondale everything was in confusion. Of course the insurance was in a disordered and perilous state—the men were unpaid, and of course they besieged our offices with various supplications and applications and it was all a very sad mixed up business. I can not conceive of doing more continuous work than we did for those receivers. Of course the receiver had to consider getting out receiver's certificates for some money to pay taxes with and pay the services of clerks and persons who were in charge of the property at Irondale which, of course, could not be neglected because it was a little iron plant there, and we had a very hard time in getting money because there was no cash, and nobody seemed disposed to lend money on these precarious assets. I think the receivers consulted us a dozen times a day—every day—on some point involving those titles and those claims and questions of liability of various persons and how we could get information from various sources. I think—I can not think of being more continuously employed; in fact I never have been more continuously employed by a receivership of a court than I was by those two receivers. If your court is inclined to do it, and you desire me to give all my testimony relating to the Western Steel and the appointment of the receivers I would be very glad if you will let me do it now, because at the close of the week I want to go away. I do not think that it would take very long.

Mr. McCoy. There is just one question that occurs to me and that is as to the necessity for the two receivers.

The CHAIRMAN. Before you leave the point you are now on, I want to ask you this question. As I understand you, a great deal of the work which you were continuously employed in doing was not purely legal work?

A. I think it was, practically none of it, Mr. Chairman, but what took on a legal aspect. For instance, the receivers would come in in a rush and say, "What is necessary to be done to preserve our titles to such and such properties—such and such persons make claims upon this, that, and t'other thing, and had we better release that or the other piece of property?" A good deal of it was personalty, and whether we wished to release it or let it go required a good deal of consideration, and then claimants would appear claiming they were secured and the question was whether the receivership should immediately dispute that claim or acknowledge it.

Q. Were any suits actually brought?—A. Any suits?

Q. Yes.—A. I do not recollect whether any suits were brought or not—I don't think so, no—I don't think we brought any suits.

Q. Well, were any brought against you?—A. No.

Q. In which the title to some of this property was disputed?—A. The title—during the receivership I do not think any suits were brought at all, no.

Q. Were the receivers so timid that every time anybody announced they had a claim that they came in and put you to so much trouble running the matter down on the mere verbal pretense of the claim?—A. No, sir, they did not; they showed no timidity at all, so far as I could see.

Q. Then what was the necessity for all the work which you spoke of so long as there was not any concrete legal claim made in a legal way?—A. Well, I can readily answer that by saying it would strike me with astonishment if they had not sought lawyers daily. There was a great mass of confused title there. They had to assert or yield their position about various things. They had to decide many questions as to the propriety and liability of this about people whose property they were claiming. We had, for instance, a great mass of real estate there. It was claimed that that property had never passed to the Western Steel Corporation. We claimed on the other hand that it had; that it had not gone to a syndicate composed of the former stockholders.

Q. It does not take a lawyer long to prepare to make a claim, does it?—A. No, sir; but if he has a great many things to examine it takes long.

Q. Well, he can very safely make a claim without much examination?—A. That may be, but I can only decide upon the fact that the receivers, who seemed to be very intelligent men, although they had not both been appointed at my instance, seemed to think that they should consult their lawyers every day.

Q. For how long a time were you acting as attorneys of the receivers?—A. Two months. [Addressing Mr. McCoy:] I think you were asking me a question there when he interrupted me.

Mr. MCCOY. About the necessity for the two receivers?

A. The receivers were appointed upon my application. I asked for one receiver, and Judge Hanford appointed two.

Q. Did you name the person whom you would like to have him designate?—A. Yes, sir.

Q. Who was that?—A. I named first a Mr. Edgar Ames, of Seattle, and Judge Hanford, after some consideration, decided he would not appoint him.

Q. Who is Mr. Ames?—A. He is the gentleman whom subsequently I caused to be elected trustee after the election of trustees, or at the election of the trustees.

Q. Did you name him because you thought he had some particular qualifications for the place?—A. I named him because the Metropolitan Trust Co. in New York had asked me to nominate him.

Q. What is his business?—A. He is a business man here of some means and possibly what you might call of some wealth; he is interested in tide lands here and is one of the officers of what is called, I think, the Seattle General Contract Co.—a man very well known to us, and we preferred him for receiver. When he was rejected, I requested the appointment of Mr. Lester Turner. The judge acceded to that and added Mr. Sutcliffe Baxter.

Q. Well, now, do you think that there was any necessity in the world, or the slightest desirability, of having two receivers in that matter?—A. Why, I did not think so; no.

Q. It was not a matter of any tremendous complication?—A. Yes; it was a matter, Mr. McCoy, of very great complication as far as that is concerned.

Q. I mean so far as the receivers were concerned—any complications that might appear to be in the matter would be such as would be referred to an attorney for solution, were they not, no matter whether there was one receiver or twenty?—A. Oh, yes; I think so. We wished but one receiver. I asked for one receiver.

Q. And there was not any business to be carried on?—A. No, sir.

Q. In other words, the receiver in this matter was practically nothing more than a custodian of things that nobody could put into his pocket or run away with, namely, a steel plant and some real estate and some steel and some office furniture and things of that kind, and it was practically, for all purposes, a custodianship, wasn't it?—A. Yes; though I think, perhaps, we should be fairer than that.

Q. I want to be fair. I am only stating what the record shows.—A. I do not mean that you are unfair, but I think I should be fairer—I am rather inclined to your conclusion, but at the same time I think I should have to concede more than that. To put it plainly, the estate was in this condition; somebody had applied for a receivership in the State court. I held this large claim of six hundred and odd thousand dollars of the Metropolitan Trust Co., and I, after seeing this receivership in the State court, or after the application for one, rather, which from time to time was put off on various grounds, I decided the corporation was bankrupt and applied in bankruptcy and nominated Edgar Ames. Mr., or Judge, Hanford did not find Mr. Edgar Ames acceptable, and then I nominated Mr. Turner. He accepted Mr. Turner and added Mr. Baxter. I did not think of two receivers at all; as far as that is concerned, it did not occur to me at all to have two receivers. I just suggested Mr. Turner, and he added on that other name.

Q. In other words, at that time you did not think that there was any necessity for two receivers, did you?—A. No, sir; you may put it that way, that I didn't think anything about it at all—I just asked

for a receiver—in other words, I would have been satisfied with one receiver, certainly.

Q. Do you know of any possible objection that could be made to Mr. Ames as receiver on the score of fitness and responsibility and respectability?—A. There is only one answer that I can make to that. Of course I did not or I would not have suggested his name, and my clients would have been very angry with me if I had suggested an improper man.

Q. In other words, he was a man of fine reputation and good business ability and an ample financial responsibility.—A. Well, now——

Q. Who was Mr. Turner?—A. Mr. Turner was formerly president of the First National Bank.

Mr. HIGGINS. If you had the appointment of the receiver, as judge, and responsible for his appointment as receiver as the United States judge of the district court, you would hardly have appointed Mr. Ames, in view of the relations between the Western Steel Corporation and the Trust Co. of New York and the contest which subsequently followed and under the conditions and circumstances surrounding their relations, would you?—A. Yes.

Q. You would?—A. Yes.

Q. You say that because you recommended him to the court—because you would not recommend an improper man?—A. I would suggest that because the receiver is but a temporary officer; he gives way to the trustees elected by the creditors, and there is nothing that he can decide; he has to be the custodian of the property, and, as Mr. McCoy suggested, an able collector and protector of the property, but there is nothing he can decide.

Q. Do you say to this committee that at the time you recommended to Judge Hanford the appointment of Mr. Ames as the receiver that you had not also in your mind the intent to have him appointed as trustee?—A. I certainly would have recommended him as trustee, yes.

Q. Now, I asked you if you did, because you qualified your answer by stating that he had no duties to perform and was a mere custodian. Now, I understand you to say, sir, that you would have also suggested his appointment as trustee?—A. Yes, sir; because he would have a good deal to do then, and as receiver——

Q. And the relations that existed between your trust company client in New York—between them and Mr. Ames and the controversy which subsequently developed and which, as was apparent to anyone at the time would develop, would not have offered to your mind—if you were charged with the responsibility, as judge, to make the appointment, any reason why Mr. Ames should not have been appointed?—A. No, sir; I have a most perfect answer to make to that.

Q. Your answer is "No"?—A. It is not "no"—it is an answer that I can not make by yes or no.

Q. You can make any answer you wish to.—A. I will be glad to make it. Mr. Ames had no relations with the trust company of New York; he was simply personally known to Herbert Parsons, the New York counsel of the Metropolitan Trust Co., and he had told us if we applied for a receiver that he should be very glad if it would be Mr. Ames.

Q. Now, Mr. Bausman, do not let you and I beat around the bush about this thing.—A. Yes.

Q. He was recommended, wasn't he?—A. Yes.
Q. By the New York attorney?—A. Yes.
Q. That is what I say—of the trust company?—A. Yes.
Q. And it was because the New York attorney of the trust company had recommended him that you——A. (Interrupting.) That I suggested.
Q. That you suggested him to Judge Hanford?—A. Yes; because he was a man of high standing and excellent character.
Q. Now, if you want to get into the ethics of things, as a judge and if these facts had been presented to you, you think it would be eminently proper to appoint Mr. Ames?—A. Why, yes; I think a court very frequently should appoint receivers at the suggestion of the largest preferred creditors.
Q. And also trustees?—A. He does not appoint trustees—they are elected by the creditors.
Q. Well, that is a matter within the jurisdiction of the court?—A. No, sir; it is not within his jurisdiction.
Q It may be?—A. It can not be; it is absolutely within the power of the creditors by vote.
Q. Is it possible for the court to remove an improper appointee?—A. No. sir.
Q. Or to control in any way the appointment of the trustee?—A. No, sir. The creditors constitute a little republic and they vote themselves, or remove the receivers if they do not like them and appoint their own trustees at the election.
Q. For any misadministration of the estate the trustee is not then responsible to the court?—A They are responsible on their bonds and responsible to the creditors and the court has nothing to do with them.
Q. The court does not review his action?—A. He may review his action as there is a judicial appeal, as he does in other cases.
Q. As a matter of fact he reviews his entire action?—A. He reviews it only as creditors take exceptions and appeal—he can not remove him as an officer.
Q. As a matter of fact, he can review his entire action and entire administration of the estate?—A. He can review that just as he can review the action of any other body, but his controversies are brought into court; he is not an officer of that court; he is a trustee elected by the creditors. The receiver is an officer of the court and that is why the court fixes the receivers——
Q. And if you are attacking the action of the trustee appointed in bankruptcy under our Federal bankruptcy law, you are attacking him in the Federal court, are you not?—A No; you can attack him in the State court. The act specially imposes that.
Q. But as a practicing lawyer you ordinarily attack him in the Federal court?—A. Yes, sir; I might, but I have also brought suits against them in the State court.
Q. You have done many things besides doing that——A. But I am very clear he is not an officer which the Federal court can remove. Mr. Ames was in every way qualified for the position. I had no complaint, however, when he was not selected, and then I spoke of Mr. Turner, who had no relations with us; that is, with our client, with the trust company—they did not even know who he was when he was appointed.
The Chairman. Any further questions with Mr. Bausman?

Mr. PRESTON. Mr. McCoy asked Mr. Baxter a question as to whether there was any emergency in the bankrupt's affairs that justified the appointment of the receiver. You know that pretty well, whatever it may have been; state it.

A. Yes. Shall I proceed on that?

Mr. MCCOY. Yes.

A. Why, yes; there was every reason why in this estate there should be a receiver. If we did not have receivers we had to wait—if we didn't have the receiver we had to wait until there should be a meeting of the creditors, that would take a month or more—and if we would take a month or more before there would be this custodian of any kind—there was this plant Irondale liable to destruction; no legal guardian there for it and there would be its assets liable to be carried off and dismembered by anybody who chose, and it seemed to be preeminently a case for a receivership. The bankrupt made no fight on the question of bankruptcy and it was adjudicated a bankrupt and it made no attempt to remove the receiver. The assets were subsequently appraised at $440,000. The liabilities, counting the claim of the Metropolitan Trust Co. as a secured claim and not as a claim independent of the ownership of the bonds, were I think about $1,400,000. At the sale the Metropolitan Trust Co. took all the assets by virtue of its first lien. It bid all the bonds and paid in cash some seventy or eighty thousand dollars. Now, if you will permit me to add in this matter of the fees. My clients paid those fees to the court. Permit me, if you will, voluntarily to say this, if there is any exception to it—they bore the burden and they never have complained. They held the first lien upon all this property, barring some loose personalty on which they had no lien.

The CHAIRMAN. But did they realize the full amount of their lien?

A. They realized it fully except having to take over the assets on the lien—assets which they regarded as very bad indeed and one of which is subject to the option claim of $200,000, or at the time of the bankruptcy, $250,000.

Q. The point, then, is, at the sale or in any other way there could not be enough cash or money realized to pay their claim and leave anything over for other creditors, so that other creditors did not suffer even if you did get liberal attorney's fee?—A. Because the assets were worth so much less than their claim that there could not be any possibility of anybody bidding, either in separate lots or in the whole—for it was offered in both ways—any amount which would approximate $600,000; the approximation was $440,000, and their claim alone was $650,000. Of this fee of the receivers and of our firm they, of course, were apprised. They made no objection at all, and as far as I know it was satisfactory to them, and there was no objection to it. And in answer to your question I would say that I can not now conceive the possibility that any creditor got a dollar less by virtue of the fees. They formed but an insignificant part of the burden which was already vastly greater than the visible assets which we had to take over.

Mr. HIGGINS. How long had the plant been in operation?—A. It had been in what they call operation about a year or two, but it never had been in continuous operation.

Q. What was its capital stock?—A. Its capital stock was $20,000,000, of which I think five was preferred and fifteen common.

Q. What was the preferred stock—accumulative dividends?—A. I do not know what it was, because this being in bankruptcy, of course we have no right to assess the shareholders and it did not interest me.

Q. Well, did you act as attorney for the company before it went into the hands of a receiver?—A. No, sir.

Q. Or for the trust company at the time the bonds were taken over?

A. No. Perhaps I did not understand it exactly—at the time the bonds were taken over?

Q. I refer to the bonds taken by the trust company of which Herbert Parsons was attorney.—A. I had nothing to do with that. That had been done in New York at an auction sale.

Q. When did you come into the concern as the attorney for the trust company?—A. About the first week, I think, in September. In other words, a month before the receivership, that is also a month before the petition in bankruptcy—September, 1911—it may have been the first or second week. Mr. Parsons came out here from New York and he brought with him evidences of the note and of their having purchased the bonds at auction sale and we held this claim against the company for nearly a month before we put it in the hands of the receiver.

Q. It was their own auction sale?—A. Yes?

Q. Which they held under the authority of the pledge that was given at the time the bonds were deposited as collateral.—A. Yes. He showed me those papers. It constituted a notice of one month given to Mr. James A. Moore in writing, the president of the company here, if he didn't take care of the lien in the month they would sell the bonds.

Q. Who promoted the steel company?—A. A man by the name of James A. Moore.

Q. Of Seattle?—A. Of Seattle; and he took out a large proportion of the stock himself by turning over certain assets of old companies preexisting. This occurred about the beginning of the year 1910. The company then led a fitful existence and operated intermittently during 1910 and stopped somewhere about the 1st of August, 1911; then in September the trust company lawyer came out here and put the claim in our hands. Then we held it a month seeing if we could not get some satisfaction in it and during that time applications were made to the State court for receivers by various people and the company fought them and finally, about the 12th of October, I think it was, we petitioned in bankruptcy for the bankruptcy of the corporation.

The CHAIRMAN. Are there any further questions of the witness?

Mr. PRESTON. Yes, sir.

The CHAIRMAN. What was it you suggested that we should inquire of you about in addition to this?

The WITNESS. Just about what we have been going over—at first you limited it——

The CHAIRMAN. Then we have covered the ground?

The WITNESS. I rather think so, unless counsel has something.

The CHAIRMAN. Have you anything to ask, Mr. Preston?

Mr. PRESTON. Yes. Do you wish the committee to understand that the receivers were inactive and had not much to do?

A. Oh, no; they were very active. They were at their offices every day and during the full hours of the day. They had a bookkeeper

there, two bookkeepers—a bookkeeper and an assistant bookkeeper and a stenographer, and were going through those voluminous files and data as far as I could see all day long and apparently keeping up a vigorous correspondence and communication with people whom they thought had relations with the company and endeavoring, I think, with a great deal of diligence, to ascertain the relations of all claims presented to them.

Q. And what was your observation of Mr. Baxter, speaking first of the impression he created on you, as to his capability and efficiency and honesty?—A. Well, Mr. Baxter struck me as exceedingly diligent. He did at one time render a very valuable service, but I am not able at this juncture to say whether that was during the receivership or the trusteeship, but I think it was during the receivership—services aside from what he was doing every day, during which he seemed to me to be very busy—service that was of great moment to the estate. It was in relation to this asset that I call Graham Island. This Graham Island asset is the one which I have described to you as owned by a British corporation. The British corporation stock I think I told you was owned to the extent of seven-eighths by this bankrupt steel corporation here, but the Western Coal & Iron Co. (Ltd.), the British corporation, had no title to Graham Island, but only an optional right to acquire it. It had paid previously $150,000 and it had yet to pay $250,000 with some interest. Now, one of those payments of $50,000 was coming due January 1, 1912, or say, December 31, 1911, and the holders of that stock—the holders, or I should say the owners of that property, rather—Graham Island—were unwilling to extend the option. Now, it was plain that the bankrupt corporation and its receivers and trustees would not have the money to pay it on the 31st of December.

The CHAIRMAN. You have substantially told us that already.

The WITNESS (continuing). Well, he went over there and it seemed to me he did very good work, and he got the extension to April 1, which enabled the bankruptcy court finally to save that asset.

Mr. PRESTON. Now, I want to ask you the question, Do you know whether that was the result of some personal acquaintance or influence of his own?

A. I do not know that of my own knowledge, but he told me that it was largely due to friendships of past years with certain people in Victoria who were interested in those properties; that in that way he was able to get an extension.

Q. When I asked you about the emergency reasons for the appointment of the receiver, you mentioned several. I seem to remember, in my looking over the papers, that there were some reasons urged also in regard to Mr. Moore's handling of the assets—just briefly, if there is anything of that kind.—A. Well, Mr. Moore was the president of the bankrupt, and we regarded him as a very unreliable man, to put it mildly, and we regarded it as deeply essential to the preservation of the assets that they should be immediately taken charge of by that court. There were many reasons for that; among them was the fact that some of the properties were still in his name and not yet conveyed to the corporation—the evidences of title to those scattering properties were such as might disappear—they were scattered in many counties and in the State of Nevada and in the Dominion of Canada, and were in very involved relations, and the preservation

incidental to every bit of evidence relating to those things was of the highest essential—in the highest degree essential. I should have regarded it, gentlemen, as very wrong if the court had not appointed a receiver of that property.

Q. Now, Mr. Bausman, at the time of the allowance of the fees to the receiver and receiver's attorneys and trustees' attorneys, were you a participant as attorney for the trust company?—A. In which—the trustees——

Q. Yes.—A. I served as attorney.

Q. I say, were you a participant to the proceedings, representing your clients, the Metropolitan Trust Co.?—A. Afterwards, when the controversy arose between my clients and others, I resigned and other counsel was appointed to represent the receivers from that time on—the trustees.

Q. You did not get my question.—A. (Continuing.) And then we debated certain legal points. Up to that time there had been no conflict and it was expected there would be none, because my client had offered to reorganize the company at its own expense, if all the creditors would join with it, and save delay, to keep the plant from going to ruin. There was a vote on that in which a majority in number were with us, but the Standard Oil Co. came in and fought us, joined by the First National Bank of this city. They resisted this right of ours to use the whole issue of bonds in the right of ownership, and contended that we should only have the right as collateral; and they opposed the whole voluntary organization scheme, and then I resigned.

Q. Mr. Bausman, you do not understand my last question. The point I was getting at was this: When those different allowances were made to receivers, attorneys, trustees and attorneys, were you not on the ground participating in the proceedings leading up to those allowances, by virtue of your representation of your client, the Metropolitan Trust Co., or, to put it more directly, did your client, the trust company, or you for them, ever make any objection to any of those allowances?—A. Oh, no, sir; just as I told these gentlemen, they were perfectly satisfied with the fees, as far as I know.

Q. Your testimony, I thought, related more particularly to your own fees.

The CHAIRMAN. He included the other also.

The WITNESS. They did not object to the receivers' fees.

Q. Did Judge Hanford, in declining to appoint Mr. Ames, and appointing Mr. Turner and Mr. Baxter, announce any reason that operated on his mind for it?—A. In appointing Mr. Baxter——

Mr. PRESTON. No, no.

The CHAIRMAN. Yes, answer.

Mr. PRESTON (continuing). Appointing Mr. Baxter jointly with Mr. Ames.

The WITNESS. Yes, sir. The conversation that ensued between Judge Hanford and myself is almost exactly as follows: After he rejected the appointment of Mr. Ames I suggested Mr. Turner. He finally said yes, that Mr. Turner was highly qualified, or words to that effect, but, he said, there ought to be another—that he had always found himself that the most efficient results were obtained not by picking out receivers miscellaneously on the suggestion of lawyers,

but by picking a man whom he said had gotten results before and understood the procedures and the way to handle estates.

Mr. McCoy. He didn't happen to mention the McCarthy estate, did he?

The Witness. No, sir; he did not mention anything about any particular estate to me; he made that remark. I made no observation in respect to that. He said, "What is wrong with having two receivers, why not have two receivers." I said, "That is a matter I leave entirely to your honor." He said, "I think it would be well to have two receivers," and I think he said then, "I will appoint Mr. Baxter." At any rate he did appoint Mr. Baxter.

Witness excused.

Sutcliffe Baxter, recalled, testified as follows:

Mr. McCoy. Is there anything more that you want of anybody else to testify about the Western Steel case, so that we can get it all into the record at this place.

Mr. Preston. No other witnesses that I know of.

Mr. McCoy. Mr. Baxter, I believe there was one more case which you mentioned, the Ingalls case.

A. C. J. Ingalls; yes, sir; C. J. Ingalls.

Q. This is the matter of C. J. Ingalls, bankrupt?—A. Yes.

Q. That was a jewelry store and you were appointed. The adjudication was on the 26th day of January, 1912—voluntary bankruptcy.—A. That is right.

Q. The schedule of liabilities amounted to $2,950.78; wage claims, $60; and other indebtedness, $2,890.78. The scheduled assets were valued by the bankrupt at $1,600, the cost price being stated as $739.16; fixtures scheduled at $454 and claimed as exempt; and also a lot of book accounts; now what was the total of the amount scheduled?—A. The book accounts were about $450.

Q. What was the total amount of the assets set out in the schedules; you made an inventory?—A. Yes.

Q. Showing the original cost price of the assets of the bankrupt at $3,114.29?—A. Yes, sir.

Q. Then in February, 1912, you were elected as trustee, and in the same month you filed your report as receiver, showing receipts amounting to $35 and disbursements $35.30.—A. Yes, sir.

Q. The disbursement being car fare and assistance in taking inventories, and stenographic services, and typewriting inventories, and services of the keeper, and the receiver's bond, etc. Did you sell the stock as receiver or as trustee?—A. I think as trustee.

Q. It was sold February 19, 1912?—A. Yes, sir; I had been elected trustee before that time.

Q. The stock was sold for $1,557?—A. It was appraised at $1,557.

Q. It had been appraised at $1,557?—A. Yes, sir.

Q. Then you sold it, or you received bids for it, did you?—A. Yes, sir.

Q. And you rejected the bids, did you?—A. We rejected the first set of bids.

Q. And March 6, 1912 on a resale you accepted the highest bid, which was $985?—A. Yes, sir.

Q. On April 5, 1912 you declared a dividend of 5 per cent—the total amount of assets that came into your hands was $1,045?—A. Correct, sir.

Q. That estate has not been distributed, has it?—A. No, sir; only one dividend has been paid. The papers are in the hands of the attorneys now and it is up to the referee—I don't know whether there was any other dividend.

Q. How much money is there remaining in your hands?—A. About $460.

Q. $465?—A. $465; yes, sir.

Q. Were you authorized by the order appointing you receiver to conduct that business?—A. I don't remember as to that, I did not conduct it at all. I had an inventory taken and sold it out as quickly as possible.

The CHAIRMAN. Any questions about that, Mr. Preston?

Mr. PRESTON. I would like to ask you, Mr. McCoy, if it is the purpose of the committee to append as part of your record all these statements as to the bankruptcy matters.

Mr. MCCOY. Oh, no; I think I have taken the essential figures out of them—the Western Steel bankruptcy was in the shape of a cash statement, but these others are narrative, and I think I have taken out all the figures in there and simply putting them in that way.

Mr. PRESTON. You spoke of a meeting of the creditors in the McCarthy estate held before Judge Hanford at which the question came up as to whether the Stone-Fisher bid, part cash, and part on installments, should be accepted.

A. Yes, sir.

Q. Or what should be done?—A. Yes.

Q. Now you say there were creditors there and that is about as far as you went into it—were there any number of creditors there in person or by attorneys, or both?—A. There were some creditors there in person and others were represented by attorneys; most of them were represented by attorneys, though, generally.

Q. Speaking roughly of the percentage of creditors, what percentage were represented there?—A. A considerable percentage, I could not state positively, or even approximately.

Q. Was there considerable of a gathering there?—A. Yes, sir; I think there were some dozen or 15 people there, or, 20 perhaps.

Q. Were there not most of the creditors represented by attorneys in the proceeding?—A. Yes, sir.

Q. And were those attorneys present?—A. Yes, sir.

Q. Do you know of any of them that were absent from that meeting?—A. I do not think they were; as far as I know they were all there.

Q. Were the creditors insistent that the bid be not accepted and that the business go on?—A. Yes, sir.

Q. Was it not shortly after that that the slump in business occurred here in Seattle, the falling off in business generally, I mean—I do not mean that McCarthy business alone. A. Yes, sir; commencing in 1908 the business was poor.

Q. I am not speaking of the McCarthy business.—A. Generally business was very poor throughout the year 1908; yes, sir.

Q. Now, some suggestion has been made that the continuance of that business so long, for so many months after it devoloped that it was not paying expenses, was perhaps not the right thing; what, if anything, had the creditors to do with that continuance of the business?—A. Well, I do not know that the creditors had much, if anything, to do with it. We were trying to sell it, and finally after reporting to my attorneys and the creditors here that the thing was losing money, and losing money very rapidly, there was a man by the name of Hubbell, up here on Seventh and Pike Streets, who got into communication with Mr. Anderson, of the Western Dry Goods Co., and they conceived the idea that they wanted to buy it and came up to the store and asked whether if I could furnish them with an inventory of it. I told them that I could furnish them an estimated inventory based on the last preceding inventory, less the sales taken from the stock and plus the purchases, and on that basis, while they never made a definite offer for it, they did intimate that they would pay me enough for that stock and fixtures and the whole outfit to leave the receiver in debt ten or fifteen thousand dollars.

Q. Now, when was that Hubbell proposition made?—A. It was the latter part of the summer; it must have been in July or August; I think July, perhaps.

Q. Now, did you carry on that losing business because you wanted to or because you could not get rid of it?—A. No, sir; I was opposed to conducting the business at all from the start. I wanted to sell it. I was trying to sell it, because I could not——

Mr. McCoy. You could put it up at auction.

A. You could put it up at auction.

Q. And you could not possibly have come out any worse, hardly even if you had given the assets away.—A. We could not have foreseen those things; at least I did not.

Mr. McCoy. I think myself it is very objectionable for receivers to be running a business. That is my own view of it. I think no receiver ought to be allowed to run a business except on an absolutely clear showing; that is, bankrupt business.

Mr. Hughes. You mean bankrupt business?

Mr. McCoy. Or any kind of business.

Mr. Hughes. This was not a bankruptcy proceeding.

Mr. McCoy. Any kind of a proceeding.

Mr. Hughes. I agree with you.

The Chairman. It was insolvency.

Mr. McCoy. The best thing to do is to sell it out and let the other fellow run the business.

Mr. Preston. You were asked and you testified that at one time you were in the liquor business a number of years. Now I will ask you what kind of liquor business were you in?—A. The wholesale liquor business.

Q. Here in Seattle?—A. Here in Seattle.

Mr. Preston. Mr. McCoy, you asked me to get the stipulation fixing the fees in the Seattle Paint & Varnish Co. Now I have got the original files here and I would suggest that the quickest way to get it into the record is to read it in.

Mr. McCoy. Yes; will you do that?

Mr. Preston (reading):

It is hereby stipulated and agreed by and between the petitioning creditors, by their respective counsel—the Seattle Paint & Varnish Co., by Richard Saxe Jones, its attorney; the Washington National Bank, a corporation, by Messrs. Kerr & McCord, its attorneys; the Washington Trust Co., a corporation, and John Schram, principal creditor of the Seattle Paint & Varnish Co., by H. R. Clise, their attorney; and Sutcliffe Baxter, by Messrs. Metcalfe & Jurey, his attorneys—that in pursuance of a certain oral agreement fixing the compensation of the receiver, Sutcliffe Baxter, Esq., and his attorneys, Metcalfe & Jurey, and Richard Saxe Jones, as attorney for the bankrupt, and McClure & McClure, Pipes & Taft, and John G. Gray, attorneys for the petitioning creditors, that the compensation of the said receiver and attorneys is hereby stipulated as follows—

And here follow the exact amounts as set out in the statement which you read from and I will not read those. And then it proceeds:

It is further stipulated that an order may be entered herein by the court, allowing the compensations herein named and directing the payment by Sutcliffe Baxter, receiver, of said amounts to the parties so entitled thereto.

Dated the 23d and 28th days of December, 1904, and signed by those different attorneys recited in the order. You do not need the signatures, I guess.

Mr. McCoy. Those are all attorneys, Mr. Preston?

A. Oh, yes.

Mr. Preston. Now, in the Walker estate, according to your statement there, your allowance was $500?

A. Yes.

Mr. Preston. That is one thing which you overlooked in reading it into the record. I noticed one or two things, and I thought I would supply them.

Mr. McCoy. Yes; I thought he stated $500; however, if there is anything of that kind to be cleared up you might do so.

Mr. Preston. In the Dowell case——

The Witness. Alice C. Dowell——

Mr. Preston. The total cash received is $4,101.22. You gave in the amount that the stock sold for, but there was a few hundred dollars more which you passed over; then, there is the statement in the Walker Co. case that the commission and expenses of John P. Hoyt, referee in bankruptcy, was $300; do you know what the expense items were?

A. I do not; I do not think I ever saw any of the figures of it other than the order to pay the $300—in other words, to issue a check for $300 for compensation and expenses of the referee.

Mr. Preston. I think that is all the questions I have.

The Chairman. What is your age, Mr. Baxter?

A. I was 70 years of age on the 11th of November, last.

Q. Have you any personal connections which brings you pretty close to Judge Hanford?—A. I am not related to Judge Hanford at all. I have known him very well for 40 years and over. He was my attorney for 12 or 15 years prior to his appointment to his present position.

Q. Did you know whether the late Gov. McGraw was largely responsible for the judge's appointment to his present position?—A. I do not know that he was. I presume he was. Mr. McGraw was in politics in those days, and so——

Q. Your family and Gov. McGraw's are connected in some way?—A. My son married the governor's daughter.

Q. When were they married?—A. Some 11 or 12 years ago—about 12 years ago, I think.

The CHAIRMAN. That is all.

Mr. PRESTON. Now, Mr. Baxter, tell us what you know of your own knowledge about Gov. McGraw's being responsible for the appointment of Judge Hanford to the Federal bench.

A. I do not know anything of my own knowledge in the matter. I simply know that Judge Hanford and Gov. McGraw have always been very great friends—strong, close friends.

The CHAIRMAN. Personally and politically?

A. Personally and politically; and I supposed, as a matter of course, the governor was instrumental in obtaining that appointment.

Mr. PRESTON. You spoke of Gov. McGraw. He was not governor of the State until long after Judge Hanford was appointed to the bench?

A. Long after Judge Hanford was appointed—over 20 years, or 22 years ago, if I remember right.

The CHAIRMAN. But the governor was the greatest personal and political power in the Territory or the State?

A. I would hardly say that he was the greatest; he was a great political power.

The CHAIRMAN. He was among the greatest, if not the greatest?

A. I think so; he was a very strong man.

Mr. MCCOY. Now, Mr. Preston, I wanted to ask you at what stage of the Knosher case you came into the bankruptcy proceedings?

Mr. PRESTON. It was some time between the 20th of April, 1911, which is the date upon which there was filed with the referee the petition of the Western Dry Goods Co. and others to set aside the appraisement and sale of the stock, and the date upon which I, on behalf of Anisfield & Co., filed objections to the jurisdiction of the bankruptcy court to entertain that petition, and that date was April 25. I can not be more definite than to say that it was between the two dates that I was first employed.

Mr. MCCOY. Your appearance was for the purpose of objecting to the jurisdiction of the court to proceed on the petition of the Western Dry Goods Co.?

A. Yes, sir. My objection was that the remedy was by plenary suit; and that the bankruptcy court under the circumstances existing could not entertain jurisdiction to give any such relief sought.

Mr. MCCOY. One matter more, and that is in regard to the indictments against the Schwabacher Bros. grocery concern for violation of the pure food and drug act. They continued to sell the objectionable articles after the circuit court of appeals had decided that the department was wrong in its ruling, didn't they?

Mr. PRESTON. That is my understanding.

Mr. MCCOY. And whatever you may say in regard to any moral guilt in the matter, they were guilty under the law, after the law had been declared?

Mr. PRESTON. They were technically guilty, and I so advised them, while I did not think the decision was right. I am not presumptuous enough to set up my opinion against that of the circuit court of appeals—that it would be followed in other courts in this circuit, and that they were technically guilty.

Mr. McCoy. They continued, after the circuit court of appeals decision, to get rid of their surplus stock, in violation of law?

A. That is my understanding of the fact.

Whereupon the further proceedings are adjourned until to-morrow morning, July 18, 1912, at the hour of 9.30 o'clock.

EIGHTEENTH DAY'S PROCEEDINGS.

THURSDAY, JULY 18, 1912—9.45 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will please be in order.

Mr. PRESTON. Mr. Chairman, before leaving the Western Steel matter, knowing that you would like to keep your subjects close together, I have here the documents in that case furnished by the referee upon your precipe, which, if you wish them, I think you would like have go in at this point before going off on another subject.

The CHAIRMAN. Have you examined them?

Mr. PRESTON. Yes, sir. They are covered by the referee's certificate.

The CHAIRMAN. Those are the receiver's and trustee's reports in the Western Steel cases?

Mr. PRESTON. They are certified to under the certificate of the referee and referred to by their exhibit numbers which he puts on the back of them.

The CHAIRMAN. Was it your thought that they would go directly into the record or that we would take them in a collateral way?

Mr. PRESTON. Well, sir, I did not have any thought on it. Whatever you wish to do, of course we wish to do in the matter. They will be of assistance to anyone in an inquiry in that case. The other matter, Mr. Graham, is simply a certificate descriptive of the volume of the records in the referee's office in that matter.

The CHAIRMAN. The reports and papers referred to by Mr. Preston will be made alphabetical serial exhibits to accompany the record, but not as a part of it at this time.

Documents marked "Exhibit H."

H. L. KLOCK, being first duly sworn, testifies as follows:

Mr. McCoy. Mr. Klock, you are a member of the Seattle Merchants & Credit Men's Association.

A. I am; or rather my firm is.

Q. Your firm is?—A. My firm is.

Q. Are you one of the trustees of the association?—A. Why, I am not one of the trustees, I am one of a certain committee.

Q. Were you appointed by Mr. Anderson, president of the committee, on a special committee which was constituted in pursuance of an action taken at the recent monthly meeting or dinner up there at the Hotel Washington Annex?—A. I am.

Q. Did you meet with some other members of that committee on the call of Mr. Anderson recently and when it took up for consideration some charges against Judge Hanford?—A. I did.

Mr. PRESTON. Speak a little louder, please.

The WITNESS. I did.

Mr. McCoy. At that time you had a conference with this congressional committee, didn't you?

A. I did.

Q. And they had requested you to endeavor to get the association to cooperate with the committee in getting together any facts in regard to the complaints of the administration of the bankruptcy law, didn't you?—A. Well, they asked for facts regarding excessive receiverships and attorneys' fees regarding Judge Hanford's court, and they asked for information from the Merchants' Association and Credit Men. I was asked if I would put them in touch with such parties.

Q. Now, state as nearly as you can recollect what took place at this meeting of the committee appointed by Mr. Anderson—it had only one meeting, hadn't it, so far as you know?—A. Only one meeting only.

Q. What took place at the meeting?—A. The meeting was called by request to have the committee decide whether they cared to take part in preparing evidence and presenting it to your committee or not. Do you want me to tell what happened there?

Q. Yes, tell what was said and what was done about anything, if anything was done there.—A. Well, to begin with, there was a meeting held, I think, on the 17th day of June in the Washington Annex, being a monthly meeting of the Seattle Merchants & Credit Men's Association. At this particular meeting an attorney by the name of Anderson whom I believe is a brother of Mr. Anderson who is the president of our association. Mr. Anderson recited in detail that evening some of the grievances coming out of these receiverships and he made a special mention of the McCarthy Dry Goods Co. and the Western Steel Co., the Knosher Dry Goods Co.—whether there were others or not—I think not—but he mentioned those in particular. He recited the fight that the Association made against the excessive charges in the matter of the Knosher Co.—how that the matter had been carried to San Francisco.

Q. To the circuit court, you mean?—A. Yes.

Q. The circuit court of appeals?—A. Yes, sir, and that they had succeeded in getting this fee cut down something like $2,500 or $3,000. He recited the matter of assets of $80,000—or 80 per cent, rather, in the McCarthy Dry Goods case, where they had been eaten up in court costs to the amount that there had been paid to the creditors a sum in the neighborhood of about 5 per cent only. After reciting several other matters in connection with these excessive receiverships the meeting proceeded with its other work, and at the conclusion a man by the name of Fred Fisher of Fisher Bros. moved that the committee—made a motion that the committee be appointed to wait upon Judge Hanford and Judge Hoyt and request that the creditors in the future be consulted as to who would be receivers. What led to this motion was that there was a certain party had been a receiver in each one of those three particular cases and that that party had received exorbitant fees.

Q. Who was it—Sutcliffe Baxter?—A. Sutcliffe Baxter.

At this stage Mr. Finch interrupts the proceedings as follows:

Mr. Finch. Mr. Chairman, will you pardon an interruption?

The Chairman. Is this for the record?

Mr. FINCH. Yes, sir, if you please.

The CHAIRMAN. Suspend for the moment.

Whereupon Mr. Klock, the witness, is temporarily withdrawn from the stand.

The CHAIRMAN. What is it, Mr. Finch?

Mr. FINCH. I want to complete the record that the committee has asked me to make relative to the exhibits which you are to take with you. I would like to have the committee have a complete set of files in the State court in the receivership proceeding. I have a complete set that have been compared and I have tendered them to Mr. Dorr and I think that he acknowledges them to be copies. I have in my hand a list of those exhibits, it being a transcript of the State court appearance docket. I would like to have that list marked in some way just so that the committee can have it for reference. Then the files I also offer at this time, being those two packages [showing]. Then I would like to have you have——

The CHAIRMAN. Are they the original court files?

Mr. DORR. Copies.

Mr. FINCH. No, they are copies of the original court files. Then I would like to have the committee have in their possession certain exhibits that were introduced before Judge Smith and which are among the court files here in this case. I have no way of supplying copies of them and I suppose the committee will have to take the originals.

Mr. DORR. We will make copies, Mr. Finch, if you wish.

Mr. FINCH. Very well, just so they are true copies. What I mean by that is that they show the indorsements and the cancellation marks and such items as that.

Mr. MCCOY. Can not those originals go with us?

Mr. FINCH. I do not know why they could not.

Mr. MCCOY. I have always found that where you have stamps and check marks and what not on them that it is much more satisfactory to have the original check marks than any copy of them.

Mr. DORR. Then I will suggest that we make copies and leave the copies here in the court records.

Mr. FINCH. Very well.

Mr. MCCOY. How many are there that you want to go?

The CHAIRMAN. Have you made a list of those which could accompany them, so that it might be known that all you have mentioned go along with us?

Mr. FINCH. I have not made such a list and I would like to dictate it at this time into the record, as my time is so short.

The CHAIRMAN. All right; you can dictate it right into the record.

Mr. FINCH. The first one is a certified check of M. F. Mayhew to Peter L. Larsen, $21,712.50, dated March 7, 1902.

Mr. MCCOY. Let each of these be marked with the alphabetical serial letters, and this will be "H," and they will be marked "H–1" and "H–2," and so on.

Mr. FINCH (continuing). The second is a certificate of deposit signed by H. F. Lane, cashier, payable to Peter L. Larsen, receiver, $21,712.50, dated March 12, 1902. [Document marked "Exhibit H–2."]

The third is another certificate of deposit signed by J. F. Lane, payable to Peter L. Larsen, receiver, $19,706.05, dated March 24, 1902. [Document marked "Exhibit H–3."]

Fourth is a certificate of deposit signed J. F. Lane, cashier, payable to order, C. A. Koepfli, clerk, and Peter L. Larsen, receiver, for $20,064.77, dated March 24, 1902. [Document marked "Exhibit H–4."]

Fifth is a check signed by M. F. Mayhew, payable to cash for $150, dated April 17, 1902. This is the original check of the one which I put a photograph copy in of. [Document marked "Exhibit H–5."]

Mr. DORR. The one that was paid to C. A. Reynolds.

Mr. FINCH. Sixth, a check signed by Peter L. Larsen, receiver, payable to the Scandinavian-American Bank, $338.45, dated 3/24, 1902. [Document marked "Exhibit H–6."]

Seven—then I offer as No. 7 six deposit slips, all of them dated April 3, 1902.

The CHAIRMAN. Please pin them all together. [Deposit slips are pinned together and marked as "Exhibit H–7."]

Mr. FINCH. That, I think, gentlemen, is all that I care to offer.

The CHAIRMAN. These will go in with the other alphabetical exhibits.

Mr. DORR. In addition to that, may it please the committee, we desire to offer certain exhibits from the Federal court records, a list of which I have prepared; it includes those exhibits which were offered during the progress of the taking of the testimony of Mr. Finch and other witnesses on this subject, and some additional documents.

The CHAIRMAN. It was taken from the record in Judge Hanford's court?

Mr. DORR. Yes.

Mr. FINCH. That is satisfactory, as far as I am concerned.

Mr. DORR. And my suggestion is that the lists be combined as one list, showing all the Heckman & Hansen exhibits on one paper, if that is agreeable to the committee.

The CHAIRMAN. Let them go in that way as one exhibit under one letter. They can be arranged in that way.

Mr. DORR. Now, Mr. Finch, before you leave, there is one item on this list that you supplied, dated March 23, reading "enter"—or "ent," which I take to be "enter"—"enter". C. A. Heckman gave notice of appeal. I find no record of any paper of that kind.

Mr. FINCH. That is due to the fact that this list is a copy of the State court appearance docket, and it would simply mean that that was noted as an entry in the book and it would not mean that it was a file.

Mr. HUGHES. Was this a notice in open court?

Mr. FINCH. Yes.

Mr. HUGHES. A notice of appeal given in open court?

Mr. FINCH. Yes. The record may show that on this date, March 22, Mr. Heckman gave notice of appeal.

Mr. HUGHES. In open court?

Mr. FINCH. In open court.

Mr. HUGHES. That is, notice of appeal from the superior court to the supreme court.

Mr. FINCH. Yes. You will find that there is also a record of that in the order on the fourth report of the receiver.

The CHAIRMAN. If that notice was given I suppose it was the duty of the clerk to make a minute of it.

Mr. McCOY. One thing more, Mr. Finch, in regard to that newspaper account of Judge Hanford's alleged remarks—have you been able to locate it?

Mr. FINCH. I have not yet, but I still think I shall get it. I know it so well—I had a copy of the paper for five years in my possession and I have got a very distinct mental photograph of it, and while I have leafed a number of books of the Star I have not found it yet. There are some copies of the Star missing from the files over in the Star office. It may have been there, but it is in existence and I will get it.

Mr. McCOY. I suggest that when you get back to Seattle, if you get hold of that, that you can have a conference with Mr. Dorr about it and make some sort of agreement so that we can find out whether or not Judge Hanford did make those remarks. The quickest way would be to ask him, I presume. I think you can arrange to send it on to us under some sort of stipulation.

Mr. DORR. Very well.

Mr. FLINCH. Very well.

Mr. DORR. Before you retire from the room I would like to have you identify the book which I now hand you, as the ledger of Heckman & Hansen [handing book to Mr. Finch].

Mr. FINCH. I would be unable to do that. I never saw it. I tried to get the books of Heckman & Hansen, and I could not get them.

Mr. DORR. Can not you tell whether or not that is Heckman & Hansen?

Mr. FINCH. No; I can not myself. I have never seen it.

Mr. DORR. It seems to have been used as an exhibit in the hearing.

Mr. FINCH. Well, I will say, now that you have called my attention to a mark there, that that would lead you to conclude that it had been. The mark being the usual stamp put on by Judge Smith, but not containing his signature as is contained on all the other exhibits, I will say that one day some parties came in there with a load of books when I had not time to go through them, and I never got an opportunity to go through them. I do not know what sort of a record was made any more than I know that in this transcript of the testimony there is a long complaint made about my failure to get access to the Heckman & Hansen books and the books of the receivership.

Mr. DORR. This is a book, Mr. Finch, that I found among the exhibits in that case on file in this court, and can not you tell from an inspection of that book whether it is their ledger?

Mr. FINCH. Why, I can only do what you can do, Mr. Dorr. I do not know that it is not—it is not in the handwriting of either Mr. Heckman or Mr. Hansen.

Mr. DORR. Probably not.

Mr. FINCH. And so I would not know any more about it that you know.

Mr. DORR. Now, I am expecting to call some witnesses from the Scandinavian-American Bank, and I recalled Judge Battle, in our endeavor to further throw light on this subject. I wish to make that statement to you now, before you leave.

Mr. McCOY. When are you coming back, as nearly as you can tell?

Mr. FINCH. So far as I know, it will take me 10 days in all to do what I am about to do.

Mr. MCCOY. I presume there will be further testimony given in the Heckman & Hansen matter, and when you come back I should like to have you ask Mr. Dorr, or whoever has the transcript of the additional testimony, to be allowed to use it and read it and then write a letter to Mr. Graham, as chairman of the committee, so that we may determine whether we need to have you testify any further or not in regard to it.

Mr. DORR. I shall be very glad to show him the record.

Mr. MCCOY. It is a matter that is brand new to us, and we can not tell the significance of any of the testimony without Mr. Finch's help.

Mr. DORR. I will state to the committee that I will undertake to arrange all these exhibits in chronological order, first the exhibits in the State court, and following that the exhibits in the Federal court.

Mr. MCCOY. Any labor-saving device that you adopt will be approved by the committee.

The CHAIRMAN. Proceed with the witness now.

Whereupon H. L. Klock is recalled to the stand and resumes his testimony, as follows:

Mr. PRESTON. Before proceeding with this witness, Mr. Chairman, you asked me to get a copy of an address made by Judge Hanford at the exposition here at Seattle on the subject of conservation. As I informed Mr. McCoy, I asked Judge Hanford and he says he does not think he made any speech at Spokane; he has not any recollection of it; if he made one it was extemporaneous and short and he has no copy of it. He thinks he did not make one. I have, however, here a copy of the proceedings there at Spokane—a printed copy.

Mr. HIGGINS. That was on conservation?

Mr. PRESTON. No; it was the irrigation congress; and you gentlemen have leave to use this if you wish, except that it requires an explanation. There are a couple of pages of it that have been cut out. A full copy can be obtained. This is what Judge Hanford has. Those two pages are some part of an address made by Mr. Pinchot there, which have been cut out for some other use, so that there will be no suspicion attaching to the missing two pages. We can get you, somewhere, if it can be got, a complete copy.

Mr. MCCOY. We can get it in Washington—you need not bother about it.

Mr. PRESTON. I will let you have it, so that you can read it over if you wish.

The CHAIRMAN. Gentlemen, let us proceed. We are using up a good deal of time.

Mr. MCCOY (addressing the witness). Mr. Klock, I think you had not gotten beyond the point where you were telling us about this meeting at the credit men's association at the hotel, and a motion having been made to appoint a committee; was that where you stopped?

The WITNESS. About there.

Q. Will you continue from there?—A. This committee, or rather Mr. Anderson, reserved the privilege of appointing that committee later. After meeting with your committee and being requested to have this information presented, I called upon Mr. Anderson, of the

Anderson Dry Goods Co., and put the matter up to him regarding presenting our grievances to your committee, and suggested that he and his brother act together, inasmuch as his brother had handled these matters. Mr. Anderson claimed that he did not care to act alone in the matter, and thought it better to see the other members and have a conference and take it over. Later I met Mr. Fred Fisher of Fisher Bros.—this was the same morning—and recited to him the request of your committee.

Q. By the way, that request included a suggestion that your association employ some attorney to make this compilation.—A. I believe that is correct.

Q. All right. You saw Mr. Fisher, and what took place?—A. Mr. Fisher—well, I asked him if he would agree to meet with your committee that evening, and he suggested that he did not care to be responsible for what was said or done alone, and he thought it would be better, too, for the association to go, or rather the committee—and accordingly Mr. Fisher called up Mr. Anderson on the phone and suggested to him the calling of this meeting. Later in the day I was notified over the phone that there would be a meeting at 5 o'clock at the Seattle Merchants and Credit Men's room in the Polson Building and to call there at once. I got Mr. Anderson on the phone, and I asked him what was the object of the meeting, and he recited that it was regarding the call of the committee for this—for presenting such information as they might see fit before your committee and to come at once. I begged to be excused, but he insisted on my coming. I did so. Do you wish me to continue there with the meeting?

Q. Yes; tell us all that happened; all that was said as nearly literally as you can, otherwise the substance of it.—A. When I called at the room not all the committee was present. I believe there was 9 or 10 members of the committee, or something in that neighborhood. When I entered Mr. Goldsmith was present and made the remark——

Q. What is his first name?—A. I think his name—his initials are J. S., if I am not mistaken—he represents the Schwabacher Bros. And Mr. Goldsmith and myself entered into somewhat of an informal discussion before the other members present, and a little later Mr. Anderson——

Q. What was said by you and Mr. Goldsmith at that time, as nearly as you can recollect?—A. Why, I told Mr. Goldsmith that your committee had asked for such information as we might have regarding these receiverships and bankruptcy proceedings and Mr. Goldsmith suggested that if any of us saw fit to volunteer that information it might be all right, but he did not think it wise to act as an association.

Q. Did he say why he did not think it wise?—A. Well, a little later in the meeting Mr. Goldsmith made this remark, that if the association would drop these proceedings and not take any action in it that he felt confident that he could go to Judge Hanford himself and succeed in righting the grievances which we had; that he thought he could induce Mr. Hanford to appoint such receivers as we might ask for. The meeting proceeded officially after Mr. Anderson had asked Mr. Wills to act as chairman. The discussion became general and nearly everybody took part. The principal part of the discussion was between Mr. Goldsmith on the one side and myself on the other. Mr. Goldsmith said he thought it unwise to take such action—we

could accomplish more by going to the judge as an association, or individually, reciting our grievances to him and ask him that those receivers or trustees be appointed as requested by the creditors. Referring to the Western Steel Co. and Mr. Baxter, as trustee, Mr. Goldsmith remarked that, inasmuch as the creditors to the amount of 60 per cent were principally Eastern people, that we were not interested so much here locally; that Mr. Hanford had acted within, possibly, the bounds of which we and he himself would act; that if he saw fit in a case of that kind he would appoint a friend of his own and that it was not so necessary to interview the local creditors when their amounts were in the minority. He also went on to state that while the old man, referring to Judge Hanford, I suppose, may have had his faults, that he was not much worse than some of the other Federal judges. But one special remark that he made was: "I must admit that the old man has, possibly, outlived his days of usefulness, nevertheless I would be willing to try a personal case before him"—or a case of my own before him—that while the old man may have taken a drink occasionally, that a man doing the heavy amount of work and working at night it was necessary to take a stimulant, and he did not think it necessary to censure a man for doing so; that we were entering into a fight that was being brought about by the Socialists—it was their fight and not ours; that we could right our grievances by going before the judge and making known the same to him. When he made the remark regarding the old gentleman's age and some of his shortcomings, I asked Mr. Goldsmith why Mr. Hanford had not resigned and saved all of us the inconvenience of being called in the matter, and thus saving his friends humiliation and saving the Government the expense of investigation, by resigning. He stated that it did not look well to have the judge resign at this particular time, especially under fire; that it was practically admitting his guilt to do so, and that the judge was not doing any more than any other man should do under the circumstances—he should fight it through; that we were not interested other than in bankruptcy proceedings. I think to this remark I replied that there were other matters of public interest, especially some State school lands over there on the Columbia River, that as a singular coincidence certain parties succeeded in having those school lands placed upon the market, and that a peculiar incident was that Judge Hanford and his associates knew of the time of the sale of those lands that were advertised in a certain out-of-the-way paper; that the public at large did not know about it; and to this I also further added that I thought a man unfit to sit upon the bench who would either take part in, lend or allow his name to be associated with any transaction of this nature which tended to defraud the educational fund of posterity out of its rightful belongings. He blamed our State land commissioner, Ross, for some of these actions and apparently seemed to be of the opinion that it was not very generally known and that this information was practically without foundation—that he had never heard of it before.

Other members spoke either for or against, but the consensus of opinion seemed to be that it was a Socialist fight and not a merchants' association fight, and one party made the remark that if we succeeded in impeaching Judge Hanford that the Socialists would claim the credit and that the credit would be given to them instead of to the merchants, and the proper course for redress would be to go

before the judge after this thing had all blown over and ask the judge to rectify the grievances we had asked for. There was also stated that the judge had rendered much valuable service to the community and it was not right for a business man to take part in this fight or attempt to produce evidence against the old man; that he had been a citizen for twenty some years and he had went through many a fight that was for the benefit of the community and it would be better for the association to wash its hands of the affair. The matter was put to a vote on a motion that we take no part in this matter as a committee. The motion prevailed, and it was so ordered.

Q. You have stated substantially all——A. It was a running argument that was participated in generally. I think I have recited the principal things that were brought out. There may have been other remarks made that I do not call to mind now that I may later.

Q. Did anybody say anything to the effect that if action were taken by those who were there that it might, if adverse in any way to Judge Hanford, result unfavorably to them?—A. Well, not directly. I think Mr. Goldsmith made this remark, that we would not stand in good favor with the judiciary to take action in this matter. That is not exactly the words of Mr. Goldsmith, but to that effect.

The CHAIRMAN. Any further questions?

Mr. PRESTON. Did you make the statement there, in relation to the school-land matter, that the sale of those school lands over near Hanford was a deprivation of the school children of the present and future of their heritage?

A. I made the statement that I did not think a man fit to sit as a judge on the bench who would either take part in, lend or assist, or allow his name to be associated with any proposition which tended to defraud or deprive the educational fund of posterity—that is substantially the words that I used.

Q. Did you make the statement that I have asked you about?

The WITNESS. Will you kindly repeat it?

Question repeated to the witness.

A. I did not make it in those words; no.

Q. Did you make it in substance?—A. I think that I drew the inference that the man who would do that was unfit for the judiciary.

Q. Did you also make the statement there at that meeting that you individually had furnished some money to a man to go and buy some of those school lands, but that because they were sold to the Hanford Irrigation & Power Co. your man did not get your share of this heritage, or words to that effect?—A. I made the statement that I loaned $325 to a certain party who had come to me and asked me to keep the matter as a secret and he would let me in on the proposition; that Hanford and his crowd had succeeded in getting a certain amount of the State school land being advertised in an out-of-the-way paper and the same would be placed on the market and there would be very few bidders there. I might add further that I also told this man at the time that I did not care to take any part in it, that I had so much land that I was land poor.

Q. I did not ask you what you told the man; I am asking you what you said at this meeting.—A. Well, I have answered the question as fully as you wish?

Q. You have not answered it directly—if you can't answer it, you can say so.

The WITNESS. Will you repeat the question again?

The CHAIRMAN. Just restate the question, Mr. Preston.

Question repeated to the witness.

A. No; I did not make words to that effect, because I had no share in the matter whatever.

Mr. PRESTON. Now, you say that Mr. Goldsmith said there, or that Mr. Goldsmith there at that meeting blamed Mr. Ross, and then you followed that, as I caught your testimony, by a statement that he said he did not know anything about the facts in the matter—he, Goldsmith.

A. I think that is correct.

Q. Now, was not the statement that Mr. Goldsmith made, that that was a matter which was in charge of the State land commissioner, Mr. Ross, and that if there had been any dereliction in duty that it was Mr. Ross's dereliction, or words to that effect?—A. I think that is probably the statement.

Q. And was that the statement that he made from which you deduced the conclusion that he blamed the commissioner, Ross?—A. I think possibly you are correct; yes, sir.

Q. Did he make the statement there that Judge Hanford, in his opinion, had outlived his usefulness?—A. Yes, sir; that is practically the statement Mr. Goldsmith made—"Well, I must admit," or rather "admit," I forget just whether he said "must admit" or "admit," I am not sure as to that, "outlived his days of usefulness"—I would not say whether he said "had possibly," "may," or "has."

Q. Did he say or use the words "outlived his usefulness?"—A. "His days of usefulness."

Q. Did he use the language———A. Let me add there—I think he said "as a judge"—I think that was added, if I am not mistaken.

Q. Did he use any words to the effect that Judge Hanford was not much worse than other Federal judges?—A. In substance he did.

Q. Did he say there that this committee was a committee appointed to effect cooperation between the Merchants & Credit Men's Association and the Federal court, and that it was outside of the scope of the committee's appointment?—A. Outside of what?

Q. (Continuing.) The scope of the committee's appointment to gather evidence for the congressional committee?—A. I think he said it was not proper or would not be wise—now, I am not sure as to the exact words he used.

Q. Did he say it was outside of the scope, or did he say that in effect?—A. I would not say that he used the word "scope" or not; I do not remember positively.

Q. Well, did he use words to the effect that it would be going out of the province of that particular committee?—A. It was practically to that effect. I think he said "unwise," if I am not mistaken.

Q. Now, you say that he said that he, individually, would be willing to have any case of his submitted to Judge Hanford for decision.—A. He did.

Q. Did he also say that he thought every man in the room would be willing to have his own case or his firm's case submitted to Judge

Hanford?—A. That was not at the time I was there—anyway, I did not hear that remark myself.

Q. Would you say that it was not made?—A. Well, it may have been made, but I did not hear it.

Q. You were right there, and you heard everything that was said, didn't you?—A. Well, it was a general discussion, of course, and I was listening more especially to Mr. Goldsmith's talk, because Mr. Goldsmith and myself probably sat as close to each other as you and I, and facing each other, and it was principally between ourselves that the argument took place.

Q. If Mr. Goldsmith made a statement of that kind which escaped your hearing, did you hear others in the room assent to such a proposition?—A. I did.

Q. What is your business concern?—A. Principally wholesale butter and eggs.

Q. Here in Seattle?—A. We manufacture, as well as job.

Mr. HUGHES. Manufacture butter and eggs?

A. We manufacture butter.

Mr. PRESTON. What is the style of your firm?

A. The Klock Produce Co.

Q. You do business here in Seattle?—A. Yes, sir.

Q. Did you yourself ever make any investigation of the facts in the McCarthy Dry Goods case?—A. I did not.

Q. Or in the Knosher case?—A. I did not.

Q. Or in the Western Steel case?—A. I did not.

Q. Were there any other cases mentioned at this meeting than those three?—A. In a general way there were. Personally I made this statement myself——

Q. Excuse me; we will get along better if I can get you to answer my questions.

The CHAIRMAN. His answers seem to be relevant; as I understand it, you are asking for anything that was said, and if he said it it was relevant.

Mr. PRESTON. My question was whether any other case than those three were mentioned.

The CHAIRMAN. Well, the way he is starting out may lead to an answer to that very question, but if you wish to change it you may do so.

The WITNESS. I asked some of the members present if we had ever received any returns satisfactory out of any of the cases we had in the bankruptcy court, and some of them claimed they had received some returns, but I do not know of anybody who claimed they had received satisfactory returns.

Q. Did you ever—was your concern ever interested in the bankruptcy proceedings?—A. Yes, sir.

Q. In which ones?—A. Why, in what is known as the Labor Union and the Wagner Post and Austin Bros.

Q. Is that all one case, or two cases?—A. No, sir; three separate cases.

Q. The Labor Union——A. The Labor Union Cooperative. I might add here that our claims, as well as other business houses' claims, are assigned to the association, and the association carries those claims through in order to save the business man from making

trips to appear in court and from having several different attorneys. It is done as a matter of economy and saving time.

Q. Go on and sate the next. You said the Labor Union Cooperative?—A. I think another was the Marysville Mercantile Co.

Q. And the next one?—A. Did you get Austin Bros.? That is the only four that I remember of our firm having any interest in.

Q. The Labor Union, the Marysville Mercantile Co., Austin Bros.—now, what is the fourth?—A. Wagner & Pass.

Q. Was there a receiver in any one of those four cases?—A. I think Mr. Jennings acted as receiver for the Wagner & Pass.

Q. Mr. Jennings was then the secretary of your association?—A. Yes, sir.

Q. And was he also elected as trustee?—A. I can not say. I did not follow those matters through in detail.

Q. Was there a receiver in the other three or any of them?—A. I can not tell you. I would refer you to George Telfer and I. H. Jennings.

Q. Do you know who was the receiver or trustee in the Labor Union Cooperative case?—A. No, sir.

Q. In the Marysville case?—A. I do not.

Q. In the Austin Bros. case?—A. I do not.

Q. Don't you know, as a matter of fact, in a great many bankruptcy cases Mr. Jennings, the representative of the association, was the receiver and trustee or receiver or trustee?—A. In the cases I was interested in, which were small cases, I think Mr. Jennings did.

Mr. McCoy. You think he got the little cases?

A. Yes. This statement was also brought out at that meeting that night that the practical object of our association was to expedite matters, to save ourselves, individually, trouble, and that we had always interested ourselves in keeping cases out of the bankruptcy court; that we usually could bid them good-by when they left our hands.

Q. Was that acquiesced in by the people generally?—A. I made that statement myself and no one objected to it.

Q. I wish you would state to the committee in full what you stated at this meeting in regard to the sale of those school lands and your advancing money on whatever conditions you did.—A. I stated that I understood——

Q. First state what you stated at this meeting.—A. Well, I stated that I understood there was 66,000 acres of land belonging to the State school fund over on the Columbia River—I think this was in Benton County—had been advertised in an out-of-the-way paper, and that as a singular coincidence the people connected with the Hanford project know about this sale, and they had men on the ground the day that the sale was made. and that there were very few people there outside of their representatives to bid in this land, and then I made the remark, as I stated, about the judge——

Q. Now, come to the part where you stated something about some money of yours that had something to do with the transaction.—A. A party had come to me and stated——

Q. I mean state what was stated at this meeting about it.—A. As nearly as I can remember, in substance, I said at this meeting that a party had come to me and borrowed $325 with which to make the initial payment on 160 acres that he bought over there—well, that was

the statement that I made at this meeting—and the other statement was relative to the deal between the man and myself.

Q. Did you state that he did not succeed in getting his allotment?—A. I stated that he did get the allotment; that he got 160 acres of land for which he was afterwards offered ten or eleven thousand dollars for it, and this land was bought for $1,700.

Q. Now, state to the committee all the facts in regard to your transactions with this man, what he said to you and what you said to him.—A. That is, outside of the committee meeting?

Q. Outside of the committee meeting; yes.—A. At the time that this sale was made and just previous to it, a party came to me who was an intimate friend and asked me if I did not want to go in on a little land speculation; that he had got next to a sale that was going to be pulled off over here by Judge Hanford and his crowd, and that it had been advertised in an out-of-the-way paper, and there would be very few people there, and he said, "If you come in on it and get on the ground you can buy yourself rich," or something to that effect. "You can get some land that is worth two or three hundred dollars an acre for a nominal sum—the land was appraised at $10 an acre and could not be sold for less than that." After going over the matter with the gentleman I recited the fact to the man that I had more land than I cared for, and I was land poor, and I did not care to make any further investments. He said then, "All I know is that you will never find a proposition like it again in your life, and you better come in," and he spoke in a rather detrimental manner of the gentlemen interested in it, and used profane language, and he said that if they were going to get in on it that he was not going to see them get it all; that he was going to get a piece of it or they would pay what it was worth; and when he returned he told me he got a dandy piece of land over there, and he said he had cleaned up a nice little sum of money on it; and I talked with him last night and he told me he had been offered $12,000 since for this 160 acres.

Q. What is his name?—A. E. G. Sutton.

Q. Where does he live?—A. He lives out on Twentieth Avenue—he is in business on Weston Avenue.

Q. Now, you did not put any money into the scheme at all or attempt to become interested in it?—A. Not only what I loaned this gentleman, as a friend?

Q. How much did you loan him?—A. $325.

Q. And he states to you that he bought, with that, 160 acres.—A. He made his initial payment.

Q. And that he has to make nine other payments; is that the arrangement?—A. That is my understanding.

Q. Do you know how much the total bid came to?—A. $1,700, he told me at the time.

Q. At the time?—A. Yes; that is, on the 160 acres.

Q. And he stated to you last night that the land was worth what?—A. He said he had been offered $12,000. I asked him if he was not foolish for not accepting it, and he said no; that it was worth twice that.

Q. Do you know how much land has been improved by irrigation ditches?—A. I do not.

Q. By irrigation or what not, in the meanwhile?—A. I do not.

Mr. McCoy. That is all.

The Chairman. Did he mention the name of the out-of-the-way paper in which the land was advertised?

A. I think he said it was the Benton County—some Benton County paper.

Mr. Higgins. The advertisement appears in the records—in the minute book of the Hanford Irrigation & Power Co.—a copy of their advertisement was attached as a memorandum of the land that was purchased.

The Chairman. Does it give the name of the paper in which the advertisement appears?

Mr. Higgins. I do not know.

Q. Where is that county?—A. I think Benton County is one of the Columbia River counties.

Q. The sale itself took place at Olympia?—A. No; it took place over there.

Q. On the land to be sold?—A. There, or near abouts.

Q. And where, from that, is this paper published, if you know?—A. I can't tell you.

Mr. Hughes. If you will pardon me one suggestion, I think you will get a little more light by examining the law of the State, because the sale had to be conducted in conformity with the statute regulating the sale.

The Chairman. You may inform us in that connection what is the statutory provision with reference to determining when school lands shall be sold.

Mr. Hughes. I will get the statute for you. I can give you my recollection, but I would prefer to get the statute for you and have it accurate, because that is the only valuable information.

The Chairman. If the statute provides when the land is to be sold and in whose discretion the sale is to be ordered, and those things, we would like to have that statutory information.

Mr. Preston. I think you will find that the statute requires the publication to be made in the county in which the lands are situated.

Mr. McCoy. Does anybody know what is the custom covering the advertising of sales of school lands, whether they are merely advertised in the locality or in the county where the land is situated or whether the practice is to advertise pretty generally throughout the State or outside the State?

Mr. Hughes. My recollection is that the law requires the advertisement to be in the county.

Mr. McCoy. I want to know what the custom is regarding the sales of school lands, and does anybody know whether they have ever been advertised elsewhere than in the locality.

Mr. Preston. I can not answer you as to that.

Mr. Hughes. The custom is to post notices in the office of the county auditor of the county where the land is situated and to advertise it in a paper published in the county and make the sale at the courthouse of the county where the land is situated; that is my recollection as to the law.

The Chairman. As a matter of fact, or practice, it is quite apparent, I think, that in land of that character where purchasers are apt to come from a distance of thousands of miles, that good, or reason-

ably good, business methods would require more advertising than in the local county.

Mr. HUGHES. I think that the land commissioner should confine his conduct in the matter to the law which regulates his action, to the law in regard to advertising and in regard to the interests of those who have a leasehold of the land under leases issued by authority of the statute, but I would prefer to get the law as it was in that regard.

The CHAIRMAN. In this connection we should put into the record those provisions of the statute which apply to the sale of school lands and then we can find elsewhere, if we can, what is actually the custom or practice, what it has been with reference to determining what lands should be sold and how it should be advertised.

Mr. HUGHES. I think I have a book which was put out by the land commissioner's office in which the laws and regulations are compiled, and I will submit it to you.

Mr. PRESTON. I submit, if you want to know what the custom is that we can get Mr. Ross to come down—we can phone to him over long distance, I do not think you need subpœna him, he will come—he is the State land commissioner.

The CHAIRMAN. We ought to have, I think. Any further questions of Mr. Klock?

Witness excused.

CHARLES S. WILLS, being first duly sworn, testifies as follows:

Mr. MCCOY. State your full name to the committee.

A. Charles S. Wills.

Q. What is your business?—A. Treasurer of the Seattle Hardware Co.

Q. You have been in the court room and have head Mr. Klock testify, haven't you, just now?—A. Yes, sir.

Q. Without asking particular questions, I will ask you the general question to please state to the committee, as nearly as you can recollect, in detail where you can, in substance where you can not, what was said at the meeting of the committee appointed by Mr. Anderson about which he has just testified.—A. I will have to explain that I was not there when the meeting—when they first arrived—I was about 25 minutes late. Shortly after I arrived, or when I arrived, Mr. Klock and Mr. Goldsmith were having a discussion, and the subject they talked about at that time was the Hanford Irrigation & Power Co. land about which Mr. Klock has just testified. I had heard this remark that Mr. Klock made about the lands, and Mr. Goldsmith questioned him, and Mr. Klock admitted that it was only hearsay, and I paid no further attention to the matter. And then the meeting was called to order and I was made chairman of it, and the resolution was introduced by Mr. Hassen that no action be taken at this time. It was seconded by Mr. Goldsmith, the ayes and noes were put, and it was carried with one dissenting vote—Mr. Klock voting no. That was all there was to the meeting, that I know of.

Q. Then we understand you, Mr. Willis, to mean that when you came there the thing was substantially over except this talk about the Hanford Irrigation & Power Co.—A. Yes, sir; substantially over.

Mr. HIGGINS. You were chairman of the meeting?—A. I was.

Q. The meeting was not over then? It was not organized until you arrived?—A. You understand they met informally, and they were talking, and after I came there it was organized.

Q. What was the motion?—A. That no action be taken at this time.

Q. On what?—A. On the resolution that had been adopted at the Credit Men's Association at the previous meeting.

Q. Which one?—A. I do not know the exact resolution. At that meeting I did not attend the dinner, but came down about half past 8, and that part of the proceedings had been dispensed with.

Q. Did you call this meeting together?—A. I was appointed as a committeeman by Mr. Anderson, and upon my arrival they organized and I was nominated as chairman, and I called it to order.

Q. This talk between Mr. Goldsmith and Mr. Klock was before the meeting convened?—A. Before the meeting convened.

The CHAIRMAN. Anything further?

Mr. PRESTON. Was there any discussion of the motion after the meeting was called to order?

A. None to speak of, Mr. Preston.

The CHAIRMAN. That is all, Mr. Wills.

Witness excused.

Mr. PRESTON. Judge Hanford sent in to me a newspaper clipping purporting to give part of his remarks on another occasion out at the exposition.

GEORGE D. BLACK, being first duly sworn, testifies as follows:

Mr. MCCOY. What is your full name?

A. George D. Black.

Q. What is your business?—A. I am president of the Black Manufacturing Co.

Q. Is your company a member of the Merchants' & Credit Men's Association?—A. Yes, sir.

Q. Were you appointed by Mr. Anderson on a committee?—A. Yes, sir.

Q. In pursuance of the resolution adopted in the meeting in June?—A. Yes, sir.

Q. Have you heard Mr. Klock testifying this morning?—A. Yes, sir.

Q. Now, referring to the meeting about which he testified and in which the committee appointed by Mr. Anderson met, state, if you can remember, about what was said and what was done.—A. I was called up over the phone by Mr. Anderson, telling me that I was appointed on this committee, and I told him I did not think I could be there. About an hour after that the girl called me up at the headquarters and told me that they were waiting for me, so I came there just before the resolution was voted on. I did not hear any discussion, except Mr. Goldsmith was talking—they were all sitting around the table informally talking. Mr. Goldsmith said that Judge Hanford had been here a long time, and so forth, and he did not think that we should take any action as an association, but if anyone wanted to furnish the information that the committee desired that they were at perfect liberty to do so. Mr. Cobb said that he thought now was the opportunity for us to remedy the wrongs which had been exist-

ing a long time, and Mr. Hassen got up then and offered the resolution that we take no further action at the present time; and it was voted on, carried, and we adjourned.

Q. Can you give any more in detail what Mr. Goldsmith said than you have here?—A. I only heard just a part of his remarks. I was there just a few minutes before the resolution was voted on.

The CHAIRMAN. Any further questions with Mr. Black?

Mr. HIGGINS. What complaint have you got to make, Mr. Black, of specific cases in which the bankruptcy law has not been well administered in this district?

A. I do not quite understand you.

Question repeated to the witness.

A. Well, the only complaint I have to make is the excessive fees.

Q. In which cases?—A. Well, the Knosher case particularly; that is the only one I know anything much about in detail.

Q. Can you give the committee any other cases than the Knosher case?—A. Nothing except hearsay. It has been discussed. We heard a good deal about the Western Steel, the McCarthy Dry Goods Co., and all those things.

Q. Any way, by hearsay or in any other way?—A. No; I can not recall any at the present time.

Q. You have not yourself any information about those cases which you referred to which you can give to the committee?—A. No; I do not know as I have any information any more than——

Q. If you have any I wish you would give it.—A. The information—you can get all the information from the secretary and the assistant secretary of the old Merchants' Association, who has the records—the cases are always turned over that we possibly can turn over. The members of the association turn over their claims to the association and they handle them.

Q. You refer to the present organization or to an independent and different one?—A. No; the present organization has just been in existence just a few months. It was previously the Merchants' Association, and the Credit Men's Association, and the Merchants' Association consolidated.

Q. What is the name of the secretary that you say has the information about the Knosher case?—A. I. H. Jennings and Mr. George F. Telfer.

Q. Both of Seattle?—A. Both of Seattle.

Mr. PRESTON. Were you present so as to hear anything that was said there by Mr. Goldsmith or anyone else in substance to the effect that those present would be willing that any controversy of their own should be submitted for decision to Judge Hanford?

A. I heard Mr. Goldsmith say in the latter part of his remarks that he would be willing to serve on any committee to go before Judge Hanford and talk over the matter of appointing receivers acceptable to the merchants. It may not have been those exact words, but that was the substance, as I understood it.

Q. Perhaps you did not understand my question right. There is evidence here before the committee that Mr. Goldsmith at that meeting made the statement that he or his company would be willing to have Judge Hanford pass upon any controversy in which they were

interested, and he thought that the others present felt the same way.—A. I was not present; I got there late.

Q. That did not occur when you were there, if it occurred at all?—A. No, sir.

Witness excused.

Mr. PRESTON. Mr. Chairman, if you are going off on some other subject we would like to call Mr. Goldsmith in regard to that matter.

The CHAIRMAN. There is a witness here waiting—Mr. Starr.

W. E. STARR, being duly sworn, testifies as follows:

Mr. HUGHES. Before you commence, Mr. Starr, will you be kind enough to speak out loud so that we can hear you.

Mr. MCCOY. What is your full name?

A. W. E. Starr.

Q. What is your business?—A. Dry goods department store, superintendent at Stone-Fisher Co.

Q. Your concern is a member of the Merchants & Credit Mens' Association?—A. Yes, sir.

Q. Are you an officer or trustee of the association?—A. No, sir; simply a member.

Q. And you have heard some testimony here about a committee this morning—were you a member of that committee?—A. No, sir.

Q. Do you know anything about that?—A. I was there when the committee was appointed.

Q. I mean about the meeting of the committee?—A. No, sir; I do not know anything about that.

Mr. MCCOY. I think Mr. Starr was called on another matter, and he can be excused for the present.

Witness temporarily excused.

J. S. GOLDSMITH, recalled, testifies as follows:

Mr. PRESTON. Calling your attention again to the meeting of the committee of the Merchants & Credit Men's Association, did you make a statement at that meeting, either before the meeting convened or afterwards—that is, either before the meeting organized or afterwards, in effect that Judge Hanford was not much worse than other Federal judges?

A. Not exactly in those words.

Q. Just what was it?—A. I said that Judge Hanford compared favorably with the Federal judges all over the country; that he was fully as good as any of them, and I could see no difference between his rulings and decisions and the other Federal judges that I knew.

The CHAIRMAN. Is not this almost a verbal repetition of what he testified last night?

Mr. PRESTON. No, sir.

The CHAIRMAN. My recollection is that he said substantially that last night when he was on the witness stand.

Mr. HIGGINS. This is in the nature of impeachment—contradiction.

The CHAIRMAN. He has no right to call witnesses to contradict some other witnesses, where this witness has stated the same facts here before; repetition is not contradiction.

Mr. PRESTON. I do not think that that was brought out yesterday, to my mind.

The CHAIRMAN. Well, if you think so you may go on, but avoid duplicating his testimony.

Mr. PRESTON. I have no desire to duplicate any of it. I asked the question because I thought it had not come out before; I do not intend to go over that again except in one or two points that seem to me from my memory had not come out before.

The CHAIRMAN. Proceed.

Mr. PRESTON. Did you on that occasion say something about Judge Hanford having outlived his days of usefulness as a judge?

A. I said that some people evidently thought that Judge Hanford had outlived his usefulness as a judge and that he should be cast aside like an old horse. I said that I did not think so, but that I thought he was fully capable of handling all the cases that came before him, and then I made the remark that I made in my testimony yesterday.

Q. You mean the remark about your willingness to submit cases to him?—A. Yes, sir.

Q. Now, you stated in your testimony yesterday, and I do not want to repeat it, that others assented; can you recall now which others present gave assent to that last statement which you have referred to?—A. I think that Mr. Wills did, and I think that Mr. Perry Polson did, and I think that Mr. Fischer did.

Q. Did you at that time make a statement that you personally could go to Judge Hanford—either that statement or in substance or effect—that you personally could go to Judge Hanford and correct any abuses that your association complained of?—A. I said that I felt if a committee from the merchants' association would go to Judge Hanford and put the matters in their right light, that he would take them up and adjust them to their entire satisfaction.

Q. You have not answered my question. Did you say that you personally could do it?—A. I did not.

The CHAIRMAN. Any further questions?

Mr. PRESTON. That is all.

The CHAIRMAN. Are there any other witnesses present in connection with that meeting of the Merchants and Credit Men's Association? If so, please rise and make your presence known.

Witness excused.

PERRY POLSON, being first duly sworn, testifies as follows:

Mr. MCCOY. State your full name to the committee.

A. Perry Polson.

Q. What is your business?—A. I am president of the Polson Implement Co.

Q. Your company is a member of the Merchants and Credit Men's Association of Seattle?—A. Yes, sir.

Q. You were on this committee appointed by Mr. Anderson, about which you have heard the testimony here this morning?—A. Yes, sir.

Q. Did you hear Mr. Klock testify?—A. Well, I came in——

Q. Well, you know what the meeting is that we are talking about?—A. Yes, sir.

Q. Please state to the committee what took place at that meeting, what was said, and state when you arrived, and all about it, as you recollect it, going into detail as much as you can, and where you can not give detail give the substance.—A. I was a few minutes late.

The meeting had not been exactly called to order when I arrived, and I heard Mr. Klock discussing the matter.

Mr. PRESTON. Speak up louder, please.

A. (Continuing.) And Mr. Goldsmith and others speak at that meeting. The committee, in the first place, as I presume you know, had been appointed.

Mr. McCOY. We have gone all over that. What I would like to have you do is to state fully, but as briefly as possible, just what took place when you got there—what was said. We know all about the arrangements for the meeting and what led up to it.

A. Well, the question seemed to be whether this committee should go before your committee, as a body, as a representative of the merchants, or not, and it was decided there to not go before this committee—this investigation committee—as a body.

Q. Now, what did Mr. Goldsmith and what did you say and what did Mr. Klock say and what did anybody else say at that meeting, as nearly as you can recollect it on that matter—what did Mr. Goldsmith say—what did you hear him say?—A. Well, Mr. Goldsmith said that personally he was not in favor of going as an association.

Q. What did he say about Judge Hanford, if anything?—A. Well, he said that Judge Hanford had been on the bench for a long time, was possibly getting somewhat old and possibly a little feeble, but he had been overworked, he thought, and that his rulings and decisions, he thought, had been up to the standard at least, comparing with other judges throughout the United States, and that at this particular time he did not think that we as a body should take it up as an association.

Q. What did he mean by "this particular time," if he said?—A. Well, I presume that your committee being in session here to investigate Judge Hanford's conduct, that he did not think it was right or proper for the Merchants' Association as an association to go before this body.

Q. Did he or did he not say anything to the effect that Judge Hanford, in his opinion, possibly had outlived his usefulness?—A. Well, I can not say. I do not think so—I do not think that he had outlived his usefulness—he admitted, I think we all agreed practically that Judge Hanford was getting to be quite an old man and had been overworked and a very hard worker.

Q. How old do you think he is?—A. Well, I don't know; I suppose he is a man of 60 or 65 years old, at least.

Q. You do not call that old in Seattle?—A. Well, it depends on the man's physical life—some men are old at 50 and some men are not very old at 80—there is a large difference.

Q. Did you hear Mr. Klock say anything about the Hanford Irrigation & Power Co.?—A. Yes; I heard that mentioned.

Q. Well, what do you recollect that he said?—A. Well, I think he said that the judge was connected with that company, but he did not know in what capacity he was connected with it; and I gathered the idea that about all Mr. Klock knew about it was that it was called the Hanford Power & Irrigation Co., and that there was a connection there, but what the connection was I do not think Mr. Klock knew.

Q. Did you hear Mr. Goldsmith testify a minute or two ago?—A. Yes.

Q. What is your recollection as to what he said about going to Judge Hanford in regard to the abuses, or alleged abuses, of which complaint had been made?—A. Well, he stated that he thought if we were to go—if the committee was to go before Judge Hanford or Judge Hoyt, or any of the courts, as far as that is concerned, and make our complaints known, that they would be remedied.

Q. Did he suggest that a movement on that ground had better be postponed until after the results of the hearing before this congressional committee were known?—A. Well, I do not think that he did that, but there was a motion made that no action be taken at the present time—that is, that the committee defer going to the judges with their complaint until later.

The CHAIRMAN. Any furher questions?

Mr. PRESTON. Do you remember, Mr. Polson, something being said by Mr. Goldsmith to the effect that he and his company would be entirely willing to have any controversy in which they were interested submitted to Judge Hanford for decision?

A. Yes, sir; I think he made that statement.

Q. And did he say that he thought others present would feel the same way?—A. Well, I do not know as to that; but that is very likely.

Q. And did some others there assent to that proposition?—A. There didn't seem to be any objection—there were no objections raised.

Q. Did you say anything on the subject yourself?—A. Yes, sir.

Q. What did you say about it—I mean about the matter that I am speaking of—that is, about the willingness to submit your controversies to Judge Hanford for decision?—A. Well, I agreed to that, and spoke along that line.

Q. What did you say?—A. That I thought we should make our complaints known to the judges and take them up with them; and I stated that in insolvency and bankruptcy cases it seemed to be the fashion in the United States and all over the country that lawyers and courts would take about all there was left and the creditors usually got very little. The organization had been formed for the purpose of handling delinquent estates without having those estates go into the court and be eaten up. Now, we thought that by working together with the judges, or rather getting the judges to appoint our association whenever possible, whenever our members insisted—have the secretary of our association made receiver when possible; at least give the creditors a chance to say who they wanted for receiver, and we think that we can save the creditors, and in many cases the bankrupt, quite a sum of money by so doing.

The CHAIRMAN. That does not answer your question.

Mr. PRESTON. I was asking what you said about the proposition as to whether or not you and your company would be willing to have Judge Hanford pass upon any controversy in which you were interested.

A. I did not say anything about that, but what I have just stated is a part of what I said as my argument in favor of our going direct to the judges with this proposition.

Q. Now, would you be willing to have Judge Hanford the judge in a case in which you were interested or your company?

The CHAIRMAN. That is bordering on a field that we have been avoiding absolutely—the matter of character evidence.

Mr. PRESTON. I would not have asked the question except that the record was in such shape——

The CHAIRMAN. This has been gone into only because it is a part of the res gestae, but you are now going into it independently, and it is character evidence, and I think it ought to be avoided.

Mr. PRESTON. I would like to explain a little further. My idea was this: My recollection is that Mr. Goldsmith said that he would be willing and that others agreed to it, and that, among others, he thought that Mr. Polson was one of them.

The CHAIRMAN. And the witness has just said that he was not.

Mr. PRESTON. And Mr. Polson said that nobody dissented from it.

The CHAIRMAN. The witness has told you specifically that he did not make any remark of that kind, and then you asked him, independently of the meeting, whether he would do so and so, which is the point that I think that you should not go into.

Witness excused.

The CHAIRMAN. Now, Mr. Preston, you stated that when we were through with this branch of the case and before we would take up another that there was some matter that you wanted to call the attention of the committee to. We are ready to call Mr. Plummer now—if there is anything which you want to call our attention to.

Mr. PRESTON. I think it was those records which I got in there—I can not recall anything else now—I think it has been substantially accomplished. I was asked by Mr. McCoy to get track of the stenographic report of what was said to have taken place at the Dreamland Rink meeting. I have information that such report is in the office of the United States district attorney, under Mr. McLaren's custody. He is right at the end of the hall here.

Mr. MCCOY. When we come to that let us have it in the record and have the man who took it here to prove it.

Mr. PRESTON. Do you want the reporter also to testify to the accuracy of it?

Mr. MCCOY. I think it would be the wisest.

GEORGE H. PLUMMER, being first duly sworn, testifies as follows:

The CHAIRMAN. Have you the subpœna which was served on you?

A. Yes, sir [showing].

Q. State your name to the committee.—A. George H. Plummer.

Q. Where do you live, Mr. Plummer?—A. Tacoma.

Q. What is your business?—A. Western land agent of the Northern Pacific Railway.

Q. How long have you held that position?—A. Since 1901.

Q. What are the duties and powers which go with that position?—A. I have under my charge the sale of land of the railway company within the States of Washington, Idaho, and Oregon.

Q. And you have had during the years you have mentioned?—A. Yes, sir.

Q. The subpœna asked you to bring with you all letters, correspondence, contracts, and papers passing between the Hanford Irrigation & Power Co. and the Northern Pacific Railway Co. in your possession and under your control. Have you done that?—A. I have, sir.

Q. Will you please submit those papers to the committee?—A. It is rather a voluminous bunch of papers [hands bundle of papers to the committee].

The CHAIRMAN. Mr. Plummer submits to the committee a large volume of papers and has kindly consented during the lunch hour to go through those papers with the committee. Until that is done we can not question him with a purpose. Mr. Plummer, you may stand aside for the present, and after lunch we will need you again.

Witness temporarily excused.

GEORGE H. STONE, being first duly sworn, testifies as follows:

Mr. McCOY. State your full name to the committee.

A. George H. Stone.

Q. You are the president of Stone-Fisher Co.?—A. Yes, sir.

Q. That is a dry goods concern in the city of Seattle?—A. Yes, sir.

Q. Wholesale or retail?—A. Yes, sir.

Q. Wholesale and retail?—A. Yes, sir.

Q. Do you know Sutcliffe Baxter?—A. Yes, sir.

Q. Did you have any dealings with him on behalf of your corporation, the Stone-Fisher Co., in regard to the possibility of purchasing the assets of the McCarthy Dry Goods store from him as receiver?—A. Yes, sir.

Q. State, if you can, when you first began to negotiate with him for a possible purchase?—A. The possibility of a purchase was taken up in the ordinary routine of such proceedings, which was through the publication of the receiver of the fact that there was a certain stock known as the McCarthy Dry Goods Co. that inventoried so and so and that bids would be received on a given date when accompanied by a certain percentage of the bid with a certified check. There was no direct communication between the receiver and ourselves in any other than a purely official—in his official capacity as receiver, and I have forgotten the details following, as it was several years since.

Q. Excuse me a minute, I want to get a memorandum which Mr. Baxter gave up here yesterday in the McCarthy Dry Goods case. [Mr. McCoy examines memorandum.]

Q. You or your corporation, Mr. Stone, did put in a bid in response to these advertisements or notices?—A. As I recall it we did, in the usual course; yes.

Q. The statement is made—or in a statement submitted to this committee by Mr. Baxter he states that Mr. Stone, of that company, referring to the Stone-Fisher Co., took the matter up in person and he first offered $40,000 for the stock; is that your recollection of it?—A. My recollection is that special offers or negotiations were made in the presence of Judge Hanford at the time he requested or set aside for any special considerations that might be offered.

Q. Did you at first, if you recollect, offer $40,000 for the goods on some terms?—A. I prefer not to state definitely because of the fact that my memory is somewhat hazy on that particular question of definite offers of definite amounts.

Q. Mr. Baxter, in his statement submitted to the committee, adds: "Then he raised his bid to $44,000." Have you any recollection of doing that?—A. I have a recollection of there being quite a continued consideration from within our own organization regarding

the amount, and that an increased amount was offered after our first sentiment on the matter.

Q. Mr. Baxter further states: "The receiver kept negotiating with him (meaning yourself) until finally Mr. Stone, in the forenoon of October 15, 1907, said that he would pay $65,000 for all the assets except the moneys in the possession of the receiver, said offer being conditioned that the same be accepted that day, and he made the further requirement that the purchase price be paid $10,000 in cash and $15,000 on the 15th day of each month thereafter, and that the assets should be delivered on the day he made the bid." What is your recollection as to that?—A. My recollection would be that that is substantially right, and the only possible question that might arise, without definite memory to guide, as I have none and made none, and made no records in the house which can be produced that I know of—but my idea would be that the conditions of immediate delivery did not obtain, but I do not consider that that is vital one way or the other, as there is not any particular reason that I now can see why the delivery should be made within 24 hours. Although I do think now, as I think into the matter further, that we were close to the holiday season when the question of time would be vital because of reasons which would naturally occur to all, that purchases before the holiday season are very much freer naturally than afterwards.

Q. How about the terms of payment, $10,000 cash and $15.000 a month?—A. Well, I think that, without definite figures, I think that may be substantially right.

Q. At any rate, it was on the basis of a cash payment and the balance in subsequent payments periodically?—A. I think that is right.

Q. Now, was that bid brought to the attention of Judge Hanford, so far as you know?—A. The fact of having appeared in the court room, as I before stated, when the question of whether or not our bid should be accepted, and possibly others that were considered at the time, should be accepted or not—will you please repeat that question again to me.

Question repeated to the witness.

A. Yes; the fact of the opportunity having been presented by the judge for anyone to appear and reveal their attitude with reference to the purchase, and several attorneys representing different interests having been present and arguing in favor of and also against a confirmation of the sale at that time or the announcement of the sale, would lead me to believe that perhaps even previously to the occasion, possibly—it is not vital one way or the other that I can see—previously it may have been taken up with the judge, but at that time it was thoroughly aired, something like possibly an hour having been given to the occasion and arguments pro and con.

Q. Were you in court at that time when this matter was argued for an hour or so?—A. Yes, sir.

Q. State what your recollection is of the objections, in substance, that were made to the acceptance of your bid; in other words, why did not all the creditors agree to accept it, as far as they stated?—A. I think one of the attorneys represented Chicago interests and stated at that meeting that a representative of he Chicago house

was en route to Seattle and desired—or that the house he represented desired—a postponement or delay of a confirmation of the sale until the arrival of the representative—and some encouragement was given. I will withdraw the encouragement feature. I will withdraw that, if you please, that last feature. I do not know that there was any encouragement given, but I think the appeal was made on the sense of fairness that the sale be postponed until large creditors should have an opportunity to protect their own interests so far as might be possible, and the reason you asked still further the reason why, as I recall it, that the sale was refused. If I recall it correctly the court state—and in this I must have the latitude of memory there, because a possible mistake——

The CHAIRMAN. Your best recollection.

A. My best recollection is the fact that it was stated, possibly in the interests of all creditors and especially the large one, that the postponement should be made and that the offer that we made was refused—the postponement was made and the offer not accepted.

Q. Now, Mr. Stone, have you now, as nearly as you can recollect, stated the only objections that were made at that time to the acceptance of your bid?—A. I certainly do not recall anything that occurred at that time that would lead me to think that there was any other reason.

Q. Then I will ask you specifically, Was the question raised at that time that your bid did not include an offer to secure in any way the deferred payments?—A. I do not recall that the question of security entered into it in any way.

Q. Assuming that the question had been raised, were you in a position to give security—your concern—for the deferred payments?—A. We were in this position as a house—that we did not know what our credit is at the banks; we do not have the cash in the bank to draw a check for it; we had perhaps something like three-quarters of a million dollars in dry goods that was not obligated in any way. We operated strictly as cash people. If we want to use the bank we feel at perfect liberty to do it at any time to the extent of our desires. I only had to say that we, as I see it now, would have felt at liberty to have said to the court, if the question of postponed payment or payments was vital, we could give them the cash.

Q. And this opening of the bids having been just before the holidays—during the holiday selling season—was, of course, the most favorable time for the sale of the assets, was it not?—A. Yes, sir.

Q. How did you consider your bid in amount compared with the value of the assets for which you bid?—A. Our intent was to do this, to bid beyond our actual opinion—beyond our opinion of the actual value of the stock—and in bidding beyond it was based on this fact: It was at a season of the year when we desired, naturally, as any jobing house would, perhaps, to move through retail channels, or any other legitimate channels, as many of our goods as we possibly could. The plan of proceedings was what usually obtains in such cases, that to distribute the goods at the place where they were located and under the flag or banner of the bankruptcy sale or receiver's sale, and it was our intent and plan to supply the store with goods at substantially wholesale figures—retail at wholesale figures—which would be very cheap to the public and legitimate, we believed, and yet so advantageous to them that we could move a liberal amount of goods,

and hence, we reasoned among ourselves, that we could afford to bid a certain amount because of that, and that was one reason why our bid was raised from the previous figure that had been named as our opinion of the actual value of the stock.

The CHAIRMAN. Any further questions of Mr. Stone?

Mr. HUGHES. The receiver recommended the acceptance of your bid, didn't he?

A. I would not like to say positively that he did or did not. I do not recall. I think the attitude, if I remember correctly, the attitude—I will state frankly that the attitude of the receiver was not unfavorable to our bid. I think it was congenial and natural in every way, but there was nothing I can recall now specifically one way or the other.

Q. And did not put in a written bid, a sealed bid, did you?—A. I think, if I recall it accurately—I do not like to state just what form of bids went in; there was a good many bankrupts' stocks in the air at that time and we have been pretty liberal buyers in the past—and the specific instance, and not having to give the matter any considerable thought I do not like to state in just what position the bids went in, but I would say this, however: Very naturally, of course, our bid would be in writing—that is, our bids were submitted with other bids. As I recall now, other bids had gone in before, and not being accompanied by certified checks had gone in and the court retained the privilege of postponing the sale, and the court postponed the sale after we had put in our bids, and this matter came up subsequently, if I remember right. I do not like to state.

Q. To refresh your memory, is it not true that the receiver, Mr. Baxter, and Mr. McClure came to your office, and it was there that you finally raised your bid to $64,000?—A. I think that is right.

Q. You know Mr. McClure, of the firm of McClure & McClure?—A. Very well; yes, sir.

Q. And you know Mr. Baxter very well?—A. Yes, sir.

Q. Now, you have had conversations with Mr. Baxter from time to time in which the question of your bid and the price you would pay were discussed?—A. Yes, sir; and as I previously stated that our conferences had been nothing outside of the official capacity of the receiver, and I wish it to be understood that way—there is nothing to reflect on Mr. Baxter or the Stone-Fisher Co. that we were in cahoots in any way.

Q. You know Mr. Baxter as receiver was striving to interview persons who would be likely purchasers?—A. I think he exercised the diligence and efforts—he put forth all the efforts that a faithful receiver ought to put forth to get the largest amount for the stock possible.

Q. And in that capacity and in that way he interviewed you at different times?—A. I think there was once or twice in the office, and I do not know whether I may not have met him—I met him sometimes on the street and would halloo to him on the street, and he would say, "Are you going to be bidders," and I would say, "Yes, perhaps."

Q. On this occasion, when you finally decided, after having discussed it in your own office with your own company as to your bid, you had a conversation with the receiver and Mr. McClure in your office

and there stated that you would make a bid upon the terms which you have already stated?—A. I think that is substantially correct.

Q. No one in this community questions the credit of your house—of the Stone-Fisher Co.—but let me ask you this: Is it not true that at that time we were operating under receiver's certificate—I mean bank or clearing house certificates through the banks—in other words, wasn't it after the panic of 1907 had put the banks to the necessity of issuing clearing-house certificates and cash funds were very difficult to secure?—A. I remember the incident of the clearing-house certificates clearly. With reference to the relation of that particular period to the McCarthy Dry Goods bankruptcy I am not clear.

Q. Perhaps you can recall it by the time. Do you remember that it was in the fall of 1907 and the fore part of 1908?—A. If the dates are identical, I will be very pleased to change the wording of my answer a few moments since by saying that if the dates are identical and we were at that time operating under the clearing-house certificate feature we would not feel at liberty to have asked our bank for one cent.

Q. You do recall, if you refresh your mind, that the period when the clearing-house certificates were being used was in the fall of 1907 and the winter or early part of the year 1908?—A. Yes, sir.

Q. Now, after you had informed Mr. Baxter, the receiver, and Mr. McClure, his attorney, in your office that you would make this bid you were advised that the matter would come up before Judge Hanford at a stated time, were you not?—A. Yes.

Q. And it was in this court room, wasn't it—or it was in the old court room, I think?—A. I don't recall.

Q. At that time it must have been in the old court room at the corner of Fourth and Marion Streets—but there were a number of people present, Judge Hanford being on the bench, were there not?—A. Yes, sir.

Q. And among those present were stockholders or preferred stockholders of the McCarthy Dry Goods Co.?—A. I don't know.

Q. Don't you recall the persons speaking on behalf of the preferred stockholders objecting to the making of this sale at that time?—A. No, sir; I do not recall that.

Q. You do not?—A. I do not recall that.

Q. Do you recall that some of the creditors other than the one you referred to as the Chicago house which you mentioned also spoke at that time?—A. I have a faint memory that they did, but the only one that I recall as having represented any considerable amount or having made any considerable impression on my mind was the gentleman representing the Chicago house.

Q. You do not remember that certain attorneys representing other creditors spoke there?—A. Yes; quite a number of them.

Q. Don't you recall that they objected to the confirmation or the making of the sale?—A. Yes, sir; I think their attitude was rather against the confirmation of the sale.

Q. Now, try to refresh your memory, because I know you will give us the facts as you recall them. Can not you recall that some one speaking on behalf of the preferred stockholders also objected to the making of the sale?—A. Possibly if the name was given to me I might recall it.

Q. Do you remember Mr. Leopold M. Stern?—A. Yes, sir.

Q. Do you remember his speaking in opposition to the making of the sale?—A. Yes, sir; but in connection only with the Chicago house—I do not recall that he mentioned the stockholders.

Q. You do not recall that he expressed the objection of the preferred stockholders?—A. No, sir; he may have done so, but I do not recall it.

Q. Mr. Stone, you recall, do you not, that the action that was taken at that time in turning down your bid was based upon objections of creditors or preferred stockholders or both—that is to say, it was based upon objections made there by parties who had the right to object if they saw fit?—A. I do not know that I would like to undertake to interpret the thought of the court.

Q. I am not meaning to ask you for that, except as it was expressed by the court.—A. There were reasons, possibly ample reasons, presented why the sale should be postponed. Perhaps I am safe in saying that the reasons would seem to appeal to a court, but just what the motive or thought was, of course, I can not tell.

Q. You do not recall what the judge said at the time in announcing his decision.—A. No. I was trying to recall it as the committee asked the questions a while ago, and while I do not recall it, the only leading thought presented clear enough to even clothe it in my own words—I was trying to do that.

Mr. McCoy. Mr. Stone, Mr. Hughes asked you something about the condition of the money market then, and the fact that you were using at the same time out here—the banks were using those clearing-house certificates and what not—was there anything in that situation that would have prevented the receiver from dealing with you on terms of perfect safety in regard to payment?

A. Perhaps I am justified in giving my opinion of the matter.

Q. That is what I am asking you for.

Mr. Hughes. If what you want is a statement as to whether they were insolvent or not—I never meant to include that in my questions of the witness.

Mr. McCoy. No, not at all; but you asked some questions as to the discussion between Mr. Baxter and Mr. McClure with Mr. Stone, that is in regard to the clearing-house certificates; at any rate you mentioned the clearing-house certificates, and I supposed it was because of some connection with the matter.

Mr. McCoy. Now, was there anything, Mr. Stone, so far as the matter of the clearing-house certificates were concerned, whether they were being used at that time or at any other time, which would have prevented a satisfactory arrangement with Mr. Baxter for the payment of those goods to the amount of your bid by the Stone-Fisher Co.?

A. Possibly you will pardon me in answering that question to deviate the least bit from a direct answer, yes or no.

The Chairman. You may have the opportunity this time, because you have not done it yet.

A. The question of how far a court, in realizing upon property in the hands of the court may be permitted to deviate from a direct cash consideration would enter in, and I would like to answer that only in this way, as it is passing upon our own credit, that I would simply say that had I had the distinguished honor of sitting in the

chair of Judge Hanford I think I would have felt perfectly safe in assuming that an organization fixed just as we were at that time would meet their obligations precisely at the minute that they agreed to meet them.

Q. Well, I will put it a little more specifically. Suppose the proposition had been put right up to you, Mr. Stone, "We must have the cash or the equivalent of cash for this $60,000 bid," what would you have done?—A. Now, that the particular date and conditions are fully made familiar, I would have to say that I do not know what we would have done. It is hard to say. It was a time when the matter of $60,000 was not flying about on the streets here for every good house to pick up.

Q. I do not mean what would you have done in regard to complying with the absolute cash payment, but I mean what would you have done to satisfy the court, or offered to do to satisfy the court and Mr. Baxter, as a careful receiver, not what you would really tender as payment?—A. Had I been in the court I would have requested this, to have made it absolutely safe for the court, "That we, as a court, will insist on placing our cash here in that building and as the stock is distributed and realized upon a cash sale, we will retain the amount to the extent that you are obligated as the sales are made."

Q. That would have been satisfactory to you, would it?—A. That would have been satisfactory to us, surely.

Mr. HUGHES. Did you make any such proposition as that?

A. No, sir.

Witness excused.

W. E. STARR, recalled, testified as follows:

Mr. McCOY. What is your connection and how long has it existed with the Stone-Fisher Co.?

A. I have been a member of the board of directors and connected with them for about eight years and acting as superintendent.

Q. You have been sitting in court while Mr. Stone has been testifying before this committee.—A. Yes.

Q. And you heard what he testified about?—A. Yes, sir.

Q. You appreciate, of course, the scope of the questions that were asked him?—A. Yes, sir.

Q. Have you anything to say which will in any way supplement what Mr. Stone has said to the committee in regard to this McCarthy Dry Goods matter and the bid, etc., or to vary it in any way?—A. I think that as I have been sitting here and following what took place—I was present in the court room—I do not think I can add anything to what Mr. Stone has said. I think that his recollections of what took place on the part of the court and on the part of ourselvers as bidders is very correct.

Q. That is, you will substantiate his recollections of what took place in court.—A. Yes, sir.

Q. Now, have you any recollection of the question having been raised at any time, either in court or anywhere else, as to the perfect ability of the Stone-Fisher Co. to make good this bid of $60,000 in cash, or by way of security if the payments were deferred as proposed?—A. I do not think any such proposition of security ever was

put up beyond a note signed by a certain number of the majority owners of the business.

Q. And was that proposition put up?—A. I do not remember that any proposition other than the usual course with merchandise notes.

Q. Were you present at any interview or interviews with Mr. McClure, of the firm of McClure & McClure, and Mr. Baxter in regard to your bid or the bid of Stone-Fisher Co.?—A. I do not. I remember that the proposition was made, but I can not swear that I was present in the office at the time.

Q. Have you heard at any time of any question being raised or suggested against this bid because of the possible fact that it might have to be pair for in clearing-house certificates, or what not?—A. No, sir; not before to-day.

Q. This is the first time you ever heard that suggestion made?—A. That is all.

Mr. HUGHES. Have you heard that suggestion made here to-day?

A. Not unless it has cropped out in the evidence.

Q. Have you heard it crop out in the evidence in any way?—A. Only as a suggestion.

Q. Only as involving the question of the ability to pay cash at that time. Now, I want to say now for the benefit of this committee, there is no question that I ever meant to suggest as to the solvency of the Stone-Fisher Co., or their ability to pay, or their credit at all. I only asked certain questions of Mr. Stone as proper cross-examination because I thought he was overlooking a financial condition existing here at that time.

Mr. MCCOY. I understood your question leads up to this proposition that a receiver's only duty is to receive cash, and my questions were directed exactly to the same thing—now, is not that the point, Mr. Hughes?

Mr. HUGHES. I do not understand, Mr. McCoy, that that is the point. The ground on which I understand the sale was rejected—that the creditors and preferred stockholders objected to it—I have not understood at all that it was based on the ground that this proposed purchaser was not able to meet his obligations or that a satisfactory arrangement could not be made with the purchaser, but it was objected to because the creditors and preferred stockholders objected.

Mr. MCCOY. Then, I misapprehended your question about the clearing-house certificates. I won't ask you to explain it.

Mr. HUGHES. I saw a good opportunity to let the committee know what the conditions financially were here at that time and thought that might throw some light on the result of the McCarthy Dry Goods receivership.

The CHAIRMAN. The committee will take judicial knowledge of that fact, I can not——

Mr. HUGHES. May I ask one question? Your bid was not submitted in writing, but orally, was it?

A. I could not testify regarding that.

Q. Do not you recall that, Mr. Starr, you made an oral statement in court at the time?—A. I remember the oral statement, but whether that had been preceded by a bid I could not say.

Witness excused.

The CHAIRMAN. On account of the large volume of correspondence to be gone through the committee will take a longer recess for lunch than usual—we will take a recess until 2 o'clock.

Whereupon a recess is taken until 2 p. m.

AFTERNOON'S PROCEEDINGS.

JULY 18, 1912.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

The CHAIRMAN. The committee will please be in order.

FREDERICK T. FISCHER, having been first duly sworn, testified as follows:

Mr. McCOY. Your full name, Mr. Fischer?

A. Frederick T. Fischer.

Q. And your business?—A. Wholesale grocer.

Q. Of what firm?—A. The firm of Fischer Bros.

Q. Your firm is a member of the——A. Seattle——

Q. Yes; if you will give the name?—A. Seattle Credit Men's & Merchants' Association.

Q. You were appointed on a committee of that association by Mr. Anderson, the president?—A. Yes, sir.

Q. Did you hear Mr. Klock testify this morning?—A. No, sir.

Q. There was a meeting of that committee held some time this month, I believe?—A. I think it was; yes.

Q. It was possibly in June?—A. Yes; within two or three weeks.

Q. A meeting at which it was suggested to the members of the committee that this congressional committee had asked for some form of cooperation; do you remember that?—A. Yes, sir.

Q. How long were you at that meeting yourself? Did you get there——A. (Interrupting.) I was a little late getting in there, Mr. McCoy, and stayed until the end.

Q. Well, if you will state, as nearly as you can remember, in detail, or substantially where you can't remember the details, any remarks that were made by anybody at that meeting, and particularly what Mr. Goldsmith said and what Mr. Klock said?—A. Why, I think the purpose—or the meeting was called merely on the suggestion of Mr. Klock, I believe, to confer together with an idea of being called before the committee through the instigation of Mr. Perry, as I recall it, and during the course of the meeting general conversation ensued, and we thought that the matter in hand was more or less irrelevant to the matter at the present time. The gist of the conversation was that there was no immediate hurry for this matter to be taken up, and it was——

Q. (Interrupting.) Well, what was said, Mr. Fischer, as to complying with the request or suggestion of this congressional committee for cooperation?—A. Oh, that the committee should not be called upon as a body, but should be—if they were called upon to testify individually, why, all right.

Q. Well, did you hear Mr. Goldsmith make any statement at all?—A. I heard Mr. Goldsmith make some remarks.

Q. What did he say?—A. I don't remember exactly what the remarks were in his own language, but the purport of the remarks

were that he had known Judge Hanford for a great many years and esteemed him very highly, and knew that he was a very hard-worked man, and that he felt that this investigation ought not to be brought just at the present time. I think that was about along the line of the remarks.

Q. Well, can't you give us a little more in detail what he said?—A. Why, I think that—exactly what he said, do you mean? I couldn't tell that quite, Mr. McCoy; it has kind of gone out of my mind.

Q. Well, I would not expect that you would remember the exact words, but the substance of each phase of his remarks. Now, you have stated that he said what he did say about Judge Hanford. What else did he say about him?—A. He said that he had known him for many years and considered him to be a man of excellent reputation in every way; that his habits were good: occasionally he might take a little drink; and that question had been brought up, I believe—been referred to or something—and he merely mentioned that he thought he was always very temperate in that respect, and I think also he said that the judge was getting a little old, or words to that effect.

Q. Did he say anything in substance to the effect that he thought the judge perhaps had or was about to reach the full limit of his period of usefulness?—A. Why, some language along that line; yes, sir; words to that effect.

Q. Do you remember hearing Mr. Klock say anything about the Hanford Irrigation Co.?—A. Mr. Klock did make some remarks in regard to that.

Q. Do you remember what they were?—A. Why, I could not tell you exactly, because I don't think I was paying very close attention, but it was quite—it was of quite an intricate nature, explaining the legal sides of the case, which at the time I didn't pay much attention to, because I thought it was irrelevant.

Mr. McCoy. That is all.

The Chairman. Any further questions?

Mr. Hughes. I would like, with the permission of the committee, just to ask a question or two, and if it is not objectionable I will ask it in leading form, for the purpose of doing justice to members of this association.

The Chairman. Ask him.

Mr. Hughes. Mr. Fischer, was there anything said there that either expressed or implied an unwillingness on the part of the members of this association as individuals to give any information that they might possess to this committee?—A. No, sir.

Q. Was there any intimation there that they should in any way interfere with the work of this committee or subvert its efforts to get at the truth?—A. No, sir.

Q. Was there anything further than an intimation or suggestion adopted finally by the committee, that the association as an association, or its committee appointed for another purpose, should not act officially in the matter?—A. No, sir.

Q. Was it not suggested there and assented to by everybody that as individuals they should all feel at liberty to give any information they might possess——A. (Interrupting.) Yes, sir.

Q. (Continuing.) That they were called upon to give, but not to act as an official body?—A. Yes, sir; that was the case.

Mr. HUGHES. That is all.

Mr. MCCOY. Was anything said there to the effect that it might not be for the best interests of anybody a member of that committee to take any part in this congressional inquiry?

A. I don't recall any such remarks; no, sir.

Witness excused.

CHARLES F. PETERSON, being recalled, testified as follows:

The CHAIRMAN. What are your initials?

A. Charles F.

Q. You are the same Charles F. Peterson who testified before the committee one day last week?—A. Yes, sir.

Q. At that time you were asked with reference to the name of some person who you said was with you on a certain occasion near the Washington Hotel, I think, when you saw Judge Hanford. I may not state the facts correctly, but do I recall to your mind what you testified then and the fact that you promised to consult the records of the hotel to get the name of the person who was with you?—A. That was in regard to a date—in regard to the date that I was supposed to have seen Judge Hanford drink in the Rainier Grand Hotel.

Mr. MCCOY. Your testimony was that you were on your way to meet this person.

A. Yes; at the Colman Dock.

The CHAIRMAN. Well, have you obtained the information that you promised the committee you would get?

A. I think I have. The date was January 27.

Mr. HUGHES. Of what year?

The CHAIRMAN. Of this year?

A. Of this year; yes, sir.

The CHAIRMAN. Any further questions?

By Mr. DORR:

Q. Who was the person, Mr. Peterson?—A. That I met?

Q. Yes. sir.—A. Mr. O. A. Wadenstein.

Q. Of Tacoma?—A. Well, he is representing F. S. Harmon; that is, he has charge of their wholesale furniture business here in the 1500 block on First Avenue south.

Q. Is he there now?—A. Yes, sir.

Q. And January 27, 1912, is the day that you say you saw Judge Hanford in the Rainier bar?—A. Yes, sir.

Q. The Rainier Grand Hotel bar?—A. Yes, sir.

Q. You fixed the time when you were on the stand before as November, I think?—A. Was that all?

Q. Sir?—A. Is that all I said?

Q. I thought you fixed it——A. I said November, December, or January, and I was under the impression that I could have referred to the register of the Washington Annex Hotel and find the date that he was here.

Q. Now, you are certain this is the correct date?—A. I certainly am.

Q. That was on Saturday?—A. Yes, sir.

Witness excused.

F. W. BURPEE, being recalled, testified as follows:

Mr. McCOY. Mr. Burpee, do you wish to make any correction of or addition to the testimony that you gave the other day?—A. Yes, sir; I do.

Q. You may state what.—A. In reply to a question from Mr. Dorr as to the date at which I met Judge Hanford——

Q. Yes.—A. (Continuing.) I think I stated it was January or February, 1903.

Q. Yes.—A. I would like to state that it was in April, 1903, instead of January or February. It was in January or February that I first heard regarding Judge Hanford's invention.

In reply to Mr. Dorr's question as to where I met Judge Hanford, I may say that I asked of Mr. McCord at that time where Judge Hanford's office was, and he told me it was in the Federal Building. I had just received a letter from the committee in which they said this investigation was being held in the Federal Building, and for that reason I took this to be the same place, but on leaving this building I saw that this was not the same building, but it was in the building then known as the Federal Building.

Mr. HUGHES. Pardon me for the interruption. That was at the corner of Fourth and Marion, in this city?

A. I am not very positive.

Mr. HUGHES. Just across from the Rainier Club?

A. I am not very positive as to positions in this city. I am not just acquainted with those blocks, but it was a building known at that time as the——

The CHAIRMAN (interrupting). Its location is in the record six or seven times now.

Mr. HUGHES. There have been three different locations. I was simply fixing the time. That would be the location at that time?

The WITNESS. At that time.

Mr. McCOY. You say you don't know anything about where it was; you know it was the Federal Building?

A. Yes.

Q. Just what was your information?—A. Mr. McCord told me his office was in the Federal Building.

Q. Have you, since you testified, looked up the question about the patent to Judge Hanford?—A. Yes.

Q. I will read from the statement that you have handed to me and ask you whether this is correct: The "'Title of the invention is 'Machine for operating on cans or other receptacles. Inventor, Cornelius H. Hanford. Number of patent, 748,368; issued December 29, 1903. Application for patent filed July 18, 1903.'" Those details are correct, are they?—A. As I copied them from the Gazette.

By Mr. DORR:

Q. You fix this time as April, 1903?—A. April, 1903.

Q. And when was the application for patent made?

Mr. McCOY. July 18, 1903.

Mr. DORR. Then this would be before the application for patent?

A. Before the application was filed, but I understood that he was applying for a patent on his invention, but before it was filed.

Q. You stated the other day, as I recall it, that it was between the date of the application and the date that the patent was issued that

you had this conversation?—A. I understood that an application was being made for a patent. Since I have found that the application was filed with the Patent Office in July.

Q. Well, and because you have so found you fixed——A. (Interrupting). I wish to correct that.

Q. You want to correct your statement?—A. Yes; I want to correct that.

Q. You say the conversation that you had was before the application for patent was filed?—A. I wish to correct any statements that I find are not correct.

Q. I understand, but you say now that your conversation with Judge Hanford was before he applied for the patent?—A. That is what the record shows.

Q. And you still say that the Judge wanted to sell you that patent?—A. I do.

Q. He told you so himself?—A. No.

Q. How?—A. No.

Q. Did he ever intimate any such thing to you?—A. No.

Q. Did he ever talk to you at any time about selling that patent to you?—A. No.

Q. You were there solely to consult with the court, in conjunction with your attorney, as to the suit that was involved?—A. No.

Q. Sir?—A. No, sir; I was not. I was there to see the judge regarding his invention.

Q. You went there to see the judge regarding his invention?—A. Yes.

Q. And he never offered to sell it to you and you didn't offer to buy it?—A. From Mr. McCord I was given to understand that he wanted to sell it to me, and I went with Mr. McCord to his office in connection with that matter, and he explained to him that I did not want to purchase it.

Q. Did you explain to Judge Hanford that you didn't want to purchase it?—A. No; I didn't.

Q. Sir?—A. No; I didn't. Mr. McCord explained it.

Q. I want to get right at the conversation that you had with Judge Hanford.—A. I went with Mr. McCord to Judge Hanford's office, and Mr. McCord explained to him that I did not wish to purchase his invention; that I had made certain changes to my machine by which I thought I had avoided infringement of the claims he had decided were infringed, and I was manufacturing the machine as so changed, and that it was only a short time before, or a little over a year before, the patent belonging to the Alaska Packers would expire, at which time we would be able to manufacture our own machine, and for those reasons we did not care to purchase his invention. It was for that reason we went to see Judge Hanford.

Q. Are you sure, Mr. Burpee, that this occurred in April, 1903?—A. Yes.

Q. You have refreshed your recollection and——A. (Interrupting.) I have seen a copy of a letter I received from Kerr & McCord at that time, which fixes that date.

Q. About this same matter?—A. About this same matter.

Mr. McCoy. Have you got the copy with you?

A. Yes.

Mr. McCoy. Let me see it, please.

Witness produces paper.

Mr. McCoy. Do you want to look at this, Mr. Dorr, before it goes in?

Paper referred to was handed to Mr. Dorr.

Mr. Dorr. This letter seems to be dated April 13, 1903?

A. Yes.

Q. Now, can you fix the time of this interview?—A. I am not certain as to the exact date. I am of the opinion that I was informed by Mr. McCord, by telephone or some other way, that the judge was not able to be—would not be able to get back at that date, that he was delayed by trains or something, I have just forgotten what, and that it would be a day or two later. I am of the opinion that it was about Tuesday instead of—I met Judge Hanford the following Tuesday instead of Sunday as asked for in that letter.

Q. Had the judgment been entered against your firm in this patent litigation at that time?—A. By Judge Hanford; yes.

Q. It had been?—A. Yes.

Q. And you were enjoined from manufacturing the machines according to the plans that you had been manufacturing them on?—A. We were enjoined from manufacturing the machines containing the claims decided by Judge Hanford that were infringed by us.

Q. You were then seeking some way to avoid that decision, were you not?—A. I was trying to build a machine in which those claims would not be infringed.

Q. And you heard of this invention some way—Mr. McCord had told you?—A. Yes.

Q. Or somebody else—sir?—A. Yes.

Q. And you wanted to investigate it, to find out whether it was practicable?—A. I had tested it out as far as the practicability was concerned before this date.

Q. You had tested out the Hanford device before that?—A. I hadn't seen the Hanford device; I knew nothing of the Hanford device.

Q. I say, you wanted to find some device that you could use that would avoid the patent that you were infringing upon?—A. I had devised a scheme and I had my plans made and was building and changing the machine that had been built to this plan.

Q. I say, that is what you were engaged in at that particular time?—A. Yes.

Q. To find some scheme for avoiding the patents that you were adjudged to have been infriging?—A. Yes; and I brought down drawings of the plan that I was working out with me at that time and showed them to Judge Hanford at that time.

Q. Well, that had nothing to do with the previous litigation, so far as the validity of the patents were concerned, Mr. Burpee, had it?—A. I didn't just understand your question.

Q. I say, these matters had nothing to do with the litigation as to the validity of the patents that were involved in the suit?—A. No; I don't think they did.

Q. That was all settled long before?—A. Well, it was settled in Judge Hanford's court, but it was at that time before the court of appeals; it was not settled in the court of appeals.

The CHAIRMAN. You remember that Mr. Burpee testified the other day that while the matter had been decided by Judge Hanford it was then pending in the court of appeals and that the damages for the infrigement would not be fixed until the court of appeals had decided the case.

Mr. DORR. I do.

The CHAIRMAN. And the question of damages was still pending.

Mr. DORR. Yes; I remember that he so testified.

Mr. DORR. And the matter of damages was settled by a stipulation between the parties, ultimately, was it not?

A. Later, yes; in 1904.

Q. The judge had nothing at all to do with that?—A. No.

Q. It was an agreement outside of court?—A. Settled outside of court.

Mr. MCCOY. In 1904?

A. 1904.

Mr. DORR. I think that is all I want to ask him.

Mr. MCCOY. I would like to have that marked. Where did you get this copy, Mr. Burpee; who furnished you this copy of this letter?

A. I really got it from Mr. McCord.

Q. This is a copy of the letter that you received from Kerr & McCord at that time?—A. I believe it is.

Q. Then, the letter is dated Seattle, April 13, 1903, and is addressed to Messrs. Letson & Burpee, Fairhaven, Wash., or at least the copy shows that, and is signed by Kerr & McCord. Letson & Burpee was your firm?—A. Yes.

Q. That is all, Mr. Burpee, unless you want to say something else.

Paper above referred to was marked "Exhibit No. 84."

GEORGE MCINTYRE GIBBS, having been first duly sworn, testified as follows:

Mr. MCCOY. Please give us your full name.

A. George McIntyre Gibbs.

Q. And you live where?—A. British Columbia—Vancouver.

Q. What is your business?—A. I am president of the British Columbia Drilling & Dredge Co. and managing director of the Queen Charlotte Island colleries.

Q. Are you familiar with any of the properties formerly belonging to the Western Steel Co. and located in Canada?—A. Yes; I am by the reports of the men I have had working on it and also from the reports of some of the most celebrated engineers of the United States.

Q. Is that on what is called Gorhams Island?—A. No; Graham Island.

Q. Have you ever visited the property yourself?—A. No; but my men were working on it at the time that the Western Steel went into the receivership.

Q. Did you have any conference or conferences with the receivers of the Western Steel in regard to the sale of the property?—A. I at-

tended the creditors' meeting and urged as hard as I could to delay the matters until they could investigate the case a little thoroughly. It was at that time in the winter time. It was Crown-granted land—20,000 acres. They had 600,000,000 feet of timber on it. It was worth at least 50 cents a foot and would probably——

Mr. HUGHES (interrupting). A thousand, you mean?

A. Or a thousand, I mean. Will be worth, likely, a great deal more in the near future with the building of railroads. I have been bringing out coal which I paid for after the company went into the receivership, as the men were not out. The coal—Mr. Hays, late general manager for the Grand Trunk Pacific, said it was as fine coal as he had ever seen under the conditions—it was only 20 feet down in the ground. I had samples of the coal out here.

Q. Well, did you state these facts at that meeting?—A. I stated those facts as far as I could. I raised the objection at the creditors' meeting that there should be a little bit more delay in order to ascertain the true facts of the case. The 20,000 acres of Crown-granted land, as farm land, after the trees are taken off, is worth a consideration.

Mr. HUGHES. A little louder.

A. I say, the 20,000 acres of Crown-granted land—Crown-granted land in Canada—the timber may be exported while licensed timber can not be, which is of considerable advantage if we want to ship timber into the United States. The Crown-granted land, or at least the licensed coal lands—I staked 38,000 acres on Graham Island about two years ago, and I have got a million-dollar company in which we are developing now and which we have a sale on bond in the old country, and that is valued at $20 an acre; so that the Crown-granted coal lands, of which we got the specimens of coal of the Western Steel, ought to be worth a great deal more. I think that the Crown-granted lands of the Western Steel ought to be worth, at the very least, $30 an acre. The timber ought to be worth at least $300,000 and the farming lands, after the timber is taken off, must be worth a certain amount; and I think any sane person would say that at the lowest valuation it is worth $700,000 at the time it went into the receivership.

Q. And you urged these objections at the meeting there?—A. I urged these considerations at the creditors' meeting here.

Q. In Seattle as——A. (Interrupting). Yes; I raised the point with Mr. Bausman, if I may mention his name in his absence, that the Metropolitan Trust, before making a loan to the extent of $600,000, might place out good valuators; and I asked if he knew what valuation he put on them, because it is not likely a loan company would make a loan of such magnitude as that without thoroughly investigating, and he replied that sometimes loan companies made mistakes; and I asked him in this case if the loan company had made a mistake, and he said he didn't think so. So I think all these should have been a lot of preliminary investigation. Of course he put up the claim that the property was deteriorating, that the men at Irondale were not being paid their wages, and the creditors would not be paid in full unless they accepted certain terms.

Q. Did you urge at that meeting, or at any time, to these people that in order to permit a prospective bidder to make up his mind intelligently how much to offer for the property there ought to be de-

lays so as to give him a chance?—A. Yes, I did; and they came back with the report: "Well, who is going to put up the money?" And I stated that the year before I put up $59,000 to save the Graham Island property, or at least a portion of that, and $9,000 of which was not yet paid, so I borrowed from the Bank of Vancouver at that time and I got extensions on the rest of the property. I only had a day's notice to do that, and I said I thought in saving the property a year ahead that some consideration ought to be shown instead of rushing it right into the receivership.

Q. Testimony has been given here that dates for the payment of some option installment was about to come around and that Mr. Baxter, one of the receivers, went up to Canada and through his efforts got the extension. Do you know anything about that?—A. Yes; I know all about it. Mr. Baxter came to my office. I had gone through the same thing and got the extension the year before. I told Mr. Baxter what I did and he went over and got the extension.

Q. So that it was not a herculean task?—A. Well, I would not say that, I could not—I think it was—in all fairness to Mr. Baxter I think it required diplomacy, because it is harder to do things the second time than it was the first.

Mr. McCoy. That is all.

By Mr. Higgins:

Q. You spoke of Mr. Bausman. What is his full name?—A. Who is that?

Q. Bausman?

Mr. Dorr. Bausman?

A. Bausman, an attorney here.

Mr. Higgins. What is his full name?

A. Well, I don't know who he is.

Mr. Dorr. Frederick Bausman, a witness who testified the other day.

Mr. Higgins. Well, I wanted to be sure that was the same gentleman.

The Witness. Yes; he was representing the Metropolitan Trust and I think got a fee of $10,000.

Mr. Higgins. And he was also attorney for the receiver?

A. For the receiver; yes, sir.

Mr. Higgins. Mr. Chairman, in connection with Mr. Bausman's testimony and from discussion that has been engaged in during this hearing as to the power of the court over trustees in bankruptcy I hand the reporter a few sections of the bankruptcy law, which I have marked and which I would like to have copied into the record; also the rules established by the United States Supreme Court which make very clear some questions which seem to have been in doubt. Mr. McCoy may want to make a statement in that connection.

Mr. McCoy. I won't say anything further than that my friend, Mr. Higgins, has found the sections which substantiate my claim as to the jurisdiction of the court at the election of a trustee.

Mr. Higgins. The United States bankruptcy law, page 30, section 26; page 30, section 27; page 35, section 44; page 35, section 47; page 37, section 50, subdivision C. And, then, under "General orders in bankruptcy," adopted and established by the Supreme Court of the United States November 28, 1898, section 15, page 58; section 17, page 59; and section 25, page 63.

The CHAIRMAN. They will be incorporated in the record.

The sections above referred to read as follows:

Section 26, page 30:

Arbitration of controversies.—a. The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

b. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days as to their appointment, the court shall appoint the third arbitrator.

c. The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

Section 27, page 30:

Compromises.—a. The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate, upon such terms as he may deem for the best interests of the estate.

Section 44, page 35:

Appointment of trustees.—a. The creditors of a bankrupt estate shall, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after it has been reopened, or after a composition has been set aside, or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee, or trustees, as herein provided, the court shall do so.

Section 47, page 35:

Duties of trustees.—a. Trustees shall, respectively, (fig. 1) account for and pay over to the estate under their control all interest received by them upon property of such estates; (fig. 2) collect and reduce to money the property of the estate for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (fig 3) deposit all money received by them in one of the designated depositories; (fig. 4) disburse money only by check or draft on the depositories in which it has been deposited; (fig. 5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (fig. 6) keep regular accounts showing all amounts received, and from what sources, and all amounts expended, and of what accounts; (fig. 7) lay before the final meeting of the creditors detailed statements of the administration of the estate; (fig. 8) make final reports and file final accounts with the courts fifteen (15) days before the days fixed for the final meeting of the creditors; (fig. 9) pay dividends within ten (10) days after they are declared by the referees; (fig. 10) report to the court, in writing, the condition of the estates and the amount of money on hand, and such other details as may be required by the court, within the first month after their appointment, and every two months thereafter, unless ordered by the court; (fig. 11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

b. Whenever three trustees shall have been appointed for an estate the concurrence of at least two of them shall be necessary to the validity of their every act concerning their administration of the estate.

c. The trustees shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupts own real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the costs and disbursements of the proceedings.

Section 50, subdivision C, page 37:

c. The creditors of a bankrupt estate, at their first meeting, after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside, or a

discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee, as herein provided, the court shall do so.

Section 15, page 58:

Appointment and removal of trustee.—The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge, and he shall be removable by the judge only.

Section 15, page 58:

Trustees not appointed in certain cases.—If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may direct that no trustee be appointed; but at any time thereafter a trustee may be appointed if the court shall deem it desirable. If no trustee be appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

Section 17, page 59:

Duties of trustee.—The trustee shall, immediately upon entering upon his duties prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustees to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

Section 25, page 63:

Special meeting of creditors.—Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

By the CHAIRMAN. I wish to ask you one question more, Mr. Gibbs? Are you a stockholder in the Western Steel Co.?

A. Both a stockholder and a creditor.

The CHAIRMAN. That is all.

The WITNESS. There is one question that—may I ask?

The CHAIRMAN. You may make any statement you please about the matter.

The WITNESS. Don't you think it would be fair that the Metropolitan Trust Co. should give the report of the valuators?

The CHAIRMAN. Well, we may take that up when we get back to Washington. Will you give the names of those valuators now?

A. No. I don't know them. I may have met them but I don't know who they were. I sent——

The CHAIRMAN (interrupting). Do you know whether they were western people or whether they were eastern people?

A. I could not tell you. There were a great many valuators who used to come in and value the property. You see Mr. Moore in order to float the bonds was turned down time and time again, and

he had to send fresh valuators. I don't know that any properties have been more valued in Canada than the Western Steel Corporation.

Q. It is safe to say that they had an appraisal and that that apparently justified a loan of $600,000, but we will find that out—A. Yes.

Mr. HIGGINS. Did they have property worth twenty-five millions?

A. Well, that question has been raised several times. If there is as many tons of coal in it as the prospectus says, it is worth a hundred million.

Mr. HIGGINS. It was capitalized for twenty-five million, wasn't it?

A. It was capitalized for twenty million, fifteen million preferred—or five million preferred and fifteen million common stock.

The CHAIRMAN. How much of it has ever been issued?

A. Well, I could not tell you; I don't know. That part I don't know. But I was trying to develop the property, and I did so at my own expense, to find out what coal was in there, to save the stockholders.

Mr. HIGGINS. You promoted the company?

A. I beg pardon.

By Mr. HIGGINS:

Q. You promoted the company?—A. No; Mr. Moore promoted the company.

Q. You owned some lands that were sold to the company. did you?—A. No; I simply put in my money and tried to protect the stockholders who were interested in British Columbia.

Q. How much money did you put into it?—A. I put in—well, we raised $200,000 the first time that they came up to see us. I financed I guess about—I guess of that amount there must have been $100,000 in cash.

Q. The rest of it in coal land?—A. No; the rest were notes. some of which are pending.

Q. Were they paid?—A. Some of them were taken up by the parties. But none of them are in the banks anyway; there are none of them in the banks anyway.

Q. You mean the parties that made notes to the company?—A. The parties gave notes and they were sent back to British Columbia and were discounted there, and you see these parties took them up.

Q. They had to pay the notes?—A. Yes; it has been inferred that there was a certain amount of stock given out, you know, but we paid for what stock we got in British Columbia. But what I wanted to do was to try to develop. I know the coal is there, because I have got other interests there, and we are bringing it out. Prof. McCoy, of Bakersfield, has given one of the best reports for the national banks in the States, and if it is of any use I can send down the report.

Mr. MCCOY. I wish you would. We would like to see it.

A. He was sent by one of the national banks in Chicago; and we have a report on the coal.

Mr. MCCOY. Will you mail a copy, please?

A. I will be very pleased to.

Mr. HIGGINS. You had some doubt in your mind about the valuations placed on that property by the New York Trust Co., didn't you?

A. Well, no—oh, no; I supposed that the valuation was very much in excess of the loan. I don't think that any trust company in the world would make a loan unless they were at least worth $1,500,000, across the continent.

Q. Did you think that the Metropolitan Trust Co.——A. (Interrupting.) I thought that the——

Q. (Interrupting.) Did you think the values by the Metropolitan Trust Co. were too high or too low?—A. I thought the valuation of the Metropolitan Trust Co. must be greatly in excess of $600,000 and that they should not have forced the issue so quickly.

By the CHAIRMAN:

Q. What I understand you to mean is that you would like to know just what they were?—A. What their valuators put on them.

Q. You assume that when they made a loan of $600,000 on property of that character, largely speculative in its value, that the report must have been vastly in excess of the amount they loaned?—A. Yes.

Q. And you would like to know what the report was?—A. I would like to know what it was.

Q. It is a matter of curiosity?—A. I have heard that they intended—I don't know about this, but one of the rumors that floats around—that they intended to form a new company for eight hundred thousand; that at the present time a company has been formed in the East, called the Occidental Iron Co., to take over the assets of the—to take over this mortgage from the Metropolitan Trust, so evidently they can sell it for—that is a million-dollar company.

Q. That is, if what you have heard is true?—A. Yes; that is the newspaper report about the Occidental Iron Co.

Mr. HIGGINS. Do you happen to know who was suggested by Mr. Bausman as the receiver for the company?

A. No; I never heard that Mr. Bausman made any suggestion. That part I don't know. In fact, I never heard until to-day that Mr. Bausman had made a suggestion, but he may have.

Mr. HUGHES. Mr. Chairman, one moment.

The CHAIRMAN. Do you want to ask him?

Mr. HUGHES. I have not yet discovered the materiality of this inquiry, but it seems to be material, and I would like to ask just a question or two.

By Mr. HUGHES:

Q. Were you one of the parties that sold the Graham Island property to the Western Steel Co. or to Mr. Moore?—A. No; I had nothing to do with it.

Q. Had you been interested in it before Mr. Moore secured the purchase?—A. No; the only interest that I had was borrowing $19,000, nine thousand of which I have not got back yet.

Q. Well, you meant to take——A. (Interrupting.) To save it; to save it from going to the original owners.

Q. Why were you interested in that?—A. Well, because we had—the steel company would have lost it the next day, and I was interested to a considerable extent in the stock of the company, and I didn't want this $20,000,000 asset going away.

Q. You never had had any interest in this property?—A. I never——

Q. (Interrupting.) Or in selling it to——A. (Interrupting.) No; I never made a cent out of the Western Steel Corporation at any time. I paid my way——

Q. (Interrupting.) I think you misunderstand my inquiry. You had no interest in this property, no knowledge of it, and were not a party in any way to selling it to Mr. Moore?—A. None. That was before my time.

Q. Do you know what Mr. Moore purchased it for—what his contract price was for it?—A. I think he had—I think about $350,000, but that was a great many years ago.

Q. Well, not so very many years.—A. About six or seven. The property up in Vancouver, you know, has trebled in three years.

Q. Yes; Vancouver has been a very thrifty place. We will all agree to that, but I am talking about Graham Island, which is some hundred miles north.—A. Yes.

Q. Some 300 miles north, isn't it?—A. Yes. No; it is about five north.

Q. Five hundred miles north and entirely undeveloped, isn't it?—A. No; I——

Q. That is, I mean the island is practically uninhabited?—A. Oh, no; that was three years ago. The settlers are pouring in there. We have got a $100,000,000 railroad running within 60 miles of it.

Q. Well, the railroad is coming to Port Rupert, of course?—A. Yes; that is 60 miles from Graham Island. Of course that makes a big difference. If I may say so, that the United States Government at Washington has offered to take all the British Columbia coal we can sell them, so that gives a market.

Q. We don't want to go into a comparison of the policy of the United States Government as compared with that of the Canadian Government.—A. I see, but it is the value of the lands I want to show.

Q. (Continuing.) It might not be interesting. That is all.

Mr. McCoy. The trouble is, Mr. Gibbs, that they come down here and win golf championships and they don't want you to take anything else up there.

The Witness. Well, my only interest in the thing is to get some of my money back and some of the stockholders'; and if I can do that by developing and showing that they have a lot of coal there, I think I have done some good for the public.

Witness excused.

The Chairman. Is there any other witness whose testimony is brief who is anxious to get away?

D. Irvin Smith, having been first duly sworn, testified as follows:

Mr. McCoy. What is your full name, please?

A. D. Irvin Smith.

Q. What is your business?—A. Wholesale dry goods.

Q. Give the name of your firm.—A. Smith, Daniels & Keller.

Q. Have you ever had occasion to make any complaints about the administration of bankruptcy law in this district?—A. Well, in a general way I might say yes.

Q. Have you ever on any specific occasion made any complaints in mettings or what not?—A. Complaints to who?

Q. To anybody, to your fellow business men.—A. Yes, sir.

Q. What was the occasion?—A. Why, the Knosher case in particular.

Q. Were you interested as a creditor in that case?—A. I was.

Q. Did you have anything to do with the McCarthy Dry Goods case?—A. Yes, sir.

Q. What did you have to do with that?—A. I was a creditor.

Q. Did you take any active interest in the handling of it?—A. Yes, sir.

Q. Tell us what you did in that matter?—A. Well, the McCarthy case, as I recall, came up during the panic of 1907 and I didn't take much interest in the case until I heard that a local corporation was going to make a bid for the stock, or, rather, for the assets of the corporation, which I didn't think was adequate, and I went up to see Mr. Walter McClure and stated my position to him, asked him what action could be taken, and he told me that the case was coming up that afternoon before Judge Hanford and if I would go before the courts or have an attorney to go before the courts and make a protest, that the judge would no doubt be influenced by it—make a protest representing the local creditors, and that was done.

Q. You mean you retained some attorney to do it, or you went yourself?—A. No; I went up to see Mr. Gleason, who was one of the large creditors, and he called in his attorney and we had several claims there, probably a total of $30,000, and Mr. Kane, as I recall, was the attorney. He went before the court, representing these claims, and opposed this sale, and the judge listened to it and rejected the bids and ordered the store opened by the receiver.

Q. Ordered what, you say?—A. Ordered the store opened and started the business to going by the receiver. The business at that time was closed up.

Q. The business had been shut down?—A. Yes; oh, yes; the business had been shut down for two or three weeks, probably a month, six weeks; I don't recall how long.

Q. And when was that, do you recollect?—A. That was between the time that the receiver was appointed and up until they got bids on the stock. They could not sell it at that time on account of the conditions that existed.

Mr. McCoy. I think that you are mistaken about the business having ever been shut down. Isn't he, Mr. Baxter?

Mr. Baxter. The business was closed down for a week or ten days, something like that, immediately after the receivership.

By Mr. McCoy:

Q. The fact is, Mr. Smith, that the business was run almost continuously from the time of the appointment of the receiver. Mr. Baxter now says it was shut down for about ten days. Now, when was it these bids were received, do you remember?—A. Well, the business was closed, as I recall it, immediately after Mr. Baxter took possession of it, and remained closed until these bids came in——

Q. (Interrupting.) When was that, do you recollect?—A. No; I have no recollection about that.

Q. Whose bid was it you objected to?—A. Stone, Fisher & Lane's, as I recall it.

Q. What was the amount of the bid?—A. About $60,000.

Q. And what was the basis of your objection?—A. We thought that the stock would bring more than that, didn't think it was a fair price for the business.

Q. You thought it would bring more than that in bulk or retail?—A. Either way.

Q. Well, now you had a meeting of these creditors, and was some attorney retained to appear before Judge Hanford and make the protest that you thought should be made?—A. No; we didn't have a meeting. I went personally and saw the largest creditors. This happened, as I recall, in the morning, that I went to see Mr. McClure, and the case was to be heard at 2.30, so I went personally to see some of the creditors and they gave me their verbal permission to use their names, and we merely made a memorandum of that and Mr. Gleason requested Mr. Kane to go before the courts.

Q. Mr. Kane being an attorney or a——A. An attorney.

Q. And your information is that he did go before Judge Hanford and made the objection which you people felt should be made to it?—A. I was in court myself and——

Q. Oh, you were there yourself?—A. I was there myself and heard him make the objection.

Q. And that was the basis of the objection—that the price was not adequate?—A. Yes, sir.

Q. What was your estimation of the value of the assets that were included in the offer of the Stone-Fisher Co.?—A. I hardly get the question.

Q. You complained that the price offered by the Stone-Fisher Co. was not an adequate price. What, in your judgment, would have been an adequate price?—A. Well, as I recall it, the Stone-Fisher Co. offer was about 55, probably 60 cents on the dollar, and the business was a going business at that time, and being a creditor we wanted to get the most out of it possible. I was probably a little sanguine about it, but I was of the opinion that we should have got 75 cents. The stock seemed to be appraised on a fair valuation.

Q. Well, at this time when you made the objections you were right in the midst of the panic of 1907, were you not?—A. Yes, sir. That was one reason for it.

Q. One reason for what, the failure?—A. No; for making the objections. We thought if we could open the store and run it as a going business and make expenses for a few months conditions would change and more likely to find a buyer who was willing to pay a better price for it than the Stone-Fisher Co. were.

Q. Is not 60 per cent a pretty high average of realization on bankruptcy estates?—A. Not prior to that time it was not, for a good location. The location was the principal asset at that time.

Q. Your judgment is, or your experience is, that bankruptcy estates, where the business is well located and a reasonably good stock nets more than 60 per cent?—A. Well, there is all kinds of conditions that govern those things.

Q. I mean under conditions similar to this?—A. As a rule; yes.

Q. Did you confer at any time with the receiver in regard to running the business after it was being run for a while?—A. Well, yes.

Q. When, if at all, did you reach the conclusion that the business ought to be closed down?—A. Oh, probably six or eight months after that.

Q. The testimony is that it was sold out in September.—A. Yes, sir.

Q. The subsequent year?—A. The subsequent year.

The CHAIRMAN. Anything further?

By Mr. HUGHES:

Q. Mr. Smith, what concern did you say you were connected with?—A. Smith, Daniels & Keller.

Q. You are now?—A. Yes, sir.

Q. How long have you been?—A. Two years.

Q. And prior to that time with what company?—A. Western Dry Goods Co.

Q. At the time of the McCarthy business you were connected with the Western Dry Goods Co.?—A. Yes, sir.

Q. The McCarthy dry goods store had, previous to its insolvency, been a large and very well known institution in this city, hadn't it?—A. Yes, sir.

Q. And I suppose that that was one of the factors that you had in mind in believing that its name and business should be continued until a favorable season for disposing of it, was it?—A. That and the question of location.

Q. The location of the business was also in the trend of rapid business growth and particularly retail business?—A. That and the fact that at that time there could not be had a room or a business place on Second Avenue, hardly, for any price, for retail purposes.

Q. Now, let me ask you this further question: Was it not generally believed in this community, on account of good crops and good prices, that the panic of 1907 was necessarily only a temporary matter and that there must of necessity be an early return of prosperity?—A. That was our impression.

Q. And that was what influenced you in thinking that it was better to have the business continued by the receiver until this temporary depression passed over?—A. Yes, sir.

Q. And Mr. Kane did appear there at this meeting before Judge Hanford and did voice the objection of the local creditors that you have referred to?—A. Yes, sir.

Q. That was an express objection to accepting the bid of Stone, Fisher & Lane?—A. Yes, sir.

Q. Do you recall whether he or any one else expressed the objection to the confirmation of that sale, or the acceptance of that bid, on behalf of the preferred stockholders of the McCarthy Dry Goods Co.?—A. No, sir; I have no——

Q. (Interrupting.) You don't recall as to that?—A. I have no recollection as to that.

Witness excused.

Mr. PRESTON. Mr. Chairman, here is that exhibit that was to go in—the Western Steel.

Mr. MCCOY. This is that one you drew up.

Mr. PRESTON. Yes; it was to go in as a part of that. I just got it completed.

Mr. McCoy. This statement, Mr. Preston, which you have furnished the committee is a synopsis prepared by you of the papers in this court in the receivership or bankruptcy of the Western Steel Corporation.

Mr. Preston. That is only the papers in court, not those in the referee's office.

Mr. McCoy. Yes, in the court.

Papers referred to were marked "Exhibit No. 84."

George H. Plummer, having been first duly sworn, testified as follows:

Mr. Higgins. State your full name.

A. George H. Plummer.

Q. You reside where?—A. Beg pardon?

Q. Where do you live?—A. Tacoma.

Q. What are your business connections?—A. I am western land agent of the Northern Pacific Railway.

Q. How long have you occupied that position?—A. Since 1901.

Q. What are your general duties, Mr. Plummer?—A. I have charge of the sale of lands of the railroad company in the States of Washington, Idaho, and Oregon.

Q. The Northern Pacific Railway?—A. The Northern Pacific Railway Co.

Q. Does the authority to close contracts for the sale of railroad land, Mr. Plummer, rest with you, or is it necessary to submit it to some other official of the Northern Pacific Railway Co.?—A. The sale of lands that are not on the market for sale under a regular price list must be submitted to the land commissioner at St. Paul before the sales can be made.

Q. To the general land commissioner of the road. And are you able to state, from your own knowledge and experience, whether he has to submit propositions for the sale of such lands as you have indicated to anyone? If so, you may name him.—A. I don't know that there is any limit placed upon his authority to make sales, but I do know that it is his custom to take up the matter of sale of all large blocks of land with the president, Mr. Elliott.

Q. Mr. Elliott—what is his full name?—A. Mr. Howard Elliott.

Q. Who is the executive officer, Mr. Plummer, of the western district of the Northern Pacific Road, located in this vicinity?—A. At this time, do you mean?

Q. Or of a date in 1905?—A. In 1905 the chief executive officer here, I think, was Mr. C. M. Levey. He had the position of third vice president.

Q. He had offices in Tacoma?—A. Yes, sir. The headquarters—the western headquarters of the company are in Tacoma.

Q. He had offices in the same building that you had offices?—A. Yes, sir.

Q. It was the general offices of the western division of the Northern Pacific Railroad?—A. Yes, sir.

Q. Perhaps you know where Mr. Levey is now?—A. Mr. Levey is at present in San Francisco.

Q. And by whom he is employed?—A. I believe he is connected with the Santa Fe road. I am not certain about that.

Q. The Atchison, Topeka & Santa Fe?—A. The Atchison, Topeka & Santa Fe Reilroad.

Q. What, in a general way, Mr. Plummer, were Mr. Levey's duties?—A. He was in charge of all matters pertaining to the operation and maintenance of the railroad on this end of the line—that portion west of Paradise, I think, was the division at that time—Paradise, Mont.

Q. And did his duties include a supervision over your duties as well?—A. Why, not directly; no, sir. I reported usually to Mr. Cooper on all matters that pertained to the sale of lands, except in some cases where there were traffic matters involved and then I took up questions with Mr. Levey before submitting the matters to Mr. Cooper at St. Paul.

Q. That is, Mr. Levey had charge of the general operation, construction, and maintenance of the railroad, subject, of course, to the control of the general office?—A. Yes, sir.

Q. In this part of the country?—A. Yes, sir.

Q. In the three States that you had?—A. Well, his district was not the same as mine. The western district in the land department constitutes the States of Washington, Oregon, and Idaho, while the operating division is a little different. That, I think, at that time was Paradise, Mont., though I am not certain about that; it might have been west of that point.

Q. How long have you known Judge Hanford, Mr. Plummer?—A. Why, I think our acquaintance extends back 10 years.

Q. How frequently have you seen him in that period of time?—A. Only semioccasionally; not often.

Q. Where?—A. In both Tacoma and Seattle.

Q. Where in Seattle?—A. At his office in this building.

Q. In the Federal Building, do you mean?—A. Yes, sir.

Q. Do you mean in his chambers?—A. In his chambers; yes, sir.

Q. At any other place in Seattle?—A. I have never met him anywhere that I remember, except I have seen him up at the Rainier Club.

Q. Are you a member of the Rainier Club?—A. No, sir.

Q. Any other place than his chambers and the Rainier Club?—A. No, sir.

Q. Now, in Tacoma where would you meet him?—A. He has been in my office in the Headquarters Building, in Tacoma, and I also met him once, at least, in the Tacoma Hotel.

Q. Have you met him at any other place than at Tacoma and Seattle?—A. No, sir; not that I remember.

Q. You were directed in a subpœna issued by the committee, Mr. Plummer, to bring with you all of the correspondence and records and copies of correspondence—in general, all papers in your office at Tacoma in connection with the transfer of certain lands by the Northern Pacific Railway Co. to C. H. Hanford, the Hanford Irrigation Co., or that in any way were involved in that transfer of land. Have you done so?—A. Yes, sir.

Q. Do you have them in the room now?—A. Yes, sir.

Q. Won't you state to the committee when and where and under what circumstances the matter of the transfer of lands by the

Northern Pacific Railway Co. to either Judge Hanford or the Hanford Irrigation Co. was first called to your attention? You can refer, if you wish, to any papers that you brought with you.—A. [Witness refers to paper.] The negotiations with the Hanford Irrigation & Power Co. are eight in number——

Q. (Interrupting.) Well, now, you said negotiations. You meant transactions, I take it?—A. Transactions; yes, sir.

Q. And, to amplify, you refer to contracts which were made by the Northern Pacific Railway Co?—A. Contracts and leases. There were eight transactions, including contracts and leases.

Q. For railway lands?—A. For railway lands; yes, sir.

Q. What were these lands, Mr. Plummer?—A. They were lands either lying below or connected with the Hanford irrigation project.

Q. No; but so far as the railroad was concerned, what was the nature of the lands, and how did they get into possession of them?—A. The lands—the major portion of the lands came to us under grant from Congress, the act of July 2, 1864—March 2, 1864. It is the original grant from Congress to the Northern Pacific. The balance of the lands, containing a very small area, however, were lands that were selected with selection rights under the act of July 1, 1898; but principally they were lands that came to us under the original grant.

Q. They were arid lands?—A. They were arid lands; yes, sir.

Q. All of them?—A. Yes, sir; unproductive, without water.

Q. How near were these lands that it appears subsequently your railroad deeded to the Hanford Co. to your railroad?—A. I should say, without knowing, about 40 miles from our nearest point.

Q. What station?—A. At Kennewick. I will have to refer to the map to see——

Q. You may do so.—A. (Continuing.) Whether that—well, I haven't a map that shows that whole district. It may be that the line at North Yakima, running between North Yakima and Ellensburg, is closer to the land than 40 miles.

Q. Your railroad was the nearest railroad to any of that land?—A. No, sir; the Milwaukee is nearer.

Q. Was it in 1905?—A. No; not at that time.

Q. The Milwaukee was——A. (Interrupting.) The Milwaukee was not built and I don't know that it was surveyed at that time.

Q. When was the Milwaukee built?—A. The Milwaukee was built about three years ago.

Q. Through that section?—A. Yes, sir.

Q. You spoke of there being eight transactions. Explain to the committee what you mean by that.—A. There were eight separate transactions. Some of them—two of them—cover the greater portion of the land sold to the irrigation company, including approximately 21,000 acres of land. The other six—six other transactions—are for small tracts, or rights of way, that were either sold to them direct or else, as in one case, through a Portland party—that is, we sold one of the tracts to a Portland man and he transferred the contract to the irrigation company, and the deed was finally made by the Northern Pacific to the irrigation company.

Q. About how many acres were in that contract?—A. [Witness refers to papers.]

Q. Well, without taking the time for you to look it up, it was less than a hundred?—A. Well, I can give you the exact acreage. [Referring to papers.] That was 80 acres.

Q. Now, Mr. Plummer, reverting to the time when that matter was first called to your attention, I wish you would tell the committee when and who first spoke to you about the proposition of developing that section through irrigation.—A. Judge Hanford first took up the matter of purchase of lands in 1905——

Q. (Interrupting.) Well, was it first called to your attention by Judge Hanford or by some one that you supposed had been sent by Judge Hanford?—A. It was first taken up by Mr. Drake—J. C. Drake, of Tacoma. He made an application on behalf of Judge Hanford to——

Q. (Interrupting.) Is that James C. Drake, the present United States marshal at Tacoma?—A. James C. Drake, the present United States marshal.

Q. What was his position then?—A. I am not certain, but I think he was United States marshal at the time.

Q. In 1905?

Mr. Dorr. He was clerk of the court.

A. Well, I beg your pardon.

Mr. Hughes. Clerk of the court?

Mr. Higgins. Clerk of the court; he was not United States marshal.

Mr. Hughes. He was prior to that time United States marshal. At that time I don't think he held any office.

A. Well, that is my mistake. I thought he was still United States marshal.

Mr. Higgins. Have you any acquaintance with Mr. Drake?

A. Yes, sir.

Q. Had you before 1905?—A. Yes, sir; I have known him for 15 years.

Q. Well, what, if anything, did he say to you in reference to making a contract for the sale of these lands?—A. Mr. Drake told me that Judge Hanford wanted to buy two sections of land on the Columbia River, with a view of irrigating them, his plan being to put in a small pumping plant to cover these lands which lie adjoining the river, and can, I think, be irrigated with a very low lift, and I then took up the matter with Judge Hanford direct and told him, by letter dated June 19, 1905——

Q. (Interrupting.) Well, did you do that as result of your talk with Mr. Drake?—A. Yes, sir.

Q. Did the suggestion come from him that you communicate with Judge Hanford?—A. I don't remember that; it is seven years ago, and I don't remember, and I have nothing to show in the files whether it was his suggestion or whether I did it of my own volition.

Q. The fact is that you did write Judge Hanford?—A. I did write to Judge Hanford on June 19.

Q. And up to the time you had written that letter you hadn't talked with Judge Hanford about acquiring these lands?—A. No, sir.

Q. Or he with you?—A. No, sir. I had no——

Q. (Interrupting.) And you had received no letter from him?—A. No, sir; not prior to that time.

Q. I wish you would read, if you please, that letter.—A. The letter is dated:

JUNE 19, 1905.

Hon. C. H. HANFORD, *Seattle.*

DEAR SIR: Mr. Drake has advised me of your desire to purchase that portion of sections 23 and 25, township 13 north, range 27 east, lying west of the Columbia River; but I regret that on account of instructions from our board of directors to withdraw from sale the lands owned by the company in eastern Washington, I am not in position to sell them. Moreover, they lie below the extension of the Sunnyside Irrigation Canal and are a part of a block of lands which we have reserved from sale, expecting that they might be used in connection with that project. I desire, however, to accommodate you in this matter, if it is possible, and am willing to submit the matter to Land Commissioner Cooper, with the request that he ascertain whether or not the board will approve the sale of these sections, and I will be glad also to recommend that he make the sale, though I don't know that this will be of any effect unless the lands are not tied up. However, I shall be glad to do what I can to get released and if possible make a sale. I explained to Mr. Drake that these lands are not particularly valuable in their present condition, and in fact from our examiner's report I should judge they are suitable only for grazing. If you are unacquainted with the character of the soil, I should be glad to let you examine our field notes, from which you can determine whether you care to purchase them. If you expect to call here, please phone me before coming over, as I am frequently out of the city.

Yours, very truly, ——— ———.

Q. Do you desire to make any explanation of that letter? If you do, you can at this time.—A. Why, no, sir; excepting that it is our custom always to deal with the original or the real applicant, and so I took the matter up direct with Judge Hanford to find out what his plans were, and did not negotiate any further with Mr. Drake.

Q. Did you see Judge Hanford after sending that letter—have a personal talk with him?—A. I don't think I did. There is nothing in the files to show that I had any talk with him. He acknowledged and replied to my letter and confirmed the application made by Mr. Drake in his behalf.

Q. Now, let's see. You want, Mr. Plummer, as I understand you, to preserve your original files?—A. I would like to do that; yes, sir.

Q. Who belong in your office at Tacoma?—A. Yes, sir.

Q. Will you indicate so that the stenographer may take it, not only read the letter, but read what appears as printed on the letter, indicating where the letter was written—that is, it is on the official stationery of the judge of the district court?—A. The original was——

Q. Dated in the judge's chambers?—A. The original was on the—yes; the original of Judge Hanford's reply, you mean?

Q. Yes.—A. Yes.

Q. That is the reply to the letter which you wrote?—A. Yes.

Q. Consequent to Mr. Drake calling on you?—A. Yes, sir; that is on the district judge's official stationery.

Q. Read just what appears as printed on there.—A. This letter is not dated, but it is headed "Chambers of United States district judge, district of Washington. Corner Fourth Avenue and Marion Street, Seattle, Wash."

Q. Read the letter, please.—A. (Reading:)

Mr. G. H. PLUMMER,
Western Land Agent, Northern Pacific Railway Co.

DEAR SIR: I thank you for your letter of the 19th instant, received through my friend, Mr. Drake. In confirmation of his application in my behalf, I will purchase the portions of sections 23 and 25, township 13 north, range 27, on west side of the Columbia River, at $2.50 per acre, if your company will sell the same to me at that price. I have trustworthy information in regard to said lands. It is not very good for grazing and most of it is flooded at times of extreme high water and will never be worth taxes unless some new scheme can be discovered for making it productive. I have a scheme in my head and I want the land to experiment upon. If successful, the railway will be benefited indirectly many times the value of this land. If I fail, the land will be well sold. Therefore I hope that the interest of the company, as well as any desire the officers may have to accommodate me, will prompt them to grant my application.

Yours, truly, C. H. HANFORD.

Q. What followed, in order, in that transaction, with Mr. Cooper?—A. I transmitted that application to Mr. Cooper and advised him of——

Q. (Interrupting.) Have you a copy of the letter which you sent to Mr. Cooper?—A. Yes, sir.

Q. Before you read that, Mr. Plummer, let me ask you if you had heard from Mr. Drake or Judge Hanford or from anybody who had called upon you personally to discuss this transaction?—A. Why, so far as the file shows and so far as I can remember, there was no talk with Judge Hanford. I simply——

Q. (Interrupting.) Was there a talk with Mr. Drake?—A. I don't think so; no, sir.

Q. Was there a talk with Mr. Haynes?—A. I don't remember that I knew Mr. Haynes at that time. I don't think Mr. Haynes had anything to do with this transaction.

Q. Was there a talk with Mr. Owens?—A. Not that I remember.

Q. You know Mr. Owens——A. (Interrupting.) Yes, sir.

Q. (Continuing.) Who was afterwards the engineer of the Hanford Irrigation & Power Co.?—A. Yes, sir.

Q. In that letter of Judge Hanford's, Mr. Plummer, will you tell the committee what is meant by his reference to the desire of the officials of the road to accommodate him or aid him, whatever the language might be there—what that refers to?—A. Why, only that there was a very large district there lying on the west side of the river from Priest Rapids down to Kennewick that had never been developed, and nobody had had the nerve to go in there and experiment with the land with a view—to the extent of spending money on an irrigation plant, and we were very glad to have somebody do that experimenting. That was the interest that we had in mind in encouraging this proposition of Judge Hanford's, that if he would go ahead and make a test of the irrigation possibilities that we would be very glad to assist him. At that time you must remember that irrigation didn't have the standing that it has now; that is, irrigated lands did not have the standing that it has now.

Q. We won't go into that phase of the inquiry just now. Did you know then that Judge Hanford was contemplating considerable development near Priest Rapids? A. Only from what he suggested in this letter, that he had a scheme in his head for a larger develop-

ment. I don't remember whether it was before or after this letter that I read that I talked with him about the larger project.

Q. Now, this letter refers to a very comparatively small tract, doesn't it?—A. Yes, sir; only 795 acres; that is the two sections on the west side of the river that he applied for; that is the first application he made to us and that was made in 1905.

Q. Well, those two sections were necessary in order to control the power at Priest Rapids?—A. No, sir; they had nothing to do with it.

Q. Now, you may read Mr. Cooper's reply.—A. No; my letter to Mr. Cooper.

Q. Oh, your letter to Mr. Cooper, yes.—A. My letter to Mr. Cooper is dated July 13, 1905. (Reading:)

Mr. THOMAS COOPER, *Land Agent, St. Paul, Minn.*

DEAR SIR: United States District Judge C. H. Hanford desires to purchase that part of section 23 and 25, township 13–27 east, lying west of the Columbia River, embracing 795.55 acres. He intends to install a pumping plant to irrigate the lands, and seems very anxious to procure them. I have explained to him that these lands lay below the proposed extension of the Sunnyside Canal, which the Reclamation Service is now investigating, and that all of our holdings in that vicinity are held up for that purpose. I desire, however, to accommodate him if it is possible to do so without detriment. In view of the conditions of our holdings in that vicinity, I judge that there will be no objection to selling, providing the lands are not tied up by agreement with the Reclamation Service. You will observe from the map inclosed that we own nothing along the river except sections 3, 23, and 25 in township 13–27, and should we make the agreement with Mr. McKeand referred to for sections 3 and 5 it will still leave the lands left in solid form. I am of the opinion that the lands bordering the river in this vicinity will be irrigated from the river some time to come, as it will be——

Mr. MCCOY (interrupting). Will be or will not be?

A. "Will be." That means that if the lands were developed at all that they would be irrigated from waters from the Columbia River, rather than from an extension of the Sunnyside Canal, which meant the building of possibly 100 miles of ditch.

The CHAIRMAN. In other words, "will" is used as synonymous with "must."

A. Yes; might better have been used. (Continuing reading:)

as it will be some years before the canal is constructed, and, moreover, the distance from the ditch to these lands is very great, and it is therefore probable that they will be the last lands under the canal to be irrigated.

That is referring all the time to the extension of the Sunnyside Canal. (Continuing reading:)

In view of the circumstances and the fact that Judge Hanford desires to purchase, I thought that you will give special consideration to the matter. He has offered $2.50 an acre and expects to get the lands at that price.

Then Mr. Cooper wrote back.

Mr. HIGGINS. Is that the close of the letter?

A. That is the close of the letter. I beg your pardon. (Continuing reading:)

Yours, very truly,

WESTERN LAND AGENT.

Q. Why did you think he would give special consideration to it?—A. To Judge Hanford's application?

Q. Yes.—A. Well, only because of the fact that he was going

ahead with this possible development there to determine the possibilities, and also that I figured that like any other prominent man taking hold of a thing of that kind, that we would be glad to aid him and sell him the lands.

Q. The fact that he was a judge of the United States district court——A. (Interrupting.) No, sir; not at all.

Q. That is what his prominence consisted in largely, wasn't it?—A. Why, not only that; no sir. I have always believed that Judge Hanford was a factor in the upbuilding of this part of the State.

Q. But he had been a judge of the United States district court for 23 years?—A. Yes.

Q. And is now.—A. And had been identified with a good many improvements—matters that were connected with the development of this side of the State, and he was taking hold of the other side.

Q. Well, I will ask you, Mr. Plummer, to state fully just what you meant when you wrote to Mr. Cooper that you thought that special consideration would be given. You may explain as fully as you desire.—A. I have no other explanation to make than that. If it had been any other prominent man, Gov. McGraw or any other man who had been prominent in matters here in Seattle in the development of the city, it would have had exactly the same meaning that I intended here.

Q. How long before that time was it that you sold any land of the Northern Pacific Railway Co. in that vicinity?—A. Sold any of the Northern Pacific lands?

Q. In that vicinity; yes.—A. I don't remember that we had made any sales there prior to that time. I can't say, Mr. Higgins. I don't remember what time before that date the last sale had been made.

Q. What is the nearest point to Priest Rapids project at which you had sold lands before that?—A. There was a block of land sold a few miles north of this property, up the river——

Q. When?—A. Sometime before, but I don't remember the date. I think——

Q. (Interrupting.) How large a tract?—A. About five or six sections. I think it was sold before I was made western land agent.

Q. What was the price?—A. I have not any idea.

Q. You never have heard?—A. No, sir; I never had occasion to look it up, and I could not make even a wild guess.

Q. Take up the next letter in order there, Mr. Plummer.—A. The next letter is from Mr. Cooper, in answer to my letter, dated July 18, 1905.

Mr. G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: I am in receipt of your favor of the 13th instant, advising me of the application made by Judge Hanford to purchase that portion of sections 23 and 25, township 13, range 27 east, lying west of the Columbia River, on which he desires to install a pumping plant for irrigating the same. We have agreed with the United States to withhold from sale all of our lands underlying an extension of the Sunnyside Canal until such time as the Reclamation Service has completed its investigations in the Yakima Valley and determined whether it will undertake an irrigation project in said valley under the reclamation law. It is expected that the field investigation will be completed this year and a conclusion reached by the Reclamation Service next year. For

the reasons stated, to wit, the agreement that we have made with the United States, we are precluded from considering Judge Hanford's application, which otherwise we would be very pleased to do, and you will please explain to him the situation.

Yours, truly,

THOMAS COOPER,
Land Commissioner.

Q. Did you explain to Judge Hanford the situation?—A. I wrote him a letter.

Q. Well, in the meantime did you have a talk with him?—A. Not that I remember.

Q. Or with Mr. Drake?—A. I don't remember it; no, sir.

Q. Or with anybody that purported to represent Judge Hanford in this transaction?—A. No. sir.

Q. You can't recall——A. (Interrupting.) I don't recall of having had any talk with anyone in connection with it.

Q. You didn't know at this time just what the plans of the Hanford Irrigation & Power Co. that were in prospect were, did you?—A. I did not; no, sir; and I don't—I don't think that——

Q. (Interrupting.) Well, who first explained their plans, Mr. Plummer, to you?—A. My recollection is that Judge Hanford first explained their plans to me.

Q. And where?—A. In my office.

Q. In Tacoma?—A. Yes, sir.

Q. Who was present, if anybody, besides you and Judge Hanford?—A. I don't remember.

Q. That was some time subsequent to the letter which you are about to read now, was it?—A. I would like to refer to that next file in connection with that [witness referring to papers]. Yes, sir; this is prior to the time that the Hanford irrigation plans were explained to us.

Q. You may read.—A. This is my letter to Judge Hanford advising him of Mr. Cooper's decision, dated Tacoma, Wash., July 22, 1905.

MY DEAR SIR: I submitted your application to purchase sections 23 and 25, township 13–27 east, to Mr. Cooper, and am advised that on account of the fact that we have agreed with the United States to withhold from sale all of our lands underlying the proposed extension of the Sunnyside Canal, we are precluded from considering your application. This is the question to which I referred in my talk with Mr. Drake, though I was not certain that we had made an agreement with the Government, but Mr. Cooper informs me that the Reclamation Service had arranged to investigate that district with a view to constructing an irrigation canal if a feasible project can be found, and he has agreed to reserve from sale all of our holdings until they have determined whether or not they will undertake a project there. I regret, therefore, that we are not in position to accommodate you in the matter, which under other conditions we should be very much pleased to do.

Yours, very truly,

WESTERN LAND AGENT.

It is addressed to Judge Hanford, Seattle.

Q. You signed that letter, did you?—A. Yes, sir.

Q. Did you see Judge Hanford subsequent to the writing of that letter? I mean in connection with this transaction.—A. No, sir; I have no recollection, nor have I any notes that would tend to show that I had any talk with him following that letter.

Q. Was that acknowledged by Judge Hanford?—A. Yes, sir.

Q. Read, the same as you did before, if that is the fact, indicating to the reporter the stationery, etc., that was used—whatever appears

printed on the letter.—A. Yes; this is printed on the official stationery of the district judge. Shall I read the heading?

Q. Read it.

A. (Reading:)

CHAMBERS OF UNITED STATES DISTRICT JUDGE,
District of Washington,
Corner Fourth Avenue and Marion Street, Seattle, Wash.

MR. G. H. PLUMMER.
Western Land Agent Northern Pacific Railway Co.

DEAR SIR:

The date is July 25, 1905. [Continuing reading:]

Your favor of the 22d instant received. Although I am disappointed, I wish to thank you for the consideration given to my application. I now renew my application to purchase the same land when your company shall be free from the obligation of the existing agreement with the Reclamation Service. If you will sell me an option I will pay taxes on the land and will enter into a binding agreement to not obstruct or embarrass the Government in any way whatever, and to convey gratis so much of the land as may be required for right of way and for reservoirs, and any other work pertaining to the Government scheme. Presumably the Government does not wish to impede experimental efforts to improve barren land, if protected against hold-ups by speculators and appropriators of water.

Respectfully, C. H. HANFORD.

Q. He refers to what he is willing to do. That had not been referred to in any former letters, as I recall it, that you have read.—A. Yes; I wrote in my letter to Mr. Cooper that he was going to install a pumping plant to irrigate the lands. That was the——

Q. (Interrupting.) After reading that letter, is not your mind refreshed to the extent that you can say that you had at that time some talk with either Judge Hanford or somebody representing him?—A. Only the talk that I had with Mr. Drake when he first made the application.

Q. Did Mr. Drake go into the purposes and objects that the judge wanted the land for?—A. Why, I don't think he did. I am not clear on that.

Q. Did Mr. Drake discuss the terms and conditions?—A. I am not clear about that. There is nothing in the file to show that I had any talk with anyone in connection with it excepting Mr. Drake, and I don't know that he explained the terms. You see, it is seven years now, and I can't remember what the conversation was.

Q. Of course, you understand, Mr. Plummer, that your testimony is confined to the letters. If you can supplement it with your recollection of conversation——A. (Interrupting.) Yes; I would be very glad to give you anything in connection with it that I can remember, but a good deal has transpired since then, and I don't remember the details of it.

Q. What followed the sending of the last letter that you read?—A. In response to that letter from Judge Hanford, I wrote him on July 28, 1905:

HON. C. H. HANFORD,
Seattle, Wash.

DEAR SIR: I have your letter of 25th. I suggest that we leave this matter in its present shape until the end of the year, when, if you will bring the subject up again, I will then advise you what the prospect is of the Reclamation Service entering that field——

Q. (Interrupting.) What is the date of that letter?—A. July 28, 1905. [Continuing reading:]

I will make notation on our plats of our correspondence, but you had better call the matter to our attention, say, January 1 next, when the Reclamation Service will have completed its investigations. It will not be necessary for you to pay the taxes in the meantime. Our agreement with the Reclamation Service is such that we could not grant you an option, and, furthermore, under our rules we are prohibited from entering into agreements of this kind on lands that are otherwise tied up and therefore not in the market. Under other conditions I would be glad to favor you in the matter.

Yours, very truly, WESTERN LAND AGENT.

Q. Did you send a copy of that letter to the general offices of the company?—A. Did I send a copy?

Q. Yes.—A. No, sir.

Q. Either to Mr. Levey or to Mr. Cooper?—A. No, sir.

Q. Who was the attorney for the Northern Pacific in this section at that time—Mr. Grosscup?—A. B. S. Grosscup, I think.

Q. Up to this time did you confer with him about any legal question that might be involved in this transaction?—A. No, sir.

Q. Well, what followed, either in your recollection or by any correspondence?—A. The next was another letter to Judge Hanford, dated September 4, 1905——

Q. (Interrupting.) Well, in the interim didn't you see Judge Hanford?—A. I don't think so. I don't remember—unless there is some reference to a talk with him in this letter; no, sir.

Q. Well, read it.—A. (Reading:)

TACOMA, WASH., *September 4, 1905.*

Hon. C. H. HANFORD, *Seattle, Wash.*

MY DEAR SIR: I met Mr. Cooper at Spokane on Saturday and discussed with him the question of sale of the two sections in township 13–27 east, and he informed me that although these sections are embraced in the agreement with the Reclamation Service it is unlikely that anything will be done there for some time, and Mr. Cooper thinks that we will be able to get these sections released from the agreement. As already explained to you, the Reclamation Service has asked us to withhold all of our lands, and while we desire to aid them in every way in making their investigations, and to this end have reserved from sale all of our lands, I explained to Mr. Cooper that you expected to install a pumping plant and if successful would irrigate these lands and thus obtain the same results. I have procured from Mr. Cooper authority to make the sale, and he will straighten the matter up with the Reclamation Service, if necessary; therefore you may complete the application blank inclosed herewith and forward to me with amount necessary to cover the first payment, $332, if you desire to purchase same under contract, or if you prefer to pay all cash, the total consideration at $2.50 per acre is $1,988.90. The area of the two sections west of the river is $795.55. I am glad that this matter has been arranged as you desire.

Mr. MCCOY. Seven hundred and ninety-five acres?

The CHAIRMAN. Acres and hundredths of acres?

A. 795.55 acres.

Mr. MCCOY. You said dollars.

A. Beg your pardon, it should be acres. (Continuing reading:)

I am glad that this matter has been arranged—

you have got that.

Yours, truly, WESTERN LAND AGENT.

A copy of that was furnished Mr. Drake. The——

Q. (Interrupting.) Why did you send the copy to Mr. Drake?—A. Merely because he had taken up the matter in the first place with us.

Q. More than once?—A. I don't know whether Mr. Drake spoke to me about it afterwards or not, I can't remember that. There is nothing in the files to show whether he did or did not.

Q. About how often does Mr. Cooper, your general land agent, come to Tacoma in the ordinary course of the administration of the railroad's affairs?—A. He comes not at stated periods at all; sometimes three or four months elapses, and sometimes six months.

Q. Had you seen Mr. Cooper with Judge Hanford about that time?—A. I don't remember that, and I don't think so. I don't think they——

Q. (Interrupting.) Well, at the Tacoma Hotel or elsewhere, had you talked with Judge Hanford when Mr. Cooper was present?—A. There was one meeting—one conference that we had, Mr. Cooper and I with Judge Hanford, at the Tacoma Hotel, sometime in 1906 I think it was, along in May, 1906.

Q. When did you arrange as to the price for this acreage? It was $2.50 an acre as you state in your letter to Judge Hanford.—A. The price of $2.50 an acre was suggested by Judge Hanford in the letter which I read, and that offer was transmitted to Mr. Cooper and was accepted by him.

Q. That was the price suggested by Judge Hanford that he would pay?—A. That he would pay; yes, sir.

Q. And that price was acceptable to the company?—A. Yes, sir; yes, sir.

Q. And in consequence of that letter to Judge Hanford the transaction was closed?—A. Yes, sir.

Q. And a contract of sale, agreement for deed was made?—A. Yes, sir.

Q. Between the Northern Pacific Railway Co. and Judge Hanford?—A. Yes, sir.

G. Have you another letter at hand there that was written by Judge Hanford?—A. The next letter was written by Judge Hanford inclosing the application——

Q. (Interrupting.) I wish you would not only indicate the style of the letter written by Judge Hanford, but also in copies which you have in your files showing when copies were sent to Mr. Elliott and Mr. Cooper. There are in some of your copies such notations, are there not?—A. There are some letters that copies were sent to—no; that letter that you refer to. that copy was sent to Mr. Elliott, was written by Mr. Cooper when he was on the coast and he sent a copy to Mr. Elliott.

Q. Yes; I was in error about that. That was Mr. Cooper's letter.—A. Yes; that was Mr. Cooper's letter. But I never sent copies of any of the letters to Mr. Elliott. I may have sent some to Mr. Cooper.

Mr. Hughes. Does that refer to the letter of Mr. Cooper already mentioned or some other letter?

A. No, sir; that is another letter, Mr. Hughes.

Mr. HIGGINS. A subsequent letter.

Mr. HUGHES. You were about to read Judge Hanford's reply.

A. Judge Hanford's reply was dated September 7, 1905. [Reading:]

Mr. G. H. PLUMMER, *Western Land Agent, N. P. Railway Co.*

SIR: Your favor of the 4th instant received and I thank you for favorable action on my application. I return herewith the formal application to purchase parts of sections 23 and 25, township 13 north, range 27 east, and my check for first payment amounting to $332. A scheme is now being promoted to organize a company with sufficient capital to install a large pumping plant to raise water from the Columbia River to irrigate a district which will include this land. If the organization shall be completed this fall, with stockholders and officers worthy of confidence, I will make a contract with them for water; otherwise I will install a pump for experimental use next spring.

Yours, truly,

C. H. HANFORD.

Q. That is on the official paper, the same as the other letters?—A. Yes, sir.

Q. And I will ask you now the general question whether all the correspondence that you had with Judge Hanford relative to his purchase of railroad lands was on the official stationery, indicating it was written in the judge's chambers of the United States district court at Seattle?—A. I can't say that without looking through the entire files. I didn't note that as I went through.

Q. I will ask you to indicate it as you read Judge Hanford's letters.—A. Yes, sir.

Q. The examination will show it to be the fact, as near as I have been able to examine the files.—A. All right. With that letter was an application for the purchase of the lands, and subsequently a contract was entered into in the name of Cornelius H. Hanford for the lands in question, providing for the payment in six installments.

Q. Was that the usual contract for the sale of such lands?—A. That is our usual five-year contract plan.

Q. Was there anything unusual in the contract different than the Northern Pacific Railway Co. ordinarily made for the sale of such land?—A. No, sir; it is on the regular printed form.

Q. A general form?—A. Yes, sir.

Q. That contract was paid up in full, however, before it matured and was assigned on December 5, 1906, to the Hanford Irrigation & Power Co., as to the lands in section 25–13–27 east, and the deed was issued to the irrigation company, dated December 10, 1906.

Mr. HUGHES. For the land in 25?

A. For the lands in section 25 only.

Mr. HUGHES. Pardon me; may I just interrupt?

Mr. HIGGINS. Certainly.

Mr. HUGHES. What other lands, what other sections, were embraced in that contract?

A. Two sections, 23 and 25.

Q. Twenty-three and twenty-five. I had it 23 and 5.—A. Yes.

Mr. HIGGINS. Will you furnish, Mr. Plummer, to the committee, at the hotel, at the Washington Annex, sending it to Mr. Graham, a copy of that contract, when you reach Tacoma?

A. Yes, sir.

Q. And certify to its being correct?—A. Yes, sir.

Q. Reference is made in that letter of Judge Hanford's—the last letter which you read—to a scheme for irrigation. Did you then

know what that was?—A. I don't remember, but I think that is the first intimation we had of the plan to organize a larger company.

Q. Well, now, Mr. Plummer, that was called to your attention either about that time or a little later in some other way than by that letter, was it not?—A. That is the first mention we have in the files of the formation of the larger company.

Q. Well, now, apart from the files, what is your recollection as to when and who first called the plan of the Hanford Irrigation Co. to your attention?—A. My recollection is that the plans were first outlined to me by Judge Hanford at the time he made the application for the purchase of the large block of lands, about 12,000 acres. That is my best recollection.

Q. Now, I have inquired of you, Mr. Plummer, as to the first contract that was made by Judge Hanford with the Northern Pacific Railway Co. for these lands. If there is any other fact that you desire to state in connection with the letters which you have read, I wish you would do so, and all facts which you can recall now with reference to this one transaction, either of talks that you had with Judge Hanford personally or Mr. Drake or with anybody else?—A. It is not likely that I had any talk with Judge Hanford about this sale. It was an unimportant matter compared with the larger trade——

Q. (Interrupting.) But did you then know at the time that there was to be a larger trade?—A. No, sir; no, sir. It was merely the matter of sale of a couple of sections, with a promise on Judge Hanford's part that he would install a pumping system.

Q. But that was to be an experimental system?—A. Yes, sir.

Q. And very small?—A. Yes, sir.

Q. In the nature of not a large development in any sense at all?—A. No, sir; merely an experiment to see whether the land could be irrigated at a reasonable cost.

Q. Well, was that a suggestion that one corporation would do the irrigating and another corporation develop the land, provided his experiment proved successful?—A. I don't know as I understand that question. What is that?

Q. Was it suggested to you when Judge Hanford told you of his plans to carry on an experimental irrigation plant that if his plans to carry on that experimental irrigation plant were successful that it might be feasible to carry on a development there which would develop a very much larger area of the Northern Pacific lands than he had purchased?—A. Why, I don't think the larger proposition was taken up with us nor considered at that time—at the time this sale of the two sections was made—and I don't know whether the judge had any plans for larger development in mind at all.

Q. Or whether anybody else did?—A. Nor anybody else; no, sir.

Q. Have you told the committee all you know about the way that the first tract of land was acquired?—A. Yes; I have told you all I remember about that transaction.

Q. Will you hand Mr. Hughes the file which you have just been reading, in order that he may look it over, in case he wants to ask you any questions in reference to it?—A. Yes. [Witness handing file to Mr. Hughes.]

The committee here took a short recess.

GEORGE H. PLUMMER on the stand.

Mr. HIGGINS. When did Judge Hanford and Mr. Copper, with you, if at all, talk about the acquiring of a larger tract of land?

A. As near as I can recollect that was in 1906. [Examining papers.]

Q. Well, did they talk with you?—A. Yes, sir.

Q. Where?—A. In Tacoma.

Q. What was said?

Witness examines papers.

Q. Can't you give your recollection without——A. (Interrupting.) My recollection is that Judge Hanford outlined to us the plans that he then had in mind for forming the large company for the irrigation of about 25,000 acres of land below a feasible lift, and in connection therewith the construction of a power plant, which was afterwards carried out.

Q. What was said by Judge Hanford at that meeting as to getting additional lands from your company?—A. He told us that if he went ahead with his plans he would want to acquire the lands owned by our company below the canal.

Mr. HUGHES. Below the proposed canal, you mean?

A. Below the proposed canal.

Mr. HIGGINS. When was the appointment, or how was the appointment made for you and Judge Hanford and Mr. Cooper to meet to discuss this matter?

A. I don't remember that, but it is probable that I told Judge Hanford that Mr. Cooper would be in Tacoma on a certain date and suggested that he arrange to meet us at that time.

Q. Well, that suggests that you had before that had some talk with Judge Hanford about this same matter.—A. Very likely.

Q. What did Mr. Cooper say in response to Judge Hanford's suggestion that he wanted some more railroad land to carry out his irrigation project?—A. That is contained in a letter——

Q. (Interrupting.) Well, apart from the letter, won't you give me your recollection of it? We will have the letter later on.—A. No, I can't, Mr. Higgins, I can——

Q. (Interrupting.) For how long a time did the interview last?—A. I don't remember that, but it was quite short.

Q. Was an arrangement made at that interview for a subsequent meeting with Mr. Cooper?—A. No, sir: I don't think so. As I recollect it, Mr. Cooper told Judge Hanford that when he had his plans perfected to take the matter up with me and agree with me upon the lands to be sold to the irrigation company and to try if possible to reach an agreement as to price, all of which was to be submitted to Mr. Cooper for his approval, and possibly that of the president.

Mr. HUGHES. Possibly that of what, did you say?

Mr. HIGGINS. Possibly that of the president.

The WITNESS. Possibly that of the president.

Mr. HIGGINS. Had you discussed with Mr. Levey at that time the matter of the sale of these lands to Judge Hanford?

A. I don't think so; no, sir.

Q. You did, however, subsequently?—A. I did later; yes, sir.

Q. Now, I wish you would fix the date, if you found the letter that you were looking for—the date of that meeting of Mr. Cooper and Judge Hanford and yourself?—A. (After examining.) I have no record in the file, but it is probable that it was some time prior to January 22, 1906, because Mr. Cooper wrote to Judge Hanford from St. Paul advising him of his conference with the officials of the Reclamation Service.

Q. We will take that letter up and have it read in the regular time. That is the way you fix the date after looking through your letter file?—A. That is the way I fix the date, yes.

Mr. HUGHES. What is that date?

A. January 22, sometime prior to that date.

Mr. HIGGINS. Before that time, not after that time. How are you able to say that it was at the Tacoma Hotel?

A. No, sir; I am not.

Q. Why do you say it?—A. I don't know. There were two meetings that Mr. Cooper and I had with Judge Hanford, one at the Tacoma Hotel and one in my office, but I can't say which one. They were two about two years apart, as I recollect it.

Q. Neither do you want to say that those were the only two meetings that you had with Judge Hanford about just at that time, do you?—A. That is all that I remember that we had with—that is Mr. Cooper and I had with Judge Hanford.

Q. How did you happen to call upon Judge Hanford at his chambers in the Federal building?—A. As I recollect it it was on account of the fact that the Reclamation Service wanted to know——

Q. (Interrupting.) Well, it was with reference to this project, was it?—A. Oh, yes; yes, sir; with reference to this project, and had——

Q. (Interrupting.) You also met Judge Hanford on occasions at the Rainier Club?—A. I simply—I didn't meet him there—I simply saw him there.

Q. Well, you saw him there?—A. That is all.

Q. And discussed this matter with him there?—A. No, sir; I don't believe that I ever discussed it—discussed the matter with him there.

Q. Well, he called also at your office a number of times——A. (Interrupting.) And he called at my office; yes, sir.

Q. As you have testified. Now, you may read the letter that you have indicated that opens the transaction for the acquiring of 12,690 acres. Is that correct?—A. 12,690.05 acres. [Reading.]

ST. PAUL, MINN., *January 22, 1906.*

Judge C. H. HANFORD, *Seattle, Wash.*

DEAR SIR: I was at Washington, D. C., last week, and there discussed with the officials of the Reclamation Service and the Washington congressional delegation the entire situation with reference to irrigation projects in the State of Washington. The situation now is that the Secretary has approved the Teton project; also the purchase of the Sunnyside Canal, conditional that a satisfactory adjustment of water rights in the valley is effected; also that the claim of the State to the Carey lands is disposed of either by the State withdrawing its claim or by an adverse ruling of the Secretary——

Q. (Interrupting.) The Carey lands refers to the Carey Act?—A. Yes, sir; lands under the Carey Act which the State had previously selected. [Continuing reading:]

Provided these conditions are met, the Reclamation Service will commence in the Yakima Valley, and ultimately, when funds are available, they will un-

doubtedly take up and construct the Leadbetter Canal, and will also construct the necessary storage reservoirs on the Yakima and its tributaries.

I should say here that—this is not in the letter, but I should say in regard to the Leadbetter Canal that that is a canal that was designed to divert the water from the Yakima River at a point near Prosser and bring it around the easterly end of the Rattlesnake Hills and to cover all of the lands lying between the Columbia and the Yakima Rivers and including these lands that now lie below the Hanford Canal, and it was in connection with that that we reserved all of these lands, at the request of the Reclamation Service.

Mr. HUGHES. Would that include all of the lands below the lower ditch, or only those south of ——— Mountain?

A. That includes all of the lands below the Hanford project.

Q. Including that 20,000 acres?—A. Including the 25,000 acres under their canal that is already constructed.

Mr. HIGGINS. You mean the 25,000 acres that was subsequently acquired by the Hanford Co.?

A. Well, they didn't acquire all of the 25,000 acres; they acquired 12,000 of it from us, and the balance were the lands that did not come to us. We got, of course, only odd sections——

Q. (Interrupting.) The balance of them were school lands?—A. No, sir; the balance were Government lands, but the school lands only constituted one-sixteenth of the total. The school lands are sections 16 and 36 in each township—only got 2 sections out of 36 under the enabling act.

Q. You don't understand that the Hanford project included any Government land, do you?—A. No; they could not acquire the Government lands. The only way the Government lands could be acquired was by settlement under the homestead law or the desert act, under which they could be taken up by actual settlers.

Mr. DORR. I think some of those lands were granted lands for normal-school purposes, as distinguished from the school lands, sections 16 and 32, that the witness is referring to.

Mr. HIGGINS. Well, that is a matter we have no——

A. (Interrupting.) That is something——

Mr. HIGGINS (continuing). Information about.

A. (Continuing.) That I have no information about.

Q. And had nothing to do with?—A. No, sir.

Q. And neither did the Northern Pacific Railway Co.?—A. No, sir; not a thing.

Q. Continue with your letter.—A. (Continuing reading:)

If, however, the conditions referred to are not met, then the Reclamation Service wish to take up the Priest Rapids project, covering both sides of the river, that being the only other project in the State of Washington that they consider at all feasible. Therefore the Reclamation Service desire us to withhold any disposition of any of our lands that would be affected by the Priest Rapids project until it is determined whether that project will be taken up, which in turn will be determined by whether the conditions in the Yakima Valley are met or not met.

My understanding is that the adjustment of water rights in the Yakima Valley is well in hand and in all likelihood will be disposed of within a very short time, and I also understand that the State land commissioner is now in Washington in the interests of the State with reference to the Carey lands, and that that question will also be disposed of shortly. My judgment, from all I heard in Washington, would be that the conditions as to the Yakima Valley projects will be met within a short time and the work commenced. If I am correct, then the United States will do nothing with the Priest Rapids

project at this time and probably not for many years to come. As long as the Reclamation Service has determined that it will not take up the Priest Rapids project, we have concluded to deal with your company with reference to our lands underlying your project, accepting the fact that the sale to your company of these lands will take away some acreage that would be covered by the Leadbetter Canal, but it is not considered serious because of the large acreage that will be left and because of the location of the lands under your your project. The question of price and terms upon which we will sell the lands to your company has not been determined, as it was thought best to leave that for negotiation between your company and western land agent Plummer. It might be well, in order to save time, for your company to take up that question with Mr. Plummer now, in anticipation that the United States will not go on with the Priest Rapids project, and Mr. Plummer will be advised to deal with your company accordingly.

Yours, very truly,

THOMAS COOPER, *Land Commissioner.*

After reading that letter, if your recollection is refreshed at all as to what was discussed in your meeting with Mr. Cooper and Judge Hanford?—A. Yes; we no doubt discussed and explained fully to Judge Hanford the situation regarding our agreement with the Reclamation Service, which was explained that we——

Q. (Interrupting.) I don't care to have you repeat the letter, but any fact which the letter does not state that is recalled to your mind?

A. No, sir; I don't remember anything else.

Q. Well, did Judge Hanford explain to you in detail just what he proposed in his irrigation company?—A. I don't know that he did.

Q. Did he state who were interested with him in that company?—A. I don't remember that; no, sir.

Q. Did he indicate to you in any way how he proposed to finance it, or what his general scheme of promotion was?—A. No, sir; he might have stated that he proposed to take in some moneyed men here—local men that would put up the money to put this through—which was afterwards done.

Q. You know, then, as a matter of fact, that the company was formed a long time before the date of that letter?—A. I don't know when the company was formed.

Q. That is a fact?—A. It is a fact. I didn't know that. I didn't know that.

Q. When did you talk with Judge Hanford after that letter which you have just read? Let me see that file.

Witness hands file of papers to counsel.

Q. Are you able to answer my last question, Mr. Plummer?—A. Not without referring to the file; no, sir.

Q. Well, here is a letter from Mr. Cooper to you, dated January 22, 1906. Read that in the record [handing papers to witness].—A. (Reading:)

ST. PAUL, MINN., *January 22, 1906.*

Mr. D. H. PLUMMER, *Western Land Agent, Tacoma, Wash.*

DEAR SIR: I hand you herewith copy of letter to Judge Hanford which explains itself. If this company desires to take up negotiations with you on price and terms of our land that will be covered by their project you may proceed to do so. As to price, that properly should be determined by what they can afford to pay, taking into account the cost of watering the lands and their value when watered. As to this I have no information whatever, so that I can not even make a suggestion. I am satisfied, however, that the company would not care to sell these lands at less than $2.50 per acre, and I should hope

it would figure out so that we could get at least twice that price and as much more as they will stand. You will, of course, understand that the price must finally be approved by the executive committee. Discuss the matter fully with Mr. Levy and keep him advised of the negotiations.

Yours truly,

THOMAS COOPER, *Land Commissioner.*

Q. Who was the executive committee then of the Northern Pacific Railroad?—A. Well, that is something I don't know. I think, however, that Col. Clough was chairman of that committee and Mr. Lamont, I am not sure.

Mr. McCOY. What Mr. Lamont?

A. Daniel S. Lamont. He was vice president of the Northern Pacific at that time.

Mr. HIGGINS. When did you subsequently learn more in detail as to the plans of the Hanford Irrigation Co.?

A. I can't tell that without looking at the files.

Q. Approximate it?—A. I think following that letter I took up the matter with Judge Hanford, or else he took it up with me—no, I first got from Mr. Haynes, as I recollect it, without refreshing my memory, a plat showing the lands that they would be able to irrigate from their proposed system, and then took up the matter with——

Q. (Interrupting.) Is that the letter of January 23 that you got from Mr. Haynes, dated Seattle, January 23, 1906, addressed to you and signed by Mr. Haynes—is that the letter you referred to [handing letter to witness]?—A. That letter is addressed to Mr. Cooper and signed by Mr. Haynes.

Q. Yes; I am in error about this, it is addressed to Mr. Cooper.—A. Yes, sir; I think that was the next letter in the progress of the negotiations.

Q. Won't you read that letter, Mr. Plummer.—A. (Reading:)

SEATTLE, *January 23, 1906.*

Mr. THOMAS COOPER, *Land Commissioner, N. P. Railway Co., St. Paul, Minn.*

DEAR SIR: Your letter to Judge Hanford regarding his application dated November 4, for Northern Pacific lands below described, has been referred to me, Judge Hanford requesting me to supply you with further information regarding the purposes of our company. Our company is organized for the purpose of irrigating lands on the banks of the Columbia River by hydroelectric power, and the company intends to increase its power capacity and extend its business, as the demand increases, to the lands in the valley of the Columbia River, possibly to a distance of 100 miles. Similar power plants to the one which we intend to build have been built and operated successfully in California until the business has grown to the extent that according to Government reports four times the area is under irrigation by power than was formerly irrigated by gravity. Nowhere can conditions be found more favorable for this business than is afforded by the water power of Priest Rapids and the rich lands lying within an easy lift on the banks of the Columbia River. The water power on which our company has filed is ample for purposes of irrigating all lands for which application has been made, and sufficient over to transmit to the thickly settled Yakima Valley, Sunnyside, Prosser, and Kennewick District. Later it is the intention of the company to promote and operate electric railroads. It is not our intention to in any way embarrass the operations of the Reclamation Service Applications for these lands were not made until Engineer Noble, of the Reclamation Service, told the writer that the Government would not consider a reclamation scheme on the west bank of the Columbia River, the Government not being empowered to sell power commercially, and their estimates of the cost of this project were too high to be considered. Hoping that these additional facts may aid you and hasten favorable action on our application, I am,

Very respectfully, yours,

M. B. HAYNES, *Secretary.*

Q. That is addressed to Mr. Cooper?—A. Yes, sir.

Q. Do you know how it happened that Mr. Haynes should write that letter to Mr. Cooper after Mr. Cooper had in a former letter referred the matter to you?—A. No; I don't, except that I presume he wanted to advise Mr. Cooper of their plans, as he has done in that letter. The only matter that he was to take up with me was——

Q. (Interrupting.) Had he talked with you at that time?—A. I don't remember about that. I don't think so; no, sir.

Q. Your recollection of just what occurred, Mr. Plummer, is limited to the correspondence that you had at that time?—A. Very much. Very much, Mr. Higgins. I have—as I say, it is a good many years since this happened, and I don't remember much of the details, but the details are all in this file; the correspondence had between Mr. Cooper and myself is very complete.

Q. You can't explain to the committee how Mr. Haynes wrote that letter to Mr. Cooper——A. (Interrupting.) No, sir.

Q. (Continuing.) When Mr. Cooper had left the matter with you to investigate?—A. No; I can not.

Q. When was it that you made some investigation as to the financial resources of the Hanford Irrigation & Power Co.?—A. That was a long time after the negotiations started. The investigation, or rather the inquiries, that I made were with a view of determining whether or not they were going to be able to carry out that feature of the contract which required the construction of the canal within a certain time, and the expenditure of $200,000 on the irrigation project. The contract contained such a provision, which was made a part of the consideration.

Q. That is, you were subsequently advised of who was financially interested in the Hanford Irrigation Co., and you made, from those that you understood were financially interested in the company, inquiries as to its responsibility?—A. Yes, sir; I talked with Mr. Michael Earle and also W. R. Rust at Tacoma, both of whom were stockholders.

Q. Who is W. R. Rust?—A. He is the manager of the Tacoma Smelting Co.

Q. Did he tell you that he was a stockholder?—A. Yes, sir.

Q. You got your information from him?—A. The information I got from him at the time was——

Q. (Interrupting.) No; but you got your information as to his holding stock from him, didn't you?—A. No, sir.

Q. Who from?—A. My remembrance is that Mr. Haynes told me who the parties were interested in the project.

Q. Did he submit to you a list of the stockholders?—A. Not that I remember; no, sir.

Q. It appears that on January 27, 1906, Mr. Cooper replied to Mr. Haynes's letter, that being dated at St. Paul. I want you to read that.—A. (Reading:)

ST. PAUL, MINN., *January 27, 1906.*

MR. MANLEY B. HAYNES,
15 Schuerman Block, Seattle, Wash.

DEAR SIR: I am in receipt of your favor of the 23d instant, in reference to the Priest Rapids irrigation project. As I explained in my letter to Judge Hanford, we can do nothing definite about this until the United States has decided whether it will take up the Priest Rapids project or not, but I suggested in my letter that in order to save time you might take up the negotiations

as to price and terms of sale, if one is made, with Mr Plummer, and this I think you had better do unless you prefer to wait until we are in a position to say definitely that we will sell.

Yours truly,

THOMAS COOPER,
Land Commissioner.

Mr. Cooper sent me a copy of that letter.

Q. That appears on the letter which you have just read?—A. Yes, sir; it says "this is copy to Mr. Plummer with copy of Mr. Haynes's letter, to which there is a reply attached."

Mr. McCOY. What was the date of the letter in which Mr. Haynes said that he had been satisfied on inquiries of some Government official?

Mr. HUGHES. January 23.

A. That was January 23, 1906.

Mr. McCOY. That was a letter to Mr. Cooper?

A. That was a letter to Mr. Cooper, to which this letter which I have just read was a reply.

Mr. HIGGINS. Have you then had a talk with the Hanford Co.'s engineer?

A. No, sir; I don't think so.

Q. Here is a letter, which I will ask you to read, from Manley B. Haynes, 15 Sheurman Block, First and Cherry, Seattle, giving date February 3.—A. Dated:

FEBRUARY 3, 1906.

D. H. PLUMMER, *Northern Pacific Land Office, Tacoma.*

DEAR SIR: Judge Hanford wishes me to let you know that he will be in Tacoma on Monday, and wishes to call on you while there.

Yours, truly,

M. B. HAYNES.

Q. Did you answer that letter?—A. (After examining paper.) Apparently not; no, sir.

Q. Well, did Judge Hanford call on you as a result of that letter, or whether or not as a result of it, as a matter of fact he called on you at about that time?—A. It appears that neither Judge Hanford nor Mr. Haynes called on me, but——

Q. Well, did you call on him at Seattle?—A. No, sir.

Q. Or at Tacoma?—A. No, sir; I don't think so—because there is a letter—the next letter is——

Q. (Interrupting.) Well, without reference to the letters which you have before you, are you able to state you saw at about that time and discussed this project with him?—A. I am not able to say; no, sir.

Q. Well, do you know whether you did at any time?—A. And discussed with him. Now, just wait a moment. Let me go back here. [Examining paper.] I did discuss the matter with Judge Hanford some time between February 3 and February 12, 1906. In my letter to Mr. Cooper of the latter date——

Q. (Interrupting.) Well, where did you have this talk with him?—A. Presumably in my office.

Q. Well, can't you——A. (Interrupting.) I can't say that.

Q. (Continuing.) Divorce yourself for a moment from your letters, and see if you can't recall——A. (Interrupting.) No, sir; I could not.

Q. (Continuing.) A prominent citizen calling on you on a project of this kind?—A. No, sir; we have a good many prominent citizens calling at my office, and this is six years ago. I can't tell.

Q. Not a good many Federal judges, however?—A. No, sir; we have a good many prominent citizens calling.

Q. (Continuing.) In Seattle and this section. Well, you are not able to state that——A. (Interrupting.) No, I am not, Mr. Higgins. Evidently we got together, because on February 12, 1906, I wrote Mr. Cooper that I had discussed the matter with Judge Hanford.

Q. Well, inasmuch as you have got along, we will leave it until after dinner and discuss it further.—A. All right.

Q. If you will allow me to take your files.

Adjournment was taken until 7.30.

EVENING SESSION.

Continuation of proceedings pursuant to recess. All parties present as at former hearing. Same witness on the stand; examination resumed as follows:

Mr. Higgins. Just before the recess, Mr. Plummer, I called your attention to a letter from Mr. Haynes to you asking for an appointment for Judge Hanford to talk with you, and as I recall it you fixed, approximately, some time after that that Judge Hanford did see you about these lands; now I want you to state to the committee what was said and done at that meeting.

A. I met Judge Hanford, but I do not remember whether it was at my office or elsewhere. But at that meeting we discussed the matter of the price of the lands that were—a list of which was given me by Mr. Haynes, and as I recollect it an agreement was reached on a price of $10 per acre for the lands that were irrigable from the proposed canal and $3 per acre on the lands that were nonirrigable, either on account of the character of the soil or because of the fact that they were above gravity irrigation—that is, irrigation by gravity from the ditch. There was then left to be determined——

Q. Before you get on that, how did you determine whether the lands were irrigable or not?—A. That was to be determined by a joint examination to be made by representatives of the two parties, as I recollect it.

Q. Who was to represent the railroad in that examination?—A. Sir?

Q. Who was to represent the railroad in that examination?—A. Well, that examination was not made, but it was intended at the time that I should appoint an examiner to go over and look over the lands and classify them into the two classes, the irrigable and nonirrigable lands.

Q. Did you have in your employ an engineer for that purpose?—A. He is not an engineer, but I have a man who is very familiar with irrigation and irrigated lands.

Q. Who was the man that you intended to make that examination at the time of your talk to Judge Hanford?—A. Well, I do not know. I have two or three men, but it is probable that I should have put Mr. Benson on that work if he had been available.

Q. And whom did you understand was to represent the Hanford Co.?—A. I do not know, as we did not get to that point where the joint examination was to be made. I do not know that they appointed a man, at least there was no man appointed for the purpose,

because we found another method of classifying the lands without having the joint examination made.

Q. But you knew who their engineer was, didn't you?—A. Yes.

Q. At that time had you had any talk with him?—A. I do not think I had.

Q. Who was he?—A. I think Mr. Owens—Henry K. Owens—was engineer at the time.

Q. At that time had you made any inquiry as to the financial responsibility of the Hanford Irrigation & Power Co.?—A. No, sir; not that I remember.

Q. Didn't you satisfy yourself of their ability to perform any contract that they signed with you before you had finally concluded to recommend that a contract be made?—A. No, sir; we were satisfied from the—from Judge Hanford's statement to us that he was able to go ahead and complete the ditch, that he could do so, and the fact that he was willing to agree to have a clause put in the contract that if he did not construct the ditch and spend $200,000 within a certain time that he should forfeit the contract, and the money that he had paid was evidence, satisfactory evidence to us, that he was—that he had made such arrangements as would enable him to go ahead.

Q. That is to say, you considered the sale of the land upon his personal statement?—A. Yes, sir; and the fact that he was willing——

Q. Now, upon any representations which he made to you as to the responsibility of the people whom he proposed to associate with him in the company?—A. We did not look into that matter.

Q. What led your company, Mr. Plummer, if you know, to finally conclude to dispose of this 12,000 acres?—A. The fact that the company was willing to go ahead and construct the ditch, place the lands under irrigation, and offer them for sale, and——

Q. Well, so far as your knowledge went and so far as you know as to the knowledge of any of your associates in the Northern Pacific Railway Co. were concerned, they had no assurance of the ability to do that except Judge Hanford's willingness to undertake it?—A. And the fact that he was ready to pay the first payment, which was quite a large amount, and also that he was willing to submit to a clause in the contract that they would spend $200,000 within the limited time, which was two years—if you will allow me to look at that contract——

Q. What was the means to be taken by the Northern Pacific Railroad to check up the expenditure on the irrigation plant to determine whether or not $200,000 was spent?—A. They were required, under the contract, to spend within two years from the date of the contract $200,000, and when the time came when the two years had elapsed, or about that time, I called upon them for a statement of the work that they had done, and I had kept in touch with the work; my examiners were in that vicinity from time to time and they reported to me on the progress of the work and I had a recollection that the Reclamation Service, or rather one of the engineers of the Reclamation Service, had been in that vicinity, and I think I had a talk with him about it.

Q. Who was it?—A. Mr. D. C. Heney.

Q. From where?—A. His headquarters were in Portland.

Q. Oregon?—A. Yes, sir.

Q. Is he now connected with the Reclamation Service?—A. No, sir.

Q. Do you know where he is now?—A. His office is in Portland, but he is not connected with the Reclamation Service. I do not know what his business is now—whether he is connected with any other concern or not.

Q. What phase of the matter did you discuss with him at that time?—A. The work that had been done, and I also talked with him about the—now let me see—at that time I was going to say that I talked with him about the relinquishment of the lands by the Reclamation Service; but that was before that time; it was not at that conference that I had with him that I discussed that matter.

Q. To enable your road to make this contract with the Hanford Irrigation & Power Co., did the Reclamation Service have to make some releases?—A. Yes, sir.

Q. Now was that release evidenced by assignment?—A. No, sir; it was a release that was made by Director Newell.

Q. Is that recorded in the auditor's office?—A. No, sir.

Q. As a deed of real estate would be?—A. No, sir; it was not necessary, because the arrangement we had with them was an agreement whereby we were to reserve all of our lands within districts that the Reclamation Service was investigating with the view of possible irrigation, and they had a blanket agreement that covered all of our lands, no matter where located, that we knew the Reclamation Service was engaged in examination work.

Q. Did you take that matter up yourself with the Chief of the Reclamation Bureau in order to get it released?—A. No, sir; Mr. Cooper did.

Q. You mean your general land agent?—A. Our land commissioner.

Q. And that is what he refers to in his letter about having been in Washington conferring with Mr. Newell?—A. Yes, sir; and I think there is a copy of Mr. Newell's letter in the file in which he stated that the Reclamation Service had decided not to construct a canal there.

Q. Suppose you find it and read that at this point, if it is there.—A. I do not see it in this file.

Q. Can you supply it?—A. I think it is probably in the other file; I will see [examining file]. I do not see it. That was done about the first part of April, for I have a telegram here from Mr. Cooper dated April 3, 1906, in which he says——

Q. Read the telegram just as it is in the evidence.—A. (Reading:)

ST. PAUL, *April 3, 1906.*

G. H. PLUMMER, *Tacoma:*

No reason, so far as Reclamation Service is concerned, why you should not go ahead and make deal with Judge Hanford subject to approval. What is the status of negotiations?

Q. That is dated Washington, D. C.?—A. No, sir; that is St. Paul. I am quite sure there is a copy of a letter from Director Newell in this file, but I am not able to locate it.

Q. Without taking any more time now, Mr. Plummer—if you find it after you get back to your office I wish you would be good enough to send the committee a copy of it.—A. Yes, sir.

Q. To go back to the meeting you had with Judge Hanford after you had received the letter from Mr. Haynes requesting an appoint-

ment for Judge Hanford, as I understand you, Judge Hanford then explained what he proposed to do.—A. Yes, sir.

Q. He did not at that time indicate to you any persons who were associated with him in the project?—A. I do not remember that he did.

Q. The result of that talk was that the irrigable land was to be sold at $10 an acre and the nonirrigable at $3 an acre.—A. Yes.

Q. Now, have you in your files a letter that follows that in sequence?—A. I have a letter which I wrote Mr. Cooper explaining my conversation and the agreement that I made with Judge Hanford, subject to approval.

Q. Did you at that meeting make an agreement?—A. Yes, sir; I reached an agreement.

Q. Have you a copy of the agreement which you then reached with him?—A. No, sir; that was not put in writing, except in the form of my letter to Mr. Cooper.

Q. That agreement was subject to the approval of Mr. Cooper?—A. Yes.

Q. In your letter to him after you talked to Judge Hanford that is the only memorandum you have of that agreement?—A. Yes, sir.

Q. Will you read the letter?—A. I will read the letter. This is dated:

TACOMA, WASH., *February 12, 1906.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR: Referring to your letter of January 22 about sale of lands in Yakima County to Judge Hanford, in discussing the matter with him in a preliminary way I named a price of $10 an acre for the good lands below the ditch and $3 per acre for lands not irrigable, with which will be included any lands too rocky for irrigation and those lying above the ditch. They informed me that out of a total of 32,000 acres commanded from the 100-foot lift, about 7,000 acres are waste lands or too high to be reached. These figures included, of course, the entire area and did not refer to N. P. ownership only. They are to furnish me a map showing surveys, from which I will figure the exact area owned by us. The price of $10 per acre may seem high, but I found that their estimate of cost of placing water on the land is $15 per acre, and they can at this rate afford to pay our price. Their estimate is probably too low, but any cost less than $25 per acre will warrant an expenditure of $10 for the land. It is probable that they will ask us to enter into a contract which will be conditional upon the Reclamation Service deciding not to take up a project to irrigate the same lands, and this will be submitted for approval later. In the meantime our negotiations are subject to your approval.

Yours, truly.

Q. I notice in that letter that you use the language "They informed me" and "they are to furnish me." Whom did you refer to?—A. The irrigation company.

Q. Had you then had any talk with anybody except Judge Hanford about the irrigation company?—A. I may have talked with Mr. Haynes, but I do not remember it. It is possible that I talked with him in connection with the list and the map that he furnished me, but I do not remember that.

Q. Don't you think, Mr. Plummer, that you talked with Mr. Haynes later on with reference to the purchase of 8,000 acres lying east of the river?—A. It may be. I think that I discussed this matter of this sale with Mr. Haynes also, but I am not sure about it.

Q. That is, you think you discussed the sale of the land at this time, west of the river, with Mr. Haynes?—A. These lands are all west of the river; all of them.

Q. Well, did Mr. Haynes call on you, either with Judge Hanford or with Mr. Owens or with anybody else, about the purchase of 8,000 acres east of the river?—A. Why, no; not at this time. The sale of the 9,000 acres came two years later, and was not discussed at all at this time.

Q. Well, that is west of the river?—A. All the lands are west and south of the river.

Q. The 9,000 acres which you refer to were west of the river?—A. Both the 9,000 and the 12,000 are west of the river.

Q. Don't you know that the Hanford Irrigation & Power Co. were considering the purchase of lands east of the river?—A. On the east side of the river?

Q. Yes.—A. I do not remember if they were.

Q. You are not able to say whether or not they called on you—by using the word "they" I mean either Judge Hanford or Mr. Haynes or Mr. Owens or anybody that represented themselves to be interested in the Hanford Irrigation & Power Co.—calling on you for the purchase of 8,000 acres of land on the east side of the river?—A. Well, it is possible; it has slipped my memory if they did.

Q. That would be, even with the Northern Pacific Railroad Co., quite a sale of land, wouldn't it?—A. Yes, sir.

Q. How large an acreage does the railroad company have to dispose of to get it into a class where you would regard it as large for them?—A. Well, it depends on the course that the negotiations take. Now, they may have discussed with us the matter of the purchase of 8,000 acres, but it never reached any point where it was necessary to start a file on the subject, and, of course, it is not likely that we would make any record of it.

Q. You say they may have; of course, that implies they may not have. Now, do you know anything about it yourself?—A. No; I do not remember about it.

Q. On or about this time that this occurred—that you had the talk with Judge Hanford?—A. No, sir; I do not remember about it.

Q. In regard to the purchase of the land on the west side of the river?—A. No, sir; I do not remember about it; they may have discussed that matter with us.

Q. What followed your letter to Mr. Cooper? By the way, do you know Mr. James A. Kerr?—A. I have met him; yes, sir; of Kerr & McCord?

Q. Yes.—A. Yes, sir; I met him.

Q. Where?—A. In Tacoma, and also at his office. I had some dealings with him on an irrigation matter on the lower Yakima Canal; it had nothing to do with this case.

Q. You did have a talk with him about the transfer of these lands to the Hanford Co.?—A. No; I have no recollection of Mr. Kerr having anything to do with this matter.

Q. That was not quite what I asked you.—A. Talked with Mr. Kerr about the transfer of these lands?

Q. Yes; anything in regard to that?—A. No, sir; I have no recollection of that.

Q. Do you know whether Mr. Cooper and Mr. Kerr had any conferences about it?—A. I do not think so; I do not know.

Q. Did you meet any of the trustees of the Hanford Irrigation & Power Co. and discuss with them the terms upon which this sale might be made?—A. No, sir; unless Mr. Haynes was a trustee—Mr. Haynes or Judge Hanford. I discussed it with them.

Q. Well, they were both trustees; but you have spoken of seeing them. Mr. Haynes at that time was the secretary of the company.—A. Yes.

Q. I wish you would state what that letter refers to [showing document to witness]. Is that from Mr. Newell?—A. That is not direct from Director Newell, but it is from Mr. Sweigert.

Q. That is the letter from the Reclamation Bureau which enabled your company to make this contract with the Hanford Irrigation & Power Co.?—A. Yes, sir.

Q. Releasing it from the Reclamation Service; is that right?—A. Yes, sir.

Q. Won't you read it, please?—A. This is from the Reclamation Service office at North Yakima, Wash., and is dated June 8, 1909, and is addressed to Mr. S. H. Plummer——

Mr. Hughes. That would not be this release, because this was 1906.

The Witness. Now, let me see; this is the release of the second batch of lands in the second list.

Mr. Higgins. That is the lot that was afterwards acquired?

The Witness. The second lot that was sold to the Hanford Irrigation & Power Co.

Q. Leaving that for the moment—Judge Hanford told you, didn't he, that the price suggested in your interview with him, the $10 an acre and the $3 an acre, depending on the classification of the land, was too high?—A. Why, I do not remember that he said it was too high. We agreed on that rate.

Q. What did he say about it?—A. I can not remember the conversation, but we agreed at that time that the price should be $10 an acre for the irrigable land and $3 an acre for the nonirrigable land.

Q. Now, Mr. Plummer, didn't he in the course of that conversation in reference to terms, sometime during the conversation, say to you that your prices for your land was too high.—A. I can not tell you, Mr. Higgins, that matter is six years old and I do not know what he said. Heavens and earth, I can not remember a conversation that was six or seven years old—I have to refer to the files.

Q. I can remember one that is two hours old.—A. Perhaps you can.

Q. Refer to the files, if you want to.—A. All right; is this the file here? You will have to allow me to refresh my memory with the files because I can not remember the details of a conversation that I had six or seven years ago—it is simply impossible. Now, that letter that I have read for the record that I wrote to Mr. Cooper on February 12, 1906, would lead me to believe that that price was acceptable to Judge Hanford, depending, of course, upon the classification of the lands. Now that is all I can say about that.

Q. That is to say that you finally, in the course of your talk with Judge Hanford, indicated that those were the figures at which the land could be purchased.—A. Yes, sir.

Q. Now, the conclusion of that interview you reported to Mr. Cooper?—A. Yes, sir.

Q. During the interview can you recall what your discussion was with Judge Hanford about the price and about the classification?—A. About the classification, the arrangement that I had and my recollection is really made up from the file, that the understanding was that we were to have the lands classified, as I stated, by representatives of the irrigation company and the railway company. Now, Judge Hanford expressed the opinion, as I find it in one of my later letters——

Q. Expressed the opinion in this interview that we are talking about?—A. Now, if you will allow me to read this letter it will—it shows just what the—the information that I got from Judge Hanford, whether it was in an interview or in a communication I do not know; if it is a communication it is in the file here, but the letter is dated April 10, 1906, and is addressed to Mr. Thomas Cooper, land commissioner, St. Paul.

DEAR SIR: I hand you herewith form of contract which I propose to use in the sale to Judge Hanford's irrigation company of lands below its canal. I have left the description and consideration blank. As a complete list of the lands has not yet been made up, and it will probably be necessary to have an examination made of the lands to determine whether they are in the $3 or the $10 classification. They have accepted our price of $10 per acre for good lands lying below the canal and $3 for the rocky lands below the canal and those above irrigation. Judge Hanford furnished me a map, showing the lands in the two classifications, and out of 12,700 acres he estimates about 7,100 in the $3 class. This is a larger proportion than I anticipated, and I think it will pay us to have an examination made and classify them accordingly. Will you please look over the form and advise me if satisfactory. I have thought it better to make a straight contract of sale, with a stringent provision for cancellation in case they failed to complete works, rather than to make an agreement of sale later after they have started construction. They are ready to go to work immediately, and from what Judge Hanford tells me I feel satisfied that they have the money and ability to carry it our and are simply waiting on us. They will purchase on five-year contract, one-sixth down and balance in five equal annual installments. I have not yet submitted this form to Judge Hanford, as I desired you to pass on the same before doing so, and I would be glad if you will wire me after you have looked it over so that I can submit the form to him immediately. The total area of lands which we expect to include, according to Judge Hanford's classification, is as follows: Irrigable below the canal, 5,580 acres; poor lands below the canal and area above irrigation, 7,149 acres; total, 12,729 acres.

Yours, truly,

WESTERN LAND AGENT.

P. S.—The above was written on the 10th instant, and was held awaiting an opportunity to talk with Mr. Levy. I have not yet been able to see him, however, as he has been very busy since his return from California, but I will take it up with him at first opportunity and advise you of his approval.

Q. You did take it up with him, didn't you?—A. I then took it up with Mr. Levy and Mr. Levy approved it. Now, as I have suggested there, the area of the poor lands to go into the $3 class was very much larger than I expected, so that I insisted on making the classification—the joint classification, as I had arranged with Judge Hanford, instead of taking his classification, but before we got to

that I learned that the Reclamation Service had made a classification of all of the lands and that I could probably get their map, which was in considerable detail. They had classified it into three separate groups—first, second, and third class—all of the lands in this district by 40-acre tracts; so I took up the matter with the Reclamation Service, as is shown by the file here, and procured a copy of that map, and before doing so I made an arrangement with Judge Hanford that we would both of us accept the classification as made by the Reclamation Service. Neither one of us knew what that classification was, but we agreed that we would both accept and abide by it. Now, when we got that map and figured up all of those lands we found that instead of there being more than one-half of the acreage in the poor-land class, which was to go into the sale at $3 an acre, according to Judge Hanford's classification, that there was about one-third of the lands that were classed as the third-class land, and two-thirds went into the $10 class. Then it was that Judge Hanford demurred and said that at that percentage the average price——

Q. (Interrupting.) When you say he demurred, what do you mean?—A. Well, he demurred to the price—he objected to the price.

Q. He thought it was too high, then?—A. He thought the price was too high, and he objected very seriously to going on with the proposition because he said that the average price per acre that they would have to pay for the land in that classification was very much greater than they had figured on, and when I came to look into the matter carefully, in view of that additional information we had, I felt the same way about it, and I so advised Mr. Cooper, and I recommended to Mr. Cooper that we leave the price of the better lands at $10 an acre, but reduce the price of the poor lands to $1 per acre, and Mr. Cooper objected to that and so wired me, but he said in his message that as it would doubtless cause me some embarrassment because I had already discussed this matter with Judge Hanford and agreed with him, subject to Mr. Cooper's approval, on the dollar rate——

Q. (Interrupting.) Subject to Mr. Levy's approval.—A. (Continuing.) To Mr. Cooper's approval, not Mr. Levy's approval, but to Mr. Cooper's approval—that he would let the dollar rate stand, and the sale was finally made on that basis, and the acreage as it finally worked out, based upon the Reclamation Service classification, was the first and second class lands, which were sold at $10 an acre and amounted to 9,294.24 acres, and the third-class land, which went in at the dollar rate, 3,395.81 acres. Now, that is the whole story in regard to the classification of the lands.

Q. Was it Mr. Cooper that advised you to refer to Mr. Levy in the first conference?—A. Yes, sir. The reason that——

Q. (Interrupting.) When you and Judge Hanford had reached a different price, did you take it up with Mr. Levy?—A. Yes, sir; I discussed the matter with Mr. Levy.

Q. And was Judge Hanford present then?—A. No, sir; I do not think so.

Q. Do you know whether Judge Hanford ever took the matter of the price on the first large purchase up with Mr. Levy?—A. No, sir; he did not.

Q. Well, what was it you talked with Mr. Levy?—A. The reason why the matter was discussed with Mr. Levy was largely a traffic matter, because we had in mind at that time that we might build a railroad up there if this irrigation scheme were carried out and the land settled up, as we all hoped it would be, that there would be a large amount of tonnage there that might attract a railroad into that district, and, as a matter of fact, we did later survey a line from our main line near, or west of Kennewick up through Richland and to Hanford, and then along the river to a connection with the Milwaukee, known as the Kennewick Northern Railway. That line was surveyed and the maps filed, and the right of way was procured over a part of the line.

Q. I find here in your files this memorandum:

TACOMA. *June 11, 1906.*

MR. G. H. PLUMMER:

I have initialed and return to you herewith proposed contract with Hanford Irrigation & Power Co. received with your memo. of June 9.

C. M. LEVY.

A. Yes, sir.

Q. Does that refer to the first purchase?—A. Yes, sir. That is one of our customs, that when a contract passes through any of our officials they initial the contract so that it is always there for reference.

Q. Is the memorandum which you refer to, and that is referred to by Mr. Levy of June 9, among these papers? Mr. Levy says: "Have received a contract with your memoranda of June 9."—A. It is probable that I merely made a lead-pencil memorandum, sending it up.

Q. Well, is it among these papers?—A. I do not see it here.

Q. If it is, will you please read it?—A. No, sir; the memoranda of that date is not here.

Q. What legal services, if any, were involved in the transfer of this land to the Hanford Irrigation & Power Co., by your railroad?—A. The clause relating to the construction of the ditch was a special clause that was prepared, I think, in my office, and submitted to our attorney.

Q. Who?—A. Mr. Grosscup, for approval as to its form.

Q. Any unusual legal questions involved in that, different than ordinarily arise in the transfer of land?—A. No, sir; there was only that question as to the form of that clause which I wanted to be sure was binding on the company and that if they failed to construct the canal and spend the $200,000 that we could cancel the contract.

Q. You might read that letter [showing].

A. (Reading:)

TACOMA, WASH., *June 9, 1906.*

HON. C. H. HANFORD,
Hanford Irrigation & Power Co., Seattle, Wash.

DEAR SIR: I beg to hand you herewith duplicate copies of contract for sale of lands lying below your proposed canal, which I believe is now in proper form. Will you kindly have the agreement executed by the proper officials of your company and return same to me with amount of first payment, $16,063.04, when I will have the agreement executed by the land commissioner.

Yours, truly,

WESTERN LAND AGENT.

Q. How soon after that did Judge Hanford tell you who was associated with him?—A. I can not say; I do not know that Judge Hanford told me who was associated with him. It may have been Mr. Haynes.

Q. Well, did Mr. Haynes tell you about that time?—A. I can not say when it was that I was told.

Q. You spoke of Mr. Rust, Mr. W. R. Rust, he is the manager of the——A. Tacoma smelter.

Q. Is that the American Smelter & Refining Co.?—A. Why, it is one of the Guggenheim smelters.

Mr. HIGGINS. At this time I think it might as well go in the record that it appears from the minute book given to the committee by Mr. Hughes, that the W. R. Rust——

The CHAIRMAN. You mean given to the committee by Mr. Kerr?

Mr. HIGGINS. Mr. Kerr brought the book to Mr. Hughes and Mr. Hughes furnished it to the committee—that Mr. W. R. Rust was a stockholder of the Hanford Irrigation & Power Co., holding 933½ or 933⅓ shares; he subsequently discussed with you, did he not, Mr. Plummer, the financing of the Hanford Irrigation & Power Co. when it was in financial straits.

A. At a time when they were not making progress I called up Mr. Rust on the telephone and asked him about their affairs and he told me that arrangements were then being made to procure additional funds to go ahead with the completion of the ditch.

Q. He told you that he was personally interested in seeing that funds were provided and the thing was financed?—A. No, sir; I do not remember that he did.

Q. Well, is it or not true that upon his assurance, you made the second contract—I mean by that his assurance of the responsibility of the company.—A. No, sir; I could not say that. We knew that Mr. Rust——

Q. Well, did he give you such assurance except on the telephone?—A. No, sir; he gave me no assurance excepting just what I have said; that he and some other stockholders were going to supply additional funds to complete the ditch, and, as I say, I had some talk also with Mr. Michael Earles, whether before or after that time I do not remember, but I made some inquiry and was satisfied that they were going ahead with the completion of the canal.

Mr. HUGHES. Mr. Higgins, you read into the record from the stock journal of the company the stockholdings of Mr. Rust; didn't you read what his stockholdings were after this reorganization instead of prior to that time?

Mr. HIGGINS. Yes; I do not mean to say that it appears from the minute books of the Hanford Irrigation & Power Co. that Mr. Rust at this time was a stockholder in any 933⅓ shares, but that at a later time he held that amount.

Mr. HUGHES. Yes. At this reorganization which the witness referred to he took a large amount of additional stock.

Mr. HIGGINS. Well, the date was about the 21st of September, 1909, nearly three years after the first large tract was acquired, the records of the Hanford Co. will disclose, I think, that he was not at that time a large stockholder. Now, will you read that letter [showing letter to witness]?

A. (Reading:)

TACOMA, WASH., *July 3, 1906.*

Hon. C. H. HANFORD,
Hanford Irrigation & Power Co., Seattle, Wash.

DEAR SIR: I beg to hand you herewith duplicate original of Washington contract No. 6769 for the sale of lands lying below your proposed canal, duly executed on the part of this company. When the contract was returned to me after being executed by your company I discovered on rechecking the original figures that an error had been made in the area of nonirrigable lands in section 1, township 13, range 26 east W. M., which I found totaled 85 acres instead of 125 acres, as originally reported. I have, therefore, corrected the contract, reducing the total area 40 acres and changing the consideration to read $96,338.21 instead of $96,378.21. As the remittance received has been applied as down payment, the deferred payments of principal and interest have been reduced proportionately.

Q. That was signed by you?—A. Signed "Yours, truly, Western Land Agent" and my signature.

Q. I note here a letter from Mr. Thomas Cooper, dated St. Paul, Minn., July 10, 1906, to you, correcting some totals—I do not suppose that it need appear in the record.—A. No, sir; that was merely some errors that were made in figuring up the total area that was sold to them; that is all.

Q. You subsequently acknowledged that letter to Mr. Cooper and advised him that he is correct and that the error was made in making the extra copies to accompany the reports?—A. Yes, sir.

Q. Now, will you read that letter, please [handing letter to witness]?—A. (Reading:)

TACOMA, WASH., *March 12, 1907.*

Hon. C. H. HANFORD,
United States District Court, Seattle, Wash.

DEAR SIR: In accordance with your request when here recently, I hand you herewith a copy of list showing classification of lands sold to the Hanford Irrigation & Power Co. on June 22, 1906, under Washington contract No. 6769.

Yours, truly.

Q. Do you recall what your conversation with Judge Hanford was at that time?—A. No, sir.

Q. Or who came with him?—A. No, sir; I do not.

Q. Or where you met him?—A. No, sir; I do not.

Q. Or whether he came by appointment or you requested him to come?—A. No, sir. The probability is that he merely called and asked me for a copy of the list which I had prepared showing the classification of all the lands in each section, and there is a copy of that list there, and doubtless it was a copy of that list I gave him.

Q. Was it the habit of Judge Hanford to call at your office before this land sale was taken up?—A. Why, he was in my office two or three times, I do not remember how many, perhaps four or five times, in connection with this—possibly four or five times in connection with this trade.

Q. He had been there before 1906, hadn't he?—A. How?

Q. He had been there before 1906, had he not?—A. Well, he was there—I saw Judge Hanford in connection with that first sale which was made in 1905.

Q. But before that it was not an unusual thing for Judge Hanford to drop into your office before 1905, was it?—A. I do not remember that Judge Hanford was in my office before this irrigation matter came up—before the purchase of these two sections; no, sir.

Mr. HIGGINS. I do not know that I care to place in the record the correspondence that Mr. Plummer had with Mr. Haynes as to the progress that was being made in the construction of the irrigation ditch and the power plant, succeeding the acquiring of the first tract of land.

Mr. HUGHES. If that is intended as a question to me, I will state that I have not examined it; if you desire me to answer you, I would say that I have not examined it, Mr. Higgins. That batch of correspondence which you now have I have not seen at all, and my only suggestion would be that such correspondence as would throw light on this transaction should go into the record, and what does not appear to you as throwing light on the transaction it would be useless to encumber the record with; but not having seen it, I can not make any suggestion as to whether it should go into the record or not.

Whereupon Mr. Higgins reads some samples of the letters referred to, and which it is concluded not to put into the record.

Mr. HIGGINS. After the first tract was acquired, Mr. Plummer, and during the summer of 1907, it is true, is it not, that the work was commenced on the irrigation ditch and the plans of irrigation had been commenced?

A. Yes, sir.

Q. What did you do toward following the work; did you go out there yourself?—A. No, sir.

Q. Did you see Judge Hanford frequently and ask him about it?—A. I talked with Mr. Haynes, and, as a mater of fact, I did not take any steps toward ascertaining from them about their compliance with that feature of the contract requiring construction until the time limit was about up, and then I called upon them for a showing as to what they had done, and I was satisfied they had complied with that feature of the contract.

Q. Well, your file of the letters shows that you had, in the summer of 1907, considerable correspondence with Mr. M. B. Haynes, who was then the secretary of the company, as to the proper construction to place upon the contract, and also as to the progress of the work.—A. I think that was in reference to the issuance of deeds, Mr. Higgins; wasn't it?

Q. I think on both.—A. Was it? I do not remember that, of course.

Q. You might read that; that is one with reference to the issuance of deeds [handing letter to witness].—A. I think that all was in connection with the issuance of deeds. [Reading:]

TACOMA, WASH., *July 29, 1907.*

Mr. M. B. HAYNES,
Secretary Hanford Irrigation & Power Co., Seattle, Wash.

DEAR SIR: Referring to recent correspondence about the matter of issuing deeds for lands sold to your company under Washington contract No. 6769, I submitted these matters to the land commissioner and am just in receipt of advice from him authorizing the modification of your contract to the extent that after your canal has been constructed and you are ready to deliver water we will issue from time to time, as desired, special deeds for tracts of not less than 160 acres. For the first 10 deeds so issued no charge will be made, but after that an arbitrary charge of $10 will be made for each deed applied for, to cover clerical expenses incident to the preparation of same.

Mr. HIGGINS. You may state, Mr. Plummer, what you mean by "special deeds."

A. The use of the words "special" there is merely this: That under the contract they were only entitled to a deed for the entire block of land sold upon the completion of contract, but under this modification of the contract they were entitled to receive deeds from time to time for 160 acres or more in advance of the completion of the contract.

Mr. HUGHES. But upon payment of the full price of that particular tract?

The WITNESS. Yes, sir; on payment of the full price of that particular tract.

Mr. HUGHES. That was for the purpose of aiding in the sale of minor tracts.

A. Yes, sir; that was for the purpose of aiding the development of the property.

Mr. HIGGINS. That is to say, when a settler took a contract and he wanted a clear title, there was a provision whereby that particular small tract which the settler acquired could be released from the general contract which the Hanford Irrigation & Power Co. had with the Northern Pacific Railroad?

A. Yes, sir.

Q. Is that the fact?—A. Yes, sir; that is the fact. We frequently find in contracts of this kind that parties who want to make extensive improvements do not want to do so upon lands that they hold under a contract which is based on another contract, and therefore the irrigation company wants to be in a position to obtain a title from us and then make either a deed and a mortgage, or to give them a contract based upon a title which they hold.

Q. Now, will you read that letter [handing letter to witness]?—A. (Reading:)

TACOMA, WASH., *August 31, 1908.*

HANFORD IRRIGATION & POWER CO.,
Seattle National Bank Building, Seattle, Wash.

DEAR SIRS: I beg to call your attention to the fact that the payment due on your contract No. 6769, June 22 last, has not yet been made, and request that you arrange to make payment of same, including interest to date. Be good enough to advise me by return mail in regard to this matter.

Yours, truly,

WESTERN LAND AGENT.

Q. Did Judge Hanford call on you after the receipt of that letter?—A. I do not remember, sir. I will have to look at the file.

Q. And you do not remember whether Mr. Rust did, either?—A. No, sir.

Q. There does not appear from your files anything which would indicate that that letter was replied to, or else I am in error by reason of my unfamiliarity with your files.—A. I can tell when the payment was made and I can see there whether they complied with the demand or not. On October 23, 1908, which was about a month and three-quarters after my letter, they paid interest amounting to $3,853.21, and on November 19, 1908, they paid the installment of the principal that was due on June 22, which was $16,055.04 with interest.

Q. Do you find a letter which accompanied that remittance?—A. No, sir; I do not find the letter that accompanied that remittance, and it is more than likely that the treasurer or secretary——

Q. I won't ask you for your speculation, if you can not recollect about it.—A. Well, there are only two ways that we could have

gotten it; one is to send it by mail and another is to send it by messenger, and if it came by mail it would be in this file, but if it came by messenger it would be delivered to us in the office.

Q. That is, by way of argument—it may or may not be.—A. There is a statement in the files showing the payments and the dates they were made and how they were divided, principal and interest.

Q. Here is a letter dated September 2, 1908, from Mr. Walthew, acknowledging your letter to him of August 31, 1908, in which you call his attention to payments due and in which he assures you "that the men with whom we are dealing are possessed of ample funds to take care of all the obligations of the company, but the details necessary to be arranged have occupied considerable time, so that the matter has not as yet been finally closed." And then another portion intervenes, and then this language: "We appreciate very much the courtesy which your company has extended us in this matter, and trust you will favor us until our present deal can be put through. Very respectfully, Hanford Irrigation Co., Wm. Walthew, secretary." That does not refresh your memory at all?—A. No, sir; except that we held it open for them for a month or two.

Q. Under date of September 3, 1908, Tacoma, Wash., appears a letter to the Hanford Irrigation & Power Co., Seattle National Bank Building, Seattle, Wash., this letter being from you, in which you acknowledge the former letter which I have just quoted from and in which you state that you are pleased to learn "that you have succeeded in carrying out your plans for providing necessary funds to carry the work to completion." That does not afford you any means of recollecting just how that payment was made, and by whom?—A. No, sir; that does not throw any light on the payment. The payment was made later.

Q. You do not know whether it was the subject of negotiations personally or telephonic or in any other way?—A. No, sir; it is customary to allow a little time on our payments, and that is what we did there. The payment was only four months behind.

Q. Is that a usual thing on your contracts?—A. Yes, sir; with a concern that is developing the property, going ahead in good faith and trying to carry out all the other features of the contract, we were very lenient with them.

Q. Do your contracts provide a forfeiture in the case of nonpayment in a given time?—A. Yes, sir.

Q. How long is the time provided in the contract?—A. It immediately becomes forfeitable at the option of the railway company.

Q. Forfeitable on due date of any payment?—A. Yes, sir; if the payment is not made; if either the payments of principal, interest, or taxes are not made on the date when due, the contract is forfeitable.

Q. You may read that letter—I do not know what application it has [handing letter to witness].—A. (Reading:)

TACOMA, WASH., *October 16, 1908.*

HANFORD IRRIGATION & POWER CO.,
Seattle, Wash.

DEAR SIRS: I am in receipt of your letter of the 13th instant requesting deeds for about 3,500 acres of land now contained in your Washington contract No. 6769 on payment of principal and interest which is due June 22 last, amounting to approximately $20,300. I have given this request consideration and can not see my way clear to recommend the issuance of the deeds. Under the terms

of your contract no deeds are to be made until the contract is paid up in full and until the entire irrigation system is completed and in successful operation, but this was later modified by letter to the extent that we would issue deeds for lands underlying the constructed and completed canals on payment of the full purchase price, and providing, of course, though not stated in the letter, that the contract is in good standing.

Upon payment of the amount due last June, one-half of the total consideration in the contract will have been paid. In other words, one-half of the price of the lands will have been paid, but as you ask for deeds for more than one-third of the irrigable lands, which it is to be presumed are of a value greater than the average of all lands under the system, the conveyance of those lands free from under the contract would materially lessen our security, and ordinarily we would not make the deeds without payment of the full amount of the purchase price—that is, $10 per acre—but in view of the circumstances I will recommend to our land commissioner that we make deeds for the lands applied for upon payment of the balance of the purchase price for such lands after the contract has been put in good standing. When the installment due June 22 has been paid, approximately $5 per acre will have been paid on account of all lands. If you will then pay the balance at $5 per acre for the lands to be conveyed, I will attempt to secure authority to make the deed.

Trusting this will be satisfactory to you, I am,

Yours, truly,

G. H. PLUMMER, *Western Land Agent.*

Q. Are you able to supplement that letter with any recollection that you have of the circumstances?—A. Why, no, sir; that is all there is to it, as is shown by the correspondence. They made a request for 3,600 acres—a conveyance of 3,600 acres.

Q. Read that, please [showing letter to witness].—A. (Reading:)

TACOMA, WASH., *October 23, 1908.*

HANFORD IRRIGATION & POWER CO.,
Seattle, Wash.

DEAR SIRS: Replying to your letter of the 22d instant I expect to be in Seattle on Tuesday the 27th instant, and will try to arrange to see Judge Hanford at that time.

Yours, truly,

Q. Did you see him?—A. I will have to look at the file. I do not think I did—I do not remember seeing him—that was on the 22d. No; I did not see Judge Hanford at that time; for on November 9, 1908, I wrote Mr. Walthew, secretary of the company, that "I regret that I did not see Judge Hanford when in Seattle on the 28th ultimo. I tried to reach him by telephone to make an appointment, but was unsuccessful."

Q. Is that all of that letter?—A. No, sir.

Q. Well, you may read the rest of it.—A. I will read the balance of the letter. (Reading:)

TACOMA, WASH., *November 9, 1908.*

Mr. HUGHES. You are now reading the whole of the letter?

The WITNESS. Yes, sir; the whole of the letter now. (Reading:)

Mr. WM. WALTHEW,
Secretary Hanford Irrigation & Power Co., Seattle, Wash.

DEAR SIR: I have your letter of the 5th instant, and regret that I am not authorized to depart from the conditions of the contract, and the letter of July 29, 1907, with respect to the conveyance of lands before the contract is completed, but I am willing to take up the matter with the land commissioner in view of the urgency of the situation. When the matter of making deeds was laid before the land commissioner some time ago it was contemplated that no deeds would be made unless the contract was in good standing, and I do not know whether he would feel like making the conveyance of the portion of the lands while the contract is in its present shape, as this is contrary to our rules.

I have, however, submitted the matter to him to-day, and will advise you of his decision as soon as received. I regret that I did not see Judge Hanford when in Seattle on the 28th ultimo. I tried to reach him by telephone to make an appointment, but was unsuccessful.

Yours, truly,

Mr. HUGHES. Pardon me, but both you and the witness, Mr. Higgins, are reading the name as "William Walthew"; I think that is a mistake—it should be H. M. Walthew.

The WITNESS. We discovered that afterwards. His signature was not clear and we wrote his name as "William" for some little time before we were able to read his writing.

Mr. HIGGINS. It is "H. M.," but it looks very much like "Wm." as he writes it?

The WITNESS. Yes, sir.

Q. Did you see Judge Hanford at a later time, Mr. Plummer?—A. I may have seen him after that correspondence, but I can not recall it. I think I can tell by looking over the files.

Q. Your recollection of the conversation is always limited to your letter file?—A. We are doing a great deal of business in our office. We are selling, some years, 7,000 or 8,000 acres of land and some years more than that, and we are constantly busy from morning till night, and those things that run for five or six years I do not attempt to remember. As a matter of fact, I have gotten so that I carry everything by memoranda and I can not recall a conversation held that far back.

Q. Or any circumstances connected with it—I assume that is true also?—A. No, sir; that is not true.

Q. I say, or any circumstances connected with it?—A. In connection with the sale?

Q. In connection with any conversation that you may have had?—A. Why, certainly I can, yes, sir; I can remember some circumstances. I have reported some of them and I have testified to some of them that I do remember, but as to saying, without looking at this file, that between certain dates I had a conversation or a conference with Judge Hanford it is impossible for me to do so.

Q. You may read that letter [handing letter to witness].—A. (Reading:)

TACOMA, WASH., *November 9, 1908.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR: The Hanford Irrigation & Power Co. desires to get deed for lots 6, 7, 8, 9, and the south half of the southeast quarter of section 1, township 13, range 25 east, embraced in contract W, No. 6769, containing 253.35 acres. The contract makes no provision for issuance of deeds, but you authorized me to make deeds for tracts of not less than 160 acres on payment of the full amount of consideration. These lands are in the nonirrigable class and were figured in the contract at a dollar per acre. The contract is in arrears, the payment due June 22 last, amounting to $16,055.04, being unpaid. The interest, however, amounting to $3,853.21, was paid and extension was granted on the principal. I have, therefore, advised them that no deeds could be issued until the contract is put in good standing. They are, however, anxious to secure this deed for the reason that they intend to use it in connection with negotiations for land in the adjoining section which they require for site for their pumping plant. In view of the circumstances, I recommend that we make this deed on payment of $1,000, to be applied on the contract. Judge Hanford recently informed me that they were arranging their finances satisfactorily and would put our contract in good standing, and Mr. Rust also told me that he and some others interested were putting up the necessary money

to place the company in good shape, and I would like to encourage them to the extent of making this deed so that they can go ahead with their plans for building the pumping project. Do you approve?

Yours, truly,

WESTERN LAND AGENT.

Q. Are you able now to supplement that letter with any recollection of yours as to any talk with Judge Hanford about the financing of the company?—A. No, sir; except that—no I do not remember the conversation had with Judge Hanford at that time. I can not recall the details of it. I remember my talking with Mr. Rust, because I called him on the telephone for the purpose of finding out what was being done toward getting the necessary funds to complete the ditch.

Q. You wrote Mr. Cooper that Mr. Rust also told you that he and some others interested are putting up the necessary money; do you recall who the "some others" were that Mr. Rust spoke of?—A. He spoke of Mr. Earles, I believe.

Q. From your file, Mr. Plummer, I find that that letter of the 9th of November, 1908, was or that your recommendation in that letter was approved by Mr. Cooper in a letter to you dated from St. Paul.—A. Yes, sir.

Q. And that you wrote Mr.—it appears here as "William Walthew," who was the secretary of the Hanford Irrigation & Power Co., advising him that Mr. Cooper had approved, and requesting that a check be sent—you may read that letter into the record [showing letter to witness].—A. (Reading:)

TACOMA, WASH., *November 25, 1908.*

Mr. H. M. WALTHEW,
Secretary Hanford Irrigation & Power Co., Seattle, Wash.

DEAR SIR: I have your yetter of the 23d instant, and have figured out the amount to be paid by your company for deed 3,338.93 acres described in your letter in the event the land commissioner will approve my recommendation to make conveyance upon payment of the balance of consideration due for the particular lands applied for. As I explained to you when in Tacoma, it is our custom to require purchaser to pay the whole amount of consideration without regard to any payments previously made, or, in other words, in addition to the regular annual payments due under the contract, but in view of the conditions explained to me, I am willing to recommend to the land commissioner that we waive our rule and accept the balance of the consideration for particular lands applied for.

Q. Did you then refer to the conversation which you had with Judge Hanford and Mr. Rust and which you indicated in the letter to Mr. Cooper?—A. No, sir; I think not.

Q. As being the conditions explained?—A. No, sir. I think that was a conference that I had with Mr. Walthew. I have a recollection that Mr. Walthew came over and took this matter up with me personally, but this refers, I notice, to a letter of the 23d—this refers to the letter of the 23d.

Q. Give the date of it.—A. November 23, 1908; in which Mr. Walthew, on behalf of the irrigation company, made application for a deed to a number of descriptions aggregating approximately 3,300 acres.

Q. Is that all that you desire to say—I think I interrupted you in the reading of it.—A. (Continuing.) I was looking this over to see what representations he made here about the lands. I called his attention to the classification here, and it was with reference to his

representations in regard to that classification that I agreed to recommend to the land commissioner that we make the deed. To go on with the letter. [Continuing reading:]

I am willing to recommend to the land commissioner that we waive our rule and accept the balance of the consideration for the particular lands applied for. Under the classification adopted at the time sale was made 394.10 acres of land applied for are within the $1 class and 2,944.83 acres are within the $10 class, as shown in the statement below.

And then follows the statement of all of the lands, explaining the classification, the summary of which was 394.10 acres at $1 and 2,944.83 acres at $10, a total of $29,842.40, the balance then to be added to that—a balance of one-half to be paid in order to secure deed—$14,921.20. [Continuing reading:]

After crediting the payment recently made on account of the contract, one-half of the total consideration has been paid, and there is, therefore, payable at this time $14,921.20 in order to secure the deed. You will understand that I have no authority to make this arrangement with you, but am willing to submit it to the land commissioner, and if you are prepared to make your payment I will submit it to him at once and advise you promptly of his decision.

Yours, truly,

WESTERN LAND AGENT.

Q. Will you read the letter submitting it to the land agent [showing letter to witness]?—A. (Reading:)

TACOMA, WASH., *November 30, 1908.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR: The Hanford Irrigation & Power Co. desires to procure deed for 3,339.93 acres of land contained in their contract W, No. 6769. They have sold a considerable portion of this land and some of the purchasers are willing to pay out in full and take their deeds, while it is proposed in other cases to make deed and take back a mortgage which can be sold. Financial arrangements have been made to carry the project along, and they are now attempting to put it in good shape. I advised Judge Hanford that if they would pay the balance of the total consideration due for such lands I would recommend that we make the deed. You will observe by the statement inclosed that they have exactly one-half of the total consideration for all lands contained in the contract, the price of which was $10 for the irrigable lands and $1 per acre for the lands which could not be irrigated either on account of the fact that they were above the ditch or the soil too poor for cultivation. I also inclose herewith a copy of my letter of 25th instant to Secretary Walthew, which explains situation. We have agreed to give them deed for 160 acres or more on payment of the full amount of consideration, and the only question to decide is whether we will make the deed on payment of the balance of the consideration instead of the whole amount. I am in favor of aiding them in this matter, and recommend that we make deed, and if you approve kindly have same executed, and if you will advise me by wire I will deposit consideration $14,921.20 now held in our suspense account.

Yours, truly, WESTERN LAND AGENT.

Q. Will you read Mr. Cooper's reply?—A. Mr. Cooper's reply was in the form of a telegram, dated St. Paul, December 19, 1908.

G. H. PLUMMER, *Tacoma:*

Your letter of November 30 re deed to Hanford Irrigation & Power Co. The President approves issuance of deed, and it will be executed and sent you in due course.

THOMAS COOPER.

10.17 a. m.

Q. Whereupon you wrote Mr. Walthew, advising him to that effect in the letter dated December 21, 1908, as appears from your file. I find letter of September 24, 1909, that is to the Hanford Irrigation

& Power Co., Hanford, Benton County, Wash.; your former letters were addressed to them at Seattle.—A. Yes, sir; at Seattle.

Q. (Continuing.) In which you call attention to certain amount of principal remaining unpaid on the contract, $17,566.—A. I think that was about the time they moved their offices over there to Hanford.

Q. When you wrote the Hanford Irrigation & Power Co., at Hanford, from Tacoma, under date of March 30, 1910, accepting a payment of one-half of the total amount still unpaid on June 22, 1910, with interest up to that date, and the balance on June 22, 1911; and as it appears from your letter the total amount unpaid on the contract is $17,566.98, and you agreeing to accept $8,783.49 and extend the due date on the balance for one year.—A. Yes, sir.

Q. This seems to be a calling down by Mr. Cooper of you.—A. I do not know whether I want that in the record or not.

Mr. HIGGINS. I think it had better go in.

The WITNESS. Very well. Shall I read this?

Mr. HIGGINS. Yes.

The WITNESS (reading):

ST. PAUL, MINN., *June 16, 1910.*

Mr. G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: Among other papers received with your letter of the 11th instant is a contract with the Hanford Irrigation & Power Co. for my signature. This contract is dated June 18, 1909, so that it is practically a year old. Nevertheless it is sent for my signature, without any explanation of the delay. Obviously this is an unusual occurrence, and there must be some explanation, and the explanation should have accompanied the instrument. It should not be necessary for me to take time, which I can ill afford, writing a letter of this character.

Yours, truly, THOMAS COOPER, *Land Commissioner.*

Now, I want to get my reply into the record, if you will allow me to read it.

Mr. HIGGINS. You may do so [handing letter to witness].

The WITNESS (reading):

TACOMA, WASH., *June 20, 1910.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR: Replying to your letter of the 16th instant, regarding contract with Hanford Irrigation & Power Co., I did not think it necessary when sending this contract for execution to make any explanation regarding the delay. They had first deferred execution of the contract on account of pending negotiations for sale of the property. You will remember that those negotiations ran along for some time, and it was intended, in case the sale was made, to have the purchasers execute the contract. After those negotiations were ended they overlooked signing the contract, although we repeatedly called their attention to it. I finally advised them that the matter must be settled up at once, and Mr. Earles then came over and signed the contract. There was no objection to the terms, and it was simply a matter of delay, for the reasons stated—an oversight on their part that the contract was not completed. We frequently send contracts to you the execution of which has been delayed by the purchaser, and I did not think that this particular case required any explanation; otherwise I would have attached a memo. explaining the situation.

Yours, truly,

WESTERN LAND AGENT.

Q. Were you at that time negotiating also with the American Light & Power Co.?—A. I do not remember that it was that time; but we had some negotiation.

Q. I saw a notation or a memoranda in your files of the correspondence between the Northern Pacific Railroad Co. with the Hanford Irrigation & Power Co.—A. That was a notation that I made after talking, I believe, with Mr. Earles, who told me that an option for 90 days had been granted to the American Light & Power Co. on the Hanford Irrigation & Power Co.'s properties.

Q. Under what date?—A. The memorandum is dated June 18, 1910. I do not know what the date of the option was.

Q. Perhaps this further explains the notation with reference to the American Light & Power Co. It appears in the letter dated Tacoma, Wash., June 23, 1910, and signed by you as the western land agent, and to Mr. Thomas Cooper, land commissioner, St. Paul, Minn., referring to the two contracts that the Hanford Irrigation & Power Co. have with you for the purchase of land, and referring to the option which Mr. Earles was given on the majority of the stock of the Hanford Irrigation & Power Co. and the American Light & Power Co., and asking that the payments due by the Hanford Irrigation & Power Co. ought to be allowed to await the determination of the option.—A. Yes, sir.

After a conference with the witness, it is arranged that he will return on Saturday, July 20, to complete his examination by the committee on another branch of the investigation.

Mr. HUGHES. There are a few questions that I might ask him now, if you like.

The CHAIRMAN. You may.

Mr. HIGGINS. Of course, you understand that as to the second large tract there are a few letters which should go in there. It is not my purpose to examine Mr. Plummer as to any of the eight tracts, except the two largest ones—the one that he has already testified about and another of about 8,000 or 9,000 acres. The one I have just examined him about is the 12,000 acres, and he returns by Saturday, and we will examine him as to the 9,000-acre tract at that time.

Mr. HUGHES. The lands in sections 23 and 25 on the Columbia River are fractional sections, because they join the Columbia River.

A. Yes, sir.

Q. And part of them were subject to overflow in the flood waters of the Columbia River?—A. So it was stated to us by Judge Hanford.

Q. The flood waters of the Columbia River, in that portion of the river, occur in spring and early summer, do they not?—A. Yes, sir; usually in June, I think.

Q. Due to the melting of the snows in the mountainous headquarters of the Columbia River?—A. The overrapid melting of the snows after a very heavy snowfall in the winter.

Q. That fact would diminish rather than increase the value of those lands?—A. Yes, sir.

Q. Mr. Plummer, was the price at which those lands were sold by you to Judge Hanford less or more than the usual customary price for like lands similarly situated?—A. Well, that is rather hard to say. The fact is that at that time if a responsible person came to us with a proposition to put in a pumping system down in that section we would have been very glad to have sold them the land at a very nominal price in order to get him started on an experiment.

Q. Up to that time comparatively little had been done in the way of attempting to irrigate the lands immediately adjoining the Columbia River by pumping?—A. Yes, sir; in fact anywhere; there were very few pumping systems in this State anywhere.

Q. Ones that were put in on a very large scale with hydraulic power, such as was afterwards proposed at Priests Rapids, would be impracticable except upon the very low levels near the river?—A. Yes, sir; that is the point. You see the gasoline engines using cheap fuel had not been perfected and there had been no other system except steam power, and the cost of moving the fuel up there was so great that it would exceed the value of the land—the cost of getting the water on the land would be so excessive that a man could not afford to go in there and develop it.

Q. How far was this land below Priests Rapids—those two pieces in sections 23 and 25——

Mr. HIGGINS. You do not mean to say, Mr. Plummer, that the gasoline engine had not been perfected in 1906–7?

A. It had not been perfected for using cheap fuel as it is to-day. Oh, yes; the gasoline engine had been perfected, but then not to the extent that it is to-day, where cheap fuel can be used.

Q. By cheap fuel you mean gasoline?—A. No—well, I mean—I mean to say the gasoline engine, or rather I mean the crude-oil burner, that is the cheapest fuel that we have now for operating small units of pumps. To answer your question about the distance, Mr. Hughes, I do not know exactly, but it must be about 30 to 35 miles below Priests Rapids.

Q. Following the river in a direct line, about 20 to 30 miles?—A. Following the river in a direct line, possibly 25 miles.

Q. You spoke of a body of land that had been sold long previously on the east side of the river, of the Columbia River, about 5,000 acres; that was east or northeast of Priests Rapids, wasn't it, in the flat at the bend of the river, opposite the rapids and lying north of the Hanford project, or north of the lands embraced in the Hanford project?—A. No, sir; the lands that I spoke of that had been sold prior to the time that I took charge of the office were on the same side of the river as the Hanford project; that is, the south or west side, but the areas I do not remember, and, as I say, I do not know anything about that trade, because I did not handle it.

Q. I thought there had been a body of land sold to some Spokane parties north or east of Priests Rapids, and that you might know of it.—A. East or north of Priests Rapids?

Q. East of the river and lying perhaps a little north of Priests Rapids.—A. You have reference to what is known as the "Two Spot" ranch, that was owned by Col. Ridpath.

Q. And Senator Turner and others?—A. And Senator Turner and one other man—there were three of them interested in it. That is quite a valuable ranch on the east side of Priests Rapids; that is, opposite the Hanford power canal—it has nothing to do with this.

Q. It is a little north and on the east side of the river?—A. Yes, sir; a little north and on the east side of the river.

Q. Do you know what price that land was sold at?—A. No, sir; that was sold before my time.

Q. Now, the 8,000 acres were in that same flat on the opposite side of the river from the power plant of the Hanford Irrigation & Power

Co., and opposite Priests Rapids?—A. Well, that is a matter that I have no recollection about. If, as suggested by Mr. Higgins, that the Hanford Irrigation & Power Co. made an inquiry or an application for those lands, I do not remember about it.

Q. As a matter of fact, they never actually attempted to carry on negotiations for them?—A. No, sir.

Q. If they had any purpose at any time, so far as you are advised, it was abandoned before negotiations were taken up with your company?—A. Yes, sir.

Q. Was the price at which the lands were sold to the Hanford Irrigation & Power Co. less than the price at which similar lands were sold to other companies? In other words, what I want to inquire is whether a different price was made to this company than would have been made to any other company or was made for like properties for like undertakings?—A. The price that we sell the lands to irrigation companies for depends on a number of things. First, the character of the soil, the expense of irrigating—I mean by that the cost of the project, the pumping project and the canals, also the distance from transportation is an element in fixing the price, and when I took the matter up with Judge Hanford about the price I had authority from Mr. Cooper to sell it as low as $2.50 an acre; but when I was discussing the question, one of the big elements of the value of the land, which was the cost of the project, with Judge Hanford, I found that his figures were only $15 an acre for constructing the ditches on the power plant, and I concluded that they could afford to pay us $10 an acre for the lands, so I simply suggested that price to Judge Hanford and talked that over with them, as I remember it, and he was satisfied to accept that price, $10 an acre, for the lands that were irrigable. Of course, as I have explained in my previous testimony, that the question of the value of nonirrigable lands came up later, and we made a reduction there from $3 an acre to $1 an acre.

Q. As a matter of fact, you afterwards discovered that the cost was much greater than was originally figured?—A. Well, I figured, as I wrote——

Q. I mean the cost of the irrigation project per acre.—A. Yes, sir; as I wrote Mr. Cooper that I thought their price of $15 an acre for irrigating the lands was altogether too low, because I did not think they could irrigate them for that. I had no special information about it, but then I go on the general principles that irrigation engineers generally figure much too low—the Government has found that out, and all other irrigation companies have—so I raised their price to $25 an acre and I still felt that they could afford to pay us $10 an acre for the land, making the price——

Q. That is, you raised the estimate in your own mind of the cost of irrigating the land $20 an acre?—A. Yes, sir.

Q. And you still thought they could afford to pay you ten?—A. Yes, sir.

Q. As a matter of fact, you subsequently learned that it cost them much more than $25 an acre, didn't you?—A. Well, I don't know what it did eventually cost them.

Q. Did you ever abate the price at all in consequence of the added cost to this company of placing water upon the land?—A. No, sir.

Mr. HIGGINS. But you did abate the original price which you made on the land?

A. Yes, sir; on account of the larger area of the $10 lands. That is explained in the testimony.

The CHAIRMAN. In fixing the price on these lands did you take into consideration at all the power possibilities that went with it?

A. No, sir; it was purely an irrigation proposition with us, without reference to any investment that they might have on the development of power or any return that they might make on the development of power.

Mr. HUGHES. None of your lands carry with them any right to take off the water from the rapids so as to give any power privileges? You do not sell any property of that kind, and did not, to the company? They bought that from others, didn't they?

A. I sold them a right of way for their power canal——

Q. Yes——A. Oh, do you mean riparian rights?

Q. Yes. You had no lands which you sold to the company that carried riparian rights at the points where they could divert the water from the falls?—A. No, sir.

Q. Or gain or acquire power?—A. No, sir.

The CHAIRMAN. But would the ownership of that land at the valley and the ownership of the power plant located at the falls—in other words, would a power plant there owned by a company who did not own the land be of equal value to them as it would be to the company that did own this land?

A. Well, it all depends on what kind of an agreement they had the land under. If they had a long-time lease of sufficient number of years to protect them in their investment, it would be just as good as holding the title.

Q. But the company owning the land could very well take into consideration the advantage which would come from owning the power plant there, too, and on that consideration consent to pay a somewhat increased price for the land? It would be worth more both for tillage and accessibility for power than if the rapids were not there?—A. Yes, sir; it would introduce another element of value into the property.

Q. And if the valley were a populous one, a very considerable element of value?—A. Yes, sir. In this particular case we did not own the land that controls the water power, and part of it was Government land and a portion of it was within an odd section, but we had previously sold the odd section to some sheepmen in connection with a sheep range that lies up back of it; but I did reserve, and I might here explain one of the transactions that we had with the irrigation and power company. I did reserve in my sale of the lands to that sheepman, Mr. J. C. Lloyd—I reserved a right of way for an irrigation and power canal, not because I had any idea that it would ever be constructed, but I thought it was along the river and that possibly some time in the future they might construct a canal, so I put the reservation in this contract, and when the Hanford Irrigation & Power Co. wanted to construct their power canal I fell back on that reservation, and in order to assist the Hanford company I compelled this sheepman to release his interest that he had in it, and then we conveyed that right of way that we had reserved to the Hanford Irrigation Co.

Mr. HUGHES. Mr. Plummer, the Government, prior to entering into this contract, had abandoned the undertaking to extend the Leadbetter Canal, so that it would be possible to irrigate any of those lands embraced in the Hanford project, hadn't it?

A. Yes, sir.

Q. And subsequently developments have disclosed on the part of the Government that there is not sufficient water to undertake that larger scheme involving the Leadbetter Canal, so that but for the project of pumping the water by power from the Priests Rapids the irrigation of this body of land and the adjacent lands would be impracticable, wouldn't it?—A. I would not want to say that it is impracticable, because the Government has entered upon the policy of storing water at the headwaters of the Yakima, and have already impounded a large amount of water in one or two lakes—the Kachess Lake, and I think they are now doing work on Kachelas Lake. There are two other lakes that are susceptible of improvement for storage reservoirs, Cle Elum Lake and what they call McAllister Meadows; and I believe that when those four storage reservoirs are completed that there will be sufficient water for all of these lands, but that is going to take a great deal of money, and I do not believe the development will be made for a large number of years, so that when we speak of feasibility here I should say that the most feasible way to irrigate the lands is by pumping from the Columbia River, because that can be done immediately, and the lands can be developed and the pumping plant paid for, and the land will pay for itself many times over before it could be irrigated from the lakes at the headwaters of the Yakima River. So that I think the most feasible way of irrigating these lands is by pumping from the Columbia River.

Q. One other question, Mr. Plummer: Some reference has been made to Mr. Rust, and his name connected in some way with the bogy name of Guggenheim; now, is it not true that Mr. Rust——

Mr. HIGGINS (interrupting). The witness was the one that introduced the bogy name of Guggenheim. I asked him if Mr. Rust was the manager of the American Smelting & Refining Co.

Mr. HUGHES. Is it not true that Mr. Rust sold to the American Smelting & Refining Co. his interest in the Tacoma smelter, and after this time?

A. Well, it may be, Mr. Hughes. I have no information about that. When Mr. Higgins asked me whether he was connected with the American Smelting & Refining Co. I did not remember whether that was the Guggenheim properties, but I merely suggested it was the Guggenheim interests.

Mr. HUGHES. I think it would be proper enough to say it if it were the case. I merely want to eliminate any such possible thought——

A. Yes, sir; I had no intention of making any misstatement in regard to that at all. It was simply to identify the smelter.

Q. You do know that Mr. Rust sold to the American Smelting & Refining Co.?—A. Yes, sir.

Q. And simply remained by contract for a year or two years, I forget which, as president of the company to conduct its operations after selling his interest?—A. My testimony was that Mr. Rust is

the manager of the Tacoma Smelting Co., which I understood to be one of the Guggenheim properties.

Q. Well, it was bought by them after this time, wasn't it?—A. Oh, after the time that we were speaking about—well, that might possibly be; yes.

Mr. HIGGINS. In 1906 Mr. Rust was manager of the Tacoma smelter, was he?

A. He was manager of the Tacoma smelter, and I believe a large owner in the smelter himself, and I do not know what date it was sold—what date it was that he sold his interest—but I knew that he had sold his stock.

Q. Is he connected now with the concern?—A. Yes, sir; he is still the president of the smelter company, I guess; or at least he has the active management of it and lives in Tacoma.

Mr. HIGGINS. Then the record will show that it was Mr. Hughes who referred to the Guggenheim bogy and not you.

The CHAIRMAN. Are there any other files concerning this matter——

A. No, sir.

Q. In the transactions with the company anywhere else than in your possession?—A. No, sir. There are the originals of my letters to Mr. Cooper at St. Paul, but that is all.

Q. You referred in one of your answers to Mr. Higgins to where a certain file might be; that if it came by the mail it would be in this file, but if it came by messenger it would be in another file.—A. No, sir; I mean to say that if the remittance came by mail it would be attached to this file, but if it was sent by messenger there would be nothing to show it in these files. It would be merely shown in our remittance record at Tacoma—just a book which we keep of moneys that come across the counter and are not sent in by mail.

The CHAIRMAN. You state the fact to be, then, that all the files concerning this transaction are here?

A. Yes, sir; all of them.

The CHAIRMAN. We will expect you back at 9.30 Saturday morning.

A. KOLAR, recalled, testified as follows:

Mr. MCCOY. Mr. Kolar, you had a conversation with a witness named Anderson after he had testified in this matter, didn't you?

A. Yes; well, not after he testified—previous to his testifying.

Q. Well, was that in regard to his testimony here?—A. Well, no; it was regarding a prospective witness and also what he stated. That was on a Saturday; that was on the 29th of last month.

Q. After you testified you left Seattle for a few days, didn't you?—A. Yes.

Q. And didn't you see in the newspaper some reference to something about a witness, what a witness said about you, calling you a stool pigeon, or something of that kind?—A. I didn't see him at all about that.

Q. I say didn't you see that in the newspaper?—A. Yes.

Q. Now, who was that witness?—A. That was Elmer Anderson.

Q. Now, then, at any time, either after you testified or after he testified, did you have a conversation with him?—A. Well, I didn't

have a conversation with him from the time—let me see, on the 1st, that was the morning he was going to come here the next day to testify.

Q. Well, that was after you had testified?—A. Yes.

Q. Well, what was your conversation with him then?—A. Well, I talked to him first concerning what he knew about Judge Hanford, concerning liquor. He said, "Why, I know the old," and he mentioned a vile name. "I have served him ever since I have been here with benedictine," and he said, "if you can see your people"—I suppose he meant my boss—"and arrange with them that I can get a trip to Chicago out of this, at least $150, why I will come over and testify, and I will make the judge look a dirty deuce in a deck." I says, "Have you got any corroboration of that?" And he says, "Well," he says, "it occurred several times before the Frenchman"— he meant the other bartender—"but," he says, "he would not testify." I says, "Why would you want a trip to Chicago?" "Well," he says, "if I ever testify and tell the truth I could not stay around here any more—around the city." So that evening I left there and saw him on Monday morning—no, saw him on Monday evening, and I came in with a man by the name of Brown. I met him out on the street and I invited him to go in there and have a drink with me, and so he went in there and Elmer Anderson was just getting off the shift. He must have been subpœnaed in the morning, or probably that day, and was red in the face and said to me—called me a vile name and said, "After you get information from me and you cause me to lose my job—I am going over to-morrow to testify and to show you people up, you see if I don't." Now, that was in the presence of this Mr. Brown and also a few others there. I didn't pay any attention to whom those others were.

Q. That was all that conversation?—A. Yes, sir; that was all that conversation. So he came over the next day and I was not here when he testified, but I was on my way out east to stay there until yesterday morning.

Mr. HIGGINS. That is all, so far as I am concerned.

The CHAIRMAN. Any further questions?

Mr. HUGHES. Are you still working for the Burns Detective Agency?

A. I have ever since I was in the city here.

Q. Were you away from the city in their service?—A. Yes.

Q. And you are still under pay from them now?—A. I am.

Q. Have you ever been convicted of any offense?—A. Convicted of any offense?

Q. Yes; been in jail?—A. I don't know whether that means when I was in jail over there roping murderer Clark.

Q. Roping a murderer?—A. Yes; on that Barr murder case.

The CHAIRMAN. You mean you went to jail purposely?

A. Yes.

Q. To be near and interviaw some one accused of homicide?—A. Yes; for murder; yes.

Mr. HUGHES. Never any other way?

A. No; and then also in Montana, in the same kind of a charge—in a bank robbery.

Mr. MCCOY. The same purpose, you mean?

A. The same purpose.

Mr. HUGHES. That is all.

Mr. HIGGINS. Following the practice that has been followed in the past, I think it is only fairness to Mr. Anderson, he being the witness that Mr. Kolar contradicted, to give him an opportunity to take the stand.

The CHAIRMAN. Is this intended for the record?

Mr. HIGGINS. That is for the record.

The CHAIRMAN. Mr. Hughes, do you desire Mr. Anderson brought in?

Mr. HUGHES. I should think it would be due to Mr. Anderson. He was not our witness. We had not had anything to do with Mr. Anderson.

Mr. HIGGINS. He was subpœnaed by the committee, I think.

Mr. DORR. I think he ought to be subpœnaed.

The CHAIRMAN. Do you desire it, Mr. Higgins? If you wish it, he will be brought in—if you desire it.

Mr. HIGGINS. I think it is only fair.

The CHAIRMAN (addressing the sergeant at arms). Mr. Brennan, woll you be good enough to see that Elmer Anderson gets a subpœna or request to attend, or you can notify him of what Mr. Kolar has said?

Whereupon an adjournment was taken until to-morrow morning, July 19, 1912, at 9.30 a. m.

NINETEENTH DAY'S PROCEEDINGS.

JULY 19, 1912.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

WALTER A. MCCLURE, being recalled, testified as follows:

Mr. PRESTON. Mr. McClure, you were attorney for some of the people interested in the McCarthy Dry Goods Co. failure?

A. I was; yes, sir.

Q. Will you tell the committee what occurred at the time the Stone & Fisher bid came in for consideration?—A. Yes. In order to get at that clearly, I think it will be necessary to state a little history chronologically, if the committee will permit. The assets were offered for sale in the regular way and the only bid received was that of the London Co. of something like $24,000, grossly inadequate, considered so by everybody; and it was a very large store and a very expensive concern, and I came to the courthouse and addressed Judge Hanford as he was about to go off the bench, telling him the situation and stating in detail all the facts in connection with it, and we discussed the matter there. He finally said—he asked me if I thought that I could obtain a purchaser, and I told him I saw no reason why I could not; and he said, after considering all of the facts of the matter, that if the receiver and his counsel could get a bid of $60,000 the court would approve the sale, unless there were objections offered by the parties in interest. And we went to work on the matter; I did nothing else for quite a little while; I was very anxious about that store; and Mr. Stone, of the Stone-Fisher Co., we succeeded in

interesting him in the matter. He jockeyed with us. He started in at $40,000.

The CHAIRMAN. Who was this?

A. Mr. Stone, of the Stone-Fisher Co.; and we kept negotiating, continued our negotiations over several days, as my recollection runs, and finally we obtained from him a proposition in the morning of a day that he would pay $65,000. The question of his company's financial responsibility of course never entered into the matter, but he made the proposition that he would pay $10,000 in cash and the balance was to be paid $15,000 every 30 days. Of course I knew what that meant; he meant that he would simply borrow from the bank $10,000 and the balance he would get out of the assets, and he would get his thirty thousand back, too. It simply meant his practically buying the store for $10,000. The offer was made conditioned on immediate acceptance, and as soon as the offer was received I repaired to the courthouse and Judge Hanford was hearing something in regard to the railway commission; and he said, from the bench, that he would hear me at 4 o'clock that afternoon. And we notified everybody that the hearing would be at 4 o'clock that afternoon. I had forgotten that many of the creditors saw me, until I heard Mr. Smith's testimony here yesterday, and that recalled to my mind the fact that as soon as I told him about that, as a representative of the Western Dry Goods Co., he came up to my office and talked with me quite a while about the matter. The burden of his conversation was that the business ought to bring a good figure, and he thought $65,000 was too low. I am not sure, but my impression is I also talked with Mr. Gleason, of the American Savings Bank & Trust Co. At any rate their attorney——

Mr. PRESTON (interrupting). How much of a claim had that bank, approximately?

A. About $20,000.

Q. Proceed.—A. At any rate, their attorney telephoned me about the matter—Mr. Kane—and he was present in court at 4 o'clock. Judge Hanford suspended this rate commission hearing and took the matter up. I made as complete a statement as I was capable of as to the situation.

Q. Tell who were present and what percentage of creditors were represented.—A. Mr. Stern was present; Mr. Gray was present—Judge Gray; Mr. Smith, of the Western Dry Goods Co.; Mr. Kane, representing the bank. Of course Mr. Stone was there. While he had no rights as bidder at all, I asked him particularly to be present, because I wanted the court to fully understand his proposition. There were others present. I suppose from—oh, there must have been two dozen people. As to the proportion of the indebtedness, it is difficult for me at this time to state, but I would say that at least $40,000 and perhaps $60,000 was represented at that meeting. I know that we were particular to notify everyone whom we could reach in the city who had a claim or every representative of a claim here. I stated the proposition to the court and Mr. Kane addressed the court in opposition to the acceptance of the bid, stating that he was speaking for the bank. He said that he was also speaking for the Western Dry Goods Co., although he was not their regular counsel; Mr. Smith had applied to him and asked him to state his views

upon the matter. Mr. Stern asked that the matter be held over for a few days. The——

Q. (Interrupting.) Stating the reason?—A. Yes; he stated the reason to the effect that some of the preferred stockholders were about to send or had sent a representative from Chicago, and perhaps from New York also, but it remains in my mind that he spoke of the Farwell Co., of Chicago—John B. Farwell & Co.

Q. Was this person that was coming out here, or these persons that were coming out from the East—did he say they were expected to bid?—A. No; he did not. He said that they were coming out to investigate; and it should be understood in that connection that there had been war among these preferred stockholders for several years, ever since McCarthy's death, in fact, but there was nothing tangible in connection with that; it was merely a repetition of what had been before in connection with that business as to the attitude of the preferred stockholders. I was very much astonished, because I considered that an extraordinarily good bid. In fact I had always found the Stone-Fisher people good bidders. If I could interest them in a stock, they would pay what was a good figure. And a question having been raised as to the kind of bid that was adduced, I asked the court, in Mr. Stone's behalf, for him to be given an opportunity to explain, and he made a statement in court as to the bid.

Q. What position did you and receiver take in regard to that sale there before the court?—A. Oh, we asked that the bid be accepted, and I felt so confident that it would be accepted—it seemed to me that a credit man who could not accept that bid would be—well, a consummate ass, I would call him, if the committee will pardon me for the expression.

Q. What, if anything, was said there about a delay—about holding Mr. Stone or Stone-Fisher's bid in abeyance for a few days?—A. The only thing that was said about that proposition was what was stated by Mr. Stern as to a representative of the preferred stockholders coming out for the purpose of investigating.

Q. I know; but did he ask that the Stone-Fisher bid be held in abeyance?—A. No.

Q. (Continuing.) Pending the arrival of this man?—A. No; I don't remember that anything of that kind was said.

Q. Did any question come up about whether it was necessary—whether the Stone bid would stand good for any length of time?—A. That bid was made to be accepted that day.

Q. What was said there before Judge Hanford about it?—A. That was the statement made.

Q. By whom?—A. Made by Mr. Stone. I stated the same thing, because that was my understanding of his position. I never heard that questioned until this minute, if it is questioned.

Q. What was the position taken by the creditors there—was there any creditor there favoring the acceptance of that proposition?—A. No creditor.

Q. What was the position, then, of the creditors in regard to that proposition—was it one of opposition to the acceptance of the bid?—A. All who expressed themselves were opposed.

Q. To the acceptance of the bid?—A. Yes, sir.

Q. Did Judge Hanford say anything at the conclusion of the matter?—A. He simply said, "The bid is rejected on the opposition of the creditors, the parties in interest."

Q. Did he say anything there about whether or not, in his opinion, the receiver and his attorneys would be able to get soon a better bid?—A. No, sir.

Q. Well, now, the sale was rejected and the business then was opened up as a going concern?—A. Yes, sir.

Q. It has been testified here that after the 1st of January the business began losing money and continued in that condition until the fall, I believe. Why was it that that condition was allowed to go along in that way so long as September?

Mr. PRESTON. I believe, Mr. McCoy, wasn't it, September, the date of the sale?

Mr. MCCOY. September; yes.

Mr. PRESTON. Yes; until September.

A. The idea of these creditors and parties in interest, as expressed to me, was that that business should be sold in bulk; they desired to keep it as a going concern, to be turned over as a complete business.

Q. Well, why didn't you sell it, then, in bulk?—A. We made many attempts. That business caused me many a sleepless night. Couldn't do it. Mr. Strain came here from Montana. Every clew that I could learn of I followed up with diligence; could not sell it in bulk. At the beginning of the year 1907 there was a freight blockade in this country; it took in some instances six months to get stuff through from the East, and in the fall of 1907 the goods that should have theretofore been in the merchants' stores months before were arriving, and every merchant was stocked up to the limit. We could not interest any of them in the purchase of the business.

Q. Now, is there anything else about that McCarthy dry-goods matter that you have in your knowledge or recollection that would be of interest to the committee—the congressional committee?—A. I don't know of anything, Mr. Preston, except I am always, always have been and always shall be, exceedingly reluctant to operate a business by a receiver or trustee; I think it is the most foolish thing that an officer can do, except in those instances where the operation of the business is the business; but I think that a receiver or trustee who operates a business, mercantile concern or anything of that kind, is making a great mistake. It has always been my opinion, based upon years of experience.

Q. Now, Mr. McClure, this morning you called my attention to a feature ofthe decision of the court of appeals in the Knosher case that had escaped my attention.—A. Yes.

Q. Will you explain it, just to call their attention to it?—A. Yes.

Q. They will read the opinion themselves. I don't want you to rehearse the opinion.—A. The decision of the court of appeals in the Knosher case reduced the allowances made by the lower courts one-third. The order, however, of the lower court was that the allowances made by that court were in full of all allowances to the final closing of the estate. The opinion of the court of appeals, as nearly as I can understand it, is that the allowances made by that court are the allowances up to the date of the entry of the order of allowance in the lower court, and I don't know—and I would be glad to have the eminent lawyers constituting this committee tell us whether that

means that further allowances should be made. As I say, I don't want any, I tried to get rid of what I had, but the opinion of the court of appeals tends that way, if words mean what they ordinarily mean.

Mr. PRESTON. That is all the questions I desire to ask Mr. McClure.

The CHAIRMAN. Are there any further questions?

Witness excused.

Mr. PRESTON. I would like to have Judge Hoyt examined for a few moments.

The CHAIRMAN. Is the judge present?

Mr. PRESTON. I will get him.

The CHAIRMAN. Mr. Dorr, while we are waiting—and Mr. Preston, while we are waiting—the addresses which you handed the committee, made by Judge Hanford on the subject of conservation, may as well go in the record at this time, one of which is reported in the Post-Intelligencer of September 23, 1909, and the other copy furnished by Judge Hanford, with the resolutions adopted by the meeting at which the address was made.

Mr. PRESTON. I wanted to say that Judge Hanford furnished also a newspaper clipping.

The CHAIRMAN. Mark those, Mr. Reporter, in order numerically, as exhibits, and let them go in the record.

Papers referred to were marked "Exhibit No. 85" and "Exhibit No. 86," respectively.

JOHN P. HOYT, being recalled, testified as follows:

Mr. PRESTON. Judge Hoyt, I think it was on yesterday—it was on yesterday—I asked you to make such an examination as you could of the referee's records so as to be able to inform the committee as to the extent to which the local association of the merchants and the credit men, or either, were voiceful or influential in naming their own representative as receiver and trustee, or either, in bankruptcy estates. Give the committee such information as you have been able in that time to gather.

A. With the other business—I was holding court all of yesterday afternoon and I only had an opportunity to glance at my appearance docket and such like. I took, therefore, as a sample, No. 10 of my—I keep a flexible-cover appearance docket—No. 10, of which I have filled 20, assuming that that would be fairly representative—and I examined those, the cases recorded in No. 10, and I find that it covered from January to October, substantially, in 1908, if I remember rightly. During that time there were trustees appointed in about 30 cases. Of course there were more cases brought than that, but, as your committee is aware, under certain contingencies no trustee is appointed and the matter is reported back without the appointment of a trustee. I understand that in some districts they appoint a trustee in each case, but that has not been the rule here, to appoint where there was no estates and no creditor appeared; the practice has been to report them back without the appointment of a trustee. In the 30 cases I find that Mr. Jennings, who was secretary of the Merchants' Association at that time, and the acting manager, was appointed trustee in 11 cases and was receiver in the larger number of them.

Q. The larger number of the 11, you mean?—A. Yes; and that where the—and Mr. Telfer, who was the assistant secretary and general manager of the association, was appointed in several; I didn't have time to see—in at least three or four cases during the time; and I found that in several of the other cases, noticeably quite an important case which by some reason came to me from Lewis County, because the larger creditors were here, Schwabacher Bros. & Co. being one of the larger, that appointment was made while—and one of the members of the firm of Schwabacher Bros. & Co. was appointed. The practice—I might say, for the information of the committee, I don't know that the practice here has been as it has been in other districts. I came in—had no precedents when I commenced and have not had much opportunity to consult outside precedents except as they have appeared in the reports of the courts—the practice here has always been the referee has never yet attempted to control the personnel of the receiver or trustee, never in a single instance. I have considered that bankruptcy law designed that the creditors should control that, and that it gave them the right absolutely to control the trusteeship, and that consequently the best policy was to allow them to control the appointment of receivers; and when the petition was filed making it appear that a receiver was necessary I have always allowed the one—allowed the creditors, petitioning creditors or others—to suggest a receiver, if I found that it was necessary that there should be one, and I have in every instance appointed that one, reserving the right always to inquire as to their competency and efficiency.

The CHAIRMAN. In how many instances were custodians appointed instead of receivers?

A. I never have appointed a custodian as such.

The CHAIRMAN. In how many cases did you have anyone, under any name, take care of the property until the creditors selected a trustee, without having a receiver?

A. That practice has never prevailed here. In a few instances where it did not—in a few instances where it appeared to me clearly that there was no—that there was no reasonable necessity for a receiver, often where there was personal property I have authorized the bankrupt himself to lock the door and bring the key and deposit it with the referee or the court, and that is the only way aside from the appointment of a receiver, in this district, so far as I know, at least in my court, there has been any attempt to have possession of property excepting by the appointment of a receiver. In a few cases the marshal has been named as acting receiver. I could not say in how many. I don't think there has been more than a dozen cases in the 14 years, but what, where receivers have been appointed, I have appointed them.

Mr. MCCOY. Where do you find any rule in the bankruptcy law, Judge Hoyt, for the appointment of a receiver by the referee?

A. Well, that is—it has been assumed here. Judge Hanford, at an early—in fact I guess at my suggestion, as I knew he was hard at work—he made an order under that clause of the bankruptcy law which provides that the referee may be clothed with such jurisdiction of the judge as the judge sees fit to clothe him with, with certain exceptions which are familiar to your honor. I see you are familiar with the bankruptcy law. You remember there are three or four

things that the referee can't do, but aside from that under the statutes he may, as I understand it, be clothed with the power to do anything that the judge could do, and that has been the practice in this district, for the referee in—I suppose that Judge Hanford has taken—has not in more than a dozen cases taken jurisdiction for the purpose of appointing a trustee. I know so far as——

Q. (Interrupting.) A receiver?—A. A receiver, I mean. Never, so far as I know, excepting the receiver was appointed before adjudication. Of course before adjudication it has been—excepting the judge was absent—I have never thought the referee was clothed with power to appoint a receiver except in the absence of the judge, to conserve the property under that clause of the bankruptcy law.

Mr. HIGGINS. You will agree that in a number of contingencies the court has the appointment of the trustee, will you?

A. Of course if the creditors fail to appear and the schedules show the necessity for the appointment of a trustee, as I take it, it is the duty of the referee to apoint a trustee.

Mr. HIGGINS. But the court also under certain contingencies——

A. Well, you mean the judge of the court?

Mr. HIGGINS. Yes.

A. (Continuing.) As distinguished from the referee?

Mr. HIGGINS. Yes.

A. He may of course appoint—the act specially clothes him. Of course anything the referee can do he can do, and more. The judge, of course, has a right to review all the referee's actions and act at his own instance in reference to any matter which would ordinarily come before a referee. That is as I understand the statute.

Mr. PRESTON. Judge Hoyt, speaking generally from your recollection, what would you say to the committee as to the extent of participation by the Seattle Credit Men's Association, or merchants association, or either of them when they were separate in the naming of receivers and trustees? You have spoken of one volume. Now, I ask you, from your recollection, in a general way, what you have to say?

A. They did; those whom they were supposed—who were supposed to represent them have practically—have done it in practically all cases. As was disclosed, I think by the testimony here, they had an organization of the three larger creditors, controlling the selection of an attorney in the matter, and the attorney, acting in pursuance of that article of their association, has in nearly every instance, excepting where—a few cases where nearly all the creditors were in the East—has in nearly every instance controlled—made the suggestion as to who the receiver should be, and he has been appointed, and they have elected the trustee; in fact, I believe there has never been a receiver appointed but in one instance, in the 14 years, by me as referee, who was not afterwards elected by the creditors at the first meeting to succeed himself as trustee. In one or two other instances he declined to act, and in one there was a contest and he was—the receiver was defeated at the election.

Q. Have you any recollection of these Seattle creditors or these Seattle associations of creditors having selected Mr. Sutcliffe Baxter as the man they wanted as receiver or trustee?—A. I could only speak with certainty in one case and that was the case of—I am very

poor to recollect names—Dowle, I think the name was—Alice C. Dowle—was that the name?

Mr. McCoy. Dowle he called it; D-o-w-l-e.

The Witness. D-o-w-l-e; that is the way he was spelled. I don't know how you pronounce it. In that case Mr. Baxter was appointed by Judge Hanford at the express request of those who were attacking the sheriff's attachment proceedings. It seemed to be necessary, to prevent attaching creditors' rights accruing, that somebody should be appointed, and I know that the attorney who was acting for the majority of the creditors told me that he suggested that Mr. Baxter be appointed, and he was appointed.

By Mr. Preston:

Q. Now, you have been speaking very largely of what occurred before you as referee. What knowledge have you as to whether Judge Hanford——

A. (Interrupting.) Well, my best recollection is as to that, that in very few instances—I don't think it would exceed a dozen in the 14 years—has Judge Hanford appointed receivers. It has become a practice, whether rightfully or wrongfully, to go to the—when there was an adjudication for the attorneys securing the adjudication to apply to the referee if they desired a receiver, and the referee has acted in the appointing of a receiver.

Mr. McCoy. I would suggest that for all interested in those matters here it might be well to look up the law on that. I should think a very doubtful title might be gotten from a receiver appointed by the referee. I never had occasion to look it up.

Mr. Hughes. What?

Mr. McCoy. I say I should think a title received through a receiver appointed by a referee in bankruptcy might be a doubtful thing to have.

The Witness. The title does not come from the receiver, as you have narrated; the title is generally conveyed, except in a few instances, by the trustee.

Mr. McCoy. Have you had cases where——

A. (Interrupting.) Yes; there has been quite a good many sales. I don't know but I ought to on my own motion say a word as to that. Conditions are peculiar here. Rents are, as it seems to me, exorbitant, and there is no doubt but what that provision of the statute which authorizes sales as an emergency has been given at least full force here, but it never has been done excepting, so far as I know, excepting at the request of the leading creditors when they were, the great bulk of the creditors were represented; but never has a sale been made by the receiver against the protest of a single creditor. We have found here that estates yielded the best results the sooner the sale was made after the adjudication, and in the interest of results a practice has grown up here, and has been used to a considerable extent, of making sales by receivers of merchandise stocks—no other of course—where it was thought that a much better price could be realized, and I perhaps—my experience has been that to allow the business to be run by the court as a retail business has been destructive of the rights of creditors. I have only allowed it, I believe, in about three cases since I have been referee—have allowed the business to be continued by retail—and in every instance I have been disappointed

as to the result. We have got better results by selling at once, if we got a fairly decent offer for the property.

Mr. PRESTON. Now, I didn't get to complete my question to you. What I wanted you to tell the committee was—I don't know what your knowledge of it is; maybe you have none; if so, you will say so—as to whether Judge Hanford, in those few cases in which he has appointed receivers, he, personally, had done so after the local creditors have had their hearing and had their influence upon him.

A. A representative of the local creditors has always done that, I think, from what they say to me—the representatives. As I say, this person—that is, where the local creditors are interested—the person who represents the association is selected by this committee of three and he is the one that takes the proceedings; and in every instance he has been heard by Judge Hanford, judging from his own statements to me, before the appointment of a receiver.

Q. Well, do you know whether Judge Hanford has appointed receivers that they desired?—A. Well, I can't speak with certainty as to that in all cases, but I know in some cases he has appointed—I can't say with certainty whether in all cases he has appointed receivers suggested to him or not. He may have pursued a different policy from what the referee has.

Mr. PRESTON. I have no further questions.

Witness excused.

Mr. PRESTON. May I call Mr. Shaffner now in the Scobey case?

The CHAIRMAN. Very well.

Mr. PRESTON. Would the committee like me to give you a little short statement of that case to aid you in hearing the testimony, or have you had a chance to go over the record that you have there?

Mr. MCCOY. We haven't; at least I haven't.

Mr. PRESTON. I think in one minute I could help you some, if you desire.

WALTER SHAFFNER, having been first duly sworn, testified as follows:

Mr. MCCOY. Mr. Preston, ought we to have, in the interest of expedition, the corporation counsel here while this testimony is being given?

Mr. PRESTON. He is here; that is, the assistant is here.

Mr. MCCOY. The one who had charge of the case?

Mr. PRESTON. Mr. Tucker here. He was employed also on the other side of the case.

Mr. MCCOY. Yes.

Mr. PRESTON. I purpose to call them all.

Mr. MCCOY. Yes; all right.

Mr. PRESTON. Now I can help you in one minute.

The CHAIRMAN. If you would make a succinct statement of it, it would help us greatly.

Mr. PRESTON. The suit was a suit by a nonresident taxpayer, a citizen of another State.

The CHAIRMAN. Just state what suit.

Mr. PRESTON. The Scobey suit, to obtain an injunction against the recall election that was being put under way. The complaint con-

tained allegations, first, that the amendment to the city charter which provided a means for future further amendment to the city charter was not lawfully adopted in accordance with the constitutional law; second, that the amendment made pursuant to that mode prescribed by which the recall feature was brought into the city charter was not legally adopted; third, that a recall petition had been circulated and filed with the city comptroller, who is the accounting officer, you might say, of the city, and the complaint alleged that under this amendment to the city charter which established the recall system in the city government, there were necessary 8,671 signers, and accompanying those signers or each slip or petition as it came in—each sheet was required to have an affidavit of some person that the signatures of all those who signed it were their genuine signatures and I think that they were qualified electors—I am not quite certain about the last; anyhow it will come out later.

The WITNESS. Yes.

Mr. PRESTON. The complaint alleged that the comptroller was about to certify to the council that this petition contained 8,671 names; that there were 11,000 purported signatures to it, and that his office force was not sufficient to properly check that petition and he was going to file it without properly checking it; that he was going to certify that there were 8,671 good signatures to it; that at least 300 of those signatures, a part of which he was going to count to make up his 8,671, were forgeries; that quite a number of others, I think 800 of them—eight, five, or eight, you will pardon me if I am not accurate in that figure—of the signers, of the signatures, were obtained by false representations by the solicitors, one representation being that the documents they were asked to sign had something to do with an election to obtain a museum site or art gallery site for the city, another that the petition they were asked to sign was a petition requiring some means of double tracking of some of the street railroad system here in the city, and that of those signatures so fraudulently obtained, a number were being counted by the comptroller in his 8,671; that a great many of the signatures were obtained by paid solicitors in the employ of a public welfare league, I think it is called, an association here in town in opposition to Mayor Gill; that those paid solicitors were out on the street corners, had obtained signatures from utter strangers, not knowing them, either their qualifications or their identity, and yet were making the affidavit, and upon that solicitor's affidavit, made in ignorance of the truth, the comptroller was counting those names also, or a part of them, in his 8,671. Then there was a general allegation that there were not 8,671 genuine signatures. That is my recollection of the allegation; I can't state it as it was from memory. It was also alleged that the tax levy for that year had been based upon estimates upon hearing and that this recall petition was then being circulated and the members of the council well understood that there was an attempt to have a recall election and that they had made no levy for that purpose, and that any city fund in existence, any money out of which this expense of election, alleged to be $15,000, could be paid, had been exhausted and that the comptroller and the city council—and I should have said that the members of the city council were also defendants in this action—were going ahead and use city money to cover this

$15,000 expense, which they were not legally entitled to use and must therefore divert from some other fund, the other fund being a fund not legally applicable to that purpose.

Upon the presentation of the complaint an order to show cause was made and served upon the defendants, requiring them to show cause at a certain day—I forget the date—it was seven or eight days I think ahead, or maybe three or four, I don't remember now—why the temporary injunction prayed for in the bills should not issue. Now, on that day the defendants came in, represented by the corporation counsel, and filed their demurrer to the bill, attacking the jurisdiction of the court, and also the general ground that there was no equity in the bill, and that they were not entitled to the relief demanded, and so forth. And upon that hearing briefs were filed, largely upon the question of jurisdiction, by both sides—typewritten briefs—and they are in your transcript; the question seeming to be whether the taxpayer who did not allege an interest in the funds equal to the $2,000 requirement of jurisdiction could maintain a suit, or whether, on the other side, the amount of money involved, the $15,000, was the test of jurisdiction as to amount. Judge Hanford overruled the demurrer to the jurisdiction and granted the temporary injuntcion.

Mr. McCoy. That is, an injunction pendente lite.

Mr. Preston. Pendente lite. We call it a temporary injunction here.

The Chairman. The district attorney is here now.

Mr. Preston. Have you that document for the committee?

Mr. McLaren. Yes; I have it [producing paper].

Mr. Preston. Mr. Shaffner, you were one of the attorneys for the complainant in the Scobey suit, and also in the O'Connor suit?

A. I was.

Mr. Preston. I should have stated that the O'Connor suit, which you have, was another suit just like that, filed the same day, containing the same allegations, except the allegation that O'Connor's property holdings—he being a citizen of New York State—in the city were——

The Witness. In the neighborhood of $250.000.

Mr. Preston (continuing). $250,000 in value.

Mr. McCoy. What is the name of this witness?

Mr. Preston. Shaffner.

Mr. McCoy. What is his full name?

Mr. Preston. What is your full name?

A. Walter Shaffner.

Q. You are an attorney here in Seattle?—A. I am.

Q. Were you one of the attorneys for the complainant in the Scobey case?—A. I was.

Q. Were you present in court and did you take part in the argument before Judge Hanford upon the demurrer?—A. I did.

Q. What if anything was said by Judge Hanford, either in the course of the argument of the demurrer or at the time of his ruling upon the demurrer, in regard to a plea or answer?—A. Well, as I remember, in the morning when the matter was first called, on the suggestion of Mr. Tucker, I believe, or possibly of Mr. Calhoun, both of whom appeared for the defendants, the argument was at

first confined solely to the jurisdictional points and we argued that all morning, and as I recall it, on the convening of court in the afternoon, Judge Hanford orally announced his determination of the jurisdictional feature.

Q. Holding that the court had jurisdiction?—A. Holding that the court had jurisdiction under the bill. We then argued the equities of the bill, and during the course of that hearing the judge, as I recall it, several times made the comment that there being only a demurrer these various allegations of course would have to be taken as true—that is, the allegations to which you have referred with reference to the forgeries and the fraudulent representations, and so on, in connection with the signatures to the bill.

Mr. Highes. The petition.

A. In connection with the petition for the recall, I should say. At the conclusion of the argument the court took the matter under advisement. Briefs were filed, and I might say—your statement to the committee was that they were largely confined to the question of jurisdiction; our briefs had no reference whatever to the question of jurisdiction, because we considered that that matter had been already passed upon by the court at the hearing, and we submitted the original briefs, and our brief was confined solely to the equities of the bill itself, with no reference to the jurisdictional feature, except a statement that the jurisdiction had been passed on. The court then handed down a memorandum decision, and the day after that memorandum decision we appeared before him on the question of the form that the order was to take.

Mr. Preston. Who do you mean by "we"?

A. All the counsel who had participated in the argument. There was Mr. Blewett and myself, who had argued the matter for the complainant, and Mr. Calhoun and Mr. Tucker, who had appeared in behalf of the defendants. At that time Mr. Calhoun or Mr. Tucker—I don't remember from whom the suggestion came—suggested that they might desire to file an answer, and the court said that if they would file an answer he would at once set down any motion they might make to dissolve the bill—to dissolve the injunction on bill and answer.

Q. Your complaint prayed, I think, as I recall it—you correct me if I am wrong——

Mr. Preston. I am using this form to hurry along, Mr. Chairman.

The Chairman. Do so.

Mr. Preston. You were asking for an injunction against the election. Then I think you asked an injunction against the city comptroller incurring any indebtedness in the matter of the election?

A. My recollection is that that is correct, and that we also asked that the injunction against incurring any indebtedness that we prayed for in our complaint was also against the city officials and the comptroller from incurring any indebtedness or expending any money.

Q. Well, now you presented an order that you had prepared along the lines of your complaint to the judge for signature, did you not?—A. Yes; we did that——

Q. (Interrupting.) When I say "your complaint," I mean the prayer of your complaint.—A. It seems to me, Mr. Preston, that

we appeared first on the same day that the judge's decision was handed down. I think on that hearing—at that time we appeared with a temporary—a form of a temporary injunction exactly as prayed for in the complaint. My recollection is that in drafting it we simply took the prayer of the complaint and followed that literally in preparing the form of injunction. We presented that, and Judge Hanford said that he would not under any conditions enjoin the city council from doing anything whatever, as he was not going to enjoin any legislative act by the city, that they could go, so far as he was concerned; he didn't propose to interfere in any way with the city council in the exercise of its legislative function. We then prepared a new form of injunction, and in that injunction we were enjoining—we asked that the city council—that the city comptroller be enjoined from either incurring any indebtedness or expending any money on account of the recall election. When we presented that the defense presented a form of order, which was signed, which merely enjoined the city comptroller from spending any money—left out the feature concerning the incurring of indebtedness.

Q. What did Judge Hanford say in deciding between those two proposed forms of order?—A. Well, we, of course, had some considerable argument. We were in chambers, or in the library there, included in the judge's chambers. Judge Hanford said to me at one stage of the argument that "the difference between you and me is that you want to stop this election; I don't. The only thing that is before me is a bill by a taxpayer asking me to stop an illegal expenditure of money, and that is all I am going to enjoin. People dealing with a public official always do so at their peril; and if they want—and if people want to do business with him and do things on the faith of his—of the obligation that he may confer—that is their lookout."

The CHAIRMAN. Did he distinguish there?

A. Of course I don't——

The CHAIRMAN (interrupting). You say he said you wanted to prevent an election; that he wanted to prevent the illegal expenditure of money; but as the expenditure of money was for the very election that you wanted to prevent, where did the difference come in between his position and yours?

A. Well, the difference between his position and mine—the remark was called forth by a statement of mine that if he did not follow the form of order—of course I don't intend to convey the impression that I am giving exact language in all cases of this argument that took place. I am giving its substance, however, and I remember exactly those words that "you want to prevent an election, and I don't." That is as far as I wish to be understood as giving the exact language, but the substance of my argument at that time was that if he did not enjoin the comptroller from incurring any indebtedness that the comptroller——

Q. (Interrupting.) You don't mean from incurring any indebtedness? Oh, that is right.—A. Yes; from incurring the indebtedness. (Continuing.) Then the comptroller would go out and make contracts, for example, for advertising the election under the charter provisions as to notice, for the rental of polling places, and printing of ballots, and other things, and that the people with whom he contracted

would later be unable to get their money because of the fact that this injunction against the payment of any money would be in force.

The CHAIRMAN. But you said that feature was abandoned—that is, to prevent the comptroller from going in debt or contracting an indebtedness—and that you changed from that to requesting an order preventing him from expending any money.

A. We didn't change; the judge changed; that is, the judge changed for us. He declined to sign our form and signed the other form. We were still as anxious to get the form that we had originally proposed. We were always anxious to get that, but we were unable to do it. I think possibly I ought to add, Mr. Preston—a fact that does not appear of record, I think—when this matter was originally presented to Judge Hanford—I think Mr. Hoyt and I presented it on the first day—we asked at that time for the temporary restraining order.

Q. Without notice?—A. Without notice. And Judge Hanford denied that and simply, instead of issuing even a show-cause order, simply set the motion for a temporary injunction for hearing on a day which he then fixed, the defendants to have notice of the hearing.

Mr. PRESTON. I think that is all the inquiries I wish to make of the witness.

Witness excused.

WILMON TUCKER, having been first duly sworn, testified as follows:

Mr. PRESTON. Mr. Tucker, you are a member of the bar here in Seattle?

A. Yes, sir.

Q. Have been for a considerable——

The CHAIRMAN. What is the name?

Mr. PRESTON. Wilmon Tucker.

A. Twenty years.

Q. Were you one of the attorneys for the defendant in the case of Scobey *v.* the City Comptroller and others?—A. Yes, sir.

Q. Did you hear Mr. Shaffner's narrative of certain things that occurred that are not in the record in that case——A. Yes.

Q. (Continuing.) Here on the witness stand?—A. Yes.

Q. Will you tell the committee if he erred in any way or omitted anything material along that line of inquiry?—A. I think everything that Mr. Shaffner said is substantially correct.

Mr. MCCOY. Of course, Mr. Tucker does not know anything about the application for the restraining order without notice. I think Mr. Tucker ought to be asked just what part of it he knows about.

Mr. PRESTON. Yes; that would be fair.

A. My first appearance in the case was in return to the order to show cause.

Mr. MCCOY. Yes.

A. I did not know about the presentation of the original bill and the application for the original order. We appeared in answer to the citation.

Mr. PRESTON. I don't think I will ask any further questions; it simply will take time to go over it again.

By Mr. McCoy:

Q. You were present, Mr. Tucker, when the orders—two forms of order were presented and when Judge Hanford refused to enjoin the incurring of any indebtedness?—A. Yes.

Q. Refused to enjoin the election?—A. As I recollect, Judge Hanford signed our form of order. We very strenuously opposed the signing of the order that they proposed, because it embraced everything under the sun, and they had a lot of stuff alleged in the bill that we didn't think had anything to do with the questions that we were presenting, and we narrowed the order as far as we possibly could to come within the purview of the judge's ruling.

The CHAIRMAN. We should have the order that was signed.

Mr. McCOY. It is in the record.

The CHAIRMAN. It is already in.

Mr. McCOY. We might have the order that was presented by the complainants, too.

Mr. HUGHES. I think you could get a full idea from the prayer.

The WITNESS. There was something said by Mr. Shaffer to the point that the judge had indicated the order would be dissolved if the bill had been answered. Well, I don't recollect the judge said that at the time of argument upon the demurrer or at the time of presentation of the order. He, I believe, said—asked if we intended answering the bill. Of course, I knew the rule that if the bill was answered probably the order would be dissolved, but I did not want to pursue that method, because an election was coming on and any form of order entered in that case would have a tendency to throw cold water on the acts of the comptroller; and even when we went to Portland and applied and got a stay in aid of our appeal from the order the comptroller had telegraphed to Mr. Calhoun, or the word got to Mr. Calhoun at Portland, that the comptroller had withdrawn his contract made with people to put up the booths to hold the election, and it was only upon Mr. Calhoun telegraphing from Portland that we had the stay, that the comptroller would act. In form the order there would have effectually restrained that election, so I did not propose, from my point of view, having the judge pass upon the thing further at all if I could get in any other court, so I prosecuted my appeal and got a stay in aid of the appeal. But I do remember, when we came back and the bill was answered, after we had obtained the stay and it was set down for hearing on the bill and answer and application to dissolve, that Judge Hanford said from the bench that he supposed the lawyers would understand, if the newspapers did not understand, that if we had answered the bill he would have dissolved the order in the first instance; but I was afraid that the judge might die or be sick or some other unavoidable circumstance come in between the time that I could get a hearing, and the time was short, and I deemed it most advisable—Mr. Calhoun and myself did—to go directly up to the circuit court of appeals.

The CHAIRMAN. Any further statement you wish to make concerning it, Mr. Tucker?

The WITNESS. No.

Mr. McCOY. The papers, of course, show dates when the election was to be held, and all that sort of thing, don't they?

Mr. PRESTON. Yes; I think the bill alleges the date of the election.

The WITNESS. Oh, yes.

Mr. PRESTON. I would not be positive.

The WITNESS. That is all in the bill.

Mr. MCCOY. Then is there anything in the files which you have submitted which show the application to the circuit court of appeals for a stay, and all that sort of thing?

Mr. PRESTON. I think not; they are not in the files here.

The WITNESS. Well, I have copies in my files at the office of the application that we made. It was made in the nature of an application for prohibition; or, in the alternative, for a stay in aid of the bill. We found—Mr. Calhoun and I—that the procedure had only been, I think, tried two or three times in the history of this country, and it was not a certainty that we would get the stay.

Mr. MCCOY. Will you furnish the committee copies of those papers, Mr. Tucker?

A. Yes; I would be glad to do that.

Mr. HIGGINS. Whom did you represent?

A. I beg pardon.

Mr. HIGGINS. Whom did you represent?

A. I represented the Public Welfare League; employed by the Public Welfare League.

Mr. MCCOY. During any of these proceedings did you hear Judge Hanford give any expression of opinion as to the recall system, recall practice, or whatever you want to denominate it?

A. No. The only expression, I believe, that I heard Judge Hanford make was at the time the order was signed; Judge Hanford said to Mr. Shaffner, "You want to restrain this election and I don't want to restrain this election. The people want to agitate this thing and they will agitate this thing and they will keep agitating it and they have got to agitate it and the newspapers will agitate it, and let them agitate it and let them hold their election." That is all that he said—the substance of what he said.

Mr. MCCOY. You never heard him say anything about putting the recall law out of business?

A. Oh, no; I never heard anything of that sort; no. I always felt that Judge Hanford was absolutely sincere in his opinion in the case, though I did not agree with him at all; I don't agree with him now.

Mr. HUGHES. On the jurisdictional question?

A. On the jurisdictional question. I always considered there was only one question in the case. I never bothered about the other questions that the other gentlemen argued. It seemed to me that there was only one question, but the court did not agree with me in that, and other lawyers at the bar did not agree with me on that subject, but it was a question that I presented with every confidence. I thought there was only one question in the case.

Mr. HIGGINS. Who was Schobey?

A. Oh, Schobey was a traveling man. He used to live at Fayette, Utah, and afterwards, at the time of the commencement of this action, was living in Chicago. He had never lived out here, but I think the record displayed that a piece of property for which he was claiming there would be an increase in taxes was a piece that was transferred to him just about the time of the commencement of this action.

Mr. PRESTON. I would suggest another question. Do you remember the case of O'Connor against the same defendants?

A. Yes; I remember. Mr. Martin appeared for the complainant in that.

Mr. PRESTON. Were not those two things heard as one?

A. Well, it was understood by counsel in all the cases that the determination of one would terminate the other.

The CHAIRMAN. What was the nature of the O'Connor case?

Mr. PRESTON. It is the same. I explained that to you. I guess you did not catch it.

The CHAIRMAN. Had he been a real-estate holder here for some time before the election?

A. Yes; I think he had been; and it was charged in the bill that his holdings were of considerable amount, I believe a couple of hundred thousand dollars or thereabouts, the exact amount of which I am not sure.

Mr. PRESTON. Two hundred and fifty, I think.

The CHAIRMAN. Where did he live?

A. New York, I think.

Mr. PRESTON. Elmira, N. Y., I think. Isn't that right?

The WITNESS. I recollect the bill recited it was in New York.

Mr. HUGHES. Represented a business house in New York?

A. I don't know what he represented in New York, but it was charged in the bill he resided in New York.

The CHAIRMAN. Anything further with Mr. Tucker?

Mr. PRESTON. No, sir.

The CHAIRMAN. Unless you have something to add, Mr. Tucker, I guess that is all.

The WITNESS. Nothing.

Witness excused.

Mr. PRESTON. I have in that case the same sort of a review of the record, like an index to what you have. If you would like to have it you are welcome to it.

The CHAIRMAN. We would, of course.

Mr. PRESTON. It is a little more than an index, but it will serve the purpose of an index to the transcript which you have.

The CHAIRMAN. It is a résumé of the bill of complaint?

Mr. PRESTON. Also all the papers in the case.

Mr. HUGHES. Mr. Calhoun is here, but I suppose it would be only cumulative testimony.

The CHAIRMAN. What?

Mr. HUGHES. I say Mr. Calhoun, the corporation counsel, is here, but it is, however, only cumulative testimony—unless the committee want it.

The CHAIRMAN. You may use your judgment about it. As long as he is here I suppose he might as well go on.

Paper above produced by Mr. Preston was marked "Exhibit No. 87."

SCOTT CALHOUN, having been first duly sworn, testified as follows:

Mr. PRESTON. What is your full name, please?

A. Scott Calhoun.

Q. You are an attorney at the Seattle bar?—A. Yes, sir.

Q. And have been practicing quite a number of years?—A. Yes, since 1896.

Q. And are corporation counsel at the present time of the city?—A. No, not now.

Q. Oh, not now; that is right. You were at the time the Scobey litigation was on?—A. Yes, sir.

Q. And the O'Connor litigation?—A. Yes.

Q. Had been for a number of years prior to that, is my belief?—A. About seven years.

Q. Now, you have heard Mr. Shaffner's testimony here this morning?—A. No; I heard the last part of Mr. Tucker's.

Q. Oh, I thought you were in all the time. Do you recall the time—an occasion in Judge Hanford's chambers when the disputation arose between the counsel in the case as to the form of the order?—A. Well, I have not a very clear recollection of it. I remember we appeared there in chambers.

Q. Do you remember the difference between the two orders in their essential features—the two orders that were pressed, one by your side and one by the other side?—A. My impression is—I haven't looked that up carefully—my impression is we wanted an alternative order and they were asking for a restraining order, but I would not be positive about that.

Q. Well, it has been testified here that the plaintiff asked an order first restraining the city council as well as the comptroller. Mr. Calhoun, it has been suggested to me that perhaps you do not understand the time I am referring to. I am referring to the time in the library connected with the judge's chambers, after the judge had made his ruling and when it came to the point of getting that ruling put in the form of an order—a temporary injunction?—A. Yes; I remember now.

Q. Now, at that time it has been testified that the complainant presented an order which carried an injunction against the members of the council—an injunction against the holding of the election, an injunction against the incurring of any indebtedness in connection with the election, and an injunction against the expenditure of any public funds?—A. Yes.

Q. Whereas on your side you presented an order only restraining—enjoining, I should say, the expenditure of public funds.—A. Yes. I remember that now.

Q. Is that a correct statement of the orders as they were presented?—A. Yes; that is. We did not want the order to be in form to restrain the running of time in which notices had to be given in order to hold the election; that is the reason we asked for the modification—the running of time on the giving of notices.

Q. Of an election?—A. Yes.

Q. Now, have you a recollection about any remarks made by Judge Hanford at that time to you gentlemen assembled there about the kind of an order he was going to sign or was willing to sign?—A. Well, he said that it was very clear in his mind that this was an illegal election that was attempted to be held.

Q. On what ground; did he specify on what ground, whether it was an illegal election or an illegal expenditure of public funds?—A. Well, an illegal expenditure, an illegal procedure which would not justify the expenditure of public moneys.

Q. You mean that that was apparent to him from the allegations of the bill; there was nothing else before him, was there?—A. That was all there was before him; yes.

Q. Now, do you remember the reason that Judge Hanford expressed at the time of choosing your form of order instead of theirs? Do you remember he said he would not restrain the city council at all; do you remember that?—A. He said he would not restrain the city council, that he would allow the notices, he would sign an order which would allow the notices to be published and be running, and the matter could be disposed of prior to the election.

Mr. PRESTON. I think that is all the questions I want to ask Mr. Calhoun.

By Mr. McCOY:

Q. Mr. Calhoun, have you ever heard Judge Hanford express any opinion as to the recall system?—A. No other than remarks made in the library adjoining his chambers at that time.

Q. You never heard him say, in substance, that he would put the recall system out of business?—A. No; he never said that. He did say that there was a lot of newspaper agitation starting these things, but it was not legal and it was not law, under the allegations of the bill, the form of action that was being taken by the city in holding this election at that time.

The CHAIRMAN. Are there any other questions?

Mr. PRESTON. No: nothing further. But I want to ask Mr. Calhoun a question in the Peabody case. Shall I ask it? It is only a single question.

The CHAIRMAN. I think you had better do it so that he can be at liberty.

By Mr. PRESTON:

Q. Mr. Calhoun, I gather from the records in the case of Peabody against the city, in which a temporary restraining order was issued, about the division of transfer money—you know the case I refer to?—A. Yes.

Q. The record shows, if my recollection serves me now, and I think my dates are correct, from memory, that the restraining order was issued on the 21st of August, and do you know what time of day it was that it was issued?—A. I didn't catch your question.

Q. Do you know what time of day it was on the 21st that the restraining order was issued, afternoon or forenoon?—A. My impression is that it was in the afternoon.

Q. Yes.—A. About 5 o'clock.

Q. On the morning of the 22d of August there was quite a disturbance down on the line of the Renton & Southern Railroad, was there not?—A. Yes.

Q. And that was reported in the morning paper, was it not?—A. Well, not in the morning paper——

Q. (Interrupting.) A news item of it.—A. In the afternoon paper, I guess. The trouble occurred in the morning, forenoon following the issuance of the restraining order. Of course those troubles then were recited in the afternoon paper.

Q. Was not there some trouble occurred in the evening of the same day, which was reported in the morning paper?—A. Well, that might be so, yes; but the big trouble was the next morning.

Q. Do you recall receiving a telephone message from Judge Hanford, asking you if you were going to take some proceeding before him in the matter in that case? That on the morning of the 22d I am referring to.—A. I received telephone messages nearly all night and in the morning; different attorneys, I think, Mr. Earle, an attorney down in the valley, telephoned me suggesting some line of procedure and a lot of voluntary suggestions. I learned afterwards, or was told, that Judge Hanford called me up. I did not know that the judge was speaking to me over the phone at the time. I was asked over the phone if the city was going to make any application before the Federal court for a modification or take any action in regard to the restraining order which had been issued. This was about 11 o'clock in the forenoon. I stated no, we would not. We just had a conference in the mayor's office with members of the city council and had decided—I was then drafting an ordinance making it a penal offense—that is, providing a fine and imprisonment for the standing of street cars, other than through mechanical breakdown, on the streets of the city for over five minutes. We thought that by that action we could keep the cars moving. That was the important thing at that time.

Q. Well, now, you say you have since been told that that particular telephone message came from Judge Hanford?—A. Yes.

Q. Did he tell you so himself?—A. He told me—oh, about a month ago. But when we were returning from the court room after a hearing in that matter, Mr. Hughes, who had charge of the case in my office——

Q. You mean Mr. H. D. Hughes?—A. Mr. H. D. Hughes, assistant corporation counsel, had made the argument in that case, and on our returning to our office he said he thought Judge Hanford was pretty sore at me. I said "Do you mean personally?" "Well," he says, "I think so," he said "from the way you treated him over the telephone." That was the first intimation that I had had that I had been talking to Judge Hanford at all. He said he thought he was entitled to more consideration, because he was suggesting a way out of the difficulty. Afterwards Judge Hanford confirmed the fact of his having stated that to me, that he was on the phone. I didn't know it at the time.

Mr. PRESTON. That is all I wanted to inquire.

By Mr. HIGGINS:

Q. Did you appear in that case?—A. I appeared, but did not make the argument.

Q. When did you first appear?—A. I appeared immediately in the case, as attorney for the city.

Q. Mr. Hughes——A. Mr. Hughes, an assistant in my office, was assigned to the case.

Q. You appeared with Mr. Hughes?—A. Yes.

Q. Speaking of the hearing that you had before Judge Hanford, how soon after that was it that Judge Hanford telephoned you?—A. Oh, that was, I think, two or three days after.

Q. What was that hearing?—A. That was a hearing on a demurrer. We demurred to the jurisdiction, and asked—Mr. Hughes asked—at the opening the case before the court that the allegations of the answer—we had prepared an answer, but had not filed it; we

were afraid that by filing that answer we would perhaps waive our demurrer—and asked, in order to facilitate the argument, that court consider and counsel consider the allegations in the answer along with the argument on the demurrer, as similar questions were coming up. The court said that he thought it would be better practice to dispose of the demurrer first. The argument was had, the demurrer was overruled, and leave was given the city to file an answer. The judge then suggested—and I think he cited a case that was in point——

Mr. PRESTON. In the Supreme Court of the United States?

A. My impression is it was. I don't recall the citation. That a plea in abatement to be filed along with the answer, and then the denial—the denials in the answer and the plea in abatement——

Mr. PRESTON (interrupting). Let me interrupt you. Wasn't it a plea to the jurisdiction instead of a plea in abatement?

A. Yes; a plea to the jurisdiction. And he said that under the Federal equity practice that would dissolve the restraining order as a matter of course.

By Mr. HIGGINS:

Q. Was the restraining order dissolved?—A. The restraining order was dissolved then; yes.

Q. And you were present at the time?—A. Yes, sir.

Q. What did the court say—the judge say from the bench—upon the order dissolving the restraining order?—A. Well, I have a stenographic report of it in my office, but I would not want to——

Q. (Interrupting.) Will you furnish it to the committee?—A. I can; yes.

Q. Was the court room crowded?—A. Yes; I think at both hearings.

Q. Was it a matter of wide public concern?—A. Very wide public concern down in the Rainier Valley.

Q. Was there a great deal of feeling manifested—public feeling?—A. Down in the Rainier Valley.

Q. Well——A. (Interrupting.) That is, from people down in the Rainier Valley; they were the people who were interested in this matter. It was a car-line fight with them.

Q. They had partisans even in the center of the city, didn't they?—A. They had some; yes.

Q. It was a matter that was generally agitated and widely agitated through this section, wasn't it?—A. It was agitated very generally; yes.

Q. Can you furnish the committee, this forenoon, Mr. Calhoun, with that stenographic report?—A. I think I can; yes.

Q. Is that a complete report of everything that Judge Hanford said before dissolving that injunction, when he was on the bench?—A. I think it is; yes. It is a copy I got from the stenographer. I can learn who the stenographer was and determine that fact.

Q. You think you had it transcribed?—A. Yes; I had the stenographer make a copy of it and leave it at the office.

Mr. PRESTON. Mr. Higgins, I have it among my papers, or else it is in your transcript; one of the two.

Mr. HIGGINS. Well, I would like to see it. I don't care where it comes from, so that I am sure it is correct.

By Mr. McCoy:

Q. Mr. Calhoun, how generally was the public interest that was shown in the suits that were tried or in the agitation—this is, the suits that were tried in the State court—affecting the question of transfers and the 5-cent fare?—A. Well, that was, I think, more general than the trouble that arose and the agitation that arose in connection with the running of cars down the valley, because there every one was allowed transfers on a 5-cent fare, although it more particularly affected the Rainier Valley. As a result of all this agitation—I think the agitation outside of the Rainier Valley was confined almost exclusively to municipal-ownership advocates—municipal ownership of street railways—and as a result a bond issue was voted by the people shortly after that for $800,000 in bonds to acquire a line down into the valley and to extend it on up through the city.

Q. But there were two cases which originated in the superior court, as I understand it, one affecting the question of the additions of new territory and whether or not when new territory was added to the city they were not within the original ordinance——A. Yes.

Q. (Continuing.) Providing for fares, and then later on the same thing, or previously the same sort of agitation, or at least the same matter was brought into the superior court in connection with the transfers?—A. Yes.

Q. And now what I wanted to ask you was this: Was there a pretty general discussion of these two cases or these two matters in the newspapers and amongst the people in the city of Seattle at the time the cases were pending in court?—A. Yes; there was a general discussion of it, both in the newspapers and by the public. As I say, the real interest in the case was taken by the people down in the Rainier Valley, because it was their transportation problem. The people in the north end were not interested at all, to amount to anything, other than those who were interested in all matters of public concern, and particularly interested in the acquirement of street railways to be owned by the public; this was a good opportunity to get that question before the public.

Q. Were not a great many people who did not live in the Rainier Valley—were not they interested in the question of whether or not a double fare could be charged after certain new territory had been brought into the city?—A. Well, I suppose people are interested in——

Q. (Interrupting.) I mean financially affected. For instance, the ordinance covered the city with certain boundaries——A. Yes, sir.

Q. (Continuing.) Providing for a 5-cent fare; that is what I understand about it; subsequently territory was added and the railroad company claimed that the 5-cent fare was limited to the territory as it existed when the ordinance was passed giving them their rights?—A. Yes, sir.

Q. Now, was the added territory over which the dispute arose in the Rainier Valley or was it this side of it? I don't really know.—A. It was out there beyond the Rainier Valley; yes.

Q. But the whole thing affected just the Rainier Valley?—A. Yes.

Q. Where does that begin?—A. The Rainier Valley begins pretty close to the Union Depot.

Q. Oh, that was the point?—A. Yes.

Q. I had a notion it was farther away.—A. And runs clear on out. The line was about 13 miles long and 6 or 7 miles of territory beyond the limits of the city were added and included that car line. That is the reason it was of special interest to the Rainier Valley.

The CHAIRMAN. Are there any towns down the valley, Mr. Calhoun, with separate and distinct names?

A. There used to be, but they all have been annexed to the city of Seattle except the terminus of this line, the city of Renton.

Q. Have they preserved their names in any way?—A. Just in sort of a local way. I think perhaps they keep their post-office name.

The CHAIRMAN. What is the name?

A. Columbia, Hillman City, Brighton Beach, Rainier Beach.

The CHAIRMAN. Do they constitute a continuous town?—A. Yes; part of the city all the way along, built up all along.

Mr. HIGGINS. Mr. Preston has handed me a paper which purports to be the statement of the judge made before deciding that case. Will you look it over and see if it is your recollection that that is all that the court said before announcing his decision in that case [handing paper to witness]?

A. I can't think of anything else the court might have said. I think that is a statement of everything the court said.

The CHAIRMAN. Anything further with Mr. Calhoun?

Mr. PRESTON. No, sir.

Witness excused.

Mr. PRESTON. I would like at this point, if it is agreeable to the committee, to call Mr. H. D. Hughes in regard to the same case.

HOWARD D. HUGHES, having been first duly sworn, testified as follows:

Mr. PRESTON. State your full name, please, Mr. Hughes.

A. Howard D. Hughes.

Q. You are a member of the bar of Seattle?—A. I am.

Q. Have been practicing here how long?—A. Five years, I believe.

Q. Have you been connected and are you now connected with the office of the corporation counsel of the city of Seattle?—A. I have been connected with the office for a little over four years, and still am.

Q. Did you have to do with the case that Mr. Calhoun has just been talking to us about, of Peabody against the——A. (Interrupting.) Yes; I had charge of that under Mr. Calhoun, and I gave it my personal attention.

Q. I wish you would tell the committee what happened in court when your demurrer came up. I don't mean to tell the committee the arguments of counsel or things of that kind, but what happened there in regard to the arrangement of the presentation of the matter, the form of presentation of the matter in its different phases to the court.—A. You are now referring to the return day—the order to show cause day?

Q. Yes.—A. That was set for the morning. I forget the day now, but this was set for 10 o'clock in the morning. I interposed a demurrer and argued that during the morning session. The demurrer was to the jurisdiction of that court to take hold of the case at all. I realized that there was some doubt as to whether or not the court had jurisdiction, and therefore had prepared an answer

which set forth the facts of the case; the facts which constituted our defense to this action, with the intention of filing that answer if the demurrer was overruled, so that a temporary injunction would not issue. The demurrer was argued in the morning. We concluded—both sides concluded their argument shortly before noon. At the close of my argument I had referred to certain of the facts which constituted our defense and which had been set forth in the answer——

Q. The answer was not filed yet?—A. The answer had not been filed yet. And stated to the court that I wished to have the answer filed before any order should issue—that is, in case he should overrule that demurrer I wished it understood that I would have the option of filing my answer at the same time and arguing that question, and attempted to present both arguments at that time, but the court said that the logical way to take it up was to argue the demurrer first and subsequently the answer. So shortly before 12, when the arguments on the demurrer were concluded, the court made some remarks which were of considerable value to us when further outlining our defense of the case, and for that reason——

Mr. HIGGINS (interrupting). What were they?

A. The court said, "It does not seem fair to the court to ask him to decide this question when he only has one side of it before him: it would be fairer to the court if you would place in his grasp all the facts of the case; then he could give a proper decision." He says, "From your statements as to what your answer will contain when filed, I am of the opinion that that will leave this court without jurisdiction, if properly pleaded," and he said, "I would suggest that you file your answer. In the meantime I will take the demurrer under advisement, so that no temporary injunction will issue in case I overrule your demurrer." He then went on and read from a case in the Supreme Court of the United States, found, I think, in the 197 U. S. The case, as I recall it, was the City of Dawson *v.* The Water Works of that city—Dawson, as I recall it—which was a case very much in point with this, where a similar attempt had been made by the bondholders of a waterworks company. The waterworks company had engaged in litigation with the city over their right to charge a certain rate. The city had won its contention in the State court. The bondholders then came in the Federal court and attempted, being nonresidents, to have the matter readjudicated in the Federal court, with the view, of course, of overriding the decision of the State court, and arraigned the waterworks company and the city as defendants. The case was very much in point, and the court there held that such an action could not be maintained, that the placing of the waterworks as a party defendant was an arbitrary relation, that their interests were really identified with the plaintiff, and hence that the court would not be bound by the arbitrary position which the parties placed the defendants in; but if the interest of one of the defendants was the same as the plaintiff, it would arraign that defendant on the side of the plaintiff, which would leave citizens of the State on both sides of the case, which would, of course, divest the Federal court of jurisdiction. That point—we looked that up at noon and found further authorities to the same effect; and, as I say, it was this statement and the procedure outlined by the court at the close of the morning's argument which led,

for our help in the future, to employ a stenographer to take down his remarks. It seems to me that that is all that occurred that morning in the argument of the demurrer.

Q. Now, you came in when again; wasn't it the next day?—A. Let me see; it seems to me that we appeared again that afternoon, and that statement that you have there I think was made on the afternoon of the same day.

Mr. HIGGINS. What statement do you refer to?

A. This stenographic report. When we came back after noon at 2 o'clock on that day I had a stenographer up there.

Mr. HIGGINS. You mean the one that was prepared or given to us by Mr. Preston?

A. Yes.

By Mr. HIGGINS:

Q. And identified by Mr. Calhoun?—A. Yes, yes.

Q. There was before that some other statement of the court?—A. The statement to which I have just referred was made that morning when there was no stenographer present. Of course, there would be, ordinarily, no stenographer present.

Q. Have you stated all that you recollect as to what the judge said on that occasion? You digressed in the discussion of some other case and I didn't know but what——

Mr. HUGHES. He stated that as showing what the court meant.

A. I stated that the court read from that case——

Mr. HIGGINS. Oh, yes.

A. (Continuing.) And said that he thought that if I properly pleaded the matters which I had referred to in my argument as being contained in my answer, that under the authority of that case the court would be without jurisdiction.

Q. The judge called up the case; you didn't?—A. He called up the case of his own motion; yes. He came into the court room that morning, or else sent out after—I believe he sent out, after I had stated what the facts of our answer would be—sent out and got that case, as I recall, sent the bailiff out, and then he read that to us.

Q. Were you familiar, Mr. Hughes, with the typewritten paper which Mr. Calhoun looked over?—A. I would like to glance at that. [Examining paper.] Yes.

Q. You have recalled the remarks of the judge on one occasion that purports to report them on another. Is there any other statement that the judge made from the bench?—A. With reference to any particular point?

Q. With reference to this litigation?—A. Why, he stated, in a general way, of course, in making his rulings, that under the facts of record after the answer was filed that the temporary restraining order would have to be dissolved; that the application for a temporary injunction would have to be denied; that this would happen, as a matter of course, from the filing of an answer denying the equities of the bill; but we went further than that, and stated that under the defenses contained in the plea of abatement or the plea to the jurisdiction that he doubted very much whether the action could ever be maintained. That was in response to Mr. McCord's request for leave to amend. The court had indicated very clearly and strongly that he was going to hold against Mr. McCord and

dismiss the case. Mr. McCord then said he thought he might amend so as to state a cause of action and give the court jurisdiction.

Q. Well, now, I am getting down a little nearer to what I want. You have got those remarks transcribed, haven't you?—A. I think all of those were transcribed. Now, this is only one of the papers and it seems——

Q. (Interrupting.) Will you be good enough, Mr. Hughes, to look through your files to see if you can't bring to the committee those remarks of the court in that connection——A. I doubt if I have them.

Q. (Continuing.) If there are others than what is indicated by Mr. Preston as to the argument.—A. Yes; there are others. This one appears to be September 1, 2 o'clock. Now——

Q. (Interrupting.) That is not a full report of all that the judge said, and that is what I would like to get. If your office can furnish it, I would be obliged to you.—A. Yes. This was after we had filed the plea. That afternoon the first day we came back and I simply filed the answer and he made some rulings or certain remarks than which were taken down, as I recall it. Then these are the remarks which he made the following afternoon.

Q. Well, that closed the incident?—A. This closed the incident; yes.

Q. Well, I want the remarks that were made preceding that.—A. Well, I can get those from Mr. Kimple, who was the reporter. I haven't got any copy of it, but we doubtless can get it.

Mr. PRESTON. Mr. Kimple is East. You will have to get it from Mr. Bolster, I suppose——

Mr. HIGGINS. Very well.

Mr. PRESTON. Now, I want to ask you about that. We may not be able to get the stenographic report, so I am going to ask you for your memory about it. You came in that afternoon with the answer——

Mr. HIGGINS (interrupting). Hadn't we better wait and find out if we can get it?

Mr. PRESTON. I will do just as you suggest.

The CHAIRMAN. What is it you want to get at?

Mr. HIGGINS. He wants to question him on the assumption that he can't find the stenographic reports, when Mr. Calhoun thought he had them and when Mr. Hughes thinks he has them.

Mr. PRESTON. I don't urge it at all. I know that this——

The CHAIRMAN. If they are found, the question that you now propose to ask would be superfluous?

Mr. PRESTON. Not all of them, but that particular one would be; yes. Now, I will go further than that——

The CHAIRMAN (interrupting). Anything else to ask him?

Mr. PRESTON. You came in that afternoon with counsel in the case, that same afternoon, and filed your answer?

A. Yes, sir.

Q. Now, when was it that some suggestion was made from the bench that the proper practice to raise the jurisdictional question was to file also a plea to the jurisdiction, setting out the facts going to defeat the jurisdiction?—A. That was at that time. I filed my answer at 2 o'clock, when court reconvened that afternoon. The court then read the answer over—it was a long one—and after read-

ing it over he made some remarks, which, as I say, I think I can get a copy of—I had a stenographer there—and in substance stated that the facts set forth in the answer he thought would be sufficient to dismiss the case, but that the proper procedure to adopt was to follow the old common-law practice of a plea, a plea in abatement or plea to the jurisdiction, although he said that that was merely a technical rule. But he said that in view of the fact that this case might be appealed that we had better comply with the technical rules of procedure, and therefore he advised that I file a plea in abatement setting forth the same facts.

Mr. PRESTON. Was it a plea in abatement or a plea to the jurisdiction?

A. A plea to the jurisdiction, I think it is called.

Mr. PRESTON. I think that is all I want to interrogate Mr. Hughes about.

Mr. HIGGINS. When can you get that report, Mr. Hughes?

A. Well, sir, I can't answer that. I don't know that I can get it.

Mr. HIGGINS. Probably this afternoon?

A. Well, I will look through all my files and try to find it, but I did look through them and this was the only one that I could find. If I haven't got it I don't suppose anybody has, because I had these made for my own personal use.

Mr. HIGGINS. You understand what I want?

A. Oh, yes; I understand what you want.

The CHAIRMAN. Were there other lawyers present when the matter was discussed in the morning?

A. Oh, a great many; the court room was crowded.

The CHAIRMAN. A matter of keen public interest?

A. Particularly, of course, to the residents of Rainier Valley, who were the ones directly affected.

The CHAIRMAN. Do you know if they constituted the assembly, the people of Rainier Valley, or was it the public generally who filled the courthouse?

A. Well, they constituted the great part of that assemblage; they were people who had been interested in this litigation which I had been conducting for them in the State courts for several years past.

The CHAIRMAN. How long prior to that hearing was this public excitement to which reference has been made in this case started?

A. The public excitement started about the time the restraining order was issued.

The CHAIRMAN. That was how long before this first hearing?

A. I think the restraining order—the order to show cause—was set down for the week following the issuance of the temporary restraining order.

Mr. PRESTON. Your record shows, I think, either seven or eight days intervened. I forget now.

The CHAIRMAN. Are there any further questions?

Mr. PRESTON. Just one question. Was the time extended on your application in order to give you some further time to get ready?

A. It was. The questions were of great difficulty. There were a large mass of affidavits that had to be prepared. I had to do most of that myself, and I was compelled to ask for an extension of time in order to properly brief the case.

By Mr. HIGGINS:

Q. What was Mr. McCord urging?—A. Mr. McCord was representing the bondholders, and was asking for an order to——

Q. (Interrupting.) What was he urging, I asked?—A. Urging?

Q. Yes.

Mr. HUGHES. What do you mean, as against his request for time?

Mr. HIGGINS. What was he urging upon the court—upon the judge?

A. He was urging the issuance of a temporary injunction at the time the case came on for hearing.

Q. Just before the final determination as indicated by what is denominated the argument?—A. Oh. I suppose you are now referring to the final attempt which he made, which was to invoke a Federal statute which took away from the power of a single Federal judge the right to issue injunctions in cases such as this, in a way, although this did not come under that head, which appointed three Federal judges and gave them alone that power. Now, he attempted to bring his case under that statute and under certain decisions construing it and attempted to get the case removed——

Mr. PRESTON (interrupting). May I interrupt?

The WITNESS. Yes.

Mr. PRESTON. Wasn't it his attempt after getting the temporary restraining order to continue that in force by invoking that Federal statute bringing in two more judges?

A. Yes; that is true.

Mr. HIGGINS. I am always glad to have Mr. Preston interrupt, but I want to get an answer to my question, and then the opportunity will be given him to question the witness.

A. Well——

Mr. HIGGINS. At that time the court made some remarks, did he not?

Mr. PRESTON. I was leading up to it, sir. I have the stenographic report.

Mr. HIGGINS. Is that also a part of our files?

Mr. PRESTON. No, sir; I was going to offer it.

Mr. HIGGINS. Is that what I am asking about?

Mr. PRESTON. I took it to be. It is about the ruling on the application for two more judges.

Mr. HIGGINS. Is that the record that I have called for?

Mr. PRESTON. No; no; that is a later one.

Mr. HIGGINS. Well, then, I will ask you to get that record.

By Mr. MCCOY:

Q. Mr. Hughes, the relief sought applied not only to the question of fares and transfers, but also involved other matters, didn't it?—A. It did.

Q. Now, was the temporary restraining order obtained on affidavits?—A. It was obtained on the sworn complaint.

Q. But no affidavits in addition to the complaint?—A. I believe that no affidavits were filed at that time. The records will of course show those matters.

Mr. MCCOY. How is that, Mr. Preston? Was the temporary restraining order issued on the bill or were there affidavits?

Mr. PRESTON. Well, I will answer you in just a moment, as soon as I can find my notes. From my recollection that I can give you now,

there were no affidavits filed with the complaint; that is my recollection. I will find my paper.

Mr. McCoy. Mr. Hughes, did you ever examine the papers on which the temporary restraining order was issued so that you can now state what the allegations were of a showing of possibility of an irreparable damage so far as transfers and fares were concerned, or was the showing of irreparable damage confined to the other acts which it was alleged the city was about to perform and which would injure the plaintiff?

A. Why, the whole case consisted of a lot of separate causes of action which had been combined in one suit——

Q. (Interrupting.) Well, I will ask you——

A. (Continuing.) Under the heading of a conspiracy, that the whole thing was a part of a conspiracy.

Q. Well, now, what I want to ask you is this: What is your present recollection as to the sufficiency of the allegations in the papers presented to Judge Hanford when the temporary restraining order was issued, to justify the issuance of it on the ground of irreparable damage, so far as the fares and the transfers were concerned?—A. I can't recall all of the allegations of that complaint so far as that particular element was concerned. I do know that——

Q. (Interrupting.) I will ask you another way——A. Oh, well, yes, I do recall what you—one part at least of the feature to which you refer, and that is they said that the issuance of transfers and the collection of a single fare would depreciate the income of that road I think over 50 per cent, and that that would result in the company's being unable to pay any interest on their bonds or even to pay their own debts, and that the property would go bankrupt.

Q. Well, that is assuming, of course, that the city's action became final and were upheld in the matter, but I mean were you satisfied that the allegations as to irreparable damage that might occur between the time when the order was applied for and when the matter could be brought up for argument were sufficient to warrant the issuing of a temporary restraining order on the ground of irreparable damage? I mean taking them for what they were, at their face value.—A. Well, under the practice that prevails, I don't see how any court could have done otherwise than to issue a temporary restraining order.

Q. I mean on just this point, not the other points in the case. I have read the bill part way through, and there are a lot of allegations in there about what the city was going to do, they were going to repeal ordinances and a whole lot of things.—A. Yes.

Q. Now, I am not concerned with that feature of it at all, but I mean just on the question of the fares and the transfers.—A. Well, of course the main reason, I suppose, for that, was to prevent a financial loss during the period that would intervene before the cause could be heard, and there would have been a loss of a good many hundreds of dollars every day.

Q. That is not the point. Was there any such allegation that the loss would be really substantial?—A. I believe there was, and I know as a fact that there has been a daily substantial loss since the decision has gone into effect—a very substantial loss.

Mr. McCoy. That is all.

The Chairman. Anything further with Mr. Hughes?

I suppose you will be in town for some time, Mr. Hughes, so that if we should need you we can find you.

A. Yes.

Mr. PRESTON. May I ask one question?

Mr. HIGGINS. Are you willing to wait until Mr. Hughes reports to the committee whatever he can find——

Mr. PRESTON. Certainly, except——

Mr. HIGGINS (continuing). Without further examination?

Mr. PRESTON. I thought while he was on the stand I would identify that other stenographic report of the later matter that came up.

Mr. HIGGINS. Well, there appear to be a number of other matters.

Mr. PRESTON. I have here, Mr. Chairman, an index of the files in that case, which you gentlemen are welcome to if you care for it [handing paper to the committee].

The CHAIRMAN. Mr. Preston, the paper you have handed us now is a synopsis of the court files in the case of Augustus S. Peabody, trustee, against the city of Seattle, and the Seattle, Renton & Southern Railway Co.?

Mr. PRESTON. Yes, sir.

The CHAIRMAN. It may go in the record as "Exhibit No. 88."

Paper referred to was marked "Exhibit No. 88."

The committee here took a short recess.

The CHAIRMAN. The committee will be in order. Who do you suggest that we call next?

Mr. DORR. I suggest that we have Mr. McCord called.

E. S. MCCORD, having been first duly sworn, testified as follows:

The CHAIRMAN. Will you examine him, Mr. Dorr?

Mr. DORR. If you wish.

By Mr. DORR:

Q. Mr. McCord, state your full name, please.—A. E. S. McCord.

Q. A member of the firm of Kerr & McCord?—A. Yes, sir.

Q. Attorneys of this city?—A. Yes.

Q. Do you recall some patent litigation that was carried on in Judge Hanford's court, between the Alaska Packers' Association, as plaintiff, and Letson & Burpee, as defendants?—A. I do.

Q. And also some other cases involving the same patents, by the same plaintiff against various other defendants?—A. Yes; a half a dozen other cases probably.

Q. When was that, Mr. McCord?—A. That was in the years 1902, 1903, and 1904, I think.

Q. That was a suit, so far as Letson & Burpee were concerned, as manufacturers, for an infringement upon certain patents claimed by the plaintiff or the plaintiffs?—A. Well, the suit by the Alaska Packers' Association against Letson & Burpee was a suit against them as manufacturers, for infringing upon the Jensen patent owned by the Alaska Packers' Association and certain other patents. The other cases were injunctions brought by various parties against users of these machines that had brought them from Letson & Burpee.

Q. Brought by the same plaintiff against various defendants, you mean?—A. Yes, sir; among others one against the Apex Fish Co., the Fildalgo Island Packing Co., Carlisle Packing Co., the Pacific-American Fisheries receivers, and the Pacific Packing & Navigation

Co. receivers, and practically every fish concern or canning company on the Sound, I think.

Q. For whom did you appear, Mr. McCoy?—A. We appeared in the case of the Alaska Packers' Association against Letson & Burpee for the defendants Letson & Burpee.

Q. Was that case prosecuted to a final decree?—A. Yes, sir; it was prosecuted during the year 1902, and the decree was entered, I think, on December 19, 1902, if I remember correctly.

Q. December 16?—A. December 16, 1902.

Q. [Handing paper to witness.] What occurred, after the final decree in this court, with reference to that suit?—A. The case was appealed by Letson & Burpee to the circuit court of appeals for the ninth circuit, in San Francisco.

Q. What was the disposition made there of the case on appeal?—In that case the decision of Judge Hanford was affirmed, and I think there was one additional claim that the circuit court of appeals held was infringed upon in addition to the claims of infringement allowed by Judge Hanford.

Q. Where was the appeal reported, if at all, in the Federal Reporter?—A. 130 Federal, at page 129.

Q. Do you recall the fact that Judge Hanford himself became a patentee of a can-topping machine at any time?—A. Yes, sir; I remember that shortly after the announcement of the decision by Judge Hanford on December 16, 1902, Judge Hanford told me that in the consideration of that case and the examination of the various models and the various patents, that he himself had invented a machine that—a can-topping machine that did not, in his judgment, infringe upon either the Letson & Burpee patent or upon the Jensen patent and the other patents owned by the Alaska Packers' Association.

Q. Do you remember of having any conversation with Mr. Burpee regarding Judge Hanford's invention at any time; and, if so, I want you to state, if you will, fully all that occurred between you and Mr. Burpee regarding that matter, and fix the time as nearly as you can of those conversations?—A. Well, I fixed the time on yesterday, when I returned from San Francisco. I saw Mr. Burpee's testimony, and I had not thought of this matter for nearly 10 years, so—I had known Mr. Burpee for many years; he had been a client of mine for a good many years while I lived at Bellingham, Wash., where he resided. I asked him to go down to my office with me, and we would go through my correspondence to get a starting point to refresh my memory as well as his own. He went to the office with me, and I turned to my letter-press copy book for the year 1903 and 1902, and so on, for some months afterwards, ran through the correspondence, and the only letter that I found that bore upon the subject at all was the letter of which I gave Mr. Burpee a copy and which was introduced in evidence on yesterday. I don't remember having talked with Mr. Burpee prior to the time of writing that letter. I wrote him the letter, telling him that I had been shown by Judge Hanford in his chambers a plan, a diagram of a machine that he had invented, and that he wanted Mr. Letson to make a sample machine for him, and suggested that he come to Seattle and meet Judge Hanford, who was then gone away—going away to Spokane or some other place to hold court—and on his return, which would be on a Sunday,

and I wanted Mr. Burpee to come down and meet Judge Hanford then and go over the matter, stating to him that I wanted him to bring a plan of his own machine, modified as Burpee had modified it after the decision by Judge Hanford so as to avoid the infringement. Mr. Burpee, after Judge Hanford's decision, had made certain modifications of his machine, which he thought obviated the infringement features, and he was going to use them in carrying on his business and making the machines in the modified form.

If you will notice, in that letter I asked him to bring the plan of his modifications so that we could show them to Judge Hanford before Judge Hanford showed to Burpee the plan of his machine, my idea being that as Burpee was an excellent machinist and a very successful inventor and a successful manufacturer of canning machinery and other machinery, shingle-mill machinery, and so on, that Hanford might think, if they had arrived at the same results, that Burpee might be put in the position of having gained something from Judge Hanford, so I wanted him to show his design before he saw Hanford's design. And I told him, further, that I thought it would be worth his while to come down and go over with Judge Hanford his machine, and make it, if he could, so that if there was any way to utilize that machine, why, I wanted him to have an opportunity to do it. You see, Mr. Chairman, in the manufacture of canning machinery one man like Letson & Burpee—or one firm—will manufacture an entire line of machinery—the fish-cleaning machine, the wiper, the topper, the crimping machine, and the soldering machine, and others clean through the cannery. Now, the granting of this injunction restraining Letson & Burpee from using this can-topping machine broke up their line of machinery, and would have very materially damaged their business, because when a man wanted a cannery he wanted to go to one concern and get the whole thing, and he was put out of business with the topper. I thought that if he could get an opportunity to get Judge Hanford's ideas, if they were worth anything, why, we might be able to make some arrangement to use that and go on with the business. Well, after talking it over with Mr. Burpee, when he came to Seattle in response to this letter, he says, "I think I will stand on my own modifications, because if Mr. Dorr and the Alaska Packers' Association undertake to enjoin us we can keep the matter in court for another year anyway"—at least I told him I thought I could, and at the end of a year or a year and a half the Jensen patent would have expired by limitation, and he could go on anyway. So Burpee, as I remember it, told me that he did not want anything to do with Judge Hanford's machine, because the other patent had such a short time to run.

We then went up to Judge Hanford's office—I think Mr. Burpee is correct in saying that it was several days later than the date I have named—and went in and took up the discussion of the matter. Mr. Burpee had his plan, the design of his machine. He showed it to Judge Hanford, but he expressed no opinion on it whatever, and did not show Mr. Burpee the plans of his machine. My idea throughout the whole transaction was in the interest of Letson & Burpee, to get Mr. Burpee in possession of any ideas that were valuable if they would enable him to modify his machine and go on with

the manufacture so as not to interfere with or come in contact with the injunction.

Q. Were there any negotiations carried on at all between Judge Hanford and Mr. Burpee, or yourself representing Mr. Burpee, with respect to the acquisition of the Hanford invention?—A. I have absolutely no recollection of ever discussing the purchase of Judge Hanford's machine with him on behalf of Mr. Burpee.

Now, Mr. Burpee testified before this committee, and I think that he testified as he honestly believed, in fact, I know he did; he says that I read to him a letter of what purported to be a letter or telegram from Judge Hanford saying that he did not want to discuss the matter with Mr. Burpee unless it was with a view of Burpee acquiring the ownership of his patent.

Mr. McCoy. A telephone message was what he said.

A. Well——

Mr. McCoy. A memorandum which you had made of some telephone message.

A. Yes; something that I had read. I understood him to say it was a letter or telegram, the way I read his testimony—I may be mistaken about that, but as a matter of fact if it was a telegram, that might have been—I mean a telephone, I might have had merely a memorandum of what he said, but I am sure that I never received any telegram or telephone and I don't know why I should have received any letter from Judge Hanford, unless it was when he was in Spokane; but if I received any such telegram or letter—possibly not a telephone message, I might not have kept that—but the other would have been signed and filed among my files in the office. I went through them yesterday, with Mr. Burpee, trying to find such a letter or telegram. I found absolutely nothing, and I have no recollection of ever having read any such thing to Mr. Burpee, and I have no recollection of ever receiving any such letter, telegram, or telephone message from Judge Hanford in regard to the sale of his machine. That never was contemplated by Judge Hanford. What he wanted was to find somebody to manufacture a sample machine, to see whether it would work or not, and I remember at this meeting with Mr. Burpee Judge Hanford indicated that he preferred having the machine—his machine—manufactured, if he could have it manufactured at all, in the city of Seattle, rather than in Bellingham, where he could supervise it and be present. It was my suggestion to him possibly—I don't recall it—that Mr. Burpee was the man to develop his machine and make—his idea—and make it a workable machine, because I knew Burpee was an exceedingly competent man.

The Chairman. How long had the patent been issued?

A. The patent, as I remember it had——

The Chairman (interrupting). At the time you and Burpee called on him?

A. I don't think, Mr. Chairman, that that patent had been issued at all. I think he had filed only—I have forgotten what they call them—caveats?

The Chairman. Caveat.

A. Caveat; yes. I think he had filed that, but I think the patent was not issued until some time later than that.

By the CHAIRMAN:

Q. Who acted as attorneys in securing the patent?—A. I don't know.

Q. Was his device used in the canning concern over which Mr. Kerr was receiver?—A. No, sir. You mean Judge Hanford's?

Q. Yes.—A. No, sir.

Q. Was it tested there?—A. I am inclined to think that it was tested. I am not sure, but that may have been later. It was tested, I think, by the Pacific-American Fisheries, a corporation that is now in existence at Bellingham, and one of the——

Q. (Interrupting.) I mean during the receivership.—A. I don't think so. I don't think it was tested then.

Q. Have you knowledge on that subject?—A. No; I don't know. I don't think so, though. I think I would have known if it had been, probably.

By Mr. DORR:

Q. Do you know where the Hanford machine was manufactured, if there was a sample made?—A. Why, some time after this I went out on Western Avenue, somewhere up toward Pike Street, I think, don't recall just now—Railroad Avenue——

Q. In Seattle?—A. In Seattle; and saw a very crude model of the machine.

Q. How did you happen to go out there?—A. I went out there with Judge Hanford; he wanted to show it to me.

Q. Was that in a shop?—A. Yes, sir.

Q. Manufacturing shop?—A. Yes. I think that——

Q. (Interrupting.) Was that the shop where the machine was being built?—A. Yes, sir. I think subsequently a full-sized machine—that was a model—a full-sized machine was made, I think, at the Washington Iron Works, in this city, later on.

Q. In this city?—A. Yes. That was made, I believe, during the year 1904. That machine I never saw after it was completed.

Q. Was there ever any discussion between Burpee and Judge Hanford, or yourself and Judge Hanford, with relation to purchasing the Hanford patent, as far as you know?—A. Mr. Dorr, all I can say on that subject is this: I have absolutely no recollection of ever discussing the purchase of that machine with Judge Hanford. Now, I am going to modify that in this way: I have known Mr. Burpee for a good many years, and he is positive that I read some statement to him, in accordance with what he testified to. I think he is mistaken, but I want to say that to the best of my recollection I never received any such letter and never heard any discussion or any negotiation with Judge Hanford for the purchase of that machine. I did have in mind with Mr. Burpee that I wanted him to see Judge Hanford's machine to see his ideas.

Q. What for; why?—A. I wanted Mr. Burpee to be in a position that if it was worth anything after he saw it that he might attempt to make some sort of an arrangement to get the use of it to fill in his line of machinery and prevent the ruin of his business.

Q. Then your efforts were entirely in Mr. Burpee's interest, as you understood it?—A. Yes, sir; I was trying my best to do everything I could to minimize the injury to Mr. Burpee by reason of the unfortunate decision that was rendered against him. I might say in

this connection, Mr. Dorr, that so far as the termination of the case was concerned the thing that I was interested in and that Burpee was interested in was not the question of damages for the profits made in the manufacture of the machine, but it was to prevent the destruction of our business by the elimination of one element or one unit in the line of machinery of a cannery, and that is the point that I had in mind. I regarded the litigation as ended so far as this court was concerned——

Q. (Interrupting.) Well, was it ended?—A. Yes; ended. Of course if the case went on to the Circuit Court of Appeals and was affirmed and sent back here, why, then, possibly—then the accounting would follow, and after the case did come back I settled it for Letson & Burpee with the Alaska Packers' Association by paying them—I have forgotten how much now, two or three——

Q. (Interrupting.) That was all outside of court, wasn't it?—A. Yes, sir. About two or three thousand dollars. I have forgotten what the figures were; maybe it was——

The CHAIRMAN (interrupting). At what period of the litigation was the stipulation entered into as to what the damages would be if there were damages?

A. There was no stipulation, Mr. Chairman, entered into with regard to the first suit; that is, the suit brought by the Alaska Packers' Association against Letson & Burpee. There was no stipulation made. After it was affirmed by the circuit court of appeals, then we stipulated for a settlement. In all of the other cases—that is, the cases brought against the users of these machines by the Alaska Packers' Association—we entered into a stipulation that we might use them. The injunction was granted and then suspended by the giving of a bond or entering into a stipulation that we would pay 5 cents a case in the event that the courts ultimately held that there was any infringement.

Mr. MCCOY. That is, in the suits against the users?

A. Against the users.

Mr. DORR. Well, had this matter of Judge Hanford's patent ever come up until after the litigation had been ended in this court over the validity of the patent?

A. No, sir; no, sir; not for some time after that. The first I ever heard of this patent of Judge Hanford's, I think, was just about within a day or two of the time that I wrote that letter on the 15th or 13th day of April, 1903—the letter that is introduced in evidence—a copy of it. I know that at the time that Judge Hanford told me of the invention of this machine of his I was not very greatly surprised, because he always went to the bottom of all sorts of mechanical devices and machinery and was about as good a machinist or as good a mechanic as you could find anywhere.

Q. You had known of other judges who invented can-topping devices, hadn't you?—A. No, sir.

Q. Judge Wheaton, do you remember that?—A. Oh, yes, yes; that is right.

Q. The attorney for——A. (Interrupting.) Yes; I might say that I don't know much about machinery, Mr. Dorr.

The CHAIRMAN. Was the inference to be drawn from that that judicial work stimulates invention?

Mr. DORR. I think it does in some cases of patent rights.

The WITNESS. A man who works over these machines and can form an intelligent and write an intelligent opinion on them, he has got to know something about it; and I found, along with Mr. Dorr, of Dorr & Hadley, on one side, and we were on the other—I found that we needed attorneys, so we both employed a skilled patent attorney.

Mr. DORR. I think that is all I wish to ask Mr. McCord on this line.

The CHAIRMAN. I think that is all.

The WITNESS. Well, do you want to ask me about anything else now while I am here?

The CHAIRMAN. Well, I don't think we had better go in on some new subject now; it is about lunch time.

The WITNESS. All right, sir.

The CHAIRMAN. Unless some one has some question to ask on the testimony you have given. If not, we will take a recess now until 1.30 o'clock.

AFTERNOON SESSION.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

The CHAIRMAN. The committee will come to order—are you ready, Mr. Dorr?

Mr. DORR. Yes, sir.

E. L. GRONDAHL, being first duly sworn, testifies as follows:

The CHAIRMAN. Who is this witness?

Mr. DORR. This is Mr. Grondahl of the Scandinavian-American Bank.

The CHAIRMAN. I thought you were to call all of these witnesses while Mr. Finch was here—was Mr. Grondahl away anywhere?

Mr. DORR. No; he was here a great many times, but there was not any opportunity to use him, and I told Mr. Finch—I notified him publicly yesterday that he would be called, and Mr. McCoy requested that Mr. Finch have permission to read his testimony—the testimony of this witness—after Mr. Finch's return, and if he wanted to make any answer to it, to so notify the committee.

The CHAIRMAN. What good will that be? The committee will be out of reach.

Mr. DORR. I could not keep Mr. Finch here, and these witnesses have been constantly in attendance.

Mr. MCCOY. We have taken them up. We announced that we wanted all the evidence in reference to the Heckman & Hansen case in by Wednesday, and we shoved everything aside for that because Mr. Finch was going away, and now he is gone away and the situation is this: On account of our unfamiliarity with the record we may not be able to fully appreciate the significance of what testimony Mr. Grondahl will give here. We do not know where to refer in the testimony to find anything there which will direct or enlighten the committee in Mr. Finch's absence. However, we will do the best we can; that is all. I think, at least, Mr. Grondahl might have testified while Mr. Finch was here.

Mr. DORR. I certainly made every effort I could to have these witnesses called, but they were always put aside. Shall I examine the witness?

The CHAIRMAN. Proceed.

Mr. DORR. What relation, if any, did you sustain to the Scandinavian-American Bank in 1901 and 1902?

A. Vice president.

Q. I beg your pardon?—A. Vice president part of 1902.

Q. Do you recall the receivership of Heckman & Hansen?—A. I do.

Q. Can you state whether or not the receiver kept his bank account with your bank?—A. He did not.

Q. With what bank did he keep his account?—A. He kept it with another bank.

Q. Do you know what bank?—A. With the Washington National Bank.

Q. That is the general account?—A. Yes.

Q. Did you have anything to do with the transactions with Heckman & Hansen when the bank made the $5,000 loan to them?—A. Yes, sir; I kept in touch with the matter.

Q. Will you please state to this committee just what happened at that time?

Mr. MCCOY. Just a minute before you go ahead, Mr. Dorr—did you testify before Judge Smith?

The WITNESS. Yes, sir.

Q. Has your testimony, so far as you know, ever been reduced to typewritten form?—A. I think it has.

Q. Do you know?—A. I know it has.

Mr. MCCOY. All right, Mr. Dorr.

Mr. DORR. It is in the record, Mr. McCoy, of the proceedings before the master that have been the subject of much inquiry in this case. I will submit, if the committee pleases, the record that was made in the hearing before the master in chancery without reexamining him on those points. It appears to be contained in the general transcript marked "Exhibit A–1," commencing at page 404.

Mr. MCCOY. As we are going to take that with us, I suggest you just call attention to it in the record and then we can read it for whatever is in it.

Mr. DORR. I find in this record which I have just referred to Mr. Grondahl, what purports to be the testimony of A. L. Grondahl.

A. That is E. L. Grondahl.

Q. Well, it is written here, "A. L." Is this your testimony that is here under the name of "A. L." instead of "E. L."?—A. Yes, sir.

Q. Just a mistake in the initial?—A. Just evidently a mistake.

Q. But that is your evidence given before Judge Smith?—A. Yes, sir.

Q. Commencing on page 404 of that transcript?—A. Yes, sir.

Mr. MCCOY. Is that the only place, Mr. Dorr, where he testified in the matter so far as you know?

Mr. DORR. The index shows that the witness testified on direct examination, commencing at page 404 of the transcript, on cross-examination commencing at page 424, and redirect examination at page 425, and was recalled at page 846 of this transcript; reference is made to the general transcript containing 886 pages of the testimony which was taken before Judge Smith and which has been frequently referred to in these hearings and which is to be taken with the committee to Washington, the transcript being marked for identification "A–1." That is all that I wish to ask him.

The CHAIRMAN. That is all.

Mr. MCCOY. Just a minute. Did you testify at that hearing that Mr. Heckman or Heckman & Hansen kept, or rather that the receiver of Heckman & Hansen kept, their accounts in the Washington National Bank?

A. I do not recollect whether that question was asked in my previous testimony.

Q. Well, how do you know that he kept it there?—A. I remember the time that he placed his account in another bank and I have seen the pass book of the Washington National Bank issued to the receiver to-day, which refreshes my memory.

Witness excused.

A. H. SOELBERG, being first duly sworn, testified as follows:

The CHAIRMAN. How do you spell your name?

A. S-o-e-l-b-e-r-g.

Mr. DORR. Mr. Soelberg, what relation, if any, did you sustain to the Scandinavian-American Bank in the years 1901 and 1902?

A. I was cashier.

Q. Are you the same A. H. Soelberg who testified before Judge Eben Smith in the hearing on the petition to reopen the bankruptcy case in the Federal court?—A. Yes, sir.

Q. I find in the transcript of the evidence taken before Judge Smith in that hearing certain evidence recorded commencing at page 335, commencing again at page 427, commencing again at page 533, and commencing again at page 535; I want to know if you are the witness who gave this evidence before Judge Smith?—A. Yes, sir; I am.

Q. You looked over this recently, have you?—A. I did.

Mr. DORR. Certain of this evidence is in the report of the master that has been identified as coming out of this book [showing]; is that your evidence?

A. Yes, sir.

Q. Do you know whether Mr. Larsen, as receiver, kept his bank account with your bank at that time?—A. No, sir; he did not.

Q. What bank did he keep his account with?—A. The Washington National Bank, I think.

Q. Do you remember the time of the sale of the assets?—A. I remember something about it; yes.

Q. Do you know whether the receiver deposited any of the proceeds of that sale with your bank?—A. Well, he took out a certificate of deposit for a check which covered, I think, 90 per cent of the bid.

Q. I refer you to certificate of deposit that was identified by Mr. Finch yesterday [showing document to witness].

The CHAIRMAN. Is it an exhibit?

Mr. DORR. Yes, sir; it was one of the exhibits that he asked to go in yesterday when he was here.

The CHAIRMAN. Is it numbered or is it a part of an exhibit?

Mr. DORR. It is numbered "H" and "H-2." It is identified in that way and it purports to be a certificate of deposit executed by the Scandinavian-American Bank to Peter L. Larsen, receiver, for $21,712.50, dated March 12, 1902.

I will ask you if you can testify about that any further?

A. Yes, sir; I can.

Q. What is that paper?—A. That is a certificate that was issued to Mr. Larsen in payment of a check on us for a similar amount.

Q. A check on you for a similar amount?—A. Yes, sir.

Q. And that represented what, if you know?—A. So far as I recollect, it represented 90 per cent of the bid for the Heckman & Hansen assets.

Q. Who indorsed the certificate of deposit, if you know?—A. Peter L. Larsen, as receiver.

Mr. DORR. That is all I want to ask the witness.

Mr. MCCOY. Who drew the check on you?

A. M. F. Mayhew.

Q. Where did he get the money?—A. The money came from a loan that was made by the bank to three other gentlemen who appointed Mr. Mayhew their agent to negotiate this purchase.

The CHAIRMAN. Who were the three other gentlemen?

A. Mr. Kelley, Mr. Chilberg, and Mr. Grondahl.

Q. And yourself?—A. No, sir; I am not interested.

Q. What were the names?—A. Kelley, Chilberg, and Grondahl.

Q. What relations were theirs to the Scandinavian-American Bank?—A. They were all directors of the bank at that time.

Q. Are they now interested in the Seattle Shipyards Co?—A. I do not know. Mr. Grondahl is not, and I do not know about the others.

Q. Was Mr. Grondahl ever interested in it or did he own any stock in it or in any other way?—A. No, sir.

Q. Did they keep their account in your bank?—A. They did at that time. I am not connected with the bank now, and I do not know.

Mr. DORR. I now show you a check that was identified yesterday by Mr. Finch [showing] for $21,712.50, purporting to have been drawn by M. F. Mayhew on your bank, and I will ask you if that is the check which you just referred to.

A. Yes, sir; this is the check I just referred to.

Mr. MCCOY. May I see those?

Check and certificate of deposit are handed to Mr. McCoy by Mr. Dorr.

The CHAIRMAN. Anything further, Mr. Dorr?

Mr. DORR. Not from this witness.

Witness excused.

ALFRED BATTLE, recalled, testified as follows:

Mr. DORR. Judge Battle, do you desire to make any further answer to Mr. Finch's testimony, or any part of it?

A. I would like to call the attention of the committee to this phase of Mr. Finch's testimony: on pages 2227 and 2228 of the evidence taken before this committee in this proceeding, Mr. Finch alludes to what he claims to be a proposition made by Heckman, or Heckman & Hansen, to the bank to purchase the bank mortgages upon the Heckman & Hansen properties. In his testimony he states that the proposition was to purchase the mortgages and that that proposition was evidenced by a letter which Heckman caused his attorneys, Messrs. Metcalfe & Jurey, to write to Ballinger, Ronald & Battle.

Q. Now, do you wish to make any statement about that letter [handing letter to witness]?—A. The letter speaks for itself.

Q. Do you have the letter there?—A. Yes, sir. And I wish to read the letter into the record.

The CHAIRMAN. Has the letter been in evidence before?

Mr. DORR. No, sir. This was brought out on Mr. Finch's last testimony.

The CHAIRMAN. Do you wish it read into the record?

Mr. DORR. I want it to go as an exhibit.

The CHAIRMAN. It is not necessary to have it read—you can ask any questions based on it.

The WITNESS. The letter is dated.

SEATTLE, WASH., *July 8, 1901.*

MESSRS. BALLINGER, RONALD, & BATTLE,
Attorneys at Law, Seattle, Wash.

GENTLEMEN: Referring to the suit of the Scandinavian-American Bank, of Seattle, against Andrew Heckman and Martin Hansen, copartners as Heckman & Hansen, in the Superior Court of the State of Washington, in and for King County, for the foreclosure of a note and mortgage in the sum of $5,000, with interest, upon their shipyards at Ballard, Wash., we beg to say on account of the serious illness of Mr. Hansen he is unable to execute the necessary papers to enable Heckman & Hansen to procure the money necessary to pay the note and mortgage in question; but we have a party who will immediately advance sum necessary to satisfy this note and mortgage if the Scandinavian-American Bank will assign the same to him. Heckman & Hansen will cause the amount due upon this note and mortgage and all proper costs to date to be immediately paid into the Scandinavian-American Bank if they will assign the note and mortgage in question to whomsoever they may direct. Please let me know at once if the bank will assign the note and mortgage, as above suggested, upon the amount due thereon and all proper costs to date being paid to them.

Yours, truly,

METCALFE & JUREY.

Q. Now, is that the letter that Mr. Finch referred to?—A. So far as I know or believe.

Q. Do you know of any other letter that was written?—A. I do not. Whether or not this is a copy of the letter or the original I have no knowledge, but I do understand there was such a letter by Metcalfe & Jurey to Ballinger, Ronald & Battle along those lines. The reason I make this statement is that I notice the signature of Metcalfe & Jurey seems to be typewritten.

Q. Was that letter presented before Mr. Smith, or is it referred to in the testimony?—A. That is my belief. I think it bears his exhibit signature.

The CHAIRMAN. It states on the face of it that it is a copy.

The WITNESS. I did not observe that.

Mr. DORR. I think it is identified on the back as one of the exhibits, is it not?

The CHAIRMAN. Yes.

The WITNESS. That was the document, I take it, that was used before Judge Smith as being either a conceded copy or proven to be such.

Q. Now, Judge Battle, on the hearing before Judge Smith I want to ask you whether the account books of Heckman & Hansen were present?—A. Yes, sir. Before I get on that I would like to complete this additional feature in reference to this proposition.

Q. Very well.—A. The committee will remember there were four indebtednesses, so to speak, by Heckman & Hansen to the bank,

namely, the $5,000 note and mortgage, the $3,000 note and mortgage, the $650 note and mortgage on the personal property, and the overdraft indebtedness. The proposition was to purchase only one of the four indebtednesses, and not the mortgages, as Mr. Finch says in his testimony, but only one of the three mortgages.

Q. As is shown by this letter?—A. As is shown by that letter.

Q. I hand you a book, the same one I showed Mr. Finch on yesterday [handing book to witness], and I will ask you if you can identify that as one of the Heckman & Hansen account books that was introduced as an exhibit in the hearing before Judge Smith?—A. I can only state this to the committee: That during the hearing before Judge Smith, either in open court, so to speak, or else as a result of conferences between myself and Mr. Finch, he wanted the books of Heckman & Hansen brought into court, they being then in the possession of either the purchasers at this sale, represented by Mr. Mayhew, or in the Seattle Shipyards Co., whichever it was, at that time. I do not now call to mind; at any rate, the books—I think a whole box full of old books of Heckman & Hansen—were brought into court and Mr. Finch given free access to them—in fact, returned into the possession of the court—my best belief, and so far as I have any definite recollection about the matter—I say that because I can not express it any more definitely—is that this is one of the books that was produced by Mr. Mayhew or the Seattle Shipyards Co. at that time as being the records coming to them as purchasers at the sale.

Now, what does this book purport to be?—A. I can not answer any more definitely what it purports to be than this, that an examination of it would indicate that it was a ledger of Heckman & Hansen. That I gather only inferentially from looking through the contents of the books.

Q. Is it marked by Judge Smith's exhibit stamp?—A. It is marked by Judge Smith's exhibit stamp, but not bearing his signature, but has the words "Exhibit United States master in chancery, district of Washington, northern division."

Mr. McCoy. Whereas the letter which was used there has "Eben Smith" on it in addition to the rubber stamp?—A. Yes, sir. Whether or not this was offered in evidence and omitted to be signed by the master in chancery after this lapse of time I can not state, but I know that all the books were produced there, a whole boxful, and all of them were exhibited, in a sense.

Mr. Dorr. Well, Judge Battle, is there any doubt in your mind that this is the ledger of Heckman & Hansen?

A. No; I have not any doubt of it, Mr. Dorr; I can not state any more definitely, though, regarding the matter than I have.

Q. To the best of your judgment it is the same book?—A. To the best of my judgment and belief it is.

Mr. Dorr. I will state to the committee that I found this book on file with the exhibits in this case in the Federal court—personally I know nothing more about it—it purports to be the ledger of Heckman & Hansen.

The Witness. I will state to the committee that knowing as I do that Mr. Mayhew would know definitely, after Mr. Dorr asked me about this, whether it was or not, I undertook during the noon recess

of the committee to ascertain the whereabouts of Mr. Mayhew, so that he can appear here and testify. I understand he is probably out at Kent, about 20 miles from here.

Mr. DORR. I would like now, Mr. Chairman, to have added to the exhibits which are already identified in this case two pages out of this ledger.

The CHAIRMAN. You really have not made any proof yet that would justify it in going in evidence. It is not in the handwriting of either of those men. It was found among some other lumber that probably was traceable to them. The exhibits which were filed with Judge Eben Smith not only have his stamp, but his signature, and this has not his signature. A stamp proves nothing at all. On what theory do you offer it?

Mr. DORR. I will concede that if it were offered under the strict rules of evidence there might be some question about the identification of the books.

The CHAIRMAN. No; there would not be any question at all.

Mr. DORR. I say if it were being offered under strict rules of evidence——

The CHAIRMAN. There would be no question whatever—it would not go in under those rules in that case.

Mr. MCCOY. The point with me about the admission of it would be, not so much whether it was a book that Heckman & Hansen used in their business; that is, it would not turn on the question of whether those entries were made in that business, but we do not have any explanation anywhere of how the entries were made or anything of that kind. If it were testified about at the hearing before Judge Smith, why, then we need not be concerned with that. Usually when one puts in books you have to prove that the books were regularly kept and all the other things which would give them authenticity. What is the nature of it?

Mr. DORR. One of these pages, Mr. Chairman, shows the bank account and the other one the mortgage account.

The CHAIRMAN. Pass those pages up.

Book is passed up to the chairman.

Mr. MCCOY. Which pages did you say, Mr. Dorr?

Mr. DORR. Pages 142 and 293.

The CHAIRMAN. What particular entries do you refer to?

Mr. DORR. On page 142 it shows the bank account, and the amount appears to check with the other evidence which has been introduced in the case as to the amounts of those overdrafts, so called, or whatever they may be; in other words, this ledger shows a debit account in favor of the bank of sixty-nine hundred and some odd dollars balance.

Mr. MCCOY. That relates to the issue as to whether or not that was an overdraft or a payment, doesn't it—that money that was drawn out by them?

Mr. DORR. I think so; yes, sir.

Mr. MCCOY. Mr. Finch said either in the evidence or to me privately the other day that he understood, he remembered, that the finding made by Mr. Smith was to the effect that Heckman & Hansen was right about that, that that money was paid to them and not an overdraft.

Mr. DORR. I do not know.

Mr. MCCOY. I do not either; I did not see the finding, but Mr. Finch mentioned it to me or else he mentioned it in the evidence. The findings of Judge Smith should be here—I remember Mr. Finch's stating the fact that he ultimately found in favor of Heckman & Hansen's contention—how about that, Mr. Battle?

A. I think Mr. Finch gave that in his testimony. I think I remember hearing him testify, and it occurred to me at the time to look up the record.

Q. What is the fact about it?—A. I do not know what the fact is. I think he is in error about that. I think if Judge Smith made any finding at all it was to the effect that it was an overdraft, but I think if you will examine the report, I think that you will find it does not cover specifically that phase of the matter.

Mr. DORR. I think it is certain, from any view which may be taken of the matter, that whether it was an overdraft or an advance, it was paid ultimately by the sale of that schooner *Alice*.

Mr. MCCOY. I do not understand that that is controverted.

Mr. DORR. No, sir; I do not think there is any controversy over that report.

Mr. MCCOY. I think Mr. Finch reiterated the fact that it was taken care of in that stipulation, but he gave a number of other explanations about other features which would have to do with that stipulation which is in evidence here providing that the receiver should buy that boat at the sale and that he should bid up to the full amount of the claim of Heckman & Hansen against the boat. I mean, assuming that the decree of sale was entered, and if the claim was found to be a valid claim against the boat, then the amount of his bid should be on offset against the claim that the bank made, and in that way the claim was liquidated.

Mr. DORR. My real purpose in exhibiting this ledger account, which, by the way, is itemized, showing in detail the items of each credit, is to show the committee that Heckman & Hansen carried their account as an indebtedness to the bank and that it not only involved pay rolls, but a good many other things that are entirely outside of the schooner *Alice*. It seems to be a general account.

Mr. MCCOY. That is just the trouble with bringing this book in in this way—it just illustrates what I said, I think, that when you get a book in you have got to know how it is kept and you have to have some one testify as to how they kept it. I do not care, because I do not think it makes any difference. It is admitted there was a controversy. Now, Heckman & Hansen may have been wrong or they may have been right in regard to the matter. The fact is there was a controversy and the complaint was that Metcalfe & Jurey conceded, by filing the libel, that Heckman & Hansen were right. That is Mr. Finch's complaint.

The CHAIRMAN. Do you think that the committee should take the whole page of the book?

Mr. DORR. I was going to copy those pages and send them along with the exhibits.

The CHAIRMAN. You may do that.

Mr. MCCOY. We might as well let them go in anyway; only let Mr. Finch get at it, because we rely on him as an expert in this matter. What is the other page, Mr. Dorr?

Mr. DORR. Page 293.

The WITNESS. I think, if the committee will read the master's report, you will find Mr. Finch is mistaken in regard to what his report was.

Mr. DORR. Well, the report will speak for itself and it is not necessary to go into it.

Mr. MCCOY. You mean to introduce just the mortgage account.

Mr. DORR. The mortgage account and the bank account. That is all I want to offer unless the committee may want to ask you some more questions.

Mr. MCCOY. Just one question. Judge Battle, who were the trustees when the Seattle Ship Yards Co., if that is the concern, that took over this property, was organized?

A. I can not answer that definitely, because if I ever knew, it was some while ago, and I would not like to testify from memory as to just who the incorporaters were.

Q. Did your firm organize the company?—A. That is, act as attorney for the organizers?

Q. Yes.—A. I think so.

Q. Will you supply that information?—A. I think I can.

Q. As to who were the trustees and who were at or about that time the stockholders of the company.—A. Yes, sir; I think I can.

Mr. DORR. I think I have seen—if the committee would like it I will get it—a copy of the articles of incorporation of this shipyards company in the exhibits.

The WITNESS. That is filed in this county.

Mr. MCCOY. That would answer one question, and we will see who, within six months after the concern was organized, were on the list of stockholders. Well, that will do, I guess.

The CHAIRMAN. You may stand aside, Mr. Battle. Have you any other witnesses on this line, Mr. Dorr?

Mr. DORR. No; that is all I have to offer.

Witness excused.

Mr. MCCOY. As part of the testimony, there is offered in evidence a pass book of Peter L. Larsen, receiver, with the Washington National Bank, which purports to have been marked as an exhibit before Judge Smith. This pass book and the ledger will go along with the other papers in the matter to be made such use of as the Judiciary Committee may see fit, calling especial attention to the pages which are referred to by Mr. Dorr in the ledger.

R. C. HASSAN, being first duly sworn, testified as follows:

The CHAIRMAN. Do you live in Seattle?

A. Yes, sir.

Q. What is your business?—A. Mill business—flour mill.

Q. Are you a member of the Merchants & Credit Men's Association?—A. I am.

Q. Did you attend a meeting of the committee of that association at the Washington Hotel a week or two ago?—A. I did not.

Q. Were you present at any meeting of the officers or the committee at which the question of assisting the congressional committee in obtaining evidence in this investigation was discussed?—A. I was.

Q. When was that?—A. Several weeks ago; I do not remember the date.

Q. Where was it?—A. It was in the Polson Building, down on the water front, the headquarters of the association.

Q. What time did you get there, with reference to the time the meeting was called to order?—A. I was there before it was called to order.

Q. Did you hear any discussion of the question before the meeting?—A. I did.

Q. By whom?—A. Oh, several people.

Q. Did you hear Mr. Goldsmith discuss it?—A. I did.

Q. And Mr. Anderson?—A. I did.

Q. And Mr. Klock?—A. Yes, sir.

Q. Can you tell the committee, to the best of your recollection, what those respective gentlemen said on that occasion?—A. Well, I do not believe I can quote what they said.

Q. Well, the substance of it.—A. Well, the substance of it, as nearly as I could see, was that Mr. Klock was endeavoring to get the association, as an association, to sort of pull his chestnuts out of the fire, and we did not care to stand for anything of that kind.

Q. Explain what you mean by the use of that phrase.—A. Well, he seemed to have some kind of a—I don't know exactly whether it was feeling or not, but the line of his conversation would indicate that he thought that we ought to go ahead and take up a matter which we knew nothing about.

Q. If you can give the substance of what he said that would be the best way.—A. Well, I don't know that I could do that, Mr. Graham.

Q. Was the question of aiding the congressional committee in its work discussed?—A. I think he brought that up.

Q. Was there any discussion as to the management of bankrupt estates here in Seattle or in the Federal court here?—A. I think that was touched on.

Q. Who began the discussion?—A. I could not tell you as to that.

Q. Well, can you recall the substance of what Mr. Anderson said on either of those subjects?—A. Well, not exactly, but I think he thought that there ought to be some changes made along that line for the betterment of conducting those cases or something of that sort; I don't remember exactly what he said.

Q. Do you recall what Mr. Goldsmith said?—A. Well, there was a general discussion there for quite a long while and it was all informal, and so far as Mr. Goldsmith went I think that he seemed to think that some people were of the opinion that the party under discussion had somewhat worn out his self in the services.

Q. You mean Judge Hanford?—A. Yes, sir; and he thought—well, I took his conversation to be favorable to Judge Hanford; that is the way I sized it up.

Q. Did you take any part in it?—A. Somewhat; I made a few remarks, I think.

Q. What was your position on the question you have been referring to now; that is, the conversation of the assets of bankrupt estates?—A. Well, I do not think I had anything to say as to Judge Hanford at all on that question.

Q. Did you on the question I have just mentioned?—A. Which.

Q. As to saving the property of bankrupt estates for the creditors.—A. Yes; I had something to say along that line. I do not remember just what it was at the present time.

Q. Had you any personal knowledge of any bankrupt estate that you thought had not been handled advantageously to the creditors?—A. No personal; no, sir.

Q. Did you mention any estates?—A. I did not.

Q. That night?—A. No, sir.

The CHAIRMAN. Have you any questions to ask of this gentleman? You are excused.

Witness excused.

H. D. HUGHES, recalled, testified as follows:

Mr. HIGGINS. Mr. Hughes, at my request and suggestion your testimony was halted and somewhat interrupted until you could get an opportunity to go through your files and see if you could find a transcript of the proceedings taken in Judge Hanford's court in the case of Augustus Peabody against the Seattle, Renton & Southern Railway Co.; have you made such a search of your files?

A. I did.

Q. And have you found the—all of the proceedings which were transcribed and which the stenographer, as far as you know, made a record of in Judge Hanford's court at that time?—A. I was compelled to go to the original notes taken down by the stenographer at the time of the trial, and those original stenographic notes were reread and retranscribed.

Mr. HIGGINS. I think, Mr. Chairman, that the committee is under obligations to Mr. Preston for the work he has done in compiling these records, and I wish that he might examine the witness to ascertain if we now have, in connection with what he has furnished us, all of the available court records and stenographic records in that case.

The CHAIRMAN. Will you do so, Mr. Preston?

Mr. HIGGINS. You may want to examine the paper which the witness has just identified.

Mr. PRESTON. I do not care to see it, sir.

Mr. Hughes, I understood you to testify that either all or some part—my memory is not clear—of Judge Hanford's remarks you had taken down stenographically.

A. I testified that every remark made by Judge Hanford during the entire course of that trial was taken down by a stenographer, save the few remarks made by him shortly before noon on August 31. That was at the time I argued my demurrer. That was the first hearing. At that time he made certain remarks in regard to the answer which I had advised him as being on file, and read from those cases, as I told you. From that time I had a reporter present to take down every remark that Judge Hanford made until the case was closed.

Q. Now, you have already this morning, as I recall it, told the committee what those remarks were on that occasion, when you did not have the stenographer present.—A. I have.

Q. Have you omitted anything; can you recall anything which you omitted, if you have omitted anything?—A. No. I have stated,

in brief, of course, the substance of his remarks. He dwelt on no other topics than those which I have mentioned, if that is what you refer to.

Q. Now, the committee already has a stenographic report that I handed to them this morning on the course of your examination. If it be available I would like to have it so that we can get these things in their proper order.

Mr. HIGGINS. I tried to find it awhile ago, and perhaps you can identify it if you come here.

The CHAIRMAN. What was it entitled?

Mr. PRESTON. I do not think it had any title to it. It was in the Peabody case. Perhaps it went in evidence.

The CHAIRMAN. Do you mean the synopsis of the Peabody case?

Mr. PRESTON. No, sir; the stenographic report of Judge Hanford's remarks which I passed up to the committee.

Whereupon the document referred to is produced; also another document which is by Mr. Preston at this juncture shown to the witness.

Mr. PRESTON. Now, you have got a transcript before you which you just had this minute—I am handing it to you now—the paper which Mr. Hughes has brought in from the stenographer's notes.

Mr. HIGGINS. I think it should be marked.

The CHAIRMAN. Present them in the order in which you think they should be presented and have them marked.

Mr. PRESTON. They are of date August 31, September 1, and—well, first I will offer the one purporting to be a stenographic copy of the remarks of the court in the case of Peabody against the city, August 31, 1911; that should be marked first.

Document marked "Exhibit No. 90."

Next would be the one dated September 1, 1911, following the word "argument," with the same title in the same cause.

Document marked "Exhibit No. 91."

Now, I have in my hand the one that I passed to Mr. Higgins, which was passed back, which must be the last in date.

Document marked "Exhibit No. 92."

Q. Now, I will show you the one that is marked "Exhibit No. 90," and I will ask you if you can state when it was that those remarks were made by the court?—A. That was at 2 o'clock in the afternoon of August 31, on the first day of the argument.

Q. Now, is that the first stenographic record that you can find of remarks made by Judge Hanford in that case?—A. It is the first stenographic record that was made

Q. Now, this one that is marked "Exhibit No. 91," that appears to be September 1.—A. That was the following day.

Q. Is that the second which you can find, or can you find any intervening between them?—A. This states what Judge Hanford said on the following session of the court, following Exhibit No. 90.

Q. Is there nothing between them, or is there something between them?—A. There was nothing between them. This was the next time this case was called—the next time the court convened.

Q. Now, take Exhibit No. 92, and state when was that; that does not bear any date; if I could have at this time the transcript in this case certified by the clerk, I think, Mr. Higgins, that it is with the mass of transcripts that were here on the desk.

The WITNESS. Well, Exhibit No. 92 contains the remarks of the court after the—some time after the injunction was denied and the restraining order dissolved. This was the ruling and remarks of the court made upon the application of Peabody to have the case transferred to three Federal judges. He amended his complaint and set up a lot of new facts and then brought it on again in the application to have the case transferred to three Federal judges.

Mr. HIGGINS. You and Mr. Hughes thought that was what I was referring to when I asked you this morning. You and I simply failed to coordinate, and my suggestion was that before we got into what the court said we should, if possible, have the stenographic report, and for that reason you left the stand and now you have returned.

The WITNESS. You now have, with these exhibits and my statement as to what occurred this morning, a full statement of every remark that the court made during that entire trial.

Mr. MCCOY. So far as they were taken down.

A. Yes, sir. I have stated what occurred that morning.

Mr. PRESTON. I am trying to fix the date of that; if you will wait a moment, I will find the order, and that will help us. I find here in the record which the committee has in that case a petition of the complainant, filed September 21, 1911, in which they ask the court to call to his assistance two additional Federal judges, and under date of October 30 an order by Judge Hanford denying that application. Having given you those two dates, can you indicate to the committee when it was, or, as nearly as you can, when it was that the remarks contained in Exhibit No. 92 were made?

A. I think three days after the date on which that application was made. What date did you say that was?

Mr. PRESTON. September 21.

The WITNESS. I would say, then, on September 24 the remarks were made contained in Exhibit No. 92.

Q. Now, do those three exhibits contain all the stenographic reports of the remarks of the court in that case which you have been able to find?—A. Yes, sir.

Q. Now, this one, Exhibit No. 90, how did you make that up? I understood you to say that you did not find it in your files; now, what process did you use to reproduce it?—A. I employed Mr. Kimple to act as our stenographer at the time of this trial. This paper—the original of this paper was lost—I mean my original copy; but, of course, he took down his notes in shorthand, just as the stenographer here is using his book, and we went back to his book—Mr. Kimple's book.

Q. Is he here; could you find him?—A. I believe he is away; we could not find him.

Q. Now, how did you get it transcribed?—A. One of his partners——

Q. What is the name?—A. Palmer, I think; and I believe Mr. Bolster, I think, assisted him in it.

Q. Now, there are some blanks left in here, as you will notice.—A. Yes, sir.

Q. How do you account for those blanks?—A. Each of those blanks represents a word that they were not certain of.

Q. Do you mean to say a single word, or words in combination, or what; does your memory serve you about that?—A. Well, in no instance more than two or three words are missing.

Q. Were you present when they were transcribing the notes?—A. Yes, sir. This contains everything that was said, with the exception of possibly a half a dozen to a dozen words—separated.

Q. Are you able to recognize Exhibits 92 and 91?—A. I do.

Q. Where did they come from; do you know?—A. Those are from my files.

Q. Did you get them from your files now?—A. Just now.

Q. To-day?—A. No; I did not.

Mr. PRESTON. The record may show that Exhibits Nos. 91 and 92 are the two documents which I passed up from my files to the committee, which I may say that I found in Mr. Hughes's files some week or 10 days or two weeks ago.

Q. Now, Mr. Hughes, I have heard the suggestion that at some time or on some occasion when Judge Hanford was making remarks in that court, when there was a crowd in the court room, he said something about a mistake, or his mistake—I do not know any more about it—I want to ask you to try to recall, if you can, anything which you heard Judge Hanford say on that subject to use that word that is not in the stenographic report which you have.

The WITNESS. As I say, those stenographic reports contain every remark made by Judge Hanford, except on the morning of August 31, at the first or morning session of the trial, and I have already stated what he said at that time. He did not go into any explanation of his reasons for granting the temporary restraining order or anything of that kind. That was not before him. He was simply ruling on my demurrer, and he ruled on the demurrer without any comment on matters that did not pertain to the question before it.

Q. Let me ask you whether he made any explanation there of how the practice works.—A. He did.

Q. How a temporary restraining order is applied for without notice?—A. He did.

Q. And then the matter comes up on hearing upon the application for temporary injunction, or words to that effect.—A. I do not know that he said anything about the temporary restraining order. He did say, in reference to my statement, that I had an answer ready for filing, that it was a well-recognized rule of equity that if an answer denied the equities of the bill, the temporary injunction would be denied and the restraining order dissolved.

Q. I am trying to refresh your recollection, if it can be refreshed, as to whether or not anything was said along this line: that a temporary restraining order was applied for, in practice, without notice and if a sufficient emergency was shown, it was issued without notice, and then notice was given to the opposite side and they had an opportunity to come in and point out to the court, at their time, wherein he had erred, if at all, in granting the temporary restraining order; do you recall anything of that kind?—A. I recall nothing of that kind.

Mr. PRESTON. Has the committee any suggestions to make further to me in regard to the examination?

Mr. HIGGINS. Were there any questions, Mr. Hughes, or were there any statements which the court made during the consideration of this matter which were not involved in the record of the case and the pleadings which were before him?

A. No; nothing. If you mean, did Judge Hanford make any statement that might be construed as an explanation or an apology for issuing a temporary restraining order, he did not.

Q. What was the occasion for his going into an explanation as to the practice in United States court or in equity causes?—A. That was with reference to the fact that I had already stated that I had an answer on file. I had brought that point up, you see, at the time when I was asked that the matters be considered together. I did not want the demurrer overruled and a temporary injunction issue on the theory that the equities of the bill were confessed, and I stated that I had my answer ready and wanted it considered as being on file, and then he went ahead and made this statement in regard to that, but said it would not be necessary to file it in order to protect our rights, because he would delay the decision of the demurrer until the answer was filed.

Q. This was a matter of wide public interest, wasn't it?—A. The matter had been a matter of interest to the citizens of Rainier Valley for the past year or more during the State suits which I had fought for them and brought for them. It had been a matter of no public interest until this time. Then, when this temporary restraining order was issued, the people down there started rioting and that, of course, gave it a lot of newspaper publicity which it had not received before, and it did cause a large public interest for a time here; yes, sir.

Q. And the attendance in the court room was very large, wasn't it?—A. The attendance in the court room was composed, nine-tenths, of faces that were very familiar to me, residents of Rainier Valley, who had been following this litigation throughout its entire length in the State court.

Q. The court room was full, wasn't it?—A. The court room was full; yes, sir. All the seats were taken; I do not believe there were many standing.

Q. It was a matter of such public concern that the newspapers of the city devoted considerable space to it and took different views, didn't they?—A. It was not a matter of any public concern. It concerned only the residents of Rainier Valley. It was a matter of public interest by reason of the fact that there had been rioting down there.

Q. You were in the corporation counsel's office for some time later, were you not, Mr. Hughes?—A. And I still am.

Q. You still are in there?—A. Yes, sir.

Q. You are going to be in the city some days?—A. I expect to be here the major part of next week.

Mr. MCCOY. Perhaps the committee may want to call you after hearing some other testimony with reference to matters and things that occurred in reference to this suit, not, as far as I am concerned, on the matter that you have just covered in your testimony.

The WITNESS. There is one point that I think has never been brought out, and that is this: At the time when all this uproar occurred it amused me very much, because of the fact that this restraining order was of no more effect or value than the paper on

which it was written, because the company at that time owed no duty of either issuing transfers or of carrying for a single fare. Therefore, so far as the public was concerned, the restraining order did not injure them at all. We had had decisions in our favor in the State supreme court; one of those had been superseded and stayed to the United States Supreme Court; the other one had not yet become effective. So that at the time this restraining order was issued the people's rights were not affected at all, because the company did not owe any duty of issuing transfers or carrying for a single fare, even without the restraining order, so that it did not change the status of things at all so far as the practical effect was concerned.

Mr. McCoy. Had it not been finally decided by the supreme court that the company did owe the duty to issue transfers and to let people ride for 5 cents?

A. Yes, sir; we won both those cases. As I say, one of them was superseded and a bond put up and a stay obtained, so that it did not become effective. The other case had been just decided a few weeks before, and the time for a petition for rehearing had not expired. The remittitur had not been sent down, and that judgment had not become effective.

Q. So far as the law was concerned, the courts of this State had held that the people were entitled to transfers and they were entitled to ride for 5 cents; is that not so?—A. That is true.

Q. And then when they were enjoined from insisting on riding for 5 cents and insisting on a transfer, why the only way the injunction could have any effect would be by people deliberately violating it, would it not?—A. Why, the company had not any duty on it at the time the restraining order was issued.

Q. Yes; that is the very contention, and that is just the point that is made, that after there had been, at least as I understand it, the initial decisions, at any rate, in the superior court in favor of the contention of the people who used the road, then Judge Hanford stepped in with the restraining order. Now, with those decisions in the State court and without Judge Hanford's restraining order and the risk of going to jail for contempt if people violated it, then they would have an even-handed fight with the railroad company—now, is not that the gist of the complaint?—A. Well, Mr. McCoy, those judgments had been superseded and stayed; they were——

Q. (Interrupting.) That does not make any difference, to my mind, Mr. Hughes, that they had. I don't care how much they had been superseded, they were the law of the case at that time; and it was just because somebody sees fit to appeal and to stay the operation of any order by the State court. That does not change the law for that purpose at all, and if the rights of the people to their 5-cent fares and their transfers had not been enjoined by Judge Hanford, why they could have said the law of the State has been decided by the superior court.—A. I agree with you that it would be unfortunate to have the Federal court override the decisions of a State court in local matters of that kind.

Q. You spoke about there being no public agitation; was it not a fact at this time that the Post-Intelligencer had a pretty savage editorial about this injunction?—A. I think it was about the Scobey injunction.

Q. Was that the Scobey case?—A. Yes, sir; that was the Scobey case.

Q. By the way, who applied for the restraining order in this matter—in this Peabody case, if you know?—A. The bondholders.

Q. What attorney actually presented the application to Judge Hanford?—A. Of course, I do not know that. It was somebody in the office of the attorneys who represented the bondholders; Kerr & McCord were their attorneys—now, who presented that application I do not know.

Q. I did not know but what you might know.—A. Of course that complaint did not state anything in regard to the fact of these State decisions. I mean the court was not advised of the fact of those matters having been litigated, and when he was advised he indicated that he would dismiss the cases.

Q. As I say, that just emphasizes the point that I have made; very likely if Judge Hanford had been informed by the pleadings of the decisions by the State court he might not have issued the temporary restraining order, notwithstanding he might have also been informed that the supersedeas had been issued, and appeals taken and stays granted.—A. That is quite possible.

Q. In other words, the law of the State of Washington was, as far as he was concerned, that those people were entitled to what they were demanding.—A. That seemed to have been his position at the final hearing, that those State decisions were controlling on him and therefore he dissolved the restraining order, finding the matter had been litigated, and denied the temporary injunction.

Mr. HIGGINS. Do you know anything about the other litigation that the receivers are now in—the receivers of the Renton railroad?

A. Hearsay only.

Q. You are not interested in the case?—A. No.

The CHAIRMAN. Is that all with Mr. Hughes—you are excused.

Witness excused.

E. S. MCCORD, recalled, testifies as follows:

Mr. MCCOY. You were attorney for Mr. Kerr as receiver of the two fisheries companies, the names of which I have forgotten.

A. Yes, sir; I was attorney for Mr. Kerr and Mr. T. B. McGovern, John R. Winn and George D. Hallock, receivers of the Packing & Navigation Co., and also attorney for James A. Kerr, T. B. McGovern, and George D. Hallock, as receivers of the Pacific-American Fisheries Co.

Q. You were attorney for the receivers respectively in those cases throughout the entire proceedings from the time they were appointed as receivers until the time they were discharged?—A. Yes, sir.

Q. What were your fees in the American Co. case?—A. The Pacific-American Co. I have not examined the record, but I think it was $36,000 in the two cases; $24,000 in the Pacific Packing & Navigation Co. matter, and $12,000 in the Pacific-American Fisheries Co.; that is my recollection now.

Q. And those were allowed you by Judge Hanford?—A. Yes, sir.

Q. Now, state briefly what the nature of the legal services rendered by you was, say, in the Pacific-American Fisheries Co. first and then

in the other company afterwards.—A. Well, in the Pacific-American Fisheries, that was the corporation that owned the canneries—three or four or five canneries on Puget Sound and fishing properties and boats and paraphernalia; and the canneries were operated by the receivers during two years, 1903 and 1904. My duties were those of counseling the receivers in all of their matters affecting the business operations, the drawing of Chinese contracts, the drawing of contracts for tin—tin plate and all of the materials that went into the operation of those canneries. The preparation of petitions authorizing the issuance of receiver's certificates and all of the various matters that would be connected with a business of that magnitude during those two years. Of course the records show, as I understand it has been introduced in evidence, the number of petitions and orders that were prepared and filed and taken in that case; also they show in a general way the amount of litigation that was conducted during the two or three years.

Q. Was there in the Pacific-American Fisheries matter any amount of actual litigation of considerable moment or amount?—A. I do not know that there was any considerable amount of litigation other than the attacks that were made in connection with the fishing locations. I think there were one or two cases that went to the supreme court of the State involved in that. The Pacific-American Fisheries owned the stock of a certain corporation that owned a fishing location, and one of the most valuable ones, as I remember it now, was attacked and fought through very vigorously through the courts.

Q. That was an essential asset of the business, I take it.—A. Yes.

Q. Is there any way in which you could estimate the amount of time, roughly, that was given by you in legal services in the Pacific-American Fisheries Co. as distinguished from the services and the time which you gave in the other case?—A. Well, it was considerably larger in the Pacific Packing & Navigation Co.—two or three times as great—twice as great, anyway. I remember at the time the compensation was awarded by Judge Hanford in both cases. At that time I had a list of all of the cases that had been tried and a summary of the important matters that had been passed upon and handled by me during that time in behalf of the companies, and I testified on the stand on that occasion.

Q. You mean you testified for the purpose of permitting the court to estimate the value of the services?—A. Yes, sir; I did that on a stipulation with Mr. John P. Hartman, who represented practically all of the debenture bondholders or note holders who resided in New York—a very large majority of them. The time for the hearing of this matter of fixing the compensation was agreed upon by Mr. Hartman and myself, and I think notice of it was given and I appeared in the court room, and preliminary to the taking of testimony it was stipulated by the attorneys who were present representing the creditors and myself that I should go on the stand and state what was done, what had been done, and that no testimony should be offered either for or against it, but that the whole matter should be left to the discretion of Judge Hanford.

Q. Was that done in both of the receiverships?—A. That was done in both of the receiverships.

Q. Do you know whether any stenographer took down your testimony?—A. Yes, sir; I know that it was taken down. It was taken

down—I do not remember the name of the stenographer. I thought it was Mr. E. E. Richards, who was, I think at that time, associated with Mr. Bowman here, but he was unable to find it, and I told him to investigate it and get hold of that testimony if he possibly could, but he has been unable to find it. It may have been that it was reported by Mr. Dan Kennedy, who, I think, died shortly after that.

Q. Do you remember whether it was transcribed at all or submitted to Judge Hanford?—A. No, sir; it was never transcribed—never run off at all. Mr. Hartman, who represented the majority of the creditors—a very large majority—made no objection to the amount of the compensation awarded by Judge Hanford and he made no motion to have it modified and took no appeal. I am inclined to think that Mr. Kennedy took that testimony. If he did it would be utterly impossible to have it transcribed by any other stenographer, as I found out in one or two other cases, as nobody can read his notes.

Q. Did anybody at any time, any party in interest, object to the fees that were allowed you in those cases?—A. I never heard of any objection.

Q. That is, either formal or informal objection?—A. You mean any parties interested?

Q. Any parties in interest?—A. No, sir; I never heard any protest by anyone at all. Now, recurring for a moment to the Pacific American Fisheries, there were a great many matters of importance that came up that never got into the courts that I passed upon. Among other things, for instance, was the First National Bank of Chicago, I think it was, some Chicago bank, that had a claim against the old company which was secured by a so-called warehouse receipt. The Pacific American Fisheries Co. while operated in the year 1902 by the corporate management had borrowed some money, a considerable amount of money, and they had made a lease of a portion of their warehouse space and put a fence around it and put it in the hands of some individual. This individual undertook to act as a warehouse man and issue warehouse receipts—no, I am wrong about that. A storage company in Chicago leases this space at Bellingham, Wash., then Fairhaven, and that company issued its warehouse receipts to the bank in Chicago and that claimed a preference for a good many thousands of dollars on a lot of salmon. That matter I took possession of---the salmon for the receivers—and succeeded in holding it, and they never did attack it. My theory, of course, being that it was not a bona fide warehouse man or a bona fide lease, but the property still remained in the custody of the company; consequently the warehouse receipts would not be a lien preference. That was one of the matters. Then there was another matter of some considerable importance where the Pacific American Fisheries Co. had indorsed notes for $700,000 or $800,000 for the Pacific Packing & Navigation Co. and the attempt was made on the part of the note holder to enforce their claims against the assets of both corporations; and that we succeeded in defeating and I do not believe we had an action on that, but it took a great deal of time.

I spent an immense amount of time in connection with the business of the Pacific American Fisheries. Another thing we had up there, the fish traps were constantly robbed by pirates, and we had some criminal matters, and we had them arrested and convicted for interfering with the property in the hands of the receiver—contempt.

proceedings. Then the Pacific Packing & Navigation Co., there was a great deal more litigation—actual litigation involved in that than there was in the other company. For instance, the Pacific Packing & Navigation Co. was engaged in the transportation business, owning a number of steamers that operated between Seattle and ports in Alaska, carrying the United States mails, and one of those vessels, I remember, was the *Nome City* that was libeled for in one case over $75,000 and in another case for something like $20,000, and then she went down to Portland and was released on bonds and went to Portland and was relibeled there. and the litigation extended over a long period of time, I do not remember how long, but I know I was taking testimony morning, noon, and nights, and Sundays to get rid of it, and there were a very large number of witnesses involved in that case, which probably took me altogether 30 or 40 days in taking testimony. I do not remember. I know that we succeeded in defeating all of the claims. Then there was a lot of litigation growing out of the operation of steamboats—personal-injury cases; a lot of litigation growing out of claims of Chinese contractors for a violation of the guaranties of the company and failure to put up the number of fish that we had guaranteed them. With offsets on our part that they were not able to carry out their contracts—we had fish there on certain days which if they had enough men there would have enabled them to put up the guarantee, and a vast number of questions were involved in those matters; and then there was some litigation growing out of the Pacific Selling Co. on account of commissions, and Mr. Corby, on litigations, and I do not know how many more; the records in the courts here, which I understand have been introduced in evidence, will show some of that litigation.

But during the progress of that receivership there was an immense amount of counsel work necessary to be given by somebody in the drawing of their various contracts. For instance, they operated up in Alaska and had in their employ several hundred fishermen. When the fishermen got up into Bering Sea, or wherever it was being operated, why they all quit work and demanded that their wages be very largely increased. The company was helpless, and they were unable to get new men and take them up there in order to catch the fish for that season—the period within which the fish are caught being very limited—so that there was nothing for the managements or the superintendents in the various canneries to do but to conform to the demands of those claimants or those fishermen. They acceded to their demands. and when they came down in the fall we insisted on settling with them upon the terms of their original contract, claiming that they had procured the modification of the contract by coercion and without consideration; and we succeeded in adjusting the matter with them upon the original basis of the contract, as I now remember it, saving a good many thousands of dollars between the contract price and the modified contract as made by the superintendents in Alaska. Then it involved the drawing of numerous contracts with regard to the handling and disposition and selling of salmon after it was packed. You can imagine the amount of work connected with the operation of a business of that magnitude, operating 17 or 18 canneries as I remember it. during the year 1902 and 1903. I think if the records are examined here it

will show that I appeared in court at least a couple of hundred times, as shown by the records, and probably a great many more, and I should say, however, that in this matter—in the business of these corporations, as in the business of most corporations, a great amount of time of the lawyer is consumed in counsel fees more than in the actual trial of cases—that has been our experience.

Q. In other words, a very large part of your time was taken up during the years when the receiverships were running both in litigation and work in the office.—A. A considerable portion of the time was; not all of it.

Q. I say, a large amount of it.—A. Yes, yes, sir; a large amount of it. I do not think I ever worked quite as hard in any two years in my life as I did then trying to take care of the business. I think most nights you would find me at my office working in some way in connection with this business.

The CHAIRMAN. Any other questions you wish to ask, Mr. McCord, on this line? That seems to be all.

The WITNESS. Well, do you want me to testify anything in connection with the Hanford Irrigation & Power Co.?

The CHAIRMAN. We probably will.

The WITNESS. But would you rather do it some other time?

The CHAIRMAN. We are in the midst of an investigation now in reference to the application for land by the company, and I think we would be prepared to hear you on that after we have heard the others.

The WITNESS. It is entirely satisfactory to me. I will be in town, and if the commission will allow me to go to my office you can call me at any time and I can come up and be here in a few minutes.

Mr. MCCOY. I would like to ask you one question, for assistance, so to speak. We have had some vague information given to us—I might say anonymously, as a great deal of it is—about some coal properties that Judge Hanford was at one time interested in, or said to be. Do you know anything about that?

A. No, sir; I never heard of it. Where were they located, in this State?

Q. Oh, I believe, Mr. Ashton was said to be interested in them. Do you know anything about that?—A. I know nothing at all about that matter in any way, except what I saw in the newspapers. I think there was some litigation in regard to some commission agreement by which Gen. Ashton and some of the other people, possibly Judge Hanford, was interested, but I do not know anything about it personally.

Mr. HIGGINS. How long ago was that?

The WITNESS. About three years ago, I should say.

Q. From the newspaper account?—A. I just remember seeing a suit in the newspapers.

Q. In which Judge Hanford was a party?—A. I think he was; yes, sir. I think he was. It was decided in his favor.

The CHAIRMAN. That suit, or that matter, involved the question of a bond issue?

A. Yes, sir.

Q. And the sale of bonds?—A. Yes, sir; I think so.

Q. What court was it litigated in?—A. Why, I think it was decided in the superior court of this county and went——

Mr. PRESTON. Mr. Chairman, I happened to be in the supreme court, and I heard a part of the argument in that case in the supreme court and so——

The CHAIRMAN. What is the title of the case?

Mr. PRESTON. I could not tell you that, but I could find it out for you.

The CHAIRMAN. Is it decided in the supreme court reports—reported in the supreme court reports?

Mr. PRESTON. It must be; they report everything.

The CHAIRMAN. Will you find it for us?

Mr. PRESTON. I will try to; yes, sir.

The WITNESS. I do not think Judge Hanford's case ever went to the supreme court. I think that he was granted a nonsuit in the case.

Mr. PRESTON. I do not know about that. I just remember that coal-land commission case and hearing it argued in the supreme court when I was up there on some other business.

Mr. HUGHES. The case was tried before Judge Gay in the superior court of this county, Mr. Roup informs me, and that as to Judge Hanford it was nonsuited; as to Gen. Ashton and the others, judgment was rendered against them, and they went to the supreme court on appeal. I do not remember the result of it in the supreme court.

Mr. PRESTON. I want to state to the committee while I am on the floor——

The CHAIRMAN (interrupting). What was the title of the case? Do you remember, Mr. Hughes?

Mr. HUGHES. I do not remember, but I can find it out for you.

The WITNESS. I do not know a thing about it except what I saw in the papers.

Mr. HUGHES. The title of the case was Wilkinson Trip Co. *v.* Church.

Mr. PRESTON. I want to state, Mr. Chairman, at your suggestion yesterday, that Mr. Ross could be got here by phone; that a phone message was sent up to Olympia, and it was learned that he was not in Olympia but was probably at Toppenish, across the mountains, so I had a telegram sent in my name stating that this committee desired to have him appear before it. Now, I have just had a telephone from my office in answer to that saying that he is 80 miles out in the country from Toppenish and will get the telegram this evening, and if he gets it this evening he will be here in the morning. I had caused it to be sent to him, and so you can probably count on Mr. Ross being here to-morrow morning.

Mr. CHAIRMAN. That was with reference to the acquisition of the school lands by the Hanford Irrigation Co.?

Mr. PRESTON. That was with reference to the acquisition of the school lands; yes, sir. You made some inquiry about the custom, or how the thing was done, and we suggested that Mr. Ross would be the best source of information, he having been for a number of years the State land commissioner.

Mr. MCCOY. There was submitted to the committee by Mr. Schaffner the order which was proposed by the complainant in the case of J. J. O'Connor *v.* Bothwell, comptroller, and which was not signed, and he states that it is similar, identically similar, with the order

that was submitted in the Scoby case and not signed. It will accompany the papers in the case of Scoby against Bothwell and others.

Document marked "Exhibit No. 89."

Mr. HUGHES. There are two or three short matters. This seems to be a convenient opportunity to offer a little documentary evidence. Mr. Chairman, at an earlier stage of these proceedings we suggested that we would obtain and submit a comparative statement of the work of the various Federal judges of the United States, showing the relative rank and number of decisions as reported in the Federal Reporter. Such a statement I have got, and I herewith submit it.

The CHAIRMAN. It may go in.

Statement marked "Exhibit No. 93."

Mr. HUGHES. There was also suggested, Mr. Chairman——

The CHAIRMAN. With reference to the exhibit just gone in, does it give any information as to the results on appeals, whether affirmed or reversed?

Mr. HUGHES. This simply shows the relative number of cases—I do not think it shows that. I have Judge Hanford's decisions, which I am about now to offer.

The CHAIRMAN. Very well.

Mr. HUGHES. It was also suggested that we prepare and submit an abstract of Judge Hanford's published decisions containing a brief statement of what they were and what the result was, and I think it shows in each case whether affirmed or reversed. It also shows the book and page of the Reporter in which they are reported. As to each of the cases it is a very brief abstract, but sufficient to indicate what was the subject matter of the decision and the result.

The CHAIRMAN. It may go in.

Document received in evidence and marked "Exhibit No. 94."

Mr. HUGHES. Now, Mr. Chairman, I have here a copy of an application for pardon of one P. L. Lathrop—I will give the paper to the committee without any comment on the character of it, and the committee can determine whether they desire to have it introduced in evidence.

I desire also to call the attention of the committee to the fact that Arthur O. Smith, who is a married man residing at 2127 Second Avenue, apartment No. 317, was the bartender at the Rainier Grand Hotel, on duty every evening after January 6 of the month referred to in the testimony of the witness Peterson, and he can be called by your committee for the purpose of testifying as to whether Judge Hanford was there during the month of January, after the 6th, at the time fixed by Mr. Peterson, being, I believe, the 26th of January, and what, if anything, he saw respecting Judge Hanford.

The CHAIRMAN. Do you want the witness called?

Mr. HUGHES. I think in the interest of ascertaining the full facts it would probably be just to have the witness called.

The CHAIRMAN. Well, it can be done—there is no need of making any statement for the record about it. Give his name and address to the sergeant at arms.

Mr. HIGGINS. Do you know whether by telephone we could get the witness now?

Mr. HUGHES. No, sir; I do not know whether we could get him on the telephone.

The CHAIRMAN. You can get him to-morrow. Are there any other odds and ends that we can take care of now? If not, we will adjourn.

Whereupon further proceedings are adjourned until to-morrow morning, July 20, 1912, at the hour of 9.30 o'clock.

TWENTIETH DAY'S PROCEEDINGS.

JULY 20, 1912—9.30 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

G. H. PLUMMER, recalled, testifies as follows:

Mr. HIGGINS. When you were on the witness stand on Thursday you had gone through your letter files as to the purchase of the first large tract of land.

A. Yes, sir.

Q. There were, as I recall it, eight transactions which the Northern Pacific Railroad Co. had with either Judge Hanford or the Hanford Irrigation & Power Co.?—A. Yes, sir; eight.

Q. When were the negotiations opened for the purchase of the second large tract?—A. In February, 1907.

Q. How many acres were sold as the result of those negotiations?—A. 8,749.22 acres.

Q. Did they join the tract of the 12,000 acres?—A. Yes.

Q. Can you furnish the committee when you return to your office with a certified copy of the contract or the memorandum which you have in your files there which shows the acreage purchased and the prices paid and the terms of the sale?—A. Yes, sir; I will be glad to do that.

Q. I wish you would now read into the record, Mr. Plummer, the letter of January 21, 1907, from E. C. Hanford to you.—A. What was the date of that letter?

Q. January 21, 1907.—A. (Reading:)

SEATTLE, WASH., *January 21, 1907.*

Mr. G. H. PLUMMER,
Western Land Agent, Northern Pacific Railroad, Tacoma, Wash.

DEAR SIR: We wish to make application for the purchase of the following land for the Hanford Irrigation & Power Co. Please give me the price per acre.

W. ½ sec. 35, S. ½ sec. 27 and secs. 33, 31, T. 13, R. 27; secs. 3, 5, 7, 9, 11; T. 12, R. 27; sec. 1, T. 12, R. 26; secs. 3, 5, 7, 9, 11, 13, 15, 17, 21, 23, 25, 27, 35, T. 13, R. 26.

We wish to acquire these lands and by increasing our plant place them under irrigation, providing the price is such that we are enabled to buy them.

Yours, very truly,

E. C. HANFORD, *General Manager.*

Q. Won't you read the pencil memoranda and the notations in ink on the letter and explain them?—A. The pencil memorandum reads: "A. H. G."

Q. Who does that refer to?—A. That refers to one of the clerks in my office, the sales clerk, A. H. Gilchrist. The inquiry is, "Do we own and are the lands clear? E. A. P."

Q. Who is E. A. P.?—A. E. A. P. are the initials of my chief clerk, E. A. Plummer, the chief clerk at the time. The ink memoranda is

"E. A. P. Herewith plats colored red to show Ry. lands. Lands clear. Not covered by any option or agreement. A. H. G. Jan. 22, 1907."

Q. Is the description which you have read the land that was subsequently acquired by the Hanford Irrigation & Power Co.?—A. Subject to some changes, it is.

Q. It is substantially the same?—A. Substantially the same; yes, sir.

Q. About that date, do you recall whether anyone connected with the Hanford Irrigation & Power Co. called on you?—A. I have a memoranda in the file that Mr. E. C. Hanford called at the counter—that is, the counter in our office—on February 9, 1907, and talked with my chief clerk about this application, and Mr. Hanford was told that the application would have the attention of Mr. Cooper when he came to Tacoma the following week.

Q. Do you recall whether—did you see him at that time?—A. No, sir. In view of this memorandum I should judge that I did not see him, because my chief clerk would not have taken the message.

Q. Won't you read the letter of date February 22, 1907, to you from E. C. Hanford?—A. (Reading:)

SEATTLE, WASH., *February 20, 1907.*

G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: On January 21 I wrote you to the effect that the Hanford Irrigation & Power Co. desired to make application for the purpose of obtaining the land below enumerated, and requested that you give me the price per acre for the same.

W. ½ sec. 35, S. ½ sec. 27 and secs. 27, 33, 31, T. 13, R. 27; secs. 3, 5, 7, 9, 11, T. 12, R. 27; sec. 1, T. 12, R. 26; secs. 3, 5, 7, 9, 11, 13, 15, 17, 21, 23, 25, 27, 35, T. 13, R. 26. Benton County.

I have had no word from you in answer to this letter and presume it was not received by you. Our surveys show that this land can be irrigated by us.

Thanking you for an early reply I remain,

Yours, very truly,

E. C. HANFORD, *General Manager.*

Q. That refers to the same land?—A. The same body of land.

Q. As the letter of January 21, 1907?—A. Yes, sir.

Q. Do you recall why nearly a month, or a little over a month, elapsed and there was no reply to E. C. Hanford's letter of January 21?—A. I do not recall, but it appears from the file that the papers were held by my chief clerk, presumably pending the investigation of the status of title to the lands that they applied for.

Q. Do you mean the legal title of the railroad in the land?—A. The status of the title; whether or not the lands were patented to us and we were in position to sell them or whether they were reserved or otherwise tied up; however, there was an unnecessary delay there which there ought not to have been in them; we could check it up in our office in half an hour; it should have been handled quickly. This delay I do not understand.

Q. Is the delay explained in any way by the letter of February 19, 1907, being a letter from Thomas Cooper to Mr. D. C. Henny, which I will ask you to read?—A. (Reading:)

TACOMA, WASH., *February 19, 1907.*

Mr. D. C. HENNY,
Supervising Engineer,
United States Reclamation Service, Portland, Oreg.

DEAR SIR: You will recall the sale that this company made to the Hanford Irrigation & Power Co. of lands bordering on the Columbia River and which

underlie their proposed pumping project. The irrigation company have made further progress with its plans and now find that they can irrigate economically to a much higher elevation and have applied to us for an additional area of lands, as shown on the map inclosed herewith. Before considering this application further we would like to be advised whether the sale of these lands to the irrigation company will in any way interfere with any project of the Reclamation Service.

My understanding has always been that there was a surplus of land over and above all water available in the Yakima Valley, and such being the case it was to the interest of all concerned to irrigate the maximum quantity from the Columbia River. Be good enough to address your reply to me at St. Paul, sending Mr. Plummer a copy of your letter to Tacoma.

Yours, truly,

THOMAS COOPER, *Land Commissioner.*

There is a notation on the bottom of this letter, "Copy for Mr. Plummer." That had something to do with the delay of action on the application. As suggested before in that memorandum, the matter was held up pending the arrival of Mr. Cooper on the coast, and the matter was then submitted to Mr. Cooper and he wrote this letter to Mr. Henny to ascertain whether or not the Reclamation Service was willing to relinquish this tract of land from the agreement that we had made with the Reclamation Service in the same manner as they relinquished the other lands below the first lift. That was the purpose of that letter to Mr. Henny.

Q. It does not appear, however, I think, from your letter files that you had written Mr. Cooper about this new proposed sale?—A. No, sir. Well, I will see [examining files]. No, sir; I did not write Mr. Cooper. I held the application until he came to Tacoma for the purpose of discussing it with him personally.

Q. What called for the letter of February 19, 1907?—A. The letter from Mr. Cooper to Mr. Henny?

Q. Yes.—A. The railway company had——

Q. I do not know whether you understand my question—how did Mr. Cooper happen to write that letter; do you know?—A. Why, to get from the Reclamation Service the release of the lands from the agreement that had previously been made between the Reclamation Service and the railroad company to withhold our lands underlying any project that the Reclamation Service was investigating, pending the decision on the part of the Government whether or not they would go ahead and construct irrigation works. These lands were reserved in connection with a plan which was being investigated for irrigating the lands from the Yakima River. That project was subsequently abandoned by the Government. They decided not to construct the ditch.

Q. Before February 19, had you called this matter to Mr. Cooper's attention?—A. I do not remember, unless there is something in the file that would refresh my memory.

Q. Will you look through your files, please, and indicate and read any letter there which appears as apprising Mr. Cooper of the wishes of the Hanford Irrigation & Power Co., so far as requiring this second large tract.—A. The first letter to Mr. Cooper——

Q. That is of date when?—A. Explaining this application in writing——

Q. Give the date of it.—A. Is dated March 7, 1907. [Reading:]

TACOMA, WASH., *March 7, 1907.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR. I sent you in package of papers forwarded to St. Paul by express on 5th instant a blue-print map showing the lands recently applied for by Judge Hanford which he proposes to irrigate from his Priest Rapids plant. The map also shows the lands previously sold to his company.

The price at which the lands were sold in the former sale was $10 per acre for lands lying below the ditch that were susceptible of irrigation, which are included in the first and second classes as classified by the United States Reclamation Service, and $1 per acre for the third-class lands, which embrace all lands that lay above irrigation or that are worthless. The total area of lands now applied for is 14,206.34 acres, classified as follows:

First and second classes, 12,537.59 acres, at $10 per acre	$125,375.90
Third class, 1,668.75 acres, at $1 per acre	1,668.75
Total	127,044.65

The above figures include secs. 3, 9, and 11, T. 12–27 E., which are unsurveyed. I think, however, these should be eliminated from the sale and not disposed of until they are surveyed. I have written to the surveyor general to ascertain whether the survey of these lands is applied for or contemplated.

You have already written Mr. Henny for consent of the Reclamation Service to the sale of these lands, and Mr. Henny suggested that the matter be taken up with the department at Washington. Judge Hanford has requested that an agreement be reached between the two companies regarding price and terms, conditioned, however, upon obtaining the approval of the United States. I recommend rates of $10 and $1 per acre as heretofore adopted, as I think this is a fair price for the land, and I believe it is all they can afford to pay. The cost of irrigating these lands will be much more than the lower lands, and while the soil is generally of a better character I believe this is more than offset by the increased cost of placing water on the higher level.

Yours, truly,

WESTERN LAND AGENT.

Q. Please give the date of that again.—A. March 7, 1907.

Q. Is that the only letter you can find in your files which explains Mr. Cooper's letter to Mr. Henny of date February 19, 1907?—A. That is the only letter that I find at that time. There is a letter to Mr. Hanford in which we explained the situation regarding the Reclamation Service agreement.

Q. What is the date of that letter which you referred to, Mr. Plummer?—A. The letter written by me to Mr. E. C. Hanford is dated March 2, 1907.

Q. You may read that now, if you please.—A. [Reading:]

TACOMA, WASH., *March 2, 1907.*

Mr. E. C. HANFORD,
General Manager Hanford Irrigation & Power Co.,
1218 Alaska Building, Seattle, Wash.

DEAR SIR: Referring to the application of your company for purchase of lands in Tps. 12–26, 12–27, 13–26, and 13–27, Benton County, Wash., which lands you propose to irrigate in connection with the project that you are now at work upon, I beg to advise you as follows:

These lands underlie the Benton project of the United States Reclamation Service and we have an understanding with the service that we will not dispose of any of our lands underlying any of its contemplated projects without first consulting them. We are also informed that the even numbered sections in the district covered by your application to us are withdrawn. It is suggested, therefore, that you submit your plan for irrigating these lands to the Reclamation Service with a view to securing the rescindment of the with-

drawal; if successful in this we would construe such action on the part of the United States as an approval of your scheme and would then feel at liberty to consider your application.

Yours, truly,

G. H. PLUMMER,
Western Land Agent.

There was a copy made of this letter for Mr. Henny, with the notation, "Mr. Henny: Please note above in connection with your letter to me of the 28th ultimo, Thomas Cooper, Land Commissioner," dated February 2, 1907. That date must be a mistake—that February is intended for March 2, 1907. It is in figures "2/2/7," and I should judge there is a mistake in the first figure.

Q. You state the correct date should be March 2?—A. Yes, sir.

Q. Then follows the letter which you already read from Thomas Cooper to you, dated March 7.—A. No, sir; that is from me to Thomas Cooper. That is my letter to Mr. Cooper explaining the application.

Q. Of date March 7?—A. March 7, 1907.

Q. Who is Mr. Henny?—A. Mr. Henny is an engineer, or was at this time the supervising engineer—I believe his title was—of the Reclamation Service, with headquarters at Portland, and he had under his charge the Reclamation Service projects in Oregon and Washington, which included the Yakima Valley, Wash.

Q. Is he now in the Government service?—A. I do not know whether he is regularly in the service; he is retained, I believe, as a consulting engineer.

Q. As you explained to the committee in your testimony the other day where he was located, I will not ask you to repeat it.—A. His headquarters are in Portland.

Q. Who is in charge now of the Reclamation Service in this section of the country?—A. The State of Washington is under the charge of Charles H. Swigert, supervising engineer, at North Yakima.

Q. Then, on the 12th of March, 1907, you wrote to Thomas Cooper with reference to this same contract for the sale of this 8,000 acres; I wish you would please read that letter to the committee.—A. That has reference only to the status of the unsurveyed sections. [Reading:]

TACOMA, WASH., *March 12, 1907.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR: Referring to my letter, 7th instant, regarding lands applied for by Judge Hanford, I am advised by the surveyor general that no application for survey of the 12 sections unsurveyed land in Tps. 12–27 E. has been filed. I think it would be advisable to have this land surveyed, and so recommend.

Yours, truly,

WESTERN LAND AGENT.

Q. I notice in that letter that the lands are referred to as having been applied for by Judge Hanford.—A. Yes, sir.

Q. Did he call on you up to that time?—A. No, sir; I don't think so.

Q. Do you know whether he had seen Mr. Cooper?—A. I do not; no, sir.

Q. Do you know whether he talked with any of the officials of the Northern Pacific Railway Co.?—A. The only officials he would have talked with about this matter are Mr. Cooper or myself.

Q. Now, you are speculating, are you not, Mr. Plummer?—A. No, sir.

Q. You have not any information about it, have you; if so, I wish you would give it.—A. No; but I am quite certain that any land matters would either have been taken up with Mr. Cooper or myself, because weare the only ones who know anything about the land matters in this district.

Q. I think we are dealing now in the realm of speculation, but, however, if that is so, why should letters with reference to this transaction have been sent to Mr. Elliott, who is the president of the Northern Pacific Railroad?—A. Simply to inform him of the negotiations—that is customary and quite proper.

Q. Why should subsequent letters, which I will ask you, if you please, to read for the record, state that this very contract of sale would have to be submitted to the executive committee or the board of directors of the Northern Pacific Railroad?—A. That is customary, also, in the sale of a large block of lands.

Q. So that it is entirely possible that other officials of the Northern Pacific Railroad may have been seen by people interested in acquiring these lands without your knowing anything about it?—A. It is possible, but not very likely.

Q. Well, it is true, Mr. Plummer, that the executive officers of the Northern Pacific Railroad were kept informed as to the progress being made on this contract, is it not?—A. I do not know what was done at St. Paul. The likelihood is that when the deal was agreed upon with the Hanford Irrigation & Power Co. that the matter in its completed form was submitted to the executive committee of our company, or to the board of directors of our company, for final approval.

Q. Why should you refer to it as the land that Judge Hanford wanted? If you are able to offer any explanation to the committee further, I wish you would do so, inasmuch as the correspondence indicated by your files had been with the Hanford Irrigation & Power Co.—A. We referred in all these transactions you will find in our correspondence to the Irrigation & Power Co. sometimes and to Judge Hanford at other times. It does not mean—it has no significance—except that it is all a part of the Hanford irrigation deal.

Q. He was a managing trustee of the company, as you understood it?—A. I don't know, sir; but I had a good deal of the early negotiations with Judge Hanford in connection with the first trade.

Q. Have you told the committee all that you can recall of those negotiations?—A. Yes, sir.

Q. In your testimony the other day?—A. Yes, sir.

Q. Will you now please read the letter of March 17, 1907.—A. The letter of March 17?

Q. To you from Thomas Cooper.—A. (Reading:)

ST. PAUL, MINN., *March 17, 1907.*

MR. G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: Replying to yours of the 12th instant, in reference to the 12 unsurveyed sections in Tps. 12 N., 27 E., I suggest that you advise Judge Hanford of the situation, and I think likely the judge could exert sufficient influence with the authorities to have this land ordered surveyed in connection with the regular surveys of the public domain. If he is unsuccessful, we can

make application under the special act, and will do so, but would rather avoid this, as it involves our advancing the cost of the survey, and we already have several hundred thousand dollars tied up in this manner.

Yours, truly,

THOMAS COOPER,
Land Commissioner.

Q. Did you at that time know that Judge Hanford had taken the matter up with the Reclamation Service or with other people with a view to getting the Reclamation Service to release this land?—A. I do not know, sir; but I may have known that. I do not know whether Judge Hanford took the matter up at all with the Reclamation Service or whether he left that with us to work out with them.

Q. Subsequent correspondence, I think, may clear that up.—A. Well, that may be so—that he has done that, or that he had done that.

Q. Now, will you please read the letter of March 17, 1907, to G. H. Plummer from Thomas Cooper.—A. (Reading:)

ST. PAUL, MINN., *March 17, 1907.*

MR. G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: Referring to yours of the 7th instant, in reference to application of the Hanford Irrigation Co., the president desires to submit this matter in person to the executive committee the next time he is in New York, which will probably be within the next month; therefore there may be a little delay in handling this, and you can explain the matter to Judge Hanford should he make inquiry.

Yours, truly,

THOMAS COOPER,
Land Commissioner.

Q. Will you now read the letter of March 25, 1907, to Judge Hanford from you?—A. (Reading:)

TACOMA, WASH., *March 25, 1907.*

HON. C. H. HANFORD,
Seattle, Wash.

DEAR SIR: There are 12 sections, Nos. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, and 16, unsurveyed in T. 12 N., 27 E., a part of which underlie your canal, and I find upon inquiry of the surveyor general that there is no application for survey now before the department. These sections should be surveyed as quickly as possible, and on taking up the matter with Mr. Cooper he suggests that you might be able to exert sufficient influence with the authorities to have this land ordered surveyed in connection with the regular surveys of the public domain. We could, of course, make application under the special act for the survey of unsurveyed lands within railroad limits, but I anticipate that if handled in the other way it would expedite matters, and we would also prefer that method because of the fact that if applied for under the special act we would be compelled to advance the cost of the survey, and as we already have several hundred thousand dollars tied up in the hands of the Government for surveys applied for, we prefer not to make any additional applications. Ordinarily we would not apply for the survey at this time, but I have thought that inasmuch as a part of section 1 is covered by your ditch and a portion of the other sections will fall below the proposed high-line canal, you would like to get the survey started.

Yours, truly,

WESTERN LAND AGENT,

Q. That is the first letter that appears in your files addressed to Judge Hanford relative to this contract for the eight thousand and some odd acres, is it not?—A. Yes, sir.

Q. When you read the letters you read "Western land agent" and did not read your name—the fact is that you signed the letters?—A. Yes, sir.

Q. And that you are reading now from a carbon copy of the letter?—A. Yes, sir.

Q. I wish when you are reading the letters which you signed where this signature appears on the letter you will indicate it for the reporter.—A. Yes, sir. You can insert "G. H. Plummer" in the previous letters, or any others which I have given you the title of "Western land agent" under.

Q. Read the letter of April 5, 1907.—A. (Reading:)

ST. PAUL, MINN., *April 5, 1907.*

Mr. G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: Referring to the application of the Hanford Irrigation Co., as set forth in your letter to me of the 7th ultimo, you are authorized to say to the irrigation company that we will enter into a contract for the sale of said lands at the price recommended by you upon their securing the rescindment of the withdrawal of the even-numbered sections, and further provided they secure such rescindment within one year from date. The contract will contain the usual provision requiring the irrigation of the lands within a reasonable time and no conveyance of the lands to be made until they are irrigated.

Yours, truly,

THOMAS COOPER, *Land Commissioner.*

Q. That was the first authorization that you had received from the St. Paul land agent of the road to carry out this contract?—A. Yes, sir.

Q. Are there any notations on that letter, Mr. Plummer, in pencil?—A. The notation only of my chief clerk, with my initials on it, which meant that it was for my personal attention.

Q. Will you read the letter of April 10, 1907, to E. C. Hanford from G. H. Plummer?—A. (Reading:)

TACOMA, WASH., *April 10, 1907.*

Mr. E. C. HANFORD,
General Manager Hanford Irrigation & Power Co.,
No. 1218 Alaska Building, Seattle, Wash.

DEAR SIR: Replying to your letter of January 21, in which application is made for the purchase of certain lands in Tps. 12 and 13, 27 E., and 12 and 13, 26 E., lying above your canal, I beg to state that in view of the understanding we have with the Reclamation Service that we will not dispose of any of our lands underlying their project without first consulting them, as explained in my letter, March 2; we are not prepared at this time to sell the lands, but if you can arrange with the Reclamation Service for the rescindment of the withdrawal of the even-numbered sections within one year from the date hereof, which would, in effect, mean the release of that district from their project, we will enter into a contract for the sale of our lands at the rate at which the lands below the present canal were sold, viz, $10 per acre for first and second class lands below the ditch and $1 per acre for the third-class lands below the ditch and all lands above the ditch. Contract will contain the usual provision requiring the irrigation of the lands within a reasonable time, and no conveyances to be made until they are irrigated. Terms of the contract to be agreed upon hereafter.

Yours, truly,

G. H. PLUMMER,
Western Land Agent.

Q. Now, will you read the letter of February 7, 1908, to G. H. Plummer from C. H. Hanford?—A. This is a letter written on the Hanford Irrigation & Power Co.'s stationery and is dated Seattle, Wash., February 7, 1908.

Mr. HIGGINS. Read it.

A. (Reading:)

SEATTLE, WASH., *February 7, 1908.*

Mr. G. H. PLUMMER,
Western Land Agent, Northern Pacific Railway Co., Tacoma, Wash.

DEAR SIR: I inclose herewith a list of odd-numberd sections and parts of sections of land not heretofore purchased, which will properly come under the

irrigation system of the Hanford Irrigation & Power Co. below Priest Rapids, also a map showing the location of said lands.

In behalf of the company, I make application for an option to purchase all of said lands on or before the 1st day of July, 1909, at the lowest price you can offer, payable in six installments. To show good faith and to make the contract legally binding, I offer to pay $100, to be forfeited if the purchase is not consummated within the time above indicated, and I will pay the taxes for the year 1908.

To be of any value these lands must be irrigated, and there is no practicable scheme for getting water there except by an extension of the system of this company. Our perfected surveys show that part of the lands will come under the second distribution canal which we have projected on a level of little more than 100 feet above the Columbia River. Most of the lands included in the list which are higher than 100 feet above the river can be irrigated by a third canal, which will be supplied by pumping from a basin on the 100-foot level; and it is our design to construct and maintain this third distribution canal if we can purchase these lands.

The cost (approximately) of the works and machinery, which will be completed within the next two months, is $325,000, and we are confident of success in distributing water by our first canal during the irrigation season of 1908. The additional cost of extending our system as proposed will be a large sum of money, and in order to perfect financial arrangements we find it necessary to make definite arrangements now for the purchase of the lands indicated.

We are assured that consent of the Reclamation Service to the sale of these lands to this company can be obtained, if that is necessary.

Respectfully,

C. H. HANFORD.

And then there is a P. S.

Q. Now, the P. S. is in his own handwriting?—A. The P. S. is in Judge Hanford's own handwriting.

Mr. HUGHES. The former part being typewritten?

A. Typewritten.

Mr. HIGGINS. The body of the letter being typewritten?

A. The body of the letter being typewritten.

P. S.—Some of the lands in this list are stony and very poor and will not be salable for a long time. The general classification of the lands we purchased will be fair if applied to this purchase. That is to say, $10 per acre for first and second class, and $1 per acre for third class.

Attached to that letter was a list of Northern Pacific lands applied for by the irrigation company.

Mr. HIGGINS. What is the meaning of the notation at the corner of that letter, "Copy"?

A. There is a lead-pencil notation "E. A. P. Check descriptions and plat and see if we own. Show acreage. G. H. P. 2/8/8." That is a memoranda of my chief clerk to check the descriptions and see if the lands were owned by the company and to prepare a statement of the descriptions with the acreage.

Q. And also to make a copy of the letter?—A. I do not know, sir, whether the letter was copied or not. I beg pardon, there is another lead-pencil memorandum here with the word "Copy" in lead pencil within a circle. We may have made a copy, but I do not see the reason for it here.

Q. In the final contract which was closed with the Hanford Co. on this land, how many classifications of land were there?—A. Only two.

Q. That letter of February 7, 1908, refers to three classifications?—A. Yes. The reason for that is——

Mr. HIGGINS (interrupting). I will allow you later to explain that. In the three classifications which were then contemplated, won't you

state the prices at which the three classes were to be sold and what determined the classification.

A. The arrangement that I had with Judge Hanford in the beginning of the negotiations for the first large sale were that the company was to pay $10 per acre for all irrigable lands below the canal and $3 per acre for nonirrigable lands, which were nonirrigable either on account of the character of the soil or because they lay above irrigation. The plan was at that time to classify the lands into those two classes; but, as I explained in my testimony on Thursday, before we got to the point of making that classification we found that the Reclamation Service had classified those lands into three different classes, which they termed first, second, and third class. They classified under the first and second classes the lands that properly went into our one class of irrigable lands and, therefore, in making our trade finally, or making our contract finally, with the Hanford Irrigation & Power Co.——

Q. (Interrupting.) You are referring now to the second contract?—A. Both contracts. In making both these contracts to the irrigation company we embraced two classes of the Reclamation Service in the one class for which they were to pay us $10 per acre. I do not know whether I have made myself clear, but the arrangement, as I stated that I had with Judge Hanford, was that he was to pay $10 an acre for the irrigable land, whether they were first-class soil or inferior soil. Therefore there were only the two classes that we had to deal with in making our sale to the Hanford Co.

Q. You mean that class 3 in the classification of the Reclamation Service became class 2 under this contract?—A. Yes.

Q. And class 2 and class 1 were included in class 1.—A. Yes.

Q. In the contract which the railway made?—A. Yes. We did not class them as classes 1 and 2 in this contract. We termed them the irrigable lands and the nonirrigable lands, and charged them $10 an acre for the irrigable lands, whether the soil was first class or inferior in quality and, as I explained before, that $3 rate that we had first agreed upon was reduced to $1, so that the contracts—both of those contracts were made finally on the basis of $10 per acre for the irrigable lands and $1 per acre for the nonirrigable lands.

Q. The second-class land at $1 an acre was the third-class land in the Reclamation Service classification?—A. Yes, sir.

Q. In the Reclamation Service classifications what sort of land was embraced in class 3?—A. Lands that contained so much rock that it was impracticable to remove it, and also lands that, while they were within the district or below the canal, might have been just a little too high for gravity irrigation. I mean by that that there might have been an island in the desert where the ground was a little too high to be reached by water carried by gravity from the ditch, and such land, while lying within the boundaries of the project, would be considered nonirrigable, therefore would be of very little value, because you could not get water on it.

Q. What lands were classified by the Reclamation Service as class 2 lands?—A. Lands that were irrigable and could be plowed but were so sandy as to require some special fertilizing or building up of the soil, as we call it in irrigation, and might be considered to include all other lands except the first-class lands.

Mr. HUGHES. All other irrigable lands?

A. That were irrigable.

Mr. HIGGINS. What were the circumstances which you referred to in your letter, or is referred to in Mr. Cooper's letter, which brought about the reclassification?

A. Did I get that right—reclassification, or the three classifications?

Mr. HIGGINS. Well, the change of the classification made by the Reclamation Service. You did not accept the classification of the Reclamation Service when the contract was finally made, did you?

A. Yes, sir; we did.

Q. Well, you contracted for two classes of land, didn't you?—A. Apparently I have not made myself clear——

Q. Let me ask you in that connection: In the contract which you made with the Hanford Co., both on this tract and the tract of 12,000 acres, there were two classes of land.—A. Yes.

Q. And only two.—A. Yes, sir.

Q. And the price for the first class was $10 an acre.—A. Yes.

Q. What was the price for the second class?—A. $1 per acre.

Q. What were the circumstances that led your company, if you know, to change the classification made by the Reclamation Bureau of those lands?—A. We did not make any change. At the time the negotiations started I made this arrangement with Judge Hanford, that we would charge him one price, $10 per acre, for all the irrigable lands. Now, that includes any land that is irrigable, whether it is inferior soil or first-class soil.

Q. Let me ask you in that connection, if it will not disturb you: You understood that this project was more than a gravity project?—A. It is not a gravity project.

Q. It is not a gravity project at all?—A. Not any portion of it; no, sir; no portion of the lands lay below the gravity flow.

Q. How many lifts are there in the project?—A. At the time the matter was first taken up with us there was only one lift.

Q. How many were contemplated?—A. I do not know that they had any definite plans for two lifts at that time, but later they did survey a location of a canal higher up above the first lift, which thereupon made two lifts within their project.

Q. Are you able to state that in your comprehension and understanding of the plan that it might have been possible to have irrigated all of this land by the system that they were to install?—A. I believed that they could irrigate successfully the lands below that first lift, but I questioned the feasibility of the second lift.

Q. Do you know whether they did or not?—A. No, sir; I do not.

Q. Did they represent to you, through their engineers or anybody else, that they intended to irrigate all the land?—A. No, sir; I assumed, of course, by the fact that they purchased and paid quite a sum on the second batch of land lying above that second lift that they considered it feasible.

Q. The first lift provided for the irrigation of how much land, approximately?—A. Approximately, 30,000 acres.

Q. And the second lift for how many?—A. The second lift about—somewhere between 17,000 and 20,000 acres, I believe.

Mr. HUGHES. Pardon me; may I ask whether the witness includes in these estimates the odd and even numbered sections as the total

amount of land which could be irrigated as distinguished from the odd sections which they own.

The WITNESS. Yes, sir; I assumed that Mr. Higgins's question was with reference to the total area irrigable from the two different lifts, and not the lands in which our company were interested or that we owned. You wanted to know the total acreage irrigable from the two different lifts, didn't you?

Mr. HIGGINS. Yes.

The WITNESS. Then my answer is correct.

Q. You were about to make some explanation as to the classification—you can do so if you wish.—A. At the time the negotiations for this large block of lands was started Judge Hanford and I agreed upon the price that was to be paid for the irrigable lands, and the price to be paid for the nonirrigable lands. It was then necessary to classify those lands into those two classes, and I had the understanding with Judge Hanford that when it came time to make that classification that he should appoint a representative and I would appoint a representative, and those two representatives would make a joint classification. That, of course, we understood was going to be somewhat expensive because the men who are able to intelligently classify lands cost money, and before we had got to that work I learned that the Reclamation Service had done all of that work sometime before in connection with their investigation of the Yakima projects; that they had a map showing the classification of all the lands, but they did not classify it into two different classes; they classified it into three different classes; the first class—what they called first-class lands—being the lands that were of the first-class soil and susceptible of irrigation; and then in a second class, lands which were irrigable, but the soil was inferior. Now, you see that that brought—under my arrangement with Judge Hanford that brought both of those classes into our one class of irrigable lands on which they were to pay $10 an acre. You see that brought them both into that one class, so that we eliminated one of the classes. Then that left only the nonirrigable lands, or, which, of course, included lands that were so rocky that they could not be plowed or else were so high in altitude that they could not be irrigated from the ditch.

Mr. MCCOY. At one time you had negotiations about those lands at which you had reached the conclusion that they should go in at $3?

A. $3 an acre; that was my first arrangement with Judge Hanford.

Q. Now, you testified the other day, and perhaps you read a letter to the effect that you thought it was not fair that that price should be paid for those lands, and you recommended a $1 an acre price for those lands?—A. Yes, sir.

Q. Now, what were the circumstances which led you to that conclusion?—A. The circumstances were these: At the time Judge Hanford and I agreed upon the $10 and $3 rates, we both of us supposed that there was a much larger proportion of those lands which would go into the cheap class than the Reclamation Service's map finally showed. In other words, Judge Hanford expressed the view, and it is in one of his letters, that about 50 per cent of the lands would come into the $3 class.

Q. That is what you were testifying the other night?—A. Yes, sir.

Q. And then you testified when you got to the Government classi-

fication you found that a much smaller proportion of those lands were in the poorer class than Judge Hanford estimated?—A. That was the point.

Q. Well, was that the circumstance that led you to recommend the reduction to $1 an acre for those lands?—A. Yes, sir.

Q. Now, what did that have to do with it?—A. It had this to do with it, that under the first idea that we had of the poor lands being about 50 per cent of the area; that you will observe made the average of all the lands under the canal $6.50 an acre, one half being $10 and the other half $3 would have made the average $6.50 per acre. Then when we got the Reclamation Service map and figured the areas up, the propositions, instead of being one-half of each, were about 75 per cent or three-quarters in the $10 class and 25 per cent in the $3 class, which made the average, as I say, $6.50 per acre.

Q. In short, you had made a better bargain with Judge Hanford than you thought; isn't that right?—A. That is about the size of it.

Q. Why did you turn around and make a worse bargain than you were able to make if you had stuck at your original price?—A. Because I felt that they could not afford to pay that price; that is the reason, and I so recommended and so expressed myself in my letter to Mr. Cooper.

Q. You mean by your statement that they could not afford to pay, that they did not have the money, or that the operation, or at least the lands were not worth the money.—A. Yes, sir; that the lands were not worth it, that is the point exactly.

Q. Now, then, if there was more good land than you expected, why should not the price have been raised instead of diminished; in other words, what finally turned out to be the case was that there was more good land there than you had calculated on.—A. Yes, sir.

Q. Consequently they really, on any business basis, could have afforded to pay more rather than less in the aggregate.—A. Well, that is hardly correct, Mr. McCoy, in connection with an irrigation project. In constructing an irrigation project and in fixing your prices you have to base them upon the average cost per acre, which is charged against the land for building the system. In other words, if you have got 10,000 acres of land and it costs you a million dollars to build your pumping system and your distributing system, there is that average charged against your lands. Now, there is a limit that you can get for your lands that are remote from transportation, as these lands were. The whole distribution of the cost and your arrangement on prices is based on the average for the entire system.

Q. Well, I do not see it that way, Mr. Plummer, as an argument on the facts. The argument is that, they being about to get so much more good land than they expected, were in better shape to pay a good price; but if the situation had been reversed and instead of getting some 3,000 acres of bad land it turned out that on the reclamation estimate they were going to get about 10,000 acres of bad land and 2,000 acres of good land—now, under those circumstances, of course, they could not afford to pay so much.—A. As I explained, the matter was figured at the time on the average basis. It was presumed that the average of all the lands, embracing about 12,000 acres would not exceed $6.50 per acre. As a matter of fact, I was surprised that they had figured that they could afford to pay that. Now,

when we come to change that proportion your average runs up. Now, let me figure that average. [Witness figures.] Under the first arrangement made with Judge Hanford where we considered the proportion 50 per cent, the average price that they figured they would pay for those lands was $6.50 an acre. Now, under the classification by the Reclamation Service, the average price that they would have to pay was $8.50 an acre. It is the difference—the difference between $6.50 and $8.50.

Q. That is perfectly apparent, but they were getting more, and why shouldn't they pay more?—A. Well, there is a limit to what an irrigation company can pay for lands, regardless of their character.

Mr. HIGGINS. Is there any limit on the price which a railroad company can charge, if they could get the money?

A. Yes, sir; yes, sir.

Q. What is it?—A. It is the limit which would be placed by the other fellow who was willing to buy them.

Mr. MCCOY. Well, Mr. Cooper in one of those letters said, reviewing the whole situation, it was quite apparent that they could afford to pay $10.

A. Mr. Cooper expressed his opinion in the first letter after I submitted the application to him that he thought we should get $2.50 an acre, and I was authorized to sell them at that price. I expressed the opinion that they could afford to pay $10 an acre, I don't think Mr. Cooper did.

Mr. HIGGINS. Will you read the letter of February 11, 1908, from you to Mr. Henny.

A. (Reading:)

TACOMA, WASH., *February 11, 1908.*

Mr. D. C. HENNY,
Supervising Engineer, United States Reclamation Service,
No. 351 Washington Street, Portland, Oreg.

DEAR SIR: The Hanford Irrigation & Power Co., owners of the canal near Priest Rapids, are figuring on irrigating a considerable area of lands above their present ditch, and they have made application for an option to purchase all of the railroad lands within the district colored in red on the map attached. I do not think the canal to irrigate these lands has been definitely located, but it is presumed that its location will be along the southerly edge of the lands applied for. The lands colored blue belong to the railway company, but as they lie on Gabel Mountain above irrigation by gravity from said canal they do not apply for same.

I do not know what action our people will take on this application, but before submitting the matter to Mr. Cooper I would like to ascertain whether the sale of these lands would interfere with any project now under consideration by the Reclamation Service, and if not, whether you see any objection to disposing of them. I am assured that the Hanford people will commence furnishing water this spring, and if their project proves a success they will want to buy these lands, and we will, of course, require them to place the lands under irrigation within a reasonable time, so that if they do not carry out their plans for watering the lands they will revert to us. If their scheme is a success, I think we should encourage them to go ahead and irrigate as much as they can water by practical means.

Please return the inclosed map with your reply.

Yours, truly,

G. H. PLUMMER,
Western Land Agent.

Q. So that it took some time to get the Reclamation Service to release the land?—A. Yes, sir.

Q. Nearly a year or about a year?—A. From the time the matter was first submitted to us it was about—the matter came to us in February, 1907.

Q. That was something over a year.—A. It was later than that; it was in June, 1909, that I was advised by the supervising engineer, Mr. Swigert, that the directors had advised him that there is no longer objection by the Reclamation Service to the sale by the Northern Pacific of the railroad lands embraced within this area.

Q. That was when they were finally released?—A. Yes, sir; that was June 8, 1909.

Q. Will you read the letter of February 12, 1908, to you from C. H. Hanford.—A. Is that date correct—February 10, is it not, from C. H. Hanford to me?

Q. I thought that was the last letter which you read.—A. No; the last letter I read was the letter to D. C. Henny of February 11, 1908.

Q. Now, will you read the letter of February 10, 1908.—A. (Reading:)

SEATTLE, WASH., *February 10, 1908.*

Mr. G. H. PLUMMER,
Western Land Agent Northern Pacific,
Tacoma, Wash.

DEAR SIR: Permit me to express the hope that your company will grant my application for an option on land subjacent to the Hanford Irrigation & Power Co.'s project without taking into consideration, to effect the price, the extraordinary newspaper stories respecting recent transactions. According to one published report the company sold 1,260 acres for the round price of $252,000 to Messrs. Todd & Cover, and another published report, stated as having been confirmed by Mr. Todd, is that those gentlemen sold two sections of land which they purchased from the Northern Pacific Co. four years ago for the price of $5 per acre to the Hanford Co. for $250,000. Both of thes stories are so far untrue that they may be justly characterized as pure fakes. The real transaction is a contract by which Todd & Cover are to sell the land in connection with water rights for irrigation to be furnished by the Hanford Co., and the proceeds to be divided. The land is to be sold in small tracts and the price has not yet been agreed upon, but there is no expectation of realizing an aggregate amount of $250,000 for both land and water rights.

In my last conversation with you the relatively high prices for which the company has contracted to sell land was mentioned. If this should be considered in connection with any future trade with your company I wish to have you understand that the only sales which have been consummated are of land considered the most valuable in near proximity to the town of Hanford, and mostly in even numbered sections to which a complete title can be given as soon as the purchaser elects to make full payment. The only sales of railroad lands are with extended payments of installments, so that our company can realize but little until our works are so far completed that we can claim a fulfillment on our part our contract of purchase from your company.

Respectfully,

C. H. HANFORD.

Q. That was before you had reached the agreement with Judge Hanford on the prices for the land?—A. Yes, sir; I had recommended to our people that we sell the lands under the upper list at the same rate as under the first list, however.

Q. You apparently call his attention to some newspaper reference to the Hanford Irrigation & Power Co. and the prices that were gotten on the lands which you had sold them before that?—A. I do not remember whether the suggestion came from me or whether Judge Hanford was a little worried that we might boost up the price on account of those newspaper stories about fabulous prices received over there. I do remember that I had a conversation with him. I do not remember now whether it was in my office or whether I met him on the street; but we discussed that, and I rather think I "jollied" him a little about it and told him, in view of the high prices they were getting, that——

Q. (Interrupting.) You discussed what? Just relate, if you can, what you did say to him.—A. The question of the prices they were to pay, merely, in view of all these newspaper stories.

Q. You discussed with him also the price which the Hanford Irrigation & Power Co. were getting for the land?—A. According to the newspaper stories; that is all.

Q. How did those prices compare with other irrigation projects in that section?—A. There were no other irrigation projects in that district with which the prices could be compared and, as a matter of fact, there was no other similar irrigation scheme which you could compare them with. The prices were much higher than prices being charged for lands under gravity project, and, of course, that was necessary because it was a more expensive project.

Q. I believe it appears in that letter which you have just read of date February 10 that Judge Hanford refers to having a talk with you?—A. Yes.

Q. Are you able to tell the committee any more of your conversation with him at that time?—A. That is all I remember about that talk; that we discussed the high prices that were referred to in the newspapers at the time. I could not have talked with him very much at that time. because the matter was not yet passed upon and settled by our people at St. Paul.

Q. As an expert on land values, was the price which the Hanford Irrigation & Power Co. were getting high, in your judgment?—A. Yes, sir; I think their prices were pretty high.

Q. Will you read the letter of February 12, Mr. Plummer, from Judge Hanford to you?—A. Do you mean the letter of February 12 from me to Judge Hanford? I have just read the letter of February 10 from Judge Hanford to me.

Q. To whom is the letter of February 12?—A. It is addressed by me to Judge Hanford.

Q. That is the one I refer to.—A. (Reading:)

TACOMA, WASH., *February 12, 1908.*

HON. C. H. HANFORD,
Hanford Irrigation & Power Co.,
Seattle National Bank Building, Seattle, Wash.

DEAR SIR: Your letter 10th instant received, and I would assure you that no notice will be taken of the newspaper articles referred to in fixing price on the lands for which you apply. In arriving at prices I endeavor to find out what the irrigation company can reasonably afford to pay after taking into account the cost of placing water on the land and of maintaining the plant, and no attention whatever is paid to wild stories circulated through boom literature or articles published by newspapers. I have read the article to which you refer, but sized it up as a newspaper yarn printed for the purpose of exciting intending purchasers. I question the value of such advertising to a bona fide project.

Mr. HIGGINS. You meant as a boom to the Hanford Co. sales of land?

A. How's that?

Q. You meant it was intended to boom the Hanford Co. sales?—A. Yes, sir; boom prices.

Q. Boom prices for the Hanford Irrigation & Power Co.?—A. Boom the irrigation prices under that project. [Continuing reading:]

I question the value of such advertising to a bona fide project.

I already have under consideration your application for the higher lands, and as soon as I have the matter in shape I will submit it to Mr. Cooper, at St. Paul, and will then advise you. I am somewhat in doubt as to whether we would want to make an agreement to reserve these lands for 15 months; but after I have looked into the question more thoroughly I will take it up with you again.

Yours, truly,

G. H. PLUMMER,
Western Land Agent.

Q. Well, what did you do in the way of looking into it more thoroughly?—A. The correspondence with the Reclamation Service officials was then going on; we had not yet obtained their consent to the sale of the lands, and pending the getting of that consent and preparing a statement of the lands I told Judge Hanford that it was under consideration. That is all we were doing at that time that I remember.

Q. Do you recall whether you had discussed it with Mr. Cooper on one of the trips that he made to your office?—A. I do not remember about that; no, sir; and there is nothing in the file to show that he was out here at that time.

Q. Will you read the letter of March 14, 1908, being a letter to Judge Hanford from you, is it not?—A. Yes, sir. [Reading:]

TACOMA, WASH., *March 14, 1908.*

Hon. C. H. HANFORD,
Seattle National Bank Building, Seattle, Wash.

DEAR SIR: Referring to our recent correspondence regarding the reservation of lands above your present ditch, I desire, before submitting the matter to the land commissioner, to procure from your company a statement of the situation regarding the present project. This is desired in order to fully inform the land commissioner of the conditions connected with your canal and the necessity for the reservation of the higher lands. Will you kindly give me the following data:

Number of miles of main canal already constructed.

Number of miles of laterals already constructed.

Length of power canal and condition of same, including power and pumping station.

Approximate number of acres to be placed under irrigation this year.

What proportion of the entire contemplated project is finished.

What date do you expect to begin operations for supplying water?

I assume that there is no objection to giving me this information.

Yours, truly,

WESTERN LAND AGENT.

Now, that inquiry was brought about by the request of the supervising engineer of the Reclamation Service for some data as to what they had already done to be used in deciding whether or not they wanted to relinquish any additional land from their project.

Q. Why didn't you take that up with the engineer, H. K. Owens?—A. All my negotiations had been had with the other officers of the company, and I do not know whether I had occasion to discuss the matter with Mr. Owens up to that time; I do not remember that I had.

Q. What other officers of the company had you taken this second transaction up with?—A. Mr. E. C. Hanford and Judge Hanford were the only members of the Hanford Co. that I had had this matter up with.

Q. Not with Mr. Haynes?—A. I do not remember of having had anything to do with Mr. Haynes in regard to this, and there is nothing in the file to show it, unless I have overlooked it.

Q. Will you read the letter of March 21 to you from C. H. Hanford?—A. This letter is written on the official letterhead of the district judge. [Reading:]

SEATTLE, WASH., *March 21, 1908.*

Mr. G. H. PLUMMER,
Western Land Agent, Northern Pacific Railway Co.

DEAR SIR: Answering inquiries in your letter of the 14th instant, I have to say:

The Hanford Irrigation & Power Co. has now completed one main distribution canal extending from its pumping station to the town of Hanford, its length being a fraction less than 20 miles.

The aggregate length of lateral ditches, with wooden-stave pipe lines necessary to carry over depressions, is about 8 miles; these lines are nearly completed.

The length of the power canal is 2 miles, and it is 70 feet wide on the bottom.

In addition to these works we have installed the first unit of pumping machinery, including wooden-stave pipe line for delivering water to the ditch, 66 inches in diameter. This machinery is installed in a substantial concrete building. The electrical power machinery is being installed in a concrete building at the foot of the power canal. We have a copper wire transmission line from the power station to the pumping station, a distance of about 14 miles, and a telephone line from the power station to the town of Hanford, a distance of about 35 miles.

Our work originally projected is more than half completed, but we can see that to meet the demands of the country it will be necessary to enlarge our power canal and install a great deal more machinery than at first contemplated.

If no unforeseen calamity happens, we will be delivering water for irrigation purposes on about 3,000 acres before May 1 this year.

The quantity of land which can be irrigated by the completed canal is not less than 16,000 acres. About one-half of this amount is held by private owners and lessees from the State. Eventually they will deal with our company for water, but it is difficult to make contracts with them at present.

A definite contract with respect to the additional land which the company has applied to purchase is necessary to enable the company to complete financial arrangements for the enlargement of our works.

Yours, truly, C. H. HANFORD.

Q. Have you there a letter of March 25 from C. H. Hanford to you—March 25, 1908?—A. Yes, sir.

Q. Read it, please.—A. Written on the same official stationery.

Q. Read the whole heading, so that the reporter can take it.—A. (Reading:)

CHAMBERS OF UNITED STATES DISTRICT JUDGE,
WESTERN DISTRICT OF WASHINGTON,
CORNER FOURTH AVENUE AND MARION STREET,
Seattle, Wash., March 25, 1908.

Mr. G. H. PLUMMER,

DEAR SIR: Yours of the 23d received. We are willing for officers of the Government Reclamation Service to have the information furnished in my letter of the 21st, and I inclose a copy which you may send to Mr. Henny.

In looking at it I notice that in copying a line was omitted.

Yours, truly, C. H. HANFORD.

Q. That appears to be in Judge Hanford's own handwriting, does it?—A. Yes, sir. That was brought about by an inquiry of mine of Judge Hanford as to whether he had any objection to my giving that information to the Reclamation Service.

Q. Now, will you read the letter of April 2, 1908, to Thomas Cooper from you?—A. (Reading:)

TACOMA, WASH., *April 2, 1908.*

Mr. THOMAS COOPER,
Land Commissioner, St. Paul, Minn.

DEAR SIR: I inclose herewith copy of letter from Judge Hanford, applying on behalf of the Hanford Irrigation & Power Co. for an option on 10,000 acres of

land above their present project, a map and list of which are attached. From conversation with Judge Hanford since his application was filed, I infer that, while they are figuring on irrigating this additional area at some time in the future, the main object in securing this option is to enlarge the scope of their project by an additional 20,000 acres of irrigable land to aid them in securing additional funds to carry their present project to completion. Their scheme has been successful so far; they have gone ahead with their works and will probably be ready to furnish water for 3,000 acres by May 1st. They have sold considerable area of land at high prices, but on long-time contracts, and the returns from these sales have not been large. I have no doubt that they had arranged for funds to carry the project through to completion, and had it not been for the recent money stringency they would have had no trouble in getting the necessary funds locally, but this source of supply is apparently cut off, and they are seeking aid elsewhere for completion and further extensions of their system, and I assume will use the option on our lands in carrying out the plan.

I submitted the matter to Mr. Henny, and hand you herewith copy of his reply. I am also sending you copy of Judge Hanford's statement of present status of their works. In view of Mr. Henny's position, I think we should make no promises with reference to these lands; if the Hanford Co. were prepared to go ahead with the irrigation of these lands, I would be in favor of eliminating them from the Benton project, but as neither the Hanford Co. or the Reclamation Service have any definite plans for immediate construction of works, I think we should leave the land unoptioned, so that we will be free to deal with anyone when ready to go ahead. I think we should say to Judge Hanford that these lands are within the Benton project and that we have agreed with the Reclamation Service to hold everything we own until they have completed their investigations, though if he were prepared to go ahead with the work we would consider his application, but would not care to take them out of one reservation and put them under another reservation with no immediate prospect of irrigation.

I will be glad to have your advice on this matter.

Yours, truly,

G. H. PLUMMER,
Western Land Agent.

Q. From whom did you get the assurance as to the financial resources of the Hanford Irrigation & Power Co. which you referred to in that letter?—A. I think that was gotten from Judge Hanford at the time of that talk with him, though I am not sure.

Q. Do you recall where you had that talk with him?—A. No, sir; I do not.

Q. Or what the talk was?—A. No, sir; except that——

Q. (Interrupting.) Will you read the letter of March 30, 1908?—A. The letter of March 30, 1908, from the supervising engineer of the Reclamation Service to me?

Q. Yes.—A. (Reading:)

PORTLAND, OREG., *March 30, 1908.*

Mr. G. H. PLUMMER,
Western Land Agent, Northern Pacific Railway, Tacoma, Wash.

DEAR SIR: We are, in receipt of your letter of March 27, inclosing statement from Judge Hanford. Permit me to express my thanks for your courtesy in sending this communication.

Yours, very truly,

E. E. HOPSON,
Acting Supervising Engineer.

Q. Have you a copy of that communication in that file that is referred to in that letter?—A. The letter that I sent to Mr. Hopson was a copy of Judge Hanford's to me explaining what had been done in constructing their works, which he sent me.

Q. No more than a copy of the letter which you already read.—A. Yes, sir; it was a copy of his letter which I already read.

Q. Will you read the letter of April 6, 1906, to you from Thomas Cooper?—A. (Reading:)

ST. PAUL, MINN., *April 6, 1908.*

MR. G. H. PLUMMER,
Western Land Agent, Tacoma, Wash.

DEAR SIR: Replying to your favor of the 2d instant, in regard to the application of the Hanford Irrigation & Power Co. for an option on 10,000 acres above their present project, it will be necessary for you to explain to Judge Hanford the position of the Reclamation Service with reference to these lands, as we can not consistently make any other disposition of them until they are released by the Reclamation Service. Also explain to the judge that this does not mean that if released the option will necessarily be granted, as that question has not as yet been taken up with the board of directors, whose approval would be necessary, but until they are released as above it will be useless to take the matter up with the board.

Yours, truly,

THOMAS COOPER,
Land Commissioner.

Q. Now will you read the letter of April 13, 1908, to C. H. Hanford from you?—A. (Reading:)

TACOMA, WASH., *April 13, 1908.*

HON. C. H. HANFORD,
Hanford Irrigation & Power Co.,
Seattle National Bank Building, Seattle, Wash.

DEAR SIR: I submitted to the land commissioner your application for an option on certain lands lying above your present canal, and am advised that in view of our agreement with the Reclamation Service and of their position with reference to these lands, he thinks it advisable not to grant the option at this time. I discussed this matter with Supervising Engineer Henny, of the Reclamation Service at Portland recently, and he explained to me that the elimination of additional lands from the so-called Benton project is likely to affect its feasibility, and while they do not wish to stand in the way of any immediate development of lands by private enterprise, especially in view of the uncertainty of the Benton project being carried out, at the same time he feels that as there is no immediate prospect of irrigation of these lands, he would prefer to see the present status maintained, so that they can properly be considered a part of the Benton project. If you were prepared to proceed with the immediate irrigation of these lands, I am inclined to think the Reclamation Service would look more favorably upon an application for their restoration, but in view of the fact that the Benton project is having serious consideration, they prefer that the area tributary to that project be not diminished.

While explaining the position of the Reclamation Service in this matter, I do not wish it understood that their consent to this application would result in favorable action on the part of this company, as the matter would still have to be referred to our board of directors It will be necessary to secure the approval of our board to an option, but until they are released it would be useless to submit the matter to them.

Yours, truly,

G. H. PLUMMER,
Western Land Agent.

Q. That is addressed to Judge Hanford?—A. Yes, sir; that is to Judge Hanford.

Q. Now, you may read the letter of May 1, 1908, to C. H. Hanford, from Mr. Cooper.—A. (Reading:)

TACOMA, WASH., *May 1, 1908.*

HON. C. H. HANFORD,
Hanford Irrigation & Power Co.,
Seattle National Bank Building, Seattle, Wash.

DEAR SIR: Confirming our conversation of yesterday, your company is hereby granted an option to June 30, 1908, to purchase the lands for which you applied in your letter to Mr. Plummer of February 7, 1908, the price to be the same as for the lands already purchased by your company, and the sale to be made on a five-year contract, if desired. If the option is exercised, your company will pay the taxes on the land for the year 1908, also interest on the purchase price at the rate of 6 per cent per annum from the date of this letter up to the date

that the contract for purchase is entered into; also, there will be a provision in said contract that no lands will be conveyed by us until provision for their irrigation by your company has been completed.

It is further provided that this option shall not be effective until the United States Reclamation Service has signified to this company in writing that they have no objection to the sale by us of the lands in question by your company.

Yours, very truly.

THOMAS COOPER,
Land Commissioner.

Copy to Mr. Howard Elliott, Mr. G. H. Plummer.

Mr. HUGHES. What is the date of that letter?

A. May 1, 1908.

Mr. HIGGINS. In furtherance of the plan they outlined in that letter the Hanford Irrigation & Power Co. did acquire this land?

A. Yes, sir; and in accordance with the terms explained by Mr. Cooper they paid taxes and interest in addition to that rate of $10 per acre for irrigable lands and $1 per acre for the nonirrigable lands.

Q. What is the date of the contract?—A. The date of the contract is June 18, 1909.

Mr. MCCOY. That is the contract entered into after they had notified the company that they would exercise their option?

A. Yes.

Mr. HIGGINS. Was there a formal option given to them before the contract was executed?

A. That is the option that I have just read—that constituted the option.

Q. No other option than that letter?—A. No, sir; I do not think so, Mr. Higgins. I think that we considered that the option. In going through the file I do not see that there is any other option drawn up.

Q. Were you present at the conversation which Mr. Hanford had with Mr. Cooper just referred to?—A. I think so; I think that is the one of the two conversations that I remember that Mr. Cooper and I had with Judge Hanford.

Q. What is the practice of your company in disposing of lands of this character in the way of giving an option before the final contract is signed?—A. It is not a general custom, but wherever we think it necessary or advisable to aid in the carrying out of an irrigation scheme we have granted such options.

Q. What is the form of that option—do you have a form which is used in such cases?—A. No, sir. Sometimes we make it in the form of a letter like this, and sometimes a more formal agreement is drawn up. It is nothing more or less than an agreement to sell within a limited time.

Q. Who was present besides you and Mr. Cooper with Judge Hanford at the meeting?—A. Nobody that I remember.

Q. That meeting was at Tacoma?—A. Yes.

Q. In the railroad office?—A. I think this meeting was held in Tacoma in my office.

Q. Had there been any meeting with Mr. Cooper before that?—A. Yes, sir; there was one other meeting which Mr. Cooper and I had with Judge Hanford that I remember—was at the Tacoma Hotel, and, I think, at noontime.

Q. How long before the one which resulted in the giving of the option?—A. It is difficult to fix that time, but it was along sometime in 1906, I think.

Q. 1906?—A. Yes, sir. Not with reference to these lands.

Q. Well, that was with reference to the acquirement of the other first large tract?—A. Yes, sir; the other sale.

Q. So that, so far as you know, there was only one meeting between Mr. Cooper and Judge Hanford as to the second tract?—A. Yes, sir; that is all I recollect, Mr. Higgins.

Q. You may now read the letter of April 3, 1909, to Mr. Hopson from you.—A. (Reading:)

TACOMA, WASH., *April 3, 1909.*

Mr. E. S. HOPSON,
Supervising Engineer,
United States Reclamation Service, Portland, Oreg.

DEAR SIR: The Hanford Irrigation & Power Co. has perfected plans for the irrigation of a considerable area lying above their present ditch, and they have applied to us to purchase the lands shown in the list attached in accordance with an option granted them on May 1, 1908, by Mr. Cooper. The option provided that they would be allowed to purchase these lands at any time before June 30, 1909, but conditional upon the Reclamation Service signifying to this company in writing that they have no objection to the sale. The irrigation company has notified us of its intention to exercise the option, and I am now submitting this matter to you for advice as to whether or not the Reclamation Service objects to the sale. I think you understand the situation fully; the lands lie at the far end of any of the projected canals from the Yakima River, and I understand that it is the policy of the Reclamation Service to encourage the development of irrigation projects by private companies, providing they do not interfere with the projects of the service. The same question was submitted to the Reclamation Service with reference to the lands of the company now being irrigated by the Hanford people and consent was given to that sale.

Will you be good enough to consider this matter, and advise me as promptly as possible so that we can inform the Hanford Co. of the situation?

Yours, truly,

G. H. PLUMMER, *Western Land Agent.*

The CHAIRMAN. With your signature?

A. Yes.

The CHAIRMAN. What is it? Give it.

A. I read the signature "G. H. Plummer, Western land agent."

Mr. MCCOY. In this connection, I want to make this statement for the record. I have the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the action entitled "King County, Wash., and Matt H. Gormley, as treasurer of King County, Wash., appellants, *v.* Northern Pacific Railway Co., a corporation, appellee." It appears from the complaint that the action, among other things, was brought to strike from the amount of taxes under the assessment on the Northern Pacific Railway the sum of $60,690.75. The complaint was filed in the United States Circuit Court for the Western District on April 6, 1908. The defendants demurred to the complaint by demurrer filed June 1, 1908, and the demurrer was overruled by Judge Hanford on June 22, 1908. The answer was then filed by the defendants on July 22, 1908, and the replication to the answer on June 4, 1910. I think that is all that is necessary to state, up to the time of the rendering of the opinion by Judge Hanford, which was filed on August 3, 1911. And I will give this record on appeal to the reporters to copy that and will not read it.

Mr. HUGHES. You mean to copy the opinion?

Mr. McCOY. To copy the opinion on the decision of the case. Well, the substance of it was that the prayer of the complaint was granted and the taxes were cut down, I think—not the assessment, but the tax levy is cut down.

Whereupon the opinion above mentioned is copied into the record as follows:

United States Circuit Court, Western District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY CO., A CORPORATION, complainant,
v.
KING COUNTY, WASH., AND MATT H. GORMLEY, AS treasurer of King County, Wash., defendants.

No. 1655.
Filed August 3, 1911.

MEMORANDUM DECISION ON THE MERITS.

The controversy involved in this suit relates to alleged excessive valuation of the complainant's operative property in King County, for the purpose of taxation for the year 1907 by the King County board of equalization; and the listing by the assessor of King County for taxation as a part of its personal property of intangible property, including its franchise for doing business in King County, on which a valuation of $100,000 was placed, which is alleged to be illegal.

Federal jurisdiction is invoked on the ground of diversity of citizenship, as well as on the ground that the complainant has been invidiously discriminated against and excessively taxed in violation of the Constitution of the United States; and equity jurisdiction is invoked on the ground that the complainant has no adequate remedy at law.

The important facts of the case are that in this State there is a board of tax commissioners empowered by law to supervise the assessments of property for valuation throughout the State, and for the year 1906 the board classified the complainant's operating property, placing a valuation of so much per mile on each of the different classes for the entire State, and apportioned the same between the several counties according to the miles of trackage in each, and directed the assessors of the several counties to assess said property for taxation according to that valuation. The directions given were observed in all of the counties of the State, except the county of Snohomish, where the assessors placed a higher valuation on railroad property than that fixed by the board of tax commissioners. In litigation which ensued the supreme court of the State sustained and enforced directions of the board of tax commissioners. No new or different classification and valuation of railroad property for the purpose of taxation for the year 1907 was made by the board of tax commissioners, and the 1906 schedules were used, and the complainant's property was accordingly assessed for that year in all the counties of the State, except King County, in which the board of equalization raised the assessment on its operating property, and the assessment of $100 for the complainant's franchise was retained. The complainant has tendered payment of the amount of taxes admitted to be due, contesting merely the amount of taxation on the excess valuation of its operating property above the valuation fixed by the board of tax commissioners, and the franchise tax.

The ground of defense chiefly relied upon is alleged lack of jurisdiction in a court of equity to interfere in the proceedings for the collection of taxes. The jurisdiction is disputed upon an assumption that legal remedies available to the complainant are adequate for its protection and an attempt has been made to point out specific methods of procedure which the complainant might have resorted to for the legal determination of this controversy, viz:

a. An application to the board of tax commissioners to correct the assessment, to be supplemented, if necessary, by an action for a writ of mandate to compel the county assessor to obey directions of the board of tax commissioners.

b. An application to the State board of equalization to correct the assessment.

c. Payment of the whole of the tax, under protest, and an action at law to recover the amount unlawfully exacted.

d. A writ of certiorari.

The first and second and fourth of these supposed remedies all involve relinquishment of the complainant's right to invoke the jurisdiction of a Federal court, which is not compellable by any State law.

Cowles *v.* Mercer County (7 Wall., 122); Insurance Co. *v.* Morse (20 Wall., 445); Doyle *v.* Continental Insurance Co. (94 U. S., 543); Hess *v.* Reynolds (113 U. S., 77); Steamship Co. *v.* Kane (170 U. S., 111); Davis Manufacturing Co. *v.* Los Angeles (189 U. S, 218); Traction Co. *v.* Mining Co. (196 U. S., 252–253).

The test of equity jurisdiction in the courts of the United States—namely, the adequacy of the remedy at law—is the remedy recognized as a legal remedy when the judiciary act was adopted, and not statutory remedies created by local authority. (11 Am. & Eng. Enc. of Law, pp. 200–201; Boyle *v.* Zacharie & Turner, 6 Pet., 648–658; Kirby *v.* R. R. Co., 120 U. S., 137–138; McConihay *v.* Wright, 121 U. S., 201.)

The third of the supposed remedies involves circumlocution and risk, and it is impractical as a general rule, for if a taxpayer happens to be not supplied with a surplus of cash, that remedy will be unavailable to him. It is surprising that the suggestion was ever considered to be plausible. (A., T. & S. F. Rwy. Co. *v.* Sullivan, 173 Fed., 456.)

There is a contention on the part of the defendants that in raising the valuation of complainant's property for the 1907 assessment the King County board of equalization acted pursuant to authorization by the board of tax commissioners, and testimony was introduced to prove that members of the board of tax commissioners attended meetings of the board of equalization and discussed the subject in a way to justify an inference that as individuals they approved the raise. It is the opinion of the court that all of this evidence is irrelevant, for the reason that under the revenue law of 1897, which governed the assessment for 1907, the tax commissioners, either acting as a board or as individuals, could not lawfully confer authority upon the board of equalization of a single county to segregate the trackage of a railroad within that county and assess it for taxation on a higher valuation than other parts of the same lines of railway in other counties.

The supreme court of this State, in overruling the demurrer in the bill of complaint in the case of the Great Northern Railway Co. *v.* Snohomish County (48 Wash., 478; 93 Pac., 924), established five propositions, as follows:

1. The main track and rolling stock of a railroad extending through two or more counties in this State are an entirety for the purpose of assessment and taxation.

2. The entire value of such main track and rolling stock must be apportioned between the several counties through which the road passes, in the proportion that the mileage in each of such counties bears to the entire mileage in the State.

3. Such main track and rolling stock must be assessed at their true and fair value in money.

4. The assessment must be equalized between the different counties so that equality of taxation shall be secured according to the provisions of law.

5. The State board of tax commissioners is given general supervision over assessors and county boards of equalization to that end.

Subsequently to that decision, on a final hearing the superior court of Snohomish County denied relief to the complainant in that case from the invidious assessment made by the county authorities, and upon an appeal the supreme court reached the conclusion that the State board of tax commissioners had in conformity to law classified and valued the operating property of railways in the State, and in its opinion said:

"This court, then, having decided upon the former trial of the cause that the tax commission had power to classify railway property, and that it is its duty to so classify and superintend its assessment, and it having directed the different assessors of the State as to their duties in the premises, there is no escaping the conclusion that the commission acted under the provisions of the law, and it was the duty of the assessor to obey such instructions."

The judgment of the superior court was accordingly reversed, with instructions to grant the injunction prayed for, which was an injunction restraining the exaction of the tax upon the excessive valuation above the schedules issued by the board of tax commissioners. (G. N. Ry. Co. *v.* Snohomish County, 154 Wash., 23.)

In the present case it is contended on the part of the defendants that it was necessary to raise the valuation of the complainant's property in King County to make the assesssment equal and uniform with the valuation of other property in the county; and it is contended that equality in valuation of property within the county is essential to a legal assessment. That same argument was made to the supreme court and was overruled in the decision above referred to. That decision by the highest tribunal of the State is an authoritative declaration of the law of the State, to which the judgment of this court must conform.

The State board of tax commissioners, either intentionally or unintentionally, by not revising the classification and valuation of railway property for assessment for the year 1907, left the schedules issued in 1906 to govern the assessments in the different counties, except King County, the valuation of the operating property of railroads for the latter year were made in conformity to those schedules. Therefore the action of the King County board of equalization in placing a higher valuation on the complainant's property was an invidious discrimination, contrary to the law of the State, and the complainant in this suit is entitled to relief in the form sanctioned by the supreme court of the State in the Snohomish County case.

In the light of the decision of the Supreme Court of the United States in the case of Western Union Telegraph Co. *v.* Kansas (216 U. S., 1), the attempt to tax the complainant on its franchise appears to be wholly indefensible.

I direct that a decree be prepared for my signature granting the relief prayed for by the complainant in its bill of complaint.

C. H. HANFORD.
United States District Judge.

Indorsed: Memorandum decision on the merits. Filed United States Circuit Court, Western District of Washington, August 3, 1911.

Mr. McCOY. Here is the decree in the same case, and I will read that into the record. [Reading:]

It is further ordered that the tax levied and assessed by the defendant, King County, for the year 1907 upon complainant's said railway property described in said bill of complaint in the sum of $106,208.84 is hereby declared excessive to the extent of $45,518.09, and said sum of $45,518.09 and all interest, cost, and penalties accrued on said tax are hereby ordered to be canceled and stricken from the assessment rolls of King County upon the payment into court or to defendant by complainant of the sum of $60,690.75, which the court finds to be the full sum of money justly due and payable by complainant as and for taxes upon the property hereinbefore described situated in King County, Wash., for the year 1907, being the same sum heretofore tendered by complainant in full payment of its said tax for the year 1907, and the defendants are hereby ordered and directed to receive and accept said sum of $60,690.75 full payment of all taxes due and owing by complainant upon its said railroad property in King County, Wash., for the year 1907; and defendants are hereby ordered and directed to issue to complainant, upon payment of said sum, a receipt in full for all taxes for the year 1907 upon said property and that the rolls of defendant county be marked, "Paid in full."

It is further ordered and decreed that complainant recover its costs and disbursements herein to be taxed by the clerk in the sum of $152.37.

Dated this 14th day of August, 1911.

C. H. HANFORD, *Judge.*

Indorsed: Final decree. Filed United States Circuit Court, Western District of Washington, August 14, 1911.

I believe that the record shows that there was tried at the same time an action in the same court, in which the Great Northern Railway Co., a corporation, was complainant against King County and Matt H. Gormley, treasurer of King County, Wash., defendants.

I have here also, and I will ask to have it marked as an exhibit, the opinion of the circuit court of appeals, which, in part, reversed the judge of the lower court. In the first place, it is said that on the face of the bill it stated an action for equitable relief and practically amounted to saying the demurrer was rightly overruled. There had

also been an assessment of the franchise of the railroad company for taxing purposes, and Judge Hanford had held that that was a wrong assessment; and the circuit court of appeals sustained him on that. The decision of the circuit court of appeals reversed, however, the decision as to the assessment on the railroad property.

The opinion just referred to by Mr. McCoy is marked as "Exhibit No. 95."

Mr. McCoy. I might say that, apparently, in the beginning of my statement, when I stated that the application was to strike off some sixty thousand and odd dollars, that I was wrong; it apparently was forty thousand and odd dollars.

The Chairman. Do you wish to make any additional statement for the record, Mr. Hughes?

Mr. Hughes. I have not had time, and I have not any familiarity with the case; but, as to this one fact, it seems to me that it would be proper to also show in the record at this time, Mr. McCoy, that the counsel for the railway company have applied for a certiorari to the Supreme Court, and the case is now pending in the Supreme Court of the United States from the decision of the circuit court of appeals reversing Judge Hanford.

Mr. McCoy. Let that go in there.

Whereupon a recess is taken until 1.30 p. m.

AFTERNOON SESSION.

1.30 o'clock.

Continuation of proceedings pursuant to recess. All parties present as at former hearing.

The Chairman. The committee will please be in order.

William E. Holmes, being first duly sworn, testified as follows:

Mr. Higgins. State your full name to the committee.

A. William E. Holmes.

Q. Where do you reside?—A. At Dunlap, in the southern part of the city.

Q. Is that on the line of the Seattle, Renton & Southern Street Railway?—A. Yes, sir.

Q. Were you interested in the controversy over the matter of fares and transfers on that road?—A. Yes, sir; as one of the patrons of the line.

Q. What committees, Mr. Holmes, did you serve on with a view of carrying out the result which the patrons of the line were endeavoring to establish?—A. I do not recall; I was on perhaps a dozen committees.

Q. Well, what were they?—A. Well, there would be a mass meeting to take up some particular subject and a committee would be named to see the city officials or some attorney with reference to litigation, and so on.

Q. What attorneys did you call on as a member of any of those committees?—A. We called upon Mr. Erl, I think Mr. Calhoun, and Mr. Hughes, and Mr. Hastings, and Mr. Smith—Everett Smith—and perhaps others.

Q. Was Mr. Hastings a member of any committee with you at any time?—A. I won't be sure, but I think possibly he was.

Q. Did he live on the line of the road?—A. Yes, sir.

Q. Do you recall whom you called upon with the committee that Mr. Hastings was on?—A. No, sir; I do not; perhaps those matters extended over several years, and there have been so many phases of it, and so many different committees appointed that I do not recall any special features about it.

Q. Were you present in the court room when the injunction was heard before Judge Hanford?—A. I was at one hearing; yes, sir.

Q. Had you seen Judge Hanford before that time?—A. Not that I knew him.

Q. You would know it if you did?—A. No, sir; I do not remember faces very well—probably I had seen him on the streets a number of times.

Q. Did you ever call on him before that?—A. No, sir.

Q. Did you call on him after that?—A. No, sir.

Q. Do you know of anybody that did, with reference to this litigation, any committee?—A. No; I never heard until you mentioned it a few minutes ago that there was any committee called on him with reference to this litigation.

Q. You do not remember whether such a committee did, and you did not call on him?—A. No, sir; I did not.

Mr. HIGGINS. That is all.

The CHAIRMAN. You are excused.

Witness excused.

G. H. PLUMMER, recalled, testified as follows:

The CHAIRMAN. Mr. Hughes, have you any questions to ask of Mr. Plummer?

Mr. HUGHES. I do not think there is anything that I could ask Mr. Plummer which would throw additional light on the subject of the inquiry, except possibly some questions might be propounded to him which would give to this committee better conception of the matters involved in the matter of the irrigation, the different levels and the significance of those matters, but it does not seem to me that it is important to this inquiry to take the time. In other words, I merely suggest this matter, that if water is pumped up to a level of 80 feet it is pumped into a canal or small reservoir, which is the beginning of a canal, and from there it flows, descending just enough to carry it a distance of 25 miles, we will say, which it appears was the length of this canal; and then below it must follow the irregular lines of the country, which would give it, starting with the 80-foot level at the river, the necessary descent; below that the irregularities of the surface would leave a certain amount of the land above the canal, although below it geographically according to the contour survey—that is to say, take 160 acres, the hummocks or the elevated portion of the 160 acres could not be irrigated. Now, there are some pieces of land——

The CHAIRMAN. He made that clear—that is, if all the land below this ditch was flooded certain portions of it would be above the surface of the water like islands.

Mr. HUGHES. Certain portions of it would be too high to be irrigated by it.

The CHAIRMAN. He made that clear. Is that all?

Mr. HUGHES. I do not think there is anything else that is worth while going into.

Mr. HIGGINS. You think you had a memorandum of all the copies which you wanted to send the committee in response to their request?

A. Yes, sir.

Q. The custody of such letters and papers as you brought with you in response to the subpœna of the committee—the regular place of their custody would be in your office, would it not?—A. Yes.

Q. In the regular course of business they would remain there?—A. Yes, sir; these files were a part of my regular record.

The CHAIRMAN. Any correspondence between the agent, Mr. Cooper, at St. Paul with other persons might or might not get to your files?

A. Yes; sometimes I get copies of the correspondence, and all of those copies appear in the files.

Q. That is, when copies were sent you?—A. Yes.

Q. But you are not quite sure that all the copies of the correspondence between Mr. Cooper and others did actually reach you?—A. No, sir; I am not sure of that.

Q. Well, might there be correspondence other than with Mr. Cooper relative to this matter which he would not have in his files?—A. No, sir; I think not.

Q. For instance, if Mr. Elliott or some one above him had communication with anyone about it, what would the probabilities be as to copies of that correspondence being in Mr. Cooper's files?—A. The probability would be that Mr. Cooper's files would have copies of the correspondence, but it is possible, of course, that they would not appear there.

Q. Well, now, Mr. Plummer, subject to your promise to furnish the files—that is, to furnish the committee with such copies as you told Mr. Higgins you would furnish—I think you are excused.

The information promised is as follows:

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

THOMAS COOPER, Land Commissioner, St. Paul, Minn.	GRAFTON MASON, Land Attorney, St. Paul, Minn.	J. L. WATSON, Principal Right-of-Way Agent, St. Paul, Minn.
J. M. HUGHES, Eastern Land Agent, St. Paul, Minn.	G. H. PLUMMER, Western Land Agent, Tacoma, Wash.	D. E. WILLARD, Development Agent, St. Paul, Minn.

NOTICE.—All prices quoted subject to change and lands subject to sale without further notice.

TACOMA, WASH., *July 26, 1912.*

MY DEAR MR. GRAHAM: In accordance with your request, I am handing you herewith certified copies of "memorandum of sales" to Hanford Irrigation & Power Co., which show the dates of sale, dates when payments were to be made under the contracts, and the dates when payments were actually made, all of which I think will be clear to you, but if not, I shall be glad to give you any further information you require in connection therewith. I am also inclosing copy of letter from Supervising Engineer Charles H. Swigart, dated June 8, 1909, advising me that the Director of the Reclamation Service had no objection

to the sale of the lands embraced within a certain area described in the letter, which included the lands sold to the Hanford Irrigation & Power Co. under the second sale. I do not have a copy of the director's letter, which is doubtless on file at the office of the Reclamation Service at North Yakima, but I presume you can procure a copy from the director's office at Washington, if you desire it.

I believe these are the only papers which you wished me to furnish the committee, but if there are any others please advise me and I will be glad to furnish them.

Yours, very truly,

G. H. PLUMMER,
Western Land Agent.

Hon. JAMES M. GRAHAM,
Chairman Subcommittee of Judiciary Committee,
House of Representatives, Washington, D. C.

OFFICE OF SUPERVISING ENGINEER.

Subject: Restoration of Northern Pacific lands.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
North Yakima, Wash., June 8, 1909.

Mr. G. H. PLUMMER,
Western Land Agent Northern Pacific Railway,
Tacoma, Wash.

DEAR SIR: Referring again to your letter of April 3 regarding the sale of a portion of the Northern Pacific lands covered by list attached to your letter in sections 13 and 15, T. 13, R. 25; secs. 1, 3, 5, 7, 9, 11, 15, 17, 21, and 25, T. 13, R. 26, and secs. 3, 5, 11, 27, 29, 31, 33, and 35, T. 13, R. 27, I have been advised by the Director of the Reclamation Service that there is no longer objection by the Reclamation Service to the sale by the Northern Pacific Railway Co. of the railroad lands embraced within this area.

Respectfully,

(Signed.) CHAS. H. SWIGART,
Supervising Engineer.

Copy to Director.
Copy to Mr. Conway.

I certify that this is a true and correct copy of the original letter on file in my office at Tacoma, Wash.

G. H. PLUMMER,
Western Land Agent Northern Pacific Railway Co.

Dated TACOMA, WASH., *July 25, 1912.*

NOTE.—Secs. 3, 5, and 11 referred to as being in T. 13, R. 27 E., have reference to secs. 3, 5, and 11, T. 12, R. 27 E.

G. H. P.

NORTHERN PACIFIC RAILWAY CO.—LAND DEPARTMENT, WESTERN DISTRICT.

Memorandum of sale, Washington division.

Contract No. 7590.
Purchaser, Hanford Irrigation & Power Co.
Residence, Seattle, State of Washington.

Dated, June 18, 1909.

Part of section.	Sec.	Tp.	R.	Acres.	First and second class.	Third class.
		N.	*E.*			
All	13	13	25	640.00	445.00	195.00
S. ½	15	13	25	320.00	320.00	.....
NW. ¼ of SW. ¼ and S. ½ of SW. ¼	1	13	26	120.00	120.00	.....
Lot 1, S. ½ of N. ½ and S. ½	3	13	26	521.74	521.74	.....
SE. ¼ of NE. ¼ and S. ½	5	13	26	360.00	200.00	160.00
E. ½, E. ½ of W. ½, and lots 2, 3 and 4	7	13	26	597.54	359.66	237.88
All	9	13	26	640.00	640.00	.....
All	11	13	26	640.00	640.00	.....
All	15	13	26	640.00	560.00	80.00
All	17	13	26	640.00	600.00	40.00
All	21	13	26	640.00	640.00	.....
All	25	13	26	640.00	640.00	.....
Lots 1, 2, and S. ½ of NE. ¼	5	12	27	148.20	148.20	.....
SW. ¼ and S. ½ of SE. ¼	27	13	27	240.00	240.00	.....
S. ½	29	13	27	320.00	320.00	.....
All fractional	31	13	27	641.74	641.74	.....
All	33	13	27	640.00	640.00	.....
NW. ¼ of NW. ¼, S. ½ of NW. ¼, SW. ¼, and W. ½ of SE. ¼	35	13	27	360.00	340.00	20.00
Total	.....	.....	.....	8,749.22	8,016.34	732.88

SUMMARY.

First and second class lands..	8,016.34 acres, at $10, equals	$80,163.40
Third class lands	732.88 acres, at $1, equals	732.88
Total	8,749.22 acres	80,896.28
Interest on purchase price from May 1, 1908, to June 30, 1909, at 6 per cent		5,662.74
Taxes on land for the year 1908		310.80
Total consideration		86,869.82

Benton County, Wash. 8,749.22 acres.
Amount $86,869.82.

Payable as per contract.			Payments received.			
Dates.	Principal.	Interest.	Dates.	Principal.	Interest.	Paid to—
June 18, 1909	$14,478.30	.....	June 18, 1909	$14,478.30	.....	.....
1910	14,478.31	$4,343.49	July 13, 1910	.....	$4,669.25	July 15, 1910
1911	14,478.31	3,474.79	Oct. 24, 1910	14,478.31	234.08	Do.
1912	14,478.30	2,606 09	June 17, 1911	14,478.31	3,214.19	June 18, 1911
1913	14,478.30	1,737.40				
1914	14,478.30	868.70				
Total	86,869.82	.....	Total received.	.....	.....	

Correct.
This contract not yet paid in full.

G. H. PLUMMER, *Western Land Agent.*

NORTHERN PACIFIC RAILWAY CO.—LAND DEPARTMENT, WESTERN DISTRICT.

Memorandum of sale, Washington division.

Contract No. 6769. Dated June 22, 1906.

Purchaser, Hanford Irrigation & Power Co.

Residence, Seattle, State of Washington.

Description.	Sec.	T.	R.	First class; good land, all irrigable.	Second class; inferior land, but irrigable.	Third class; non-irrigable.	Total acreage.
Lots 2, 3, 4, NE. ¼ NW. ¼	11	13	23	.....	.....	122.55	122.55
Lots 2, 3, 4, 5, and S. ½	11	13	24	60.00	332.00	.....	392.00
N. ½ and NE. ¼ SE. ¼	13	13	24	.....	270.00	90.00	360.00
N. ½ N. ½	15	13	24	.....	80.00	80.00	160.00
Lots 6, 7, 8, 9, S. ½ of SE. ¼	1	13	25	.....	.....	253.35	253.35
Lots 6, 7, 8, 9, S. ½ of SW. ¼	3	13	25	.....	248.10	.....	248.10
Lots 2, 3, 4, 5, E. ½ of SW. ¼, SW. ¼ SW. ¼ and SE. ¼	5	13	25	.....	406.00	.....	406.00
All fractional	7	13	25	.....	620.05	.....	620.05
All	9	13	25	.....	440.00	200.00	640.00
All	11	13	25	80.00	490.00	70.00	640.00
N. ½	15	13	25	.....	185.00	135.00	320.00
N. ½ and N. ½ of S. ½	17	13	25	.....	320.00	160.00	480.00
Lots 1, 2, 3, 4, S. ½ of N. ½, NE. ¼ SW. ¼ and SE. ¼	1	13	26	363.20	75.00	85.00	523.20
Lots 2, 3, and 4	3	13	26	5.00	15.00	104.62	124.62
Lots 1, 2, 3, 4, SW. ¼ of NE. ¼ and S. ½ NW. ¼	5	13	26	.....	141.84	143.38	285.22
Lot 1	7	13	26	.....	.....	38.88	38.88
All	13	13	26	80.00	355.00	205.00	640.00
Lots 4 and 5	21	14	26	.....	.....	59.00	59.00
All	27	14	26	200.00	160.00	280.00	640.00
Lot 7	29	14	26	.....	.....	12.00	12.00
Lot 9	31	14	26	.....	.....	18.20	18.20
All	33	14	26	.....	240.00	400.00	640.00
That which, when surveyed, will be described as NW. ¼ and NW. ¼ SW. ¼	1	12	27	.....	105.00	95.00	200.00
Lots 3, 7, and SW. ¼ SW. ¼	3	13	27	104.90	.....	.....	104.90
All fractional	5	13	27	607.58	40.00	.....	647.58
All fractional	7	13	27	200.00	446.02	.....	646.02
All	17	13	27	380.00	260.00	.....	640.00
N. ½ NE. ¼, SE. ¼ NE. ¼, lot 1, NE. ¼ NW. ¼	19	13	27	.....	.....	201.58	201.58
N. ½, N. ½ SW. ¼ and SE. ¼	21	13	27	80.00	375.00	105.00	560.00
N. ½, N. ½ SE. ¼	27	13	27	80.00	172.00	148.00	400.00
NE. ¼, NE. ¼ NW. ¼, E. ½ SE. ¼	35	13	27	.....	190.00	90.00	280.00
All fractional	5	12	28	86.95	367.00	90.00	543.95
Lots 2, 3, 5, 6, 7, W. ½ NW. ¼, SW. ¼	9	12	28	.....	146.00	209.25	355.25
Lots 1, 2, 3, 4, 5, 6, 7, SE. ¼ NW. ¼, E. ½ SW. ¼, W. ½ of SE. ¼ and SE. ¼ SE. ¼	31	13	28	487.60	.....	.....	487.60
Total	.....	.....	.....	2,815.23	6,479.01	3,395.81	12,690.05

RECAPITULATION.

First and second class lands	9,294.24	acres, at $10	$92,942.40
Third class lands	3,395.81	acres at $1	3,395.81
Total	12,690.05		96,338.21

Yakima and Benton Counties, Wash. 3,395.81 acres, at $1; 9,294.24 acres, at $10.

Amount, $96,338.21.

Payable as per contract.			Payments received.			
Dates.	Principal.	Interest.	Dates.	Principal.	Interest.	Paid to—
June 22, 1906	$16,063.04	.....	June 22, 1906	$16,063.04	.....	.....
1907	16,055.04	$4,816.51	June 29, 1907	16,055.04	$4,816.51	June 22, 1907
1908	16,055.04	3,853.21	Oct. 23, 1908	.....	3,853.21	June 22, 1908
1909	16,055.03	2,889.91	Nov. 19, 1908	16,055.04	393.35	Do.
1910	16,055.03	1,926.60	Dec. 22, 1908	14,543.08	378.12	Do.
1911	16,055.03	963.30	June 18, 1909	16,055.03	2,006.62	June 22, 1909
			July 13, 1910	.....	1,121.35	July 15, 1910
			Oct. 24, 1910	8,783.49	142.00	Do.
			Dec. 15, 1910	975.60	24.40	Do.
			June 22, 1911	7,807.89	438.56	June 22, 1911
Total	96,338.21	.....	Total received	96,338.21	.....	

Correct.

G. H. PLUMMER, *Western Land Agent.*

Mr. HUGHES. Might I ask just a question or two which I think will be important? Have you testified to everything which you recall or know of involving any communications or negotiations for the disposition of this land for this irrigation project?

A. I have, sir, everything that I can recall. Yes, sir; everything that I can recall in connection with the transaction. As a matter of fact, our files are very complete.

Q. Was there anything in those dealings, in the prices fixed or the terms or conditions, different from those made by your company in other similar projects?—A. No, sir.

Q. Was there any consideration paid to these negotiations or to the terms or conditions or prices because Judge Hanford was connected with them?—A. No, sir; none whatever. We would have made an exactly similar deal with anybody—any responsible person or company that was willing to undertake the construction of that ditch and power plant.

Q. What, in brief, has been the policy of your road respecting arid lands that it owned in the large arid districts of the West?—A. The policy has been to encourage any feasible project. We have had submitted to us a good many plans for the irrigation of lands that we have refused to consider, because after investigating them we have considered that they were not practicable, either from a physical or a financial standpoint. Such schemes we have refused to lend our encouragement to by granting an option on the land. We have refused to do that, but it has been our policy wherever a practicable scheme was submitted to us by people of responsible means and with the understanding of irrigation to encourage them by either granting an option on all lands or selling them to them outright.

Q. Why was that policy adopted?—A. We are a railroad company; we are in the business of transporting freight and passengers, and the settlement and development of the country is one of the most essential things to the success of our business.

Q. In other words, your purpose was to promote the settlement and development of the country?—A. Yes, sir; that is so, and it always has been.

Q. And those arid lands, in the main, were of little, if any, value unless they were irrigated?—A. Yes; they were absolutely unproductive, and for a very large area there was no development of the lands; there was not a settler in that district, and we were anxious to see the district developed.

Q. How much land does your company have of this general character in eastern Washington? I speak of arid lands.—A. I do not know the exact figures, but it must be in the neighborhood of 1,000,000 acres.

Mr. HUGHES. I think that is all.

Mr. HIGGINS. Mr. Plummer, you stated, in answer to Mr. Hughes, that the policy of your railroad was to develop those lands, if I caught it?

Mr. HUGHES. To encourage development.

Mr. HIGGINS. To encourage the development of the lands?

A. Yes.

Q. Who determined upon that policy?—A. That is pretty hard to say, but the enforcement of the policy has been in the hands of Mr.

Elliott and Mr. Cooper, our land commissioners, and through Mr. Cooper——

Q. And the board of directors?—A. And the board of directors; yes, sir.

Q. To determine the general policy of the railroad?—A. Yes, sir.

Q. You do not determine the general policy of the railroad?—A. No, sir.

Q. With reference to the development of arid lands?—A. No, sir.

Q. You do not understand that Mr. Cooper does, do you?—A. Why, not officially; no, sir. I think the questions of policy are discussed and determined largely by Mr. Elliott, and with reference to the development and disposition of the lands of the company largely with Mr. Cooper—Mr. Cooper and Mr. Elliott together.

Q. But as to the broad, comprehensive scope, having in mind the development and settlement of these arid lands, on a matter of that kind, of interest manifestly to the railroad company, that is controlled, in ordinary administration, by the board of directors, is it not?—A. I think the general rule is, the general policy is probably laid down by the board of directors.

Q. And of course that accounts for the reference in the letters which you have read to the fact that this contract was submitted to the board of directors, or the executive committee, and to the president of the railroad?—A. Yes, sir.

Q. How much or what information do you furnish a prospective buyer of your lands?—A. It is not customary to furnish them much information. We expect, in order to prevent any misunderstanding, that purchasers of our lands shall satisfy themselves as to the character of the lands and their value. We do not try to induce sales by making any representations as to the quality, character, or condition of our lands.

Q. That is to say, you tell the prospective purchasers, "There are the lands," and they can have them at such a price?—A. Yes, sir.

Q. Is that your usual and ordinary policy?—A. That is the policy that we follow, and it prevents a good deal of misunderstanding between purchasers and the company.

Q. The fact remains, Mr. Plummer, and if it is not a fact I wish now that you would correct it, that from the correspondence which you read this morning, and which embraces substantially all of your correspondence on this second transaction—the fact remains that that was with Mr. E. G. Hanford—you knew that he was the son of C. H. Hanford?—A. Yes, sir.

Q. And with C. H. Hanford—now, I think you stated this morning that those were the only persons that you recollect you had any talk with at all; that is, any of the persons connected with the Hanford Irrigation & Power Co. that you had any talk with at all with reference to this second transaction?—A. I think that is correct, Mr. Higgins, up to the time of entering into the contract. After that time I had correspondence and I think with some talks about the payments and the terms of the contract with Mr. Walthew and possibly with Hayesn, although I am not sure about that.

Q. Your duties in a transaction involving the question of as large an acreage as this are to report to your superiors, are they not?—A. Yes.

Q. The matter of the terms and conditions and the classification and circumstances that happened to be determined before the contract was made rests with others connected with the Northern Pacific Railroad?—A. No, sir; hardly that. The acceptance and final approval of the terms rests with the higher officials, but it is my duty to size up the situation and work out the plan and recommend the terms and conditions, and those are either approved or modified.

Q. Are those usually approved by the board of directors or the executive committee?—A. No, sir; not always. They are usually; yes, I can answer your question yes.

Q. A development by the Government of the North Yakima project, as contemplated by the Reclamation Service, would have put under irrigation a much larger acreage than the Hanford Irrigation & Power Co. ever contemplated, wouldn't it?—A. Yes, sir. The plan that the Government had under investigation at the time was a scheme for the irrigation by gravity of about 125,000 acres, and recently our company has, at its own expense, made quite an exhaustive investigation of that same scheme—I have just received a copy of our engineer's report. The project contemplates the diversion of the water from the Yakima River at about Prosser, and bringing it as I say by gravity around the foot of the easterly end of Rattlesnake Hills to a point above the Hanford land. The Hanford lands, however, lie at the far extreme end of the ditch. That was known at the time of this application that came from the Hanford Irrigation & Power Co., but as I suggested in some of my letters—perhaps you will notice them—that as the lands were at the far end of the canal, and in view of the fact that the supply of water for irrigation from the Yakima River was very limited, that notwithstanding the fact that the Hanford project was a pumping scheme, that I felt that the most feasible and practicable way of irrigating those lands was from the Columbia River under this scheme that Judge Hanford had proposed.

Q. Although that was not the plan which the Government engineers at first developed?—A. No, sir.

Q. Why did they change their plan—do you know?—A. No, sir; I don't know, but I think that it was on account of the fact that the water supply from the Yakima River was limited and had been appropriated and they had not yet worked out a complete system of storage reservoirs, which has not been worked out by the way, and the policy adopted by the Government for the creation of very large storage reservoirs at the headwaters of the Yakima River, which will supply very much more water than was expected would be available at the time this project was under consideration.

Q. And it would also irrigate lands adjoining the Hanford project?—A. Yes, sir; it is expected now that water will be available for the lands adjoining and above this Hanford project.

Q. Will that project, as now determined upon by the Government, irrigate these very same Hanford lands, which the railroad sold?—A. It is possible; yes, sir.

Mr. Hughes. I think by the last question and answer that an erroneous impression may be conveyed—do you mean to testify that the Government has determined upon this project of the Benton County canal?

A. No, sir. The Government has determined not to take up that project. As I stated in my answers when I commenced to speak about this project, that they had determined not to do it, and our company took it up and we have just made ourselves an exhaustive investigation of that project, the idea being that if the time should come that any responsible parties wanted to take up an irrigation scheme, we will have all the information ready to show to them so that they will be saved that expense.

Mr. HIGGINS. That is to say, that your company has now finished all plans and determined upon a definite irrigation scheme which will irrigate a very large acreage of this land, including the lands which the Northern Pacific Railway Co. sold to the Hanford Irrigation & Power Co.?

A. No, sir; that is hardly correct, Mr. Higgins.

Q. Well, that is the way I understand your testimony. If it is not so, I want you to correct it.—A. No, sir. The railway company has completed only a preliminary investigation of the project to irrigate 125,000 acres of land lying adjacent to and above—some of it above—the lands of the Hanford Irrigation & Power Co.; but these lands are at the far end of the canal.

By Mr. HUGHES. You mean by above—at a higher level?

A. At a higher level.

Mr. HIGGINS. Has either the Government or the Northern Pacific Railway Co. determined upon a scheme of irrigation which would irrigate the Hanford lands?

A. No, sir; we have left these out of consideration entirely.

Q. Oh, but would your scheme irrigate them?—A. It could; yes, sir; but it is a question whether under that scheme they can be irrigated as a unit of the whole project—it is still a question whether they could be irrigated as cheaply as they can from the Hanford project.

Q. Apart entirely from the cheapness and apart entirely from what, as a matter of fact, your company is going to do, is the scheme which is completed such that it would put water on the Hanford lands?—A. No, sir; it is not contemplated to do so at all.

Q. I understand that; but I say, is it possible or feasible to do so?—A. Physically, yes; any canal lying above the Hanford canal, if there is a gravity flow from the upper canal, would irrigate those lands.

Q. And it is planned to irrigate lands that adjoin them?—A. It is. Under the scheme as surveyed it is possible to do so. There is no plan to do it. All that we have done is to investigate that system; that is all. We have no idea of doing it ourselves, nor have we anybody in mind that is ready to construct it.

Q. Who made those plans?—A. The survey was made by W. I. King, of Portland.

Q. Portland, Oreg.?—A. Yes, sir.

Q. He was the chief engineer?—A. He was the chief engineer.

Mr. HUGHES. This is getting into a broad field, and it is apparent to me that it would require considerable explanation of this witness to make the whole situation clear. Now, I will ask one or two questions, however.

As a matter of fact, there is not now nor is there any prospect of there being for many years to come any water which would be available for such a ditch as would be contemplated in the survey of which you have last spoken—any unappropriated water?

A. There is not water available now, and I do not know when water will be available for it.

Q. Do you know to what extent the present reservoirs contemplated, and in which something has been done by the Government for which money is available, are already taken up by the new ditch in the Kittitas Valley and the other irrigation projects farther up the Yakima Valley?—A. Yes, sir; I think that is true, yes, sir, that they have only provided storage water—although I am not sure about this. I have not the land figures as to the storage capacity of the reservoirs; but my understanding is that they have only provided storage enough for the ditches that are already completed or that are at such a point that they are about ready to make an agreement with the Government for the storage of water, such as that Kittitas project.

Mr. HIGGINS. I think that we might save time if you will let me make a statement as to my understanding of this witness's testimony. As I understand, he testified that either the Northern Pacific Railway Co. or the Government, perhaps both, have either a plant now completed or have completed plans and a completed scheme of irrigation which could irrigate the Hanford lands, and they propose to irrigate sometime in the future lands adjoining the Hanford lands. That is his testimony as I have got it.

Mr. HUGHES. I do not so understand it, and I do not so understand the facts at all.

Mr. HIGGINS. Well, I am taking his testimony. Am I correct?

The WITNESS. No, sir; not exactly. What I intended to state to the committee was simply this, and it was having in mind that feature about encouragement of irrigation schemes—that our company had undertaken at its own expense to determine whether or not it was a feasible project for lands lying above and back of the Hanford lands.

Q. And they have determined upon such a——A. (Continuing.) Now they have determined that there is a feasible project there, so far as the feasible nature of it is concerned. Now, that did not determine the feasibility of a project. If the expense of irrigating the particular unit of that system is more than the lands will stand, it then takes it out of the feasible class.

Mr. HIGGINS. I am utterly unable to differentiate between his statement and mine.

Mr. HUGHES. You would if you understood the problem as it exists over there; you would see how entirely erroneous your conclusion is. Let me ask a couple of questions.

The CHAIRMAN. Certainly, Mr. Hughes, I think you have a right to go into this matter with the witness.

Mr. HUGHES. As a matter of fact the surveys which you have made, which you say are not for the purpose of being carried out by your company but merely for the purpose of having the information, demonstrate that it is physically possible to take out water from the Yakima River and carry it around at the proper elevation along the foothills of the Rattlesnake Mountains northward to a

point where it would irrigate lands lying at a higher elevation than the Hanford lands—that is what you testified?

A. That is it; yes, sir.

Q. Now, is it a fact that if such a project were to be undertaken, there is now or in prospect the possibility of water to irrigate the lands which would be below that ditch?—A. No, sir; there is no water available for those lands from the Yakima River. That is the point exactly.

Q. And is not the problem of the sufficiency of water the great one which the Government engineers have been studying and the one which involves the question of the cost and advisability of irrigating other lands which lie in the valleys of the Yakima River?—A. Yes, sir. Now, you might locate—an engineer could locate an intake on the river and he could survey a canal which would run along on the contour line, and it would be physically possible to construct that canal, but that is a long way from having an irrigation ditch, because there is still another question and that is the question of the water supply. If you have not got any water to run in that ditch, you have not got any irrigation project.

Q. Now, the fact is that, with the cooperation of the Government, it withdrew those lands from its arrangement with you because of the desirability of taking water out of the Columbia River to irrigate a portion of those lands on account of the paucity of water in the Yakima River?—A. That was just the consideration.

Mr. Higgins. How do you know that?

A. Because they said so. It is so stated in the correspondence, I think, that the Reclamation Service found that this land, that the Hanford Irrigation & Power Co. proposed to irrigate was at the far end of this system, and they concluded that the most practicable and quickest way to irrigate those lands around Hanford was by pumping from the Columbia River, and therefore they released it.

Mr. Higgins. If you can find any letters in your files that will bear you out on that, I wish you would furnish them to us.

Mr. Hughes. I think you will be very easily able to get all that from the Irrigation Department of the Government.

Mr. Higgins. I think the best way to get all this information is from the Reclamation Service and from the engineer he referred to—he is not an engineer, and it is necessarily hearsay.

Mr. Hughes. Have you had any estimates of what it will cost per acre to irrigate lands, assuming that water were available, under this scheme which you have spoken of, of carrying a ditch around the foothills of the Rattlesnake Mountains?

A. No, sir; I just got that report a few days ago and I haven't had a chance to make any deductions or figure out the cost of actually placing the water on the lands.

Mr. Higgins. Is that report in such shape that you can send a copy of it to the committee?

A. I think so. I would like to get Mr. Cooper's consent to do that. I have no doubt but that he will be very glad to furnish a copy of the report to the committee.

Mr. McCoy. You might as well furnish it to us, as we could subpœna Mr. Cooper.

Mr. HUGHES. You can fully advise yourselves on all these questions from the Reclamation Service.

Mr. MCCOY. Mr. Plummer, I live in a State where we have plenty of water and I do not know anything about irrigation, and I want to find out one or two things—is the problem in a country which needs irrigation to be productive, a problem which has existed before?—A. Yes, sir.

Q. And the storage of that water is the prime element in the whole situation?—A. Yes, sir.

Q. Is it also a fact that large quantities of water annually run to waste?—A. Yes, sir.

Q. Millions and millions of gallons, is it not?—A. Yes, sir; if it is in the State, of course.

Q. Well, anywhere—there are millions and millions of gallons of water running to waste, going down the Mississippi River, and overflowing all the lowlands down there?—A. Yes, sir.

Q. Now, does the Government have any scheme to store any of that water at the headwaters of those rivers?—A. They have at the headwaters of the Yakima River.

Q. I mean, that is a well-recognized scheme?—Yes, sir.

Q. There is nothing novel about it, anyway—in fact, they had it in Egypt and built an enormous dam there?—A. Yes, sir.

Q. Now, is it not a fact that if the Government had been left alone to work out that project, it could eventually, although there had been some considerable delay, they could have worked out a storage scheme which would have irrigated nearly all of these lands?—A. No, sir; I do not think so, for these reasons: That it was determined some years ago that when all of the possible storage at the headwaters of the Yakima River were taken care of, and that includes all of the flood waters of the winter season—in other words, if all the water from the snow that falls on the upper Yakima watershed were impounded that there would then be only enough water to irrigate the lands within the Yakima watershed.

Q. How many thousands of acres?—A. I can not say that, but it was in the neighborhood of 500,000 or 600,000 acres.

Q. And that would include these particular lands of the Hanford Irrigation & Power Co.?—A. No, sir. This land of the Hanford Irrigation & Power Co. is in the Columbia watershed.

Q. Well, let us take it on the Columbia River watershed. Could any storage project furnish water which would reach the Hanford lands and the lands which you say now you have mapped out a sort of scheme of your own for?—A. You mean storage on the Columbia River?

Q. I don't know anything about the geography—storage anywhere.—A. Well, there are only two sources of supply for this land. One of them is the Yakima and the other is the Columbia River. I have already explained that it was thought at that time——

Q. How long ago was that?—A. Five or six years ago when this matter of the development of the Hanford project came up—that there was not sufficient water available from the Yakima River to irrigate these lands. Then the only other source that was available was the Columbia River.

Q. Well, was it estimated that between the two rivers there would be sufficient water to irrigate the land?—A. Yes, sir; of course, in

the Columbia River there is water enough for all the lands tributary to that stream and a lot besides.

Q. Then, the fact was that they could store water from the Columbia River?—A. It is not necessary to store water from the Columbia River.

Q. They could take it by flowage?—A. There is plenty of water in the natural flow of the river to irrigate all the lands, and that is what this company did.

Mr. HUGHES. What they do not understand probably is that it could not be taken by gravity out of the Columbia River on account of the height of the banks?

The WITNESS. No, sir.

Mr. HUGHES. On account of the height of the banks of the Columbia River?

A. The Columbia River runs in a canyon almost its entire length, and it was not practicable to take it out in a gravity ditch.

Mr. MCCOY. Of course, when I referred to this going into the Mississippi River, I was mistaken; it goes the other way; it runs this way.

The CHAIRMAN. Well, the Columbia River does overflow quite a good deal?

A. Yes, sir.

Q. You have testified to a number of acres or to a large tract of submerged land that was valueless because of the overflow on the banks of the Columbia River?—A. Yes, sir.

Q. Have you any knowledge as to the formation of the ground toward the source of the river, or whether it would be feasible to impound that excess of water at a reasonable cost?—A. There are a number of large lakes. For instance, one is Pend d'Oreille, Cœur d'Alene Lake, and others that would serve as storage reservoirs, but there is no storage necessary on the Columbia River, because the natural flow of the river is sufficient to irrigate all the lands along its banks.

Q. All the irrigable lands within reach of it?—A. Yes, sir.

Witness excused.

J. F. LANE, being first duly sworn, testified as follows:

Mr. MCCOY. State your name to the committee.

A. J. F. Lane.

Q. Where do you live—Seattle?—A. Yes, sir.

Q. And what is your occupation?—A. Cashier of the Scandinavian-American Bank.

Q. You were served with a subpœna to produce a certain note. Did you make search for that note?—A. I did; yes, sir. However, I will say I only had about 10 minutes from the time the subpœna was served on me until I was to appear in court.

Q. Did you ever hear of such a note?—A. No, sir. Pardon me, we have to-day a note of Mr. Hopkins and a mortgage, but nothing on old records, which your subpœna appears to call for.

Mr. MCCOY. I am sorry to trouble you, Mr. Lane, but I wish you would take the time. If the chairman approves of it, you will be excused to make the search.

The WITNESS. I did this. We have a record in our bank showing the liability of all borrowers back for seven or eight years. I re-

ferred to those cards, and I found no card in which Mr. Hopkins and Mr. Hanford had had any dealings with the bank. I have been chief cashier of the bank during that time, and I do not know Mr. Hopkins personally. I may have seen him.

Q. How long have you been cashier?—A. I have been cashier of the bank for 12 years, but this record goes back 8 years, and we have no record of Mr. Hopkins and Mr. Hanford having made any note to the bank except real-estate mortgage, which is still in existence and which was made about 2 years ago.

Q. Have you any papers of any kind in the bank which bear Judge Hanford's name in any way?—A. No, sir.

Q. I wish you would make a search—a complete search—Mr. Lane, and go back about as far as 1900 and see if you can find any record. Do your records show—does your notebook or your note ledger show the indorsement on notes that are discounted by your bank?—A. Yes, sir.

Q. Is your bank—do you know whether your bank has contributed anything toward the expense of Judge Hanford in conducting this investigation?—A. No, sir.

Mr. McCoy. That is all, if you will just make that search.

The Witness. When do you want me to appear before the committee?

The Chairman. Monday.

Witness excused.

Juliet Adams Shumaker, being first duly sworn, testified as follows:

Mr. McCoy. State your full name, please.

A. Juliet Adams Shumaker.

Q. You are a stenographer?—A. I am.

Q. How long have you been a stenographer?—A. About 20 years.

Q. Where are you now employed?—A. The firm of Kerr & McCord.

Q. How long have you been employed with them?—A. Seven years this month.

Q. Continuously?—A. Yes, sir.

Q. The subpœna that was served on you called upon you to produce certain notebooks of dictation that you used in their employment, covering the months of April and May, 1912. Have you produced those books?—A. I have.

Q. Have you there the book of about May 14, 1912?—A. From May 13 to May 20. Yes, sir; I have it from May 13 to May 20, or May 12 to May 20.

Q. From May 12 to May 20?—A. Yes, sir.

Q. Did you ever see that paper before [handing paper to witness]?—A. No, sir; I do not recognize that paper. It is not my typewriting.

Q. The paper bears date the 14th day of May, 1912?—A. Yes, sir.

Q. I wish you would look in your book from May 12, we will say, to May 15.

Witness examines notebooks.

A. No, sir; I have not got anything of the kind.

Q. You have gone through those three or four days?—A. Yes, sir.

Q. And what was it you were looking for?—A. I was looking for the order which you showed me.

Q. Did you use more than one sort of book for your minutes?—A. I did not.

Q. Did you have more than one book at the time; that is, covering a given period?—A. No.

Q. Are those books which you have with you all the books that you brought with you this morning?—A. Yes, sir.

Q. You are sure of that?—A. I am certain.

Q. What became of the book which you took out of that bundle which you had with you on the back seat there and which you put under you and sat down on for a part of the time?—A. I thought that was one that you did not require, and I went away and forgot it, and Mr. McCord handed it to me later. I have it here.

Q. Does that book cover this period?—A. No, sir.

Q. You are sure of that?—A. It is much earlier. It was an April book. I can give you the date. From April 6 to April 23. I thought you did not require that, and I had taken it out and was looking at something else, and I forgot it.

Q. Why did you think we didn't require it?—A. I had an idea—my subpœna called for books for May and June and I brought one of April by mistake.

Q. Have you brought all your April books now?—A. Every one.

Q. When did you bring those?—A. I brought all those—I brought them all this morning.

Q. Did you bring some April books this morning?—A. I brought an April book this morning.

Q. Why did you think we didn't want that?—A. It was a mistake, my bringing it.

Q. Why did you think we didn't want it? Why do you say it was a mistake?—A. Because I thought you wanted the May and June books.

Q. But you brought some April books with you?—A. I brought another April book with me this morning—I gathered them up very hastily this morning and I was mistaken in what I brought, that is all.

Q. And you are sure you never saw that paper before to-day?—A. No, sir; I never saw that paper—I know my typewriting when I see it.

Q. Does it look like the typewriting of anybody in your office?—A. It is not mine.

Q. Is it the typewriting of anybody in your office?—A. Well, it may be.

Q. You say it may be; can you tell whether it is or not?—A. Why, no.

Q. You do not recognize it?—A. I know my own typewriting.

Q. You do not recognize this as having been done on any machine in your office?—A. No, sir; I can not recognize it positively as such.

Q. Do you have more than one typewriter in the office?—A. Yes, sir.

Q. How many typewriters do you use there?—A. Four; the employees of the office, however, only use three.

Q. Have you ever had any occasion to compare with the others who use the typewriting machines there the work that they have done,

for the sake of accuracy, to see whether it is correct or not?—A. We read back to each other; yes, sir.

Q. Having that in mind, are you sure you do not recognize this?—A. I could not absolutely recognize it; no, sir. I never had it in my hand before to my knowledge; neither have I seen it before.

Q. Well, can you see anything about it which would enable you to say whether or not it was made on any machine in your office?—A. No. The work of the machines looks very much alike.

Q. You are positive that you did not make the notes from which that order was typewritten?—A. I know that I did not. I never make dashes on each side of the numbers of my paragraphs, for one thing; I invariably use the capital I, and there you will notice the small l is used. I never use the small l for the Roman "1." I page my work at the bottom invariably, and I always put brackets around my heading. That is not my work.

The CHAIRMAN. Can you give us your best judgment as to whether it was done in your office by anybody—do you wish to look at it further [handing document to witness]?

A. Well, I have no way of identifying it further than to say that we frequently use covers of that color; that is about the only thing I could tell you, and there are a great many of those in use.

Q. What are the names of the others who take dictation and do typewriting in the office of Kerr & McCord?—A. Mrs. Harrah.

Q. What is her full name?—A. Margaret E. Harrah.

Mr. McCOY. Who else?

A. There is the telephone girl, who does work for the clerks, but not for the firm.

Q. And what is her name?—A. Mary Habernal.

Q. And the other one?—A. Margaret Harrah.

Q. And you three are the only ones?—A. We three are the only ones.

The CHAIRMAN. Three altogether?

A. Three altogether. Mrs. Harrah is Mr. Kerr's sister and does his work almost exclusively, and I do Mr. McCord's work almost exclusively.

Witness excused.

WALTER S. FULTON, being first duly sworn, testified as follows:

Mr. McCOY. State your full name, please.

A. Walter S. Fulton.

Q. You are an attorney, practicing in Seattle?—A. Yes, sir.

Q. Were you one of the solicitors for the complainants in the action in the United States District Court for the Western District of Washington, Northern Division, entitled "William R. Sterling et al., complainants, *v.* The Seattle, Renton & Southern Railway, de-defendants"?—A. Yes, sir.

Q. I show you what seems to be an order or injunction, or, rather, an order appointing receivers in that matter, and I will ask you when and where you first saw that [handing document to witness]?—A. The first time I saw it was when it was presented to Judge Hanford in open court.

Q. And who presented it?—A. It was handed to me, as I recall, by Mr. Little, and I handed it to the clerk, who handed it to the judge.

Q. And Mr. Little is who?—A. Mr. Little represents Peabody, Houghtling & Co.—their Chicago representative.

Q. Is Mr. Little an attorney?—A. Yes, sir.

Q. I show you the bill of complaint in the same action, and I will ask you when you saw that [showing document to witness]?—A. I first saw this when Mr. Little handed it to me.

Q. And where? In court?—A. As I recall it, Mr. Little came to my office, was introduced to me by Mr. McCord, and this complaint was prepared, and I was then associated with him as attorney.

Q. You mean it was prepared in your office when Mr. Little and Mr. McCord were there?—A. No, sir; Mr. Little had the complaint when he came to me.

Q. And you signed it as one of the solicitors for the complainants?—A. Yes, sir.

Q. Was that the first time that you had heard anything about the proposition to bring this action?—A. Yes, sir.

Q. Never heard of it before?—A. No; I never did.

Q. Had you ever been asked by anybody whether there was anything in your professional associations with any of the parties in interest which would prevent you from properly representing the plaintiffs?—A. As I recall, Mr. Little asked me that question—whether I was associated with the Renton Railway Co. in any way, or connected with them.

Q. The usual sort of question that might be asked of any attorney?—A. Yes, sir. He asked, I think, if I had any actions pending against them at that time.

Q. And that was at the time the bill of complaint was produced?—A. Yes, sir.

Q. And Mr. McCord was present at the time, was he?—A. Yes.

Q. Now, you have already stated that you saw the order appointing the receiver for the first time in court?—A. Yes, sir.

Q. When it was handed to the court?—A. Yes, sir.

Q. And that Mr. Little produced it?—A. Yes, sir; that is my recollection. It was handed to me in open court.

Q. And when it was handed to you there were two blank places in it, in which were subsequently inserted the names of the two receivers?—A. Yes, sir.

Q. Who was the court—who was presiding in court when the order was presented?—A. Judge Hanford was on the bench; and when he went up on the bench he asked if there were any ex parte matters—the usual notification—and I arose and presented this matter, asking for the appointment of receivers, stating the substance of this complaint very briefly.

Q. What did Judge Hanford say?—A. He indicated that he desired to see the complaint, and I handed it to the clerk, who handed it to the judge. The judge then examined the complaint quite at length—some little time—and then announced that he would appoint the receivers.

Q. Did he ask for suggestions as to the names or the name?—A. The judge said, as I recall it, the judge said "I will appoint; upon this showing I will appoint or grant the application." He said "I will appoint two receivers." He said "I would prefer to appoint one who has had some practical experience, who is an experienced man who would be able to operate the road and direct its

affairs, and I will. Are there any suggestions as to such a person?" Mr. McCord then suggested the name of a Mr. Mills. Judge Hanford announced then that he would appoint Mr. Mills as one of the receivers, and would take under consideration as to who he should appoint for the second, and then left the bench after he had been handed the order.

Q. Well, you then, Mr. McCord and you, then left the court room?—A. Mr. Little and I and Mr. McCord. I don't know that he went out with us, but Mr. Little and I then went to the clerk's office, and I filed the papers, together with a precipe for the appearance of Mr. Little and myself.

Q. That is, you filed the complaint?—A. Yes, sir.

Q. Of course, not the order, because that had not been signed?—A. Judge Hanford had that.

Q. Did Judge Hanford confer with you about the appointment of the other receiver?—A. I never spoke to Judge Hanford about it in my life, outside of the statements I made to him in open court.

Q. Did Mr. Little confer with him?—A. With Judge Hanford?

Q. Yes.—A. Not that I know of.

Q. Did Mr. McCord confer with him?—A. Not that I know of.

Q. Do you know whether—did you go to Judge Hanford's chambers in regard to the matter?—A. No, sir; I went right to the clerk's office.

Q. At any time, I mean?—A. No, sir; at no time.

Q. Did Mr. Little go in there?—A. Not that I know of.

Q. About that time?—A. No, sir.

Q. Did Mr. McCord go there?—A. Not that I know of.

Q. Now, who was E. M. Mills?—A. Mr. Mills. I didn't know Mr. Mills at the time. I only came to know him since. At that time he was the president of the road—of the Seattle & Renton Railroad. He was out here representing the Peabody Houghtling people.

Q. Is he a practical railroad man?—A. As I understand, he is. I don't know.

Q. Is he a resident of Seattle?—A. He is now; he came here from Chicago, I think.

Q. Do you know how long he had been president; did you say that he was the president?—A. I think he was the president.

Q. When did you first ascertain who had been appointed receivers?—A. Well, Judge Hanford announced from the bench that he would appoint Mr. Mills. Then he retired from the bench, as I stated, and Mr. Little and I then went to the clerk's office, where I made out the precipe for our appearance and where I paid the appearance fee and filed the papers. After I had done that—that took some 5 or 10 minutes, I should judge—the announcement was then made that Judge Hanford had named the second receiver.

Q. Who made that announcement?—A. I don't know who it was.

Q. Where were you when it was made?—A. Right there in the clerk's office.

Q. Was it some clerk made it?—A. I don't know who it was. The statement was made that Judge Hanford was on the bench and had named the second receiver, which was a surprise to me—I did not know he would name him so quickly. So then I went back to the court room, and Mr. McCord, who at that time was in the clerk's

office, also went into the court room; and Mr. McCord said to the court—remarked, "I understand your honor has appointed the second receiver." And Judge Hanford said he had; he had appointed Mr. Colvin.

Q. O. D. Colvin?—A. O. D. Colvin.

Q. And who is Mr. Colvin?—A. Mr. Colvin is a citizen of this community and has been for a great number of years.

Q. What is his business?—A. He is connected with an iron and steel works here.

Q. In what capacity?—A. I think he is one of the officers of the company, one of the principal stockholders in it.

Q. Was he formerly a clerk in Judge Hanford's court, or a stenographer or something of that sort?—A. No, sir; I do not think Mr. Colvin ever was. Mr. Colvin years ago was receiver of the Front Street Cable Railway Co. That was a cable road that we had at that time that was running on First Avenue. It was then called Front Street.

The CHAIRMAN. Are there any further questions of this witness?

Whereupon a short recess was taken.

WALTER S. FULTON resumed the stand.

Mr. McCOY. Mr. Fulton, have you stated now substantially all that was said and done in the court on the day when the order for the receiver in this case was presented to Judge Hanford?

A. Yes, sir.

Q. Did you say anything in support of the application?—A. For the appointment?

Q. Yes.—A. Well, I just simply stated what the complaint charged, that the complaint charged the insolvency of the defendant, and stated briefly the facts upon which that charge of insolvency was based, and stated, as I recall, that the defendant company was represented in court, as it was, by Mr. McCord.

Q. Well, was that day the same day when this thing was presented to you—this complaint was presented to you—in your office?—A. That was the same day; yes, sir.

Q. And did you come right to the courthouse directly from your office, with Mr. Little and Mr. McCord?—A. No. I came up to court about an hour after that. That was about a quarter of nine or 9 o'clock, and I came up to court about five minutes of 10, and met Mr. Little there.

Q. That was by appointment?—A. I told Mr. Little that I would be in court prepared to make the application.

Q. You say Mr. McCord appeared for the defendant?—A. Yes, sir.

Q. Did he say anything in regard to the application for a receiver?—A. Mr. McCord, as I recall, had an answer, and stated to the court that the facts charging insolvency were admitted by this answer, and upon my statement and upon Mr. McCord's statement, the court requesting the papers, I handed the complaint up; Judge Hanford read the complaint, rather carefully as I thought, and announced that he would grant the application.

Q. What information had you about the alleged insolvency of the company when you signed the bill of complaint?—A. I had none save the statements to me of Mr. Little relative to it and the facts contained in the complaint. Of course, I had a general knowledge of

the condition of the company. It has been in litigation here almost continually for some time.

Q. Well, did you know that a temporary receiver had at one time shortly prior to this been appointed by the superior court?—A. Yes; I knew that.

Q. Was that matter discussed at the time you had this bill of complaint before you or——A. (Interrupting.) No; I don't think it was discussed. I knew that a temporary receiver had been appointed, and that upon a hearing upon an order to show cause why the appointment should not be made permanent the court discharged the temporary receiver.

Q. Well, did you know that the action was pending in the State court?—A. Yes; I knew it was pending.

Q. In which the application was denied for a receivership?—A. Yes; I knew it was pending.

Q. Did you or did anybody at that conference between you and Mr. Little and Mr. McCord mention that fact?—A. The fact of the case pending in the superior court? Mr. Little and I discussed that.

Q. What was the nature of your discussion: what was said?—A. That the court having discharged the temporary receiver that the property of the road was no longer in custodia legis, and that the Federal court would have jurisdiction on the application of Peabody, Houghteling & Co., who had not appeared in that action at that time.

Q. Have you ever had any correspondence with the plaintiffs in the action—in this action in the district court?—A. Peabody, Houghteling & Co.?

Q. Yes.—A. Yes, sir; I have had considerable.

Q. Had you had any prior to the application for the receiver?—A. No; I had not.

Q. Do they deal with you as attorney in the matter or do they deal with Mr. Little?—A. They deal with me direct, and all their communications are signed "Peabody, Houghteling & Co."

Q. Do I understand you rightly, that Mr. Little is an attorney in the State of Washington?—A. No, no; he is their—an attorney of Chicago, Ill., and had come out here in behalf of Peabody, Houghteling & Co.

Q. How long prior to the filing of this bill did he come here, do you know?—A. That I don't know.

Q. How long after it did he remain here?—A. He remained here several days after that. He appeared in the State court after that, in the suit that was pending there—that is, he was present in court. I know that he took an active—I don't think he addressed the court in the matter.

Q. Do you remember whether there are any matters in this complaint stated to be alleged on information and belief?—A. I don't recall that, Mr. McCoy.

Mr. McCoy handed paper to witness.

A. (After examining.) They all appear to be positive statements.

Q. Did Mr. Little claim to have positive information?—A. Yes, sir.

Q. What did he say he knew about the insolvency?—A. Well, he simply stated to me that the facts were as they were charged.

Q. Was there any general discussion as to the condition of the business or any of their contracts or mortgages or anything of that kind?—A. No, sir; there was not. The statement was made to me that it was necessary to employ a local attorney to make this application formally to the court; that Kerr & McCord, because of their connection with the railway company, could not represent and would not represent Peabody, Houghteling & Co. in that matter, and that my name with others had been suggested.

The CHAIRMAN. Any further questions with Mr. Fulton?

By Mr. HUGHES:

Q. Who made that report to you—made that statement to you?—A. As to Kerr & McCord?

Q. Yes.—A. Mr. Little did, and Mr. McCord also, when he introduced——

Q. (Interrupting.) When Mr. McCord introduced you, what, if anything, did he say on the subject?—A. Mr. McCord introduced Mr. Little to me as the legal representative of Peabody, Houghteling & Co., from Chicago, and stated that he desired to employ my services in the matter, and that Mr. McCord said that he had recommended me with others—given my name to him, with others; that I had been decided upon.

Q. Did he say anything about——A. (Interrupting.) Then I was asked whether I had any connection with Mr. Crawford or Mr. Calhoun or with the Seattle & Renton Railway Co. that would preclude me from accepting the employment. I said that I had not.

Q. Did Mr. McCord say anything about his connection with the railway company or whether he was at liberty to represent Peabody, Houghteling——A. (Interrupting.) Mr. McCord said that he was not at liberty and could not represent them, or would not; that it was necessary to have a local attorney to be employed other than some one from their office.

Q. Did Mr. McCord remain there after that or return to his own office?—A. Mr. McCord went to his own office.

Mr. HUGHES. That is all.

By Mr. McCOY:

Q. Since the commencement of the action, Mr. Fulton, have you had the sole advice, or have you been the only one who gives advice to the plaintiffs in regard to the matter?—A. Well, there is a Mr. Evans here who is a lawyer and who was sent out from Chicago to locally represent them. I think Mr. Evans is not a man who appears in court. He advises with me, and then I advise direct with Peabody, Houghteling & Co.

Q. Did you ever advise with Kerr & McCord in regard to any of the steps to be taken in the matter since that time?—A. No, sir; I have not. As a matter of fact, there have been no steps taken in this suit that was commenced in the Federal court since the appointment of the receivers. The fight has waged around the suit that Mr. Crawford started in the State court, and that was afterwards removed to the Federal court upon the ground that there was a separable controversy, and I briefed that and argued it before Judge Rudkin, who recently decided it in favor of my contention, handing down a written opinion.

Q. Has there been any amended pleadings filed in the matter since Judge Rudkin's decision?—A. I received a couple of days ago a notice of an application for an order to permit the filing of an amended complaint.

Q. And has that been argued?—A. No; that has not been heard yet. It was to have been heard this morning, but Judge Cushman could not be here.

Q. Have you at any time appeared in Judge Hanford's chambers in this matter when Mr. Crawford was present?—A. Never.

Q. Did you know that——A. (Interrupting.) I don't think I have been in Judge Hanford's chambers for years.

Q. Did you know that he intended to be in Judge Hanford's chambers in regard to some phase of this matter?—A. That Mr. Crawford intended to be?

Q. Yes, sir.—A. No, sir; I did not.

Q. Didn't he give notice to you a few days ago that he would appear in Judge Hanford's court in regard to some phase of this matter? I think it was the application to——A. To amend?

Q. (Continuing.) For leave to file the amendment?—A. Yes; I was served with notice.

Q. Did you appear there?—A. No, sir. I was served with the—I was just leaving town—I was served with notice at 1 o'clock—served with notice that it would be called up at 2 o'clock that day. I telephoned the clerk that I was leaving town and that I could not be there at that time, and requested the clerk to so inform Judge Hanford, that I could be there the day following. The next morning I phoned to Mr. Sachs—Judge Sachs, Mr. Crawford's lawyer—and told him that I had been served with his notice just as I was leaving town, giving me but an hour's notice, and asking him what had been done, and he stated that Judge Hanford had declined to hear the matter, and that it was to be heard by Judge Cushman this morning.

Q. Did Mr. Sachs state to you who were present at the time Judge Hanford declined?—A. He said that Mr. McCord was there and had agreed to the matter being heard by Judge Cushman to-day.

Q. What is the necessity for any hearing on the leave to file an amended pleading?—A. Well, it is Mr. Crawford's contention, made to me this morning, that the serving of notice upon me of their intention to ask for this order was a mere act of courtesy, that no notice was required as a matter of fact, but he gave me notice, nevertheless, as he says, through mere courtesy. I feel, though, that the giving of the notice was entirely proper, and I expect to object to the filing of the complaint.

Q. What are the grounds of the objection?—A. Well, I think he is changing his cause of action.

Q. Well, is he, as a matter of fact, changing it, or simply eliminating one cause of action?—A. Well, in the original complaint he prays for a million dollars damages against Peabody, Houghteling & Co., and by this amendment he seeks to eliminate that and claim the million dollars as damages to the railroad company, and that seems to me a departure from the allegations of the original complaint—a complete departure.

The CHAIRMAN. Anything further with Mr. Fulton?

Mr. HUGHES. Nothing further.

Witness excused.

WILLIAM R. CRAWFORD, having been first duly sworn, testified as follows:

Mr. McCOY. Your full name, Mr. Crawford.

A. William R. Crawford.

Q. You lived in Seattle?—A. I do now; yes; for the last six years.

Q. You are an attorney?—A. Well, I have not taken out any license to practice in this State, but I have been admitted since July, 1889, to practice.

Q. It has been charged, Mr. Crawford, that the suit of Peabody, trustee, against the city of Seattle—is it?—A. City of Seattle and Seattle, Renton & Southern Railway Co.

Q. (Continuing.) And others was a collusive suit. You were president of the railroad company, as I understand it, at the time the suit was brought, weren't you?—A. I was.

Q. State to the committee any facts which bear on the question of collusion in that connection.—A. Well, I can't state any facts bearing on it, because there was no collusion, Mr. McCoy. I could tell the facts of the relationship of the different parties to that litigation.

Q. Well, do that.—A. Did you want a history—a short history of it, or——

Q. Well, as bearing on that point, yes; make it as brief as you can.—A. The railway company had been sued in the State court for the purpose of enforcing the rights, under its ordinance to issue and receive transfers from the Seattle Electric Co., which suit was called the Linhoff suit. It was also sued by a man named Denison, to enforce a 5-cent fare within territory which had become annexed to the city after the acceptance of the franchise by the company. Those two suits were determined against the contentions of the company in the lower court and were appealed to the supreme court. They were afterwards decided by the supreme court in favor of the contention of the lower court and the orders entered in the lower court affirmed The Linhoff case was—the petition for rehearing was denied I think in the first part of August—I haven't looked this up; it is simply from my memory—1911. Almost—well, in a few days thereafter a writ of error to the Supreme Court of the United States was sued out by the railway company and Justice Dunbar fixed a supersedeas bond, which was given by the railway company, and that suit now is pending in the Supreme Court of the United States on a writ of error, with supersedeas granted and bond filed. No action was ever taken in the other case; that is, the 5-cent fare matter—the Denison case. In the early part of the summer of 1911, although still retaining my office as president of the company, I had surrendered practically the control of the company's property and the company's affairs to Peabody, Houghteling & Co. and Peabody—Augustus S. Peabody—trustee of the first trust deed, trustee of a collateral trust agreement of May 1, 1911, under which had been issued $300,000 worth of collateral trust notes, and I was under instructions to report to Kerr & McCord and advise with them in connection with matters arising on the road as representing such interests.

Q. Now, do you mean by that that Mr. Peabody, as trustee, was in possession?—A. I should consider, for all purposes, that Mr. Peabody, trustee, was in possession of the corporate property of this company.

Q. What was the nature of the arrangement you made with him that leads you to that conclusion?—A. Well, the board of trustees under the collateral-trust agreement had resigned, leaving only two representing stockholders on the board of five, and the remaining three had been chosen by Peabody, Houghteling & Co., being Mr. Mills, who was and is now a—not a member of the firm, but an office manager of the company—and James L. Houghteling, jr., a member of the firm, and Mr. E. S. McCord, a member of the first of Kerr & McCord. The question of this transfer then coming up here in August, the matter was taken up by me with Mr. McCord, and, with his advice and consent, the company filed their writ of error and filed their supersedeas bond. After that the people demanded that the judgment of the court should be put into effect and that the company should issue and receive transfers. Then——

Q. (Interrupting.) Well, you haven't stated any facts yet on which you base your conclusion that Mr. Peabody was trustee in possession?—A. Well, as I say, I can't say anything more than that the attorneys for Peabody, Houghteling & Co., and Peabody, trustee, were to have full consultation on everything that the company did, and that the majority of the board of trustees of the company had resigned and other trustees representing those interests had been put in, in charge and control of the corporate affairs of the company.

Q. Well, had the corporation at any meeting of its trustees voted to surrender possession——A. (Interrupting.) No; there was no formal action ever taken by the board of trustees in connection with the matter. As I say, theoretically the company was in possession, but actually they were under the situation as I have described here. But, as I have explained, in August this matter came up and Mayor Dilling asked me if I would not come up to his office and take up this situation. I went up to Mayor Dilling's office then and I explained to Mayor Dilling that I had absolutely nothing whatever to do with any settlement and could make no settlement; that Peabody, Houghteling & Co. were the parties to see and to make the settlement with; and that their representative was out here, Mr. L. L. Sommers, of L. L. Sommers & Co., or that he would be in a few days; and that I would notify him and he could take it up directly with the mayor. Just at this point I will say that on the 15th of August, 1911, or June 24, 1911, at which the directors' meeting was held of the company for the purpose of resigning, three directors resigning and three others being substituted; after that time I was asked to allow a contract to be made, or rather informed that a contract would be made in Chicago for turning over all of the property and the operations of the property to L. L. Sommers & Co., of Chicago, Ill. A draft of that contract was forwarded to me either—I think it was the middle or the latter part of July, and on or about the 15th of August Mr. Sommers, of the firm of L. L. Sommers, arrived here in Seattle, and I handed over the property under their contract to L. L. Sommers & Co. in person, which was on or about the 15th of August, although at that time he didn't desire to come out and actively take it over through a man whom he had brought out with him named Mr. Perine.

Q. What was the arrangement under which the majority of trustees resigned and three others were elected?—A. That was under the

contract in the collateral-trust agreement which was made on the 1st of May, 1911.

Q. What was that agreement?—A. Well, that was an agreement by which the company placed with Peabody, Houghteling & Co. $300,000 of what are called collateral trust notes, bearing 6 per cent interest and due in five years, and is quite a lengthy agreement, and——

Q. (Interrupting.) Well, what was it that would involve the question of resignation of the stockholders—I mean trustees?—A. It provided in there that the trustees—as I recall, that I should be on the board of trustees always, but provided the voting power was lodged in Peabody, trustee, of all the stock of the company, which was put up under the terms of the collateral-trust agreement as security for the repayment or the payment of the interest and the repayment of this loan on maturity.

Q. All the stock, you say?—A. All the stock of the company was put up and new certificates issued in the name of Peabody, trustee, for all the stock of the company outside of five qualifying shares.

Q. Was that agreement reduced to writing?—A. Yes; and is on file in the files of the company.

Q. Signed by whom?—A. It is signed by me as president and also by me as guarantor and by the railway company.

Q. Who owns the stock?—A. I owned all but a small portion of it, and it was signed by the other owner of the stock, Mr. John B. Berryman, of Chicago, Ill.

Q. Was there any agreement—any term in that agreement which called for the disposition of the receipts of the company?—A. Yes; it provided that all the net receipts of the company should be deposited with Peabody, Houghteling & Co. monthly for the purpose of preventing defaults on their securities—on the securities of the company.

Q. After the election of the three new trustees was any action taken by the corporation, as a corporation, looking to the surrender of the physical property to the trustee?—A. None whatever. There was no meeting of the board of trustees after that time, I don't think, until later on in the fall, when some question in regard to these notes came up, and a meeting was held by request of Peabody, Houghteling & Co., as I recall it. There was some question in regard to the issuance of these notes or some portion of them. I think we held a meeting—it may have been in October or September or October—simply taking up that matter.

Q. Well, now, coming to the institution of this suit by Mr. Peabody as trustee.—A. Mr. Sommers—after my meeting with the mayor, as I have stated, I informed him the company had nothing—I had nothing to do with this situation whatever; that it was all in the hands of Peabody, Houghteling & Co., and their representative, Mr. Sommers, was in the vicinity and would see him, and did see him, as I understand. I was not present and never had any further communications, directly or indirectly, with the mayor in regard to the situation, but I understand that negotiations were carried on between the mayor and Mr. Sommers; that is merely what I have heard, and I was not present at any one of them.

Q. The two suits in the State court, one involving the question of fares and the other the question of transfers, who were the parties

to each of those suits?—A. The parties were Linhoff against The Seattle, Renton & Southern Railway Co. and the Seattle Electric Co., Denison against The Seattle, Renton & Southern Railway Co.

Q. Were the parties to those actions the same as the—or the parties defendant to those actions the same as the parties in the Peabody, trustee, suit?—A. No, sir.

Q. Well, then, your claim is that the action of Peabody, trustee, against The City of Seattle and others was in no way a collusive suit?—A. In no respect.

Q. Well, why not? Didn't it involve substantially the same questions as those that were involved in the two actions in the State court?—A. Yes; it did; yes.

Q. And why, therefore, do you think it was not collusive, or why not, under those circumstances?—A. Well, I think that the committee understands the law to be that there is no such thing as a privity between a mortgagor and a mortgagee, and that the rights of the mortgagee to protect the mortgaged property can not be foreclosed out of the jurisdiction of a Federal court, if there is a diversity of citizenship, by reason of any judgment in a State court to which the mortgagee is not a party, provided there is only one thing in the suit, and that is that when the contract which the mortgagee sues under is made prior to any determination in the State court as to the meeting of that contract. The Supreme Court has passed on that so many times I don't think you desire any authorities. I can give them to you.

Q. Isn't it true that the question turns on whether or not the mortgagee is in possession?—A. I don't think it does at all. I don't think that it has any—there is no necessity for the mortgagee to be in actual physical custody of property to enable him or it to appear in a Federal court—being the necessary diversity of citizenship—to protect that property, no matter whether it is in the hands of the mortgagee or the mortgagor, from being wasted and depreciated.

Q. Well, if the mortgagee is not in possession, why can't the mortgagor protect all those rights?—A. It can if it wants to, or it can submit—the privity of contract does not exist between a mortgagor and a mortgagee. There is no such thing as a privity of contract which would bind the actions of the mortgagee by whatever action or nonaction the mortgagor might take.

Q. Well, in a suit brought by a mortgagee out of possession, wouldn't he have to allege that the mortgagor was collusively or corruptly or whatnot failing to protect the rights of the mortgagee?—A. That is the rule of the Federal court in regard to a stockholder's bill, by equity rule 94, but it does not apply to the question of a mortgagee.

Right in that connection, if the committee please, I would like to say that there seems to be a little difference of opinion or views——

The CHAIRMAN. What, Mr. Crawford?

A. A little difference of opinion or views in regard to a mortgagee in possession or out of possession and his rights to bring an action, and I was present here when Mr. Howard D. Hughes brought up the case of Dawson against The Columbia Finance Co., which was presented at the hearing on demurrer by Judge Hanford to consideration of the counsel at that time as being a reason for the collusive character of this suit. This case has been commented on and dis-

tinguished in the case of The Mercantile Trust Co. against Columbus, and the opinion in the Supreme Court in the Dawson case fails to set up the facts upon which the opinion is based, which facts are reported in 158 Federal Reporter, that show that there was an ordinary contract in that case entered into between the city of Dawson and the Dawson Waterworks Co., and that there were moneys due under that contract, and there was a suit brought in the State court, and in that suit it was finally determined that the contract was at an end and that there could be no recovery by the Waterworks Co. for the rental to be charged to the city of Dawson, and after all of that determination the Waterworks Co. assigned its claim under this contract to the Columbia Finance Co., who then went into the Federal court to establish its rights as a nonresident to bring that action, the whole matter having been settled by a final decision in the supreme court of the State prior to the assignment to the Columbia Finance Co.

The case of the Citizens Street Railway Co., a case which went up from Indianapolis and through the circuit court of appeals to the Supreme Court of the United States, is absolutely in point to the right of the court to have heard and decided the Peabody, trustee, case. There was an ordinance by the city of Indianapolis making it a crime for anybody to pay more than 3 cents on a street car, and the city of Indianapolis instituted proceedings against a man named Navin, in which suit the Supreme Court sustained the lower court in a fine against Navin for having disobeyed this ordinance. The railway company appeared in the Federal court, I think before Judge Wood, who was then circuit judge, and got an injunction. The same question exactly was raised by the city of Indianapolis as was raised before Judge Hanford in this case, namely, that there was a decision on this ordinance, and the city of Indianapolis was a party to it, although the railway company was not, and that that was a final determination, and it absolutely prevented the Federal court from taking jurisdiction or passing upon the question as an original proposition. The Federal court did not look at it that way, and their position was sustained by the Supreme Court of the United States, and the Federal court looked at the contract and the rights of the parties under it in an entirely different light than the State court, reversing absolutely the State court.

There is a Minneapolis case. I could sit here and cite lots of cases, but I don't think you care to have them in the record.

Q. You think those bear on the question of the right of Peabody to bring this suit, and the question of collusion in it?—A. Absolutely. The Trust Co. against the city of Cincinnati, in the 79 Federal, by Justice Lurton, now justice, now circuit judge; Judge Taft and Judge Swan had the same questions exactly presented to them there in regard to the incline railway.

Q. Mr. Crawford, you made an application for the appointment of a receiver of the Seattle, Renton & Southern Railroad Co. in the superior court of King County, I believe, did you not?—A. Yes, sir.

Q. Who was the plaintiff's attorney in that suit?—A. Morris B. Sachs and myself in proper person.

Q. What was the title of the case?—A. William R. Crawford against W. R. Sterling and Alexander Smith and James L. Hough-

teling, jr., composing the firm of Peabody, Houghteling & Co., and Augustus S. Peabody, trustee, and First Trust & Savings Bank of Chicago, Ill., and Seattle, Renton & Southern Railway Co.

Q. Now, Mr. Crawford, I wish you would give to the committee a complete history of that litigation, with all the facts connected with it, in any way, shape, or manner, the removal of that case to the Federal court, and bring into the narrative, chronologically, so far as it affects that litigation or affects the matter in any way, the action in the United States district court, in which William R. Sterling and others are plaintiffs, and the Seattle, Renton & Southern Railway Co. is defendant, up to and including the service or delivery to Judge Hanford of a mandate from the circuit court of appeals and including anything else that you think has any bearing on the matter in any way, shape, or manner. Give us the narrative and we can follow it better than if the committee asks questions, I think. You can go back as far as you want to with the Renton Street Railway Co., so as to make the story intelligible from the beginning down through.—A. That is a pretty large order. Do you want me to take up the charges of my bill, or do you want—I don't know exactly—and do you want me to state what is in the bill, how I arrived at the charges in the bill, or the court procedure on the bill?

Q. Everything, going back to the time when you surrendered your stock, if you please, to Houghteling & Co., or whatever their names are?—A. Well, after the 24th of June, at this meeting of the board of trustees of the company at which the resignations of three of the board were accepted and three nominees of Peabody, Houghteling & Co. were installed in their places——

Q. (Interrupting.) I don't like to interrupt, but before that you had made arrangement, hadn't you——A. (Interrupting.) I explained first—I thought I had explained that. You mean in regard to the collateral-trust agreement of May 1?

Q. Yes; your guaranty and all about it.—A. I was a guarantor on that for $300,000, and as a surety placed with Peabody, Houghteling & Co. the entire capital stock of the railway company. The stock certificates held by myself and John B. Berryman were surrendered, and one stock of preferred, being for $250,000 worth of the stock, and one for $999,500 of common stock, was issued in the name of Augustus S. Peabody, trustee. Then this contract was entered into between L. L. Sommers & Co. and the Seattle, Renton & Southern Railway Co., and on about the 15th of August, 1911, the firm of L. L. Sommers & Co. under their contract nominated one G. F. Perine as general manager of the Seattle, Renton & Southern Railway Co., and took possession of the physical property and operations of the company, and continued under the terms of that contract in the active management and operation of the corporate properties until some time in December, 1911.

On or about the 1st of December, 1911, Mr. E. M. Mills came here from Chicago and requested my resignation as president of the company. After conferences lasting several days I resigned as president. We had a meeting of the board of trustees and Mr. Mills was elected in my place, having resigned, and Mr. James L. Houghteling, of Chicago, Ill., was elected vice president in place of Mr. E. M. Mills. After that time I have not even been out on the line of the railroad except once—on the 16th of January I made a trip out to Matheson

Station and back again. I have had nothing whatever to do as an officer of the company, although I have been a trustee and am now a trustee of the company.

This matter continued along and we had only one meeting of the board of trustees, in February, which adjourned to meet again, I think, within a few days, but there has never been another meeting of the board held. On the 15th of April, 1912, I received a communication signed by Peabody, Houghteling & Co., in connection with the affairs of the company, which was that they had been informed by Mr. Mills, as the president of the company, that the company would not pay and would default on the interest on the collateral-trust notes amounting to $9,000 on the first——

Q. (Interrupting.) Nine thousand?—A. $9,000 on the first—this is the letter—$9,000 on the 1st day of May, 1912, and in such letter demanded of me, as guarantor, that I should make good for the interest or the default would be made on May 1, and under the terms of the collateral trust agreement a declaration of the maturity of the entire sum of $300,000 would be made and that the provisions of the collateral trust agreement would be carried out, which included, of course, the sale at private sale of all of the stock of the company. The 17th of April, 1912, was the day upon which the annual stockholders' meeting of the Seattle, Renton & Southern Railway Co. was to be held, for which formal notice had been, prior to the 15th of April, sent out, so that I then appeared on the 17th of April with Mr. Frank J. Friend, who was then and is now a trustee of the company and its secretary, and going into the doorway of the office we met Mr. E. M. Mills and Mr. Thomas Evans. They opened the door and we walked in with them. Mr. Mills then excused himself and went out and came back accompanied by Mr. James Kerr. The meeting was not called to order, but Mr. Evans, as soon as Mr. Kerr appeared in the room, said, "I move we adjourn the stockholders' meeting until the 12th day of June, 1912, representing Augustus S. Peabody, trustee, and holding his proxy for all of the stock of the company except five shares." Immediately I suggested that there had been no meeting called to order and it was a little premature. Mr. Kerr then asked if I objected to Mr. Mills being elected chairman. I said no. Mr. Mills was elected, and immediately that motion was renewed. I then notified both Mr. Mills and Mr. Evans that I declared the contract under which the voting power of all the stock of the company had been vested in Mr. Augustus S. Peabody at an end, as Peabody, Houghteling & Co. and Augustus S. Peabody, trustee, had vitiated and set aside the terms and conditions of the collateral trust agreement by failure to pay—or failure to conserve the net earnings to take care of and protect the collateral trust agreement.

Q. Now, you haven't gone into sufficient detail about that aspect of the agreement, Mr. Crawford, I think, to make the record show clearly what the basis was upon which you thought you had any right to make any such contention.—A. When this collateral trust agreement was made—was being drafted in Chicago—and these different conditions to be inserted upon the request of Peabody, Houghteling & Co., one of the requests, and I think the only one, that I made was that the entire net earnings of this property, simply paying out merely for operations, should be monthly forwarded to Chicago to Peabody, Hough-

teling & Co., so that there could be no defaults in the payment of the interest or the obligations of the company, and especially of this collateral trust agreement, as I was surrendering to them all of the stock of said company and would be absolutely at their mercy, and that clause was inserted in the agreement.

Q. Well, is there anything in these papers—any copy of that agreement in these papers that came over from the State court on the removal to the Federal court?—A. There may be, attached to an affidavit presented by E. M. Mills. I am not sure whether the collateral trust agreement itself was attached to the affidavit, or a preliminary agreement which was made prior to the execution and the making of the collateral trust agreement.

Q. Well, now, was it distinctly agreed in that collateral trust agreement that that money should be received—forwarded from Seattle to Peabody & Co., or whatever the name is, Houghteling or Peabody—and used for the purpose of taking care of these fixed charges?—A. That is what the fund was there for—the purpose of paying the interest on the bonds and the collateral trust notes and to create a fund for the retirement of the collateral trust notes at maturity.

Q. It was so agreed in this written agreement?—A. That is the written agreement as I recall it. It may not be just in that language, but it is very close to it.

Q. And you claim that, at a matter of fact, that money was not remitted, but was used for some other purpose, and that if these Peabody and the rest of them didn't have money to meet the interest, and what not, or fixed charges which they had agreed to meet, it was because of their own violation of this agreement?—A. That was my contention.

Q. And that was the contention that you made at this meeting of the trustees?—A. Not in full length; no. No; not in full length because it was very short.

Q. They understood what the basis of it was?—A. They should have.

Q. Did Mr. Mills know that that agreement existed?—A. He was in Chicago at the time it was drafted, and in consultation with the firm about it, and myself.

Q. All right; now go ahead.—A. Where was I?

Q. You had got down where you were making a protest against the holding of that meeting, or its adjourning, rather.—A. Then from that meeting Mr. Friend and myself, as directors of the company, served a written notice on Mr. Mills, as president, demanding an immediate meeting of the board of trustees of the company to consider the business of the company. We did not hear from Mr. Mills for a day or so, and then we received word that owing to the absence of Mr. McCord that he would hold no meeting of the board of trustees. I desire to say there that right after—the very next day—that is, the 18th of April—I received a letter from Mr. Mills, as president of the company, inclosing two or three copies of letters received by him from Peabody, Houghteling & Co., all dated on the same day, which day was the same day that the letter which I had received on or about the 15th of April, was dated. I think the date of all these letters was the 9th day of April, 1912. These three letters from Peabody, Houghteling & Co. to Mr. Mills were first in

regard to the loaning to the company $10,000 on a demand note, and showed that they were that day sending the money to him, or an authorization for a draft, which was the 9th day of April. The next one was calling his attention to the fact that the company had outstanding now, together with this new note issued that day, $34,400 of demand notes, and that they thereby demanded payment of those notes on the 1st of May, 1912, being the same day on which the interest fell due on the bonds secured by the trust deed and the note secured by the collateral trust agreement, and further that they noticed by his letter of March 27, as I recall the date, that he would not be able to pay the interest of $9,000 on the 1st day of May, 1912, being the interest on the collateral trust notes; that the company would be compelled—that is, Peabody, Houghteling & Co.—to a strict payment, and if that money was not paid, why, they would declare the entire principal due and would proceed to carry out the terms of the collateral trust agreement in regard to the security, and demanded that the money should be paid. Immediately on receipt of these communications—and I desire to say here that the notes of $34,400 mentioned in the letter was the first time that I as a trustee of that company ever heard of any paper ever having been issued by the company and it was the first time that the secretary and the other trustee, Mr. Friend, of that company, ever heard of the issuance of any such paper: that immediately on receipt of this communication from Mr. Mills we, Mr. Friend and myself, again demanded an immediate meeting of the board of trustees to take up the matters and business of the company, that they needed to meet. We received a communication that Mr. McCord was out of the city and they didn't know just when he would be expected back and declined to hold a meeting. We called the attention of Mr. Mills to the fact that there were three trustees in the city of Seattle, Mr. Mills, Mr. Friend, and myself, being a majority of the board, and again demanded a meeting, which was refused us. Then it was getting on to about the 20th or 22d of the month, and I had already received in my office word that Mr. Mills had not yet quite made up his mind whether or not he would apply for the appointment of a receiver of the railroad. Having all this——

Q. (Interrupting.) I didn't hear that.—A. I said that I had received word in my office that Mr. Mills had not quite made up his mind whether or not he would apply for the appointment of a receiver of the Seattle, Renton & Southern Railway Co.

Q. How did you receive that word?—A. I received that word from Mr. Price in March, who was then working as a claim agent for the Seattle, Renton & Southern Railway Co.

Q. What did he tell you?—A. He told me, or rather he told Judge Sachs in my presence—it was in relation to a small claim that Judge Sachs had representing an Italian out there for personal injuries, and it was a question that Mr. Price told him he had better have his client take $75, because Mr. Mills had not quite yet made up his mind whether or not he would apply for a receiver of the Seattle, Renton & Southern Railway Co., and if he did, why, of course the man would not get anything. So that I then asked Mr. Price and said, "What has Mr. Mills got to do with it?" "Well," he says, "that is what my information is from him." Then, taken in connection with these defaults to be pulled off on the 1st of

May, why, I concluded that there was going to be something in the nature of a suit brought for a receiver, and I thought, for the protection of my interest and the interest of John B. Berryman, as stockholders and guarantors, that we had better proceed ourselves to put this road in the hands of a receiver, which would be a contested receivership if brought. By contested receivership I mean where orders would not be entered as of course and without contest.

So that I drafted a bill and that on the 30th of April, 1912, Judge Sachs presented the same before his honor, King Dykeman, in department 9 of the superior court of King County, Wash., in open session, and made an argument in open session for the appointment of a temporary receiver, the grounds for the appointment of the temporary receiver being, first, that I had information which led me to believe that an application would be made to the Federal court for the appointment of a receiver, and suit brought there for the purpose of vesting jurisdiction over the property in the Federal court, and second——

Q. (Interrupting.) What was your information, if any, besides the conversation in regard to this claim of somebody that had been heard?—A. Information that came to me from Judge Sachs, who had a conversation with another gentleman in the city, just about the 27th, I imagine, somewhere along there, of April. I am not quite sure: I am not sure of that date, but it was—I think it was Saturday, the 27th of April, if I am not mistaken. And the second fact, that I believed that a notice was given that the files of the company would be depleted and correspondence which should be on the files would not be there, and his honor, King Dykeman, appointed a temporary receiver, with an order to show cause why a permanent receiver should not be appointed, returnable on May 3, 1912. On May 2, I believe, or May 1, I don't know what date, Merr & McCord, appearing by Mr. James Kerr, representing the Seattle, Renton & Southern Railway Co., appeared before Judge Dykeman and without notice presented an application for a change of venue from the judge on account of prejudice.

Q. On account of the judge's prejudice?—A. Yes. The judge then transferred the case into the department of Judge A. W. Frater—I think it is No. 7—and on the 3d of May we appeared to take up the question of the appointment of a receiver permanently on the order to show cause.

Q. In the papers that were removed into the district court from the State court is the affidavit alleging prejudice contained, or is that not such a paper as would come over?—A. Why, I have not examined the files in the Federal court.

Q. Well, briefly, what was the allegation of prejudice?—A. Oh, why, it is a statutory ground in this State, since 1911—since our——

Q. (Interrupting.) Do you have to state any facts?—A. No; it is as of course. All you have to say is that you believe that either on account of the attorney or on account of the party that you can't get a fair trial, and ask to have it changed, and that is all that is done, and it is changed; it is a mere matter of course.

The matter was taken up and argued on May 3, affidavits filed, taken up again later on another day, more affidavits filed and more arguments; finally on the 8th of May we filed a supplemental bill alleging the insolvency of the company since on the 1st of May it

had defaulted as alleged that it would in the original bill on May 30, and prayed for the appointment of a permanent receiver. That is a second appointment instead of the one to show cause appointment—a new application for an appointment of the receiver on the ground of the insolvency of the corporation, it having become insolvent by its failure to pay its debts as they matured on the 1st day of May, 1912.

In this State, for the information of the committee, we have a statute which is a mandatory statute, as decided by the Supreme Court. The first case is the Oleson case against the Bank of Tacoma, in the 15 Washington, which provides absolutely that wherever any party interested in a corporation or corporate affairs shows to the court that a corporation is in imminent danger of insolvency or is in insolvency the court must appoint a receiver of such corporation. This application was on May 8, as well as the application for a permanent receiver on the motion to show cause, denied by Judge Frater.

Q. On what ground?—A. On the ground, as expressed by him—I don't know whether his opinion is taken down or not, if it is I haven't got a copy of it; if it is, I think I can get a copy of it; I think it was taken down, but I don't know—as I understood it was that although the corporation was hard up for money, yet that it had assets shown to be twenty-four hundred and odd thousand dollars, and that at this time he would not appoint a receiver. That is my remembrance of his grounds.

Q. You mean on the ground that it was not insolvent, is that it?—A. Well, just hard up for money.

Q. Was the contention made in the affidavits resisting the application?—A. Well, the affidavits resisting the application went on the ground that the company was solvent, and Mr. Mills swore so.

Q. Well, I say the opposition to the motion was on the allegation of solvency?—A. The denial of the motion was on affidavits of being solvent.

Q. The opposition to the motion was on the basis of solvency, it was denied on that opposition, is that right?—A. It was. The judge in taking up that matter took up a report that was made by Price, Waterhouse & Co., showing the situation of the affairs of the company up to the 1st of March, 1912, which should be attached to the affidavit of E. M. Mills.

Q. Were they trying to float bonds about that time?—A. No; oh, no; this was 1912. This was made herein—I think it covered up until 1912. And referring to that—or Judge Frater referred to that statement in his remarks concerning the financial condition of the company. Then during that time of the receivership, which continued from the afternoon of April 30, 1912, until the end of the day of May 8, 1912, the receiver had accumulated a fund of over $10,000.

Q. The temporary receiver?—A. The temporary receiver. I appeared and filed a motion in the cause, asking that the court order the temporary receiver to forward to Peabody, Houghteling & Co. $9,000, so as to save the final default under the terms of the trust deed due on June 1, 1912, and prevent the sale of the securities. Kerr & McCord appeared for the railroad company and resisted the application of this money for this purpose. I believe the record will show that I filed a second motion, directed against the railway company,

and asked the court to decree or order that the railway company then use this money, or so much thereof as was necessary, to pay the interest. This was resisted and the court refused to make such order. That was practically the way the matter stood for an interim of a few days.

Then on or about the 14th of May, 1912, there was an application made in the Federal court before Judge Hanford for the appointment of receivers of the property.

Q. If you heard anything about the matter from anybody during that interval, just state what it was you heard and who told you.—A. Well, while Mr. Scott Calhoun was temporary receiver I was asked the question whether or not Mr. Will H. Parry would be acceptable to me as receiver of the property. I informed this gentleman that I had nothing whatever to do with the appointment of a receiver; that Mr. Scott Calhoun had been appointed receiver, and that the court would appoint whoever he pleased; and that I would not make any suggestion to the court as to who should be appointed. I also informed him I didn't see how it would be possible for Mr. Parry to be appointed, and he informed me that——

Q. (Interrupting.) Giving him what reason?—A. Giving him the reason that a court generally in appointing a temporary receiver will upon an order appointing a permanent receiver always appoint the temporary receiver, appoint the same man and continue his appointment. And that was my reason why, as I say, I didn't see what would be the use of Mr. Parry or anybody for Mr. Parry taking the matter up. As far as I was concerned or Judge Sachs, why we, of course, would not take the matter up.

Q. Have you yet stated whether the order appointing the temporary receiver was vacated?—A. I don't—I think this was at the time Scott Calhoun was the temporary receiver of the road—I am very sure of it.

Q. A few minutes ago had you reached the point where you stated that Judge Frater vacated the order appointing Mr. Calhoun receiver?—A. Yes. This should have been—this conversation was prior to the 8th day of May on which it——

Q. (Interrupting.) Was that the day on which the order was entered vacating the order?—A. Yes.

Q. Now, then, you said, as I remember, that an interval of some few days elapsed and then something else happened, or——A. (Interrupting.) Well, not covered by this; no.

Q. That is not the point.—A. But you asked me a question there and——

Q. (Interrupting.) But you said that on the 8th day of May, was it, or April—8th day of May, yes—that the order was entered vacating the temporary receivership?—A. Yes.

Q. Then you started to say, or you did say, that an interval elapsed, and then you started to say something else happened; is that right?—A. Then I started in to explain the action here o the 14th.

Q. Well, then, I say during that interval between the time when the order was vacated and the application on the 14th of May for the receivership, did you hear anything about the probability that a receiver was to be applied for in the United States court; and if so, what did you hear and from whom?—A. No; I didn't hear anything between that time. The only knowledge that I had was prior

to the 30th of April and just prior to April 8, or May 8. The first time was in April that I was informed by Judge Sachs that he had had interview with a certain gentleman in the city and that my affairs were discussed—brought up by this gentleman and discussed, and wanted to know who was running the road and matters of that character, and wanted to know whether or not I was protected in my stock holdings, and Judge Sachs—this, of course, is all hearsay, Mr. McCoy.

Q. You have not been confined to direct evidence.—A. What is that?

Q. I say, you haven't been confined to direct evidence in any way. We want to know the story.—A. And Judge Sachs informed this gentleman that he was satisfied that my interest would be protected; and, if necessary, why, I would apply for a receiver. And this gentleman immediately said, "Well, of course that will be in the Federal court," and Judge Sachs said, "No; it will not be in the Federal court, because Mr. Crawford is a citizen of the State of Washington and the railway company is also a citizen of the State of Washington. It will be in the State court." As I say, I had this in mind, together with the statement of Mr. Price and together with the statement of Judge Sachs with an interview with John Powell, of this city, as a basis for my belief that they were preparing to go into the Federal court and ask for a receiver of this property.

Q. Well, now, go ahead from May 14.—A. On May 14 the application was made as related, I presume, by Mr. Fulton. I was not present in court before Judge Hanford and had received no word or intimation that such an application would be made. My knowledge of it came to me from reading the newspaper, saying that the appointment had been made. Immediately after the appointment had been made I was kindly furnished a copy of the bill and answer by Mr. Fulton and Kerr & McCord. I then drafted a motion in the State court, basing my motion upon the bill and answer in the Federal court, and moved the State court for appointment of a permanent receiver, upon the ground of the confession of insolvency filed by Kerr & McCord on the 14th day of May in such suit.

Q. That is, in their answer they admitted the allegations of the complaint in the action for the appointment of a receiver, such allegation being to the effect that the company was insolvent?—A. Yes, sir. Then that matter was taken up, we argued the matter before his honor Judge Frater, and he appointed Mr. Scott Calhoun as permanent receiver. Messrs. Kerr & McCord, appearing for the railway company, objected to the appointment of a receiver again.

Q. On what ground?—A. Well, I believe it was on the ground that the matter was in the Federal court and the State court had no jurisdiction now to entertain a motion for the appointment of a receiver. The matter was argued, and Judge Frater held that he did have jurisdiction over the res and did appoint a receiver.

Q. Who was appointed?—A. Scott Calhoun. The prayer immediately was made for the fixing of a supersedeas bond to supersede the functions of that receiver and Judge Frater fixed the bond at $300,000. Immediately——

Q. (Interrupting.) How much?—A. $300,000. Immediately the bond was presented, signed by Kerr & McCord as representing the railway company, with the National Surety Co. on it as the surety.

Q. Do you mean it was signed Seattle, Renton & Southern Railway Co. by Kerr & McCord?—A. Yes.

Q. It was "Attorneys"?—A. Attorneys.

Q. Attorneys in fact?—A. No; just attorneys. I think you have a copy of the bond; is it not in the record there?

Q. Well, had there been any meeting of the trustees authorizing this?—A. I will come to that just now. I immediately gave notice to the court that I desired, within the time allowed, to file exceptions to the bond. The next morning—this happened in the afternoon—the next morning I filed exceptions to the bond, which exceptions are, I believe, on file—are they, Mr. Fulton; did you bring them up?

Mr. Fulton. I think there is a complete record.

The Witness. One of the exceptions being the fact that this was not the bond of the railway company, but was the bond of Peabody, Houghteling & Co., and that there had been no meeting of the board of trustees of that company that had authorized Kerr & McCord or any officer of the company to enter into an engagement binding that company for $300,000——

Q. Well, had there been any such meeting?—A. The record is confessed that there never was any such meeting, which I will come to later. [Continuing.] And naming numerous other exceptions to the bond. That was filed, as I recall it, on the 21st day of May. On the 31st of May an affidavit was filed by Messrs. Kerr & McCord, of E. M. Mills, as reaching to the exceptions, an affidavit supporting the exceptions which I had made on the 21st of May, 1912, which confessed that there was no meeting of the board of trustees, but said that he, as president of the company, had given full power and authorization to Kerr & McCord to sign that bond for the railway company, admitting and confessing all of the different matters set up in my affidavit on the exceptions, namely, that there had been no meeting of the board of trustees of the company to act or pass upon this question of becoming liable or perfecting an appeal from this order appointing a receiver in the State court where there were at such time receivers of a Federal court in possession of the res.

On the 23d, I believe, of May, 1912, through my attorney, Judge Sachs, we served notices on Mr. Fulton and Kerr & McCord that at 2 o'clock there would be presented for filing before Judge Hanford a petition supported by affidavit, in Peabody, Houghteling & Co. against—or, rather, W. R. Sterling—I think is the title of the case—et al., against the Seattle, Renton & Southern Railway Co., and the matter was taken up before Judge Hanford at 2 o'clock on the same day and this petition and affidavit presented for leave to file the same. I was not present in court, and all the information I have about it is hearsay from Judge Sachs.

Q. Give the information.—A. Judge Sachs returned to the office and informed me that he had presented this matter to the judge, and he said that he would allow it to be filed. Mr. McCord was present, but Mr. Fulton was not, and Mr. McCord objected to the filing of it. The judge then said that he would look it over—would not allow it to be filed, but would look it over and would act as he saw fit under the circumstances. The judge returned to the office, and about half past 3 he was called on the phone and informed——

Q. (Interrupting.) You mean Judge Sachs?—A. Judge Sachs; and informed that his presence was desired up at the Federal court at

half past 4 that same day. He went up at half past 4 and returned and informed me that Judge Hanford refused to allow the petition, and affidavit in support thereof would be filed.

Q. On what ground?—A. On the ground, stated to me by Judge Sachs, that it was too voluminous, and he did not care to encumber the records of his cause with such a voluminous document.

Q. The records of his court?—A. Of his court in this cause.

Q. Is that the paper [handing paper to witness]?—A. It is.

Q. About how many pages are there in it—typewritten?—A. I will have to—they are differently numbered here, different—there is no consecutive numbering.

Q. There are about 50 pages in it—I have counted them—typewritten pages.—A. Also, that Judge Hanford informed Judge Sachs that this was no proper way for this matter to come before him, and that if Mr. Crawford desired to present such facts he had his method by intervening and becoming a party in the cause. That was the report made to me by Judge Sachs. I asked Judge Sachs if he had requested Judge Hanford to sign an order to the effect that he refused to allow this petition, supported by affidavit, to be filed, and we prepared one and Judge Hanford signed it, and that is in the record, I believe, in the case—is an order refusing to allow this to be filed.

Q. All right. The order was filed?—A. The order was filed—signed and filed, which order recites that this petition was presented and he refused to allow it to be filed.

Q. That was on the 23d day of May, as it appears from the order?—A. Yes.

Q. What happened after that?—A. On his return to the office with this information I immediately started to draw up a petition for a mandate—a petition for leave to file a writ of mandamus to compel Judge Hanford to allow this petition to be filed and to take up and consider the matters contained therein. That writ and petition for mandate were drafted and notice served on Judge Hanford that the matter would be presented to the circuit court of appeals at San Francisco on June 3, 1912. On June 3, 1912, the matter was presented to the circuit court of appeals by Judge Sachs, and Judge Hanford was represented by Mr. McCord. The proceedings—of course I was not present and my knowledge of all this is hearsay.

Q. Well, is Mr. Sachs in town? I mean he is not away on a vacation?—A. Yes. No; he is here.

Q. So far as anything that occurred down in San Francisco, we will allow Mr. Sachs to tell that, but did you obtain the mandate that you wished?—A. An order was entered on the 3d day of June which recited, as I recall it——

Q. (Interrupting.) Have you a copy with you?—A. I have not. I have got a copy of the mandate, but I haven't got a copy of the order that was entered on June 3.

Q. I beg your pardon; I thought it was granted. All right; go ahead.—A. The order was, as I recall it, that this matter—that I appeared by counsel and Judge Hanford appeared by counsel, and the matter was heard and submitted for decision to Judges Gilbert, Ross, and Morrow, and would be taken up on the 15th day of July, 1912, at San Francisco. On the 15th day of July the matter was taken up at Frisco and Judge Morrow drafted an order of mandate

granting the petition. This is a copy of it, forwarded to Judge Sachs from Mr. Monckton, the clerk of the court [referring to paper].

Q. The original of it seems to be here in the files.—A. Yes.

Q. All right; go ahead.—A. In the meanwhile there became activities in the State court——

Q. (Interrupting.) Well, just a minute. Just for the sake of making the record show it at this time, this mandate seems to be on file here in this cause, and I will read, just for the record, what the mandate was, to see what the end of it was.—A. Did you say for me to read in the record, Mr. McCoy, this——

Q. (Interrupting.) Well, yes; I think so. It is entitled "in the cause" and it is entitled "a writ of mandamus." You might read the whole thing right in here.—A. Eliminating the title of the case?

Q. Eliminating the title; yes.—A. And the greeting, and so forth?

Q. Yes. Will you read it?—A. Yes; I will.

Q. Or if your voice is tired, I will read it.—A. Well, I would rather have you read it. I don't know how long you are going to keep me here. It would save my voice.

Mr. McCoy. (Reading:)

WRIT OF MANDAMUS.

The President of the United States of America, to the Hon. Cornelius H. Hanford, as judge of the District Court of the United States for the Western District of Washington, Northern Division, greeting:

Whereas it has been made to appear to the United States Circuit Court of Appeals for the Ninth Circuit by the petition of William R. Crawford, filed in the above-entitled matter on the 1st day of June, A. D. 1912, that you, the Hon. Cornelius H. Hanford, as judge as aforesaid refused to make and cause to be made and entered an order in the cause entitled "William R. Sterling, Alexander Smith, Augustus S. Peabody, James L. Houghteling, jr., and Burton Thoms, copartners doing business under the firm name of Peabody, Houghteling & Co., complainants, *v.* Seattle, Renton & Southern Railway Co., a corporation, defendants," No. 2158 in the District Court of the United States for the Western District of Washington, Northern Division, permitting the said William R. Crawford to file in said cause and court a petition asserting that the said district court has no jurisdiction over the said cause; and

Whereas in view of the allegations of the said petition and of the authorities appertaining thereto it was your duty as said judge to make and cause to be made and entered said order:

Therefore, you, the Hon. Cornelius H. Hanford, as judge of the District Court of the United States for the Western District of Washington, Northern Division, are hereby directed and commanded forthwith to make and enter said order in said cause permitting said petition to be filed, and that you proceed to consider and determine the said petition. Hereof fail not.

Witness: The Hon. Edward Douglass White, Chief Justice of the United States, and the seal of this, the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, this 15th day of July, A. D. 1912. And bearing the seal of the circuit court and the name of the clerk.

Mr. McCoy. All right, Mr. Crawford, you may go ahead.

A. At the hearing at Frisco, or rather at the time of the decision at Frisco, Judge Morrow delivered an oral opinion, of which we have now no copy, but we understand he is to have a written opinion in the matter, so I can't furnish or we can't furnish the commission any opinion of the decision of the circuit court of appeals in connection with this matter now.

Q. Well, did Mr. Sachs bring this mandate back from San Francisco with him?—A. Oh, no; this mandate was dictated by Judge Morrow himself and was forwarded by the clerk. We got it by mail on Thursday morning.

Q. Of this present week?—A. Of this week, yes.

Q. And what did you do with it?—A. Why, I was going to take up the other case which will come along now, to show what——

Q. (Interrupting.) All right, go ahead.—A. We will get down to them together.

After this matter had been taken up and notice served, as I recall it, on Judge Hanford—I would like to refer to what date—this is the date of the filing in this court of these papers in the removal—I would like to get right that date.

Q. June 3 it appears to be filed.—A. June 3, yes. Well, that was—June 3 was on Monday, wasn't it? Let's see, it was the 1st of June, wasn't it, Fulton, that you served notice on us? Do you recall the date?

Mr. FULTON. No; I don't.

A. Well, about the 1st of June, 1912, we were served with a petition or notice, rather, of an application to the State court to remove the suit which I had instituted against the firm of Peabody, Houghteling & Co., Sterling, and so forth, Peabody, trustee, First Trust & Savings Bank, and the railway company, into the Federal court. This application, as I recall it, was made after we had noticed—as I say, I am not sure of this, as I recall it, not having the dates—was made after we had given notice that we would appear and file or ask leave to file in the Federal court this petition supported by affidavit, calling attention to Judge Hanford of the question of his jurisdiction over the case then pending in his court, instituted by Sterling et al. against the defendant railway company on the 14th of May, and it was after that day that this application made on behalf of Sterling et al., Augustus S. Peabody, trustee, and the First Trust & Savings Bank of Chicago, Ill., represented by Mr. Walter S. Fulton, appeared in the State court with a petition to remove the Crawford case against the same defendants, with the addition of the railway company, into the Federal court. This application was heard and argued and was based upon the ground that the defendant railway company was not an interested party that would be aligned on the side of Peabody, Houghteling & Co., but should be aligned on the side of Crawford, as their interests were similar, and further that there was a separable cause of controversy existing in that case, in which the citizenship was diverse of the parties aligned as plaintiff and defendant, and therefore within the jurisdiction of the Federal court, and the motion to remove should be allowed.

The State court did not consider, after an argument, that it was a case in which there was existing a separable cause of action existing between diverse citizens, and then after that I appeared in the suit, as under the Federal practice a defendant seeking to remove a cause from a State court has a right to file a record of the proceedings that had taken place in the cause in the State court up to the time of the filing in the State court—that is, petition and bond to remove—and thereupon filing that in the Federal court, gives the Federal court jurisdiction of the cause, which jurisdiction the court

can sustain by proper writs in case a State court refuses to take cognizance of the fact that there is on file in the Federal court the pleadings on the cause removed. Then I appeared in the proceedings and filed a motion of the Federal court to remand. That motion was argued by Judge Sachs and Mr. Fulton before his honor Judge Rudkin. Last Saturday Judge Rudkin handed down an opinion holding that there was a separable cause of action between diverse citizens, as this was a stockholder's bill, and as a stockholder bringing such a bill I had no right to a personal judgment for $1,000,000.

Then immediately after having received a notice from Judge Sachs that the circuit court of appeals had issued this writ of mandate, I drafted amendments—short amendments—to the original bill in the State court proceedings, which were and are now on file as a bill filed in the Federal court, which exceptions were to strike out the separable cause of action as found to exist by Judge Rudkin.

Q. You don't mean your exceptions; you mean your amendments, don't you?—A. My amendments. I didn't mean exceptions. The exceptions will probably come later. Then that matter was taken up and notice served, yet we don't consider that a notice in the equity practice, under rule 28, is required; but we served a notice on Mr. Fulton and Mr. McCord, saying that we would appear at 2 o'clock on Thursday last—Judge Sachs just having returned on Wednesday night from San Francisco—before his honor Judge Hanford, and would present this motion to be allowed to file these amendments and to thereby amend the bill. We appeared—his honor was not holding court in the court room—we appeared, Judge Sachs and myself and Mr. McCord, before his honor, Judge Hanford, in chambers, and Judge Sachs presented this application or petition or motion to be allowed to amend, and Judge Hanford stated that the matter was—he did not desire to take up the matter at all; that he did not desire to take any action in any of these cases under the present conditions. I asked if that would apply also to the Sterling matter, in which a writ of mandamus had been issued, and he said it would and that we could take those matters up before Judge Cushman.

Q. Did he say whether or not he had this mandamus from the circuit court?—A. Why, no; he did not; but I knew—I had seen it in the clerk's office—I knew it was here.

Q. Has he yet acted on the order of the circuit court?—A. Oh, no; he simply said that he did not care to take up these matters, under the circumstances, and that Judge Cushman would be over here Saturday and that we could take up not only the motion to amend but also this matter of the entering of this petition and affidavit and take up the questions involved in that before Judge Cushman.

Q. Well, what was said there in regard to amending your complaint?—A. Why, Mr. McCord said that he had not had time to look it over, it had just been served on him, and he would like to know that it was so that if necessary he might object and that he didn't think it should be made until he had had a chance; but Judge Hanford stopped, practically stopped, all argument by announcing that he did not care to take the matter up, as this was a case of such a character, and under these conditions he didn't think that he should.

Q. Did you question Mr. McCord's right to object in any way to

your filing this; and, if so, on what ground?—A. Why, I object to anybody objecting to the allowance of the amendment of a bill.

Q. Well, Mr. Crawford, the question is, did you at that time object; and, if so, what did you state was the ground for your objection?—A. Why, I simply stated—as I say, there was no extended argument. We fairly did not get into any argument, but I simply made the presentation to the judge that the matter was entirely of course, a motion absolutely of course.

Q. Did you raise the point that Mr. McCord had not filed any answer in the case and therefore had no standing?—A. No. As I say, the matter was in a very short space of time, and, as far as that goes, I think I asked Mr. McCord whether or not he had filed any pleading in the case, and surely, if he had filed no pleading in the case, we had a right to amend our bill, and Mr. McCord said that he did not know whether he had—the record would show what it was; and as I say, the judge stopped all talk or argument and simply refused to take up the matter under the present circumstances.

Q. Well, did the judge take any exception to your saying anything?—A. Well, he didn't think that I should be allowed to present my own case, which he did under a misapprehension, which he apologized to me for by saying that he did not know that I had entered my name as an attorney in proper person on the record and could present my matters under the rules; but I called his attention to that fact, and so he said that under those circumstances it was different.

Q. What is the business of Mr. Parry—I think, W. H. Parry, was it—of whom you spoke?—A. Why, I don't know whether he is now engaged in any business or not. He has not been a well man for the last couple of years.

Q. What is he, a professional man? Is he an attorney or what is he?—A. No; he has been heavily interested here in many matters of public improvement of the city. He has been at the head and front of filling this whole south part of what is known as the tide; he has been practically responsible for that, having devoted a great many years to the efforts to fill all our tide flats here in the southern portion through the Lake Washington Waterway Co. and the Seattle Contract Co., I think, it was originally. I don't know much about it except in a general way.

Q. Who is O. D. Colvin?—A. Why, Mr. Colvin is connected in an official capacity, I believe, with the Seattle Car Manufacturing Co., that has a plant out at Renton.

Q. What railroad experience, if any, if you know, has Mr. Mills?—A. I never knew that he ever had any. He has been an accountant and was the owner or interested in what was called the Western Audit Co.—I think was the name of it—in Chicago, a concern that did public accountant work as certified accountants, went over reports; and about 1908, in the fall, he either sold his interest out or severed his connection to take employment with Peabody, Houghteling & Co. in the same line, namely, going over reports of different companies, as he had done a great deal of their work as a public accountant, and he took up that class of work with Peabody, Houghteling & Co. when he went in with them.

Q. Who, if you know, is the practical man in the management of the road now?—A. Why, I don't know anything about the man-

agement of the road. I don't know who is the manager. I don't know who is operating it. I have not been out on that line but once since the 18th day of September, 1911.

Q. Is there anything further that you want to add to your testimony, Mr. Crawford?—A. I don't recall anything.

The CHAIRMAN. Gentlemen, are there any questions you wish to ask Mr. Crawford?

Mr. HUGHES. I have nothing, Mr. Chairman.

The CHAIRMAN. Is there anything more, Mr. Dorr?

Mr. DORR. No.

The CHAIRMAN. A copy of the application for pardon by Mr. P. N. Lathrop, of Salem, Oreg., will go in as a collateral exhibit.

Paper referred to was marked "Exhibit I."

The CHAIRMAN. Mr. Stenographer, I hand you a paper marked "Mass meeting at Dreamland Rink, Seattle, Wash., August 25, 1911, evening," which you will mark as a collateral exhibit.

Paper referred to was marked "Exhibit J."

An adjournment was here taken until 9 o'clock next Monday morning.

TWENTY-FIRST DAY'S PROCEEDINGS.

JULY 22, 1912—10.40 A. M.

Continuation of proceedings pursuant to adjournment. All parties present as at former hearing.

The CHAIRMAN. The committee will be in order. Gentlemen, some conditions have arisen which make it necessary for us to take a short adjournment or rather a recess at this time. The committee will be in recess until 2 o'clock. All witnesses in attendance will be here promptly at that hour. The committee is now in recess.

Thereupon the committee, at 10.45 o'clock a. m., took a recess until 2 o'clock p. m. the same day.

AFTER RECESS.

2 O'CLOCK P. M.

The CHAIRMAN. The committee will please be in order. Gentlemen, owing to the resignation of Judge Hanford these hearings will be discontinued. On behalf of the committee I want to thank the gentlemen who have represented Judge Hanford during those hearings. They have been of immense help to the committee, and the committee appreciates keenly their labors in the matter. I think it would not be regarded as invidious if I would say for the committee that it is particularly under obligations to Mr. Preston for the marvelous work he has done in summarizing the many and very voluminous records which have been before the committee and putting them in such shape that they are easily understood. I think it would not be doing justice to these people who have attended the hearings if I did not also on behalf of the committee express our keen appreciation of their excellent conduct and demeanor. There have been many, many times when the seats were all occupied and the aisles packed and yet there was never the slightest suggestion of

disorder. I want to assure you on behalf of the committee that we appreciate it very keenly. And, by way of conclusion, I would add what you doubtless already know, that the duty assigned to this committee was a very delicate and in some sense a very disagreeable duty. But the committee came out here, as the chairman stated at the very outset of these hearings, to perform its duty without fear, favor, or prejudice. We think we have done that.

This concludes the work of the committee here for the present, and the committee now stands adjourned subject to the call of the chairman.

Thereupon, at 2.15 o'clock p. m., the committee adjourned subject to the call of the chairman.

WASHINGTON, D. C., *August 10, 1912.*

I, Robert R. Brott, official stenographer to the above subcommittee, do hereby certify that the foregoing is a true and correct transcript of the evidence taken in the investigation of Judge C. H. Hanford by the subcommittee of the Committee on the Judiciary of the United States House of Representatives, at Seattle, Wash., June 27 to July 22, 1912.

ROBERT R. BROTT.

56249°—H. Rept. 1152, 62-2——93

EXHIBITS.

Exhibit No. 1.

[H. Res. 576, Sixty-second Congress, second session.]

Congress of the United States,
In the House of Representatives,
June 13, 1912.

Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Cornelius H. Hanford, United States judge for the western district of the State of Washington, and say whether said judge has been in a drunken condition while presiding in court; whether said judge has been guilty of corrupt conduct in office; whether the administration of said judge has resulted in injury and wrong to litigants in his court and others affected by his decisions; and whether said judge has been guilty of any misbehavior for which he should be impeached.

And in reference to this investigation the said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, if necessary, and to appoint and send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. The said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee and the process and orders of said subcommittee and shall attend the sitting of the same as ordered and as directed thereby, and that the expense of such investigation shall be paid out of the contingent fund of the House.

Attest: South Trimble, *Clerk.*

Exhibit No. 2.

Excerpts from the Minutes of the Committee on the Judiciary, House of Representatives, U. S., Thursday, June 13, 1912.

Mr. Webb offered the following resolution, which was adopted:

Resolved, That James M. Graham, Walter I. McCoy, and Edwin W. Higgins, members of this committee, be appointed the subcommittee by virtue of the authority given under H. Res. 576, passed by the House of Representatives on June 13, 1912, authorizing an inquiry into the alleged misconduct of Cornelius H. Hanford, United States judge for the western district of the State of Washington, and that said subcommittee shall have all the powers authorized by said resolution hereinbefore named."

I hereby certify that the above is a true and correct copy taken from the minutes of the Committee on the Judiciary, House of Representatives, United States, for Thursday, June 13, 1912.

J. J. Speight,
Clerk, Committee on the Judiciary, House of Representatives, United States.

District of Columbia:

Personally appeared before me, A. E. S. Gitterman, a notary public in and for said District of Columbia, J. J. Speight, known to me to be the clerk of the Committee on the Judiciary, House of Representatives, United States, who, being by me duly sworn deposes and says that the above is a true and correct copy taken from the minutes of the Committee on the Judiciary, House of Representatives, United States, for June 13, 1912.

J. J. Speight.

Subscribed and sworn to before me on this the 21st day of June, 1912.

[seal.] A. E. S. Gitterman, *Notary Public.*

My commission expires May 16, 1916.

EXHIBIT No. 3.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES UNITED STATES,
Seattle, Wash., June 26, 1912.

DEAR SIR: The subcommittee of the Committee of the Judiciary of the House of Representatives, Washington, D. C., will convene to-morrow, June 27, in the court room, Federal Building, in Seattle, for the purpose of taking testimony under House resolution 576, a copy of which is attached hereto. You can, of course, be present at the session of the subcommittee in person and by counsel if you so desire.

Respectfully, yours,

JAMES M. GRAHAM, *Chairman.*

To the Hon. C. H. HANFORD,
Seattle, Wash.

EXHIBIT No. 4.

Whereas charges have been made in Congress against the personal character and official conduct of Judge C. H. Hanford;

And whereas the Committee on the Judiciary of the House of Representatives has been directed to inquire and report whether the action of the House is necessary concerning the same;

And whereas this board believes that the members of this association have the highest respect for Judge Hanford's personal character and the utmost confidence in his integrity;

And whereas this board believes said charges are unfounded in fact and is desirous of lending Judge Hanford such aid and assistance as is in its power in securing a thorough and impartial inquiry on the part of said Committee on the Judiciary of said charges; now, therefore,

Be it resolved by the Board of Trustees of the Seattle Bar Association, That a committee of three members of this association, consisting of E. C. Hughes, Esq., Harold Preston, Esq., and such other person as they may select, be appointed for the purpose of rendering Judge Hanford, professionally, such aid and assistance in the matter of said inquiry as is in their power.

Be it further resolved, That said committee of three be empowered and requested to call to their aid and assistance such other members of this association as in its judgment may be deemed necessary to accomplish said purpose.

A true copy.

IVAN L. HYLAND.
Secretary of Board of Trustees.

EXHIBIT No. 5.

[Presented by Mr. Hughes, etc., attys. (Stamped;) June 27, 1912. Committee on the Judiciary, U. S. House of Representatives.]

United States of America, petitioner, *vs.* Leonard Olsson, respondent. No. 1688.

PETITION.

To the honorable judges of the above entitled court:

The petition of the United States of America respectfully represents and shows to the court:

I. That the above named respondent, Leonard Olsson, is now a resident of the city of Tacoma, Pierce County, State of Washington.

II. That before the filing of this petition and the commencement of this proceeding an affidavit was made by John Speed Smith, and presented to the United States attorney for the Western District of Washington, showing good cause for the institution of this proceeding, which said affidavit is hereto attached and made a part hereof.

III. That the respondent herein, Leonard Olsson, on the 10th day of January, 1910, obtained an order from the Superior Court of Pierce County, Washington, granting his petition and admitting him to become a citizen of the United States of America, which said petition was filed under the provisions of the act of Congress of June 29,

1906; that pursuant to said order of said court, a certificate of citizenship was issued out of said court and delivered to the said Leonard Olsson, and that since said date the said Leonard Olsson has claimed and now claims to be a citizen of the United States.

IV. That contrary to the provisions of said act of Congress the said Leonard Olsson being the petitioner in the aforesaid proceeding in the said Superior Court of the State of Washington in and for said Pierce County, did, for the purpose of obtaining said certificate of citizenship, wilfully, knowingly, and intentionally represent and state to the court upon the hearing on said petition that he was attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, whereas in truth and in fact the said petitioner, Leonard Olsson, was not attached to the principles of the Constitution of the United States at the time he represented himself so to be, and was not a person well disposed to the good order and happiness of the United States, and had not been for a period of several years prior to his so testifying at said hearing; that the said petitioner, Leonard Olsson, well knew said testimony and representations to the court to be false and in violation of law, and that the said certificate of citizenship was obtained through fraud and perjury, and thereafter did testify in said Superior Court in Pierce County, Washington, on or about the 12th day of September, 1910, as a witness in the petition of one Carl Olsen for naturalization, that he, the said respondent herein, was not then so attached to the principles of the Constitution of the United States, and had not been for a period of two or three years prior to the date of said last hearing, to-wit: September 12th, 1910.

Wherefore, Your petitioner prays that process issue out of this court in accordance with the law and rules and practices of this court, requiring the said respondent, Leonard Olsson, to be and appear in the above entitled court on a day certain, to-wit: Sixty days after the date of service of such process upon him, exclusive of the day of service, and answer the petition of the petitioner herein, and further prays that the order of the said Superior Court of the State of Washington in and for Pierce County, made on the 10th day of January, 1910, admitting the respondent herein to be a citizen of the United States of America, to be set aside and held for naught, and that the said certificate of citizenship issued out of the said Superior Court of Pierce County, Washington, on the said 10th day of January, 1910, and delivered to the respondent herein, be revoked and cancelled, and that the said Leonard Olsson be restrained and enjoined from using or enjoying the rights and privileges thereunder, and that your petitioner have such other and further relief as to this Honorable Court may seem meet and equitable.

W. G. McLaren,
United States Attorney.

Assistant United States Attorney.

State of Washington, *County of King, ss.*

Jno. Speed Smith being first duly sworn according to law deposes and says, that he is now and has been for two years last past a duly appointed and acting chief naturalization examiner of the United States for the district of Washington, with headquarters at Seattle, Washington; that the records of the Superior Court of Pierce County, Washington, at Tacoma, show that Leonard Olsson filed petition for naturalization No. 517 in said court on the 27th day of September, 1909, and was admitted to become a citizen of the United States by said court, January 10, 1910, and a certificate of naturalization, No. 117750 issued to him; that said petitioner made oath in said petition for naturalization, No. 517 as follows: "I am attached to the principles of the Constitution of the United States;" that said Leonard Olsson appeared as a witness for petitioner for naturalization, Carl Olsen, in said Superior Court of Pierce County, Washington, September 12, 1910, and under oath ,said Leonard Olsson as such witness for Carl Olsen, stated in open court in answer to interrogatories propounded by affiant that he, the said Leonard Olsson, was not attached to the principles of the Constitution of the United States; that he believed in radically changing it; that he had maintained such view for a period of between two and three years and at the time he, the said Leonard Olsson, was admitted to become a citizen of the United States he was not attached to the principles of the Constitution of the United States, therefore, affiant believes that the said Leonard Olsson was not a fit subject, at the time of his naturalization, to become a citizen of the United States and was not naturalized in accordance with law.

Jno. Speed Smith.

Subscribed and sworn to before me this 21st day of September, 1910.

[seal.]

R. M. Hopkins,
Clerk U. S. Dist. Court, Western Dist. of Washington.

In the Circuit Court of the United States for the Western District of Washington, Western Division.

United States of America, plaintiff, *vs.* Leonard Olsson, defendant. No. 1688.

ANSWER.

Comes now Leonard Olsson, defendant in the above entitled cause, and for his answer to the petition therein alleges:

I. Defendant admits the statements of Paragraph I.

II. Answering Paragraph II of said petition defendant denies that said affidavit shows good cause or any cause for this proceeding.

III. Admits the allegations of Paragraph III.

IV. Admits the allegations of the first part of Paragraph IV, to wit, down to and including the word "same," in the 16th line thereof, excepting that defendant alleges that said proceedings were done in harmony with the provisions of the said act of Congress, and not contrary thereto. And from and including the word "whereas," in said 16th line, defendant denies all the remainder of said paragraph and every allegation thereof.

Wherefore defendant prays that this proceeding be dismissed and that he have an order for the return of his costs expended herein.

J. W. A. NICHOLS,
Attorney for Defendant.

STATE OF WASHINGTON, *County of Pierce, ss.*:

Leonard Olsson, duly sworn, deposes and says: That he is the defendant named in the foregoing answer; that he has read the same, knows the statements thereof, and the same are true as he verily believes.

LEONARD OLSSON.

Subscribed and sworn to before me this 7th day of April, 1911.

[SEAL.] J. W. A. NICHOLS.
Notary Public in and for the State of Washington, residing at Tacoma.

United States District Court, Western District of Washington, Southern Division.

United States of America, petitioner, *vs.* Leonard Olsson, respondent. No. 1688. Filed May 11, 1912. Suit in equity for annulment of naturalization of an alien. On final hearing.

DECREE FOR THE UNITED STATES.

W. G. McLaren, assistant United States attorney; J. W. A. Nichols, for respondent.

Hanford, district judge:

This suit is prosecuted by the United States district attorney for this district, pursuant to the 15th section of the naturalization law of June 29, 1906 (34 U. S. Stat. 596); U. S. Compiled Laws Supp. 1907 (p. 419); F. S. A. Supp. 1909 (p. 365); Pierce's Fed. Code (sec. 8292), to obtain a decree setting aside and canceling a certificate of naturalization alleged to have been fraudulently obtained by the respondent. The grounds for the suit as set forth in the Government's petition are that the respondent on the 10th day of January, 1910, obtained an order from the Superior Court of Pierce County, Washington, admitting him to become a citizen of the United States of America, and that a certificate of citizenship was issued out of said court and delivered to him, and that since said date he has claimed and now claims to be a citizen of the United States; that for the purpose of obtaining said certificate of citizenship the respondent intentionally represented to the court on the hearing of his application that: "He was attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." Those averments and the jurisdictional facts set forth in the petition are admitted by the respondent's answer; he makes an issue, however, by denying the charge contained in the petition that the representations which he made to the court respecting his attitude toward the Constitution and Government of the United States were and are contrary to the truth.

On the trial of the case the respondent appeared in person and by an attorney, and after the introduction of evidence on the part of the Government tending to prove that he is now and was at and previous to the time of being admitted to be a citizen of the United States opposed to the form of government of this country and to the principles of the Constitution, he offered rebutting evidence and gave testimony in his own behalf, which in the opinion of the court materially aided the Gov-

ernment's case. Answering direct interrogatories propounded by his own attorney, he denied that he is an anarchist; denied that he is opposed to organized government, and denied that he is in favor of overthrowing this Government by force or violence, but omitted to make any declaration affirming his loyalty to the Constitution of the United States, and, on the contrary, when tested by cross-examination his answers to all questions respecting his attachment to the Constitution of the United States were evasive. He admitted that he is a socialist and frequenter of assemblages of socialists, in which he participates as a speaker, advocating a propaganda for radical changes in the institutions of the country. He claimed to have a clear understanding of the Constitution of the United States and knew that by one of its articles deprivation of life, liberty, or property without due process of law is forbidden, and yet the evidence introduced in his behalf proved that the party with which he is affiliated and whose principles he advocates has for its main object the complete elimination of property rights in this country. He expressed himself as being willing for people to retain their money, but insisting that all the land, buildings, and industrial institutions should become the common property of all the people, which object is to be attained, according to his belief, by use of the power of the ballot, and when that object shall have been attained the political government of the country will be entirely abrogated, because there will be no use for it. And he further admitted that his beliefs on these subjects were entertained by him at and previous to the date of the proceedings in the Superior Court admitting him to become a citizen of the United States.

In order to procure a certificate of naturalization, the respondent was required to comply with the provisions of the statute above cited, which is mandatory and stringent in prescribing the necessary qualifications of aliens to become citizens of the United States, and in limiting the power of the courts in naturalization proceedings. The 4th section of the act requires, among other things, that each applicant shall make and file a petition in writing setting forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in, or opposed to, organized government; and that he shall, before he is admitted to citizenship, declare on oath in open court that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same; and provides further that it shall be made to appear to the satisfaction of the court admitting an alien to citizenship, that he is attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. The 7th section of the act provides:

"That no persons who disbelieves in, or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in, or opposition to organized government, * * * shall be naturalized or made a citizen of the United States."

The 15th section makes it the duty of United States district attorneys upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud, or on the ground that such certificate of citizenship was illegally procured; and provides further that the court shall make an order cancelling any certificate of citizenship fraudulently or illegally procured. The 23rd section provides:

"That any person who knowingly procures naturalization in violation of the provisions of this act shall be fined not more than $5,000, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication."

The people of this country ordained the Constitution of the United States to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, and thereby established a national government, to endure permanently. The notion that citizens of this country may absolve themselves from allegiance to the Constitution of the United States, otherwise than by expatriation, is a dangerous heresy. The nation generously and cordially admits to its citizenship aliens having the qualifications prescribed by law, but recognizing the principle of natural law, called the law of self-preservation, it restricts the privilege of becoming naturalized to those whose sentiments are compatible with genuine allegiance to the existing government as defined by the oath which they are required to take. Those who believe in and propagate crude theories hostile to the Constitution are barred.

The evidence in this case including the respondent's admissions above recited do not have to be analyzed, interpreted or weighed in order to determine any doubtful question as to his attitude. He has no reverence for the Constitution of the United States, nor intention to support and defend it against its enemies and he is not well disposed toward the peace and tranquillity of the people. His propaganda is to create turmoil and to end in chaos. But in order to secure a certificate of naturalization he intentionally made representations to the court which necessarily deceived the court, or his application for naturalization would have been denied. Therefore, by the petition which he was required to file and his testimony at the final hearing of his application and by taking the oath which was administered to him in open court, he perpetrated a fraud upon the United States and committed an offense for which he may be punished as provided by law. The case, therefore, comes clearly within the provisions of the law requiring the court to set aside and cancel his certificate of naturalization, and it will be so decreed.

C. H. HANFORD,
United States District Judge.

United States District Court, Western District of Washington, Southern Division.

United States of America, petitioner, *vs.* Leonard Olsson, respondent. No. 1688.

DECREE.

This matter came regularly on for hearing upon the petition of the United States of America, seeking to vacate and set aside the order of the superior court of the State of Washington in and for Pierce County, made on the 10th day of January, 1910, admitting the respondent herein, Leonard Olsson, to become a citizen of the United States of America, and to revoke and cancel the certificate of citizenship issued out of said superior court of Pierce County, Washington, to the respondent herein, the petitioner appearing by W. G. McLaren, United States attorney for said district, and the respondent, Leonard Olsson appearing in person and by J. W. A. Nichols, his attorney, and the court having heard the evidence submitted by the respective parties, and the argument of counsel herein, it appearing to the court that the said respondent was naturalized by an order of the superior court of the State of Washington, in and for Pierce County, on the 10th day of January, 1910, and that said certificate of citizenship issued out of said superior court and delivered to said respondent was illegally and fraudulently procured by him, in this, that the said respondent at the time of making application for his said naturalization papers, and at the time of receiving the same from said superior court, represented himself to be attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; whereas said respondent was not so attached and so disposed as he represented himself to be, and is not now attached to the principles of the Constitution of the United States, or well disposed to the good order and happiness of the same; and it appearing to the court that good cause exist why the order of said superior court granting said certificate of citizenship be vacated and set aside;

It is therefore hereby ordered, adjudged, and decreed, That the order of the superior court of the State of Washington, in and for Pierce County, made on the 10th day of January, 1910, admitting the respondent herein, Leonard Olsson, to become a citizen of the United States of America, be and the same hereby is set aside and vacated, and the certificate of citizenship issued out of said court and delivered to said respondent be and the same hereby is revoked and cancelled.

It is further ordered, adjudged, and decreed, That said respondent, Leonard Olsson, be, and he hereby is required to deliver up said certificate of citizenship to the chief naturalization examiner of the district of Washington, Oregon, Idaho, and Montana, at Seattle, Washington, or to the clerk of this court.

It is further ordered, That the clerk of this court send a certified copy of this judgment to the Bureau of Immigration and Naturalization, at Washington, D. C., and a copy to the clerk of the superior court of Pierce County, at Tacoma, Washington.

Done in open court this 22nd day of May, 1912.

C. H. HANFORD, *Judge.*

In the United States District Court in and for the Western District of Washington, Western Division.

United States of America, petitioner, *vs.* Leonard Olsson, respondent. No. 1688.

PROCEEDINGS ON PETITION FOR NEW TRIAL AND REHEARING.

Be it remembered, that at this time, to-wit, the 19th day of June, 1912, the above entitled cause coming regularly on for hearing before the Honorable C. H. Hanford, Presiding Judge, on the petition for new trial and rehearing herein, and the United

States being represented by Honorable W. G. McLaren, United States attorney, and the respondent being present in person and represented by his attorneys, J. W. A. Nichols, Esq., J. H. Easterday, Esq., George M. McKay, Esq., and R. Winsor, Esq., and Honorable G. D. Emery, amicus curiae, being present, the following proceedings were had and done:

The COURT. The case in hearing to-day is the United States of America against Leonard Olsson, petition for a new trial.

PETITION IN INTERVENTION.

Mr. ENSLOW. If your honor please, will you entertain at this time a petition in intervention in this case of the United States against Olsson? I have the petition here in words as follows:

"Comes now Charles A. Enslow and represents to the court that he is a citizen of the United States over 21 years of age; that he is a party in interest in the above entitled case in that he has vested interest in the same as a citizen of the United States, and entitled to all the rights, privileges, and immunities of a citizen; that his said interest is jeopardised by certain acts done or threatened to be done in connection with this case; that his interests are such as to be properly cognizable by and within the jurisdiction of this court, and that he has no other remedy at law or in equity. Wherefore he prays the order of the court joining him as a party plaintiff in the above entitled case."

The COURT. You may file the petition subject to any motion that may be made by either party to contest it or strike it.

Mr. NICHOLS. If the court please, the defendants in this case have not been served with any notice of any intention to ask leave to intervene. We know nothing of the grounds upon which the petition is based. Under those circumstances it makes it a little difficult to know now just how to proceed, after leave has been granted to file the petition.

This matter comes on to-day for hearing before your honor on the petition of the defendant here asking for alternative relief; the first relief asked is that the case be reconsidered by your honor upon the merits, and if upon such reconsideration it should appear that the defendant is entitled to the first relief asked, it will be that he have judgment, and that the petition filed against him be dismissed, and that in the event your honor should not think, upon reconsideration, that the defendant was entitled to that relief, then we ask that your honor grant a rehearing in this case for the purpose of enabling the defendants to complete a record. Upon the first hearing of this case no evidence was transcribed and there is no evidence in the record at this time except such facts as are shown in your honor's opinion, which is on file in this case; and in order that a record may be made which a court of review should take into consideration if the first relief asked should be denied by your honor, then we ask that this secondary relief be granted for that purpose. Argument upon the matter so far as the first relief is concerned would depend upon the memory of your honor and of counsel as to the evidence which transpired upon the former hearing, and we feel that it would not be right for us to urge that matter unless we got an expression from your honor that you would at least be willing to hear us upon that branch of the case. If your honor is willing to take that matter up, the argument upon that branch of the case would devolve upon myself, as I was the only counsel present for defendant at that time. If your honor were not willing or should feel unwilling to hear a review upon the merits, based upon the merits, then the other relief asked will depend upon matters of law which Mr. McKay of Seattle would present to your honor upon what we consider to be the law of the case as outlined by other decisions of the Federal courts in similar cases.

This petition in intervention has been allowed to be filed, and I hardly know how we ought to proceed without some suggestion from your honor. We would not want to proceed with the argument now upon the merits subject to be again taken up at some future time by the intervener. If your honor should think it proper to hear this intervener it might be well to adjourn this hearing to some other time when all parties could be here, but it does not seem to me to be justice to the defendant or good procedure to hear the case piecemeal. This argument is now upon the merits. If your honor should see fit to hear that part of the case now, and intervener's argument at some later date, the defendant may find it necessary to reargue the case. I think I would like to ask an expression from your honor as to the procedure at this time.

The COURT. Well, I will give it to you. It is always a condition of allowing a new party to intervene voluntarily in pending litigation that it should not delay the proceedings, and I would not postpone this hearing to give an intervener time and opportunity to make new issues. As I understand the present situation of the case new issues cannot be injected now.

As to your first suggestion, I will answer that about the same way I answered Mr. Enslow. I allowed him to file his intervention subject to any attack that might be made upon it. If you want to argue for a rehearing in this case on the merits, I certainly am not going to refuse to hear you before I decide against you. This court has never yet decided a case against a party without hearing him.

Mr. NICHOLS. I am satisfied your honor would not. Shall I proceed now?

Mr. ENSLOW. May I ask your honor a question at this time, whether or not under the ruling of the court I in propria persona may represent my interest at this time, that is in the matter of such argument as I may feel called upon to make to the court.

The COURT. Well I will make this intimation now. It has been suggested to me that as the case has attracted attention the issue in it is one of real importance to the whole people of the country, that other lawyers than those that have been engaged in the case wish to appear amicus curiae and argue the case. If that is true, if there is anyone present that has come here expecting to make that offer, I will allow them to be heard, but you must select someone to make the argument; I will allow only one to be heard.

Mr. EMERY. If your honor please I came here for that purpose and I would like at this time to ask your leave to appear as amicus curiae in this matter.

The COURT. Can you arrange with Mr. Enslow.

Mr. ENSLOW. The matter has already been arranged so far as I am concerned. I had no intimation that Judge Emery was here for that purpose, and I am entirely agreeable, and I will therefore not intrude myself upon the court and members of the bar present. I will leave it to Judge Emery entirely, not withdrawing, however, my petition in intervention.

United States District Court, Western District of Washington, Southern Division.

United States of America, petitioner, *v.* Leonard Olsson, respondent. No. 1688.

PETITION FOR NEW TRIAL AND REHEARING.

The above-named respondent asks that the judgment or decree heretofore entered in this case be set aside, and the cause dismissed, or if not dismissed that the respondent be granted a rehearing and a new trial for the following reasons, to wit:

I. There was no evidence produced on the trial of said cause that the respondent was an anarchist or a polygamist or that he was a disbeliever in, or was opposed to organized government or a member of, or affiliated with, any organization or body of persons teaching disbelief in organized government, or that he is not or was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

II. The evidence produced on the trial of said cause that the respondent is and was a Socialist and a member of the Socialist Labor Party, does not prove that he is an anarchist or that he is opposed to organized government for the reason that Socialists, including the respondent, believe in a highly organized form of government, not in the abolition or destruction of government, nor do Socialists teach or believe in the change of constitutions or forms of government by force; the testimony showed and the respondent reaffirms that he is now and at all times has been in favor of organized government and that his purpose is and was to support the Constitution and laws of the United States.

III. That Socialists do not believe in or teach, nor does the respondent believe that any man's life, liberty, or property should be taken without due process of law. They teach and believe and the respondent believes that the instrumentalities of production should be owned collectively and that exploitation of the laborer should cease, and that he should receive the full product of his labor. But Socialists do not teach and the respondent does not believe that these instrumentalities of production can be acquired except by due process of law, and on condition that compensation be made on their acquisition.

IV. That no evidence was produced on the trial of this cause that the respondent is not or was not attached to the principles of the Constitution of the United States. Proof that he is and was in favor of changes in that Constitution does not disprove his devotion to the Constitution, for the Constitution itself provides for its amendment, and even radical changes and amendments are entirely within the constitutional right of the people, and it is the political right of every citizen to advocate such changes, even though such advocacy may create political disquiet. The "peace" which the Constitution was designed to secure was not the peace which prevails where political discussion is absent.

V. That on the trial of this action no record was made or kept of the testimony; and no statement of a case embodying the testimony, or bill of exceptions can be

settled, except on the memory of counsel and the court as to the testimony, which might involve counsel for the respondent in an unseemly controversy with the court as to such testimony.

VI. The court erred in its opinion in this action in the following particulars:

1. In holding that on the trial the respondent was required "to make any declaration affirming his loyalty to the Constitution of the United States."

2. In holding that "his answers to all questions reepscting his attachment to the Constitution of the United States were evasive." His answers were not evasive, but if they were, that such evasiveness was no ground for setting aside and annulling his naturalization.

3. In holding that it is a legal ground for annulling his naturalization because "he is a Socialist and a frequenter of assemblages of Socialists in which he participates as a speaker advocating a propaganda for radical changes in the institutions of the country."

4. In holding that the Socialist party or organization "has for its object the complete elimination of property rights in this country."

There was no proof that it ever was or now is the purpose of the respondent or any organization or party to which he belongs to eliminate property rights in this country, or detract in any degree from the sacredness of property rights. The Socialist believes in the sacredness of private property.

5. In holding that it is ground for annulling the respondent's naturalization because he believes that an industrial organization of the State and Nation should displace the present political organization. Every citizen worthy of the name is seeking by some means or in some way to change the political government of this country. An industrial organization of the Government would be a beneficial change.

6. In holding that it was the purpose of the people of the United States, in adopting the Constitution, to "establish a National Government to endure permanently." The people who adopted the Constitution made a clear distinction between the people or the Nation on the one hand and the Government on the other; the Nation or the people was the principal, the Government a mere agency of the people; they believed that all Governments derive "their just power from the consent of the governed," and that "it is the right of the people to alter or abolish it (the Government) and to institute new Government, laying its foundation on such principles, and organizing its powers on such form as to them shall seem most likely to effect their safety and happiness." The only permanent and enduring principle recognized in the Constitution is the right of the people to govern themselves and to make and unmake constitutions and forms of government, and it is a dangerous heresy to hold that any part of the Constitution is beyond the power of the people to annul or repeal.

7. In holding that the United States has restricted "the privilege of becoming naturalized to those whose sentiments are compatible with genuine allegiance to the existing Government." The restrictions on naturalization are well defined by law and the applicant for naturalization is not required to possess a sentiment of devotion "to the existing Government." Such a doctrine would compel him to refrain from an agitation for the most necessary amendment. Such a doctrine would have compelled every naturalized citizen to oppose the fifteen amendments to the Constitution, one of which (the fourteenth) was cited and emphasized by the court.

8. In holding that "those who believe in and propagate crude theories hostile to the Constitution are barred" from naturalization. The law defines the only crude theories which shall bar a foreigner from naturalization; they are opposition to organized government. Besides who is to be the judge whether the theories are crude or hostile to the Constitution? Again, is a wish to change some provision of the Constitution hostility to the Constitution?

9. In holding that it was necessary to his naturalization that the respondent should have a "reverence for the Constitution of the United States."

No such restriction is written into or implied in the law. Such reverence is incompatible with the critical spirit necessary to the securing of much needed changes in that instrument.

10. In holding that it was necessary to his naturalization that he have an "intention to support and defend it (the Constitution) against its enemies." No such restriction exists by law and the court possesses no power to add one word to the written law on the subject. One who merely believes in changing the Constitution is not its enemy; if so, the Constitution has more enemies than friends.

11. In holding that "he is not well di-posed toward the peace and tranquillity of the people. His propaganda is to create turmoil and to end in chaos."

This imposed on the respondent an extra legal condition and required of him by the decree what the law does not require. The judgment of the court should be the voice of the law.

12. In eliciting and considering over the objection of respondent's counsel and rendering judgment upon evidence upon irrelevant and immaterial matters, viz, the political beliefs and doctrines of the respondent when the only issue was the question of fraud in obtaining his naturalization certificate.

This application is based on the records and files in this action and on this petition.

LEONARD OLSSON, *Petitioner.*

J. W. A. NICHOLS,
GEO. MCKAY,
R. WINSOR,
J. H. EASTERDAY,
Attorneys for said Petitioner.

UNITED STATES OF AMERICA,
Western District of Washington, King County, ss:

Leonard Olsson, being duly sworn, says he is the respondent in the foregoing action; that he has read the same, knows the contents thereof, and that the statements of facts therein made are true; that he has fully and freely stated the facts of this cause to his attorney and counsel herein, J. W. A. Nichols, of Tacoma, and who, after such statement as aforesaid, advises him that he has a good and meritorious defense on the merits.

LEONARD OLSSON.

Subscribed and sworn to before me this 7th day of June, 1912.

J. W. A. NICHOLS,
Notary Public in and for the State of Washington, residing at Tacoma.

We, the undersigned counsel for the respondent, hereby certify that we have examined the foregoing petition and that in our opinion the same is meritorious and well founded in law.

J. W. A. NICHOLS.
GEO. MCKAY.
R. WINSOR.
J. H. EASTERDAY.

United States District Court, Western District of Washington, Southern Division.

United States of America, plaintiff, *vs.* Leonard Olsson, defendant. No. 1688.

MOTION OF PLAINTIFF TO VACATE JUDGMENT.

Comes now the plaintiff by W. G. McLaren, United States attorney, and by direction of the Attorney General, respectfully moves and petitions the court to vacate and set aside the judgment heretofore rendered by it in the above-entitled cause on the 22d day of May, 1912, in order that a retrial may be had of the issues herein.

W. G. MCLAREN,
United States Attorney.

ARGUMENT BY MR. M'KAY.

Mr. MCKAY. If the court please, what I have to say relates entirely to the matter of procedure, and I will have nothing to say if your honor grants this motion.

Mr. MCKAY. Perhaps you did not hear. I say what I have to say relates entirely to a matter of procedure and placing the record so that an appeal may be taken and the case may be heard by the appellate court the same as your honor heard it. If your honor grants this motion I have nothing to say, and if your honor refuses it I have a suggestion to make so that an appeal can be heard in the way this case was heard.

The COURT. As far as the argument is concerned, I think it would be best that the whole field should be covered before any response should be made to the argument, and counsel for the petitioner or counsel for the Government, in behalf of the last motion, have the concluding argument. So I think you had better present your views now before I hear either Judge Emery or Mr. McLaren.

Mr. MCKAY. All I have to say relates to the condition of the record and to the argument in this case. The petition is filed under a special statute, section 15 of the naturalization act. That statute does not give any name to this procedure. It does not make it a matter at law; it does not make it a matter of equity; it does not name it or make it a special proceeding. Now, in looking back through the history of the country—judicial history of the country—I find, in two other cases before this statute was enacted, that the United States Government had filed a bill in equity in its own

name against the grantee of this franchise to vote, and its asks the annulment on this proceeding admitting him to citizenship, and those cases were suits in equity, were brought in the name of the United States, and regular bills were filed, regular subpœnas issued, and regular replications filed and testimony taken in some of them in the ordinary way, and the question came before the court as to the jurisdiction of the court.

Thereupon counsel proceeded with his argument—(1) to the effect that this is an equity proceeding. (U. S. *v.* Norsch, 42 Fed., 418; U. S. *v.* Gleason, 90 Fed., 778.)

ARGUMENT OF MR. NICHOLS.

Mr. NICHOLS. If the court please, this is a petition for rehearing; I do not know whether your honor has read it or not.

The COURT. No, I have not.

Mr. NICHOLS. Then I will read it in portions so as to give your honor at least an outline of the grounds upon which the petition is based.

Now, in proceeding upon this branch of the matter before the court for hearing, I shall have to rely, of course, upon your honor's remembrance of the testimony, and my own remembrance of it so far as I am able to remember it, and that part of your honor's opinion filed in this case, which to some extent sets out portions of the testimony, and it is to that part of the case particularly that I desire to call your honor's attention.

I am not disposed to take exception to the order of this court or to the attitude taken by this court in safeguarding the government of our Nation. I am not among that class of persons who criticize the courts for their decisions. I am among that class of attorneys who believe that when the court has inadvertently erred it is the duty of counsel, not only to himself and to his client but to the court also, to advance his belief upon that matter, and if it shall appear upon the argument that he is correct and inadvertent error has been entered into, I am one of those who believe our courts will correct their errors; and that is the spirit in which we come to this court at the present time. It is not with a spirit of adverse criticism; it is not in the spirit that we have been supposed to possess by the reports that have gone abroad regarding this case. I would not have referred to that matter had not your honor referred to the wide extent to which this case has been published. It is our intention to call your honor's attention to what we believe to be an inadvertent error. It is a duty we owe to our client, and as I said to the court itself, and in that spirit it is our duty to call your honor's attention to some of the expressions which your honor used in the opinion filed in this case, which I think indicate that the court has inadvertently gotten into an error in this case, and to ask your honor's consideration with me as to whether my view of that matter is correct or whether it is the court's.

Your honor's opinion, after setting forth the nature of the suit and the parties, and purpose of the suit, and the relief sought, proceeds on the second page with this language:

"On the trial of the case respondent appeared in person and by an attorney, and after the introduction of evidence on the part of the Government tending to prove that he is now and was at and previous to the time of being admitted to be a citizen of the United States opposed to the form of government of this country, and to the principles of the Constitution, he offered rebutting evidence and gave testimony in his own behalf, which in the opinion of the court materially aided the Government's case. Answering direct interrogatories propounded by his own attorney he denied that he was an anarchist."

Of course that part of the facts, as shown by the evidence and as recited by your honor here, instead of being a foundation for annuling his citizenship certificate, would be in support of granting the certificate, because the statute requires he should not be an anarchist.

"Denied that he is opposed to organized government, and denied that he is in favor of overthrowing this Government by force or violence."

Of course these matters are set forth by your honor for the purpose of laying a foundation for the decree. The following sentence comes after that, "But omitted to make any declaration affirming his loyalty to the Constitution of the United States." To that part of it I desire to give the view I take of that matter for your honor's analysis. As counsel for the defendant I do not quite see the necessity for expression at that time declaring or affirming his loyalty to the Constitution of the United States, because I did not then understand and do not now understand that the defendant at that time was being heard upon examination as to his qualifications for citizenship. The issue at that time was whether or not he had perpetrated a fraud upon the superior court of the State of Washington in obtaining his citizenship papers. If he had been then on trial upon examination as to his qualifications for citizenship, it would have been his duty to

affirm his loyalty to the Constitution of the United States, to make declaration to that effect, and doubtless, when he was on examination before the superior court he did make such declaration; in fact, I think later on in your honor's opinion it is so found he did. On the trial here, however, for having perpetrated a fraud, instead of being reexamined as to his qualifications, my understanding was, and is now, that the issue should be confined entirely to the question of fraud, and not the question as to his qualifications, and hence I did not bring that out. I think inadvertently your honor fell into an error there in not holding strictly to the issues. I think if this had been a case on trial before a jury in which the question had been asked as to his loyalty to the Constitution, and objection offered to the question on the ground of irrelevancy, your honor certainly must have sustained the objection on the ground that was not the issue being tried. I think that would have been an error to have introduced such evidence before a jury. It certainly is an inadvertent error, in your honor's opinion, upon which to base the conclusion which your honor has reached in this case.

"Omitted to make any declaration affirming his loyalty to the Constitution of the United States, and on the contrary when tested by cross-examination his answers to all questions respecting his attachment to the Constitution of the United States were evasive."

Your honor, of course, in this statement, if I might so refer to it, in the statement of fact or in the recital of the facts upon which your honor's conclusion later on expressed, is founded, gives here a conclusion as to the wintess's testimony, instead of stating the substance of the testimony, It seems to me if your honor had had the time and if the idea had occurred to your honor in writing the opinion to have given the substance of the tesimony as your honor did above in the previous statement, instead of putting down merely the statement here that his answers were evasive, so as to have shown in what way they were evasive.

"He admitted that he is a Socialist and frequenter of assemblages of Socialists in which he participates as a speaker advocating a propaganda for radical changes in the institutions of the country."

I think it is error for your honor to base judgment here canceling the certificate of citizenship upon the fact that this man belongs to or failed to belong to any political party. Socialists, I think, are recognized not only in this country but in other countries as a political party. In some States of our Union they have been so considered as a political party, so recognized and treated, candidates elected, even seated in the legislative bodies of our States and in the legislative body of the United States. To say, therefore, that belonging to a party which is recognized, which elects officers, and whose officers are now holding office, to say that in this State we must take up the position of saying that to belong to that party, so recognized by other States and so recognized by the United States Government, should be considered in a declaration for citizenship and as a reason for canceling his certificate of citizenship, seems to me must have been inadvertent error on your honor's part. That is not, in my opinion, the ground upon which your honor's conclusion should have been based, a sufficient ground upon which that conclusion may be reached. While I do not wish to argue further upon that matter, I think it is an important point in this case. I want your honor if you shall be pleased to do so, to consider fully that States of this Union can not be put in a position where they shall be antagonistic to one another; the civil rights of a man in one State can not be held in another State to disqualify him from citizenship. The fact that a man has some crude belief in which he thinks the public should have a community interest in various forms of property does not mean that he has beliefs which are so hostile to the Government of the United States or to our institutions as to deny him the rights of citizenship or to take from him the right of every subject, the right to advocate those doctrines and try to get to himself others of the same belief.

Now your honor proceeded with another statement of evidence there in this language: "Claimed to have a clear understanding of the Constitution of the United States, and knew that by one of its articles deprivation of life, liberty, or property without due process of law is forbidden, and yet the evidence introduced in his behalf to prove that the party with which he is affiliated and whose principles he advocates, has for its main object the complete elimination of property rights in this country."

That statement by your honor as a basis for the conclusion later reached, it seems to me, is error in two particulars. In the first place, I think your honor's memory must be at fault as to the evidence; if not, mine is greatly at fault. I do not think the evidence established the fact that the Socialist Party or Socialist-Labor Party advocates the entire elimination of property rights in this country, and in the second place I do not think the Socialist party or its beliefs or docrtines was on trial here under the issues in this case. I think the evidence as to the objects of the Socialist party would have been ruled out by your honor as wholly immaterial, and therefore could not

have formed a basis for your honor's judgment in this case, even if such evidence were introduced and were of the character which the language of your honor, as used here, would indicate.

The COURT. It may be mentioned, and right there in line with your statement, that Mr. McLaren did offer some literature of a character I presume to show the doctrines and beliefs of Socialists. The court rejected them.

Mr. NICHOLS. I think that is correct, and as I remember it in that connection Mr. Olsson offered some papers which he stated contained the principles and platform of the Socialist Party and Socialist Labor Party with the idea of showing your honor a distinction, which also your honor rejected, and I think correctly.

Then your honor proceeds with a recital of facts here. "He expresssed himself as being willing for people to retain their money, but insisting that all the land, buildings, and industrial institutions should become the common property of all the people, which object is to be attained, according to his belief, by use of the power of the ballot."

In that particular recital of the facts I think your honor is correct. The error which I would call your honor's attention to occurs to me would be in basing the judgment which your honor has reached upon that fact. The fact a man may believe in the power of the people through the ballot changing the rights of holding property seems not to me to be a ground for annuling his citizenship. The rights under which we hold property are very often changed by the legislature of the State.

The COURT. You are making the mistake that most of the newspapers have made by putting a period where I put a comma.

Mr. NICHOLS. Let me read that again. I do not wish to in anywise misstate your honor. The language used by your honor in this statement, and I know that your honor will not put me in the same catagory with the newspapers because I never yet have expressed an opinion of this court or any court of the United States or of this State such as have been expressed by the newspapers unfortunately while this case has been pending. I do not take second place to any lawyer at the bar in my respect to the court, and I think my record during the last twenty years I have been practicing in this city will bear me out fully in the assertion, and it is with the highest respect to this court I come now asking for the review of this court.

The COURT. I do not want you to understand my remarks implied a censure to you. As we go along we want to avoid some of the mistakes that other people make. Let's meet this matter fair and in its true light.

Mr. NICHOLS. That is the common desire of myself with your honor. The language used then is, "But insisting that all the land, buildings, and industrial institutions should become the property of the people, which object is to be attained, according to his belief, by the use of the power of the ballot, and when that object shall have been attained the political government of the country will be entirely abrogated because there will be no use for it."

The COURT. You will observe that there is a comma after the word "ballot."

Mr. NICHOLS. That is true. I did not at first read to the end of the sentence as I have done now. However, I do not see how that changes the evidence as therein stated by your honor so as to give it sufficient basis for the conclusion later reached. It simply shows that the defendant's beliefs as to property rights are what we would all consider to be very crude, or at least what I consider to be in my private belief very crude. I, however, concede to the defendant the right to entertain any beliefs which he may have so long as he only undertakes to promulgate those beliefs and to get proselytes to those beliefs by fair means. He may be a crazy man, but being crazy does not form a basis for depriving him of citizenship. I think that the language which the defendant used in that case would not justify your honor's opinion here as stated in this case. I think that his theories in regard to property rights may possibly be crude theories. I do not care to argue that point. I wish to ask your honor's judgment about that point, as to whether or not it is a sufficient basis for the judgment canceling his citizenship papers.

Now proceeding: "And he further admitted that his beliefs on these subjects were entertained by him at and previous to the date of the proceedings in the superior court admitting him to become a citizen of the United States." Possibly that might have been a subject which the superior judge might have considered when Mr. Olsson was on examination before him for the purpose of obtaining citizenship papers, and which possibly may have been a subject which the superior court in its discretion might have deemed sufficient for rejecting citizenship to Mr. Olsson at that time, but that was a question for the court to pass upon in rendering its decree and judgment. If it was a proper matter for trial it was a matter for trial then, and it was then determined by the court, because it is a familiar principle of law which I think will be conceded that all things which might have been tried in the hearing of a case upon trial are considered to have been tried and adjudicated by the court when it renders its decree. The matter can not again be opened up and gone into for new trial and for reexamination

as to the rights of that man to obtain his citizenship papers. The only question upon which he may again be brought to trial is, as suggested a little while ago, whether the decision in the superior court was obtained, not erroneously, not by inadvertence in not considering matters that might have been considered at that time, but whether the court was purposely deceived. Those are the questions, and the only ones, it seems to me which were on trial here at that time. Hence his expressions as to his beliefs in property rights and so forth are immaterial matters.

Now, your honor, in the further part of the opinion sets out some sections of the law. It is not necessary to read that, and the purpose of the law, and what the object to be attained is, and after setting out those matters in your honor's opinion, your honor proceeded at the bottom of page four in this language:

"The evidence in this case, including the respondent's admission above recited, do not have to be analyzed, interpreted, or weighed in order to determine any doubtful question as to his attitude. He has no reverence for the Constitution of the United States."

I shall take these conclusions up separately instead of combining them together, for the purpose, as it occurs to me, of better analyzing the position necessary to be taken in this case. Your honor says the defendant here has no reverence for the Constitution of the United States. It seems to me your honor certainly must have used the word "reverence" there inadvertently, and I am willing to think your honor meant respect instead of reverence. A person who has no respect for the Constitution of the United States would certainly be in a position to make his application for citizenship at least very doubtful, if it were an original inquiry before this court. I should say if I were a judge upon the bench that a man who had no respect for the Constitution of the United States would not be entitled to citizenship. Certainly we all know that the Constitution of the United States is entitled to the highest respect, and not only do the United States receive that respect, not only from our own citizens, but from all the greatest men of the world. The statesmen of Europe have expressed opinions which would not be hard to find in which they say that the Constitution of the United States is one of the greatest documents that has ever been promulgated. We are all willing to admit that, and I take that position myself, but if it comes down to the statement here, the recital of fact in your honor's ruling, then I should have to write another word there, and not that word reverence, because no citizen of the United States, I dare say in this court before your honor, who is worthy of that honor of being a citizen of the United States, will have reverence for any instrument or any work of man's hands. The word is too broad. The men who framed the instrument themselves were not entitled to reverence and certainly the work of their hands would not be entitled to reverence. The American citizen is a king. The American citizen stands on a plane higher than any king in Europe or any king of the Old World. The American citizen has a higher title of honor than any title of nobility held by any men in any country on earth, and a man holding that position, a citizen of the United States, would not have reverence for the work of any man's hands. It is impossible. Reverence is not the word to use there, and it is not the proper basis, in my opinion, for the cancellation of a man's citizenship. I think as I said before your honor must have used that word inadvertently. Whether or not that is so is for you to say. If it is not used inadvertently I think your honor has inadvertently fallen into an error, and it should be considered.

"He has no reverence for the Constitution of the United States, nor intention to support and defend it against its enemies, and he is not well disposed towards the peace and tranquillity of the people." Now, if that were a fact instead of a conclusion, if the defendant did testify to those things, or if there were evidence before your honor which would force that conclusion which your honor has recited there, then I would be almost willing to concede and confess that I think Olsson, as I said before, was not showing fit qualifications for citizenship. If this were the evidence, if the evidence necessitated that conclusion, I would almost think your honor were right even though perhaps it was irrelevant at that time, but my remembrance of the evidence as it was at that time certainly would not justify the conclusion your honor has set out. In his examination, as said before, before the superior court in this county, undoubtedly it was made a part of that examination that it was his intention to support and defend the Constitution of the United States against its enemies. The statute requires that evidence of that kind, a declaration of that kind, as I remember it, should be made when the application for citizenship is made. The statute recites he shall, before he is admitted to citizenship, testify on oath in court that he will support the Constitution of the United States, and that he will absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatsoever. Undoubtedly when he was on examination before the superior court he made these declarations. It would not be presumed the superior court of the State admitted him to citizenship unless proper qualifications were made and appeared before that court. Now, then,

I do not remember any testimony was given here by the defendant himself or by any witnesses which would contravene that, except as it be from a conclusion drawn from other statements which he made at that time, that he was a member of the Socialist-Labor Party. If the fact that he was a member of the Socialist Labor Party would justify those conclusions, then perhaps those conclusions might be correct. I think however, no one will contend that the fact that a man belongs to the Socialist Party or the Socialist Labor Party or any other party will justify a conclusion as to his own beliefs. A man may belong to a party without fully knowing or understanding what its beliefs and what its platforms are.

It can not be said because a man belongs to a party therefore he advocates all the theories of that party, and that the party controls his own beliefs and his own actions so as to disqualify him or condemn him.

Your honor reached the conclusion "He is not well disposed towards the peace and tranquillity of the people. His propaganda is to create turmoil and end in chaos." Undoubtedly your honor's conclusion must have been drawn from the fact that this man belonged to the Socialist-Labor Party. If your honor will remember, he denied emphatically that he belonged to the Socialist Party, and undertook to state the difference between them as expressed in their platforms was radical. He was not permitted to go into that explanation. I do not myself think it was material, your honor did not wish to hear it, and from the very fact it was immaterial I was satisfied at that time your honor would not base any conclusion upon it, would not use it as a basis for judgment in that case, but in that your honor has set out those facts in this opinion I think I must have been mistaken myself at that time; that I ought to have called your honor's attention more particularly to that part of the testimony as being wholly inadmissible under the issues of the case then on trial.

Now, with regard to rebutting your honor's statement of a portion of the facts that appeared at that time, and going back to our memory of the case a little bit, I think perhaps we can agree upon some features of it, and directing your honor's attention to the requirements of the statute as applicable to the conditions in this case, your honor has recited in here in this opinion that this man Leonard Olsson was not attached to the principles of the Constitution at the time he acquired from the superior court his papers in naturalization. How, under the statute, would attachment to the Constitution be shown? Certainly not by the political party to which the man belongs. There are certain things set out in the statute which disqualify a man from attaining citizenship. Among other things, he must not be a polygamist, and I apprehend that in his application to the superior court that fact was made to appear, that he was not a polygamist. I apprehend also if that was not the fact, if he falsely so represented himself to the superior court, that he was not a polygamist, and it was discovered afterwards that at that time he was a polygamist, it would be sufficient ground for annulling his citizenship papers. There is no question as to that. So that I think the fact would be as to his residence in the country. He was required to show to the court that he had been a resident of the United States for a period of five years, and if it should be made to appear afterwards that that was not a fact and susceptible of proof, it would be sufficient ground without doubt for the cancellation of his citizenship papers. I may call your honor's attention now to the nature of these facts. In the same way the fraud which the statute is aimed at when it says if his citizenship papers are obtained by fraud they may be cancelled, the fraud which is intended to be punished is fraud as to some physical fact which is susceptible of demonstration, and not to opinions entertained. If he was a polygamist and if his residence here was not for the prescribed time, if he was a Mongolian, did not belong to the proper race of people which are entitled to become citizens, and he deceived the court as to those facts, physical facts capable of demonstration, it could be said he perpetrated a fraud. It could be said with all certainty that he perpetrated a fraud upon the court, and his papers necessarily under the statute would have to be revoked, but when a man expresses an opinion, an opinion is never susceptible of demonstration. I may be of the opinion that this book here is of red color. I may express that opinion. No man on earth can say that I am deceiving the court or defrauding the court if I am color-blind and if I am honest in my expression. When this man said that he was attached to the Constitution of the United States, and he had his witnesses to that effect, they expressed an opinion as to his belief, which they expressed in sufficient firmness to justify the judge of the superior court at that time in saying that that was true. It does not seem to me, and I so argued upon the hearing of this case on demur, it does not appear to me that is one of the questions of fact which are susceptible to demonstration or capable of being called in question on rehearing.

I desire to call your honor's attention to the language of the statute. It does not say that he shall be attached to the Constitution of the United States, but it does use this

language with regard to what shall be made to appear at the hearing when he is making application for his citizenship papers, "It shall be made to appear to the satisfaction of the court before admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States for five years at least, and within the State or Territory where such court is at the time held one year at least, and during that time." Now, here is the clause I wish to direct your honor's attention to: "It shall be made to appear that during that time hè has behaved as a man of good moral character attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." Let me go over that clause once more and separate these clauses so that we may more particularly analyze the directions so given by the statute. "It shall be made to appear that during that time he has behaved as a man of good moral character." It should be made to appear that during that time he has behaved as a man attached to the principles of the Constitution. It shall be made to appear that during that time he has behaved as a man well disposed to the good order and happiness of the same. Those three qualifications required there by the law as to attachment to the Constitution, good moral character, and proper disposition toward the well-being and happiness of the people of the United States are required to be determined during the five years of residence here by his behavior. I want to ask your honor to go over the evidence in your honor's mind and see if there is a single word in that trial derogatory to the man's behavior during that five years. The evidence was he was a hardworking man, that he resided here for five years, he was a longshoreman; that he has earned his living by working with his hands; that he spent his evenings in study—I think the testimony was in the study of his peculiar beliefs in regard to Socialism. The evidence on cross-examination, I think, perhaps, was partly, at least, brought out by your honor's own questioning, and was to the effect that he had at times distributed tracts of the Socialist-Labor Party upon the street, and that he occasionally made speeches in the hall of the Socialist-Labor Party, but was there a single word of evidence anywhere as to any tumultuous conduct on the part of the defendant? Was there a single word that he had not in any way behaved as a quiet, peaceful, law-abiding citizen of the United States during those five years? Was there a single word in the evidence which would brand him as a criminal in any respect, or doing anything to injure the rights of person or property of his fellow men or of the public? Not one word. Of course your honor will bear me out in the assertion when I say that there was not one word of evidence there to show that any act of Leonard Olsson during the five years preceding the time when he made application for his citizenship papers was not an act which any good citizen of the United States might not have done without interfering with the rights of any person. And his acts in passing out those tracts upon the street may be looked upon as being a vagary of his. Certainly those of us who hold opinions in some respects different from the opinions of our fellow beings are not so dangerous to the community at large that our citizenship could be taken away from us. If such were the fact, I do not know who would be left as citizens of the United States. I am afraid there would not be citizens enough left to manage the affairs of state.

What I want to call your honor's attention to is that these qualifications required by the statute of good moral character and being well disposed to the good order and happiness of the people of the United States, and his attachment ot the principles of the Constitution, are to be determined not by his theories. The statute does not provide that, but they are to be determined by his behavior during those five years. Those witnesses he had on the stand had known him continuously during that time, and longer some of them. He is a neighbor of theirs. He had visited their houses. They had met him on the street and they had met him in the halls of the Socialist-Labor Party, but I call your honor's remembrance to the fact that in response to the same question they said directly each and every one of them that they had seen nothing in the behavior of Mr. Olsson during their entire acquaintance with him which would brand him as in any way a bad citizen, and that they would and did recognize him as a citizen of good behavior, entitled to the respect of the community, and were willing to recommend him, and did recommend him then, in answer to my direct question, as a good citizen of the United States. This was based upon their knowledge of his behavior, not upon his political theories, not upon his vagaries as to rights of property, or what would be the rights of citizens under a different condition of affairs, but upon his behavior, the very thing which the statute requires.

In fact, under this evidence it seems to me in going over this thing again, your honor can see that the evidence in this case does not fall within the requirements of the statute, which says that a man's citizenship papers may be annulled when it says they may be annulled for fraud. His citizenship papers may be cancelled on the ground of fraud, or on the ground that such certificate was illegally procured. A man's belief

in regard to these matters is not susceptible of proof so as to fasten upon him the condemnation of fraud practiced upon the court before whom he obtained his citizenship papers.

I have gone over these matters very briefly. I hope your honor will not go over them so briefly as I have done. I am not now arguing to a jury before whom a case is being presented and points of argument are being presented and re-presented in different lights. Your honor has had more experience than I have had in analyzing these matters. I know if the points I have suggested are meritorious your honor will give them sufficient consideration to see their merit and pass judgment on them accordingly. I am not going to weary your honor or this court by reiterating what I have said, and I am only going to make this suggestion, so that your honor will see why I have made this argument brief, that it was out of deference to your honor, it is not because I do not believe my argument is well-founded; it is not because I do not believe error has been committed which has worked a grievous mistake to this defendant, but it is because I have confidence in your honor enough to know if there is anything in this contention your honor will recognize it and render judgment accordingly.

Upon the other branch of the case, as to whether, if your honor should not deem this matter which I have presented sufficient to warrant the dismissal of the case, then as to the alternative relief of granting a rehearing for the purpose of getting a record, Mr. McKay, of Seattle, will present that branch of the case, with your honor's permission.

MR. M'LAREN'S REMARKS.

Mr. McLaren. May it please the court, counsel's petition is stated in the alternative. He is asking first for the dismissal of the case. I am here opposing that branch of the motion. I see no occasion for the case being dismissed, no matter what else may become of it. I am put here in this position: The attorney general has ordered me to cooperate with the defendant in seeking a reopening of the case, in order that a new trial may be had. I make that statement to the court in order that the court may know why I am here taking a position contrary to the position which I am in on the record in this case.

I therefore present to the court, addressed to its discretion, a formal motion asking that the judgment made by this court be vacated and set aside. I submit that motion without any argument.

The Court. Does your motion state that you are doing it by direction of the Attorney General?

Mr. McLaren. It certainly does, your honor.

The Court. Mr. McLaren, when you conducted the trial of this case for the Government, you were acting in good faith, were you not?

Mr. McLaren. I certainly was, your honor.

The Court. And afterwards a decree, final decree, entered in this case, came from your office. That met your approval, didn't it?

Mr. McLaren. It certainly did, and I may add——

The Court. I wish simply to have the record made clear, so that all who are in any way connected with the case will bear the responsibility for what they individually did, that is all.

REPLY OF MR. NICHOLS.

Mr. Nichols. If the court please, there is no argument—no response has been made to this motion by counsel for the Government. The only argument I could reply to would be the argument of the last speaker.

Mr. McLaren. I am objecting to that part of your motion asking for a dismissal of the case. Do not misunderstand me.

Mr. Nichols. I meant to have said that there was no argument made. I recognize your position. I could not repeat my argument in favor of the first part of my motion in the absence of the argument by the Government attorney; so that the only argument that has been presented to be answered is the argument of the last counsel, and as the only knowledge which that counsel has of the facts of the case is what he say he learns from hearsay evidence I could not take the time to answer that argument upon that line. I shall have to be excused from attempting to make any answer to that part of his argument. He reads a letter from Congressman Berger containing some lurid expressions, and I would like to ask a consideration of the fact as to whether that letter ascribed to Congressman Berger is just as authentic as a great many newspaper reports and current reports of this case have been during the last few weeks. If there is no greater authenticity to Mr. Berger's letter than there is to some of those reports, the letter requires no answer at my hands. The position of counsel for the

intervenor could be made here only on one or two grounds. Either he speaks here in defense of this court or he speaks here from some knowledge of the record. This court needs no defense. No attack has been made on this court by the respondent in this case or his counsel. If inadvertent expressions have been published by unauthorized persons we will not be held responsible for that I am sure at the hands of this court. I can not therefore reply to counsel on that line, and as to his argument as to what he hears or learns of the evidence, I decline to make any response.

COURT'S REMARKS OVERRULING MOTION.

The COURT. I will first dispose of the petition for a new trial and rehearing. This petition in twelve paragraphs cites the assigned reasons for the court vacating the decree which has been entered, and asks to dismiss the case or retry it. I will pass these in review briefly.

The first is that, "there was no evidence produced on the trial of said cause that the respondent was an anarchist or polygamist, or that he was a disbeliever in or was opposed to organized government, or a member or affiliated with any organization or body of persons teaching disbelief in organized government, or that he is not or was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same."

If that statement is true there should be no hesitation on the part of the court in granting this petition. It is true as counsel has stated that the issue on the trial of the Olsson case was whether he had committed a fraud at the final hearing of his application for naturalization, in the superior court. That was the issue raised by the petition filed by the United States district attorney in this court, and it was because that issue was raised that Judge Donworth overruled the demurrer to the petition. It was for the trial of that issue that the case was brought to a hearing, and if the court made its decision and granted its decree without evidence of the facts as stated in this first paragraph, then the court was greviously wrong and the whole case should be entirely decided in Mr. Olsson's favor. But I must say emphatically that the statements of the first paragraph of the petition are untrue. The fraud alleged in the petition was that Mr. Olsson had at the hearing in the superior court represented and stated that he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same. That allegation in the petition is, by Mr. Olsson's answer on file in this case, expressly admitted. He did so represent, he did so state. Then to sustain this petition it was necessary for the Government to prove by evidence on the trial that that representation, that statement, was not true. There was evidence.

The argument made in support of this petition is to a large extent a presentation of the recital in the opinion of the court of things said or admitted by Mr. Olsson as a witness and by his other witnesses who testified for him, and combined with the conclusion that those things are not grounds for depriving a man of his citizenship. Those recitals are merely put into the opinion in accordance with the habit of the court to treat fairly the party whose case is decided adversely, and give him a fair statement of his case as he made it. There was introduced on the trial of the case evidence on the part of the Government, positive evidence. What is recited in the opinion is that which was presented in opposition to it. It was that which had to be weighed against the evidence introduced on the part of the Government.

I have taken pains to prepare a statement of the evidence introduced on the trial of Mr. Olsson's case, which may be useful hereafter in further proceedings in the case, but at least it will serve for the purpose of basing the decision of the court now upon the evidence that was heard by the court upon the trial. I will read that statement as I have made it of what the evidence was:

United States District Court, Western District of Washington, Southern Division.

United States of America, petitioner, *vs.* Leonard Olsson, respondent. No. 1688.

On the trial of this case, Mr. Smith who made the initiatory affidavit, testified that in the Superior Court of the State of Washington for Pierce County, Olsson appeared as a witness supporting an application for naturalization when he, Smith, representing the Government, interrogated the applicant and his witnesses and in the examination of Olsson at that time propounded to him the question: Are you yourself attached to the principles of the Constitution of the United States and well disposed toward the good order and happiness of the same? To which Olsson made a direct answer saying that he was not attached to the principles of the Constitution of the

United States. Mr. Smith testified further that Olsson again appeared in the superior court as a witness for another applicant for naturalization and he, Smith, again propounded the specific question: Are you attached to the principles of the Constitution of the United States and well disposed toward the good order and happiness of the same, and that Olsson again answered specifically saying—that he was not attached to the principles of the Constitution of the United States and in answer to a further interrogatory stated that he had entertained the same sentiments regarding the Constitution of the United States for a period of two or three years, which antedated his naturalization. Mr. Charles A. Enslow, another witness for the Government, testified that Olsson had attracted his attention by his participation in assemblages engaged in propagating doctrines hostile to the Government of the United States, and he then told of an interview with Olsson in which he exploited his theories and beliefs which the witness regarded as dangerous. Said witness further testified that he had previously been connected with the Bureau of Naturalization charged with the duty of examining applicants for naturalization and their witnesses, and while so employed he interrogated an applicant for naturalization in the Superior Court for Pierce County which refused to admit said applicant to citizenship for the reason that he declared himself to be not attached to the principles of the Constitution of the United States and appeared to be unfriendly to our Government, and that Olsson was then and there present as a witness for the said rejected applicant.

The evidence given in behalf of Olsson consisted of testimony of Gustave Rust, Mrs. Catherine Gelderman, Antone Esklund, and Mrs. Antone Esklund to the effect that in their estimation he is a good citizen. Either Mr. Esklund or Rust stated that he and Olsson are pledged supporters of a propaganda, the nature of which he failed to explain.

Mr. Olsson testified as a witness in his own behalf and the examination in chief by his counsel consisted mostly of direct and leading questions eliciting negative answers to the questions: Are you an anarchist? Are you a polygamist? Are you in favor of the destruction of the Government of the United States, by force or violence? Other questions propounded by his counsel elicited his version of the testimony given by him on the two occasions referred to by Mr. Smith, differing from Mr. Smith's testimony only as to the precise words of the questions propounded, Olsson saying that Mr. Smith asked him the question: Are you devotedly attached to the principles of the Constitution of the United States?—that being the question which he answered negatively and being asked to explain what he meant by saying that he was not "devotedly attached" to the Constitution of the United States, he said he meant that he was not idolatrously attached to the principles of the Constitution; and he was further interrogated as to what he meant by that and he said that he did not worship the Constitution as an idolator worships his idol.

On his cross-examination he stated that he had read the Constitution of the United States and understood its provisions—that he knew that one of its articles is that no person shall be deprived of life, liberty, or property without due process of law, and being asked to explain the propaganda referred to in the testimony previously given by one of his witnesses he said the object of it was to do away with private ownership of property; and being asked how that was to be accomplished he said by the power of the ballot; and being asked if he believes it to be right to deprive owners of their lands, and improvements, and buildings which they have placed thereon, and their money, and all other property, by merely voting to do so, he answered saying: Oh, let them keep their money, but all lands, and buildings, and mines, and industrial works will be held in common for all the people and then the political government will be abrogated because there will be no use for it when there is no property, and he repeated a second time that without individual ownership of property to be protected by law there will be no use for the political government of this country and it will be succeeded by an industrial democracy.

He explained his party affiliations saying that there are two kinds of Socialists, the difference between the two branches being that the Trade-Union Party to which he belongs, believes in working along industrial lines, to substitute industrial control of the country, in place of the present political government; whilst the other branch believes in proceeding according to the usual methods of other political parties.

The Government called as a witness in rebuttal, Mr. McFarland, who testified that he was present in performance of his duties as deputy clerk of the superior court on the occasions when the respondent appeared as a witness in the naturalization proceedings referred to in the testimony given by Smith and Enslow, and that he had never heard the word "devotedly" used in questions propounded to applicants for naturalization or their witnesses.

[Exhibit No. 6 not printed.]

EXHIBIT No. 7.

[Presented by Leonard Olsson. (Stamped:) June 27, 1912. Committee on the Judiciary. U. S. House of Representatives.]

SOCIALIST LABOR PARTY PLATFORM.

[Adopted by the national convention of the party April 10, 1912.]

The Socialist Labor Party of the United States of America in national convention assembled in New York on April 10th, 1912, reaffirming its previous platform pronouncements, and in accord with the international socialist movement, declares:

Social conditions, as illustrated by the events that crowded into the last four year, have ripened so fast that each and all the principles, hitherto proclaimed by the Socialist Labor Party, and all and each of the methods that the Socialist Labor Party has hitherto advocated, stand to-day most conspicuously demonstrated.

The capitalist social system has wrought its own destruction. Its leading exponents, the present incumbent in the presidential chair and his "illustrious predecessor," however seemingly at war with each other on principles, can not conceal the identity of their political views. The oligarchy proclaimed by the tenets of the one, the monarchy proclaimed by the tenets of the other, jointly proclaim the conviction of the foremost men in the ruling class that the republic of capital is at the end of its tether.

True to the economic laws from which socialism proceeds, dominant wealth has to such an extent concentrated into the hands of a select few, the plutocracy, that the layers of the capitalistic class feel driven to the ragged edge, while the large majority of the people, the working class, are being submerged.

True to the sociologic laws, by the light of which socialism reads its forecasts, the plutocracy is breaking through its republic-democratic shell and is stretching out its hands toward absolutism in government; the property-holding layers below it are turning at bay; the proletariat is awakening to its consciousness of class, and thereby to the perception of its historic mission.

In the midst of this hurly, all the colors of the rainbow are being projected upon the social mists from the prevalent confusion of thought.

From the lower layers of the capitalistic class the bolder, yet foolhardy, portion bluntly demands that "the trust be smashed."

Even if the trust could, it should not be smashed; even if it should, it can not. The law of social progress pushes toward a system of production that shall crown the efforts of man, without arduous toil, with an abundance of the necessaries for material existence, to the end of allowing leisure for mental and spiritual expansion. The trust is a mechanical contrivance wherewith to solve the problem. To smash the contrivance were to reintroduce the days of small-fry competition and set back the hands of the dial of Time. The mere thought is foolhardy. He who undertakes the feat might as well brace himself against the cascade of Niagara. The cascade of social evolution would whelm him.

The less bold among the smaller property-holding element proposes to "curb" the trust with a variety of schemes. The very forces of social evolution that propel the development of the trust stamp the "curbing" schemes, whether political or economic, as childish. They are attempts to hold back a runaway horse by the tail. The laws by which the attempt has been tried strew the path of the runaway. They are splintered to pieces with its kicks, and serve only to furnish a livelihood for the corporation and anticorporation lawyer.

From still lower layers of the same property-holding class, social layers that have sniffed the breath of socialism and imagine themselves Socialists, comes the iridescent theory of capturing the trust for the people by the ballot only. The "capture of the trust for the people" implies the social revolution. To imply the social revolution with the ballot only, without the means to enforce the ballot's fiat, in case of reaction's attempt to override it, is to fire blank cartridges at a foe. It is worse. It is to threaten his existence without the means to carry out the threat. Threats of revolution, without provisions to carry them out, result in one of two things only—either the leaders are bought out, or the revolutionary class, to which the leaders appeal and which they succeed in drawing after themselves, are led like cattle to the shambles. The Commune disaster of France stands a monumental warning against the blunder.

An equally iridescent hue of the rainbow is projected from a still lower layer, a layer that lies almost wholly within the submerged class—the theory of capturing the trust for the working class with the fist only. The capture of the trust for the people implies something else besides revolution. It implies revolution carried on

by the masses. For reasons parallel to those that decree the day of small-fry competition gone by, mass-revolutionary conspiracy is, to-day, an impossibility. The trust-holding plutocracy may successfully put through a conspiracy of physical force. The smallness of its numbers makes a successful conspiracy possible on its part. The hugeness of the numbers requisite for a revolution against the trust-holding plutocracy excludes conspiracy from the arsenal of the revolution. The idea of capturing the trust with physical force only is a wild chimera.

Only two programs—the program of the plutocracy and the program of the Socialist Labor Party—grasp the situation.

The political state, another name for the class state, is worn out in this, the leading capitalist nation of the world, most prominently. The industrial or socialist state is throbbing for birth. The political state, being a class state, is government separate and apart from the productive energies of the people; it is government mainly for holding the ruled class in subjection. The industrial or socialist state, being the denial of the class state, is government that is part and parcel of the productive energies of the people.

As their functions are different, so are the structures of the two states different.

The structure of the political state contemplates territorial "representation" only; the structure of the industrial state contemplates representation of industries or useful occupations only.

The economic or industrial evolution has reached that point where the political state no longer can maintain itself under the forms of democracy. While the plutocracy has relatively shrunk, the enemies it has raised against itself have become too numerous to be dallied with. What is still worse, obedient to the law of its own existence the political state has been forced not merely to multiply enemies against itself; it has been forced to recruit and group the bulk of these enemies, the revolutionary bulk, at that.

The working class of the land, the historically revolutionary element, is grouped by the leading occupations, agricultural as well as industrial, in such manner that the "autonomous craft union," one time the palladium of the workers, has become a harmless scare-crow upon which the capitalist birds roost at ease, while the industrial unions cast ahead of them the constituencies of the government of the future, and, jointly, point to the industrial state.

Nor yet is this all. Not only has the political state raised its own enemies; not only has itself multiplied them; not only has itself recruited and drilled them; not only has itself grouped them into shape and form to succeed it; it is, furthermore, driven by its inherent necessities, prodding on the revolutionary class by digging ever more fiercely into its flanks the harpoon of exploitation.

With the purchasing power of wages sinking to ever lower depths; with certainty of work hanging on ever slenderer threads; with an ever more gigantically swelling army of the unemployed; with the need of profits pressing the plutocracy harder and harder recklessly to squander the workers' limbs and life; what with all this and the parallel process of merging the workers of all industries into one interdependent solid mass, the final break-up is rendered inevitable and at hand.

No wild schemes and no rainbow chasing will stead in the approaching emergency. The plutocracy knows this—and so does the Socialist Labor Party—and logical is the program of each.

The program of the plutocracy is feudalic autocracy, translated into capitalism. Where a social revolution is pending, and, for whatever reason, is not enforced, reaction is the alternative.

The program of the Socialist Labor party is revolution—the industrial or socialist republic, the social order where the political State is overthrown; where the congress of the land consists of the representatives of the useful occupations of the land; where, accordingly, a government is an essential factor in production; where the blessings to man that the trust is instinct with are freed from the trammels of the private ownership that now turn the potential blessings into a curse; where, accordingly, abundance can be the patrimony of all who work; and the shackles of wage slavery are no more.

In keeping with the goals of the different programs are the means of their execution.

The means in contemplation by reaction is the bayonet. To this end reaction is seeking, by means of the police spy and other agencies, to lash the proletariat into acts of violence that may give a color to the resort to the bayonet. By its maneuvers it is egging the working class on to deeds of fury. The capitalist press echoes the policy, while the pure and simple political Socialist Party press, generally, is snared into the trap.

On the contrary, the means firmly adhered to by the Socialist Labor Party is the constitutional method of political action, backed by the industrially and class-consciously organized proletariat, to the exclusion of anarchy and all that thereby hangs.

At such a critical period in the Nation's existence the Socialist Labor Party calls upon the working class of America, more deliberately serious than ever before, to rally at the polls under the party's banner. And the party also calls upon all intelligent citizens to place themselves squarely upon the ground of working-class interests, and join us in this mighty and noble work of human emancipation, so that we may put summary end to the existing barbarous class conflict by placing the land and all the means of production, transportation, and distribution into the hands of the people as a collective body, and substituting for the present state of planless production, industrial war, and social disorder, the Socialist or industrial commonwealth—a commonwealth in which every worker shall have the free exercise and full benefit of his faculties, multiplied by all the modern factors of civilization.

Exhibit No. 8.

PRINCIPLES OF THE SOCIALIST LABOR PARTY.

A perfect understanding of capitalism is necessary to a clear comprehension of socialism.

Under capitalism society is divided into two classes of people, as follows:

A possessing, or capitalist class, among the members of which is distributed in unequal shares and various forms of ownership of the whole existing wealth, including land, the machinery of production, and the commodities that must be consumed in the sustenance of life;

A dispossessed, or proletarian class, whose members own nothing but their labor power, which is useless unless it can be exerted upon nature through the machinery of production.

Since machinery is owned exclusively by the capitalist class, each proletarian must sell his labor power to a capitalist or to an association of capitalists in order to obtain the necessaries of life.

Of the wealth produced by his labor power the portion which he receives is called "wages"; the other portion is appropriated by his employer and is called "profit."

Wages naturally depend upon competition among workers, and this competition increases with the displacement of labor by machinery. Each capitalist conducting his own business with a sole view to his own immediate profit, regardless of the present or future public welfare, no provision is made for the reemployment of the labor displaced.

Not only, then, is the rate of wages steadily falling, but the number of proletarians who must starve in enforced idleness, is constantly increasing. In other words, the struggle for existence among the workers becomes more intense as invention supplies the means of greater abundance with less effort.

But while progressive competition is the law of wages, progressive concentration is the law of capital.

First, as a tool develops into a machine, the artisan is driven from his shop into the factory of a small capitalist. Then, as the machine develops into a greater machine, the small capitalist is driven out of business by his more powerful competitor; and so on until the greatest capitalists, unable singly to possess themselves of the vast machinery required to carry on industry, unite into corporations, which in turn unite into trusts. Concentration in productive industry necessitates a corresponding concentration in the distributive agency, i. e., commerce.

Thus does individual capitalism develop into collective capitalism, less and less competitive; while individual labor develops into collective labor, more and more competitive. A point at last is reached where the class struggle culminates; a point where "to be or not to be" is the question for the majority of the people. The end is in sight. The issue is plain. "The dispossessors must be dispossessed." The instruments of collective labor must be owned collectively by the whole people—that is, by the cooperative commonwealth; "a commonwealth in which every worker shall have the free exercise and full benefit of his faculties multiplied by all the factors of modern civilization."

How shall this great social revolution be accomplished?

In any form of society the economic organism depends for its development and preservation upon its political organ; the organ which, under the name of "government" is simply the public agent of the economic rulers. In capitalism, government is necessarily the right arm of the capitalist class; its function is to promote by all means the interests of that class, to promptly obey its commands, and especially to

protect at all hazards the very fundament of the capitalist structure, namely, capitalist ownership of the means of production. Were government the organ of collective labor instead of collective capitalism, the capitalist structure would fall and the socialist structure would rise. The proletariat must, therefore, constitute itself into a political party of its own class in order to possess itself of the Government, which, adapted to the changed requirements of the modified social organism, will no longer be, as it ever was in the past, a class executioner, but will be transformed into a public executive of the administrative measures adopted by a free people.

[Exhibit No. 9 not printed.]

EXHIBIT No. 9½.

SEPTEMBER 21, 1910.

Hon. ELMER E. TODD,
United States Attorney, Seattle, Wash.

SIR: By direction of the Secretary of Commerce and Labor, I have the honor to transmit herewith my original affidavit, and two copies thereof, upon which to institute proceedings, under section 15 of the act of Congress of June 29, 1906, to cancel certificate of naturalization No. 117750, issued to Leonard Olsson, January 10, 1910, by the superior court of Pierce County, Washington, at Tacoma, upon the ground that the said Leonard Olsson was not at the time he was admitted to become a citizen of the United States attached to the principles of the Constitution thereof.

This Leonard Olsson, appeared as a witness in the superior court of Pierce County, Tacoma, Wash., for Carl Olsen, petitioner No. 682 in said court, and testified in open court that he was not at that time, to-wit; September 12, 1910, nor had he been for a period of between two or three years, attached to the principles of the Constitution of the United States. The witnesses who heard the testimony of witness, Leonard Olsson, are myself, William S. Graham, naturalization examiner, 406 Federal Building, Seattle, and R. E. McFarland, deputy clerk superior court, Tacoma, Wash.

The address of Leonard Olsson is No. 304 Wallace Building, Tacoma, Wash.

It is respectfully requested that proceedings be instituted to cancel said certificate of naturalization at your early convenience, and when instituted, it will be appreciated if you will advise this office of the date of filing, and docket number.

Very respectfully,

JOHN SPEED SMITH.
Chief Naturalization Examiner.

STATE OF WASHINGTON,
County of King, ss:

Jno. Speed Smith being first duly sworn according to law deposes and says; that he is now and has been for more than two years last past a duly appointed and acting chief naturalization examiner of the United States for the district of Washington, with headquarters at Seattle, Wash.; that the records of the superior court of Pierce County, Wash., at Tacoma, show that Leonard Olsson filed petition for naturalization No. 517 in said court on the 27th day of September, 1909, and was admitted to become a citizen of the United States by said court, January 10, 1910, and a certificate of naturalization, No. 117750 issued to him; that said petitioner made oath in said petition for naturalization, No. 517 as follows: "I am attached to the principles of the Constitution of the United States"; that said Leonard Olsson appeared as a witness for petitioner for naturalization, Carl Olsen, in said superior court of Pierce County, Wash., September 12, 1910, and under oath, said Leonard Olsson as such witness for Carl Olsen, stated in open court in answer to interrogatories propounded by affiant that he, the said Leonard Olsson, was not attached to the principles of the Constitution of the United States; that he believed in radically changing it; that he had maintained such view for a period of between two and three years and at the time he, the said Leonard Olsson, was admitted to become a citizen of the United States he was not attached to the principles of the Constitution of the United States, therefore, affiant believes that the said Leonard Olsson was not a fit subject, at the time of his naturalization, to become a citizen of the United States and was not naturalized in accordance with law.

JNO. SPEED SMITH.

Subscribed and sworn to before me this 21st day of September, 1910.

[SEAL.]

R. M. HOPKINS.
Clerk U. S. District Court Western District of Washington.

EXHIBIT No. 10.

SEPTEMBER 21, 1910.

To the CHIEF, DIVISION OF NATURALIZATION,
Department of Commerce and Labor, Washington, D. C.

SIR: Herewith is inclosed copy of letter this day written to Hon. Elmer E. Todd, United States attorney, Seattle, requesting that proceedings be instituted to cancel certificate of naturalization No. 117750, issued out of the superior court of Pierce County, Washington, at Tacoma, January 10, 1910, to Leonard Olsson.

Very respectfully,

JNO. SPEED SMITH,
Chief Naturalization Examiner.

EXHIBIT No. 11.

DEPARTMENT OF COMMERCE AND LABOR,
NATURALIZATION SERVICE, OFFICE OF CHIEF EXAMINER,
Seattle, Wash., May 13, 1912.

The CHIEF, DIVISION OF NATURALIZATION,
Washington.

Yesterday I forwarded to the division, copy of decision in the United States district court for the western district of Washington, at Seattle, in the cancellation case of one Leonard Olsson, in connection with which please refer to my letter of September 21, 1910, inclosing copy of my letter to the United States attorney and affidavit in connection therewith. I also inclose clipping from Seattle Daily Times of the 12th instant, and the Seattle Star of the 13th instant, which will show the widespread interest taken in this matter throughout the country.

I deem it proper to inform the division fully as to how the issue arising in this case came about. On September 27, 1909, Leonard Olsson filed petition No. 517 in the superior court of Pierce County, at Tacoma, Wash., and on the 10th of January, 1910, after a hearing in open court, he was duly admitted to citizenship. Naturalization Examiner F. S. Becker represented this office at that hearing. On August 8, 1910, Leonard Olsson appeared as a witness in petitions Nos. 650 and 651 of Victor Emanuel Eslon and Camille Stoessle, respectively, both of which petitions were investigated by Examiner Enslow of this office, and he reported that said petitioners were Socialists, as well as witness Olsson. When petition No. 650 of Eslon was heard, the said petitioner admitted in open court that he was not attached to the principles of the Constitution of the United States, and upon motion the court denied said petition with prejudice. Petition No. 651 of Stoessle came on for hearing, but the petitioner being in the court room when the previous petition was heard, and knowing of course that he would be denied if he failed to state that he was attached to the principles of the Constitution, testified that he believed in the principles of the Constitution, and he was accordingly admitted to citizenship.

In petition No. 651, I questioned Olsson as to his attachment to the principles of the Constitution and he then stated that he was not attached to them, but I omitted to ask him how long he had entertained those views. Remembering his sentiments as expressed at this time and looking over the Tacoma docket, I found that he had appeared as a witness in petition No. 682, filed June 11, 1910, by Carl Olsen, and when this latter petition was heard September 12, 1910, Leonard Olsson was questioned by me as to his attachment to the principles of the Constitution of the United States and he then stated in open court that he was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same. I had previously asked the clerk of the court to make a note of his reply, having in mind at that time an action to cancel his own certificate, and in giving his testimony he stated that he had entertained those views between two and three years, which of course antedated his own naturalization, and showed that when he took the oath of allegiance to support the Constitution of the United States he perjured himself, and upon that ground I made the necessary affidavit and referred the matter to the United States attorney to cancel his certificate.

At the trial of the case on May 1, 1912, myself, former Naturalization Examiner Charles A. Enslow, and former deputy clerk R. F. McFarland testified on behalf of the Government. Olsson was represented by an attorney who introduced testimony of several witnesses as to his good moral character, in addition to his own testimony, and the court after hearing the testimony handed down his decision on May 10, 1912, and a copy of the same was forwarded to the division by me yesterday.

This man's membership in the Socialist and I. W. W. organizations was developed at the trial and he was carefully questioned by the United States attorney and the

court itself in regard to his peculiar beliefs as to government, when he stated that he fully understood the principles of the Constitution of the United States, especially that clause with reference to property rights; and in answer to the direct question, stated that the organizations he belonged to proposed to change the organic law of this land, and that he did not approve of the Constitution of the United States. His certificate of naturalization was canceled on the ground that at the time he took the oath of allegiance he swore to that which he did not believe in.

JNO. SPEED SMITH.

EXHIBIT No. 12.

Court No. 120. Petition No. 682. Date of filing, June 11, 1910. Date of hearing, Sept. 12. Name, Carl Olsen. Address, 2317 N. Tacoma Ave. Occupation, sailor. Born, Mar. 12, 1883, Denmark. Emigrated from Hamburg, Dec. 4, 1904, on vessel *Thistle*. Ar. San Fran., Cal. Declared intention at Tacoma in sup. court, on Dec. 8, 1906. Married (No.) Name of wife, ——— ———; born at ———; resides at ———. In U. S. since June 5, 1905. In State of Washington since Jan. 15, 1906. Any former petition? ———. Ever serve in Army, Navy, Marine Corps, or merchant marine? ———. Certificate of registration filed ———.

Witnesses:

Name, Leonard Olsson; occupation, longshoreman; address, 304 Wallace Bldg. Name, Carl Blendheim; occupation, laborer; address, Garfield Hotel, Tacoma.

(O. k. 6/17/10. S. N. S. 4/4/12. Sub. A. L. Petterson—A. Olson. ———.)

(Reverse:)

Report of examination. Department of Commerce and Labor, Naturalization Service.

Examiner's report.

6/16/10. 15b. Ptc. ——— (2). 6/7/10.

Carl Olson examined O. K. Leonard Olsson, socialist, says he met Olsen, petr., in San Francisco, Calif., a day or two after Olsen landed, early in June, 1905, and more than 5 years ago. Witness Blendheim says identically the same as Olsson. Witnesses are both Socialists, but state that Olsen has no leaning that way. Enslow.

Witness Leonard Olsson to be asked from what time he has failed to believe in the form of Gov't in the U. S.

Action: Sept. 12, 1910. Dismissed without prejudice one witness could not personally testify to five years' residence in U. S.

EXHIBIT No. 13.

No. 517. Original.

United States of America. Department of Commerce and Labor. Bureau of Immigration and Naturalization. Division of Naturalization.

PETITION FOR NATURALIZATION.

Superior court of Pierce County, Wash. In the matter of the petition of Leonard Olsson, to be admitted a citizen of the United States of America.

To the Superior Court of Pierce County, Wash.:

The petition of Leonard Olsson respectfully shows:

First. My full name is Leonard Olsson.

Second. My place of residence is No. 304 Wallace Building, City of Tacoma, State of Washington.

Third. My occupation is Longshoreman.

Fourth. I was born on the 14th day of January, anno Domini, 1879, at Christianstad, Sweden.

Fifth. I emigrated to the United States form Malmo, Sweden, on or about the 15th of March anno Domini 1900, and arrived at the port of New York, in the United States on the vessel [1] *Isold.*

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[1] If the alien arrived otherwise than by vessel, the character of conveyance or name of transportation company should be given.

Sixth. I declared my intention to become a citizen of the United States on the 2d day of November, anno Domini 1904, at San Francisco, Cal., in the Superior Court of City and County of San Francisco.

Seventh. I am not married.

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty, and particularly to Gustavus V, King of Sweden, of which at this time I am a subject, and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since the 27th day of March, anno Domini 1900, and in the State of Washington for one year at least next preceding the date of this petition, to wit, since the 7th day of February anno Domini 1902.

Eleventh. I have not heretofore made petition for citizenship to any court.

Attached hereto and made a part of this petition is my declaration of intention to become a citizen of the United States, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

LEONARD OLSSON.
(Signature of petitioner.)

Dated September 27, 1909.

STATE OF WASHINGTON, *county of Pierce, ss:*

Leonard Olsson, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this 27th day of September anno Domini 1909.

[SEAL.] J. F. LIBBY, *Clerk.*
By R. E. MCFARLAND, *Deputy Clerk.*

Declaration of intention filed this 27th day of September, 1909.

J. F. LIBBY, *Clerk.*
By R. E. MCFARLAND, *Deputy Clerk.*

AFFIDAVIT OF WITNESSES.

Superior court of Pierce County, Wash.:

In the matter of the petition of Leonard Olsson, to be admitted a citizen of the United United States of America.

STATE OF WASHINGTON, *county of Pierce, ss:*

C. D. Robinson, occupation lineman survey party, residing at General Delivery, Tacoma, Wash., and J. P. Hansen, occupation real estate, residing at 1509½ Tacoma Avenue, Tacoma, Wash., each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known Leonard Olsson, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the State in which the above-entitled application is made for a period of 5 and 5 years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted a citizen of the United States.

C. D. ROBINSON.
J. P. HANSEN.

Subscribed and sworn to before me this 27th day of September anno Domini 1909.

[SEAL.] J. F. LIBBY, *Clerk.*
By R. E. MCFARLAND, *Deputy Clerk.*

Subs.:

HARRY PETERSON,
WALTER HERRON.

(Written on margin:) Cancelled. Vacated and held for naught by order of judge of U. S. Court (District). Western District of Washington, Southern Division. Order entered May 22, 1912. C. H. Hanford, judge. A. W. Engle, clerk, U. S. Court. Copy filed in Superior Court, May 24, 1912. E. F. McKenzie, clerk; by B. Cohueck, Dep.)

In the matter of the petition of Leonard Olsson. To be admitted a citizen of the United States of America. Filed Sept. 27, 1909.

OATH OF ALLEGIANCE.

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to Gustavus V, the King of Sweden, of which I have heretofore been a subject [and that I further renounce the title of an order of nobility, which I have heretofore held] [1] that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same.

LEONARD OLSSON.

Subscribed and sworn to before me, in open court this 10th day of January, A. D. 1910.

[SEAL.] R. E. MCFARLAND, *Deputy Clerk.*

ORDER OF COURT ADMITTING PETITIONER.

Upon consideration of the petition of Leonard Olsson, and affidavits in support thereof, and further testimony taken in open court, it is ordered that the said petitioner, who has taken the oath required by law, be, and hereby is, admitted to become a citizen of the United States of America, this 10th day of January, A. D. 1910.

By the Court:

JOHN A. SHACKLEFORD, *Judge.*

Certificate of naturalization, No. 117750, issued on the 10th day of January, A. D. 1910.

In the Superior Court of the State of Washington for Pierce County.

In the matter of the petition of Leonard Olson, for admittance to citizenship in the United States of America.

CERTIFICATE.

I, E. F. McKenzie, county clerk and by virtue of the laws of the State of Washington, ex-officio clerk of the superior court of the State of Washington, for Pierce County, do hereby certify that the annexed is a true and correct copy of the petition for naturalization, and order admitting, entered in volume 3, naturalization records, page 117, now on file and of record in this office.

In witness whereof I have hereunto set my hand and seal of the said superior court, at my office, in the city of Tacoma, this 27th day of June, 1912.

E. F. MCKENZIE, *Clerk.*
By B. COHUECK, *Deputy.*

(Filing on back:) No. 1688–C. In the district court of the United States for the western district of Washington, southern division. United States of America, plaintiff, *vs.* Leonard Olsson, defendant. Certified copy of naturalization papers of Leonard Olsson, deposited with clerk of court.

EXHIBIT NO. 14.

No. 117750. To be given to the person naturalized.

THE UNITED STATES OF AMERICA.

CERTIFICATE OF NATURALIZATION.

(Original.)

Petition, volume 3, page 117. Stub, volume 5795, page 50. Description of holder: Age, 30 years; height, 6 feet — inches; color, white; complexion, light; color of eyes,

blue; color of hair, brown; visible distinguishing marks, none; name, age, and place of residence of wife, none; names, ages, and places of residence of minor children, none.

LEONARD OLSSON.
(Signature of holder.)

STATE OF WASHINGTON,
County of Pierce, ss:

Be it remembered that at a regular term of the superior court of Pierce County, Wash., held at Tacoma on the 10 day of Jan., in the year of our Lord nineteen hundred and ten, Leonard Olsson, who, previous to his naturalization, was a subject of Sweden, at present residing at number 304 Wallace Building, Street, city of Tacoma, State of Washington, having applied to be admitted a citizen of the United States of America, pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that he was entitled to be so admitted, it was thereupon ordered by the said court that he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the 10 day of Jan. in the year of our Lord nineteen hundred and ten and of our Independence the one hundred and thirty-third.

[Seal of superior court of Pierce County, Washington.] J. F. LIBBY,
Clerk of Superior Court, Pierce County, Tacoma, Wash.
(Official character of attestor.)

(Department of Commerce and Labor.)

(Indorsed:) Filed, U. S. district court, western district of Washington, May 22, 1912. A. W. Engle, clerk. R. W. Jamieson, deputy.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, A. W. Engle, clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing and attached to be a full, true, and correct copy of

The naturalization paper of Leonard Olsson, delivered by him to me as clerk, and filed in the within-entitled cause, as the original thereof appears on file in said court at the city of Tacoma, in said district.

Attest my official signature and the seal of the said district court at the city of Tacoma this twenty-seventh day of June, A. D. 1912.

[SEAL.] A. W. ENGLE, *Clerk.*
By JAMES C. DRAKE, *Deputy Clerk.*

EXHIBIT NO. 15.

In the circuit court of the United States for the western district of Washington, western division.

United States of America, petitioner, *vs.* Leonard Olsson, respondent. No. 1688.

DEMURRER.

Comes now the respondent in the above-entitled matter and demurs to the petition herein and to the affidavit upon which the same is based upon the ground and for the reason that it appears upon the face thereof that the same do not state facts sufficient to constitute a cause of action against this respondent.

J. W. A. NICHOLS,
Attorney for Respondent, 506–7 Bank of California Building, Tacoma, Wash.

Received copy this 1st day of December, 1910.

CHAS. T. HUTSON,
Assistant U. S. Attorney.

(The following penciled notations in handwriting of Judge Donworth:)
Nichols cites: U. S. *v.* Aakerbik, 180 Fed., 137.
McLaren cites: Ex parte Sauer, 81 Fed., 355; U. S. *vs.* Nesbit, 168 Fed., 1005.
(Indorsed:) Filed U. S. circuit court western district of Washington. Nov. 30, 1910. A. Reeves Ayres, clerk. By Sam'l D. Bridges, deputy.

In the United States circuit court for the western district of Washington, western division.

United States of America, plaintiff, *vs.* Leonard Olsson, defendant. No. 1688.

ORDER OVERRULING DEMURRER.

This cause coming on regularly for hearing upon the demurrer of the defendant to the petition filed herein, and said demurrer having been argued by counsel, upon consideration thereof, it is now ordered by the court that said demurrer be, and the same is, hereby overruled, and the defendant is granted ten days in which to file his answer herein.

Dated this 3rd day of April, A. D. 1911.

GEORGE DONWORTH, *Judge.*

(Indorsed:) Filed U. S. circuit court, western district of Washington. Apr. 3, 1911. Sam'l D. Bridges, clerk. G. O. B. 212.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, A. W. Engle, clerk of the district court of the United States for the western district of Washington, do hereby certify that I have compared the foregoing copy with the original demurrer and order overruling demurrer in the foregoing entitled cause, now on file and of record in my office at Tacoma, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court, this 27th day of June, 1912.

[SEAL.]

A. W. ENGLE, *Clerk.*
By JAMES C. DRAKE, *Deputy.*

(Filing on back:) No. 1688–C. In the district court of the United States for the western district of Washington, southern division. United States of America, plaintiff, *vs.* Leonard Olsson, defendant. Certified copy of demurrer and order overruling demurrer.

EXHIBIT NO. 16.

C–117750

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, June 18, 1912.

MY DEAR SIR: In response to your letter of the 14th instant, the department incloses herewith a copy of a report, bearing date the 13th ultimo, by Chief Examiner John Speed Smith, of Seattle, Wash., in the matter of the cancellation of the certificate of naturalization of one Leonard Olsson by the Hon. C. H. Hanford, judge of the United States district court at Seattle, Wash.

Responding to the second paragraph of your letter, in which you ask for any other papers or information in the possession of the department which it thinks your subcommittee should have, it may be stated that an examination of the file, which is rather large, does not disclose anything that would appear to be of assistance to you. This, however, is simply the view of the department, expressed without any precise information as to the scope of your inquiry, and it may, therefore, be well for you to call at the office of the Division of Naturalization, No. 1333 F Street Northwest, and determine by a personal inspection of the papers whether any of them will be of assistance to you.

Very truly, yours,

CHARLES EARL, *Acting Secretary.*

Hon. JAMES M. GRAHAM,
Chairman Subcommittee Committee on the Judiciary,
House of Representatives, Washington, D. C.

EXHIBIT NO. 17.

[Post-Intelligencer, March 25, 1912.]

DEFENDS RED FLAG—SOCIALIST COMMITTEEMAN TELLS WHY THEY IGNORE STARS AND STRIPES.

To the EDITOR:

When a State committeeman of the Socialist Party, in the Seattle convention of that party, suggested adjournment until the United States flag be added to the decorations, he started a near-riot and his motion was overwhelmingly voted down.

The most rudimentary regard for the bourgeois intelligence of the community makes pertinent an unequivocal statement from the Socialists in the premises and really there seems no need to beat about the bush or beg the question in any manner.

We do not regard the American flag in any greater degree than we do the Russian, German, or English flags, or that of any other capitalist or feudal nation whose people depend in the main for their food, clothing, and shelter upon the capitalistic mode of production involving the essential exploitation of labor through a system of wage slavery. We propose to abolish all such systems and governments and to substitute therefor a manner of human society by cooperation and mutual aid, pretty much like the present-day trusts, and based directly upon the industries. To be absolutely direct, we propose the entire overthrow of the government of the United States and to establish an industrial republic wherein all present-day political functions will become extinct.

In this view I am quite free to say that we may not be accurately regarded, by whoever may be concerned, as other than revolutionists. Such indeed is the case.

The socialists are an internation and as such we think infinitely more of our fellow workers in "foreign" countries than we do of the capitalists in our own country, say, for example, the workingmen of Canada, Mexico or Timbuctoo, for that matter, than we do of the mine, mill, and factory owners of the United States who so readily send troops against us under the Stars and Stripes to jab their bayonets into the pregnant loins of our women, and whose police beat our wives across pulsing nursing bosoms.

As an internation we have chosen a flag—a blood red banner, symbolical of the common ichor of the aspiring human heart. It was the first flag raised in all the world and when the world was young. It was woven of the spangled rays of the first clear dawn o' civilization. It was the daylight signal of our fathers who by night built their beacon fires on a thousand hills. It was the ensign of Spartacus and the rebelling gladiators. It inspired the early Christian communists and in later days became the first standard raised in the American revolution at Breed's hill by Gen. Warren. The Moravian sisters of Bethlehem, Pa., wove a red silk flag and presented it to Count Pulaski and it was carried at the head of the continental cavalry, and the daring Pole was buried in its folds. We have chosen it. To it alone are we loyal and we will follow it until we have made a place fit to live of this wolf-den world when we have restored the earth and the machinery to labor.

BRUCE ROGERS,
State Committeeman, Socialist Party.

EXHIBIT No. 18.

OFFICE OF UNITED STATES ATTORNEY,
Seattle, Wash., May 27, 191?.

The ATTORNEY GENERAL,
Washington, D. C.

SIR: I am in receipt of yours of the 21st instant (W. R. H.–W. W. L. 162150–1) in re United States *v.* Leonard Olsson.

The testimony in this case was not reported and I am therefore able to give you only an outline of the same from memory.

Olsson is a longshoreman by occupation. He was naturalized by the superior court of Pierce County, January 10, 1910, at which time he stated that he was attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. Thereafter, in August or September following, he appeared as a witness for another applicant for naturalization and during his examination as such witness by the chief examiner of naturalization, John Speed Smith, he stated that he was not attached to the principles of the Constitution of the United States, nor well disposed to the good order and happiness of the same; also stating in response to questions that he had entertained his present views for a number of years past, and had so entertained them at the time he himself was naturalized. The substance of this statement made by him as a witness was testified to by the naturalization examiner, John Speed Smith, and also by one or two witnesses who had been particularly requested by Mr. Smith beforehand to take notice of Olsson's testimony.

At the trial of the cancellation proceedings Olsson himself stated that he had merely testified to the fact that he was not "unalterably opposed" to the principles of the Constitution of the United States. When questioned as to what he meant by not being "unalterably opposed" the defendant stated in substance and explained with some heat, "I mean that I have no superstitious reverence for the Constitution, that I do not get down on my knees and worship it as a heathen does his idol." Mr. Smith and the other witnesses, however, flatly contradicted "the unalterable" qualifications of Olsson's previous testimony as a witness.

It also appeared that at least one of the applicants for whom Olsson was appearing as a witness was denied citizenship by the superior court at the hearing on account of the views which this applicant entertained regarding our form of government.

When confronted with certain statements and doctrines of prominent Socialists in this community, Olsson testified that he belonged to the Socialist Labor Party, as distinguished from the Socialist Party, the exact nature of this distinction he did not, however, make clear. It appeared, however, that the Socialist Labor Party was not any less radical in its views than the Socialist Party. He also admitted belonging to the I. W. W. organization, but when confronted with copies of its official publication and constitution and by-laws, stated that he belonged to some different faction than the faction responsible for such publications. The nature of the distinction here again was not at all clear or satisfactory. The defendant admitted being an active participant and leader in frequent meetings held by himself and associates, at which they discussed governmental matters.

In response to questions put by the court as to his views upon the Constitution of the United States, he claimed to be familiar with it, but that he did not believe in our present form of government at all; that all land, as well as all other property which was "the product of collective labor should be owned by the people as a whole." That he and his party were in favor of abolishing entirely the present form of government and substituting therefor what he dominated "an industrial democracy."

Four witnesses beside the defendant testified in his behalf as to his general reputation of being a good citizen. Their testimony may be summarized as follows:

Mrs. Gilderman and Mrs. Estlund each admitted that they never had discussed the Government or politics with Olsson at all, but simply knew him as an acquaintance of theirs whom they occasionally saw or met on the streets in Tacoma.

Mr. Estlund testified that he had known Olsson five or six years; that he was in sympathy with Olsson's views as to "industrial changes in our form of Government."

Mr. Rush, who was naturalized in October, 1896, testified that he had known Olsson for seven years; that he never heard Olsson make any remarks from which he would suppose Olsson not to be a good citizen, or opposed to the Government of the United States. This witness himself attends regularly the meetings of a certain small association at which they discuss different propaganda regarding changes in our form of government. This witness also admitted that any one desiring to join this association must first sign a certain pledge.

I should add also that Olsson testified that he frequently took part in street corner meetings, and was devoting as much of his time as he could to the dissemination and adoption of his views.

His general attitude and demeanor upon the stand evidenced an entire lack of sympathy with, or a belief in, our form of government, not merely in some one or more few particulars, but the entire scheme of government, and that he had entertained those views at and for a long time prior to securing naturalization papers.

I have already referred to the fact that at least one of Olsson's friends and associaties was denied citizenship by the superior court of Pierce County on account of entertaining views similar to those held by Olsson.

I am informed that some effort is likely to be made by the defendant to have the case reopened in order that a copy of the proceedings may be secured. Of this, however, I have as yet not positive information.

Respectfully,

W. C. McLaren, *United States Attorney.*

Exhibit No. 19.

162150–14. W.–H.

Department of Justice,
Office of the Attorney General,
Washington, D. C., June 17, 1912.

Hon. James M. Graham,
Chairman Subcommittee Committee on the Judiciary,
House of Representatives.

My Dear Mr. Graham: I have yours of 14th instant. I beg to enclose a copy of a report made to me by the district attorney of the case of United States *v.* Oleson; also a copy of the opinion of Judge Hanford in that case.

There are no other papers or information in my possession regarding the matter.

Very truly, yours,

Geo. W. Wickersham,
Attorney General.

EXHIBIT No. 20.

W.-H.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., June 4, 1912.

Hon. VICTOR L. BERGER,
House of Representatives.

MY DEAR MR. BERGER: After you left here yesterday, I found upon investigation that the department had already caused inquiries to be made into the case of which you spoke to me, namely, the proceeding in the western district of Washington to cancel the naturalization certificate of Leonard Oleson, and, upon examining the report, I found that the proceeding was initiated at the instance of one of the local officials of the Department of Commerce and Labor, and brought by the district attorney without previous communication with this department. I found, moreover, that no report had been taken on the trial of the testimony of the witnesses and that the counsel for Mr. Oleson had requested that the decree be opened in order to enable him to make a record. I have instructed the United States attorney to facilitate him in every way within his power towards the opening of the decree and the securing of a new trial, or, failing that, of an appeal to the circuit court of appeals. I have further notified the United States attorney that, upon the facts stated by Judge Hanford in his decision, the department was of the opinion that a gross injustice had been done to Mr. Oleson in cancelling his certificate of naturalization.

I am, yours, very truly,

GEO. W. WICKERSHAM,
Attorney General.

EXHIBIT No. 21.

WASHINGTON, D. C., *June 3, 1912.*

UNITED STATES ATTORNEY,
Seattle, Wash.

Your letter May 27 reporting upon case of Leonard Oleson. Department thinks Judge Hanford has committed grave error in cancelling Oleson's certificate of naturalization upon grounds stated in his opinion. You are instructed to cooperate with respondent in effort to have case reopened and judgment set aside.

WICKERSHAM.

EXHIBIT No. 22.

W. R. H.-W. W. L. 162150-1. W. W. L.-B. G. L.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 21, 1912.

UNITED STATES ATTORNEY,
Seattle, Wash.:

I beg to acknowledge the receipt of your letter of the 13th instant, enclosing a copy of Judge Hanford's opinion in the case of United States *v.* Leonard Oleson, in which the naturalization certificate of Oleson, who is a socialist, was canceled upon the ground that he had concealed from the court naturalizing him that he was not attached to the principles of the Constitution of the United States, etc.

The department would like to have a reoport of the facts of this case, indicating the exact character of Oleson and also, if the testimony was reported, a copy of the proceedings.

For the Attorney-General:

HARR, *A. G. G.*

EXHIBIT No. 23

WASHINGTON, D. C., *June 20, 1912.*

MCLAREN, *United States Attorney, Seattle, Wash.:*

Your telegram Olson case received. Cooperate with his counsel in effort to have decree of cancellation set aside on appeal.

WICKERSHAM.

EXHIBIT No. 24.

"Labor is entitled to all it produces."

INDUSTRIAL WORKERS OF THE WORLD.

[Founded at Chicago June 27-July 8, 1905. Preamble and constitution amended 1906, 1907, and 1908. Ratified by referendum vote. General headquarters, Hamtramck, Mich.]

PREAMBLE.

The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people, and the few who make up the employing class have all the good things of life.

Between these two classes a struggle must go on until all the toilers come together on the political as well as on the industrial field and take and hold that which they produce by their labor through an economic organization of the working class without affiliation with any political party.

The rapid gathering of wealth and the centering of the management of industries into fewer and fewer hands make the trades-union unable to cope with the ever-growing power of the employing class, because the trades-unions foster a state of things which allows one set of workers to be pitted against another set of workers in the same industry, thereby helping defeat one another in wage wars. The trades-unions aid the employing class to mislead the workers into the belief that the working class have interests in common with their employers.

These sad conditions can be changed and the interests of the working class upheld only by an organization formed in such a way that all its members in any one industry, or in all industries, if necessary, cease work whenever a strike or lockout is on in any department thereof, thus making an injury to one an injury to all.

Therefore, without endorsing any political party, we unite under the following constitution:

CONSTITUTION.

ARTICLE I.

SECTION 1. This organization shall be known as "The Industrial Workers of the World."

SEC. 2. The Industrial Workers of the World shall be composed of actual wage-workers brought together in an organization embodying thirteen national industrial departments, national industrial unions, local industrial unions, local recruiting unions, industrial councils, and individual members. (*a*) Individual members shall be those actual wage-workers who, in isolated positions, desire to attach themselves to the Industrial Workers of the World until such time as a body of this organization to which they are eligible shall be organized in their locality.

(*b*) Local recruiting unions shall be composed of wage-workers in whose respective industries in a given locality there does not exist during their membership a local industrial union.

(*c*) Local industrial unions shall be composed of all the actual wage-workers in a given industry in a given locality, welded together in trade or shop branches or as the particular requirements of said industry may render necessary.

(*d*) A national industrial union shall be comprised of the local industrial unions of the various localities in America in a given industry.

(*e*) An industrial department shall be made up of national industrial unions of closely kindred industries appropriate for representation in the departmental administration, and assigned thereto by the general executive board of the Industrial Workers of the World.

(*f*) Industrial councils for the purpose of establishing general solidarity in a given district may be organized, and shall be composed of delegates from not less than five local industrial or local recruiting unions, and shall maintain communication between said district and general headquarters.

SEC. 3. The industrial departments shall consist of not less than ten local unions, aggregating a membership of not less than ten thousand members. The industrial departments shall be subdivided in industrial unions of closely kindred industries in the appropriate organizations for representation in the departmental administration. The subdivisions, industrial and national industrial unions, shall have complete industrial autonomy in their respective internal affairs, provided the general executive

board shall have power to control these industrial unions in matters concerning the interests of the general welfare.

SEC. 4. The departments shall be designated as follows:

Department of mining industry.
Department of transportation industry.
Department of metal and machinery industry.
Department of glass and pottery industry.
Department of the foodstuffs industry.
Department of brewery, wine, and distillery industry.
Department of floricultural, stock, and general farming industries.
Department of building industry.
Department of the textile industries.
Department of the leather industries.
Department of the woodworking industries.
Department of public-service industries.
Department of miscellaneous manufacturing.

SEC. 5. The financial and industrial affairs of each national industrial department shall be conducted by an executive board of not less than seven (7) nor more than twenty-one (21), selected and elected by the general membership of said national industrial department, provided that the executive board and general membership of the said national industrial department shall be at all times subordinate to the general executive board of the Industrial Workers of the World, subject to appeal, and provided the expenses of such referendum shall be borne by the national industrial departments, or national industrial union, or unions involved.

ARTICLE II.

OFFICERS—HOW SELECTED AND THE DUTIES THEREOF.

SEC. 1. The officers of the Industrial Workers of the World shall be a general secretary-treasurer, an assistant secretary and general organizer, an editor, and a general executive board composed of one member of each industrial department.

SEC. 2. The general secretary-treasurer, the assistant secretary, and general organizer and editor shall be nominated and elected from the floor of the convention.

DUTIES OF THE OFFICERS.

SEC. 3. (*a*) The duties of the general secretary-treasurer shall be to take charge of all books, papers, and effects of the office. He shall be nominated and elected as provided for in Article II, section 2, and shall hold office until his successor is duly elected, qualified, and installed, except in case he shall be removed from office, when his place shall be filled temporarily by the general executive board. He shall furnish a copy of all proceedings to each affiliated local union regardless of their affiliation, if any, with any of the departments of the Industrial Workers of the World.

(*b*) He shall conduct the correspondence pertaining to his office; he shall be the custodian of the seal of the organization and shall attach the name to all official documents over his official signature; he shall provide such stationery and office supplies as are necessary for the conducting of affairs of the organization; he shall act as secretary at all meetings of the general executive board and all conventions and furnish the committee on credentials at each convention a statement of the financial standing of each national industrial department, national industrial union, industrial council, and local union.

(*c*) He shall have a voice but no vote in the governing bodies of the organization.

(*d*) The general secretary-treasurer shall close his accounts for the fiscal year on the last day of June for each year. He shall make a monthly financial report to the general executive board and a quarterly financial report to the general membership, through the general executive board, and he shall make a complete itemized report of the financial and other affairs of his office to each annual convention.

(*e*) He shall prepare and sign all charters issued by the general executive board. He shall receive all moneys for charters, dues, assessments, and supplies from national industrial departments, national industrial unions, industrial councils, local unions, and members at large; he shall receipt for same and care for and deposit all moneys as instructed to do by the general executive board in some solvent bank, or banks, which shall be drawn out only to pay indebtedness arising out of the due conducting of the business of the organization, and then only after bill shall have been first duly presented by the creditor when, in payment thereof, a check shall be drawn and signed by him.

(*f*) For the honest and faithful discharge of his duties he shall give a bond in such sum, or sums, as may be fixed by the convention or general executive board, the bond so given to be approved by the general executive board and kept in their custody.

(*g*) He shall devote his entire time to the affairs of the organization and shall at all times be under the supervision of the general executive board, and shall receive for his services a compensation as determined by general convention.

(*h*) He shall, with the approval of the general executive board, employ such assistance as is necessary to conduct the affairs of his office. Remuneration for such employees shall be fixed by the general executive board and paid as other bills and indebtedness, as hereinbefore provided for; he shall convene the general executive board as hereinafter provided.

SEC. 4. (*a*) It shall be the duty of the assistant secretary and general organizer to at all times assist the general secretary-treasurer in the discharge of his duties as above outlined.

(*b*) He shall supervise the work of organizers in the field, shall have a voice but no vote in the governing bodies of the organization, and for his services he shall receive a compensation as determined by general convention.

SEC. 5. It shall be the duty of the editor to edit the official organ, under the supervision of the general executive board.

DUTIES OF THE GENERAL EXECUTIVE BOARD.

SEC. 6. The general executive board shall be composed of one member from each national industrial department, as provided for in Article II, section 1, and shall be elected by their respective national industrial departments.

SEC. 7. The general executive board shall have general supervision of the entire affairs of the organization between conventions, and watch vigilantly over the interests throughout its jurisdiction. They shall be assisted by the officers and members of all organizations subordinate to the Industrial Workers of the World.

SEC. 8. They shall appoint such organizers as the conditions of the organization may justify. All organizers shall at all times work under the instruction of the general organizer. All organizers, while in the employ of the Industrial Workers of the World, shall report to the general organizer in writing on blanks provided for that purpose at least once each week. They shall receive as compensation for their services three dollars per day and legitimate expenses. All national organizers must be members at large during the term of their employment.

SEC. 9. The decisions of the general executive board on all matters pertaining to the organization or any subordinate part thereof shall be binding, subject to an appeal to the next convention, or to the entire membership of the organization, provided that, in case of a referendum vote of the membership is demanded by any subordinate, or subdepartment, part of the organization, the expense of submitting the matter to the referendum shall be borne by the organization taking the appeal, except wherein the decision of the general executive board shall be reversed by a vote of the membership; then the expense shall be borne by the general organization.

SEC. 10. The general executive board shall have full power to issue charters to national industrial departments, national industrial unions, industrial councils, and local unions, as provided for in Article I, section 2. They shall also have power to charter and classify unions, or organizations, not herein provided for.

STRIKE AND LOCKOUT.

SEC. 11. (*a*) In case the members of any subordinate organization of the Industrial Workers of the World are involved in strike, regularly ordered by the organization, or general executive board, or involved in a lockout, if in the opinion of the general executive board it becomes necessary to call out any other union, or unions, or organization, they shall have full power to do so.

(*b*) Any agreement entered into between the members of any local union or organization and their employers as a final settlement of any difficulty or trouble which may occur between them shall not be considered valid or binding until the same shall have the approval of the general executive board of the Industrial Workers of the World. (*c*) A local union shall be entitled to assistance from the general organization in cases of strike only when the general organization has allowed or endorsed the said strike.

SEC. 12. The general executive board shall meet twice within the fiscal year to audit the books of the general secretary-treasurer and transact such other business as may come before them.

SEC. 13. The general executive board shall, by a two-thirds vote, have power to levy a special assessment when subordinate parts of the organization are involved in

strikes and the conditions of the treasury make such action necessary, but no special assessment shall exceed 50 cents per member in any one month nor more than six (6) such assessments in any one year, unless the same shall have been approved by a referendum vote of the entire membership.

SEC. 14. The general executive board shall have full power and authority over the official organ and guide its policy.

ARTICLE III.

CONVENTIONS.

SEC. 1. (*a*) The convention of the Industrial Workers of the World is the supreme legislative body of the organization, and its actions and enactments are of legal force unless reversed upon a referendum vote by the whole membership touching any and all amendments to the organic law which the convention may adopt.

(*b*) As to such actions and amendments, they shall be submitted to a referendum vote by the G. E. B. within thirty days after the adjournment of the convention. The vote shall close sixty days after the date of the call for the referendum.

SEC. 2. The annual convention of the Industrial Workers of the World shall be held on the third Monday in September of each year at such place as may be determined by previous convention.

SEC. 3. The general executive board shall draw up a list of delegates against whom no contest has been filed at the general office. The general secretary-treasurer shall call the convention to order and read the aforesaid list. The delegates on the said list shall proceed to form a temporary organization by electing a temporary chairman and a committee on credentials.

SEC. 4. A true and complete stenographic report of the proceedings of all general conventions and of the meetings of the general executive board shall be printed in bound form as soon as possible after the adjournment of the convention.

SEC. 5. Delegates to the annual convention shall be as hereinafter provided for:

(*a*) Members of the general executive board shall be delegates at large with one vote each, but shall not be accredited delegates nor carry the vote of any union or organization.

(*b*) National industrial departments shall have two delegates for the first 10,000 of its members, and an additional delegate for each additional 5,000 of its members or major portion thereof.

(*c*) Local unions, chartered directly by the Industrial Workers of the World, shall have one delegate for 200 members or less, and one additional delegate for each additional 200 or major fraction thereof.

(*d*) When two or more delegates are representing any local union, national union, or industrial department in the convention, the vote of their respective organization shall be equally divided between such delegates.

SEC. 6. Representation in the convention shall be based on the national dues paid to the general organization for the last six months of each fiscal year, and each union and organization entitled to representation in the convention shall be entitled to one vote for the first fifty (50) of its members and one additional vote for each additional fifty (50) of its members, or major fraction thereof.

SEC. 7. No delegate shall cast more than ten votes.

SEC. 8. On or before the 10th day of July of each year the general secretary-treasurer shall send to each local union and national industrial department credentials in duplicate for the number of delegates they are entitled to in the convention, based on the national dues for the last six months.

SEC. 9. The unions and national industrial departments shall properly fill out the blank credentials received from the general secretary-treasurer and return one copy to the general office not later than August 1st. The other copy shall be presented by the delegate to the committee on credentials when the convention assembles.

SEC. 10. Delegates to the convention from local unions must have been members in good standing of their local union at least six months prior to the assembling of the convention; provided their local union has been organized that length of time.

SEC. 11. Delegates from national industrial departments, to have a seat in the convention, must have been members of their local union at least six months and of their national industrial union at least one year; provided it has been organized that length of time.

SEC. 12. The expense of delegates attending the convention shall be borne by their respective organization.

SEC. 13. Two or more local unions in the same locality, with a total membership of 500, or less, may jointly send a delegate to the convention and the vote of said delegate

shall be based on the representation hereinbefore provided for, provided said delegate is a member in good standing of one of the locals so sending him.

SEC. 14. No local shall be admitted to representation unless it has been duly chartered at least three months before the call for the convention and is otherwise in good standing.

ARTICLE IV.

THE LABEL.

SEC. 1. (*a*) There shall be a universal label for the entire organization. It shall be of a crimson color and always the same in design. The use of the universal label shall never be delegated to employers, but shall be vested entirely in our organization. Except on stickers, circulars, and literature proclaiming the merits of the Industrial Workers of the World, and emanating from the general offices of the Industrial Workers of the World, the universal label shall be printed only as evidence of work done by I. W. W men.

(*b*) When the label is so printed, it shall be done by the authority of our organization, without the intervention of any employer.

SEC. 2. Whenever the universal label is placed upon a commodity as evidence of work done by industrial workers, it shall be accompanied by an inscription, underneath the label, stating what the work is that industrial workers have done, giving the name of the industrial department to which they belong, and the number or numbers of their local unions; and the universal label shall never be printed as evidence of work performed without this inscription.

ARTICLE V.

REVENUE OF THE ORGANIZATION.

SEC. 1. The revenue of the organization shall be derived as follows: Charter fees for national industrial departments shall be $25; for national industrial unions $15; for district councils, local unions, and branches shall be $10.

SEC. 2. National industrial departments and national industrial unions shall pay as general dues into the treasury of the Industrial Workers of the World the rate of 3 cents per month per member; industrial councils shall pay a flat rate of $1 per month for the organization; local unions shall pay 5 cents per member per month, together with such assessments as may be levied as provided for in Article II, section 14.

SEC. 3. Individual members may be admitted to membership at large in the organization as provided for in Article I, section 2, on payment of 50 cents initiation fee and 25 cents per month dues, together with such assessments as may be levied by the general executive board, all of which shall be paid to the general secretary-treasurer, provided members at large shall remain such so long as they are outside the jurisdiction of a local union subordinate to the general organization; but on moving within the jurisdiction of a local union of the Industrial Workers of the World, or any of its subordinate organizations, they shall transfer their membership from the union at large to the local union in whose jurisdiction they are employed.

SEC. 4. The initiation fee for members of local unions shall not exceed $5. The regular monthly dues shall be not more than $1 per month, together with such assessments as may be levied, as provided for in Article II, section 5, provided no part of the initiation fee or dues above mentioned shall be used as a sick or death benefit, but shall be held in the treasury as a general fund to defray the legitimate expenses of the union.

SEC. 5. National industrial departments and unions shall charge for initiation fee an amount not exceeding $5.

SEC. 6. All national industrial departments and national industrial unions subordinate to the Industrial Workers of the World shall collect from the membership of their organization a per capita tax at the rate of not more than 25 cents per member per month, provided that no part of the above mentioned moneys shal be used for sick, accident, or death fund, but shall be held in the treasury of national industrial departments for the purpose of paying the legitimate expenses of maintaining the organizations.

ARTICLE VI.

MEMBERSHIP, ETC.

SEC. 1. None but actual wage workers shall be members of the Industrial Workers of the World.

SEC. 2. A majority vote cast shall rule in the general organization and its subordinate parts, except as otherwise provided for in this constitution.

SEC. 3. No member of the Industrial Workers of the World shall be an officer in a pure and simple trade union.

SEC. 4. No member of one industrial or trade organization in the Industrial Workers of the World can at the same time hold a card in another industrial or trade organization of the Industrial Workers of the World.

SEC. 5. No member of a trade which is organized in his locality is qualified for admission in a mixed local in the same locality, and no member of a mixed local can remain a member of the same after his trade has been organized in that locality.

SEC. 6. The general executive board, or not less than ten (10) locals in at least three (3) industries, may initiate a referendum on any subject. The issuance of the referendum to be governed by Article III, section 1*b*.

SEC. 7. So soon as there are ten (10) local unions with not less than 10,000 members in any one industry, the general executive board shall immediately proceed to call a convention of that industry and to organize them as a national industrial department of the Industrial Workers of the World.

SEC. 8. All unions, departments, and individual members must procure supplies, such as membership books, seals, official buttons, labels, badges, and dues stamps from the general secretary-treasurer, all of which shall be of uniform design.

SEC. 9. There shall be a free interchange of cards between all organizations subordinate to the Industrial Workers of the World and any local union, or national industrial union, or industrial department shall accept, in lieu of initiation fee, the paid-up membership card of any recognized labor union or organization.

SEC. 10. All departments and other subordinate organizations of the Industrial Workers of the World shall use the official I. W. W. stamps in union membership book, or the dues to be paid in advance, and to be in good standing a union member must not be more than three months in arrears for dues.

ARTICLE VII.

PLEDGES FOR OFFICERS, ETC.

SECTION 1. All officers in the I. W. W. when being installed into office shall be required to give the following pledge:

"Having been entrusted by my fellow wage workers with the position I am about to assume, I do solemnly pledge my word and honor that I will obey the constitution, rules, and regulations of the Industrial Workers of the World, and that, keeping always in view its fundamental principles and final aims, I will to the best of my ability perform the task assigned to me. I believe in and understand the two sentences: 'The working class and the employing class have nothing in common,' and 'Labor is entitled to all it produces.'"

INITIATING MEMBERS.

SEC. 2. Applicants for membership upon being presented to the presiding officer of the local union shall have read to them the preamble and shall be asked the questions following:

(*a*) Do you agree to abide by the constitution and regulations of this organization?

(*b*) Will you diligently study its principles and make yourself acquainted with its purposes? The applicant answering affirmatively shall be declared a member of the Industrial Workers of the World.

ORGANIZERS—DUTIES.

SEC. 3. No organizer of the I. W. W while on the platform for this organization shall advocate any political party or political party platform.

SEC. 4. No member of the I. W. W. shall represent the organization before a body of wage earners without first having been authorized by the general executive board or a subordinate part of the I. W. W.

ARTICLE VIII.

CHARGES, TRIALS, AND APPEALS.

SEC. 1. All charges must be preferred in writing, in duplicate form.

SEC. 2. Charges must specifically state offense, time and place of same, and must be signed by member or members making the charge.

SEC. 3. The charges shall be read at the meeting of the union of which the accused is a member, whereupon said body shall set a date for trial, same to be not less than seven nor more than thirty days from date of meeting at which charges were read.

SEC. 4. If the accused is present at the meeting he shall be served with a copy of the charges. If absent, the corresponding secretary shall send to his last address, by registered mail, a copy of the charges attested by seal of the union, also notice to appear and answer the charges on the date set for trial.

SEC. 5. Failure of the grievance or investigation committee, if any, to present its report on the trial date shall not interfere with the holding of trial.

SEC. 6. At the time specified for trial the body shall, after a full hearing of the report of the grievance or investigation committee, if any, and of the testimony of both sides, proceed to vote by ballot on the charges preferred.

SEC. 7. In the event of the charges being sustained by a majority vote of the members present, the accused shall retire, after which the body shall determine by vote the punishment to be imposed on the accused.

SEC. 8. All decisions for suspension or expulsion must be published in the earliest issue of the official organ of the I. W. W.

SEC. 9. Any member notified to appear for trial and failing to appear shall be suspended and the case declared against him by default.

SEC. 10. Any member found guilty upon trial shall not be entitled to any benefits or privileges until the terms of the decision rendered shall have been complied with.

SEC. 11. Appeals shall be taken to the next superior body—i. e., from branch to local, from local to industrial council, to general executive board, and finally to convention. In a national industrial union or department the course of appeal to be as provided by the constitution of such body. While appeals are pending the appellant, if suspended or expelled, shall be excluded from all meetings of branches, locals, or industrial councils.

SEC. 12. All appeals must be filed within two weeks after the decision has been rendered. One copy of the appeal to be served on the corresponding secretary of the body that imposed sentence, as a notice that appeal has been taken. The body receiving such notice must file its answer witin two weeks, or case will be declared against it by default.

BY-LAWS FOR LOCAL UNIONS.

ORDER OF BUSINESS.

1. Election of presiding officers.
   NOTE.—Omit this when officers are elected for term.
2. Roll call of officers.
3. Reading of minutes.
4. Propositions for membership.
5. Payment of dues.
6. Admission and obligation of members.
7. Correspondence and bills.
8. Report of officers.
9. Report of committees (special and regular).
10. Report of delegates.
11. Election of officers and committees.
12. Official journal and literature.
13. Unfinished business.
14. New business.
15. Labor question.
16. Reading of receipts and expenses since the last meeting, by secretary.
17. Adjournment.

ARTICLE I.

SEC. 1. Local unions shall be composed of not less than ten members and shall not surrender their charter if seven members in good standing object thereto.

SEC. 2. They shall meet at least once a month, seven members to constitute a quorum for the transaction of business.

ARTICLE II.

SEC. 1. No working man or working woman shall be excluded from membership because of creed or color.

SEC. 2. Candidates who do not appear within thirty days for initiation, after their election to membership, shall forfeit their initiation fee.

SEC. 3. When a question arises as to eligibility of an applicant or member, the G. E. B. shall decide.

ARTICLE III.

SEC. 1. The officers of the local union shall consist of a recording, corresponding and financial secretary, treasurer, sergeant at arms, three trustees, and such other officers and committees as the local union may deem necessary.

SEC. 2. Officers shall be elected semiannually. Nominations to be made at the first meeting and election to take place at the last meeting of June and December. New officers shall be installed on the day of election.

SEC. 3. When an officer is absent from three consecutive meetings without valid excuse, his office shall be declared vacant. Election to fill vacancies for the unexpired term to be held at the next regular meeting.

SEC. 4. The corresponding secretary shall at once furnish the general secretary-treasurer of the I. W. W. with the names and adresses of the new officers for the purpose of compiling the official directory.

ARTICLE IV.

SEC. 1. The recording secretary shall keep a correct record of the proceedings of each meeting, and record the financial statement at the close of each meeting.

SEC. 2. The corresponding secretary shall receive all communications and attend to all correspondence assigned to him. He shall issue all warrants on the treasury for moneys ordered paid, and shall be the custodian of the official seal. (Locals can at will combine this office with that of the recording or financial secretary.)

SEC. 3. The financial secretary shall keep accurate accounts between his local, its members, and the general headquarters; he shall receive all initiation fees, dues, fines, assessments, and all other moneys belonging to the local, and for all dues and assessments collected by him he must place a separate stamp in the member's book for each month's dues or assessment paid, and shall cancel same with a dating stamp, showing day, month, and year when payment was made. He shall report before the close of the meeting all income since the last meeting and turn same over to the treasurer and take receipt therefor. He shall keep a complete list of the addresses of all members and note changes when reported. He shall at all times have his books ready for inspection by the proper officials and shall give a full report monthly to his local and the general secretary-treasurer.

SEC. 4. The treasurer shall receive moneys from the financial secretary, and give receipt. He shall pay all bills ordered by the local, and submit monthly a report of all receipts and expenditures. He shall deposit all moneys above a specified amount in a bank named by the local.

SEC. 5. The sergeant at arms shall have charge of the door and see that none but members enter, except by order of the meeting. He shall examine every person's book and see that same are correct and paid up, and shall report every member who is delinquent to the presiding officer.

SEC. 6. The trustees shall hold in trust all bonds, securities, and property of the union, shall keep a correct account of all bank deposits, and sign all orders for withdrawal of such money if ordered by the local, shall examine all books and accounts of the financial secretary and treasurer once every three months, and report their findings to the local union. Local unions can elect auditing or special committees for the purposes of auditing the books of their officers.

SEC. 7. All officers must turn over at the end of their terms to their successors or at any time to a committee elected for that purpose all books and property of the union that they may have in their possession and perform such duties as may be assigned to them. They must furnish bonds through some responsible surety company at the expense of the local union.

ARTICLE V.

SEC. 1. Members transferring to other locals must pay up all dues and assessments, the financial secretary to note the transfer, if granted, in the membership book. When a local union to which a member transfers collects for delinquent dues and assessments, 25 per cent of such moneys shall be retained by the local making the collection and 75 per cent shall be remitted to the local to which the member formerly belonged.

SEC. 2. Members leaving the organization whose dues and assessments are paid, may, upon application, receive withdrawal cards. Same shall not be used in place of transfer cards, and do not confer any rights or privileges, and serve only as a certificate that the person holding such card left his local honorably. A withdrawal card exempts the holder from payment of initiation fee upon application for readmittance, but he shall not be entitled to any benefits until 30 days after he has been accepted and has paid at least one month's dues. Withdrawal cards to be refused during a strike or when a strike is expected.

SEC. 3. Resignations must be put in writing, stating reasons, but no action shall be taken by the local until the resigning member has settled all accounts with the organization up to date.

ARTICLE VI.

SEC. 1. Locals may decide their own initiation fee, dues, and assessments, same to be in conformity with the general constitution.

SEC. 2. Members in arrears for six months shall be stricken from the books.

SEC. 3. Only members in good standing to take part in voting on any subject at a regular or special meeting.

ARTICLE VII.

SEC. 1. Members changing their address shall at once notify the local financial secretary.

SEC. 2. Local unions changing time or place of meetings shall advise immediately the general secretary-treasurer, so that the official directory of the I. W. W. may be correct at all times.

ARTICLE VIII.

SEC. 1. Locals can make their own by-laws, subject, however, to inspection of the industrial district council of the locality and the approval of the general executive board.

SEC. 2. All questions of a parliamentary nature shall be decided by Roberts's Rules of Order.

EXHIBIT No. 25.

[Tacoma Ledger, Sept. 13, 1910.]

DENIES DEVOTION TO CONSTITUTION—RECENTLY NATURALIZED CITIZEN MAY GET IN TROUBLE FOR STATEMENTS REGARDING GOVERNMENTAL BELIEFS.

While testifying in favor of an applicant for naturalization papers yesterday afternoon in Judge C. M. Easterday's department of the superior court, Leonard Olson, a naturalized citizen of the United States, said he was not devotedly attached to the principles of the Constitution of the United States and was not when he was admitted to citizenship. The announcement came as a sudden shock in the proceedings that had progressed without a hitch up to that point. One of the particular sections in the oath of allegiance to the United States requires the applicant to swear support to the Constitution.

Olson's statement of his ideas is in direct violation of the oath he took last January and will perhaps involve him in a serious predicament. He stated to Examiner J. Speed Smith that he had held these views for several years and said he believed certain changes could be made in the Constitution for the betterment of the Nation as a whole. A memorandum of his assertions was taken by Examiner Smith, and it is probable that proceedings will be started shortly to cancel his certificate of citizenship. Assistant Examiner William S. Graham said last night that Olson's statement was in violation of his oath.

"The statement of Olson was a surprise," said Mr. Graham. "When the oath requires one to swear support to the Constitution one would naturally suppose any man to be sincere when performing a serious act of that sort. It is the duty of the prosecuting attorney to decide whether he shall be prosecuted for perjury or not. The violation of the oath and the cancellation of his admission papers must be taken up with the United States district attorney."

The application of Carl Olson, for whom Leonard Olson was testifying, was denied when another witness failed to show that he had known him five years. Guido Luzi failed in his attempt owing to the incompetency of one of his witnesses who had not known him during the five years required by law.

NOTE: There is no exhibit numbered 26. Mistake was made in numbering.

EXHIBIT No. 27.

Before the House of Representatives of the United States of America.

In the matter of the impeachment of Cornelius H. Hanford, judge of the United States District Court for the Western District of Washington, Northern Division.

I. That Cornelius H. Hanford is now and for many years last past has been the duly appointed, commissioned, confirmed, and acting judge of the United States District Court for the Western District of Washington, Northern Division, and pursuant to Revised Statutes, section 712, took the following oath of office:

"I, Cornelius H. Hanford, do solemnly swear that I will administer justice without respect to persons and to do equal right to the poor and to the rich, and that I will faithfully and impersonally discharge and perform all the duties incumbent on me as judge according to the best of my abilities and understanding agreeably to the Constitution and laws of the United States. So help me God."

And complainants ask that this allegation be taken, considered, and made a part of every article herein contained.

II. That Cornelius H. Hanford during said incumbency in office has constantly violated his oath of office and by his unlawful acts of commission and omission, by his malfeasance and misfeasance in office, together with his immoral conduct during said incumbency in office, has rendered himself unfit and incompetent to fill the position of said judge, and that because of his gross misbehavior in office he should be forthwith impeached and removed, and for these reasons among others.

III. That during all the times mentioned herein the said Cornelius H. Hanford has on many and divers nights remained out in the various saloons and bar rooms in Seattle, indulging in drunkenness and immoral dissipation to such late hours after midnight that he rendered himself unfit morally, mentally, and physically to perform his judicial duties the following day; that during said period of years he has become addicted to the excessive use of intoxicating liquors as a beverage, and that from the effects of said intoxication he is tyrannical, impatient, intolerant, unfair, and unjust toward many clients and attorneys who have business before him.

Wherefore, the said Cornelius H. Hanford, judge as aforesaid, misbehaved himself and was and is guilty of gross misconduct and misdemeanor in office.

IV. That said Cornelius H. Hanford is now and for many years last past has been a grossly immoral and dissolute man; that he is a libertine, and for these reasons and among others; that prior to the closing of the tenderloin district in Seattle (which had existed many years prior to the year 1911, when it was closed) he habitually frequented said district and sought and had therein the company and society of lewd and dissolute women, and that by reason of keeping such late hours by night and dissipating in the aforesaid manner he rendered himself unfit morally and physically to properly attend to his judicial duties the following day.

Wherefore, the said Cornelius H. Hanford, judge aforesaid, misbehaved himself and was and is guilty of gross misconduct and misdemeanor in office.

V. And that since the closing of the district hereinbefore mentioned and at all times since while judge as aforesaid, said Cornelius H. Hanford visited and associated with one "Jane Doe," whose true name to the complainants is unknown, a resident of Seattle, Washington; that in visiting said "Jane Doe" defendant would usually go at the late hours of night and he would employ a code of signals to inform her that he was about to enter her house and in order that he would not be detected by anyone said "Jane Doe" employed a code of signals by a certain arrangement and motion of the window shade whereby said judge was informed that he would not be detected upon his entrance to said place, and that he did remain with her until such late hours of night and would return therefrom in such a drunken and dissolute condition that it would render him unfit morally and physically to perform his judicial duties the following day. And that in furtherance of the allegations herein contained complainants attach hereto a flashlight photograph taken of said judge leaving the said "Jane Doe" in the late hours of the night and ask that said photograph be marked "Exhibit A" and made a part of this complaint.

Wherefore, said Cornelius H. Hanford, judge as aforesaid, misbehaved himself and was and is guilty of gross misconduct and misdemeanor in office.

VI. That Cornelius H. Hanford has been guilty of gross and wilfull malfeasance and misfeasance and has grossly abused and misused the powers of his office in the following manner, among others: On the 21st day of August, 1912, in the case of Augustus S. Peabody, trustee, plaintiff, against Seattle, Renton & Southern Railway, City of Seattle, et al., defendants, No. 2012, said suit being openly and notoriously conceived in collusion; said judge abused and misused the writ of injunction by issuing on that day an injunction *without notice and without a hearing forbidding*, among other things, the following: The Seattle, Renton & Southern Railway Company from *refusing* and failing to collect an additional five-cent fare from all passengers transported north and south of Kenyon Street; enjoining the street railway from issuing any transfers except on the payment of an additional five-cent fare (a few days later arbitrarily and unlawfully modified to three cents); enjoining the giving of receipts to the traveling public for the fares thus collected; enjoining the people from even asking for a transfer. That said act was an attempt to override the franchise granted by said city to said railway company and the law of the State of Washington as decided by the supreme court of said State on July 14, 1911, in the case of State of Washington ex rel J. A. Dennison, respondent, against Seattle, Renton & Southern Railway Com-

pany, appellant, compelling said company to carry passengers and issue a transfer for a five-cent fare as per their franchise terms, and in violation of the United States Revised Statutes, sec. 720, to wit:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of the State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

That said writ of injunction was issued under the guise of this fictitious and collusive action brought by said Augustus S. Peabody, trustee, as aforesaid; that his action therein was unlawful, oppressive, high-handed, unjust, and a violation of his oath of office.

Wherefore, the said Cornelius H. Hanford, judge as aforesaid, misbehaved himself and was and is guilty of gross misconduct and misdemeanor, malfeasance, and misfeasance, and abuse of his judicial power in office.

VIII. That said Cornelius H. Hanford, judge as aforesaid, wilfully and unlawfully usurped and abused the judicial powers in a manner contrary to law, reason, justice, and common sense, and attempted to thwart the will of the people of Seattle, Washington, in this, to wit: The citizens and electors of the city of Seattle undertook, endeavored, and purposed to hold a recall election in said city on March 7, 1911, for the purpose of recalling the mayor of said city; that at the instance of one Frank H. Scobey, plaintiff, a nonresident of the State of Washington, an action before said Cornelius H. Hanford was brought against William J. Bothwell, city comptroller, and others; said city was enjoined and restrained from holding or attempting to hold said election; that the financial and property interests of said Scobey situated in said city, which he claimed would be affected and endangered by his portion of the expenses of said recall election, amounted to the sum of *seven cents*, and the issuance of said writ of injunction was a gross abuse of the judicial powers of said office, whereby said Hanford sought to subvert and thwart the will of more than seventy thousand voters of said city of Seattle.

Wherefore the said Cornelius H. Hanford, judge as aforesaid, misbehaved himself in office, and was and is guilty of wilful, corrupt, and gross usurpation of power, and of a high misdemeanor in office.

IX. That said Cornelius H. Hanford, judge as aforesaid, unlawfully and wrongfully abused his trust and misused his judicial power in this, to wit, that heretofore in the year 1905 a certain cause, No. 1083, in the United States Circuit Court, entitled the Alaska Packers' Association, complainant, against Thomas B. McGovern, et al., receivers of the Pacific Packing & Navigation Company, et al, was pending before said court, a receiver for said corporation was pending before said court, a receiver for said corporation was appointed; that Messrs. Kerr & McCord were attorneys for said receiver; that said Cornelius H. Hanford allowed said attorneys and receivers the exorbitant sum of approximately one hundred forty thousand dollars ($140,000.00) and that said fees were so grossly exorbitant that the assets of said corporation were thereby largely consumed, to the financial injury of the stockholders and creditors of the said corporation. That as a motive for the allowance of such an exorbitant fee said attorneys were commercially and financially associated with Cornelius H. Hanford and did become associated with him in this, that on December 2, 1905, said Cornelius H. Hanford, together with said attorneys, E. S. McCord and James A. Kerr, among others, promoted, organized, and incorporated the Hanford Irrigation & Power Company, with a capitalization of two hundred fifty thousand dollars ($250,000.00); that a large tract of land was purchased from the Northern Pacific Railway Company in Benton County, Washington; that after its organization and incorporation Cornelius H. Hanford, together with Attorneys Kerr & McCord, became one of the stockholders and trustees of said corporation; that the allowance of the above exorbitant fee was a prearranged and corrupt plan on the part of said Cornelius H. Hanford with Messrs. Kerr & McCord and their subordinates in order to advance the personal interests of said Cornelius H. Hanford and his business associates.

Wherefore, the said Cornelius H. Hanford, judge as aforesaid, misbehaved himself in office and was guilty of misconduct and misdemeanor in office.

X. That said Cornelius H. Hanford, judge as aforesaid, has repeatedly violated that portion of his oath of office "*to do equal right to the poor and to the rich*"; that he is a tool of corporate wealth and privilege seeking corporations, and looks with scorn and hatred upon the struggle of the great masses of mankind for better conditions and a more equitable distribution of this wealth which labor by its toil creates, and as one of the many instances of such gross misconduct and absolute unfairness is the case in said United States district court of Eli Melovich, complainant, against the Stone-Webster Engineering Company, a corporation, defendant, wherein the complainant, a laborer, lost his arm while working about the machinery of said defendant, and after trial the jury returned a judgment in favor of the plaintiff in the sum of twelve

thousand two hundred sixty-two dollars ($12,262); on October 10, 1911, Messrs. Kerr & McCord, business associates of said Cornelius H. Hanford, moved to set aside the judgment. Upon the argument Judge Cornelius H. Hanford used the following language:

"I do not wish to hear you upon any subject except the use of the word 'any,' Mr. Myers (attorney for complainant). It is for you to show me that the word was properly used."

Turning to Mr. Kerr, Judge Hanford said:

"I would not hesitate to grant the nonsuit in this case were it not for the number of times this court has been reversed by the Court of Appeals."

Further the court said:

"He (referring to the plaintiff) was able-bodied and lost his arm, it is true, but in keeping with other causes he *got five times as much as he should*, and the verdict is unjust."

And upon a petition for a rehearing Judge Hanford used the following language:

"While it is true that cases of this sort must be decided by a jury, nevertheless when a verdict is unconscionable the court in the exercise of discretion may require that *two* juries may be given an opportunity to pass on the case. The superstructure is based on the word 'any.' I explained the use of this word 'any' by *the fact that from weariness my mind was not as acute as it should have been at the time, and although no exception was taken at the time, it is a matter that appeals to my discretion, and justice requires the granting of a new trial.*"

That the plaintiff in said cause was an able-bodied laborer, capable of earning three dollars ($3.00) a day at manual labor and in the prime of his manhood; that his arm was ground off in the cogwheels of the machinery completely up to his shoulder; that the pain and torture suffered was enormous; that Cornelius H. Hanford was guilty of an abuse of his judicial power in setting aside said verdict on either the ground of the use of the word "any" or on the ground that the verdict was "he got five times as much as he should"; that it was only just and reasonable compensation to the said plaintiff for his future incapacity to work and earn a living, and the pain and suffering he endured. Hereto is attached a photograph of Eli Melovich, plaintiff, showing said injury, and is made a part of this allegation as "Exhibit B."

Wherefore, the said Cornelius H. Hanford, judge as aforesaid, was and is guilty of judicial usurpation and intolerance for the rights of the poor as against the rich and misbehaved himself in office, and was guilty of misconduct and misdemeanor in office.

XI. That Cornelius H. Hanford, judge as aforesaid, has lost the respect, esteem, and confidence of the law-abiding people of the State of Washington to such an extent that his power for useful service as such judge is past; that he brings the judiciary into public scorn, contempt, disrespect, and disgrace; that during all the years herein mentioned, while said Cornelius H. Hanford has been judge, he has been and is a moral bankrupt by night and a judicial pervert by day; that his commercial relations with corporations and individuals have caused him over a period of years to constantly violate the spirit of the United States Revised Statutes, section 601.

XII. And complainants by protestation saving to themselves the liberty of exhibiting any further articles of accusation of impeachment against the said Cornelius H. Hanford, judge of the United States Court for the Western District of Washington, Northern Division, and also of replying to his answers which he shall make unto the charges herein preferred against him, and in offering proof to the same, and of every part thereof, and to all and every other article or accusation of impeachment which shall be exhibited by them as the case shall require, do demand that the said Cornelius H. Hanford may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, trials, and judgments may be thereupon had and given as may be agreeable to law and to justice.

(Signed) JOHN H. PERRY.

STATE OF WASHINGTON, *County of King, ss:*

John H. Perry, being first duly sworn, on oath deposes and says that he is a resident citizen of Seattle, King County, State of Washington, a member of the bar of the State of Washington and of the United States District Court for the Western District of Washington, Northern Division; that he is cognizant of the charges contained in the matter herein set out; that he has investigated or caused to be investigated the allegations therein contained and that he believes the same to be true and correct.

(Signed) JOHN H. PERRY.

Subscribed and sworn to before me this 22d day of May, A. D. 1912.

[SEAL.] (Signed) IRVING M. CLARK,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT No. 28.

Certificates of respective clerks of the court showing number of days in which Judge Hanford has been in attendence in open court from June, 1890, to June, 1912, covering a period of twenty-two years, as follows:

	Days.
Seattle	3,500
Tacoma	979
Bellingham	22
Spokane	679
Walla Walla	160
North Yakima	23
Helena	5
San Francisco (district court)	45
San Francisco (circuit court of appeals)	88
Total	5,501
Number of days in the year	365
Average number of days per year	250
	115
Number of Sundays per year	52
Average number of days per year not in court	63

EXHIBIT No. 29.

Judge Hanford attended sessions for the circuit court of appeals for the 9th circuit at the February and October sessions in the year 1910, and the May session in the year 1911, being required to do so by being designated for that service under a provision of the law constituting that court. As a member of the court he participated in the hearing and decision of the following list of cases:

The Calif. Nav. & Impr. Co. *v.* The Union Transportation Co. (176 Fed., 533).

S. W. Bollinger & F. F. Bollinger *vs.* The Central National Bank et al. (177 Fed., 609).

The Southern Pac. Company et al. *vs.* The Arlington Heights Fruit Co. et al. 911) Fed., 101).

T. R. Sheridan *vs.* The Southern Pacific Co. (179 Fed., 81).

F. E. Earnhart *vs.* John B. Switzler (179 Fed., 832).

United States of America *vs.* Frank Grosjean et al. (184 Fed., 593).

The San Pedro, Los Angeles & Salt Lake R. R. Co. *vs.* Maggie Thomas and John Thomas (187 Fed., 790).

In the matter of the estate of Fred Dorr, a bankrupt, *vs.* John J. Forbis (186 Fed., 276).

The Barkentine Aurora *vs.* Maggie Boyce (191 Fed., 960).

William Hanley *vs.* United States of America (186 Fed., 711).

Steamship Indrapura *vs.* Gilbert Palache et al. (190 Fed., 711).

Boise City, Idaho, *vs.* Boise Artesian H. & C. Water Co. (186 Fed., 705).

The North American Dredging Co. *vs.* Pacific Mail S. S. Co. (185 Fed., 698).

S. H. Stewart *vs.* O. G. Laberee, Receiver (185 Fed., 471).

The Northwestern S. S. Co. *vs.* O. D. Cochran (191 Fed., 146).

Lew Quen Wo *vs.* United States of America (184 Fed., 685).

George W. Dwinnell et al. *vs.* United States of America (186 Fed., 754).

Maritime Investment Co. *vs.* Hanos (184 Fed., 596).

Calif. Nav. & Impr. Co. *vs.* Stockton Milling Co. (184 Fed., 369).

Steamship Wellesley Co. *vs.* C. A. Hooper & Co. (185 Fed., 733).

Atchison, T. & S. F. R. Co. *vs.* Alice M. Gilliland (193 Fed., 608).

Corcoran *vs.* United States Dist. Court for Dist. of Alaska, Division No. 1 (187 Fed., 813).

E. M. Barnes *vs.* Lyons, Judge of Dist. Court of Alaska, Division No. 1 (187 Fed., 881).

Sandidge *vs.* Atchison, T. & S. F. R. Co. (193 Fed., 867).

Thomas Nagle *vs.* United States of America (191 Fed., 141).

Amalgamated Sugar Co. *vs.* United States National Bank (187 Fed., 746).

Spencer, Claimant (Charles R. Spencer, ss). *vs.* Dalles, Portland & Astoria Nav. Co. (188 Fed., 865).

Western Transportation & Towing Co. *vs.* French Barque *Europe* (190 Fed., 475).

1942. Weiser Valley Land & Water Co. *vs.* Colonel W. Ryan and Frank D. Ryan (190 Fed., 417).
1960. Weiser Valley Land & Water Co. *vs.* Colonel W. Ryan (190 Fed., 425).
Great Northern Ry. Co. *vs.* Sloan.
Hyoma Matsumura *vs.* Martin L. Higgins, Sheriff (187 Fed., 601).
Kuratura Suzuki *vs.* Higgins, Sheriff (187 Fed., 603).
John E. Davis *vs.* McEwen Brothers (193 Fed., 305).
Copper River & Northwestern Ry. Co. *vs.* John Phillips.
Fred Willison et al. *vs.* Swan Ringwood (190 Fed., 549).
City and County of San Francisco *vs.* United Railroads of San Francisco (190 Fed., 507).
United States of America *vs.* Rudolph Axman (193 Fed., 644).
Chicago, Burlington & Quincy R. R. Co. *vs.* M. Feintuch (191 Fed., 482).
Choemon Ki Kuchi, Claimant (*Tokai Maru*—schooner) *vs.* United States of America (190 Fed., 450).
Frank N. Chaplin et al. *vs.* United States of America (193 Fed., 879).
Pelton Water Wheel Co. *vs.* May B. Doble (190 Fed., 760).
Of the cases in the above list the opinion of the court was written by Judge Hanford in the following cases:
The Calif. Nav. & Impr. Co. *vs.* The Union Transportation Co. (176 Fed., 533).
T. R. Sheridan *vs.* The Southern Pacific Co. (179 Fed., 81).
The San Pedro, Los Angeles & Salt Lake R. R. Co. *vs.* Maggie Thomas and John Thomas (187 Fed., 790).
The barkentine *Aurora vs.* Maggie Boyce (191 Fed., 960).
The North American Dredging Co. *vs.* Pacific Mail S. S. Co. (185 Fed., 698).
Calif. Nav. & Impr. Co. *vs.* Stockton Milling Co. (184 Fed., 369).
Corcoran *vs.* United States Dist. Court for Dist. of Alaska, Division No. 1 (187 Fed., 813).
Amalgamated Sugar Co. *vs.* United States National Bank (187 Fed., 746).
Western Transportation & Towing Co. *vs.* French barque *Europe* (190 Fed., 475).
Hyoma Matsumura *vs.* Martin L. Higgins, Sheriff (187 Fed., 601).
Kuratura Suzuki *vs.* Higgins, Sheriff (187 Fed., 603).
John E. Davis *vs.* McEwen Brothers (193 Fed., 305).
United States of America *vs.* Rudolph Axman (193 Fed., 644).
Choemon Ki Kuchi, Claimant (*Tokai Maru*—schooner) *vs.* United States of America (190 Fed., 450).
In the following cases Judge Hanford filed dissenting opinions:
The Southern Pac. Company et al. *vs.* The Arlington Heights Fruit Co. et al. (191 Fed., 101).
The Northwestern S. S. Co. *vs.* O. D. Cochran (191 Fed., 146).
Frank N. Chaplin et al. *vs.* United States of America (193 Fed., 879).
Great Northern Ry. Co. *vs.* Sloan.
In the case of City and County of San Francisco *v.* United Railroads of San Francisco (190 Fed., 507), Judge Hanford filed a special concurring opinion.

EXHIBIT No. 30.

SULLIVAN ESTATE.

In State court: In re Sullivan Estate, 36 Wash., 217; 37 Wash., 696; 40 Wash., 202; 48 Wash., 631.
In Federal court: 116 Fed., 934; 125 Fed., 657; 199 U. S., 89.
The decision in 199 U. S., 89, is cited in Waterman *v.* Canal Louisiana Bank, Exr., 215 U. S., 33, 44.
See citation of last case in McLellan *v.* Carland, 217 U. S., 269, 281.
Richardson *v.* Green is reported in 61 Fed., 423; certiorari denied, 159 U. S., 264.

EXHIBIT No. 31.

United States Circuit Court, District of Washington, Northern Division.

In the matter of the petition of H. C. Littooy for a writ of habeas corpus. No. 1207. Filed July 6, 1904.

MEMORANDUM DECISION ON THE QUESTION OF JURISDICTION.

By the record in this case it appears that the petitioner has been convicted in a court of this State of a violation of a statute requiring all dentists, under a prescribed penalty, to obtain a license to practice that profession.

The petitioner alleges that he has the qualifications of education, skill, and experience required for doing satisfactory work as a dentist, and that he has complied with all the conditions which may be lawfully exacted of an applicant for a license, but that the board of dental examiners have refused to grant him a license to practice dentistry for noncompliance on his part with arbitrary and unreasonable exactions, and that for practicing dentistry without a license, after it had been refused, he has been arrested and deprived of the liberty guaranteed to citizens of the United States by the Constitution of the United States.

The police power of the State undoubtedly includes the right of the State government to prescribe regulations for the protection of sufferers requiring treatment by professional dentists, and to prohibit dentists from practicing their profession if they fail to conform to the prescribed regulations. The natural right of an individual to pursue a useful calling, without unreasonable interference and obstruction by the government, is important, and among the important rights which the Constitution was intended to preserve to the people. It is a right, however, that is subordinate to the power of the State to make reasonable laws and regulations for the general welfare. Keeping these principles in view, if the petitioner has any grievance cognizable in a Federal court, it must be on one of two grounds, viz: First, that the statute under which he has been prosecuted is in some of its provisions repugnant to the Constitution of the United States; or, second, that the proceedings against him or the punishment inflicted are unusual and not authorized by the laws of the State. The issues to be determined being thus narrowed, the court is required to go further and exercise a discretion in interfering with the administration of the laws of the State, by means of the writ of habeas corpus. This is so because it would be practically impossible to carry on our system of dual government, State and National, if, as a matter of right, every person considering himself aggrieved by being convicted of an offense in a State court may require a review of the proceedings against him in a national court, and the volume of litigation in the national courts would be far beyond the capacity of the judicial system which Congress has provided, and if the national courts granted writs of habeas corpus to all applicants, the State governments would be obstructed to the extent of suspending the enforcement of criminal laws through the instrumentality of State tribunals. It is settled by numerous decisions of the Supreme Court that the United States courts may and must exercise discretion in granting or refusing writs of habeas corpus to persons convicted under State laws, and that unless extraordinary conditions demand that the writ issue it should be refused in all cases where irregularities, errors, and injustice may be corrected by a review of the proceedings in an appellate court of competent jurisdiction, and where the way remains open for the aggrieved party to submit his cause finally to the Supreme Court of the United States.

This court in the exercise of its discretion has heretofore deemed it proper to protect petitioners from vexatious prosecutions for past violations of statutes of the State or municipal ordinances which upon inspection appeared to be necessarily and obviously absolutely void, but when only irregularities have been complained of in proceedings founded upon valid statutes, the petitioners have been required to exhaust their remedies in the appellate courts.

The case now under consideration does not present any extraordinary features which seem to require or justify a departure from the practice in preceding cases. All that can be claimed in favor of immediate action for the petitioner's relief is, that he desires to be spared the consequential injuries and annoyance of being prevented from practicing his profession during the pendency of a test case in the appellate courts. But these are consequences which can not be avoided. The constitutionality of a statute of this State, and the integrity of the State board of dental examiners are challenged by the petition, and there is every reason to suppose that a decision of this court, if in his favor, would be brought for review before the court of highest authority, as it should be. The statute which the petitioner attacks is not so obviously void that intelligent and reasonable minds may not honestly differ in their opinions with respec to it, and the courts of the State which have so far sustained it, will not be required to defer to a contrary opinion until the highest court of the State or the Supreme Court of the United States has an opportunity to render a decision of binding force. Therefore, if discharged, the petitioner would be unable to practice dentistry in this State, unlicensed, without risk of being again arrested and prosecuted and convicted and sentenced in the courts of the State during the pendency of proceedings in the appellate court, and as the Supreme Court of the United States is the only national court which can shield him from repeated prosecutions, it is expedient for him to go to that court in the most direct way, which is by an appeal or writ of error in the case in which he has been convicted. No advantage whatever in the saving of time or expense can be gained by having the disputed questions passed upon in this court.

For the foregoing reasons, I direct that the writ be discharged, and the case dismissed.

(Signed) C. H. HANFORD, *Judge.*

Filed in the U. S. Circuit Court, Dist. of Washington, July 6, 1904, A. Reeves Ayres, clerk; H. M. Walthew, deputy.

EXHIBIT No. 32.

In the District Court of the United States for the District of Washington, Northern Division.

In the matter of C. A. Heckmann and M. E. Hanson, copartners doing business as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson, individuals, bankrupts. Amended petition of Heckmann & Hanson, copartners, to reopen estate, and for other relief. No. 2203.

To the District Court of the United States for the District of Washington, Northern Division, Honorable C. H. Hanford, judge:

Your petitioners, Heckmann & Hanson, copartners, of the above-named bankrupts, respectfully represent:

I. That heretofore, to wit, on the 17th day of January, 1902, your petitioners filed in this honorable court their petition in voluntary bankruptcy asking this court to adjudge them bankrupts and to grant to them the benefit of the acts of Congress relating to bankruptcy; that on the same day, by order duly made and entered, your petitioners were duly adjudged to be bankrupts; and on the 18th day of January, 1902, by an order duly made and entered all matters thereto pertaining were referred to the Honorable John P. Hoyt, a referee of this court residing at Seattle, Washington, in said district, to take such further proceedings therein as required by said bankruptcy acts; all of which matters more fully appear by the records and files of this court in the above-entitled matter, and to which reference is hereby made.

II. That at the time of filing said petition and with the said petition your petitioners prepared and filed in this court a schedule of all their property (real and personal) showing the amount and kind, the location thereof, and its money value in detail; and also prepared and filed with their petition a list of their creditors, showing their residences, the amounts due each, the consideration thereof, and the security held by them, all in triplicate, as required by law and the rules of this court. And in all other respects your petitioners have fully complied with the law relating to bankruptcy and with the rules and orders of this court and in all respects since their adjudication as bankrupts they have been ready and willing to cooperate with this court, with their creditors, and with the trustee in the administration of said estate and all matters pertaining thereto.

III. Your petitioners further represent that at the time of their adjudication as bankrupts the property of your petitioners, both real and personal, was in the possession of the superior court of the State of Washington for King County, acting through its receiver, one Peter L. Larsson, and this court was so apprised in the said petition for adjudication. That the cause in the said State court in which the said Larsson was appointed receiver of the property of your petitioners was entitled "William M. Curtiss, plaintiff, versus Heckmann & Hanson, defendants, Peter L. Larsson, receiver," and was known as file number 32817 in said court. That said superior court of the State of Washington for King County was at all times without jurisdiction over the said property, and without jurisdiction to sell or dispose of the same, as more fully appears from the complaint filed in said cause, the motion made for the appointment of said receiver, the affidavit of plaintiff filed in support of said motion, and the order of the court appointing said receiver, copies of which are hereto attached marked, respectively, Exhibits "A," "B," C," "D," made a part of this petition, and reference to which, for greater certainty, is hereby made. That said Exhibits "A," "B," "C," "D" are true copies of said complaint, motion, affidavit, and order, respectively. That after obtaining the said order appointing the said receiver no other or further proceedings were ever taken in the said cause by the said plaintiff or his attorneys in said State court, and no judgment or decree was ever rendered in said cause.

IV. That owing to the fact that at the time of preparing and filing said schedule of property and list of creditors heretofore referred to these bankrupts were not in possession of their property, nor any part thereof, nor of their books of account, stock books, inventories, records or papers, and had not access thereto, and had no reliable data from which to prepare said schedule, and ever since said time, have been unable to gain possession of or access to their said property or their said books of account, stock books, inventories, records, or papers, the said schedule of property as filed was and

is inaccurate, incomplete, and defective in that it fails to include all the accounts, owing the bankrupts and fails to include a large amount of the personal property belonging to the estate of the bankrupts and which was at the time of filing said schedule in the possession of the said receiver in the said State court; and is further inaccurate and defective in that the liabilities therein scheduled are too high by at least the sum of $6,872.12. That the value of the personal property in the hands of said receiver was upwards of the sum of $20,000.00; that the value of the real estate was upwards of the sum of $40,000.00; that the liabilities of the copartnership were not to exceed the sum of $23,000.00. That, in truth and in fact, the total value of all of the property belonging to the bankrupts' estate was and is far in excess of all the debts owing by the bankrupts, and, if properly administered, will pay the debts of the bankrupts in full and leave a considerable amount in the estate to be returned to the bankrupts, your petitioners. That all the matters and things in this paragraph contained were at all times known to the creditors of these bankrupts, to the trustee, and to the referee to whom reference of said bankruptcy matter in the first instance was made.

V. Your petitioners further represent that one of the creditors of your petitioners, the Scandinavian-American Bank, of Seattle, Washington, well knowing the value of said property and well knowing the value to be far in excess of the debts owing by said bankrupts, and contriving to obtain possession of said property and to convert the same to its own use without making just compensation therefor, and also conspiring and colluding with the said receiver of said State court, said Peter L. Larsson, to conceal certain frauds of the said Larsson committed in connection with said receivership and to part of which frauds the said bank was a party, procured the said Larsson to obtain from said superior court of the State of Washington for King County an order to sell and dispose of said property at the pretended price of $24,125.00; and the said court, after the adjudication of these petitioners as bankrupts, and with knowledge of said adjudication, and after proper motion made to stay proceedings in said State court, and over and against the protests of these bankrupts, made an order pretending and assuming to sell and dispose of said property to one M. F. Mayhew, and directing its said receiver to execute to the said Mayhew a deed of the real estate and a bill of sale of the personal estate of said bankrupts then in the possession of said court; and the said receiver as directed, did, on the 7th day of March, 1902, execute and deliver to the said Mayhew a deed of the said real property and a bill of sale of the said personal property then in the hands of the said receiver belonging to the estate of these bankrupts; and the said receiver on the same day turned over and delivered to the said Mayhew the possession of the said real and personal property, being the same property set forth in the schedule prepared and filed by these bankrupts with their petition heretofore filed, as aforesaid, or so much thereof as had not previously been fraudulently converted and disposed of by said receiver, and, in addition, being the rest and residue of the property belonging to the estate of these bankrupts and not scheduled, owing to the inability of these bankrupts to schedule the same, as hereinbefore related. That the said transfer of personal property included as well the books of accounts, stock books, records, and papers belonging to the estate of these bankrupts, and also the books of account and records of the said receiver. And afterwards, and on the 7th day of March, 1902, the said court, with knowledge of the adjudication of these petitioners as bankrupts, and after proper motion made to stay proceedings in said cause and over and against the objections of these petitioners, entered an order confirming its acts and doings and the acts and doings of its said receiver in the premises. And afterwards and on the 24th day of March, 1902, said receiver was discharged as such by said court.

VI. Your petitioners further represent that upon receiving the possession of the said property, the said Mayhew, at the instance of the said bank, immediately transferred the same, or a large part thereof, without consideration, to a corporation known as the Seattle Shipyards Company, which corporation was formed at the instance of the said bank, and your petitioners believe and therefore allege that it was so formed for the purpose of receiving the said property and losing the identity thereof and of hiding and concealing the present pretended owners thereof. That the said The Seattle Shipyards Company is now in possession of the said property.

VII. Your petitioners further represent that in truth and in fact the receiver of said State court did not receive from said M. F. Mayhew or from any one else the said sum of $24,125.00 or any other sum whatsoever, or any other consideration for the delivery of said property. But that after the discharge of said receiver by said State court the said Scandinavian-American Bank, in order to straighten the records of said court in that respect, without notice to the defendants in said suit obtained from the said State court an order of distribution of the funds pretended to be held by said State court, and after obtaining said order of distribution caused to be deposited in the registry of said court on the 15th day of April, 1902, the sum of $20,064.77, and on the same day withdrew from said registry the sum of $17,981.69 upon an alleged indebtedness

of the bankrupts to said bank but the claim of which had never been filed or allowed in said action. That within the following three days the balance of said sum so deposited was withdrawn from said registry by other alleged creditors of your petitioners on the basis of 30 per cent on the amount of their respective claims, none of which claims, with two exceptions, had ever been proved or filed in said court, and all of which claims were afterwards presented to the Bonding Company on the bond of the said receiver and the balance due on the said claims over and above the 30 per cent thus paid by said bank through said court was paid by said bonding company. That said receiver and his attorney received from the Scandinavian-American Bank for their services in so delivering the property and betraying said court as aforesaid, a sum equal to 10 per cent of the amount so deposited in said court, being the amount of $2,006.45.

VIII. Your petitioners further represent that said State court had absolutely no excuse for selling or attempting to sell the said property. That it was attempting to foreclose no lien, either mortgage, attachment, or otherwise. That it had never rendered a decree or judgment in said cause and was not attempting or pretending to sell said property to pay or satisfy any judgment or decree. That no creditor had ever asked the said court to make the said sale, nor had any of the creditors of your petitioners, with two exceptions, ever filed any claim in said court. Nor was the pretended sale done in any other manner or for any other purpose than as hereinbefore stated.

IX. Your petitioners further represent that said alleged sale of the property of these bankrupts was made by said State court to the said M. F. Mayhew, subject to the incumbrances due against the said property, said incumbrances being in the neighborhood of $20,000. And that the said Scandinavian-American Bank and other secured creditors participating in the distribution of the said sum of $20,064.77, participated in the same with knowledge of that fact, and with the further knowledge of the adjudication of these bankrupts as such and that in any event said State court had no right or jurisdiction to pay over the said money or any part thereof to them or to any other than the trustee in bankruptcy.

X. Your petitioners further represent that at the time reference of these matters was made to the referee in bankruptcy, as aforesaid, the said referee was attorney for and an officer of the bonding company which had bonded said receiver in the said State court, said Peter L. Larsson, and against which said receiver gross charges of fraud and mismanagement had been made in said court, and further charges were about to be made, and the said referree, with knowledge of said charges and the truth thereof, and with knowledge of said adjudication and of the reference of all matters thereto pertaining to him as referee, as aforesaid, became engaged in the said State court in an effort to free his said client from the said bond of said receiver, and to that end the said referee conspired and colluded with the said Scandinavian-American Bank to postpone and delay proceedings in these bankruptcy matters until after the alleged sale of the said property of these bankrupts had been made in the said State court, as aforesaid, and the evidence of the fraud of said receiver concealed and removed as far as possible, and until the said bonding company, his client, should be released from the said bond of said receiver; and, in furtherance of said conspiracy the said referee wilfully failed and neglected to call the first meeting of creditors of these bankrupts to elect a trustee, or to set in motion in any manner whatsoever the machinery of this court looking toward the administration by this court of the said estate, as by law and duty to these bankrupts he was required to do, until after the said alleged sale by said State court had been made and the property delivered to the said Mayhew as aforesaid, and the evidence of the fraud of said receiver to that extent removed and covered up, as aforesaid, and after the said bond of said receiver had been discharged by said State court. That said first meeting of creditors was not called by said referee until the 14th day of April, 1902, as more fully appears from the records and files of this court in this matter, reference to which is hereby made.

X½. Petitioners further allege that the attorney who filed in this court their petition in bankruptcy on January 17, 1902, was one C. A. Reynolds. That after filing said petition and obtaining the adjudication of your petitioners as bankrupts, the said Reynolds assisted in every way possible said receiver of the State court in delivering the said property of your petitioners to the said Scandinavian-American Bank, and on the 6th day of March, 1902, the said Reynolds appeared in the said State court and against petitioners' protests and instructions advocated before said court and assisted in consummating said pretended sale. That between the time of said adjudication and the delivery of said property on the 6th day of March, 1902, as aforesaid, the said Reynolds was paid the sum of $100 by the said bonding company and was by it engaged at the same time as attorney for said bonding company in three or four other matters in which said company was interested; and the said Reynolds was, on the 17th day of April, 1902, paid the further sum of $150 by the Scandinavian-American Bank. Your petitioners believe and therefore allege that the said $150 was paid by the said bank as a consideration for the said Reynolds's assistance in betraying your petitioners

and helping to deliver said property as aforesaid; and that the said $100 was so paid by the said bonding company and the services of the said Reynolds so engaged by the said bonding company as consideration for his services in helping to deliver the said property and making possible the discharge of said receiver by said State court and the release of said bonding company from the bonds of said receiver.

XI. Your petitioners further represent that at the instance of your petitioners a subsequent reference of the matters to these bankruptcy proceedings pertaining was made to the honorable Warren A. Worden, a referee of this court residing at Tacoma, without this said district, and the adjourned meeting of said first meeting of creditors for the purpose of proving claims and electing a trustee was held before the said the honorable Warren A. Worden on the 28th day of May, 1902.

XII. That at said adjourned meeting of creditors, held for the purpose of proving claims and electing a trustee, the said Scandinavian-American Bank, still contriving and conspiring to retain possession of said property and to convert the same to its own use, and contriving and conspiring to prevent the administration of said estate by this court and to defraud these bankrupts and this court, procured to be proved some four or five assigned claims owned by it, the said bank aggregating in amount about twenty-five dollars, and with said claims elected as trustee one E. F. Fisher, a bookkeeper in the employ of a former creditor of these bankrupts; and in anticipation of the election of said trustee said bank, acting as aforesaid, employed or procured to be employed for said trustee a firm of attorneys whose efforts, with those of said trustee, were to be devoted to stifling any and all proceedings in this court looking to the collection and administration of said estate; that afterwards, and in pursuance of said plan, on the 11th day of July, 1902, the said trustee, through said attorneys, filed with said referee his report to the effect that these petitioners had no property or estate and, without notice to these bankrupts or their attorney, procured said referee to accept and approve said report; that afterwards and on the 5th day of December, 1902, the said trustee filed with said referee his final report, and on the 2nd day of January, 1903, without notice to these bankrupts or their attorney, obtained his discharge as such trustee, and the said referee, without notice to these bankrupts or their attorney, filed with this court his report declaring the said estate closed. All of which matters more fully appear from the records and files of this court, reference to which is hereby made.

XIII. That since the last-mentioned date, the 2nd day of January, 1903, no trustee for the estate of the bankrupts has existed, and the creditors of your petitioners, with knowledge that there is property in the estate of these bankrupts which has not been administered, have failed and neglected since said date to recommend the appointment of a said trustee.

XIV. Your petitioners further represent that, aside from the said Scandinavian-American Bank, there are no creditors of these bankrupts now interested in the said estate, for the reason that before the alleged sale had been made by said State court the said Scandinavian-American Bank and the said bonding company on the bond of said receiver in said State court had arranged between themselves to take care of the said others of said creditors in manner satisfactory to said creditors, and the said creditors have long since been paid and their claims assigned for the benefit of said bank. That the terms of the said arrangement between said bank and said bonding company your petitioners are unable of their own knowledge to give.

XV. Your petitioners further represent that they have other and further property and equities than those herein enumerated which are not in the hands of the said the Seattle Shipyards Company, and which were possessed by these bankrupts at the time of their adjudication as such and which said property has never been collected and administered and is being lost to these bankrupts and their estate.

XVI. Your petitioners further represent that in the spring of 1901, and before the property of these bankrupts was taken possession of by the said State court as aforesaid, M. E. Hanson, one of the members of said copartnership of Heckmann & Hanson, was afflicted with a very severe illness in the nature of a brain disorder which left him very weak in body and mind and absolutely unable to attend to his business affairs and that he still feels the effect of the illness and is unable physically and mentally to attend to such affairs. That he knows nothing of his own knowledge of affairs as they were administered in the said State court and very little of matters as they have occurred in this court, and that at all times herein mentioned he has been and now is unable physically to concern himself with them.

XVII. That at all times herein mentioned C. A. Heckmann, the other member of said firm of Heckmann & Hanson, has had charge of the interests of the said firm so far as said firm could manage its own affairs. That he has endeavored by every means within his power to obtain for the firm a proper administration by this court of the estate of said partnership. That when, finally, on the 28th day of May, 1902, a trustee was elected by the said creditors and approved by this court the said Heck-

mann, in the belief that the estate of the said firm would be administered by this court, determined upon a business trip to Alaska, and, accordingly, on the following 8th day of June, 1902, went to Alaska. That at said time said Heckmann fully intended to return to Seattle, his said place of residence, in the following September or October. That, in fact, he did start from Alaska for Seattle October 6, 1902, by boat, the only means of transportation between the two points, and in the usual course of events would have reached Seattle about thirty days thereafter. That, in fact, the boat upon which he was making the voyage became disabled at sea and was some eighty days overdue before reaching Seattle and did not reach Seattle until the 28th day of January, 1903, and the said Heckmann was unable by any means to reach Seattle or communicate therewith before that date. That upon arrival at Seattle, in said district, said Heckmann first learned that the said trustee had not administered the partnership property, but had made a report to said referee in substance denying that these bankrupts had any estate and that the said report without notice to the bankrupts or their attorney, had been approved by said referee; and, further, learned that the said trustee, on the 2nd day of January, 1903, without notice to these bankrupts or their attorney, had obtained his discharge; and, further, learned that the referee last named had, without notice to these bankrupts or their attorney, filed his report in this court declaring said estate closed.

XVIII. Your petitioners further represent that unless this estate is reopened, a trustee provided, the property of the estate collected, and the estate administered, as in their petition for adjudication prayed, your petitioners and this court will be defrauded and your petitioners will be denied the benefits of the acts of Congress relating to bankruptcy vouchsafed them by law.

Wherefore your petitioners pray that an order be made and entered herein as follows:

1. Reopening the said estate, and referring said matter and all things pertaining thereto back to the said Honorable Warren A. Worden, or to some other disinterested referee of this court, to take such further proceedings therein as are required by the acts of Congress relating to bankruptcy.

2. Appointing a trustee of the estate of these bankrupts, your petitioners.

3. Granting such other relief as to the court may seem just and appropriate, if your petitioners have misconceived their remedy.

HECKMANN & HANSON,
Petitioners.

J. L. FINCH,
Attorney for Petitioners.

UNITED STATES OF AMERICA,
District of Washington, King County, ss:

C. A. Heckmann, being first duly sworn, on oath deposes and says that he is a member of the firm of Heckmann & Hanson, who subscribed the foregoing petition, and makes this affidavit in behalf of said firm; that he has read the foregoing petition and knows the contents thereof, and that the same is true, as he verily believes.

C. A. HECKMANN.

Subscribed and sworn to before me this 8th day of February, 1904.

[SEAL.] JOHN PEIRCE,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT "A."

In the Supreme Court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners doing business in the firm name and style of Heckman & Hanson, defendants. No. ——. Complaint.

The plaintiff complains of the defendants, and for cause of action alleges:

I. That the defendants, C. A. Heckman and M. E. Hanson, are now, and were at all times hereinafter mentioned, copartners doing business in the firm name and style of Heckman & Hanson.

II. That heretofore, to wit, during the past two years, the plaintiff sold and delivered to the defendant goods, wares, and merchandise, and performed labor for them, at their special instance and request, upon an open and running account, and the defendants have at divers times made payments thereon, and there is now due and owing to the plaintiff upon the said account, the sum of fifteen hundred and twenty-eight and 18/100 dollars ($1,528.18) which said account and balance due thereon, has been heretofore, to wit, on or about the 1st day of July, 1901, rendered and submitted to the defendants and it was then and there agreed between the plaintiff

and the defendants that the said balance due thereon in the sum of $1,528.18 was just and correct, and due and owing from the defendants to the plaintiff.

III. That thereafter, and on or about the 1st day of July, 1901, the plaintiff demanded payment of the said sum of $1,528.18 from the defendants, but they have failed, neglected, and refused to pay the same, or any part thereof, and still fail, neglect, and refuse, to plaintiff's damage, in the said sum of $1,528.18 and interest thereon at the legal rate from the 1st day of July, 1901.

Wherefore plaintiff prays judgment against the defendants for the sum of fifteen hundred and twenty-eight and 18/100 dollars ($1,528.18) and costs of suit.

BENNETT, WHITMAN & LUND,
Attorneys for Plaintiff.

STATE OF WASHINGTON, *County of King, ss.*

William M. Curtiss, being first duly sworn, on oath deposes and says: that he is the plaintiff in the above-entitled action. That he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

WILLIAM M. CURTISS.

Subscribed and sworn to before me this 11th day of July, 1901.

BURTON E. BENNETT,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT "B."

In the Superior court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners, doing business in the firm name and style of Heckman & Hanson, defendants. No. ——. Motion for appointment of receiver.

Now comes the plaintiff by the undersigned, his attorney, and moves this honorable court for an order appointing a receiver in the above-entitled cause to take possession, charge, and control of the business and property of the defendants and to care for and manage the same and conduct and carry on the business of the defendants in the usual course of the business and trade pending the final determination of this action, upon the ground that the defendants are engaged in divers and sundry litigation, wherein parties not justly entitled to the same are obtaining, and are about to obtain, unjust and unfair advantage of the defendants and of their creditors, and that the properties of the defendants are thereby being wasted and the business of the defendants destroyed to the extent that the whole thereof will be appropriated to parties not justly entitled to the same, and there will be nothing or not sufficient remaining to pay the just creditors of the defendants, including the plaintiff.

This motion is based upon the affidavits of the plaintiff and C. A. Heckman, filed herewith.

BENNETT, WHITMAN & LUND,
Attorneys for Plaintiff.

EXHIBIT "C."

In the Superior court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners, doing business in the firm name and style of Heckman & Hanson, defendants. No. ——. Affidavit of plaintiff for receiver.

STATE OF WASHINGTON, *County of King, ss:*

William M. Curtiss, being first duly sworn, on his oath says: That he is, and was at all the times hereinafter mentioned, a citizen of the United States and a resident of King County, State of Washington, above the age of 21 years, and plaintiff in the above-entitled action; that the properties of the said defendant consist of a shipbuilding plant of great value at Ballard, in said King County, and the shipbuilding business carried on thereat; that the defendants have heretofore carried on a large and lucrative business at their said shipyards; that during the latter part of the month of June of the present year a controversy arose between the defendants and the Scandinavian-American Bank of Seattle, E. L. Grondahl, A. H. Soelberg, its vice president and cashier, respectively, and William M. Calhoun, acting for them, and others, as to certain repairs theretofore made by the defendants upon the schooner "Alice" at the instance and request of the said bank, Grondahl, Soelberg, and Calhoun, amounting to the aggregate sum of about $7,000, and as to certain money theretofore advanced by said bank to defendants, amounting to the aggregate sum of

about $7,000, the defendants contending that the said bank, Grondahl, Soelberg, and Calhoun were personally liable for the said repairs so made at their instance and request, and that the money so advanced to the defendants by said bank was in lieu of payment for said repairs and to be repaid not by the defendants but by said bank, Grondahl, Soelberg, and Calhoun, as payment for said repairs. On the other hand, the said bank, Grondahl, Soelberg, and Calhoun, denied all liability upon said repairs, and the said bank contended and claimed that the said money advanced was an overdraft by the defendants; that the said dispute resulted in the defendants libeling the said vessel about the first of the present month for the said repairs in the United States district court for the district of Washington, in admiralty, and also commencing a suit in personam in the same court against the said bank, Grondahl, Soelberg, Calhoun, and others, for the same amount, both which said suits are now pending and undetermined; that the said controversy also resulted in the said bank sueing the defendants in the above-entitled court for the money so advanced to them, claiming the same to be an overdraft, and also at the same time commenced two suits in the same court against the defendants foreclosing certain mortgages held by it against the defendants on their said shipbuilding plant, which, though overdue, have been overdue for a long time and carried by the said bank as such by mutual agreement between them and the defendants that the same should be so carried; that immediately upon commencing said suit upon the said alleged overdraft the said bank caused divers writs of garnishment to be issued and served, garnishing all available outstanding accounts due the defendants, and threaten to and will continue to so sue out writs of garnishment for all outstanding accounts due the defendants, and which may become due to them, and by so sueing out such writs of garnishment the said bank have completely and effectually stopped all business of the defendants and rendered it impossible for them to do any business whatever during the pending litigation, and have obtained, and are obtaining, an unfair and unjust preference and advantage over the creditors of the defendants and, among others, the plaintiff.

That affiant is informed, and believes, that the said alleged overdraft is not a just debt of the defendants to the said bank, and that the said mortgage debts sued on as aforesaid, are amply secured, and that the said foreclosure suits and the suit on said alleged overdraft and garnishment were commenced and are being prosecuted for the sole purpose of harrassing and annoying and crippling and destroying the business of the defendants and obtaining an unjust and unfair advantage of the defendants, and an unjust and unfair advantage and preference over the creditors of the defendants, including the plaintiff, and that unless a receiver is appointed by this honorable court to take charge of the properties and business of the defendants, and case for and manage and carry on the same, pending said litigation and this action, the purpose aforesaid of said bank will be accomplished; and the business and properties of the defendants will be dissipated, wasted, ruined, and destroyed and appropriated by the said bank, and there will not be sufficient left to pay the just creditors of the defendants, including the plaintiff. That the defendants are not insolvent, in that they have ample property if justly administered to pay their debts, and is a going concern, and could and would earn large profits if permitted to run and carry on their said business, and if so permitted to carry on their business they could and would earn enoughto pay off all of their indebtedness within a reasonable time. That the defendants have many contracts on hand, and could procure many others from which a large profit could be realized for the benefit of their creditors, but that under existing conditions created by the unfair and unjust action of the said bank they can not perform any of such contracts and can not procure any others and can not pay the plaintiff or any of their just creditors. That the good will and business of the defendants is a valuable asset for their creditors, and unless the same is carried on through a receiver the whole of their good will and business will be destroyed to the irreparable injury and damage of their creditors including the planitiff.

WM. M. CURTISS.

Subscribed and sworn to before me this 11th day of July, 1901.

BURTON E. BENNETT,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT "D."

In the superior court of the State of Washington in and for the county of King.

William H. Curtiss, plaintiff, *v.* C. A. Heckman et al, defendants. No. ——. Order appointing receiver.

Be it remembered that the above-entitled cause came on regularly this day for hearing upon the application of the plaintiff for the appointment of a receiver herein. The plaintiff appeared in person and by Bennett, Whilam A. Lund, his attorneys,

and the defendants appeared in person and by their attorneys, Metcalfe & Jurey, and the court being fully advised in the premises, and good cause appearing herein,

It is by the court ordered, adjudged, and decreed that Peter L. Larsson be and he is hereby appointed receiver of the defendants to take immediate charge, possession, and control of all their properties and assets, to care for, manage, and control the same, and operate and carry on the business of the defendants in the usual course of business and trade, pending the final determination of this action or until the further order of this court.

This order to take effect upon said Peter L. Larsson giving a bond to the clerk of this court in the sum of twenty thousand dollars and upon said bond being approved by this court.

Done in open court this 11th day of July, 1901.

ARTHUR E. GRIFFIN, *Judge.*

Indorsed on back, "Filed July 11, 1901. C. A. Koepfli, clerk."

(Filing on back:) No. 2203. In the district court of the United States for the district of Washington, northern division. In the matter of Heckmann & Hanson, bankrupts. Amended petition to reopen estate, etc. Copy. Feb. 15, 1904.

EXHIBIT NO. 33.

In the district court of the United States for the district of Washington, northern division.

In re R. A. Ballinger, J. B. Metcalfe. Richard Saxe Jones, and C. A. Reynolds. No. ——. Petition.

To the Honorable C. H. HANFORD,
Judge of the District Court of the United States
for the District of Washington, Northern Division:

Your petitioner, J. L. Finch, an attorney and officer of your honorable court, respectfully states:

I. That on the 16th day of July, 1903, in open court before your honor your petitioner, as attorney for Heckmann & Hanson, bankrupts, was advocating certain rights relevant to matters suggested in a certificate sent to your honor by the Hon. Eben Smith, a special referee appointed by your honor to determine certain facts in relation to a petition filed by said Heckmann & Hanson to reopen their estate in bankruptcy, from which certificate it appeared that a certain witness had been duly subpœnaed to appear before said special referee and bring with him certain books in his care and under his control, and that the witness so subpœnaed appeared and failed to bring with him the said books, and the said referee being without power to deal with the situation had certified the matter to your honor. In the course of argument upon the matters brought before the court by said certificate your honor asked of petitioner, in effect, whether if he had the books he could show anything which would reflect in any way upon any parties involved in the matters under investigation before said special referee; to which inquiry petitioner replied in effect that if your honor would allow him to have the books which had been subpœnaed he would bring to you the evidence which would disbar Judge R. A. Ballinger, General J. B. Metcalfe, Mr. Richard Saxe Jones, and Mr. C. A. Reynolds, officers and attorneys of your court. To which promise your honor replied in effect that the statement thus made should be made good by petitioner and that unless he did so your honor would in turn disbar him, and your honor duly made and entered an order that the books called for in said subpœna should be produced. In the course of subsequent proceedings before your special referee the books referred to were produced and by the aid of them and from other sources petitioner has presented before said special referee the testimony and documentary evidence which he believes ought and will disbar from practice before your honor's court the parties heretofore referred to and named in the caption hereof. And that your honor may have an understanding of the matters indicated in petitioner's promise as above related, he presents to your honor as an officer of your court the facts which have been brought out before said special referee and which is in the evidence submitted to him, and upon this his petition respectfully asks your honor to make such order as may to your honor seem fitting in the premises.

II. C. A. Heckmann and M. E. Hanson, copartners doing business under the firm name and style of Heckmann & Hanson, were shipbuilders, and until their business was wrecked and their property converted as hereinafter alleged, were engaged in building and repairing seagoing vessels of all descriptions, in the city of Ballard, King County, Washington. Mr. Hanson, of the firm, confined his attention entirely to matters and things going on in and about the yards and pertaining entirely to the labor expended about the premises. Mr. Heckmann attended entirely to the office, to all the outside business, and especially to the financial affairs of the firm. In actual practice between the partners Mr. Hanson had and exercised no voice in the management of the business of the firm; but in the matters hereinafter referred to Mr. Heckmann acted for and on behalf of the firm.

III. From the formation of the partnership in 1898 until the spring of 1901, Judge R. A. Ballinger of the firm of Ballinger, Ronald & Battle, was the attorney for Heckmann & Hanson and to whom the firm was in the habit of going for professional advice and assistance when in need of legal services. In the fall of 1900 the firm being desirous of borrowing $5,000, Mr. Heckmann consulted with Judge Ballinger, their attorney, who recommended an application to the Scandinavian-American Bank of Seattle, Washington. With Judge Ballinger's assistance a loan of $5,000 was arranged to be made by the bank to the firm for the period of five years to be repaid in installments at the rate of $1,000 per year. Before the arrangements were consummated Mr. Heckmann was called out of the city to be gone for a period of about 30 days. At Judge Ballinger's suggestion he left with him written authority to consummate the arrangements thus made, which written authority afterwards proved to be a general power of attorney. In his absence Judge Ballinger drew and signed Mr. Heckmann's name to a note for $5,000 running to said bank and due in ninety days thereafter and to a mortgage upon the firm property to secure the same. He also induced Mr. Hanson of the firm to sign said note and mortgage under the impression that he was consummating arrangements made by Mr. Heckmann. The $5,000 so loaned was paid by the bank to Judge Ballinger and by him applied to the purposes for which it was obtained. The note was dated October 25, 1900, and fell due the following January. Mr. Heckmann knew nothing about the variations in the terms of the loan until notified by the bank of its maturity. When the facts were learned Mr. Heckmann protested to Judge Ballinger and the bank, and it was agreed that the papers should be changed to conform with the arrangements originally made. The papers were never changed, as will hereinafter appear.

IV. About a month after the maturity of the note and in February, 1901, a schooner called the *Alice* was brought to the ship yards of Heckmann & Hanson for repairs. The *Alice* was owned by one William M. Calhoun as trustee for the orginal owner, Captain Milnor, and some of the boat's creditors, among them being said Scandinavian-American Bank which held a mortgage on the *Alice* for $20,000. Negotiations for repairing the boat were carried on by Mr. Calhoun as trustee, one E. L. Grondahl for the bank, and Judge Ballinger. The negotiations ultimated in a contract for the repairing of the boat by Heckmann & Hanson. The firm were told by the parties to the negotiations to draw upon the Scandinavian-American Bank for their pay as the work progressed. Under these arrangements they placed upon the boat about $7,000 worth of repairs, and while so doing checked out of the bank something like $6,800 more than their deposit. With the account in that condition the bank repudiated its agreement, and on June 12 sent to the firm for its signature a paper purporting to assign to the bank what it chose to designate Heckmann & Hanson's claim against the schooner *Alice* and giving to the bank a right which it assumed to exist in Heckmann & Hanson to enforce a lien against the boat. Mr. Heckmann refused to sign the paper or to return it. The next day, June 13th, the bank notified Heckmann & Hanson that the firm's overdraft at the close of business that day was $6,917.62, and that they must cover the same by noon of the following day. Mr. Heckmann immediately consulted his attorney, Judge Ballinger, and then learned from him that he, Ballinger, was the attorney for the Scandinavian-American Bank, and that he had drawn the paper purporting to assign to the bank the alleged claim of Heckmann & Hanson against the *Alice*, and further, that unless Heckmann & Hanson adjusted immediately the *Alice* account and the said $5,000 note, he, Ballinger, would bring suit thereon for the bank against the firm.

V. Thereupon Mr. Heckmann consulted General Metcalfe, of the firm of Metcalfe & Jurey, attorneys of Seattle, Washington, laying before them all the facts and paying them $350 retainer to look after the firm's interests. Two days later, June 15th, Metcalfe & Jurey, for the firm, libeled the *Alice* in your honor's court. The cause is known therein as Heckmann & Hanson, libelants, *v.* Schooner *Alice*, etc., No. 2051. Three distinct claims were made: 1st, for repairs so far completed, $6,834.50; 2nd,

for moneys advanced to pay off the crew at the time when the boat was brought to the yards for repairs, $370; 3rd, for a balance due on a bill for repairing the *Alice* at a previous period, $812.78.

VI. The bank, through Judge Ballinger, retaliated with a palpable effort to wreck the business of the firm. July 3rd Judge Ballinger, for the bank, began suit in the superior court of the State of Washington for King County to foreclose a $650 mortgage on some personal property of the firm, which mortgage secured a valid debt owing the bank by the firm, but which debt had been further secured by an assignment to the bank of the claim of $812.78 against the *Alice*, practically the bank's own boat, because of the large mortgage held upon her as hereinbefore stated.

July 5th Judge Ballinger brought a second suit for the bank to foreclose the $5,000 mortgage secured by him for it in the manner hereinbefore related.

On the same day Judge Ballinger brought a third suit for the bank upon the alleged overdraft of the firm, and taking advantage of his knowledge gained as the confidential advisor of the firm sued out four different writs of garnishment and directed them against those of the firm's creditors where they would do the firm the most harm. The complaint in the case was filed and the writs of garnishment were issued and served. No papers were ever served in any manner upon the firm or any member thereof, or attempted to be served in any manner whatever. But the service of the writs of garnishment accomplished the purpose of the bank and Judge Ballinger and was the last thing necessary to completely annihilate the firm in the commercial world.

In the meantime, in your honor's court, William M. Calhoun, the trustee owner of the *Alice*, at the instance of the bank, vexatiously brought a cross libel against the firm for nearly $30,000.

VII. July 7th, the North Star Gold Mining Company brought suit on a claim afterwards abandoned, and in regard to which there is very strong evidence before your referee tending to show that the suit was inspired by said bank.

Some four other creditors filed intervening libels against the *Alice*, claiming in the aggregate $4,345.09.

VIII. July 11, 1902, a few days later, with the affairs of the firm in this situation, one William M. Curtiss began suit in said State court against the firm to recover upon a simple account stated in the amount of $1,523.18. No equities were shown in the complaint nor any relief asked other than a simple money judgment, but on the same day a motion was made to have a receiver appointed for the firm. The motion was supported with the affidavit of the plaintiff to the effect that the firm was not insolvent, but, on the other hand, had assets four times in excess of their liabilities; that the Scandinavian-American Bank by its wicked and wanton course was destroying the business, credits, and assets of the firm which could be protected by the appointment of a receiver, and that if a receiver were appointed he could soon pay off the debts of the firm from the profits which the plant was making. Mr. Heckmann supported the motion with an affidavit as to the truth of the matters stated by the plaintiff. An order was made by said State court appointing Peter L. Larsson receiver with instructions to take possession of the properties of the firm and manage the same and carry on and operate the business. And on the following day possession of all the property of the firm passed to Mr. Larsson as such receiver.

After obtaining said order appointing said receiver no other or further proceedings were ever taken by the plaintiff or his attorneys in said action and no judgment or decree was ever rendered therein by said court.

IX. During the time when these various actions were begun, the said courts, State and Federal, were not in session. Between the times when the suits were brought and the convening of the courts in the fall of the year 1901, said Scandinavian-American Bank had entered into a general conspiracy with the receiver, Mr. Larsson, and his attorney, Mr. Jones, and Messrs. Metcalfe & Jurey, attorneys for Heckmann & Hanson, to wipe out of existence the latter firm and to convert the properties of the firm to the use of the said bank. The conspiracy on behalf of the bank was entered into and carried out by Judge Ballinger, and the method pursued and steps taken in annihilating the firm and converting the property appears from the evidence before your special referee to have been and is alleged by your petitioner to have been as shown in paragraphs X to XVI, inclusive, following.

X. August 31st, in the schooner *Alice* case in your honor's court, a stipulation was entered into between the libelants, cross libelants, and claimant to the effect that judgment might be entered by the court in favor of all parties excepting the claimant, who withdrew his cross libel entirely. It was thus left to your Honor to determine simply the priorities, and the decision as subsequently rendered was made inevitable

under the stipulation. Your Honor granted judgments for the following amounts and in the following order:

1. Costs, afterwards taxed as follows:		
Heckmann & Hanson	$591.40	
S. A. Bank & Cal. E. & Co	23.50	
Arndt Thiele	60.25	
		$675.15
2. Heckmann & Hanson		7,305.52
3. Scandinavian-American Bank		275.00
Calhoun, Ewing & Co		634.50
4. Henry B. Klamroth		1,522.37
5. Scandinavian-American Bank		332.50
Calhoun, Ewing & Co		1,667.70
6. Arndt Thiele		66.65
7. Heckmann & Hanson		812.78
Total		13,292.17

With the entering into of the stipulation above referred to, the bank and the receiver of Heckmann & Hanson entered into a secret arrangement whereby they were to defraud the court, the estate of Heckmann & Hanson, and the intervening libelants, and which arrangement was to become effective as soon as your honor had rendered your decision. Briefly, the agreement was this: The receiver was to bid in the *Alice* at marshal's sale, bidding as high as necessary, and in turn hand her over to a party to be named by the bank, and take from the bank therefor a credit of $6,000 on the alleged overdraft; should the receiver, in order to carry out the plan, find it necessary to bid more than the amount of his claim and thus become obligated to pay any cash into your honor's court, it was provided that the party whom the bank would name to receive the boat would also hold the receiver harmless and provide the cash thus made necessary; further, the receiver agreed to pay the costs of the libel out of the estate of Heckmann & Hanson and to that end the parties stipulated that a fund of $889.49 belonging to the firm, and which had been tied up by the garnishment proceedings brought by the bank in the State court, as related in paragraph VI hereof, would be released and would be held by the receiver as a special fund to pay the costs of the proceedings against the boat; further, that if any balance remained of that fund over and above the amount necessary to pay those costs it, too, would be paid over to the bank or the agent whom the bank was to name. (It appears from the evidence of the receiver before your special referee that the costs already had been paid out of the estate of Heckmann & Hanson, having been paid as the proceedings progressed.)

This arrangement was carried out in detail. The bank named one A. J. Tennant, a law clerk in Judge Ballinger's office, as the one to whom delivery of the boat should be made and to whom the residue of the $889.49 be paid. The *Alice* was struck off at marshal's sale to the State court's receiver for $6,000.00, on September 23, 1901, and thereafter transferred for the benefit of said bank. This arrangement was made and consummaed through Judge Ballinger, General Metcalfe, and Mr. Jones, and was wholly unknown to Mr. Heckmann and his firm.

The net result of that manipulation, as your honor will see, was this: The bank obtained free from all incumbrances the absolute ownership of the *Alice*, upon which previously it had had a $20,000 mortagae and against which were established libels for $13,292.17, and which libels the bank in the unobstructed course of justice would have had to pay in order to protect its mortgage; the libelants other than Heckmann & Hanson lost their entire claims; Heckmann & Hanson's estate lost $3,599.19; Metcalfe & Jurey received upwards of $500 out of the deal, but testified that they could not remember how much more.

The *Alice* has ever since been sailed under the title thus obtained.

XI. With the passing of the schooner *Alice* case from your honor's court and as a part of the fraudulent agreement above set forth, Judge Ballinger, Mr. Jones, and Messrs. Metcalfe & Jurey, without consulting Heckmann & Hanson, dismissed "with prejudice" the suit in the State court brought on the so-called overdraft, the bringing of which with the ancillary garnishment suits served to ruin the firm of Heckmann & Hanson. This suit was dismissed October 4, 1901.

XII. October 12th the attorneys of record in the case brought by the North Star Gold Mining Company withdrew from the State court certain depositions theretofore taken, sealed them up, and returned them; the case was then abandoned and left as a specific legacy to the alleged purchaser of the Heckmann & Hanson property as

hereinafter stated. What the depositions so sealed may contain petitioner does not know. Mr. Heckmann was not consulted about the disposition of the case and has only learned same as the records of the court disclose it.

XIII. December 9th the attorneys of record without Heckmann & Hanson's consent or knowledge stipulated that judgment might be taken for want of answer in the suit brought for the foreclosure of the $650 chattel mortgage.

XIV. On the same day a like stipulation without the knowledge or consent of Heckmann & Hanson was entered into in the case brought for the foreclosure of the $5,000 note and mortgage. This mortgage was not signed by the wife of one of the members of the firm and your petitioner believes that for that reason, if no other, the same was void.

XV. As another instance of the utter abandon of counsel and unprecedented boldness in perpetrating a fraud, and in the consummation of which fraud they have not hesitated to involve your honor's court, appears this instance in the record before said special referee: While the firm's matters were in the hands of the receiver and for a long time prior thereto, Mr. Heckmann was living in a house situated upon the front of the real property owned by the firm but quite disconnected from the shipbuilding plant. Here Mr. Heckmann had made a home for himself and his dependent sister. The furnishings, amounting to upwards of $500 in value, were his. On the 10th day of December, about two months after the consummation of the *Alice* fraud and the next day after his attorneys had stipulated that judgment by default might be taken against his firm, Mr. Jones, for the receiver, obtained from the State court without notice to Mr. Heckmann an order that he remove forthwith from those premises; and early the following morning before Mr. Heckmann was out of bed the sheriff, at Mr. Jones's instance, served said order upon Mr. Heckmann and ejected him from his said home, giving him time only to dress and allowing him to take with him only the clothes which he placed upon his back. The papers served upon Mr. Heckmann were taken by him within a few hours thereafter to Messrs Metcalfe & Jurey, his attorneys, and the circumstances fully related to them. They advised Mr. Heckmann that he had no redress whatever and that they could do nothing for him. The receiver, Larsson, was given possession of said home and retained same with the furnishings, including the sister's wearing apparel, until his discharge as receiver and the property under his control passed to the alleged purchaser thereof as hereinafter related. To complete that outrage, and apparently to see to what extent the machinery of the law could be perverted, the trustee in bankruptcy, elected at the behest of Judge Ballinger, as will hereinafter more fully appear, sold and disposed of the household furniture of Mr. Heckmann, obtained in the manner above related. In charging your honor's court with selling parlor furniture, a dining-room set, kitchen utensils, family pictures, lady's wearing apparel, sewing machine, and other household goods in a proceeding relating to the bankruptcy of a shipbuilding plant, your petitioner in nowise means to reflect upon your honor, but only upon those to whom, by law, was delegated the duty to protect those entrusting their interests to your honor's care.

XVI. While the various cases in court were being disposed of and Mr. Heckmann personally eliminated the parties engaged in said conspiracy were also perfecting proceedings whereby the property as a whole should be delivered to said bank. On November 25 Mr. Jones for the receiver took an order from the State court for all parties concerned to show cause within a week why the property should not be sold. Mr. Heckmann was not consulted and only by accident learned of the matter upon the return day. No creditors appeared in court to oppose the granting of the order, and on December 3 the receiver was ordered to entertain private bids for the sale of the property and to report to the court by January 14.

On the day appointed the receiver made his report, saying that two bids had been presented; one by said Scandinavian-American Bank, which bid the amount of its mortgages; the other by one M. F. Mayhew, who bid the sum of $24,125. Mr. Mayhew represented the bank, and Judge Ballinger had drawn both bids; though neither fact was ever known to said State court. The receiver recommended the acceptance of the Mayhew bid, and the matter was set down by the court for hearing four days later, the 18th of January. Hearing on the report was interrupted by the beginning of bankruptcy proceedings in your honor's court on the 17th of January as hereinafter related, but finally, on the 6th of March the report of the receiver was approved and he was ordered to deliver the property to Mr. Mayhew and accept payment therefor. Two days later he reported the delivery of the property and also alleged the receipt of the alleged purchase price, namely, $24,125; and a few days later, and on the 24th day of March, 1902, the receiver was by the said court discharged as such.

The allegation made by the receiver in his report that he had received said sum of $24,125 was a deliberate misrepresentation, and a fraud upon said court. The receiver

received neither that or any other sum or any consideration whatever for the delivery of said property. In truth, the said receiver was indebted for running expenses of said receivership in the sum of $570.30 and said receiver was unable even to pay the said indebtedness without the assistance of said bank.

At the time of his discharge the record of the State court was left showing the receiver in possession of the alleged purchase price of the property, and also to be owing as debts of the receivership said sum of $570.30. After his discharge the Scandinavian-American Bank furnished to him the money necessary to pay the debts of the receivership, and with which the receiver paid the said debts, and on the 14th day of April the bank, in order to straighten the record of said State court, also furnished and caused to be deposited in the registry thereof the sum of $20,064.77. On the same day it withdrew therefrom the sum of $16,531.18 upon an alleged indebtedness of the bankrupts to it, but which indebtedness had never been proven in the cause. The balance of said sum was likewise withdrawn within the next two or three days by other alleged creditors of said bankrupts, none of whose claims had ever been proven in said court.

The receiver, Larsson, and his attorney, Mr. Jones, were not paid by the said court their compensation as receiver and attorney, respectively, but, on the contrary, on the day the receiver was discharged as such the Scandinavian-American Bank paid to said receiver the sum of $2,006.45, being 10% upon the amount afterwards deposited in the State court. Out of this sum the receiver paid the debts owing by him as such receiver at the time of his discharge, being the sum of $570.30, as above related, and the balance of the 10% so paid to him by the bank was divided by him between himself and Mr. Jones, the latter receiving for his betrayal of the court, as above related, the sum of $940.00 the receiver himself netting $496.15.

XVII. In the meantime, and shortly after Mr. Heckmann was ejected from his home, as hereinbefore related, and had been told by Metcalfe & Jurey that he had no rights in the premises, and soon after his discovery that Metcalfe & Jurey had stipulated a judgment against his firm in a case which he had paid them to defend and that they were assisting in bringing the property of his firm to a supposed sale, Mr. Heckmann engaged the services of Mr. C. A. Reynolds, an attorney of your court. Mr. Reynolds, on the 17th day of January, 1902, filed in your honor's court the petition of Heckmann & Hanson, asking to be adjudged bankrupts and for the benefits of the acts of Congress relating to bankruptcy; and on the same day he obtained an order of adjudication and a further order of reference of all things to said bankruptcy pertaining to your referee in bankruptcy, the Honorable John P. Hoyt.

With the petition Mr. Reynolds filed an application for an injunction to restrain the State court from making the sale proposed to be made on the following day, the 18th, as above related. The application was supported by the affidavits of Mr. Heckmann and one C. S. Hills, an employee of the local representatives of the American Bonding & Trust Company, the surety on the receiver's bond in the State court. The showing made was a general showing of fraud. Your honor granted an injunction prohibiting the State court from proceeding further.

Three days later, January 21st, Judge Ballinger and Mr. Jones appeared in your honor's court, disavowing a general appearance and openly stating in their moving papers that they came for the special purpose of informing your honor that you knew nothing about the real facts. They made no attempt to show what the real facts might be, but in some manner induced your honor to enter an order of reference to United States Commissioner A. C. Bowman, and directing said commissioner to try out two facts, namely, whether an adequate price was being obtained for the property by the State court and whether a better price could be obtained from a sale by your honor's court; and your honor's order further recited that no further proceedings be taken in the bankruptcy proceedings in your honor's court without special notice to them, Judge Ballinger and Mr. Jones.

Hearing was had before Commissioner Bowman. At the hearing Mr. Reynolds suppressed most material evidence, kept his client off the stand in the interests of Mr. Jones and Judge Ballinger, and later submitted the matters to Commissioner Bowman without argument. The proofs were closed without Mr. Heckmann's knowledge, and he learned of the fact only when he read in the newspapers the commissioner's decision. The commissioner reported favorably for Judge Ballinger and Mr. Jones, and an order was entered by your Honor on March 3rd, 1902, dissolving the injunction against the State court and permitting said court to confirm the sale if so advised. Mr. Heckmann was then advised by Mr. Reynolds that the order which your honor had entered on January 21st meant that no further proceedings could be taken in your honor's court without the consent of Mr. Jones and Judge Ballinger.

Mr. Reynolds returned to the State court and three days later on the 6th of March when the court directed the alleged sale to be made by the receiver, Mr. Reynolds was present, sanctioned and advocated the same, and the very order taken by the parties

on that day, the granting of which Mr. Heckmann had hired Mr. Reynolds to oppose, names Mr. Reynolds as the attorney for the American Bonding & Trust Company, the surety on the bond of the receiver.

From the evidence submitted to your special referee it appears that while said hearing was in progress before Commissioner Bowman, the said American Bonding & Trust Company paid to Mr. Reynolds $100 in cash and employed him as its attorney in the receivership proceeding and in three or four other matters in which it was engaged; and it also appears that the Scandinavian-American Bank paid to Mr. Reynolds the further sum of $150, the latter sum being paid at the instance of Judge Ballinger. From the fact that your special referee was compelled to coerce the witness (Mr. Mayhew) who passed the $150 to Mr. Reynolds before he would tell of said payment, and from the fact that Mr. Reynolds claims the sum to have been a contribution from the bank to Mr. Hanson of the firm and that he, Reynolds, now has said money in his office and is willing and desires to turn the same over to Mr. Hanson, and from the further fact that he did assist the said bonding company and the said bank in effecting a delivery of the said property to the said bank, and from other circumstances, your petitioners believes and therefore alleges that the said sum of $150 was paid by the bank to Mr. Reynolds for the purpose of inducing Mr. Reynolds to simulate protection of the bankrupt's interests before Commissioner Bowman and your honor, and to assist in the delivery of the said property to the bank. Your petitioner also believes and therefore alleges that the said sum of $100 was so paid by the bonding company and the services of the said Reynolds so engaged by said bonding company as consideration for his services in helping to deliver the said property and making possible the discharge of the said receiver by said State court and the release of said bonding company from the bond of said receiver.

XVIII. Previous to the receivership proceedings said American Bonding & Trust Company had bonded Heckmann & Hanson to the United States Government to complete repairs on the United States Transport *Seward* and so save the Government harmless from any claims of laborers and material men for labor or material entering into such repairs. At the time the receiver was applied for, there were unpaid the claims of laborers and material men against the *Seward* aggregating in the neighborhood of $3,000 or $4,000 and for which said bonding company was contingently liable. Afterwards, when the receiver was appointed said bonding company bonded said receiver for the faithful performance of his duties.

It further appears from the evidence that the regular referee in bankruptcy for this district, the Honorable John P. Hoyt, was the attorney for the said American Bonding & Trust Company, and in the fall of 1901, before bankruptcy proceedings were begun as above set forth, Judge Hoyt as such attorney was looking after the interests of said bonding company as such interests related to the so-called *Seward* claims.

With the filing of the petition in bankruptcy, January 17, 1902, said bonding company assisted said bankrupts in making a showing of fraud against the said receiver, as set forth in paragraph XVII hereof. At that time the State court was proposing to sell said property for $24,125.00. The indebtedness and expenses of the receivership were more than said amount, leaving said bonding company liable to make up the deficiency on the *Seward* claims. The property was worth upwards of $60,000.00. At that time it was the understanding and belief of the bankrupts and said bonding company that the receiver and the said bank were conniving to gain said property at a grossly inadequate price. And the object of the said bonding company in thus assisting to stop said sale appears from the evidence to have been to bring said property to a fair sale, in order that a larger price might be obtained and a loss on the *Seward* claim reduced or avoided entirely.

Later and while hearing was had before Commissioner Bowman, as before related, the bonding company appears to have discovered the extent of the fraud committed by the said receiver and which at that time was unknown to the bankrupts. And thereupon said bonding company engaged as its own attorney the said C. A. Reynolds, the bankrupts' attorney, as hereinbefore related.

On the 6th of March the said referee was present in said State court and assisted in getting said property delivered by said receiver to said bank, and later in your honor's court said referee further assisted in preventing the bankrupts from obtaining an order from your honor that the money supposed to have been received by said State court for said property be brought to your honor's court for distribution. The said referee also failed and neglected to set in motion the bankruptcy machinery looking towards an administration of the estate until after the delivery of the said property to the said bank and after the receiver had been discharged as such and his bond released by said State court.

Afterwards and between the 8th and 12th of March your petitioner and Mr. Heckmann requested of said bonding company their cooperation in unearthing the fraudu-

lent doings of the receiver and his associates hereinbefore mentioned and were informed by the said bonding company through the C. S. Hills hereinbefore mentioned that said company would decline to enter into such an investigation; that it had once started to do so, but had been advised by their attorney, Judge Hoyt, to pay the so-called *Seward* claims, and to pursue the matter no further.

Your petitioner believes and therefore alleges that the failure to set in motion the bankruptcy machinery was due to the fact that said referee was the attorney of said bonding company and knew of the fraud perpetrated by the said receiver, and the said referee in so doing was actuated by a desire to get his client released from the bond of said receiver.

XIX. When, in turn, Mr. Reynolds gave evidence to the bankrupts that he was failing to protect their interests, but on the contrary was working in harmony with the bank, the receiver and the bankrupts' former attorneys, Metcalfe & Jurey, Mr. Heckmann felt obliged again to change attorneys, and accordingly employed your petitioner.

Petitioner was called into the receivership proceedings in the State court on said 6th day of March, 1902, about three hours before the order was made by the State court confirming said sale. The bankrupts, owing to the circumstances hereinbefore related, had no accurate knowledge of the status of their several matters. Your petitioner knew even less, and was prepared to oppose the granting of the order confirming said sale on the grounds only of proceedings pending in bankruptcy. At the hearing that day there were present and advocating the granting of the order, Judge Ballinger, who had never made any appearance in the case for any named client; General Metcalfe, who in December previous had been supplanted by Mr. Reynolds, as before related; Mr. Jones, ostensibly the attorney for the receiver, but drawing his compensation from the Scandinavian-American Bank; Mr. Reynolds, who had been hired by Heckmann & Hanson to oppose those identical proceedings; and Judge Hoyt, the referee in bankruptcy and attorney for the surety on the receiver's bond. Three or four other members of the bar were present and added to the proceeding the weight that comes from numbers. Though unknown to said court, they and their clients had no real concern in the proceeding, because already arrangements had been made with said bonding company to pay on the claims so represented whatever sum happened not to be paid through said State court proceedings, and which arrangements were afterwards carried out in toto, and the claims thus paid in full. The court granted the order and confirmed the alleged sale.

The State court having made it apparent that it proposed to proceed even further and distribute the funds supposed to be in its hands, petitioner on the 8th day of March applied to the Supreme Court of the State of Washington for a writ of prohibition to stop the State court from proceeding further, because it was without jurisdiction. Mr. Jones, for said State court, returned to the supreme court that so far said State court had proceeded only in accordance with the orders and requests of your honor's court; and further, in effect, that the State court had no intention of distributing the fund then alleged to be in its hands. The supreme court denied a permanent writ, but whether or not because of the representations made by Mr. Jones petitioner does not know. (See 28 Wash., 25.)

April 3rd, petitioner then asked your honor for an order to stay proceedings in the State court, and after alleging the facts necessary to show its want of jurisdiction, also alleged that said court had under its control the fund of $24,125 received as the purchase price of the alleged sale, petitioner having been misled in that regard by the reports of the receiver and the representations of counsel made in open court to that effect, and that said State court proposed to distribute that fund. Opposed to petitioner upon the hearing before your honor was Judge Ballinger, Mr. Jones, and the said referee, Judge Hoyt. Upon the hearing your honor conceded the law to be with petitioner, but stated from the bench that under all the circumstances, the creditors being satisfied with their proceedings, your honor would deny petitioner's motion.

The parties engaged in said conspiracy then went back into the State court and, without notice to your petitioner or his clients, obtained an order of distribution to various creditors. Thereupon the bank furnished the money as hereinbefore alleged and the sum was passed through the registry of the court as hereinbefore set forth.

XX. As soon as petitioner could become the attorney of record for the bankrupts in your honor's court, he applied to said referee in bankruptcy, Judge Hoyt, to set in motion the bankruptcy machinery. Judge Hoyt thereupon called the first meeting of creditors for April 25.

At said first meeting held on the 25th of April, 1902, said M. F. Mayhew, through the A. J. Tennant hereinbefore mentioned, appeared and filed with said referee his claim in a sum of upwards of $4,000. This claim was comprised of various accounts

against the bankrupt firm, and which the bank had bought up in Mr. Mayhew's name. The claim being defective in form, the meeting was adjourned by the referee to allow of amending it.

The record made at the first meeting failed to satisfy those manipulating the court machinery. At the adjourned meeting of creditors there appeared in lieu of Mr. Mayhew some five other creditors, who proposed to prove claims aggregating $21.00. The said A. J. Tennant, from Judge Ballinger's office, appeared as attorney for these creditors. The claims at this time offered had been included by Mr. Mayhew in his claim filed at the previous meeting. Inquiry by your petitioner for Mr. Mayhew's claim developed that it had been suppressed. The referee even disavowed any record of its filing. Thereupon petitioner invited the honorable referee aside, and unoffensively as possible conveyed to him petitioner's dissatisfaction with him as a court, and the reasons therefor, and petitioner expressed his desire that said referee withdraw from the proceedings; petitioner further told said referee that any method that the latter might pursue to become unidentified with said proceedings would be satisfactory to petitioner and his clients, but that if a way were not found by him petitioner would come to your honor in search of one. Whereupon said referee went into his court, adjourned the proceedings without day, and in the course of a few days later petitioner received notice that all matters to said bankruptcy pertaining had been referred by your honor to the Honorable Judge Worden, of Tacoma, for further proceedings.

XXI. At the adjourned meeting held afterwards before said referee, Judge Worden, for the purpose of proving claims and electing a trustee, the five creditors in the previous paragraph mentioned again appeared and proved their claims. The names of said creditors, with the amount of their claims, follow:

A. J. Tennant, a clerk in Judge Ballinger's office, $4.73; F. E. Brightman, a clerk in Judge Ballinger's office, $7.10; John Larrabee, a clerk in Judge Ballinger's office, $5.25; D. C. Conover, a former clerk in Judge Ballinger's office, $2.50; Charles W. Russell, a bookkeeper in Mr. Mayhew's office, $3.55.

And these were the only claims ever at any time proven in said estate.

The creditors thus appearing elected as trustee one E. F. Fisher, a bookkeeper in the employ of a creditor of the firm. Mr. Fisher qualified, and after the passing of several months' time and while Mr. Heckmann was in Alaska sold and disposed of the household goods which the receiver had taken possession of as related in paragraph XV hereof; and also sold a couple of small pieces of real estate belonging to Mr. Heckmann individually. Said trustee then reported to the court in effect that the bankrupts firm had no property, and on the 5th of December, 1902, filed with the referee his final report, and on the 2nd of January, 1903, without notice to the bankrupts or their attorney, obtained his discharge as such trustee. Whereupon said referee filed with this court his report declaring said estate closed.

XXII. The attorneys of record for said creditors were Messrs. Gray & Tait, attorneys of your honor's court. Mr. Gray of the firm was present and for said creditors elected the trustee. Thereafter Mr. Gray acted as said trustee's attorney.

It appears from the evidence of Judge Ballinger's clerk aforesaid, Mr. Tennant, that Messrs. Gray & Tait were employed by him, Mr. Tennant; further, that the claims proven as above set forth were proved with the idea of "blocking" Mr. Heckmann, who, "they had heard," was going to disturbe the sale made in said State court.

And Mr. Mayhew, on his part, testified that the trustee was procured and his bond furnished by himself, Mr. Mayhew.

XXIII. It further appears that the absence of interest on the part of any and all creditors except as in the previous paragraph set forth, in the bankruptcy proceedings as well as in the State court proceedings, was due to the fact that said Scandinavian-American Bank had bought up the claims of the various creditors, with a few exceptions. The exceptions consisted of those who apparently understood the situation—and who took advantage of same to insist upon payment in full. Such payment they exacted by simply presenting their claims to the State court and taking whatever mgiht be apportioned to them of the amount remaining after the said bank had withdrawn the amount claimed as its own, as set forth in Paragraph XVI hereof; then presenting their accounts to the said American Bonding & Trust Company, the surety on the receiver's bond, when the balance thereof was paid by said bondsman in full.

XXIV. Mr. Hanson of the firm, was seriously injured a short time before the trouble with the bank arose, his brain was effected thereby, a long illness resulted, and he was left and is to-day in a feeble condition, mentally and physically. Of affairs as they occurred in the State court he knows absolutely nothing, and with matters as they passed in your honor's court he has been unable to concern himself.

XXV. When the trustee was elected as hereinbefore mentioned Mr. Heckmann, in the belief that the firm property would be properly administered by your honor's

court, went to Alaska, at the time expecting to return in the fall of the year. He did start to return on October 6, 1902, but the ship upon which he took passage became disabled at sea and was some eighty days overdue before reaching Seattle, and Mr. Heckmann failed to reach Seattle until January 28, 1903. March 18th following, having learned of the action of said trustee as hereinbefore related, Mr. Heckmann caused to be filed with your honor the bankrupts' petition to reopen their said estate, stating therein so much of the facts in this petition above set forth as your petitioner, attorney for said bankrupts, deemed necessary and relevant to the right of said bankrupts to have said estate reopened. Your honor thereupon made an order appointing Honorable Eben Smith as a special referee to investigate the matters alleged in said petition and directing said special referee to hear evidence and report to your honor his findings with respect to the right of the bankrupts to have the cause reopened and with respect to the conduct of such attorneys and officers of your honor's court as appeared to be accused by the allegations of said petition.

XXVI. At the hearings had from time to time before said special referee in accordance with your honor's order, the said special referee has permitted to be present and to take part in the proceedings numerous attorneys, none of whom have entered any appearance in said cause either for themselves or any client, and none of whom, with the exception of Judge Hoyt, were in any manner accused by the allegations of said petition to reopen said estate.

In the course of proceedings before said special referee a story was imposed upon said court by parties connected with said Scandinavian-American Bank to the effect that the said M. F. Mayhew, the alleged purchaser of the Heckmann & Hanson property, did not represent the said bank, as alleged by the bankrupts, but, on the contrary, that he represented two directors and a vice president of said bank, being J. W. Kelly, J. E. Chilberg, and E. L. Grondahl; and that, while Mr. Mayhew did use funds furnished by the said bank, yet the said bank had furnished them upon the credit of said Kelly, Chilberg, and Grondahl, who, said witnesses alleged, were behind Mr. Mayhew and had established for him his credit at said bank. Some five or six witnesses swore positively to said story, and it became necessary for petitioner to subpœna the books of said bank to refute said testimony and to show to said court the falsity thereof.

Thereupon petitioner caused to be subpœnaed an officer of said bank, who himself had testified to said story, and to bring with him the books and records of said bank of every name and nature relating to the moneys furnished to Mr. Mayhew and used by him in purchasing the Heckmann & Hanson property. The said witness appeared, but failed to produce said books and records, or any of them, giving as his excuse therefor that they would show nothing had he done so. Said special referee deeming, himself without power to deal with the situation, certified the matter to your honor; whereupon occurred the matters and things set forth in Paragraph I of this petition.

At the hearings before said special referee, prior and subsequent to the entering of the order in Paragraph I referred to, the facts as hereinbefore set forth were fully established.

XXVII. In conclusion, your petitioner states that the record made before said special referee shows that the firm of Heckmann & Hanson was formed in 1898, at a time when the sole assets of the firm consisted of $500 worth or mechanics' tools owned by each partner. Two years thereafter the firm had accumulated property worth upward of $60,000. The receiver himself, when he took possession, inventoried it at $54,421.19. Against the assets there were liabilities of about $23,000, but the maturity of which scattered over a long period of time. When possession of the plant was given over to the receiver the business of the firm was netting over $2,000 cash per month. Such a thing as a creditor presenting a bill which was not paid on the spot the firm never, while their affairs were in their own hands, experienced.

This was the plant, and such was its financial condition, when Judge Ballinger, the firm's attorney, designedly embroiled Heckmann & Hanson with the bank of which, unbeknown to the firm, he was the attorney and a director.

Since the 12th day of July, 1901, the firm's affairs have been in the hands of the courts. Mr. Heckmann has done all within his power to obtain a proper presentation of these matters. But never, until your petitioner placed him upon the stand before your special referee, has he had an opportunity to tell his story to a court. Three years in court, sued right and left, and unable to get so far as an answer, though his property has long since been turned over to the institution which started in with the determination to rule or ruin the firm.

As a climax to his wrongs, with the record showing the price received, respectively, by General Metcalfe, by Mr. Jones, and by Mr. Reynolds, for betraying the firm and the courts to Judge Ballinger and the bank, Mr. Heckmann has recently heard your special referee say that the right to have the bankruptcy estate reopened does not exist.

XXVIII. Your petitioner finally alleges that in all matters and things in this petition set forth he has confined himself entirely to the matters and things which have been presented to said special referee, the honorable Eben Smith, except in those instances wherein he had specifically alleged his belief, and in those instances he has based such belief upon the matters and things presented to said referee and which are in his record. And your petitioner states that he believes and therefore alleges the matters and things thus presented to said special referee to be true.

Wherefore, your petitioner respectively asks that your honor make such order in the premises as to your honor may seem fitting.

J. L. FINCH, *Petitioner.*

STATE OF WASHINGTON, *County of King, ss:*

J. L. Finch on oath deposes and says that he is the petitioner in the above-entitled matter; that he has read the foregoing petition and knows the contents thereof; that the same is true, as he verily believes.

J. L. FINCH.

Subscribed and sworn to before me this 11th day of February, 1904.

[SEAL.] T. M. JEFFERY,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT NO. 34.

In the Superior Court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckmann and M. E. Hanson, copartners, defendants, Peter Larsson, receiver. No. 32817.

ORDER OF SALE.

The above-entitled matter coming on to be heard on this, Tuesday, the third day of December, A. D. 1901, pursuant to an order to show cause, heretofore made, rendered and entered in this action on the 25th day of November, A. D. 1901, which order to show cause has been regularly and fully published, as in said order provided, and notice thereof regularly and fully give to all parties in interest in this action and to all creditors of Heckmann & Hanson and to all parties in interest in the property of Heckmann & Hanson, and the court having given to this matter full consideration and being fully advised in the premises, it is hereby ordered and directed that Peter Larsson, receiver of the property of Heckmann & Hanson, copartners, do proceed to sell the same at private sale, subject to the order and approval of this court; that notice of such sale be given as provided in the order of this court contemporaneously entered herewith; that said receiver receive bids for said property at any time on or before the tenth day of January, A. D. 1902, said bids to be private, sealed bids, in accordance with the conditions and directions contained in this order of sale; that on Monday, the 13th day of January, A. D. 1902, the said receiver report said bids to this court with his recommendations in regard thereto; that each and every bid made for any portion or the whole of said property be accompanied by a certified check for ten per cent of the amount bid, to be forfeited to said receiver in case such bid is accepted and the party making the same fails or refuses to make full and complete payment and accept the property for which such bid is offered; that bids be accepted for said property in seven separate parcels or in one or more parcels, as is set forth in the report of the said receiver filed on the 25th day of November, A. D. 1901, and no bid shall be received except for as much as or more than the upset price for each parcel and for the whole of such property set forth in this order:

Parcel A.—The property known as the Winsor property and described as follows, to wit:

Commencing at a point two hundred feet due west of the east line of tract forty-nine of "Farmdale homestead tracts," and fifty feet north, thirty minutes thirty-five seconds west of the meander line of Salmon Bay; running thence north thirty minutes thirty-five seconds west to the line of the Seattle & Montana Railway right of way; thence along the lines of said right of way to a point seventy-five feet due west of the east line of said tract forty-nine of "Farmdale homestead tracts"; thence south thirty minutes thirty-five seconds east to the intersection of the west line of Fourth Ave. west produced as platted by the State Tide Land Board; thence along said west line of Fourth Avenue west, south thirty-two degrees, twenty-two minutes,

eleven seconds west to the waterway in Salmon Bay; thence along the line of said waterway to the line between lots six and seven of block nine, and from thence to the place of beginning, including all buildings, machinery, boilers, engines, and other improvements, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging and situate at Ballard, King County, Washington. Upset price, $6,000.

Parcel B.—The present marine yard of Heckmann & Hanson, the real estate of which is described as follows, to wit:

Beginning on the northerly shore of Salmon Bay at the southwesterly corner of the tract of land heretofore conveyed to the Porter Gage Company, said point being south 45° 3′ west three hundred fifty-four (354) feet distant from a point on the southwesterly line of lot 20 in block 72, Gilman Park, set 22.05 feet southeasterly from the corner common to lots 21 and 20 in block 72, Gilman Park, and running thenceforth 45° 3′ east along the northerly line of said Porter Gage tract a distance of two hundred fifty-four (254) feet to the southwesterly line of Shilshole Avenue and to the northwesterly corner of said Porter Gage tract; thence north 44° 57′ west along the southwesterly side of said Shilshole Avenue a distance of 192.05 feet to the northeasterly corner of the tract of land heretofore conveyed to Paul Hopkins; thence along the line of said Hopkins tract south 45° 3′ west one hundred sixty-seven (167) feet and to the said Hopkins southeasterly corner; thence north 44° 57′ west 65 feet and to Hopkins southwesterly corner; thence 45° 3′ east 32 feet; thence north 44° 57′ west along a line parallel to and uniformly one hundred thirty-five (135) feet distant from the southwesterly line of said Shilshole Avenue a distance of eighty-nine (89) feet, more or less, to the east boundary line of tract No. 49, Farmdale Homestead; thence south along said tract line a distance of two hundred ninety-five (295) feet to the high-tide line of Salmon Bay; thence easterly along said high-tide line to the place of beginning; excepting from the above-described tract of land a strip of land uniformly 55 feet wide, extending from Salmon Bay to Shilshole Avenue and adjoining the tract of land heretofore conveyed to the Porter Gage Company, which said tract of land, 55 feet wide, was heretofore conveyed to Edwin Auld by deed dated February 1st, 1893, and recorded in volume 162 of deeds, on page 637, records of King County.

Also, beginning at a point on the Government meander line situated north 51° 13′ 36″ west 4.566 feet from the most northerly corner of lot 2; thence south 45° 22′ 32″ west 110 feet to a point; thence southerly 187 feet, more or less, to a point on the northerly line of Salmon Bay waterway 25.434 feet from the most southerly corner of lot 1; thence along the line of said waterway north 57° 37′ 49″ west 85 feet, more or less, to the easterly line of Fourth Avenue west; thence along said easterly line north 32° 22′ 11″ east 174 feet, more or less, to the line of ordinary high tide; thence along said line in a northeasterly direction 50 feet, more or less, to the Government meander line; thence along said line south 51° 13′ 36″ east 85 feet, more or less, to the place of beginning, the same being 0.6386 acres in lot 1 and 0.0549 acres in lot 2, block 8, of tide lands in front of the city of Ballard, as the same are shown on the official plat of same filed in the office of the board of State land commissioners December 10, 1894, and altogether containing 0.6935 acres, more or less, according to the official survey thereof. Upset price, $9,000.

Parcel C.—The tide lands or shore lands immediately in front of and adjacent to parcels A and B belonging to Heckmann & Hanson. Upset price, $3,000.

Parcel D.—The marine ways, tools, machinery, machine shops, supplies, and stock on hand of the Heckmann & Hanson yards. Upset price, $5,000.

Parcel E.—Bills receivable for accounts due Heckmann & Hanson at the time when this receiver was appointed and not now paid. Upset price, $100.

Parcel F.—The yacht *Vigilant*, now under cover in the yards of Heckmann & Hanson. Upset price, $1,000.

Parcel G.—The steamer *Clara Hawes*, now on the ways in the yards of Heckmann & Hanson. Upset price, $2,000.

Bidders will be allowed to bid on the whole of said property or on one or other number of said parcels and shall have the right of removal of all machinery, tools, buildings, and supplies from any one parcel, with 75 days of time from the time of the acceptance of any bid in which to make such removal.

That the upset price for the whole of said property in any one bid shall be $24,000 and for any two or more parcels less than the whole of said property the sum of the upset price for each thereof.

That a plat of the real property in this order described may be seen at the office of Heckmann & Hanson, in the city of Ballard, and at the office of Richard Saxe Jones, attorney of the receiver of Heckmann & Hanson, at 7–8 Colman Building, Seattle, Washington, at any time on and after the 14th day of December, A. D. 1901.

That all of the property herein ordered to be sold, together with a statement of the bills receivable, tools, machinery, machine shops, supplies, stock on hand, and all other information necessary for properly bidding upon said property may be had and seen at the office of Heckmann & Hanson and of Peter Larsson, receiver for Heckmann & Hanson, in the city of Ballard, County of King, and State of Washington.

That any and all parties having liens upon any parcel or parcels or the whole of said property be allowed to bid upon said property and to apply on their bid or bids the amount due upon their lien or liens, the lien of Carsten & Earles upon the Winsor property, described as parcel A in this notice, being preferred to the lien of the Scandinavian-American Bank thereon; that unless a greater or larger bid shall be received for any parcel of said property subject to any such lien the party holding such lien will be allowed to purchase the same for the full amount of such lien or liens, adding thereto, however, in such manner as shall be determined upon by this court and equitably adjusted among the parties, upon parcel B, the sum of $1,900.40 expended by said receiver in betterments to said parcel B, and further adding thereto, upon such parcels as shall properly distribute the costs and expenses thereof, all of the costs and expenses of this receivership not already paid, together with the sum of one thousand dollars borrowed from the Washington National Bank of Seattle under an order of this court for the purpose of conducting the affairs of said receivership; that the amount of such expenses and the sum so borrowed is estimated by the receiver to be $2,250.

Let this order be entered and such sale made in accordance herewith.

ARTHUR E. GRIFFIN, *Judge.*

(Filing on back:) No. 32817. In the Superior Court of King County, State of Washington. Wm. M. Curtiss, plaintiff *vs.* Heckman Hanson, defendant. Order of sale. Filed Dec. 3, 1901. J. B. C. A. Koepfli, clerk. Richard Saxe Jones, atty for receiver.

EXHIBIT No. 35.

In the Superior Court of the State of Washington, in and for King County.

William Curtiss, plaintiff, *vs.* Heckmann & Hanson, copartners, defendants, Peter L. Larsson, receiver. No. 32817.

FOURTH REPORT OF THE RECEIVER.

To the honorable the above-entitled court, Judge Arthur E. Griffin, presiding:

Under the order of this court, made, rendered, and entered on the 6th day of March, A. D. 1902, I hereby submit to your honor my fourth report, as receiver of the property of Heckmann & Hanson, defendants in the above-entitled action.

That my actions as such receiver have been respectfully submitted to your honor in the previous reports, reference to which is hereby had, and the same made a part of this report as though more fully herein set forth.

That since the third report which I submitted to your honor, Heckmann & Hanson, defendants, began proceedings in bankruptcy, in the United States District Court for the Northern Division of the Ninth Judicial District, holding terms in the city of Seattle, and obtained a restraining order, restraining me and this court from further proceedings in this cause. I immediately consulted my counsel, Richard Saxe Jones, Esq., and acting under his advice began proceedings in said Federal court for the purpose of dissolving said restraining order and allowing my trust, under the order of this court, to be fully carried out and completed.

Repeated hearings were had before the United States district court, and the matter referred to the Honorable A. C. Bowman to take testimony, trial had before said referee, and his findings and conclusions reported to the Honorable C. H. Hanford, judge of the United States district court; objections were made to those findings and conclusions, trial had before said court, and thereafter the Honorable C. H. Hanford dissolved and vacated said restraining order, and a certified copy of the decree of the Honorable C. H. Hanford dissolving the same has been filed with the clerk of this court in this cause.

In said decree the Honorable C. H. Hanford directed, or requested, this court to proceed and confirm the sale theretofore ordered, of the property of Heckman & Hanson, and further directed this court to properly close up the matters of this receivership.

In pursuance of the orders of your honor, and of the Honorable C. H. Hanford, judge of the United States district court, your receiver has completed the sale of the property of Heckman & Hanson to M. F. Mayhew, has received from said M. F. Mayhew

the full sum of twenty-four thousand one hundred and twenty-five dollars ($24,125), by him bid for said property; has executed to said Mayhew a receipt for said money as payment in full for his bid, a deed of all of the real property to Heckman & Hanson belonging, a bill of sale of all the personal property to Heckman & Hanson belonging, and has placed the said Mayhew in possession of each, every, and all of the component parts of said property; has transferred to said Mayhew the insurance policies upon the personal property to him conveyed, and has further transferred all of the accounts of every kind, due and payable, to Heckman & Hanson, and delivered to said Mayhew the account books attesting the same, and there is now in the possession of your receiver, as such receiver, no property of any kind heretofore to Heckman & Hanson in any wise belonging except the money hereinafter, in the accounts of your receiver set forth.

That pursuant to your honor's order, your receiver has paid to himself the sum of five hundred dollars ($500) to apply upon his fees for services, has paid to his attorney the sum of four hundred dollars ($400), has paid off his bookkeeper, E. M. Williams, in full and discharged him from further service, has paid off the watchmen on said property and discharged them from further services, and there is no further duty to be performed by your receiver in this cause, except to dispose of the funds on hand, received as the net result of the sale of the property of Heckman & Hanson.

Your receiver is of the opinion that unless the bankruptcy proceedings in the United States district court shall be dismissed, that it is the duty of your receiver to hold said funds, subject to the demand of a trustee who may be appointed in said bankruptcy proceedings, and that when such demand shall be made it is the duty of your receiver to turn over such fund to the trustee in bankruptcy, and therefore your receiver asks that he be directed to deposit the funds in his possession, after paying all claims against the receivership, in the Scandinavian-American Bank of Seattle, and that he be further directed, if it shall seem best to this court, to pay over said funds to whomsoever may be appointed trustee in bankruptcy, in the proceedings now pending in the United States district court.

Your receiver further reports that judgment has been had upon the suits instigated upon the complaint of the Scandinavian-American Bank of Seattle, against Heckman & Hanson, in which your receiver was substituted, said actions being for foreclosure of mortgage liens upon the real and personal property of Heckman & Hanson, and that said Scandinavian-American Bank has a first right to be paid out of the funds arising from the sale heretofore made of said property.

Your receiver further reports that the action begun by the North Star Gold Mining Company against Heckman & Hanson in this court, arising out of the disputed construction of the steamer *Clara Hawes*, is still pending; that an agreement was made between your receiver and the attorneys for the plaintiff in said action, by which, if a private sale could be made of the steamer *Clara Hawes*, the North Star Gold Mining Company was to receive 17/35 of the result of said sale, and your receiver 18/35 thereof.

That no such sale was consummated and the interest of Heckman & Hanson in said steamer was sold to M. F. Mayhew, under the sale heretofore confirmed by your honor, but that the said M. F. Mayhew, at the request of your receiver, and because of the absence of the Honorable Thomas Burke, attorney for the plaintiff in said action, has has consented in all ways to carry out the argument of your receiver, if a private sale can be consumated, as was contemplated at the time such agreement was made.

Your receiver reports that he has received during the term of his receivership the sum of one thousand one hundred and two and 35/100 dollars ($1,102.35); that he has been employed constantly in the affairs of said receivership for the period of two hundred and forty (240) days, to wit, from July 12th to March 8th, and believes he is entitled to receive as compensation for his services the sum of two hundred dollars ($200) per month, or a total of sixteen hundred dollars ($1,600); that under the orders of this court your receiver was absent from the city of Ballard for the period of about twenty days, but left a competent person in charge of his duties and paid him therefor, agreeing that he would be responsible under his bond for the proper performance of his duties during such absence.

And your receiver further reports that during nearly all of said period he has had constantly in his employment Richard Saxe Jones, as counsel, approved by this court; that your receiver has taken no steps in the matter of his receivership without consulting his attorney, and said Jones has been daily employed in advising your receiver and in carrying on the extensive litigation which has resulted from the complicated condition of the affairs of Heckman & Hanson; that your receiver has paid the said Jones the sum of five hundred thirty-seven and 50/100 dollars ($537.50), and said attorney has paid out expenditures in actual cash the sum of fifty-one and 40/100

dollars ($51.40); that your receiver is unable to determine the proper compensation to be paid to his said attorney, but submits the matter to your honor.

That attached to this report are various statements of the condition of the affairs of this receivership, each under their proper heading, to which statements reference is hereby made and the same made a part of this report; that your receiver respectfully prays that this report be approved; that your receiver be directed to deposit the funds in his hands in the Scandinavian-American Bank of Seattle; that your receiver be directed to hold said funds until proper orders or requests are received from the United States District Court of the Ninth Judicial District, Northern Division, holding terms in Seattle, or until further orders of this court; that all expenses and allowances of this receiver be this day ended and the affairs of this receivership be this day declared to be closed; that the bondsmen of your receiver upon the receiver's bond heretofore given in this action be relieved and the bond discharged.

Very respectfully,

PETER L. LARSSON, *Receiver.*

SCHEDULE A.

Peter L. Larsson, receiver, in account with R. S. Jones, attorney.

Expense account.

1901.				
Aug.	14.	By cash		$137.50
	29.	To Hans Spilde	$10.00	
Oct.	2.	To E. B. Herald, serving papers	2.00	
Nov.	1.	To Stuart & Hill, stenographers	7.50	
Dec.	11.	To clerk of court	.45	
	11.	To sheriff	1.80	
	31.	To Stuart & Hill, stenographers	4.50	
1902.				
Jan.	28.	To E. B. Herald, services	5.00	
Feb.	1.	To Stuart & Hill, stenographers	.50	
Mar.	3.	To E. B. Herald, U. S. Court	2.00	
	7.	To E. B. Herald, serving notices	3.00	
		To clerk, U. S. Court	.65	
		To G. M. Wing, stenographer	14.00	
			51.40	137.50

SCHEDULE B.

List of claims filed with receiver, and a statement of the amount shown to be due said claimants upon the ledger of Heckman & Hanson.

	Amount claimed.	Amount shown on ledger to be due claimant.
Acme Iron Works	$11.00	$10.55
A. H. Briggs	10.00	10.00
Ballinger, Ronald & Battle	149.50	149.50
Baker & Richards	7.60	7.60
Bryant & Chapman	16.00	16.00
A. L. Cohen	11.00	11.00
California Saw Works	26.24	26.24
Frye-Bruhn Co	83.50	83.50
W. P. Fuller & Co	6.05	6.05
John Finn Metal Works	46.50	46.50
Frederick & Nelson	19.60	19.60
Galbraith, Bacon & Co	2.50	2.50
Gorham Rubber Co	58.70	58.70
Geo. B. Helgessen	26.75	26.65
E. A. Howard & Co	82.25	82.25
Dr. A. B. Kibbe	250.00	250.00
Kerry Mill Co	69.50	69.50
Lloyd Transfer Co	22.84	22.84
Leonard & Ellis	50.88	50.88
MacDougal & Southwick Co	12.01	12.01
Maritime Exchange	7.00	7.00
Morrison Brass Works	1.00	1.00
Metcalfe & Jurey	305.20	300.00

List of claims filed with receiver, and a statement of the amount shown to be due said claimants upon the ledger of Heckman & Hanson—Continued.

		Amount claimed.	Amount shown on ledger to be due claimant.
Wm. McKeever		$50.00	$53.93
The Marine Engineers Supply Co		99.99	99.99
P. F. Norby		3,103.59	3,123.74
P. F. Norby & Co		293.89	.....
W. W. Philbrick		37.00	37.00
W. H. Peter & Co		10.00	4.50
Seattle Hardware Co		191.14	191.14
Stimson Mill Co		185.13	185.13
Seattle Cedar Lumber Mfg. Co		74.06	74.06
Seattle Brass Co		3.50	3.50
C. G. Sanborn		33.18	33.18
Sunde & Erland		270.11	271.61
Union Brass Foundry		13.35	13.35
Vulcan Iron Works		72.95	72.95
Washington Rubber Co		7.38	7.38
West Coast Iron Works		51.52	51.52
Ballard Boiler Works (Clara Hawes)		317.50	317.50
Chris Sign Co. (Seward)		8.00	8.00
Wm. M. Curtiss (Seward)		1,555.04	.....
Wm. M. Curtiss		78.38	1,516.69
A. Hembach Co		50.41	50.41
Marine Iron Works (Clara Hawes)		315.24	293.04
C. C. Moore & Co. (Seward)		691.00	611.00
Mitchell, Lewis & Staver Co. (Seward)		540.69	540.69
Northwestern Iron Works		124.14	124.14
Rohlfs & Schroeder (Seward)	$117.75		
Rohlfs & Schroeder (Vigilant)	32.70		
		150.45	150.45
Seattle Lumber Co (Seward)		220.57	126.99
Union Hardware Co. (Seward)		297.76	482.31
Union Hardware Co		192.63	
Washington Wire Works		5.00	5.00
City of Ballard, water rent		6.00	.....
Hadfield & Roberts		123.80	123.80

SCHEDULE C.

The following claimants claim to have liens or preferred claims against the steamer *Clara Hawes*, which has been sold to M. F. Mayhew:

Ballard Boiler Works	$317.50
Marine Iron Works	315.24
Total	632.74

The following claimants claim to have secured claims under the bond given by the American Bonding and Trust Company, for the completion of the repairs upon the Government transport *Seward:*

Chris Sign Co	$8.00
Wm. M. Curtiss	1,555.04
C. C. Moore & Co	691.00
Mitchell, Lewis & Staver Co	540.69
Rohlfs & Schoeder	117.75
Seattle Lumber Co	220.57
Union Hardware Co	297.76

The following persons claim liens or preferences right against the schooner *Vigilant*, sold to M. F. Mayhew:

Rohlfs & Schoeder	$32.70

All the above amounts are included in the amount claimed under schedule B, hereinbefore attached.

SCHEDULE D.

The following schedule contains a list of the claims which have been received by this receiver and which the books of Heckman & Hanson show to have been for repairs upon the steamer *Seward*, and which, your receiver is advised, are claims due under the bond given by the American Bonding and Trust Company.

Your honor will observe that these claims have not all been filed with your receiver as claims against the steamer *Seward*, but they appear as such on the books of Heckman & Hanson; your honor will further observe that the amounts set forth in this schedule do not agree with the amounts claimed by the various claimants, but your receiver has only allowed said claims for the amount shown on the books of Heckman & Hanson, and believe such amounts to be correct, and that where the amount of the claim does not agree with the books of Heckman & Hanson that the claim is incorrect and should not be allowed.

It is possible that there are claims included in other items of cchedule B which may have been for work upon the *Seward*, but your receiver is not fully informed in regard thereto.

Seattle Lumber Co	$126.99
Seattle Brass Co	3.50
John Finn Metal Works	46.50
W. M. Curtiss	1,482.09
Westerman Iron works	3.55
Seattle Hardware Co	165.88
Union Hardware Co	297.76
Mitchell, Lewis & Staver	540.69
Washington Wire Works	5.00
Morrison Brass Co	1.00
Achme Iron Works	10.55
C. C. Moore	611.00
A. Hambach Co	21.36
Baker & Richards	7.60
Northwestern Iron Works	124.14
Sunde & Erland	182.02
Lloyd Transfer Co	2.50
Rohlfs & Schoeder	117.75
Washington Rubber Co	.38
Union Brass Foundry	2.00
Galbraith, Bacon & Co	2.50
Chris Sign Company	8.00
Total	3,762.76

SCHEDULE E.

The following is a statement of the receipts of your receiver since taking possession of the property of Heckman & Hanson:

Heckman & Hanson	$131.45
Steamer *Puritan*	128.73
Wm. F. Meade	24.05
Steamer *Wallowa*	90.20
Old junk	68.23
Schooner *Vida*	32.75
Steamer *Sophia*	293.00
Steamer *Ruth*	4,196.43
The Washington National Bank	1,000.00
C. A. Heckman	9.77
Labor	13.00
North American T. & T. Co	889.49
Steamer *Grace Thurston*	81.11
Schooner *Vega*	2,640.30
F. F. Fisher	2.00
Rent	39.25
Steamer *Olympic*	791.17
Steamer *Rainier*	320.82
Schooner *Corona*	1.50
Schooner *Baxter*	4.00

Steamer *City of Everett*	$25.00
Cahn & Cohn	100.00
Steamer *Rabboni*	96.90
Steamer *Pilgrim*	37.50
Schooner *Anita*	994.15
A. McKay	12.50
Schooner *Corona*	4.85
Steamer *I. C. Reed*	266.57
Charles Nelson Co	81.50
Bryant & Clark	1.75
Schooner *Mildred*	361.09
Schooner *Alice*	293.28
G. B. Sanborn	4.28
W. F. Mayhew's first payment	2,412.50
W. F. Mayhew's second payment	21,712.50
Total	37,161.62

DISBURSEMENTS.

The disbursements of your receiver have been as follows:

Labor	$5,880.44
Merchandise	2,660.37
Discount and commission	383.55
Wing & Guion, bond	100.00
R. S. Jones	537.50
Towage	45.00
Schooner Alice	914.79
Insurance	487.50
Expense	486.80
Watchman	537.00
Bookkeeper	760.38
Foreman	375.15
Receiver, $1,340.35, less expense, $238.00	1,102.35
Washington National Bank	1,046.22
Cash on hand	132.07
	15,449.12

An itemized statement of the item appearing in this schedule as expenses, being a total of $486.80, consists of the following items:

Itemized expenses.

Stationery, printing, etc	$24.10
Office fixtures	4.10
Stamps	7.65
Telephone and telegrams	39.25
Freight and drayage	119.60
Subscriptions to maritime papers	26.45
Sundries	1.40
Typewriting	2.50
Moving small dwelling	20.00
Making three door keys	.75
Boat hire	1.00
H. B. Huntly	2.00
Receiver's expenses	238.00
Total	486.80

Your receiver is indebted for expenses actually incurred for material, labor, merchandise, publishing notice, and sundry items in the sum of $570.30, which your receiver respectfully prays authority to expend.

In conclusion, your receiver regrets that a larger amount could not be realized upon the property of Heckman & Hanson which came into the hands of your receiver. Regrets that Heckman & Hanson have been unable to take care of their debts and prevent the necessity of a sale; but respectfully reports that all the delays and extraordinary expense which may appear from the reports of your receiver have been

incurred because of the continual opposition of C. A. Heckman, of the firm of Heckman & Hanson, and the leniency shown to Heckman & Hanson by your receiver in an honest endeavor to assist them in paying their creditors in full, your receiver believing that such actions were for the best interest of the creditors and for the best administration of his trust.

And your receiver herewith presents his books and vouchers for the inspection of this court and all parties in interest.

Very respectfully submitted.

PETER L. LARSSON, *Receiver.*

(Filing on back:) No. 32817. In the Superior Court King County, Washington. William Curtiss, plaintiff, vs. Heckman & Hanson. Peter L. Larsson, receiver, defendant. Fourth report of the receiver. Copy. Filed Mar. 13, 1902. C. A. Koepfli, clerk. J. B. Richard Saxe Jones. Attorney for receiver.

EXHIBIT No. 36.

In the Superior Court of the State of Washington, in and for King County.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, defendants. Peter L. Larsson, receiver. No. 32817.

ORDER APPROVING FOURTH REPORT AND DIRECTING RECEIVER.

The above-entitled matter coming on to be heard on this, Saturday, the 22nd of March, A. D. 1902, upon the fourth report of the receiver in this action, and the plaintiff, being represented by Messrs. Whitham, Bennett & Lund, his attorneys, and C. A. Heckman, being represented by J. L. Finch, his attorney, and M. E. Hanson, being represented by C. A. Reynolds, his attorney, and Peter L. Larsson, receiver, being represented by Richard Saxe Jones, his attorney, and the various creditors of Heckman & Hanson, being represented by their respective counsel, as follows:

Messrs. Ballinger, Ronald & Battle, Hoyt & Haight, Burke, Shepard & McGilvra, Ralph D. Nichols, Shank & Smith, C. A. Reynolds, Humphries & Bostwick, and other attorneys in interest, and Messrs. Metcalfe & Jurey appearing for themselves, a motion for the continuance of this hearing, upon the part of C. A. Heckman, being presented and heard, said motion was denied and an exception to the ruling of the court taken by J. L. Finch, attorney for C. A. Heckman, and such exception allowed; thereupon hearing was had upon the motion of Peter L. Larsson, receiver, by his counsel, Richard Saxe Jones, to strike from the files and records in this action the objections and affidavit of C. A. Heckman to the fourth report of said receiver, including objections to the first, second, and third reports of said receiver, upon the ground that such objections and affidavit were scandalous, unwarranted, and undue and unnecessary reflection upon the officers of this court; and further urging that the said C. A. Heckman had no interest remaining in him, in the matters now before this court, upon the ground that he had filed a voluntary petition in bankruptcy in the United States district court for this district and had sold all of his interest in the property involved in this litigation. And the court having heard all the parties appearing by their respective attorneys, granted and hereby grants, such motion to strike said objections and affidavit from the records and files in this action.

And thereupon this matter coming on further to be heard upon the motion of Peter L. Larsson, as receiver of Heckman & Hanson, that his fourth report be approved, and that an order be entered directing a disposition of the funds in his hands as receiver of Heckman & Hanson, and it appearing to this court that this matter came on regularly to be heard on the 8th day of March, A. D. 1902, pursuant to notice duly and regularly given to each, every, and all of the parties in interest, and has been regularly continued from day to day until this day, all parties having notice thereof, and the court having regularly and duly heard the fourth report of said receiver, and no objection being made thereto by any of the creditors of said Heckman & Hanson, and the court being in all ways fully advised,

It is hereby ordered and directed:

First. That the receiver, Peter L. Larsson, pay to himself, as final and full compensation for his services as such receiver, the sum of sixteen hundred dollars ($1,600), deducting therefrom any compensation heretofore received, not consisting of moneys actually expended for the expense of such receivership.

Second. That said receiver pay to Richard Saxe Jones, his counsel, in addition to all sums by the said Richard Saxe Jones heretofore received, for the purpose of

paying the expense of litigation pending in this cause, the full sum of fourteen hundred dollars ($1,400), as full compensation to said Jones.

Third. That said receiver pay from the funds in his hands, to the parties entitled to the same, all sums due as the indebtedness of this receiver for expenses incurred by said receiver, amounting to the full sum of $570.30, and file in the registry of this court receipts for the same.

Fourth. That said receiver deposit the remaining funds in his hands in the Scandinavian-American Bank of Seattle, accepting a certificate of deposit therefor in his name as receiver of Heckman & Hanson, payable only upon the endorsement, by the clerk of this court, until the final disposition of such funds by this court, upon condition, however, that said Scandinavian-American Bank of Seattle execute a bond payable to the clerk of this court, with good and sufficient sureties thereon, for the full amount of said deposit, and $500 in addition thereto, for the payment of said sum whenever demanded by the order of this court.

Fifth. That the bond heretofore given by the receiver in this action be cancelled and the bondsmen thereon fully released from any liability thereunder.

Sixth. That Peter L. Larsson be, and he is hereby, discharged from all and every duty as receiver of Heckman & Hanson, except the disposition of said funds so to be deposited until the further order of this court, and that should said Scandinavian-American Bank of Seattle fail to give the bond herein required, that the moneys in the hand of said receiver be deposited in the registry of this court.

To all of which proceedings, orders, and direction C. A. Heckman, by his counsel, duly objected and excepted thereto, and in open court, on said 22nd day of March, A. D. 1902, gave notice of appeal to the Supreme Court of the State of Washington, from each, every, and all of said orders and direction, and every part and portion thereof.

Let this order be entered.

ARTHUR E. GRIFFIN, *Judge.*

(Filing on back:) No. 32817. In the Superior Court, King County, Washington. Wm. M. Curtiss, plaintiff, vs. C. A. Heckman et al., defendants. Order approving 4th report and directing receiver. Original. Filed Mar. 24, 1902. C. A. Koepfli, clerk. Richard Saxe Jones, attorney for receiver, Peter Larson.

EXHIBIT NO. 37.

In the Superior Court of the State of Washington, in and for the county of King.

William Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners, defendants. No. 32817.

ORDER.

The above matter coming on to be heard on this, Saturday, the 29th day of March, A. D. 1902, upon the regular continuance of the same from the hearing had on March 22, 1902; and all the parties in interest being represented in court, and arguments of counsel being heard upon the motion and petition of the creditors of Heckman and Hansen that this court, through the proper channel, proceed to distribute the funds heretofore deposited in the registry of this court by the receiver in this action; and arguments of counsel on behalf of all parties interested being heard, we hereby,

Order and direct, that this court will proceed to distribute said funds under and by virtue of the power in it vested, to each, every, and all of the creditors of Heckman and Hansen as the same appear in the fourth report of the receiver on file and approved herein, allowing, however, the claim of Hatfield & Roberts this day presented to the court with proper affidavit and proof of its genuineness, to share in the distribution.

This matter is continued until Friday, April 11, A. D. 1902, at 1.30 o'clock p. m. for the purpose of hearing proofs and determining the preferences and priorities claimed by the different creditors herein, and at said time a final order and distribution shall be made.

Let this order be entered.

Done in open court this 31st day of March, 1902.

ARTHUR E. GRIFFIN, *Judge.*

(Filing on back.) No. 39817. In the Superior Court, King County, Washington. William Curtis, plaintiff, *vs.* C. A. Heckmann et al., defendants. Order of distribution. Copy. Filed Mar. 31, 1902. C. A. Koepfli, clerk. J. B. Ballinger, Ronald & Battle.

EXHIBIT No. 38.

In the District Court of the United States for the District of Washington, Northern Division. In the matter of Heckmann & Hanson, copartners, bankrupts.

PETITION FOR DISCHARGE.

To the Honorable C. H. HANFORD,
Judge of the District Court for the District of Washington, Northern Division:

C. A. Heckmann and M. E. Hanson, copartners doing business as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson individually, of the city of Ballard, county of King, State of Washington, in said district, respectfully represent that on the 17th day of January, 1902, they were duly adjudged bankrupts under the acts of Congress relating to bankruptcy; that they and each of them have duly surrendered all their property and rights of property, both firm and individual, and have duly complied with all the requirements of said acts and of the orders of the court touching their bankruptcy.

Wherefore they pray that they and each of them may be decreed by the court to have a full and complete discharge from all debts, firm and individual, provable against their estate, both firm and individual, under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this 15th day of January, 1903.

HECKMANN & HANSON.
M. E. HANSON.
C. A. HECKMANN,
By J. L. FINCH,
His Attorney.

J. L. FINCH,
Attorney for bankrupts.

EXHIBIT No. 39.

In the District Court of the United States for the District of Washington, Northern Division. In the matter of Heckmann & Hanson, copartners, bankrupts. In bankruptcy.

ORDER OF DISCHARGE.

Whereas C. A. Heckmann and M. E. Hanson, copartners doing business as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson, individually, all of the city of Ballard, county of King and State of Washington, in said district, have been duly adjudged bankrupts under the acts of Congress relating to bankruptcy, and appear to have conformed to all the requirements of law in that behalf: It is therefore

Ordered by this court that said C. A. Heckmann and M. E. Hanson, copartners as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson, individually, be discharged from all debts and claims which are made provable by said acts against their estate, both firm and individual, and which existed on the 17th day of January, 1902, on which day the petition for adjudication was filed by them, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the honorable C. H. Hanford, judge of said district court, and the seal thereof this 16th day of February, A. D. 1903.

[SEAL.] (Signed) C. H. HANFORD, *Judge.*

R. M. HOPKINS, *Clerk.*
JEROLD LANDON FINCH,
Attorney for Bankrupts, Seattle, Wash.

(Filed in the U. S. District Court, Dist. of Washington. Feb. 16, 1903, 10 a. m. R. M. Hopkins, clerk. H. M. Walthew, deputy.)

(Filing on back.) No. ——. In the District Court of the United States, for the District of Washington, Northern Division. In the matter of R. A. Ballinger, J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds. Petition. Copy.

EXHIBIT No. 40.

Know all men by these presents: That I, Andrew Heckmann, of Seattle, King County, Washington, have made, constituted, and appointed, and by these presents do make, constitute, and appoint R. A. Ballinger, of the same place, my true and law-

ful attorney for me and in my name, place, and stead and for my use and benefit to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities, and demands whatsoever, as are now or shall hereafter become due, owing, payable, or belonging to me, and have, use, and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by attachments, arrest, distress, or otherwise, and to compromise and agree for the same, and to make, sign, seal, and deliver acquittances, or other sufficient discharges for the same, for me and in my name, to bargain, contract, agree for purchase, receive, and take lands, tenements, hereditaments, and accept the seizin and possession of all lands, and all deeds, and other assurances in the law therefor; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements, and hereditaments, upon such terms and conditions and under such covenants as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property, in possession or in action, and to release mortgages on lands or chattels, and to make, do, and transact all and every kind of business of what nature and kind soever. And also for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases, and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage judgment, and other debts, and such other instruments in writing, of whatever kind or nature, as may be necessary or proper in the premises:

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said attorney, R. A. Ballinger, shall lawfully do or cause to be done, by virtue of these presents.

In witness whereof I have hereunto set my hand and seal the 12th day of October, in the year of our Lord one thousand nine hundred.

ANDREW HECKMANN. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. J. TENNANT,
NELLIE HECKMANN.
(Internal-revenue stamp, .25.)

STATE OF WASHINGTON, *County of King, ss:*

This is to certify that on this 12th day of Oct., A. D. 1900, before me, A. J. Tennant, a notary public in and for the State of Washington, duly commissioned and sworn, personally came Andrew Heckmann, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.] A. J. TENNANT,
Notary Public in and for the State of Washington, residing at Seattle.

(Filing on back:) 197945. General power of attorney from Andrew Heckmann to R. A. Ballinger. Dated Oct. 12, 1900. Filed for record at request of Ballinger, Ronald & Battle on the 31st day of October, 1900, at 44 minutes past 11 a. m., and recorded in volume 4 of Pow. of Atty., page 514, records of King County, State of Washington. E. H. Evenson, auditor of said county. By Ellen S. Fish, deputy. Aug. 28, 1903. Respts. exhibit. Even Smith, United States master in chancery, Dist. of Washington, Northern Division. Compared by O. & O.

EXHIBIT No. 41.

In the District Court of the United States for the District of Washington, Northern Division.

In the matter of C. A. Heckmann and M. E. Hanson, copartners, doing business as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson, individuals, bankrupts. Petition of Heckmann & Hanson, copartners, to reopen estate and for other relief. No. 2203.

To the District Court of the United States for the District of Washington, Northern Division, Honorable C. H. Hanford, judge.

Your petitioners, Heckmann & Hanson, copartners, of the above named bankrupts, respectfully represent:

I. That heretofore, to wit, on the 17th day of January, 1902, your petitioners filed in this honorable court their petition in voluntary bankruptcy, asking this court to adjudge them bankrupts and to grant to them the benefit of the acts of Congress relating to bankruptcy; that thereupon, and on the same day, by order duly made and entered your petitioners were duly adjudged to be bankrupts; and on the 18th day of January, 1902, by an order duly made and entered, all matters thereto pertaining were referred to the Honorable John P. Hoyt, a referee of this court, residing at Seattle, Washington, in said district, to take such further proceedings therein as required by said bankruptcy acts; all of which matters more fully appear by the records and files of this court in the above-entitled matter, to which reference is hereby made.

II. That at the time of filing said petition, and with the said petition, your petitioners prepared and filed in this court a schedule of all their property (real and personal) showing the amount and kind, the location thereof, and its money value in detail; and also prepared and filed with their petition a list of their creditors, showing their residences, the amounts due each, the consideration thereof, and the security held by them, all in triplicate, as required by law and the rules of this court. And in all other respects your petitioners have fully complied with the law relating to bankruptcy, and with the rules and orders of this court, and in all respects, since their adjudication as bankrupts, have been ready and willing to cooperate with the court, with their creditors, and with the trustee in the administration of said estate and all matters pertaining thereto.

III. Your petitioners further represent that at the time of their adjudication as bankrupts, the property of your petitioners, both real and personal, was in the possession of the Superior Court of the State of Washington, for King County, acting through its receiver, one Peter L. Larsson, and this court was so apprised in the said petition for adjudication. That the cause in the said State court in which the said Larsson was appointed receiver of the property of your petitioners was entitled "William M. Curtiss, plaintiff, *versus* Heckmann & Hanson, defendants. Peter L. Larsson, receiver," and was known as file number 32817 in said court. That said Superior Court of the State of Washington for King County was at all times without jurisdiction over the said property, and without jurisdiction to sell or dispose of the same, as more fully appears from the complaint filed in said cause, the motion made for the appointment of said receiver, the affidavit of plaintiff filed in support of said motion, and the order of the court appointing said receiver, copies of which are hereto attached, marked, respectively, Exhibits "A," "B," "C," "D," made a part of this petition, and reference to which, for greater certainty, is hereby made. That after obtaining the said order appointing the said receiver no other or further proceedings were ever taken in said cause by the said plaintiff, or his attorneys, in said State court, and no judgment or decree was ever rendered in said cause.

IV. That owing to the fact that at the time of preparing and filing said schedule of property and list of creditors heretofore referred to these bankrupts were not in possession of their property, nor any part thereof, nor of their books of account, stock books, inventories, records, or papers, and had not access thereto, and had no reliable data from which to prepare said schedule, and ever since said time, have been unable to gain possession of or access to their said property or their said books of account, stock books, inventories, records, or papers, the said schedule of property as filed was and is inaccurate, incomplete, and defective in that it fails to include all the accounts owing the bankrupts and fails to include a large amount of the personal property belonging to the estate of the bankrupts and which was at the time of filing said schedule in the possession of the said receiver in the said State court; and is further inaccurate and defective in that the liabilities therein scheduled are too high by at least the sum of $6,872.12. That the value of the personal property in the hands of said receiver was upwards of the sum of $29,000.00; that the value of the real estate was upwards of the

sum of $40,000.00; that the liabilities of the copartnership were not to exceed the sum of $23,000.00. That, in truth and in fact, the total value of all the property belonging to the bankrupts' estate was and is far in excess of all the debts owing by the bankrupts, and, if properly administered, will pay the debts of the bankrupts in full and leave a considerable amount in the estate to be returned to the bankrupts, your petitioners. That all the matters and things in this paragraph contained were at all times known to the creditors of these bankrupts, to the trustee, and to the referee to whom reference of said bankruptcy matter in the first instance was made.

V. Your petitioners further represent that one of the creditors of your petitioners, the Scandinavian-American Bank, of Seattle, Washington, well knowing the value of said property, and well knowing the value to be far in excess of the debts owing by said bankrupts, contriving to obtain possession of said property and to convert the same to its own use without making just compensation therefor, in fraud of these bankrupts and the bankruptcy law and this court, and conspiring and colluding with the said receiver of said State court, said Peter L. Larsson, to conceal certain frauds of the said Larsson committed in connection with said receivership, and to part of which frauds the said bank was a party, procured the said Larsson to obtain from said Superior Court of the State of Washington for King County an order to sell and dispose of said property at a grossly inadequate price, to wit, for the sum of $24,125.00; and the said court, after the adjudication of these petitioners as bankrupts, and with knowledge of said adjudication, and after proper motion made to stay proceedings in said State court, and over and against the protests of these bankrupts, and without any jurisdiction to sell or dispose of said property, made an order pretending and assuming to sell and dispose of the same to one M. F. Mayhew, and directing its said receiver to execute to the said Mayhew a deed of the real estate and a bill of sale of the personal estate of said bankrupts then in the possession of said court; and the said receiver, as directed, did, on the 7th day of March, 1902, execute and deliver to the said Mayhew a deed of the said real property and a bill of sale of the said personal property then in the hands of the said receiver belonging to the estate of these bankrupts; and the said receiver on the same day, turned over and delivered to the said Mayhew the possession of the said real and personal property, being the same property set forth in the schedule prepared and filed by these bankrupts with their petition heretofore filed, as aforesaid, or so much thereof as had not previously been fraudulently converted and disposed of by said receiver, and, in addition, being the rest and residue of the property belonging to the estate of these bankrupts and not scheduled, owing to the inability of these bankrupts to schedule the same, as hereinbefore related, and which transfer of personal property included as well the books of accounts, stock books, records, and papers belonging to the estate of these bankrupts. And thereupon the said Mayhew, on behalf of the said bank, paid into the said court the sum of $24,125.00. And afterwards, and on the 7th day of March, 1902, the said court, with knowledge of the adjudication of these petitioners as bankrupts, and after proper motion made to stay proceedings in said cause, and over and against the objections of these petitioners, entered an order confirming its acts and doings and the acts and doings of its said receiver in the premises.

VI. That the money tendered in payment for the said property to give color to the said transaction and induce the said State court to make said order of sale, and deposited in the said State court in payment for the said property, as aforesaid, unknown to said State court, was furnished to the said Mayhew by the said Scandinavian-American Bank, and the property so delivered to and received by the said Mayhew was received by him in trust for the said bank. And the money so furnished to him and by him paid into court was furnished and paid with full knowledge on the part of the said bank and the said Mayhew, and any and all others connected with said transaction of the adjudication of these bankrupts as such, and with full knowledge that the said State court had no jurisdiction over the said property and no title to the same, and had no right or jurisdiction to sell or dispose of the same.

VII. Your petitioners further represent that upon receiving the possession of the said property the said Mayhew, at the instance of the said bank, immediately transferred the same, or a large part thereof, to a corporation known as the Seattle Shipyards Company, which corporation was formed at the instance of the said bank, and your petitioners believe, and therefore allege, that it was so formed for the purpose of receiving the said property and losing the identity thereof and of hiding and concealing the present pretended owners thereof. That the said The Seattle Shipyards Company is now in possession of the said property.

VIII. Your petitioners further represent that the said alleged sale of the property of these bankrupts was made by said State court to the said M. F. Mayhew subject to the incumbrances due against the said property, said incumbrances being in the neighborhood of $20,000. That after the alleged sale of the said property, as aforesaid,

and the receipt of the said sum of $24,125, as aforesaid, the said Superior Court of the State of Washington for King County, with knowledge of the adjudication of these bankrupts as such, and after due proceedings had been taken by them to stay proceedings in said court, and against the protests of these petitioners, and with knowledge that the said property had been sold, if sold at all, and the money paid subject to the incumbrances existing against it, and with knowledge that no one held any liens against the said money, and that if the said sale was valid the title to the said money vested in the trustee in bankruptcy, paid out, through its register, about $20,000 of said moneys to certain of the creditors of these bankrupts holding liens, mortgages, and incumbrances against the said property, in fraud of these bankrupts and the bankruptcy law; and of which said amount of $20,000 so paid as aforesaid some $17,000 was repaid to said Scandinavian-American Bank, a secured creditor to said amount; that the said secured creditors so receiving the said money received the same with knowledge that the said property, if sold at all, was sold subject to the liens, mortgages, and incumbrances existing against it, and that they, the said creditors, had no right or claim to the moneys received therefor, and with knowledge of the adjudication of these bankrupts as such, and that the said court had no right or jurisdiction to pay over the said money, or any part thereof, to the, or to any other than the trustee in bankruptcy. That the balance of said sum of $24,125 over and above the amount so paid to said secured creditors has been wrongfully paid out by said State court in various directions, and no part of the same has been paid into the estate of these bankrupts.

IX. Your petitioners further represent that at the time reference of these matters was made to the referee in bankruptcy, as aforesaid, the said referee was attorney for an officer of the bonding company which had bonded said receiver in the said State court, said Peter L. Larsson, and against which said receiver gross charges of fraud and mismanagement had been made in said court and further charges were about to be made, and the said referee, with knowledge of said charges and the truth thereof and with knowledge of said adjudication and of the reference of all matters thereto pertaining to him as referee, as aforesaid, became engaged as attorney for said bonding company in the said State court in an effort to free his said client from the said bond of said receiver, and to that end the said referee conspired and colluded with the said Scandinavian-American Bank to postpone and delay proceedings in these bankruptcy matters until after sale of the said property of these bankrupts had been made in the said State court, as aforesaid, and the money received therefor again distributed, as aforesaid, and the evidence of the fraud of said receiver concealed and removed, as far as possible, and until the said bonding company, his client, should be released from the said bond of said receiver; and, in furtherance of said conspiracy, the said referee wilfully failed and neglected to call the first meeting of creditors of these bankrupts to elect a trustee or to set in motion in any manner whatsoever the machinery of this court looking toward the administration by this court of the said estate, as by law and duty to these bankrupts he was required to do, until after the said alleged sale by said State court had been made and the property delivered to the said Mayhew, as aforesaid, and the evidence of the fraud of said receiver to that extent removed and covered up, as aforesaid, and after the said money had been distributed by said court and after the said bond of said receiver had been discharged by said State court. That said first meeting of creditors was not called by said referee until the 14th day of April, 1902, as more fully appears from the records and files of this court in this matter, reference to which is hereby made.

X. Your petitioners further represent that at the instance of your petitioners a subsequent reference of the matters to these bankruptcy proceedings pertaining was made to the Honorable Warren A. Worden, a referee of this court residing at Tacoma, without this said district, and the adjourned meeting of said first meeting of creditors for the purpose of proving claims and electing a trustee was held before the said the Honorable Warren A. Worden on the 28th day of May, 1902.

XI. That at said adjourned meeting of creditors held for the purpose of proving claims and electing a trustee the said Scandinavian-American Bank, still contriving and conspiring to retain possession of said property and to convert the same to its own use, and contriving and conspiring to prevent the administration of said estate by this court and to defraud these bankrupts and this court, procured to be proved some four or five assigned claims owned by it and the said bank aggregating in amount about twenty-five dollars, and with said claims elected as trustee one E. F. Fisher, a bookkeeper in the employ of a former creditor of these bankrupts; and in anticipation of the election of said trustee, said bank, acting as aforesaid, employed or procured to be employed for said trustee a firm of attorneys whose efforts, with those of said trustee, were to be devoted to stifling any and all proceedings in this court looking to the collection and adimnistration of said estate. That afterwards and in pursuance of said

plan, on the 11th day of July, 1902, the said trustee, through said attorney , filed with said referee his report to the effect that these petitioners had no property or estate, and, without notice to these bankrupts or their attorney, procured said referee to accept and approve said report. That afterwards, and on the 5th day of December, 1902, the said trustee filed with said referee his final report, and on the 2nd day of January, 1903, without notice to these bankrupts or their attorney, obtained his discharge as such trustee, and the said referee, without notice to these bankrupts or their attorney, filed with this court his report declaring the said estate closed. All of which matters more fully appear from the records and files of this court, reference to which is hereby made.

XII. That since the last-mentioned date, the 2nd day of January, 1903, no trustee for the estate of the bankrupts has existed, and the creditors of your petitioners, with knowledge that there is property in the estate of these bankrupts which has not been administered, have failed and neglected since said date to recommend the appointment of a said trustee.

XIII. Your petitioners further represent that, aside from the said Scandinavian-American Bank, there are no creditors of these bankrupts now interested in the said estate, for the reason that before the alleged sale had been made by said State court the said Scandinavian-American Bank and the said bonding company on the bond of said receiver in said State court had arranged between themselves to take care of the said others of said creditors in manner satisfactory to said creditors, and the said creditors have long since been paid and their claims assigned for the benefit of said bank. That the terms of the said arrangement between said bank and said bonding company your petitioners are unable of their own knowledge to give.

XIV. Your petitioners further represent that they have other and further property and equities than those herein enumerated, which are not in the hands of said the Seattle Shipyards Company, and which was possessed by these bankrupts at the time of their adjudication as such, and which said property has never been collected and administered, and is being lost to these bankrupts and their estate.

XV. Your petitioners further represent that in the spring of 1901 and before the property of these bankrupts was taken possession of by the said State court, as aforesaid, M. E. Hanson, one of the members of said copartnership of Heckmann & Hanson, was afflicted with a very severe illness in the nature of a brain disorder, which left him very weak in body and mind and absolutely unable to attend to his business affairs, and that he still feels the effect of the illness and is unable physically and mentally to attend to such affairs. That he knows nothing of his own knowledge of affairs as they were administered in the said State court, and very little of matters as they have occurred in this court, and that at all times herein mentioned he has been and now is unable physically to concern himself with them.

XVI. That at all times herein mentioned C. A. Heckmann, the other member of the firm of Heckmann & Hanson, has had charge of the interests of the said firm so far as said firm could manage its own affairs. That he has endeavored by every means within his power to obtain for the firm a proper administration by this court of the estate of said partnership. That when finally on the 28th day of May, 1902, a trustee was elected by the said creditors and approved by this court, the said Heckmann, in the belief that the estate of the said firm would be administered by this court, determined upon a business trip to Alaska, and accordingly, on the following 8th day of June, 1902, went to Alaska. That at said time said Heckmann fully intended to return to Seattle, his said place of residence, in the following September or October. That in fact he did start from Alaska for Seattle October 6, 1902, by boat, the only means of transportation between the two points, and in the usual course of events would have reached Seattle about thirty days thereafter. That in fact the boat upon which he was making the voyage became disabled at sea, and was some eighty days overdue before reaching Seattle, and did not reach Seattle until the 28th day of January, 1903, and the said Heckmann was unable by any means to reach Seattle or communicate therewith before that date. That upon arrival at Seattle, in said district, said Heckmann first learned that the said trustee had not administered the partnership property, but had made a report to said referee in substance denying that these bankrupts had any estate, and that the said report, without notice to the bankrupts or their attorney, had been approved by said referee; and further learned that the said trustee on the 2nd day of January, 1903, without notice to these bankrupts or their attorney, had obtained his discharge; and further learned that the referee last named had, without notice to these bankrupts or their attorney, filed his report in this court declaring said estate closed.

XVII. Your petitioners further represent that unless this estate is reopened, a trustee provided, the property of the estate collected, and the estate administered, as in their petition for adjudication prayed, your petitioners and this court will be

defrauded and your petitioners will be denied the benefits of the acts of Congress relating to bankruptcy vouchsafed them by law.

Wherefore your petitioners pray that an order be made and entered herein as follows:

1. Reopening the said estate and referring said matter and all things pertaining thereto back to the said Honorable Warren A. Worden or to some other disinterested referee of this court, to take such further proceedings therein as are required by the acts of Congress relating to bankruptcy.

2. Appointing a trustee of the estate of these bankrupts, your petitioners.

3. Granting such other relief as to the court may seem just and appropriate, if your petitioners have misconceived their remedy.

HECKMANN & HANSON,
Petitioners.
J. L. FINCH,
Attorney for Petitioners.

UNITED STATES OF AMERICA,
District of Washington, County of King, ss:

C. A. Heckmann, being first duly sworn, on oath deposes and says: That he is a member of the firm of Heckmann & Hanson, who subscribed the foregoing petition and makes this affidavit in behalf of said firm; that he has read the foregoing petition and knows the contents thereof; and that the same is true, as he verily believes.

C. A. HECKMANN.

Subscribed and sworn to before me by the said C. A. Heckmann this 16th day of March, 1903.

F. M. JEFFERY,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT NO. 42.

In the United States District Court, District of Washington, Northern Division.
In re Heckman & Hanson, bankrupts. No. 2203.

To the honorable the District Court of the United States, District of Washington, Northern Division:

In pursuance, and by virtue, of an order of reference in the above-entitled cause, made by Honorable C. H. Hanford, judge, on April 11th, 1903, to the undersigned, as special referee, to investigate the matters alleged in said petition; and that said special referee should proceed with convenient speed to hear such evidence as might be submitted to him by affidavits or upon oral examination of witnesses and report to the court his findings with respect to the right of the bankrupts to have the cause reopened, and with respect to the conduct of such attorneys and officers of this court as appear to be accused by the allegations of said petition. And the undersigned, special referee, to whom such order of reference was directed, does respectfully certify, return, and report:

First. That on April 24th, 1903, and on subsequent adjourned days, J. E. Finch, attorney for said bankrupts petitioners, and Alfred Battle, in behalf of the respondents, appeared before me at my office in the city of Seattle, King County, Washington, and I, then and there, entered upon an investigation of the matters in said reference, and the following-named witnesses were on behalf of said petitioners bankrupt, and the said respondents, produced, cautioned, and duly sworn by me to testify to the truth, the whole truth, and nothing but the truth referring to the matters in said reference; and the testimony of said witnesses was so taken by the office of Bowman, Bolster & Eaton, stenographers, satisfactory to all of the parties interested in said matter, and such testimony so taken was not translated from stenographic notes into long hand, and the same can not be by me returned to this court. That the names of said witnesses are as follows: Peter Larsen, Ernest Fisher, Charles S. Hills, Hiram Hennigar, A. J. Tennant, M. F. Mayhew, J. Fred Linderberg, J. E. Chilberg, A. H. Soelberg, C. A. Heckman, Frank M. Guion, ——— Brewster, J. L. Finch, M. S. Anderson, R. S. Jones, C. E. Reynolds, John P. Hoyt, John S. Jurey, J. B. Metcalfe, and R. A. Ballinger.

That the documentary evidence duly exhibited before me was received in evidence and in the form of exhibits numbered and lettered, is herewith returned as such, reference to which is here and now made. Upon closing proofs arguments were submitted by J. E. Finch, Esq., on behalf of said petitioners, and by Alfred Battle, Esq., on

behalf of said respondents, and thereupon said matter was submitted to me for findings, as in said order of reference directed, and therefrom I find as follows:

Second. That said Heckman & Hanson were copartners engaged in the general business of shipbuilding and ship repairing, etc., at Ballard, King County, Washington, and on September 8th, 1899, went into the possession of property known as the Hennigar property under a lease.

Third. That in a cause pending in the Superior Court of the State of Washington for King County, in which William M. Curtiss was plaintiff and Heckman & Hanson, defendants, one Peter L. Larson was duly appointed receiver, the order of the court appointing said receiver appearing as exhibit in this matter; that said receiver entered upon the discharge of his duties and from time to time reported his proceedings, having taken possession of the properties of said Heckman & Hanson, and under and pursuant to an order of the Superior Court of the State of Washington, in and for King County, made upon a report filed by said Peter L. Larsen, receiver, sold and disposed of said property and reported the same to said superior court; and thereupon, upon an order of said superior court, sold and disposed of said property for the sum of twenty-four thousand one hundred and twenty-five ($24,125.00) dollars; and said sale was confirmed by said court and said receiver on or about the 7th day of March, 1902, did execute and deliver to M. F. Mayhew, the purchaser, a deed of the said real property and a bill of sale of the personal property then in the hands of the receiver as the property of said bankrupts, and the said property was by said receiver turned over and delivered to the said Mayhew.

That theretofore, to wit, on the 17th day of January, 1902, said Heckman & Hanson, petitioners, filed in this honorable court their petition in voluntary bankruptcy, asking the court to adjudge them bankrupts and granting them the benefit of the acts of Congress relating to bankruptcy, and on, to wit, the 18th day of January, 1902, by an order of said court, duly made and entered, all matters thereto pertaining were referred to the Honorable John P. Hoyt, a deputy of this court, residing at Seattle, Washington, in said district, to take such further proceedings therein as required by said bankruptcy acts. That at the time of filing said petition said petitioners prepared and filed with it in this court a schedule of all their property, real and personal, showing the amount, kind, location thereof, and money value in detail, together with a list of their creditors, showing their residences, amounts due each, consideration therefor, and the security, if any, held by them, in triplicate, as required by law and the rules of this court.

That said petitioners have fully complied with the law relating to bankruptcy and with the rules and orders of this court, and since their adjudication as bankrupts have been ready and willing to cooperate with this court, with their creditors, and with the trustees in the administration of said estate and in all matters pertaining thereto.

That before, and about the time of said sale by said Peter L. Larsen, receiver, to said Mayhew of said property as aforesaid, one J. W. Kelly, J. E. Chilberg, and E. L. Grundahl arranged a credit at the Scandinavian American Bank for the sum of thirty thousand ($30,000.00) dollars at the time A. H. Soelberg was one of the officers of said bank, who represented the bank, in company with Mr. Lane, cashier or assistant cashier of the bank. This arrangement was made in the latter part of November or the first part of December of that year. Under the arrangement, so as aforesaid, which was by a note for said sum of thirty thousand ($30,000.00) dollars, given by said named makers, they were authorized and empowered to check against said sum of thirty thousand ($30,000.00) dollars. Said note was dated January 9th, 1902, signed by J. E. Chilberg, J. W. Kelly, and E. L. Grundahl by A. H. Soelberg, his attorney in fact, and checks were from time to time so drawn by said M. F. Mayhew, who was so authorized and empowered, against said credit fund of thirty thousand dollars ($30,000.00).

That thereupon soon after the confirmation of said sale, said Mayhew and Mildred A. Mayhew, his wife, on or about the 14th day of March, 1902, by warranty deed, by them executed and acknowledged and by bill of sale by them so executed and acknowledged, transferred and conveyed the whole of said property to the Seattle Shipyards Company, a corporation then existent, which was duly organized on the 12th day of March, A. D. 1902, as such corporation, and said property, real and personal, was thereby turned over to said Seattle Shipyards Company, which said shipyards company thereupon entered into possession of said property.

In July, 1900, Heckman & Hanson bought a one-half interest in the real property from the owner, Charles Hennigar, paying therefor forty-five hundred ($4,500) dollars, and then and there agreed to buy the other half interest at forty-five hundred ($4,500) dollars, which other half interest was owned by the minor children of Hennigar, heirs of Hennigar's wife, which sale had to be perfected through the probate court. Judge R. A. Ballinger, of the firm of Ballinger, Ronald & Battle, had acted as attorney for

Heckman & Hanson from the filing of their copartnership and Heckman conferred with Judge Ballinger touching the matter of said purchase and the raising of necessary funds to pay for the same. Judge Ballinger accompanied Heckman to the bank and Heckman made application to borrow five thousand ($5,000) dollars, which loan the bank consented to make and Heckman authorized Judge Ballinger to close the transaction. A note and mortgage were executed running to the bank, dated October 25th of that year and was made payable ninety (90) days after date. The note matured and Heckman received a notice of the maturity of the note and that he make arrangements to meet it. The business of Heckman & Hanson went forward until some time in February, 1901; a boat called the schooner *Alice*, owned by one William M. Calhoun, as trustee for one Captain Milnor, the original owner, and some of the boat's creditors, was brought to the shipyards for repairs; the Scandinavian-American Bank held a mortgage on the boat for something like twenty thousand ($20,000) dollars; negotiations for repairing the boat were carried forward by Calhoun, as trustee owner, and E. L. Grundahl for the bank; said negotiations ultimated in the employment of Heckman & Hanson under a contract to repair the boat. They were told by the parties to the negotiations to draw upon the Scandinavian-American Bank for their pay as the work progressed. Under these arrangements they placed upon the boat about seven thousand ($7,000.00) dollars' worth of repairs, and while so doing checked out of the bank something like six thousand eight hundred ($6,800) dollars more than their deposit. Judge Ballinger drew for the bank a paper purporting to assign to the bank said claim of Heckman & Hanson against the schooner *Alice*, giving the bank the right to enforce a lien against the boat. Mr. Heckman refused to sign the paper or to return it. The next day thereafter the bank notified Heckman & Hanson that the firm's overdraft at the close of business that day was six thousand nine hundred seventeen dollars and sixty-two cents ($6,917.62) and notified them to cover the same by noon of the following day. Judge Ballinger and Mr. Heckman had another interview, which resulted in Mr. Heckman concluding to employ Metcalfe & Jurey, as his attorneys, which he did, paying them $350.00 retainer to look after the firm's interest. Thereupon, to protect Heckman & Hanson's interest in the matter they libeled the schooner *Alice*, filing a libel June 15th, 1901. Previous to this time, Mr. Hanson, of the firm of Heckman & Hanson, received a serious injury by an accident and was sent to the hospital, where in a few days an operation was performed and an abscess removed from the brain, and as a result thereof, he became very weak and unable to attend to business.

June 22nd following the Scandinavian American Bank filed an intervening libel against the *Alice* for $589.88, Ballinger, Ronald & Battle appearing as the attorneys for them.

June 27th, Calhoun, Denny & Ewing filed an intervening libel against the *Alice* for $2,210.21, and in the meantime William M. Calhoun, trustee owner of the vessel and claimant in the suit, filed a cross libel against the firm for nearly $30,000, on July 9th. It appears that an answer to said cross libel was filed July 1st.

On July 1st one A. Thiele filed an intervening libel through James Caper, his attorney, claiming $80.00 to be due.

July 3rd one Henry Klamroth filed an intervening libel against the boat, Messrs. Gleason & Cole, his attorneys, claiming $1,465.00 and interest to be due.

On July 3rd the Scandinavian American Bank, through its attorneys, Messrs. Ballinger, Ronald & Battle, began suit in the Superior Court of the State of Washington for King County to foreclose the mortgage of $650.00 which existed on the Heckman & Hanson personal property when the firm rented the Hennigar ground and was past due. The bank had bought it up and were carrying it for that firm. The sum of $812.00 was included in the libel which Metcalfe & Jurey brought for the firm against the schooner *Alice*.

On July 5th Ballinger, Ronald & Battle brought a second suit for the bank to foreclose the $5,000.00 mortgage hereinbefore mentioned, and also brought a suit upon the overdraft, in which suit they filed a complaint and caused writs of garnishment to be issued and served. It does not appear that service was made upon either one of the firm of Heckman & Hanson.

On July 8th the North Star Gold Mining Company brought a suit on a claim by another firm of attorneys, which suit was afterwards abandoned.

This was the condition, in brief, of Heckman & Hanson's affairs when, on July 11th, William M. Curtiss began a suit in the Superior Court of King County against Heckman & Hanson to recover upon an account stated, in amount of $1,528.18, and in which suit Peter L. Larsen was appointed receiver with instructions to take possession of the properties and assets and manage the same and carry on the business as hereinbefore found. Three days after the appointment of Mr. Larsen by petition in the receivership

case an application to have Mr. Larsen removed as receiver and another substituted was made. On July 22nd the court denied the petition to remove Mr. Larsen.

That at the time of the sale of the property of Heckman & Hanson, made under order of the State court to said Mayhew, there were encumbrances on said property that were due, being in the neighborhood of $20,000, and the Superior Court of the State of Washington for King County caused to be paid through the register of said court about $17,000.

At the time of the adjudication of Heckman & Hanson as bankrupts and reference of the matters therein to the referee, Honorable Judge Hoyt, he, said Hoyt, was an officer of the American Bonding & Trust Company and had acted, and was acting, as such in certain matters of litigation in which it had been engaged, and the only official connection he had with the said American Bonding & Trust Company was that of local vice president, his sole duty as such officer being to authenticate bonds attested by the assistant secretary of said corporation for the State of Washington and was charged with no responsibilities or duties whatever in connection with the transaction of its general or local business, except to countersign such bonds, his only connection with said corporation, as an attorney, being to look after matters in which litigation had been commenced or was expected, and which had been especially referred to him by the home office of said corporation, or its local agent, or under instructions from said home office, and that as such attorney he had no duty or responsibility whatever in connection with any of its business, except such as was thus especially referred to him, and that he did not pay any attention whatever to any part of the business of the corporation except that which had been so especially referred to him as above stated, and all the knowledge that he had of any interest which said American Bonding & Trust Company had in the firm of Heckman & Hanson or in its business grew out of the fact of its having executed, as a surety, with said Heckman & Hanson as principals, a bond to the United States of America in connection with a contract by said Heckman & Hanson for the making of certain repairs to the United States transport *Seward;* that said Hoyt did not know that said bonding company was in any way, directly or indirectly, interested adversely to said Heckman & Hanson and in so far as he knew, as the proofs show, the interests of said bonding company were in harmony with the interests of said Heckman & Hanson and that the company's interest would be best subserved by anything which would subserve the interests of Heckman & Hanson. In so far as the proofs show, said Hoyt never knew that the American Bonding & Trust Company was surety upon the bond of said Peter L. Larsen, the receiver mentioned, and he never knew of the same until reading the petition in this matter. As the proofs show, he, the said Hoyt, had no knowledge whatever of any charges of any fraudulent conduct on the part of said Larsen, receiver, and the only action which said Hoyt, referee, took in the Superior Court of King County, Washington, in the cause in said petition mentioned, was to suggest to the court as a friend of the court, at the time when the confirmation of the sale made by said receiver first came up for consideration, that the matter should be continued long enough to allow any application to be made to this court to stay further proceedings in the superior court, that it might determine whether or not the superior court, after the institution of the bankruptcy proceedings, had jurisdiction to proceed, and the superior court granted an adjournment for that purpose.

That said referee, Hoyt, received, on the 21st day of January, 1902, the usual order of reference in the bankruptcy proceeding referred to in said petition; that in said order of reference the bankrupts were ordered to appear before said referee on the 24th day of January, 1902; that neither of said bankrupts appeared by himself or attorney before said referee on the day named in said order and neither of said bankrupts nor anyone in their behalf appeared before said referee until the 14th of April, 1903; that on said 14th day of April C. A. Heckman, one of the firm of Heckman & Hanson, appeared with his attorney, J. L. Finch, who is the attorney in this matter, and made proof of the necessary jurisdictional facts, and thereupon said Hoyt, as referee, made and filed an order of the first meeting of creditors on April 25th, 1902, and on said day mailed notice of such meeting to each and all of the creditors of said bankrupts, as shown by the schedule, and made and filed certificate of such meeting, and on the same day gave a copy of the notice of such meeting to the Post-Intelligencer Publishing Company for publication. That on said 14th day of April, 1902, the usual deposit of $10.00, to cover the expenses of the referee's office, was not made, and the referee consented to waive such deposit, stating to said Finch, attorney, that he would look to him for reimbursement for the cash outlay incident to the expenses of his office in said matter, and never, at any time, as the proofs show, did either of said bankrupts or their attorney or anyone else or in any manner state that any other earlier or further action on the part of the referee was necessary, advisable, or desired than that which he had already taken, except that one Fred

Sturn, who had filed a claim, objected to the action of the undersigned as referee in adjourning the first meeting of creditors from the 25th of April until the 2nd day of May for the purpose of allowing certain creditors, who had not their claims reduced to form, to prove them so that they could be filed. That said Finch, attorney as aforesaid, who was present on said 25th day of April, in no manner objected to or found fault with the action of the referee in so adjourning said meeting and, as the proofs show, during all of the time and while said matter was pending before said Hoyt, as referee in bankruptcy, he never knew that said American Bonding & Trust Company had any interest, direct or indirect, adverse to said bankrupts, and that said company was interested in seeing the most possible made out of the assets of said firm; and that no intimation whatever was made by either of said bankrupts or their attorney as to any desire that they might have that the matter should be heard before some other referee until the 19th day of May, 1902, when said Finch, attorney for said bankrupts, suggested to said referee that his client had in some way unknown to him become possessed of the idea that it would be better to have the matter heard before some other referee. Whereupon he conferred with the honorable judge of this court, who suggested that the matter could be referred to W. A. Worden, the referee at Tacoma, and that if said Hoyt desired to report the case back he might do so and it would be referred to said Worden, and by consent of all the said first meeting was adjourned from said 19th day of May until the 28th day of May, so that no time need be lost in the further prosecution of the matter before said Worden; and said referee, Hoyt, thereupon made an order reporting the case back with a minute of his proceedings therein, and on the 22nd day of May, 1902, made his return therein and transmitted all papers to the clerk of said court. That thereafter said Hoyt has had no connection whatever with or taken or arranged any action in or any connection with, directly or indirectly, the said bankruptcy proceedings, and, as the proofs show, said Hoyt was informed that at one time the said bonding company acted with and in aid of the said bankrupts in certain attempts made to raise money upon the property of said bankrupts and the good will of the business to pay off all the debts of the firm, and that it at one time did seem probable that something favorable might result from such an attempt, in which effort final success was not achieved.

That a reference was accordingly made to the honorable W. A. Worden, referee at Tacoma, and the first meeting of creditors for the purpose of proving claims and electing a trustee was held before him on the 28th day of May, 1902; that at said adjourned meeting of creditors held for the purpose of proving claims and electing a trustee, one E. F. Fisher, a bookkeeper in the employment of a firm creditors of said bankrupts, was elected as trustee; that afterwards, on the 11th day of July, 1902, said trustee, Fisher, filed with said referee his report, as the proofs show, to the effect that said Heckman & Hanson, bankrupts, had no property or estate, which said report was accepted by said referee, and on the 5th day of December, 1902, said trustee filed with said referee his final report and on the 2nd day of January, 1903, obtained his discharge as such trustee; and said referee filed with this court his report declaring the said estate closed, as appears from the records and files of this court; that since January 2nd, 1903, no trustee for the estate of the bankrupts has existed.

That since the injury received by Mr. Hanson and his consequent inability to attend to business C. A. Heckman, the other member of said firm, has had charge of the interests of the said firm, so far as the said firm could manage its own affairs; that he endeavored to obtain for the firm administration by this court of the estate of said bankrupts; that on the 25th day of May, 1902, when a trustee was elected by the creditors and approved by the court, said Heckman determined upon a business trip to Alaska, and on the 8th day of June, 1902, went to Alaska; that about October 6th, 1902, he started from Alaska for Seattle by boat, the then only means of transportation between the two points, and in the usual course of events would have reached Seattle in about thirty (30) days thereafter, but the boat became disabled at sea and was some eighty (80) days overdue before reaching Seattle, arriving on the 28th day of January, 1902; that he was unable by any means to reach Seattle or communicate therewith before that date; that upon arrival in Seattle, in said district, he first learned that the said trustee had made a report to the referee in substance denying the bankrupts had any estate and that the said report had been approved by the referee and that the trustee, on the 2nd day of January, 1903, had obtained his discharge and had filed his report in court declaring said estate closed, since which time the proceedings in this matter in this court on behalf of Heckman & Hanson and by their attorney, J. L. Finch, appear of record, and reference to the same is here and now made.

Subsequent to the sale by receiver of said Heckman & Hanson's properties, reference was made to United States Commissioner A. C. Bowman to inquire into the adequacy or inadequacy of the price paid for said property at said receiver's sale

and proofs were taken by said Commissioner Bowman, who thereupon and thereafter made his report to said court, which appears in said court as part of the files in this matter, reference to which is made.

As to the conduct of the respective attorneys and officers of the court who have appeared in the matters of said receivership in said suits brought and said proceedings in this court, from the proofs it appears, and I so find, that R. A. Ballinger was at the time of making the loan by the Scandinavian American Bank to Heckman & Hanson of the five thousand ($5,000) dollars, etc., a member of the directorate of said bank, and that the fact was well known to Heckman & Hanson, and he went with Mr. Heckman to the bank and interviewed others of the officers of the bank touching such loan. The application on the part of Mr. Heckman for the loan of five thousand ($5,000) dollars was granted for the period of ninety (90) days (and not for a period of five years). That Mr. Heckman being absent from the city on his trip to Alaska, Judge Ballinger, acting under power of attorney, executed the necessary note and mortgage running for the period of ninety (90) days, and the transaction was completed on that basis; that upon the dissatisfaction, as hereinbefore found, and the employment of Metcalfe & Jurey as substitutes for said Ballinger by said Heckman & Hanson, Heckman waited upon Metcalfe & Jurey and opened up the matters connected with said note and mortgage and the said overdraft, so called, of account, and stated his side of the case with regard to said mortgages and his claims, and said Metcalfe & Jurey advised him that the firm of Heckman & Hanson had no defense to the suits brought and that the best they could do would be to obtain for him as much time as possible to enable them to adjust their matters, and in that line of conduct of the matters involved they served demurrers and adopted dilatory tactics, thus obtaining all the time they possibly could obtain until a time arrived when they could accomplish nothing further in that direction, and they finally entered into an arrangement by stipulation with the bank and the attorneys representing the bank to the effect that the bank would give them time to arrange to procure the necessary funds with which to adjust their matters with the bank; that their conduct in the matter, as shown by the proofs, was to accomplish the purposes which they did accomplish, and upon the stipulation entered into decrees were taken in the cases.

Mr. Heckman, acting for the firm of Heckman & Hanson, employed C. E. Reynolds January 2nd, 1902, who appeared in this court in the petition to have Heckman & Hanson adjudicated bankrupts, etc., and they were so adjudicated, and a certain sum of money was advanced to him to use in matters of expense, etc., at one time $100.00 and at another time $150.00. Mr. Reynolds expended a portion of this money and the rest of it is in his hands, as appears from the proofs taken.

Mr. Heckman claimed that the assets of the firm were about $50,000.00 and that they owed debts, as stated in the petition in bankruptcy. Mr. Reynolds entered upon an effort to raise money with which to pay off these debts and interviewed Richard Saxe Jones, attorney for Peter Larsen, receiver, and Mr. Jones stated to him that if he could raise $100.00 more than the price bid for said property at the receiver's sale and the expenses, he would advise setting the sale aside. The efforts made to raise money were unavailing, and Mr. Reynolds called Mr. Heckman to his office and notified him that he could do nothing in the way of raising money for him. Mr. Hanson agreed to pay Mr. Reynolds $250.00. An effort was made, among other things in which Mr. Reynolds interested himself, to raise the sum of five hundred ($500) dollars for the benefit of Mr. Hanson of the firm, who was at that time an invalid, and certain steps were taken in the matter, which did not prove successful any further than the sum of $150.00 out of $500.00 was raised. The proofs show that Mr. Reynolds never represented the American Bonding & Trust Company.

Mr. Richard Saxe Jones was the attorney of Peter L. Larsen, the receiver, and acted for him in matters of his receivership, representing him in court at different times, presenting his reports and taking orders, etc. In all of the proceedings in the State court in said case of Curtiss *vs.* Heckman & Hanson, in which case said Larsen was appointed receiver, he acted for him. Said Larsen's actions are evidenced by his reports made to the court as well as the actions of his attorney, Mr. Jones.

The American Bonding & Trust Company were sureties on the receiver's bond in the State court in the sum of $20,000, and was also under a liability as surety for Heckman & Hanson on this Seward bond, and there were claims against the transport Seward in favor of laborers and material men amounting to some three or four thousand dollars, for which the bonding company was under a liability as such surety.

In and among the proofs and documentary evidence presented, certain books of the Scandinavian American Bank were produced and testimony given with regard to them. Attention is respectfully called to excerpts from testimony of Mr. Finch, a witness on behalf of the petitioners, in which in substance he states in reference to said books of the Scandinavian-American Bank, and what there was in them bearing

upon the question of disbarment of General Metcalfe, Richard Saxe Jones, R. A. Ballinger, and C. E. Reynolds. In answer to the questions, in substance, What do you find in those books that would disbar either of said named gentlemen? he answered, in substance, not anything, or I don't think anything, or I don't think I found anything. Said excerpts are hereto attached and herewith returned.

And as findings with respect to the right of the bankrupts to have the cause reopened and with respect to the conduct of such attorneys and officers of this court as appear to be accused by the allegations of said petition, I find that such right on the part of the bankrupts to have said cause reopened is not established by the proofs, and does not exist.

And as the conduct of the officers and attorneys of this court who have been engaged in these several matters, who appear to be accused by the allegations of the petition, such seeming accusations are not well founded in fact, and are not sustained by the proofs.

The proofs in this matter are voluminous, remaining in the stenographic notes in the main. The documentary evidence can be readily produced with this, my report. The parol testimony can not, of course, be produced until translated from the reporter's notes, the desirability of which is clearly apparent.

All of which is respectfully certified to this court.

Dated January 23rd, 1903.

EBEN SMITH,
U. S. Master, etc., as Special Referee.

NAMES OF WITNESSES AND DATES OF HEARING.

1903.	
Apr.	24. Mr. Larson.
May	6. Earnest Fisher.
May	8. P. N. Larson.
May	8. Charles S. Hills.
May	15. Charles S. Hills.
May	15. Hiram Hennigar.
May	15. A. J. Tennant.
June	1. M. F. Mayhew.
June	2. M. F. Mayhew.
June	3. J. Fred Linderberg.
June	3. M. F. Mayhew.
June	3. J. E. Chilberg.
June	22. A. H. Soelberg.
July	30. A. H. Soelberg.
Aug.	3. A. H. Soelberg.
Aug.	7. A. H. Soelberg.
Aug.	7. P. L. Larson.

1903.	
Aug.	8. Capt. Peter L. Larson.
Aug.	10. C. A. Heckman.
Aug.	17. Frank M. Guion.
Aug.	17. ——— Brewster.
Aug.	18. J. L. Finch.
Aug.	18. C. A. Heckman.
Aug.	18. J. L. Finch.
Aug.	24. C. S. Hills.
Aug.	24. M. G. Anderson.
Aug.	24. C. A. Heckman.
Aug.	24. R. S. Jones.
Aug.	25. C. E. Reynolds.
Aug.	25. John P. Hoyt.
Aug.	28. John S. Jurey.
Aug.	28. J. B. Metcalfe.
Aug.	28. C. E. Reynolds.
Aug.	28. R. A. Ballinger.

EBEN SMITH,
As U. S. Master in Chy., Special Referee.

In the Circuit Court of the United States for the District of Washington, Northern Division.

In the matter of Heckman and Hansen, bankrupts. No. ——.

EXCERPTS FROM TESTIMONY OF J. L. FINCH, A WITNESS IN BEHALF OF PETITIONER, TAKEN BEFORE HON. EBEN SMITH, MASTER IN CHANCERY.

Returned by me with my report.

EBEN SMITH, *as Special Referee.*

J. D. FINCH on the stand.

Cross-examination:

Q. (Mr. JONES.) Now, you stated in Judge Hanford's court, in open court, that if you could have access to the books of the Scandinavian-American Bank that you would produce evidence from them that would disbar General Metcalfe and others. Judge Hanford said to you: "You shall have that order; but if from those books you do not produce evidence, I will disbar you." What evidence did you produce from the

books of the Scandinavian-American Bank to disbar General Metcalfe?—A. That will have to be argued at length, Mr. Jones——

Q. (Interrupting.) I don't care anything about any argument; I want an answer to the question.—A. When I get the transcript of the testimony and the matter goes back to Judge Hanford, where, no doubt, we are going, all of us.

Q. I do not care anything about an argument. I want you to answer the question. (Question read.)

A. Well, if you please, Mr. Jones, that was not the language of Judge Hanford.

Q. Well, you know what the language was—practically to that effect. I do not pretend to quote exactly. But answer the question.—A. Well, there is not any foundation for the question; it assumes things that are not true.

Q. Well, you can state what was said in Judge Hanford's court your own way and then answer the question.—A. Well, I don't know what you mean now.

Q. You refuse to answer the question, Mr. Finch?—A. I have no question to answer.

Mr. JONES. I ask the commissioner to require the question to be answered.

The MASTER. Mr. Finch, the general subject matter about which you are interrogated at this particular point is touching a little colloquy between Judge Hanford on the one part and yourself on the other. Judge Hanford stating, when you applied for those books, and that if you had those books you could produce evidence, etc., and you replied to him—he asked you if you could prove that, and your reply to him, and then Judge Hanford said to you: "Very well, you may have the books or the order, and if you don't prove it I will disbar you." Now, then, you have got the general matter in your mind?

A. Yes, sir.

The MASTER. Now, then, Mr. Jones wants you to answer his inquiry as to what passed between you and Judge Hanford at that time.

Mr. JONES. No. I want him to state what there was in the books of the Scandinavian-American Bank upon which he would disbar; but he can make his statement.

The MASTER. You said first make the statement and then you may answer the question.

A. Why, I find from the books of the Scandinavian-American Bank that they furnished money to Mr. Mayhew to buy the property of Heckman & Hanson, and that Mr. Mayhew bought the property for them. They claimed, in court, that that was not true; and I intended to show from the books of the bank that that was true, and I think that it has been shown.

Q. Well, answer my question. What in that transaction do you find that would disbar General Metcalfe?—A. None.

Q. You stated at that time that if you could have the books of the Scandinavian-American Bank that from them you would obtain evidence by which you would disbar Richard Saxe Jones. Now, just state——A. (Interrupting.) I did not state any such thing.

Q, Well, you know what you stated. Taking your statement as you have it in mind of what you did state, what did you find in the books of the Scandinavian-American Bank that would in any way disbar Richard Saxe Jones?—A. I don't think anything, Mr. Jones.

Q. You stated, as I remember, practically to the effect that if you could have access to these books and papers that you would obtain evidence from them which would disbar R. A. Ballinger. Just tell the commissioner what you find in those books or papers of the Scandinavian-American Bank that would disbar R. A. Ballinger.—A. I did not make that statement. But answering the last part of the question, I state that I do not think I found anything.

Q. You stated, as I remember, practically to this effect, if you could have access to these books and papers, you would from them produce evidence to disbar C. A. Reynolds. Just state in your own way anything you found in connection with those books and papers of the Scandinavian-American Bank that would in any way disbar C. A. Reynolds.—A. I don't think anything.

(Filing on back:) No. 2203. In the District Court of the United States for the Western District of Washington. In re Heckman & Hanson, bankrupts. Report of special referee, Eben Smith on proof, etc.

EXHIBIT No. 43.

United States District Court, District of Washington, Northern Division.

In the matter of C. A. Heckmann and M. E. Hanson, individually and as copartners doing business as Heckmann & Hanson, bankrupts. No. 2203. Filed July 11 1904.

MEMORANDUM DECISION ON PETITION TO REOPEN THE ADMINISTRATION OF THE BANKRUPT ESTATE, AND TO SEIZE PROPERTY IN THE POSSESSION OF A TRANSFEREE OF THE PURCHASER AT A JUDICIAL SALE.

This is a case of voluntary bankruptcy of a copartnership. After the termination of administration of the bankrupts' estate and discharge of the trustee, the present proceeding was initiated by a petition of the bankrupts to reopen the case for the purpose of a new administration of the estate, and to have a trustee chosen and authorized to seize and take into custody the property which formerly belonged to the bankrupts, and which by judicial proceedings in another court were transferred to a purchaser for a consideration which their creditors absorbed.

The copartnership was formed in the year 1898, for the purpose of carrying on the business of building and repairing ships. The total capital of the firm at the time of its formation consisted of a kit of tools worth about five hundred dollars, which each of the partners had, and additional tools and implements worth four or five hundred dollars, which they jointly owned, and sufficient cash to pay one month's rent of the leased premises upon which business was commenced, and the mechanical skill and business ability of the two partners. The phenomenal expansion of commerce tributary to Puget Sound, which commenced in the year 1897, made the time propitious for success and the business of the firm grew too rapidly for the capacity of the partners to manage successfully, as the outcome proved. In the summer of 1901, while other litigation was pending, a creditor commenced an action against the firm in the Superior Court of the State of Washington for King County, upon an account stated, for a balance due of something less than sixteen hundred dollars, and in said action, with the connivance and active support of Mr. Heckman, the superior court appointed a receiver to take the firm's assets into custody and assume control of the business, and the receiver so appointed did take charge of the entire plant, books, papers, accounts, and business of the firm. At its inception that proceeding was distinctly hostile to the Scandinavian-American Bank, which was the largest creditor of the firm, and which was then maintaining other suits against the firm for the recovery of money loaned. While the assets and business of the firm were in the custody and control of the receiver, and about to be sold by the receiver pursuant to an order of the superior court, the copartners filed their voluntary petition in this court to be adjudged bankrupts, and obtained from this court an *ex parte* restraining order against the receiver to prevent the proposed sale. Opposition to the restraining order was made, and upon the hearing the court appointed Mr. A. C. Bowman, a commissioner of this court, to act as a special referee to hear evidence and report to the court whether the amount of a bid for the property and business which the receiver desired to accept was an adequate price or as much as might be obtained at a fair sale, and after hearing evidence the special referee reported to the court, in substance, that there was no ground for supposing that a better bid or a larger price could be obtained, and thereupon the restraining order was dissolved, and the receiver consummated the sale. Afterwards, an application was made to this court, in behalf of the bankrupts, for an order requiring the receiver to pay into the registry of this court or to a trustee of the bankrupt estate, the gross amount of the proceeds of said sale, which application was opposed by all of the creditors of the firm, and after a hearing of the parties interested was by the court denied, and all of the proceeds of the sale, which represented substantially all of the assets of the firm, was disposed of pursuant to orders of the superior court.

At the inception of the bankruptcy proceedings the case was referred generally to Hon. John P. Hoyt, referee in bankruptcy, and afterwards upon his informal request the order was revoked, and the case was referred to Hon. Warren A. Worden, the regular referee in bankruptcy, residing at Tacoma, who supervised the case until the trustee of the bankrupt estate made his final report to this court, showing that he had obtained custody of only a small amount of assets, not handled by the receiver of the superior court, which he disposed of in due course of administration, and thereupon the trustee was discharged and the administration of the estate closed.

The petition to reopen the case sets forth as grounds for such extraordinary proceeding that owing to the fact that at the time of preparing and filing the schedules which accompanied the original petition filed in this court by the copartners to be adjudged

bankrupts, their property, books of account, records, and papers were in the custody of the receiver, they had no reliable data from which to prepare the schedules, and the same are inaccurate, incomplete, and defective in this that the schedule of property "fails to include all the accounts owing to the bankrupts and fails to include a large amount of the personal property belonging to the estate of the bankrupts; and the schedule of liabilities is inaccurate and defective in that the liabilities therein scheduled are too high by at least the sum of $6,872.12; that in fact the total value of all the property belonging to the bankrupts' estate was and is far in excess of the total amount of all debts owing by the bankrupts, and if properly administered the estate will pay the debts of the bankrupts in full and leave a considerable surplus for the petitioners."

These vague and uncertain allegations certainly afford no ground for action by the court. They are not connected with any other statements of facts showing that the right of the petitioners to be discharged from their liabilities has been attacked or will be affected by reason of imperfections in the schedules filed, nor is there in the petition any indication of the value of assets not disposed of by the receiver of the superior court or the trustee in bankruptcy, nor is it shown that such additional assets are within the jurisdiction of the court, or that any further action in the bankruptcy case is necessary to enable the petitioners to recover possession or enjoy the use thereof. For these reasons the petition would have been denied upon the first reading of it if the matters above recited were the only grounds specified therein.

The petition was treated seriously by the court on account of other allegations contained therein which are here quoted:

"V. Your petitioners further represent that one of the creditors of your petitioners, the Scandinavian-American Bank of Seattle, Washington, well knowing the value of said property and well knowing the value to be far in excess of the debts owing by said bankrupts, contriving to obtain possession of said property and to convert the same to its own use without making just compensation therefor, in fraud of these bankrupts and the bankruptcy law and this court, and conspiring and colluding with the said receiver of said State court, said Peter L. Larson, to conceal certain frauds of the said Larson committed in connection with said receivership, and to part of which frauds the said bank was a party, procured the said Larson to obtain from said superior court of the State of Washington for King County an order to sell and dispose of said property at a grossly inadequate price, to wit, for the sum of $24,125.00; and the said court, after the adjudication of these petitioners as bankrupts, and with knowledge of said adjudication, and after proper motion made to stay proceedings in said State court, and over and against the protests of these bankrupts, and without any jurisdiction to sell or dispose of said property, made an order pretending and assuming to sell and dispose of the same to one M. F. Mayhew, and directing its said receiver to execute to the said Mayhew a deed of the real estate and a bill of sale of the personal estate of said bankrupts then in the possession of said court; and the said receiver as directed, did, on the 7th day of March, 1902, execute and deliver to the said Mayhew a deed of the said real property and a bill of sale of the said personal property then in the hands of the said receiver belonging to the estate of these bankrupts; and the said receiver, on the same day, turned over and delivered to the said Mayhew the possession of the said real and personal property, being the same property set forth in the schedule prepared and filed by these bankrupts with their petition heretofore filed, as aforesaid, or so much thereof as had not previously been fraudulently converted and disposed of by said receiver, and, in addition, being the rest and residue of the property belonging to the estate of these bankrupts and not scheduled, owing to the inability of these bankrupts to schedule the same, as hereinbefore related, and which transfer of personal property included as well the books of account, stock books, records, and papers belonging to the estate of these bankrupts. And thereupon the said Mayhew, on behalf of the said bank, paid into the said court the sum of $24,125.00. And afterwards, and on the 7th day of March, 1902, the said court, with knowledge of the adjudication of these petitioners as bankrupts, and after proper motion made to stay proceedings in said cause, and over and against the objections of these petitioners, entered an order confirming its acts and doings and the acts and doings of its said receiver in the premises.

VI. That the money tendered in payment for the said property to give color to the said transaction and induce the said State court to make said order of sale, and deposited in the said State court in payment of the said property, as aforesaid, unknown to said State court, was furnished to the said Mayhew by the said Scandinavian-American Bank, and the property so delivered to and received by the said Mayhew was received by him in trust for the said bank. And the money so furnished to him and by him paid into court was furnished and paid with full knowledge on the part of the said bank and the said Mayhew, and any and all others connected with said transaction of the adjudication of these bankrupts as such, and with full knowledge

that the said State court had no jurisdiction over the said property and no title to the same, and had no right or jurisdiction to sell or dispose of the same.

VII. Your petitioners further represent that upon receiving the possession of the said property, the said Mayhew, at the instance of the said bank, immediately transferred the same, or a large part thereof, to a corporation known as The Seattle Shipyards Company, which corporation was formed at the instance of the said bank, and your petitioners believe and therefore allege that it was so formed for the purpose of receiving the said property and losing the identity thereof and of hiding and concealing the present pretended owners thereof. That the said The Seattle Shipyards Company is now in possession of the said property.

VIII. Your petitioners further represent that the said alleged sale of the property of these bankrupts was made by said State court to the said M. F. Mayhew subject to the incumbrances due against the said property, said incumbrances being in the neighborhood of $20,000.00. That after the alleged sale of the said property, as aforesaid, and the receipt of the said sum of $24,125.00, as aforesaid, the said Superior Court of the State of Washington for King County, with knowledge of the adjudication of these bankrupts as such, and after due proceedings had been taken by them to stay proceedings in said court, and against the protests of these petitioners, and with knowledge that the said property had been sold, if sold at all, and the money paid subject to the incumbrances existing against it, and with knowledge that no one held any liens against the said money, and that if the said sale was valid the title to the said money vested in the trustee in bankruptcy, paid out, through its register, about $20,000.00 of said moneys to certain of the creditors of these bankrupts holding liens, mortgages, and incumbrances against the said property, in fraud of these bankrupts and the bankruptcy law; and of which said amount of $20,000.00 so paid, as aforesaid, some $17,000.00 was repaid to said Scandinavian-American Bank, a secured creditor to said amount; that the said secured creditors so receiving the said money received the same with knowledge that the said property, if sold at all, was sold subject to the liens, mortgages, and incumbrances existing against it, and that they, the said creditors, had no right or claim to the moneys received therefor, and with knowledge of the adjudication of these bankrupts as such, and that the said court had no right or jurisdiction to pay over the said money or any part thereof to the or to any other than the trustee in bankruptcy. That the balance of said sum $24,125.00 over and above the amount so paid to said secured creditors has been wrongfully paid out by said State court in various directions and no part of the same has been paid into the estate of these bankrupts.

IX. Your petitioners further represent that at the time reference of these matters was made to the referee in bankruptcy, as aforesaid, the said referee was attorney for and an officer of the bonding company which had bonded said receiver in the said State court, said Peter L. Larson, and against which said receiver gross charges of fraud and mismanagement had been made in said court, and further charges were about to be made, and the said referee, with knowledge of said charges and the truth thereof, and with knowledge of said adjudication and of the reference of all matters thereto pertaining to him as referee, as aforesaid, became engaged as attorney for said bonding company in the said State court in an effort to free his said client from the said bond of said receiver, and to that end the said referee conspired and colluded with the said Scandinavian-American Bank to postuone and delay proceedings in these bankruptcy matters until after sale of the said property of these bankrupts had been made in the said State court, as aforesaid, and the money received therefor again distributed, as aforesaid, and the evidence of the fraud of said receiver concealed and removed as far as possible, and until the said bonding company, his client, should be released from the said bond of said receiver; and, in furtherance of said conspiracy the said referee wilfully failed and neglected to call the first meeting of creditors of these bankrupts to elect a trustee or to set in motion in any manner whatsoever the machinery of this court looking toward the administration by this court of the said estate, as by law and duty to these bankrupts he was required to do, until after the said alleged sale by said State court had been made and the property delivered to the said Mayhew, as foresaid, and the evidence of the fraud of said receiver to that extent removed and covered up, as aforesaid, and after the said money had been distributed by said court and after the said bond of said receiver had been discharged by said State court. That said first meeting of creditors was not called by said referee until the 14th day of April, 1902, as more fully appears from the records and files of this court in this matter, reference to which is hereby made.

X. Your petitioners further represent that at the instance of your petitioners, a subsequent reference of the matters to these bankruptcy proceedings pertaining was made to the Honorable Warren A. Worden, a referee of this court residing at Tacoma, without this said district, and the adjourned meeting of said first meeting of creditors

for the purpose of proving claims and electing a trustee was held before the said the Honorable Warren A. Worden on the 28th day of May, 1902.

XI. That at said adjourned meeting of creditors held for the purpose of proving claims and electing a trustee, the said Scandinavian-American Bank, still contriving and conspiring to retain possession of said property and to convert the same to its own use, and contriving and conspiring to prevent the administration of said estate by this court and to defraud these bankrupts and this court, procured to be proved some four or five assigned claims owned by it, the said bank, aggregating in amount about twenty-five dollars, and with said claims elected as trustee one E. F. Fisher, a bookkeeper in the employ of a former creditor of these bankrupts, and in anticipation of the election of said trustee, said bank, acting as aforesaid, employed or procured to be employed, for said trustee a firm of attorneys whose efforts with those of said trustee were to be devoted to stifling any and all proceedings in this court looking to the collection and administration of said estate. That afterwards, and in pursuance of said plan, on the 11th day of July, 1902, the said trustee, through said attorneys, filed with said referee his report to the effect that there petitioners had no property or estate, and, without notice to these bankrupts, or their attorney, procured said referee to accept and approve said report. That afterwards, and on the 5th day of December, 1902, the said trustee filed with said referee his final report, and on the 2nd day of January, 1903, without notice to these bankrupts, or their attorney, obtained his discharge as such trustee, and the said referee, without notice to these bankrupts or their attorney, filed with this court his report declaring the said estate closed. All of which matters more fully appear from the records and files of this court, reference to which is hereby made."

The charges and insinuations contained in the foregoing quoted paragraphs of the petition in connection with the records therein referred to, constitute an assault upon the business and professional character and integrity of the officers of the Scandinavian-American Bank, Richard A. Ballinger, J. T. Ronald, Alfred Battle; the attorneys for said bank, J. B. Metcalfe, John S. Jurey, and C. A. Reynolds, who at different stages of the proceedings were attorneys for the petitioners; John P. Hoyt, referee in bankruptcy; Warren A. Worden, referee in bankruptcy; A. C. Bowman, special referee; Peter L. Larson, receiver of the superior court; Richard Saxe Jones, attorney for said receiver; E. F. Fisher, trustee in bankruptcy; and the law firm of Gray & Tait, attorneys for said trustee, and the local representatives of the American Bonding & Trust Company, and M. F. Mayhew; and in addition to attacking the jurisdiction of the superior court, the petition accuses it of receiving into its custody the proceeds of property sold under its order subject to existing liens and incumbrances, and then knowingly disbursing the fund to mortgagees and secured creditors who had no right to receive any part of said money. I say that all of the persons and officials referred to are traduced by the direct charges or covert insinuations of the petition, because, if the transactions were fraudulent, all the actors therein were necessarily guilty participants in the sense of being either culpable parties to the conspiracies alleged or else grossly negligent or stupid. In an oral argument upon the final hearing of this matter, the attorney for the petitioners made a statement to the effect that the attorneys opposing the petition would not have become personally involved in the matter, if they had not obtruded into the case without having been employed by or authorized to represent any party having an interest to be defended, and upon that statement being rebuked by the court, the attorney murmured of injustice. And now, to show that the court did not misapprehend the nature of the petition, nor the theory upon which the previous proceedings were intended to be assailed, I will here quote a paragraph from the supplemental argument in writing which the attorney has been permitted to file:

"Reluctant as your honor may be to accept the facts, and embarrassing as it may be to counsel to state them, the truth remains that the receivership proceedings had been appropriated bodily by a set of lawyers in the employ of the Scandinavian-American Bank, bent upon the confiscation of the property. There is no other way of stating the situation accurately. The original character of the proceedings had been changed. The parties to the suit had been obliterated. There was no longer any plaintiff; there was no longer any defendants, except in names. The plaintiff had abandoned the suit, having arranged for the payment of his claim by the bonding company on the bond of the receiver (R., p. 117, lines 17 to 30); the defendants had been sold out by their counsel to the bank and to the bonding company. Moreover, the receiver himself and his attorney had abandoned the service of the court which appointed them and were secretly drawing their pay from the bank. Nor was there even a creditor left to raise a voice in opposition to any measure proposed by the bank, for the bank had bought up practically all the creditors; those it had not bought up had an arrangement made with the bonding company whereby their claims were to

be paid in full (R., p. 200, lines 5 to 13). Thus, the bank, though in nowise a party to the record, was in absolute control of the proceedings. It proposed then to appropriate to itself the property in the control of the court just as an ordinary robber in a dark alley might appropriate to himself the property on the person of his victim. The course pursued has been pointed out, and we shall not reiterate it."

In view of the assault upon character which the petitioner makes, this court deemed it unwise to shun the labor of an investigation by denying the petition on technical grounds. Therefore the petition was by an order of the court referred to the Honorable Eben Smith, an attorney of this court, and master in chancery of the United States circuit court for this district, with authority to hear evidence, make a full investigation, and report to the court whether there are any grounds for vacating the previous proceedings and reopening the bankruptcy case, and whether any of the officers of this court were guilty of misconduct in the matters specified. Judge Smith took charge of the investigation under the above-mentioned order, and patiently continued through several months, hearing all the evidence offered, and in the proceedings the attorney representing the petitioners took a wide range, inquiring into all the details of the various transactions involved in the litigation in the several cases in which the firm of Heckmann & Hanson were parties, and in his examination of Mr. Fisher, trustee, Captain Larson, the receiver, and the officers of the Scandinavian-American Bank, the attorney assumed the rôle of an inquisitor and plied them with direct and searching questions affecting the matters in issue, and also harassed and vexed everybody concerned by pursuing irrelevant inquiries to an unreasonable extent. Only the testimony of persons who were called to testify at the instance of the petitioners has been transcribed and filed in court, but that part makes a volume of 886 typewritten pages. As a mere sample, showing the trivial character of interrogatories propounded and the method persistently observed in this attempt to make something out of nothing, I will here quote a few pages from the examination of Mr. Fisher, the trustee:

"Q. Now, after your appointment as trustee and before you were finally discharged as a trustee, did you ever talk over the bankruptcy matters, the matters relating to the bankrupts estate of Heckmann & Hanson, with Mr. Ballinger, of the firm of Ballinger, Ronald & Battle?—A. Not to my knowledge. I don't know the gentlemen.

"Q. Or with Mr. M. F. Mayhew?—A. I don't think so; no, sir.

"Q. With R. S. Jones?—A. Not to my knowledge.

"Q. With Peter L. Larson?—A. No, sir.

"Q. With William L.?—A. No, sir.

"Q. With James Campbell?—A. No, sir.

"Q. Any body representing the Union Hardware Company?—A. No, sir.

"Q. With E. L. Grondell?—A. No, sir.

"Q. Any body representing the Scandinavian-American Bank?—A. No, sir.

"Q. With D. C. Conover?—A. No, sir.

"Q. With John Larabee?—A. No, sir.

"Q. With Charles W. Russell?—A. No, sir.

"Q. With F. E. Brightman?—A. No, sir.

"Q. I will ask you if you know D. C. Conover?—A. No, sir; not to my knowledge.

"Q. Do you know John Larabee?—A. No, sir.

"Q. Do you know Charles W. Russell?—A. I do not place him.

"Q. Do you know F. E. Brightman?—A. No, sir.

"Q. You are sure none of those last four ever talked with you about——A. I don't know whether they did or not; I don't know them. If they did, they did so as any other strangers to me. I am not acquainted with any of the gentlemen that I can remember—that is, the four that you spoke of.

"Q. When was the subpœna served upon you to appear at this time?—A. What time?

"Q. Well, to appear on the 8th.—A. Here?

"Q. Yes.—A. Why, it was served on me—I think it was day before yesterday. I guess I have got it dated here (producing paper). I think I dated it; no, I did not, either. This is dated the 2nd of May, but I think it was served on Saturday, I guess.

"Q. Have you talked with Mr. Gray since you received that?—A. Yes, sir.

"Q. When?—A. Why, I don't remember; yesterday.

"Q. To whom did he send you?—A. Didn't send me anyone.

"Q. Have you talked with anybody else about it?—A. Why, yes; with the firm I am employed with.

"Q. Who is that?—A. Spicklemire.

"Q. Have you talked with anybody else about it?—A. I may have talked with two or three, I don't know just who they are. I think I have. I spoke to some of the boys, friends of mine at Ballard, because it kind of upset me about going away. I spoke to Judge Smith.

"Q. With whom?—A. Judge Smith.

"Q. Who else have you talked with about it?—A. I don't recollect who.

"Q. You can't recall anybody?—A. I have just told you several.

"Q. Well, you say it preyed upon your mind some?—A. It did not prey upon my mind; it just simply——

"Mr. BATTLE. I object to counsel—have you ever used the word "prey"?

"The MASTER IN CHANCERY. He did not use the word.

"Mr. BATTLE. I object to counsel's method of unfairness in the examination of this witness by attempting to put the witness in the light of stating this matter preyed upon his mind when the witness said nothing to that effect, and nothing to which such a construction could be given.

"The MASTER IN CHANCERY. The answer of the witness was simply that it upset him as to his calculations about leaving.

"Q. I may have used the wrong word; I would not intentionally mislead you; perhaps weighed would be the better word.—A. What is the question?

"Q. This matter you said weighed upon your mind some?—A. It did not. I don't know as it weighed upon my mind; it was a matter that comes the same as everything else in business, comes up in a man's life every day, and he will probably speak of it.

"Q. Now, have you talked with any other attorneys about it besides Mr. Gray?—A. I don't remember.

"Q. You can't recall?—A. No, sir.

"Q. Have you ever talked with any other attorneys to-day about it?—A. No, sir.

"Q. Besides Mr. Gray?—A. Not to my knowledge, except you.

"Q. Did you yesterday?—A. Not to my knowledge.

"Q. You would remember it if you had, would you not?—A. Well, if it happened to be a passing event I don't know as I would or not. I have lots of things that come across my mind in a day the same as anyone else.

"Q. Have you seen the petition which I have filed in this matter asking to reopen the estate?—A. I have not.

"Q. Or any part of it?—A. Not to my knowledge.

"Q. Has anybody called your attention to it?—A. Probably nothing more than this summons. That is all that I know about it.

"Q. They have not referred to this petition in any way?—A. No one that I ever heard of at all. I don't think they did, I don't remember it.

"Q. Do you want to tell the court that you have not talked with Judge Battle about it, Mr. Fisher?—A. Why, I have not talked with the judge—yes, I have, about it, but not directly; I don't know exactly; it was more on the subpœna than anything else.

"Q. You went down to Judge Battle's office and talked with him about it, now, did you not?—A. Yes, I went to his office and asked him what he could do toward having it set for another day.

"Q. When was that?—A. That was yesterday.

"Q. That was yesterday afternoon?—A. Yes.

"Q. And you just recall it, I suppose?—A. Just recall it, yes.

"Q. Now, he called your attention to this petition, did he not?—A. I don't remember whether he did or not.

"Q. Did he state anything about what I have stated to this court that the Scandinavian-American Bank procured to be approved some four or five assigned claims and that the claimants elected as trustee one E. F. Fisher, a bookkeeper in the employ of a firm a creditor of these bankrupts, and in anticipation of the election of said trustee, the bank, acting as aforesaid, employed or procured to be employed for said attorney a firm of trustees whose efforts, with those of said trustee, were to be devoted to stifling any and all proceedings in this court looking to the collection and administration of said estate?—A. Nothing was said about it at all; never heard a word that there was——

"Q. What did you say to Judge Battle?—A. I told him that I had a subpœna to be here on the 8th and I wanted to know what I could do about getting away. I went to Judge Gray on the same line.

"Q. How did you come to go to Judge Battle?—A. Why, I think Judge Gray said that he might be able to—I don't know just how I did come to go there. I think he told me to see Judge Battle, see what he could do. I think that was it.

"Q. You think Mr. Gray suggested that to you, do you?—A. Yes. And I did not get any—let me see now, I don't know whether that was yesterday or day before—Saturday, I guess it was—and I could not get any satisfaction and I telephoned up here to Judge Smith and he told me about it.

"Q. How many times did you see Judge Battle about it?—A. Once.

"Q. How long were you there?—A. About three minutes, I guess; maybe less than that.

"Q. Were you ever employed by the Scandinavian-American Bank?—A. No, sir.

"Q. Are you any relation to the Fisher who is or was?—A. No, sir; I don't know him. Didn't know there was any other man of my name there.

"Q. Have you talked with Mr. Mayhew since you have been subpœnaed?—A. No, sir; have not seen Mr. Mayhew or spoke to him for a year, I guess, to my knowledge—more than that, I guess."

During the progress of the investigation an application was made to the court for a peremptory order requiring the officers of the Scandinavian-American Bank to produce the books of the bank before Judge Smith for examination and to be used as evidence. The application was opposed on the ground that it would interfere seriously with the business of the bank to be dispossessed of its books containing entries of transactions with its customers, and in that connection Mr. Alfred Battle, one of the attorneys for the bank, made a positive statement to the effect that the books, if produced, would not furnish any evidence material in the case additional to or different from the testimony given or which would be given by the officers of the bank. Thereupon the attorney for the petitioner persisted in urging his application for an order requiring the production of the books, and the court interrogated him as to whether he would assume the responsibility of saying to the court that the books do contain evidence tending to prove a right to reopen the case on the ground of misconduct on the part of any attorney or officer of the court, to which the attorney made the audacious response that if permitted to examine the books he would undertake to bring before the court evidence which would make it necessary to disbar Richard A. Ballinger, J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds, and upon that statement being made in open court the application was granted, and at the same time the court warned the attorney that if he made use of the order and then failed to make his declaration good the court would disbar him. Reckless of consequences to himself, as well as the rights of others, the attorney persisted in requiring production of the books and has had all the advantage which he could make of their contents.

As the result of his investigation Judge Smith has filed a report in writing, the conclusion of which is as follows:

"And as findings with respect to the right of the bankrupts to have the cause reopened and with respect to the conduct of such attorneys and officers of this court, as appear to be accused by the allegations of said petition, I find that such right on the part of the bankrupts to have said cause reopened is not established by the proofs and does not exist.

"And as to the conduct of the officers and attorneys of this court who have been engaged in these several matters, who appear to be accused by the allegations of the petition, such seeming accusations are not well founded in fact and are not sustained by the proofs.

After Judge Smith's report had been filed and before the court could find an opportunity to review the proceedings, the attorney for the petitioners presented to the judge of this court a petition in writing for the disbarment of Richard A. Ballinger, J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds, containing a partisan recital of the business and litigation of the Heckman & Hanson firm, and of alleged fraudulent misconduct of the attorneys mentioned in connection with said matters. Action upon said petition has been stayed until a disposition can be made of the petition to reopen the bankruptcy proceedings by either an affirmance or rejection of Judge Smith's report, the consideration of which has been necessarily delayed several months by reason of the necessity for devoting the time and energies of the court to the performance of other duties. Finally, on the 8th day of June, 1904, the matter was brought on to be heard in open court, and arguments in favor of affirming the report of Judge Smith were made to the court by Mr. Alfred Battle and Mr. Richard A. Ballinger, and in opposition thereto by Mr. J. L. Finch, the attorney for the petitioner, who, in addition to oral argument then made, has since filed two voluminous written arguments which have been carefully read by the court.

As I have already indicated, the object of the court has been to ascertain the merits of the controversy, and to that end technical rules of pleading and practice have not been permitted to have controlling effect. I sincerely hope that this court may never again permit itself to be led into the commission of a like error.

The petition presents two main subjects of inquiry—first, the rights of Heckmann & Hanson; and, second, the question whether the court has been imposed upon by deceitful practices of members of the bar and officers of the court. With respect to the first, the gist of the complaint is that the bankrupts have been despoiled of an estate valued at over fifty thousand dollars, and a successful business has been wrecked by means of fraudulent schemes concocted and managed by a leading financial institution, aided by lawyers who have maintained the highest professional standing in

the community for many years, with the connivance and willing acquiescence of officers of this court, and false reports made by them.

In this connection the actual value of the Heckmann & Hanson estate is a matter of prime importance, and the evidence with respect thereto shows that the whole estate was sold by the receiver of the superior court for $24,125.00. Mr. Heckmann could have prevented that sale by finding a bidder who would give for the property one hundred dollars in excess of the above amount, and he was so informed, but failed to bring forward any person who would raise the bid, and this court caused an investigation to be made as to the value of the property and appointed for that purpose, as special referee, Mr. A. C. Bowman, a man of experience and intelligence and recognized integrity, upon whose report the court relied in refusing to interfere by an injunction, on the ground that a better price could not be hoped for and delay in making the sale would be attended with additional expense which would diminish the net proceeds. The property consists of real estate purchased by Heckmann & Hanson for twelve thousand dollars, and such machinery and appliances for a shipbuilding business as the firm had been able to construct and accumulate during a period of about three years in which the business was carried on, after starting with the capital which has been mentioned, the total value of which was approximately $1,500.00. In giving his testimony Mr. Hanson estimated the value at $54,000.00, but it is shown that as a result of an injury he is unable to remember even the language of the country of which he is a native. An estimate of the value of the property by a witness whose faculties are thus impaired is entitled to no consideration. Mr. Heckmann's testimony as to the value is equally untrustworthy. On being interrogated as to the value of the property he gave only an evasive answer, as follows: "I got a statement which was furnished me by Mr. Nelson, the bookkeeper of this firm, that the assets was $52,800.00—some odd dollars—somewhere about the 12th of June, the valuation of the property that we owned." In the written argument in behalf of the petitioners Mr. Finch disposes of this part of the case briefly and beautifully as follows: "It is undisputed that the bankrupts were possessed of a considerable amount of property at the time of their adjudication. As the value thereof is immaterial, it may as well be accepted at the valuation of the bankrupts, namely, $60,000.00."

Credit, when established upon a basis of probity and business ability, is a valuable asset in any business, and is to be taken into account in estimating the value of the good will of an established business. Now, what was the value of Heckmann & Hanson's credit at the time when the Scandinavian-American Bank commenced to litigate with them? Let the record answer. In response to a leading question by Mr. Finch, Mr. Heckmann made the following statement when he was under examination as a witness before Judge Smith: "Every bill that was ever presented to the firm, from the first time we started until we got into this difficulty, was paid right away, whenever it was presented or part payment made, providing it was correct." The schedule of the firm's liabilities annexed to their original petition herein is a flat contradiction of this statement, and shows Mr. Heckmann to be a mendacious witness. It appears by uncontradicted evidence that a bonding company which became surety for the performance of a contract with the United States Government, under which the firm did some work upon the steamer *Seward*, was by reason of the neglect of Heckmann & Hanson to pay the wages of their employees and pay for materials used in that work, compelled to disburse several thousand dollars in the discharge of that obligation. Mr. Heckmann's conduct in the matter of the schooner *Alice* was enough of itself to shatter the firm's credit. The *Alice* was mortgaged to the Scandinavian-American Bank for a large amount, and coming into port in a damaged condition the vessel was placed in charge of Heckmann & Hanson for repairs, and it was then arranged for the bank to pay for the repairs as the work progressed. The bank was also a creditor of Heckmann & Hanson and held mortgages upon their plant for money loaned, aggregating eight thousand dollars. Under these conditions, after issuing checks upon the bank on account of the *Alice* contract to the amount of nearly seven thousand dollars, Mr. Heckmann attempted to perpetrate a swindle by causing a suit *in rem* to be commenced against the vessel for the full amount of the bill for repairs, after having refused to either assign the right of his firm to a maritime lien therefor to the bank or repay the money which had been drawn from the bank on his checks. That case was the beginning of the litigation which has culminated in this proceeding. Mr. Heckmann having forced the issue, the bank was obliged to commence suits to foreclose the mortgages and recover what was due, to defeat which Mr. Heckmann aided, if he did not instigate, the proceedings for placing the business of the firm in the control of the superior court by the appointment of a receiver. The business was wrecked, but Mr. Heckmann was the wrecker; and the creditors have only done what was the legitimate by compromising useless litigation in a manner to realize as much

as could be realized out of the wreck. The aggregate amount of the firm's liabilities, added to the individual debts of the two partners, is within one or two hundred dollars of being equal to the cash proceeds from all of their assets, and their creditors are losers of whatever sums have been expended in fees and expenses incident to the litigation. In thus balancing their assets and liabilities I have subtracted $6,872.12, the amount of checks drawn on the schooner *Alice* account, the petitioners claiming that this item was improperly scheduled as a debt of the firm, and I adopt that suggestion, for the reason that according to my understanding of the facts this money, instead of being loaned to the firm was payment for the work done upon the *Alice*, and in compromising the litigation this account was canceled by the transfer of the title to the vessel which the receiver acquired by purchase thereof from the United States marshal in execution of the decree of this court rendered in the suit above mentioned.

By voluntarily going into bankruptcy the petitioners surrendered their property for the benefit of their creditors. The amount thereof at the highest valuation obtainable in cash was not sufficient to pay their debts in full in addition to the necessary expenses of litigation initiated by Mr. Heckmann. There being no surplus which the petitioners may justly claim, they are not concerned with the precise manner in which the money has been disbursed among their creditors. So long as the creditors are content, there is no occasion for the court to disturb the proceedings by which the administration of the estate has been conducted to completion, and as no question has been raised with respect to the right of the bankrupts to be discharged from their liabilities, there is no equity whatever in the petition affecting the first branch of inquiry.

The petitioner accuses Judge Ballinger of having betrayed the petitioners while acting in the double capacity of attorney for them and as an attorney and officer of the Scandinavian-American Bank. It is claimed that he induced Heckmann & Hanson to borrow five thousand dollars from the bank, and with the design of ruining Heckmann & Hanson he induced Heckmann to sign a writing which he did not understand, which afterwards proved to be a general power of attorney, and then, taking advantage of Heckmann's absence, executed a mortgage to the bank to secure a short-time loan, and induced Hanson to join in the execution of the mortgage. This accusation is not supported by a scintilla of evidence. On the contrary, it appears that he, in connection with Judge Ballinger, applied to the bank for a loan of five thousand dollars, to be furnished when other arrangements were completed for the purchase of a certain interest in the premises upon which the shipyard is located, four thousand five hundred dollars of the money being required to pay for that interest. Heckmann was anxious to have the purchase completed when the conditions were favorable, and having to make a trip to Alaska he left the business in charge of Judge Ballinger, with power to act, and not only executed, but himself wrote, the power of attorney under which Judge Ballinger acted for him in executing the mortgage, and all of the money loaned was used by the firm, as Heckmann designed that it should be used.

In his report, Judge Smith has specifically exonerated other members of the bar and officers of the court who were actors in the various proceedings, and has found the petition to be untrue as a whole. I have now gone sufficiently into the details of the case to indicate the grounds upon which I concur in the findings and conclusions of the special referee. No substantial rights of any party were in any wise prejudiced by the manner or dates of making entries of transactions in the books of the Scandinavian-American Bank, and Mr. Mayhew's position, whether he was a dummy representative of Mr. Chilberg or something else, is not, in view of all the circumstances already set forth, an index of fraud; therefore, I do not feel called upon to comment upon the case further. Let an order be entered denying the petition to reopen the case.

(Signed) C. H. HANFORD, *Judge.*

Filed in the U. S. District Court, Dist. of Washington, July 11, 1904. R. M. Hopkins, clerk; H. M. Walthew, deputy.

EXHIBIT No. 44.

In the District Court of the United States for the District of Washington, Northern Division.

In the matter of C. A. Heckmann and M. E. Hanson, copartners, doing business as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson, individuals, bankrupts. No. 2203. Argument.

To the Honorable C. H. HANFORD, *Judge:*

In accordance with leave granted on the 8th day of June, 1904, in open court at the time hearing was had orally in the above-entitled matter, the bankrupts submit the following written argument:

This hearing grows out of a petition made to the court on the part of Heckmann & Hanson asking to have their estate in bankruptcy reopened.

The court is without any pleadings in the matter other than said petition and an amended petition, filed by leave of court, after proofs taken. No issues in the case were ever formed. For that reason it becomes necessary to follow closely the course of proceedings subsequent to the filing of the petition if court and counsel are to arrive at a mutual understanding of what is properly before your honor for argument.

The petition to have the estate reopened was presented to your honor ex parte in chambers. It contained, among other things, allegations reflecting seriously upon various parties, among them the referee of this court in bankruptcy. At the request of the bankrupts the entering of any order thereon was deferred by your honor until such time as your honor could acquaint yourself thoroughly with the contents of the petition. This was on March 18, 1903.

On April 6th following word was received by counsel for the bankrupts that your honor would take the matter up in open court on the 11th. This word came by telephone from Messrs. Ballinger, Ronald & Battle, attorneys, and carried with it the information that it proceeded from the court.

On April 11th the bankrupts moved the court to strike certain affidavits which, from the moving papers, it appeared had been served on counsel for the bankrupts on the 8th and which it was assumed had been filed, said motion being made upon the grounds, among others, that the affidavits were not made or filed by or in behalf of any party interested in any matter presented by said petition and failed to meet any material issue contained therein, and that the same were generally incompetent, irrelevant, and immaterial; that even the source from which they came was in doubt. Your honor became impatient at the motion and, without consulting the affidavits, denied the same. At the same time the court announced that, on its own motion, it would refer the matter to Judge Eben Smith "to make a report as to what he finds the facts to be and whether they (the affidavits) are material to reopening the case or only material to the character of the parties affected."

The order of reference, however, was worded somewhat differently than was anticipated by counsel for the bankrupts from the remarks made by your honor in open court, as above quoted. It directed Judge Smith, as special referee, to investigate and report his findings "with respect to the right of the bankrupts to have the cause reopened and with respect to the conduct of such attorneys and officers of the court as appear to be accused by the allegations of the petition."

Hearings upon the reference were had from time to time before the special referee. Those hearings were interrupted, however, and the matter again came before your honor on July 16, 1903, upon a certificate from Judge Smith, from which it appeared that a witness duly subpoenaed *duces tecum* to appear before the special referee had failed to produce those certain books and records called for by his subpoena. In the course of the hearing induced by said certificate, your honor asked of counsel for the bankrupts, the writer, in effect, whether if he had the books called for he would be able to show anything that would reflect in any way upon any parties concerned in the matters under investigation before the special referee; to which counsel replied, in effect, that if he had those books he would bring to you the evidence sufficient to disbar Judge R. A. Ballinger, General J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds. Your honor's reply was to the effect that such remarks should be made good, and that unless they were you would, in turn, disbar the one making them. And an order was accordingly entered that the books desired be produced before the special referee.

Subsequent hearings were had and the matter finally submitted to the special referee in the following September; and on January 26, 1904, he made his report to this court, denying the right of the bankrupts to have the estate reopened.

Exceptions to this report were duly filed by the bankrupts on February 25th following.

May 10, 1904, the Seattle Shipyards Company, by Ballinger, Ronald & Battle, its attorneys, and Messrs. R. A. Ballinger, J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds *in propria persona*, filed in the cause a motion for an order confirming the report of the special referee and disbarring the attorney for the bankrupts.

Thereupon, on May 13, the bankrupts duly filed exceptions to said motion, for the reason that the parties making same had no interest in the subject matter of the proceedings, individually or collectively, and that they had no right to make any motion therein; and further, that there was nothing before the court upon which the court could act.

On June 7th, in the forenoon, on application of the bankrupts, the court signed an order directing the special referee to return the evidence submitted by the bankrupts upon the reference to him, a showing having been made that the costs and expenses to be incurred thereby had already been met by the bankrupts.

In the afternoon of the same day the court on application of Messrs. Ballinger, Ronald & Battle, and without notice to the bankrupts, set the matter for hearing on the motion of the Seattle Shipyards Company and the parties *in propria persona*, and upon the exceptions of the bankrupts to the report of the referee for June 8th at 10 a. m.

At the hearing the court, of its own motion, eliminated all questions relating to disbarment of counsel. At the same time your honor refused to consider first the exceptions of the bankrupts filed May 13 to the motion of the Seattle Shipyards Company, and others, filed May 8th; but ruled that the same would be given such consideration as it merited on the hearing of the matters in their merits.

This extended résumé of proceedings becomes necessary because of the evident misapprehension of the court as to the relation sustained to the record by the parties who appeared before your honor on the 8th inst., and which misapprehension can be best clarified by a discussion of the bankrupts exceptions filed May 13th to the motion of the parties filed May 8th.

By those exceptions the question is raised that the parties initiating the recent hearing of June 8th have no standing in court. The parties, it will appear by reference to their motion, are the Seattle Shipyards Company, appearing by its attorneys, Messrs. Ballinger, Ronald & Battle, and Messrs. R. A. Ballinger, J. B. Metcalfe, Richard Saxe Jones, and C. A. Reynolds, appearing in propria persona. (The attempt to connect Judge Hoyt with the motion by incorporating his name in the body thereof when he does not sign the same must not be allowed to mislead the court.) Their motion is to confirm the report of the referee and to disbar counsel.

But Messrs. Ballinger, Jones, Metcalfe, and Reynolds, personally or otherwise, or any of them are in nowise connected with the record. Though your honor may think otherwise, we respectfully submit that the first introduction your honor received to them was on the 16th of July, when the writer made the statements in open court heretofore attributed to him, though it is now well known to all that they, or a part of them representing all, had appeared and taken part in the proceedings before the special referee for three months previous to that date. From remarks made from the bench at the time oral arguments were had we believe that your honor must have the impression that these attorneys or some of them were referred to in the petition to reopen the estate as attorneys devoting their efforts to stifling proceedings while the bankruptcy matter proper was in court and that they it was who made, or were supposed to have made, a counter showing to the petition. If such is the case, it is a wrong impression, though it makes quite understandable now why the firm of Ballinger, Ronald & Battle received from your honor notice that you had in your possession the ex parte petition of the bankrupts to reopen the estate and why no greater consideration was given to the motion to strike their affidavits.

The absence of those offidavits from the files is a very important matter to the bankrupts and their counsel, for two reasons: First, they would show conclusively that the parties instigating the hearing on June 8th were not the parties who attempted to make a counter showing to that of the bankrupts when they asked to have their estate reopened; second, they would show whom, if any one, the firm of Ballinger, Ronald & Battle did pretend at that time to represent. The determination of these two points would tend greatly to harmonize your honor's notions of the record with those entertained by counsel for the bankrupts; for, were your honor then to refer to the petition to reopen the estate and later were to acquaint yourself thoroughly with the record which is coming to your honor from the special referee, your honor would have more sympathy with the writer's statement made in oral argument—that but for the appearance of Messrs. Ballinger, Jones, Metcalfe, and Reynolds before the special referee when they had no business there your honor would not have heard from the writer the charges made on July 16. We did not "falsify" when we made that statement; nor did we mean thereby to have your honor infer that you would

not have heard the same or similar charges later on, when the time therefor should have been more propitious.

At any rate, the parties now appearing in propria persona can only be interested in a personal vindication, a matter to be accomplished in some regular proceeding. Surely, it is an unheard of proceeding in the law that one feeling himself aggrieved in a personal way may come into a case to which he is an utter stranger, and, in that case, move the court to disbar the attorney of one of the litigants.

And who is the Seattle Shipyards Company, the remaining one of the movents? As a matter of identity, it is a corporation formed by the bank to take over the Heckmann & Hanson property. But never, until the motion of the 8th of May was filed, did it appear in this cause. Therefore it has no standing here now.

But if any of the parties making the motion, or anyone else, had standing in the court, there is nothing upon which the court can hear the matters in the absence of the evidence. Our concern is not that the matter be not heard at all, but that it be not heard until the evidence arrives.

Therefore, our exceptions to the motion, and we respectfully submit the exceptions should be sustained.

The following is on the merits, and with the hope that the evidence will reach your honor as soon as the argument:

The bankrupts were adjudicated such January 17, 1902.

At the time of their adjudication their property was in the hands of the State court, acting through its receiver, one Peter L. Larsson. The receiver had been appointed the preceding July, in a suit brought on an account stated. Such proceedings had been had in the receivership case that, at the time of adjudication, a sale of the property was proposed, a bid therefor had been received, and the court was about to accept same.

With the petition for adjudication, the bankrupts filed general charges of fraud in connection with the sale proposed to be made by the State court, and upon that showing this court, with the order of adjudication, issued a restraining order directed to the State court restraining it from proceeding further with the sale.

Four days later, January 21st, Mr. Richard Saxe Jones, attorney for the receiver in the State court, appeared in this court professing that he came for the *sole purpose* of suggesting to the court that any and all orders theretofore made had been made upon a misunderstanding of the facts. He set forth no facts that the court thereby might become informed, but took an order from your honor that the bankrupts show cause forthwith before Commissioner A. C. Bowman why all the orders theretofore entered by this court be not set aside; that at the hearings to be had Mr. Jones and Judge R. A. Ballinger, "as counsel for parties in interest" be allowed to be present and take part; that the hearing be confined to two questions: 1st, was the sale proposed by the State court for an adequate price; and 2d, could a better price be obtained by sale in the bankruptcy court; and the order further recited that notice of any and all proceedings in the bankruptcy cause be at all times given to Mr. Jones and Judge Ballinger A peculiar order.

After hearings had before him, a report was made to this court by Commissioner Bowman favorable to Mr. Jones and Judge Ballinger, the same was confirmed by your honor, and the restraining order issued against the State court was dissolved. The parties went back to the State court, and there Mr. Reynolds, the attorney for the bankrupts, assisted Judge Ballinger and Mr. Jones in putting through the very proceedings he was hired by the bankrupts to oppose.

From the evidence submitted to the special referee it appears that while proceedings were being had before Commissioner Bowman the American Bonding & Trust Company, the surety on the receiver's bond in the State court, paid to Mr. Reynolds, the bankrupts' attorney, the sum of $100, and also engaged him as its attorney in the receivership proceedings in the State court and in three or four other matters in which it was engaged; and it further appears that the Scandinavian-American Bank paid Mr. Reynolds a further $150 after the receiver of the State court had turned over to the agent of the bank the possession of the property of the bankrupts then in his custody and control. This money, the bankrupts believe, was paid by the bondsmen of the receiver and by the bank, and the services of Mr. Reynolds in other matters engaged by the same bondsmen, as a consideration to Mr. Reynolds to induce him to simulate protection of the bankrupts' interest before Commissioner Bowman and your honor, and later to help turn the property over to the bank under the guise of a sale by the State court. How the order of January 21st could have been obtained by Judge Ballinger and Mr. Jones without any showing of facts, and without notice, and Mr. Reynolds hauled up forthwith before Commissioner Bowman, without a protest being registered by him, we are unable to understand, unless, indeed, he possessed an understanding with the parties obtaining the order. That

he advised Mr. Heckmann that that part of the order to the effect that special notice of all subsequent proceedings must be given Judge Ballinger and Mr. Jones meant that no further action could be taken in your honor's court without their consent is undenied. *He admits that he kept his client off the stand before Commissioner Bowman, and says that he did so for fear he (Heckmann) might cast some reflections on Judge Ballinger, Mr. Jones, or General Metcalfe.* The evidence is conclusive that he was serving the bonding company. The order of March 6th made by the State court and found in the files of No. 32817 names him as its attorney. And Mr. Hills, the employee of the local agents of the company, testified that the company looked to Mr. Reynolds for advice. The excuse that the money paid him was advanced "for expenses" in investigating a matter of common interest to the bankrupts and the bonding company sounds well enough, yet the only item of expense of any moment was the commissioner's fees, and they have not been paid to this day. But that "explanation," lame as it is, doesn't attempt to explain the motive actuating the company in hiring Mr. Reynolds in other matters, their introduction to him having been obtained in the Heckmann & Hanson "investigation." And when it is considered that the more fraud on the part of the receiver, Mr. Reynolds could uncover for the bankrupts, the greater would become the liability of Mr. Reynolds's other client, the bonding company, the question of good faith to the bankrupts becomes an impossible one.

But what about the $150 paid Mr. Reynolds by the bank. He says it was a contribution to a sick benefit for Mr. Hanson, of Heckmann & Hanson; and what is further, that he has it in his office to-day and is ready and willing to turn it right over to Mr. Hanson at any time that he will come and get it.

The fact that the bank denies the "contribution" and contends that the money was advanced for third parties, when in fact it was advanced by the bank in a matter of its own, no matter for what purpose, as we shall show further along in the argument, disposes of the question.

This circumstance alone, the payment of $250 to the bankrupts' then attorney and the employment of him in the case by parties with adverse interests, and Mr, Reynolds's efforts to forfeit the rights of his clients, to the very party now opposing this proceeding, the party being one of those to pay him the said sum, is sufficient, we believe, to warrant the court in reopening the estate.

Let us not leave this period in the history of the case without calling your honor's attention to the fact that the evidence of the "respondents" before Special Referee Smith recently was to the effect that the property of Heckmann & Hanson was purchased by Mr. Mayhew for a party of three gentlemen, who together had made up a fund of $30,000 and deposited it to his order in the bank for the purpose. The special referee accepted the story and incorporated it in his report.

This man, Mayhew, is the same party who had made a bid for the property in the State court, and which stood as the excuse for your honor's reference to Commissioner Bowman to learn if $24,125, the amount of the bid, was an adequate price for the property. Commissioner Bowman reported that it was.

It must be reassuring to your honor to learn that the same parties who induced a special referee of your court to believe that they had provided a fund of $30,000 with which to purchase the property, can just as readily induce a commissioner of your court to believe that $24,125 is an adequate price therefor.

And then to ask your honor to confirm both reports!

It is undisputed that the bankrupts were possessed of a considerable amount of property at the time of their adjudication. As the value thereof is immaterial, it may as well be accepted at the estimation of the bankrupts, namely, $60,000.

This property is alleged to have been sold by the State court on March 6th to one, M. F. Mayhew, for the sum of $24,125. That the sale is void as a matter of law we shall develop later. That it is void in fact, for fraud, we will try now to show.

We lay down our proposition at the outset, that the "sale" was the culmination of a scheme on the part of the Scandinavian-American Bank of Seattle to convert the property of Heckmann & Hanson to its own use; that absolutely no money was ever offered or received for the property; that the possession of the property was obtained by the bank through the connivance and with the assistance of the receiver of the State court, for which assistance the receiver was paid a price by said Scandinavian-American Bank.

After your honor (on March 3d) released the restraining order before granted against the State court, the receiver went back to that tribunal and on March 6th took an order to be found in the files of No. 32817 that his report recommending the sale of the property be approved; that he accept the proposed purchase price of $24,125; and that he duly convey the property by appropriate instruments.

Two days later, March 8, he made to the court his fourth and final report, saying that he had received the purchase price of the property; that he had conveyed the same to Mr. Mayhew by deed and bill of sale; and that he had placed Mr. Mayhew in possession.

On March 24th an order was taken approving the fourth report and discharging the receiver.

That the receiver obtained no money for the property, and that it was never contemplated he should, but that the whole proceeding was a scheme on the part of the bank to gain possession of the property, see the order approving his fourth report and discharging the receiver, filed March 24, 1902, in files No. 32817, and note these points:

That Mr. Larsson was discharged while professing to have in his hands the sum of $21,712.50;

That at the same time there were owing and unpaid debts of the receivership to the amount of $570.30;

That the receiver was directed, after his discharge, to first pay those debts from the fund (pretended to be on hand) and then to deposit the balance of the fund in the Scandinavian-American Bank;

That Mr. Jones was granted for his compensation as attorney for the receiver, $1,400, *in addition* to anything theretofore received;

That Mr. Larsson was allowed as receiver $1,600, less anything theretofore received.

Then, refer to exhibit No. —— the pass book of Mr. Larsson at the Scandinavian-American Bank, and note that on the day of his discharge Mr. Larsson was credited with $2,006.45.

Turning to exhibit No. ——, and from the statement of receipts and disbursements therein, note that the $2,006.45 is ten per cent on the amount afterwards (April 15th) to be deposited in court.

Then, again, in the receivership files No. 32817 refer to a collection of vouchers filed March 25th and note that they were filed the day after the receiver was discharged and that they represent payment of the debts of $570.30 mentioned in the fourth report above.

Finally, turn to exhibit No. ——, the stubs of the check book used by Mr. Larsson in checking out the $2,006.45 in the bank, and note that the names and amounts of the first nineteen checks correspond to the names and amounts of the vouchers.

Also note the last two stubs, R. S. Jones, $940.00, P. L. Larsson, $494.15.

These facts then become self-evident: That on the day Larsson was discharged as receiver the Scandinavian-American Bank paid him 10% on the amount afterwards deposited in the registry of the court; that out of this amount he paid the debts of the receivership, and the balance of the amount he divided between himself and Mr. Jones.

But Mr. Jones and Mr. Larsson were to be paid for their services, according to the order, $3,000.00, less anything Larsson may have received theretofore; that is, Mr. Jones was to receive $1,400.00, in addition to anything theretofore received, and Mr. Larsson $1,600.00 less any amount theretofore paid to himself. This part of the order was a "blind." After it was entered, neither of them ever received a penny from the court. Whatever compensation they received they received from the bank, and it consisted of whatever they could save of the 10% item after they had paid the expenses of the receivership. What they may have paid themselves out of the estate previous to the entering of the order, no one knows—their books were never audited.

They may have the nerve to say to your honor that the amount the bank paid them was really equivalent to the amount the court allowed them; that any discrepancy between amounts is attributable to Mr. Larsson's compensation of $1,400 being reduced by a credit for amounts previously had.

But the spectacle of a receiver receiving his compensation from any one but the court whose servant he was is appalling; nor is our confidence in the transaction increased any when we come to learn that such compensation came from the institution which later became the owner of the property.

But in any event, upon what possible hypothesis consistent with common honesty, can the receiver and his attorney have paid the *legitimate expenses of the court?* Find any explanation, other than that they were to turn over the property *free of debts* in return for 10% on the amount which it would cost the bank to buy up creditors and for loans on the property, and your honor will be more successful than we have been in our two years' labors on the case. Perhaps the situation could be clarified if Mr. Jones could be induced to talk upon the point. He poses as the one most conversant with the Heckmann & Hanson litigation, but up to the moment of writing this we have never heard him discourse on the point.

We have also told your honor that not a penny was received by the State court for he property.

We ask the court not to draw a wrong conclusion at the start, from the fact that on April 15th, some three weeks after the receiver was discharged, the bank caused some $20,064.77 to be deposited in court, and pulled right out again on the same day on an "order of distribution." That performance was but a method employed by the parties in control of the receivership proceedings to get figures on the books of the registry of the court, as we shall presently see.

To save a long explanation, it is admitted by the bankrupts that the figures "$21,712.50" may take the place of "$24,125.00," the alleged purchase price of the property. Ten per cent of the latter amount ($24,125.00) is said to have accompanied the bid, and we raise no question at this time that the *facts*, if such was true, were not always preserved in the orders of the receiver. So we admit for the sake of the argument, that but $21,712.50 remained to be paid.

In the order above referred to, the receiver on *March 8th* said that he had received the purchase price, in accordance with the directions contained in the order of *March 6th*.

The evidence of such payment given before the special referee is Exhibit No. —— being a certified check for $21,712.50, drawn by M. F. Mayhew on the Scandinavian-American Bank in favor of Peter Larsson and dated March 7, 1902.

The check appears on its face to have been certified by the bank on the day it bears date, March 7th. But the books and records of the bank fail to reveal any evidence of its certification. On the other hand, positive testimony is given that the check nowhere appears on the books of the bank before March 12 (R., p. 459, line 14 to 25).

The books do show, however, that on *March 14th* this certified check went of record in "bills receivable" register as having been received on March 12 (see bills receivable register, p. 120, tendered herewith); and that a certificate of deposit for the same amount was issued to Peter Larsson on the 12th (see certificate of deposit register, under date Mch. 12, tendered herewith). And the testimony of the then cashier, Mr. Soelberg, is that the certified check was received by the bank in payment for the certificate of deposit (R. p. 432, line 3 to 8).

The explanation of the transaction by the bank officials is, that on March 12 they issued a certificate of deposit to Mr. Larsson for $21,712.50 in *payment* of this certified check for that amount; that the certified check then went of record in the note or "bills receivable" register, because the bank treated it, as well as all other items coming from Mr. Mayhew, as the *note* of Messrs. Kelly, Grondahl, and Chilberg, three officials of the bank, whose "agent" it professes Mr. Mayhew to have been, and upon whose "credit" the bank was advancing money to Mr. Mayhew (R., p. 432, line 16 to 30).

The "explanation" the bank gives as to why a check for $21,712.50 was certified by it on the 7th and no record of any sort made of the matter until the 12th is that the check was not paid until the 12th (R., p. 459, line 25, to p. 460, line 6; also p. 461, line 24, to p. 462, line 3). As if the *payment* of the certified check of a bank has anything to do with noting in its records the fact that its own paper—for such a certified check becomes—is outstanding.

The truth is the check had no existence until the 12th, and the statement that the receiver had in his possession the sum of $21,712.50, or anything representing that amount, when he said he had on the 8th after he had delivered the property, is wholly lacking in truth.

The cause for the record being made in the bank on the 12th was an unexpected move on the part of the bankrupts made on that day—the service of a temporary writ of prohibition from the Supreme Court of the State of Washington, with an order to show cause indorsed thereon (R., p. 743, line 24 to 28). On the 6th of March the writer had been called into the case (R., p. 707, line 4 and 5), but his efforts to stop the attempted sale by the State court had been unavailing (R., p. 707, line 23 and 24). The result was an application for the writ of prohibition, and its service on the 12th (R., p. 743, line 24 to 28). It is apparent now, but wholly unknown to the bankrupts then, that the parties in control of the receivership proceedings had been caught in an ugly position. The property had been surrendered under a pretended sale, but no consideration had been received therefor, and a return to the writ of prohibition was due in a few days to the supreme court. Hence the appearance of the certified check and the record in the bank.

But do not think, because the check existed, that Peter Larsson ever saw it or the certificate of deposit issued in lieu of it. The record was made simply for convenience; to guard against "accidents." Had Peter Larsson received the check he would not have had to rely upon the favor of the Scandinavian-American Bank in order to pay the debts of his receivership. Indeed, had he had the check he need not have been owing any debts, Had he received the money he would have done with it as he did with all other items—have placed it of record on the account books of the receiver and

then have deposited it in the Washington National Bank—the receiver's regular depositary (R., p. 573; line 2 to 10). He did neither. The receiver's books were closed without the item being entered therein (R., p. 572, line 11 to 14); nor was it deposited in the Washington National Bank (Exhibit No. ——).

The same is true of the certificate of deposit and of subsequent certificates representing the same item, which, with a thimble-rigging process in the books of the bank, are meant to make us believe that all the while Mr. Larsson had the price received for the property on deposit in the Scandinavian-American Bank. We are aware, too, of the order of court directing him to place the same there (same order discharging receiver). But if your honor will refer to Exhibit No. ——, the certificate of deposit for $20,064.77, which eventually, April 14, found its way into the registry of the court, and will read also the entry made of the certificate in the certificate of deposit register under date of March 24th, your honor cannot but notice that the "depositor" is "we," the Scandinavian-American Bank. It don't look like Peter Larsson at all.

The point of course, is not that the payment of a sum of money adequate in all respects was delayed for a short period; but rather that the receiver turned over the property to a stranger without any payment being made therefor, and then falsified to the court in regard to such payment, thus denoting that he was in some sort of a scheme that had not good faith for its foundation.

If, at this period, there is anything lacking in the presentation of the point, it will be made perfectly clear when we come to show from the books of the bank the identity of the bank with Mr. Mayhew, the alleged purchaser of the property.

The following creditors appeared and proved their claims in bankruptcy, and these were the only claims ever proven:

A. J. Tennant, owning a claim in the amount of $4.73.
F. E. Brightman, owning a claim in the amount of $7.10.
John Larrabee, owning a claim in the amount of $5.25.
D. C. Conover, owning a claim in the amount of $2.50.
Charles Russel, owning a claim in the amount of $3.55.
(See files.)

The bankrupts have said of these claims that they were proven at the instance of the Scandinavian-American Bank with the idea and for the sole purpose of stiffling proceedings in your honor's court; and further, that the bank also provided for these "creditors" attorneys (Gray & Tait), whose efforts were to be expended in that same direction. Let us look at the evidence, and first with regard to the identity of the claims.

If your honor will examine each claim as it is on file in this cause you will note that it had been assigned by the original creditor to Mr. Mayhew (the agent of the bank, as we shall later show) and was owned by him at the time when the alleged sale was put through in the State court. Then examine the petition for order of distribution, filed in the State court March 29, 1902, and found in files No. 32817 (Exhibit ——), and note that Mr. Mayhew, as the owner of each of these claims, used them in that court petitioning it to distribute the "fund" over there. Mr. Mayhew then refrained from taking down any dividend on these particular five claims, though pulling down $1,443.59 on his others (Exhibit ——). This was evidently an idea of his lawyers, so that in coming into the bankruptcy court with proof of his claim he would be under no necessity of surrendering as a preference received a payment made thereon within four months from the filing of the petition.

These claims were then distributed by assignment without consideration (R., p. 264, line 2 to 12) to four clerks in the law office of Ballinger, Ronald & Battle (R., p. 187, line 7 to 18; and p. 188, line 23 to p. 189, line 15) and a bookkeeper in the office of Mr. Chilberg (R., p. 259, line 25 to 29). For what purpose these assignments were made Mr. Mayhew himself don't know; he don't know even that the claims were filed in the bankruptcy court (R., p. 263, line 23 to 27). We must therefore look to Mr. Mayhew's attorney for the information. Mr. Mayhew tells us that the attorney doing the work was A. J. Tennant (R., p. 264, line 21 to 24), chief clerk for Ballinger, Ronald & Battle (R., p. 187, line 13 and 14).

Mr. Tennant tells us the reason they filed the claims to be that "they" were led to believe that Mr. Heckmann intended to have proven a claim or claims that would control the creditors' meeting, and through it the trustee, and through the trustee subsequent proceedings, and that it was with the intention of "blocking" that move that they procured these claims to be proven; that up to the time when they received this information about Mr. Heckmann "they had no intention of getting into the bankruptcy matter at all." (R., p. 192, line 20 to p. 193, line 12.)

The story is marred a little by the statement that Mr. Heckmann was back of the Stearn (Sturm) claim, and that the creditors were interested only in seeing that the estate be "fairly and impartially managed." In the first place, Mr. Tennant spoke

hastily about Mr. Heckmann being the "star witness" for Mr. Sturm in his contest, afterwards admitting that he was not sure on the point (R., p. 205, line 3 to 21); and if your honor is interested enough in the matter to turn to the record of the Sturm proceeding you will notice Mr. Heckmann did not appear at all. He was in Alaska (R., p. 622, line 10 to 15). On the second point, that these creditors were interested only in getting "an impartial administration of the estate," it is pertinent to remark that the entire estate had been sold by the State court, according to their theory, and nothing remained to be administered. There was in the bankruptcy court a little personal estate of Mr. Heckmann's, it is true, but what interest had partnership creditors in that?

Let us see how the trustee was obtained. He was E. F. Fisher. He says he sought the appointment of his own volition (R., p. 14, line 1 to p. 15, line 14). But we believe the story is more accurately told by Mr. Mayhew, who says:

"I first went to Mr. Fisher's employer, Mr. Campbell, and asked his permission to request Mr. Fisher to act as trustee" (R. ,p. 265, line 19 to 22);

"At first Mr. Fisher did not want to take up the burden but he finally consented." (R., p. 265, line 27 and 28);

"I told him there would be considerable hard work about it, and I left the impression with Mr. Fisher and Mr. Campbell that I was *presuming on my trade relations with them* a little bit *to accommodate me in this instance.* I was trading with them at that time." (R., p. 266, line 6 to 12);

And from Mr. Fisher's own testimony as to Mr. Mayhew's conversation with him it is evident Mr. Mayhew *sought Mr. Fisher* (R., p. 15, line 16 to 22.)

Mr. Fisher says he procured his own bond from Calhoun, Denny & Ewing (R., p. 27, line 9 to 23); and that his attorneys paid them for it (R., p. 28, line 13 and 14).

But Mr. Mayhew says that he himself arranged for the bond and guaranteed the payment of the premium thereon (R., p. 266, line 22 to 25).

Mr. Fisher also states that he hired his attorneys, Gray & Tait, that he employed them after his appointment as trustee (R., p. 22, line 10 to 14), and after inquiry among his friends as to who were good attorneys (R., p. 22, line 13 to p. 23, line 6); that he made no agreement with them for compensation (R., p. 25, line 2 to p. 26, line 10).

But as Gray & Tait were in the cause and had directed proceedings *when the trustee was elected*, Mr. Fisher's testimony is of no greater importance than to show his evident disinclination to tell the truth. The facts proper are learned from Mr. Mayhew and Mr. Tennant.

Mr. Mayhew says that on the day the trustee was elected, "I was surprised to see Mr. Gray (of Gray & Tait) there in company with Mr. Tennant. I expected to be represented by Mr. Tennant at that time or by some of the firm of Ballinger, Ronald & Battle, and that is the first time that I ever met Judge Gray" (R., p. 268, line 5 to 11).

The record does not seem as clear as it might be as to just when Mr. Tennant did employ Mr. Gray. When asked the question as to whom Mr. Gray represented at the creditors' meeting electing the trustee, Mr. Tennant replied that Mr. Gray had been employed by him to assist him in opposing the Sturm claim (R., p. 195, line 19 to 24). But the conflict over the Sturm claim occurred after the trustee was elected (see return of Referee Worden to your honor). But we think that Mr. Tennant's reply to the further question as to the membership of the firm of Gray & Tait is indicative of the fact that he *had* hired them, and is sufficient on the point. "John T. Gray and Hugh A. Tait. Mr Gray, however, was the man who had charge of this matter *throughout*, and Tait had nothing to do with it. They appeared, however, as Gray & Tait, *as my attorneys*" (R., p. 195, line 9 to 14).

Mr. Fisher admits that he never talked with any of the "creditors," and don't know them to this day (R., p. 38, line 10 to p. 39, line 2); that matters, after his appointment, were left entirely with his attorneys (R., p. 29, lines 4 to 14; also p. 30, lines 20 to 21). Rather strange, after seeking so strenuously this appointment.

It is apparent, then, that the proving of these claims was not done in good faith. Mr. Mayhew, the agent of the bank, remained the owner of them, and hid his identity for a purpose. What his purpose was will become absolutely assured when we develop the next point. It is sufficient now to know that the claims were not proven with the idea of collecting them. One whose object is to further proceedings, that is, to collect a claim or a portion thereof—the only legitimate object of bankruptcy proceedings—does not, on a $23.13 claim (the total of the five proven) furnish a bond for the trustee the premium on which must have amounted to the whole of the claim, and then hire a set of high-priced attorneys to look after proceedings unless the one doing so has ulterior motives. Especially he does not run away from proceedings where they are paying 30% on all claims into those where they pay nothing.

But this creditor even resists the reopening of the estate that his claim might be paid.

Your honor will note that not all the Heckmann & Hanson claims, apparently, were bought up by the bank (Mr. Mayhew). From the statement of disbursements appearing in Exhibit ——, it would appear that some creditors retained theirs and took down a dividend of 30% from the State court. We undertook to show that all those creditors who did not sell their claims to the bank collected them in full. In other words, that those who were "next" received dollar for dollar, by virtue of some arrangement made between the bank and the bonding company, when the latter found out more about the receivership proceedings than it desired to learn, and hired the bankrupts' attorney to protect its interests. But not a soul in Seattle knew just what settlements were made. Judge Hoyt, the attorney for the bonding company, settled a few claims, but kept no record thereof. (This is from memory of the judge's testimony, which has not been returned.) Mr. Guion, of Wing & Guion, the local agents of the bonding company, knew nothing about the matter, everything in their office in relation to the bonding business having been attended to by their Mr. Hills (R., p. 692, line 15 to 19; p. 693, line 4 to 11; p. 694, line 2 to 6 and 23 to 26). Mr. Hills testified from memory to some settlements made, but had no record in his office of the claims paid (w., p. 117, line 8 to 17). In view of this showing, or lack of showing, the "understanding" of Mr. Tennant, one of the "creditors" to prove his claim, the attorney in fact of all the other creditors, the chief clerk for Ballinger, Ronald & Battle, and the attorney for Mr. Mayhew "when he was expecting to be represented by Ballinger, Ronald & Battle," is highly interesting. He says, "I had heard considerable of the Seward claims and that the American Bonding and Trust Company were to pay any balance due on certain debts of Heckmann & Hanson *that were not paid either in the receivership or bankruptcy proceeding* (R., p. 200, line 5 to 13).

Now, what was this proceeding in your honor's court for, think you? Was it to "stifle" matters, or wasn't it?

And yet your honor has to learn a large part of the case as now made. The greatest piece of jobbery attempted upon this court, in connection with the matter, occurred before your special referee, which point we will take up next.

In the petition to reopen the estate, and in all subsequent proceedings, we have attributed to the Scandinavian-American Bank and its privies responsibility for all fraud perpetrated in connection with the Heckmann & Hanson litigation. In all our pleadings, and in this argument, we have assumed that M. F. Mayhew, the alleged purchaser of the property, is synonymous with the Scandinavian-American Bank. The parties concerned in opposing our present proceedings, by whatsoever name we may call them, have attempted to hide the identity of the bank with the deal, and, incidentally, to show a good-faith transaction in the sale made by the receiver in the State court. The affidavits offered opposing the reopening of the estate was the forerunner of their story and, should your honor ever see them, will be found to have been devoted almost entirely to that subject. Four-fifths of the record made before your special referee consists of a recitation of the bank's story by some five or six gentlemen of supposed veracity, and the evidence of the bankrupts made necessary to refute it. This attempt to hide the bank's connection with the crookedness, and to cover up the evidence of the crookedness itself, is a matter calling loudly to this court for consideration; for it embraces one of the boldest, most brazen pieces of wholesale perjury ever foisted upon a court.

Like the consideration of the disbarment proceedings springing out of the case, the consideration of this matter might well be taken up by itself; but it is necessary for us to treat of it here in order to hold good our allegations running throughout the pleadings, that Mayhew and the bank are one. And the proving of the point—which must be done from the books of the bank—will make doubly certain and clear the truth of the proposition before dwelt upon, that the receiver simply turned over the property to the bank and betrayed his trust for a price.

The situation of the bank relative to the acquisition of the property, as the parties have it in the record, is believed to be fairly stated thus: That J. W. Kelly, E. L. Grondahl, and J. E. Chilberg had determined to procure the Heckmann & Hanson property; that, to that end, they established in the Scandinavian-American Bank a credit of $30,000.00 by giving their note to the bank for that amount; that they then employed M. F. Mayhew to direct operations for them; that Mr. Mayhew was privileged, and the bank was instructed to allow him, to draw against their credit thus established; that Mr. Mayhew did, on checks signed in his own name, draw out money from the Scandinavian-American Bank when no money of his was there, but that the bank treated the items thus drawn out as drawn against the aforesiad credit of Messrs. Kelly, Grondahl, and Chilberg; that the bank itself had absolutely no interest, directly or indirectly, in the purchase of the Heckmann & Hanson property.

(The cross-examination of Mr. Lane, the cashier of the bank, by Judge Battle, R., p. 397 to 403, inclusive, brings out the position of the parties as above set forth in the clearest and most comprehensive manner and in the shortest space of any place in the record. Time alone prevents us from making more citations at this place. It may be said, however, that J. W. Kelly, E. L. Grondahl, J. E. Chilberg, A. H. Soelberg, and M. F. Mayhew, in addition to Mr. Lane, tell in substance the same story.)

The court will want to know at the outset the relation of the parties alleged to have been behind Mr. Mayhew between themselves and to the bank at the time the money actually expended in the Heckmann & Hanson matter was advanced by the bank to Mr. Mayhew.

J. W. Kelly was a stockholder in and director of the bank (R., p. 207, line 29 to p. 208, line 6).

E. L. Grondahl was vice president (R., p. 404, line 7 to 14) and manager (R., p. 426, line 7 to 10).

J. E. Chilberg was a stockholder and director (R., p. 311, line 19 to 30); Mr. Chilberg is a nephew of A. Chilberg, the president of the bank (R., p. 311, line 30 to p. 312, line 6), and had his office directly under the bank in the basement of the bank building (R., p. 311, line 12 to 19).

M. F. Mayhew, at the time of his alleged employment, was a bookkeeper in the employ of Mr. Chilberg in his office under the bank (R., p. 221, line 20 to 24).

The story of the parties will have to be disproved by the records of the bank, consisting of its books of account and various papers emitted by it, and introduced in evidence.

For the convenience of the court, the bankrupts tender herewith a set of books which have been produced from the evidence as likenesses of the books of the bank used upon the hearings before Special Referee Smith. They are three in number, a "Certificate of deposit register," a "Bills receivable register," and a "Note and collection teller's cash book." Each page in every book cites your honor to the record for verification, a carbon copy of each book has been tendered Messrs. Ballinger, Ronald & Battle, attorneys, and though gotten up hurriedly, we believe no fault can be found with them as to their accuracy.

With the aid of the books we purpose to show that this "credit" idea was an afterthought on the part of those conspiring with the receiver to obtain the property in his hands and under his control, gotten up at a time when the parties deemed it desirable, if not necessary, to *create evidence* of the story that they might some day have to tell, for just such an occasion as this; and that the exhibits purporting to evidence money in the hands of Larsson were all the while in the possession of the bank and were so much paper supporting the fictitious record—nothing more.

It is by all conceded that the bank did advance money to Mr. Mayhew (for some one's use) to be expended in relation to Heckmann & Hanson matter, chiefly to buy up claims against the estate.

The explanation running all through the testimony of Mr. Soelberg and Mr. Lane, vice president and cashier of the bank, respectively, as to the method or system employed by the bank to identify Messrs. Kelly, Grondahl, and Chilberg with the various advances made to Mr. Mayhew, is this:

Mr. Mayhew would give his check for the amount advanced him; a "debit slip" would be prepared by a teller in the bank noting the charge as against Kelly, Grondahl, and Chilberg; to this "debit slip" would be pinned the Mayhew check, and the whole would then be deposited in its proper alphabetical place among "bills receivable" of the bank (R., p. 362, line 18 to 28).

In referring to the books, the writer will make use of a bookkeeper's symbol in a couple of regards: "B/R" for "Bills receivable," and "C/D" for "Certificate of deposit."

The note alleged to have been given by Messrs. Kelly, Grondahl, and Chilberg to the bank in order to establish Mr. Mayhew's credit there has been introduced in evidence as Exhibit ——.

This note, though dated January 9th, was not placed of record until April 3rd following. It is then found at page 126 of B/R register, that register simply denoting new notes received from day to day by the bank (R., p. 439, line 4 to 11).

On the same day, April 3, it is found upon the credit side of the note and collection teller's cash book, to which we ask your honor to turn.

This note and collection teller's cash book is kept for the purpose of recording the payment of notes and the entry of new loans—new notes—and is also a record of collections, so the cashier tells us (R., p. 370, line 1 to 9).

Turn to the opposite page as the book lies open, and your honor will note a record of six items which appear to have been charged into the account of the Seattle Shipyards Company.

The explanation of the transaction running through the testimony of Mr. Soelberg and Mr. Lane is that on this day (April 3) the $30,000.00 note was put of record, and "against it" the moneys previously advanced Mr. Mayhew were charged (R., p. 398, line 6 to 18; p. 361, line 30 to p. 362, line 28).

It is to be confessed later by the bank officials that this record at which your honor is looking (p. 46, note and collection teller's cash book for April 3) is bogus (R., p. 483, line 10, to p. 484, line 7, and other instances to be cited later); but it will serve as an index to the amounts furnished Mr. Mayhew and an excuse for running down each individual item.

Let us rearrange them in their numerical order, and they will be found to be arranged in their order as to time:

Item 1. No. 11189	$2,000.00
Item 2. No. 11325	500.00
Item 3. No. 11448	2,500.00
Item 4. No. 11840	500.00
Item 5. No. 11956	394.65
Item 6. No. 11957	21,712.50

Item 1, No. 11189.—This was a certificate of deposit for $2,000.00 furnished Mayhew by the bank on December 4, 1901. (See C/D register of that date.) Mr. Mayhew deposited same on that day in the Puget Sound National Bank (see Exhibit ——, Puget Sound National Bank book) and used the amount in buying claims against the Heckmann & Hanson estate (see Exhibit ——, checks in Puget Sound National Bank Nos. —— to ——).

The item on the books of the bank was charged to bills receivable and credited to certificate of deposit account (R., p. 446, line 15 to 20; see also B/R register, p. 87). It was not charged in any account to Kelly, Grondahl, and Chilberg, or anyone representing them. (R., p. 446, line 3 to 8.)

It is to be noted by the court that this item was furnished (December 4) before the $30,000 note, put of record by the bank on April 3, 1902, even purports to have been given (January 9).

While in some of the instances occurring in the record the so-called "original" debit slip has attached to it the check of Mr. Mayhew, it is to be noted that the debit slip (Exhibit ——), evidencing this item of $2,000 is one purporting on its face to have been gotten up on *April 3, 1902*, and contains an interest charge to that date. (See Exhibit No. ——.) The original debit slip, if one ever existed, is not here, nor is any check or anything answering its purpose attached. Mr. Soelberg testifies "I do not know why (where) that is." (R., p. 445, line 18; also, p. 513, line 25, to p. 514, line 2.)

We think we will be able to convince the court that no check was ever given by Mr. Mayhew; that the practice of giving a check for the various items did not arise until after a turmoil was created in the courts, when it was deemed advisable by the bank to create a record to hide its identity with the transaction. We do not think the bank had even a receipt from Mr. Mayhew for the money other than his signature, to be seen in the certificate of deposit register, which served admirably that purpose. As very good evidence of the fact, too, is the notation in "bills receivable," record, p. 87, under the head of remarks, "12/9/01," which Mr. Soelberg interprets for us as meaning that the item was charged to bill receivable on that date. (R., p. 444, line 8 to 13.) It was credited to certificate of deposit account on the 4th (R., p. 442, line 21). In the meantime it was carried by the bank as "cash" in order to force a balance of the books (p. 443, line 17 to 24). Now, we opine that if the bank had been advancing the money on the credit of Kelly, Grondahl and Chilberg and had this note (Mr. Chilberg's check) for the amount it would not have taken the bank *four days* to make up its mind *where to charge the item.* That it carried the item as "cash" for that length of time was because, no doubt, in the embryonic stage of the Heckmann & Hanson campaign the bank did not know, because it had not determined, just how it was to treat the expenditures on its own books.

Item 2, No. 11325.—The second item was also a certificate of deposit, and was for $500. It was issued December 24, before the note was given (C/D register, under date Dec. 24). It, too, was deposited by Mr. Mayhew in the Puget Sound National Bank (Exhibit ——, under date Dec. 24) and the proceeds were also used to purchase claims against the estate (Exhibit ——, checks Puget Sound National Bank, Nos. — to —).

The item was treated on the books of the bank precisely as the first item was treated; it was charged to "bills receivable" and credited to the certificate of deposit account (R., p. 452, line 10 to 15; also B/R reg., p. 93). It was not charged to Kelly, Grondahl, and Chilberg, or any one representing them. (R., p. 452, line 15 to 18.)

The original check or receipt purports to be attached to the debit slip (Exhibit ——), but we think we can show your honor, later, that it was made afterwards and pinned on.

Item 3, No. 11448.—This was a certificate of deposit for $2,500, issued January 10, 1902 (C/D register, date Jan. ——).

The State court, by order, had required a certified check for 10% of the amount of the bid to accompany any and all bids for the Heckmann & Hanson property, and the bids were to be in by January 10th.

Mr. Mayhew proposed to and did accompany his bid with a certified check on the Puget Sound National Bank for $2,412.50 (Exhibit ——). The certificate of deposit from the Scandinavian-American Bank was deposited in the Puget Sound National Bank (Exhibit ——) and the proceeds used to obtain the certified check from the bank to put into court with the bid (or at least report that the receiver had the amount).

This item also was charged to "bills receivable" and credited to certificate of deposit account (R., p. 456, line 11 to 16); and was not charged to Kelly, Grondahl, and Chilberg (R., p. 456, line 16 to 19).

Item 4, No. 11840.—Again a certificate of deposit for $500 was furnished Mr. Mayhew (C/D register, March 1). It, too, was deposited by him in the Puget Sound National Bank (Exhibit ——). We do not have his checks, but learn from his testimony that he used the proceeds for purposes relating to the Heckmann & Hanson matter.

Again the item was charged to "bills receivable" and credited to certificate of deposit account (R., p. 458, line 1 to 6).

Item 5, No. 11956.—This was a check to the county treasurer for taxes on the Heckmann & Hanson property.

Mr. Mayhew (or whomever he represents) has been the owner of the property since the 7th—some five days, and he is now straightening up some back taxes. One would think that the receiver would have paid the taxes out of the fund received for the property, as nothing was said in the record about the purchaser assuming them.

The item was charged to "bills receivable" and credited to (cash) the clearing house (R., p. 470, line 24 to 30).

Item 6, No. 11957.—This is the certified check for $21,712.50 supposed to have been received by Receiver Larsson on the 7th, when he turned the property over to Mr. Mayhew, and which we have already dwelt upon.

It appears upon B/R register under date of Mch. 14 (received the 12th).

Look at the check (Exhibit ——) and your honor will see it is "No. 1." That is the first check Mayhew ever drew in the matter. "No. 2" is item 5 above (Exhibit ——), drawn the same day, but which happened to get upon the books of the bank first (B/R reg., p. 120). Nos. 3, 4, 5, etc., come later (Exhibits ——, etc.) in regular order. It, therefore, is apparent that up to this time the bank had no "vouchers" or "checks" to attach to the "debit slips," and if any are now in evidence they were produced after they purport to have been.

This check must be considered, too, in connection with the certificate of deposit for the same amount said to have been issued the 12th, but not produced (C/D reg., date Mch. 12). The reason for its issuance (on the books) is apparent. The check itself was needed in the bank to pin to the debit slips that the bank might have the "note" of "Kelly, Grondahl, and Chilberg." But if the bank were to have the check, the books of the bank then ought to show something as given in return for it. There is no other excuse that can be offered for the trade made. Why should Peter Larsson prefer a certificate of deposit to the certified check of the same bank?

But your honor knows that eventually the C/D to be put in court is the paper of the bank, that the "depositor" is "*we*", the bank, and it is useless to bring in Larsson's name at all. Therefore, the real question, is why does the bank want a record?

We have already told your honor that on the day this record was made, we served on the State court a temporary writ of prohibition, prohibiting it from distributing the fund the record showed it had on hand. But it hadn't any fund. We have no doubt the bank stood ready to put up the money at any time its attorneys should assure it that they had matters so arranged that it could pull it right down again. But the bank was not openly appearing in the proceedings. Mr. Mayhew, the bookkeeper down stairs, was the ostensible purchaser; and was supposed already to have paid over the money for the property. Moreover, a return was due in a few days to the Supreme Court, in which the superior court must admit the possession of the fund. How, therefore, could these things in the record be made to appear as true, if perchance the proceedings just inaugurated, or any others that Mr. Heckmann's new attorney might inaugurate should cause a "show down?" The record of March 12 solves the problem. Check "No. 1" goes upon the books of the bank as the "note" of Kelly, Grondahl, and Chilberg, while a certificate of deposit for an equal amount is "issued," and supposed to be in the hands of Pete Larsson.

Next, take up the record made April 3, on page 46 of the note and collection teller's cashbook, where these six items appear to have been charged into the account of the Seattle Shipyards Company. That is the next record appearing anywhere on the books of the bank.

The officers of the bank whose business it was to know about the transactions of that institution and the books evidencing the same were wont to indulge in a lot of platitudes before the special referee about the $30,000.00 note being placed of record in "bills receivable" and the six items being "charged against the note" or "charged against that credit" (R., p. 362, line 14 to 28; also p. 342, line 12, to p. 343, line 29; also p. 370, line 22 to 27; and other instances too numerous to mention).

Now, your honor knows, as well as anyone else, that in order to credit an item and charge against it certain other items an account must exist somewhere into which the item is credited on one side and the other items debited on the other side. But these highly salaried bank officials would have us believe that they can accomplish the same thing by a mental process purely. They told the court that no such account existed (R., p. 344, line 13 to 20; also p. 382, line 13 to 24). The cashier, Mr. Lane, even insisted upon the point with his attention called specifically to the record made at page 46 of the note and collection teller's cashbook, wherein it is indicated as plainly as words can indicate that the items were charged into the account of the Seattle Shipyards Company (R., p. 370, line 17, to p. 371, line 16; also p. 384, line 13, to p. 389, line 10). Indeed, before Mr. Lane was through swearing he had told us that the Seattle Shipyards Company had no account with the bank at that time (R., p. 589, line 7 to 10)

Now, the Seattle Shipyards Company *did* have an account at that time, and these items *were* charged to it (R., p. 476, line 9 to 17). After the occurrence in your honor's court, July 16, which resulted in the books of the bank being brought into court where we could examine them for ourselves, no difficulty at all was experienced in finding the account.

Why, then, should these witnesses perjure themselves in the matter? Because the record made in the bank on April 3 was a bogus one, as we have hereinbefore told your honor. Mr. Soelberg confesses it (R., p. 477, line 10 to 17; also p. 483, line 15, to 484, line 11; also p. 495, line 3 to 7). The Seattle Shipyards Company was credited with this $30,000.00 note, and on the same day the total of these six items, $27,832.03, was debited in the account (R., p. 483, line 19, to p. 484, line 7); and a few days later the difference between the two amounts was debited to the account to balance the matter (R., p. 495, line 3 to 11). That is, the account was debited and credited $30,000.00, and the books thereby was not affected. And all the while the items did not belong there (R., p. 495, line 3 to 7).

The books, then, not having been changed, and the items as yet having been charged to no one, the original question is, with us, who was back of Mr. Mayhew and furnishing him the money he was using.

Need we argue the question? Listen. The bank professes to have had in its possession a $30,000 note of Messrs. Kelly, Grondahl, and Chilberg from January 9 to April 3. It had also expended during that period a total of $27,607.15 (B/R reg., p. 46), if we are to include the "certified" check for $21,712.50. On this April 3 the bank became seized of a desire to charge the matters onto its books "in order to have a record of the transaction"—and in pursuance of that desire it immediately charged the items where it knew they didn't belong. If Kelly, Grondahl, and Chilberg were back of the transaction, would they not have appeared at this time, if they never had before? It is a waste of time to argue further that M. F. Mayhew and the Scandinavian-American Bank are one.

Once again, the motive actuating those manipulating affairs to make a record upon the bank books was a proceeding initiated in court—and this time initiated in your honor's court. Your honor will note from the files in the bankruptcy proceedings that on that day (April 3) an order was issued against the parties to the proceedings in the State court that they show cause why the fund of $24,125.00 (supposed to be on hand) be not brought to your honor's court for distribution. In the petition for the order we had alleged in effect that the State court had sold the property subject to incumbrances. If your honor will now bear in mind that Mr. Larsson had turned over the property without receiving any consideration therefor, the situation of the parties becomes more than interesting; to one with no interests at stake it would be amusing. They had represented to the different courts that they had sold the property for $24,125.00 when the plan all the while had been for the bank to convert the property, and, buying up all the claims against the estate, to concede payment of them and their mortgages. The record of the State court had been made to show the discharge of the receiver with $21,712.50 on hand—when he had never possessed a penny of the amount. It was being pretended that the money was on deposit in the Scandinavian-American Bank—when, were the bank called upon to show a record

of such a deposit, it would have nothing at all to show. The record in the State court must be straightened. But the original plan to straighten it, by the bank loaning a piece of paper to be put into the court with one hand only to be pulled out again with the other "as payment of its claims," was threatened with disaster, by our proposal that the property had been sold subject to incumbrances and that the parties who expected to pull the money down again had absolutely no claim upon it. Moreover, an answer was due to your honor in a couple of days. This was a situation liable to result in an exposure before all was over. Hence, a record was deemed desirable in the bank. Not that a record could be made to defeat the proposition that the property was sold subject to incumbrances, if in fact it was so sold, but one to conceal the actual state of facts were infinitely better, under all the circumstances, than none at all. Accordingly, this note and credit idea was hit upon.

Now, that the exposure has been made, your honor might take a considerable interest in the stories set forth by Messrs. Kelly, Grondahl, Chilberg, Lane, Soelberg, and Mayhew. Your honor would then have a better appreciation of why the record before Special Referee Smith assumed such unexpected proportions. As we told you before, four-fifths of it is devoted to the stories of these parties and the evidence of the bankrupts necessary to break it down, to prove that Mayhew and the bank are one.

Your honor may be loath to believe that the whole story is a lie manufactured from whole cloth. We think, ourselves, that it has some foundation, and we think the evidence of it is to be found in "bills receivable" register, page —, date June 17, the last entry in the book, and also "note and collection teller's cash book," page 109, where it appears that Mr. Kelly did give a note for $30,000 and the same was credited into the account of J. E. Chilberg, agent. If that transaction be bona fide, then the motive for Mr. Kelly swearing fasely is apparent. Mr. Kelly *has* put $30,000 into the Seattle Shipyards Company property (the Heckmann & Hanson property) since the bank obtained possession of same. Moreover, Mr. Kelly is now the bank itself, owning a controlling interest of its stock. Should the bankrupts prevail, Mr. Kelly stands a good show to lose no small amount. Therefore, it behooves Mr. Kelly to swear a little, and Mr. Kelly swears. Now, read his story, and your honor will note that Mr. Kelly knows absolutely nothing about the acquisition of the property, all the details having been left to Mr. Chilberg; that is, we are told to go to the bank which put through the deal, and which Kelly, by a mental process, "nunc pro tunc," now attempts to clothe with a vesture of agency. Were Kelly to attempt any details, the task would not be an easy one.

Lack of time after the record should have been returned to your honor is responsible for whatever defects may be found in the argument. We have had access to the records in its bound form for the past day and a half, though the same has not been returned to the court. The exhibits, being considerable in number, were not marked in such manner that they can be cited to your honor. It will necessitate some little labor on the part of the special referee, assisted by counsel, to mark the exhibits, and we have been unable to devote any time to that object since the record was bound.

Respectfully submitted.

J. L. Smith.

Filing on back:) No. 2203. In the District Court of the United States, for the District of Washington, Northern Division. In the matter of Heckmann & Hanson, bankrupts. Argument. Original. Filed in the U. S. District Court, Dist. of Washington, July 11, 1904. D. M. Hopkins, clerk; H. M. Walthew, deputy.

Exhibit No. 44½.

In the District Court of the United States for the District of Washington, Northern Division.

In the matter of C. A. Heckmann and M. E. Hanson, copartners doing business as Heckmann & Hanson, and C. A. Heckmann and M. E. Hanson, individuals, bankrupts. No. 2203. Supplemental argument.

To the Honorable C. H. Hanford, *Judge:*

We tender this supplemental argument to your honor for a double purpose: First, because we desire to present the bankrupts' cause more fully than we could possibly do in the first argument, owing to the record having been in our hands for so short a period before the same was presented. Second, because we have advised your honor that the record which has become such a burden to the bankrupts, and surprise to the court in its volume, is born of a deliberate determination on the part of those who

would oppose these proceedings, to manufacture evidence; and the writer, as an officer of this court, believes that your honor should be placed in full possession of all the facts in regard thereto.

In the certificate of deposit register there are two certificates yet to be discussed—both issued March 24th; one for $19,706.05, the other for $20,064.77; one pretending the amount to have been deposited by Peter L. Larsson, receiver, the other confessing the depositor to have been "we," the Scandinavian-American Bank.

Both these certificates are in evidence, marked Exhibits —— and ——, and correspond in all respects to the data given in the C/D register.

The certificate of $20,064.77 is the one deposited later in the State court. This fact is shown from the indorsement on the C/D itself and from Exhibit ——, being a certified copy of the appearance docket of the State court, wherein is found a statement of the receipts and disbursements of the case, and which the deputy clerk also testified to be an accurate statement of all such receipts and disbursements (R., p. 755, line 5 to 24), and which exhibit shows this identical amount to have been paid into the registry of the State court April 14. This certificate is also the one for which the bank itself appears to have been the depositor. It was "issued" the day the receiver was discharged as such, apparently in readiness to be deposited whenever the attorneys should give the signal—a signal that was never given until the Supreme Court had said whether the State court could distribute the amount (see Exhibit ——, files ex rel. Heckmann *vs.* Superior court, and Exhibit ——, certified transcript of appearance docket in said case), and not until your honor had also said whether or not this court was to interfere in any wise with the program contemplated there (see journal entry April 5), and indeed not until the parties controlling proceedings in that court were armed with the State court's "order of distribution" (order April 14, files No. 32817), a sort of a written guarantee on the part of that court as to just what it proposed to do with the money should they allow it to get its hands upon the same.

It was 10% on the amount represented by this certificate that the bank paid to Mr. Larsson. The day the receiver was discharged, March 24th, and the day this certificate was "issued," was also the day the bank opened an account with Peter Larsson and issued to him the little pass book (Exhibit ——) with $20,064.45 placed to his credit.

We naturally inquire, What are these certificates, and how can it be that two of them are issued to Peter Larsson upon the same day?

An effort is made in the record, which we will point out as we discuss it, to show a relationship between the certificates themselves, and to show that they are a sequel to the certificate of $21,712.50 "issued" March 12th. A part of the proposition only is true. We will show to your honor that, while the first of the certificates ($19,706.05) is a sequel to the fictitious record already made in the bank, the second ($20,064.77) evidences an absolutely different matter; and that there is no relationship between the two.

It is self-evident that the amount of the first certificate is the difference between the $21,712.50 pretended to have been on deposit in the bank at the time, and the 10% ($2,006.45) of the other certificate credited Mr. Larsson on his pass book.

Mr. Larsson would have us believe as the explanation of this record that he got this $2,006.45 on the certificate of March 12, and had issued this new certificate of $19,706.05 for the balance; that the $2,006.45 was just the amount he needed to pay his debts, his own and Mr. Jones' salary, etc. But his evidence is useless, because it only shows us that either he has no knowledge of the matter at all, or he is very unwilling to tell what he knows (R., p. 566. line 14 to p. 575, line 26; also p. 578, l. 11 to 579, l. 30). For instance, his assent to the leading question of counsel that it was the C/D for $19,706.05 that went into the registry of the court (R., p. 579, line 12 to 16) shows him giving his testimony with no thought as to the actual facts, but simply, parrotlike, putting into the record what his counsel would have him put in.

Mr. Larsson later "explains" the relation of the certificate to the other one of the same date in this way: That he had a balance of $338.45 in the Washington National Bank the day he was discharged; that he had the sum of $20.27 in cash; that he took this certificate for $19,706.05, drew a check for $338.45 in the Washington National Bank, added the $20.27 cash, deposited the three items in the latter bank, and received therefor the certificate for $20,064.77. (R., p. 626, line 14, to p. 629, line 21.) Those figures do make up the amount. But your honor must note that this "explanation" comes after a night's conference with the witness' attorney, Mr. Jones. The day before Mr. Larsson testified that it was the C/D for $19,706.05 that he put into court (R., p. 579, line 12 to 16), and that he did not know what he did with the balance he had left in the Washington National Bank (R., p. 573, line 10 to 21), but he was certain he did not deposit it in the Scandinavian-American Bank. (R., p. 574. line 5 to 10.)

Mr. Larsson, it is true, did in March 24 give the Scandinavian-American Bank a check for the amount of $338.45, his balance in the Washington National Bank. The check is in evidence. But it is only a coincidence that the amount comes within $20.27 of equalling the difference between the two certificates.

The item of $20.27 "cash," too, is purely imaginary. Capt. Larsson confesses it in as plain words as could possibly be used. (R., p. 633, line 1, to p. 634, line 2.) Your honor can note he says he put in cash, simply because he don't know what else to say. Indeed, the whole of Mr. Larsson's testimony will convince your honor that we are to look to him for no assistance in untangling matters.

Well, then, what was this certificate for $19,706.05? We think your honor must be convinced it was "issued" simply *for the purposes of subtraction;* that is, the certificate went through the books of the bank for the purpose of subtracting $2,006.45, the amount paid Mr. Larsson, from $21,712.50, the amount it was pretended Mr. Larsson had at the time on deposit there. This thing of paying a *price* to the receiver of a court, and paying it in such manner that evidence thereof should ever afterwards exist in *black and white*, is a thing not commending itself heartily to a prudent mind; and it was, no doubt, deemed wise within the bank to carry the record in its books, which up to this time was a fictitious one, anyhow, a little farther. Why not subtract this payment made Mr. Larsson from his "deposit"? Then, were the transaction ever called into question—as it is to-day—the bank would be in a position to say, "We know nothing about Mr. Larsson's affairs. He had $21,712.50 in the bank and for reasons of his own took out $2,006.45 in cash and a certificate of deposit for the balance, $19,706.05."

It is asking too much of an intelligent being to have him believe that Peter Larsson would furnish three items, a C/D for $19,706.05, a check for $338.45, cash in the sum of $20.27, for a certificate of deposit for $20,064.77, and that the bank, in issuing the latter certificate, would then recite therein and upon its books that the *depositor* was "*we*," the bank itself. This fact, with what has gone before, shows conclusively that there is no relationship between the two certificates.

We must therefore determine for ourselves what the latter certificate is.

We are satisfied in our own mind, and we think we can convince the court, that the same represents in amount the amount the bank had invested in the Heckmann & Hanson property in one way and another; that its purpose was to furnish the State court with figures to place upon its books to straighten the record which up to that time showed the delivery of the property without any consideration; that the passing of it through the court was the culmination of a plan of those controlling proceedings in the State court whereby the property in its possession and under its control might be turned over to the bank, in return for which the bank in its own mind would concede payment of the items owing it by Heckmann & Hanson.

We know that the bank had invested in the Heckmann & Hanson plant $16,531.18, because that is the amount it pulled out of the registry of the State court on its mortgages, as shown by Exhibit ——. We know, too, that it spent $5,500 in a campaign after claims against the estate, because that is the amount of the certificates it advanced Mr. Mayhew and which he put in the Puget Sound National Bank and used. Those items make a total of $22,031.18 expended. We know, on the other hand, that the bank pulled down again from the State court a dividend of $1,450.51 on its (Mayhew's) claims, because it is so admitted by indorsement on Exhibit ——, the alleged $30,000 note, and shown by Exhibit ——, the statement of disbursements in the case; and we know, too, that it received from Mr. Larsson $338.45 cash, because that is shown by his check on the Washington National Bank. These two items make a total of $1,788.96, which, subtracted from the expenditures, leaves a net investment for the bank in the Heckmann & Hanson estate of $20,242.22, or less than $200 more than the amount of this certificate. This excess of $200, we can readily imagine, is discounted by the unused portion of the last deposit in the Puget Sound National Bank, which, so far as we could learn, was not entirely used. Any small discrepancy can well be accounted for, too, from the fact that the dividend to be received again from the deposit to be made in the State court was at that time a thing of the future, and could only be estimated. We thus feel certain in saying that this certificate represents in amount the amount the bank had expended in the Heckmann & Hanson matter.

Of course, the bank was aware in depositing the amount in court that the same would be withdrawn again on its claims against the estate. The order of distribution made that certain. The only object, therefore, it could have had in furnishing the money to be put into court and pulled right out again, would be to get the figures on to the books of the registry, that the record of the court, left unfinished by the receiver when he was discharged, might be completed.

The bank, of course, which thus became possessed of the property, ever afterwards has said nothing of the debts owing it by Heckmann & Hanson. It is quite satisfied to call quits; $60,000 worth of property for $20,000 was not a bad piece of manipulation from a financial standpoint.

But the fact that the bank furnished the money to make a "show," that Pete Larsson ought to have furnished in good faith, is proof conclusive that the alleged sale was a fraudulent one. And we think the court can do no better than accept as true the proposition laid down by us at page 12 of the original argument: That the sale was the culmination of a scheme on the part of the Scandinavian-American Bank of Seattle to convert the property of Heckmann & Hanson to its own use; that absolutely no money was ever offered or received for the property; that the possession of the property was accomplished by the bank through the connivance and with the assistance of the receiver of the State court, for which assistance the receiver was paid a price by said Scandinavian-American Bank—being 10 per cent on its investment in the property.

Let us recur once more to the record made by the bank on April 3, to treat briefly of one subject that logically should have been treated in our former argument. We refer to the so-called "debit slips" which your honor finds among the exhibits.

These "debit slips" are nothing but contrivances of the bank calculated to conceal the truth underlying a given transaction. And they are admirably suited to the purpose. They serve well as memoranda of *amounts*, and being so susceptible to change, even to the extent of destroying one and substituting another, they make possible a future "explanation" upon any theory suited to the demands arising. Being charged to "bills receivable," and no *names* going of record on the bank books, they can on a moment's notice be charged to anyone whom the bank can induce to say, "Why, I was back of the transaction all the while; I had established my credit at the bank and these checks are the checks of my agent and are evidences of my indebtedness."

The ones in evidence so amply illustrate their possibilities. They were produced on *April 3* for the express purpose of charging the items where they did not belong. Each one recites, "Charge Seattle Shipyards Company," and not a one belonged to the Seattle Shipyards Company (R., p. 495, line 3 to 7). Obviously, then, these "debit slips" took the place of *others* on April 3. What "others" is of no moment, so long as the court appreciates how easily the *change* can be made by the system. If we were shown others—and we are, the Seattle Shipyards Company slips being attached in some cases to the "original"—we would have no assurance that the "others" were the originals.

There were six further and different items expended by the bank before it again made up a "record" on its books. These items are found in B/R register under the appropriate dates, and the exhibits evidencing the same are also in evidence.

In the note and collection teller's cashbook, at page 109, where appears a record of transactions for June 17, 1902 (to which we ask your honor to turn), occurs another record similar in time to the one made *April 3*. J. W. Kelly and J. E. Chilberg appear to have given a note to the bank for $30,000, and on the other side of the page and against this note is charged again, among other items, the net amount expended by the bank *up to April 3*, being $26,321.37. The other items charged into that account are those expended *since* that date, as recorded in B/R register.

The note itself is not in evidence, but what purports to be a record of same appears on the last page of the B/R. register.

Mr. Soelberg, the then cashier, treats of this matter, at page 523, line 7, to page 527, line 28, of the record; which being interpreted means this: That Mr. Kelly and Mr. Chilberg (Mr. Grondahl having dropped out) gave a new note in renewal of the note of Kelly, Grondahl, and Chilberg, dated January 9; that this new note, at the direction of Mr. Chilberg, was credited into the account of "J. E. Chilberg, agent;" and that Mr. Chilberg, "agent," then gave his check to the bank for $28,229.02 to cover the items advanced to date of the check, including those items expended before April 3.

We are immediately struck with wonder that these items can never get to where they belong. The "J. E. Chilberg, agent," account is one that has been running in the bank for ten years (R., p. 524, line 25 to 28). What the character of the account is we do not know, but it can hardly be such an one as to hold appropriately the record of items advanced in regard to the Heckmann & Hanson matter, unless it is in reality an investment account of some nature carried in the bank by that name. However, we are not going to concern ourselves or burden the court with the matter further than as this record goes to emphasize the fictitiousness of the one made April 3.

The amount of $26,321.37 on the left-hand page represents the amount expended by the bank to April 3, less the dividend of $1,450.51 received by the bank (Mayhew) April 16 from the amount paid into court a couple of days before. This is calculated for us upon the back of the note itself (see Exhibit ——). But it does not total the

amount of the items as recorded April 3. That record fails to credit the dividend. For that reason the record of April 3 was not brought verbatim into the one of June 17. But the very failure to carry forward the record as already made is indisputable evidence of the abandonment of the record itself.

What the new record may be we do not know, nor care. What we desired to show to your honor was that the record made by the bank up to the time the property was turned over and the money alleged to have been received therefor again distributed was a spurious one. That we have shown. The motive, also, we have furnished. It was stated in our original argument, at page 26, namely, that the bank was attempting to hide its own identity with the proceedings and, incidentally, show a good faith transaction in the sale made by the receiver to "M. F. Mayhew."

With the items in the new record the court is not concerned, with a single exception. The check for $150 dated April 17 (Exhibit ——) and recorded in B/R register at page 132 represents the amount paid Mr. Reynolds, and about which we told your honor in our first argument. It is check "No. 3," payable to cash, and on its face recites "To C. A. Reynolds, Hanson settlement." The B/R register, under head of "Remarks," has the same notation.

The way this money came to be paid is told by Mr. Mayhew (record, p. 284, line 20 to p. 285, line 11).

How unfortunate, not to say in bad taste, they were in choosing words to designate the transaction. It would have been so much more in keeping with their exalted motives to have noted it "Contribution," "Sick benefit," or the like, upon the records. "Hanson settlement" is so prosaic.

Had we time now we would like to take up the record with the idea of showing your honor specific instances of perjury committed by the witnesses. A discussion of those matters is not necessary to our present object of getting the estate reopened, but it would tend materially to show what circuitous methods it was necessary to employ to get plain, ordinary, and well-known facts into the record, consequently the reason for a cumbersome record, the responsibility for the making of which we feel has been placed upon us in your honor's mind.

For instance, Mr. Mayhew says that the reason he tendered with his bid a check on the Puget Sound National Bank was that he had another fund of Kelly, Grondahl, and Chilberg on deposit there, and it was convenient to use it (R., p. 240, line 5, to p. 241, line 21). When your honor has learned that certificates of deposit were furnished Mr. Mayhew by the Scandinavian-American Bank, and deposited by him in the Puget Sound National Bank and used.

Mr. Soelberg, too, attached Mr. Grondahl's name to the $30,000 note and then swore that he did not know for what purpose the money was to be used (R., p. 341, line 14 to 18; also, line 30 to p. 342, line 7).

Mr. Lane, the present cashier, just escaped an order of court directing him to bring in the books of the bank showing the account of the Seattle Shipyards Company by swearing that the Seattle Shipyards Company had no account (R., p. 369, line 15, to page 371, line 16, and p. 381, line 20 to p. 339, line 11). When, after the occurrence before your honor July 16, the books were produced and the account of the Seattle Shipyards put in evidence.

We again commend to your honor, too, the reading of the testimony of some of the principals offering the testimony relative to the establishment of the "Credit" at the bank. For instance, the testimony of Mr. Soelberg, which occasioned the reference back to your honor from Special Referee Smith (R., p. 335, line 8, to p. 357, line 20) and the entire testimony—it is short—of Mr. Kelly.

In the petition to reopen the estate, which was referred to Judge Smith, we alleged further that the property, if sold at all, was sold subject to incumbrances. We have no patience with the proposition that the "sale" was in any wise valid. But we offer this further fact to show that, even if the court should take a contrary view the estate should be reopened for the purpose of administering this item.

Proof of the proposition is found by reference to the various orders of the State court had in reference to the "sale," from the time it was first recommended until its confirmation. For the guidance of the court we set out portions of the orders.

The second report of the receiver, filed November 25th, recommends the sale and suggests as follows: "That *parties having liens* upon said property should be absolutely protected as though they were foreclosing their liens, being allowed to bid upon the properties upon which they have liens and apply on such bid or bids the full amount of their liens." Also "that the order of this court should be that *each party holding liens* against said property be allowed to bid such amount for said property as to them should seem best and apply on said bids the amount of their lien or liens * * * and that unless a greater or larger bid shall be received than the bid of the parties so holding said liens that the party holding said liens shall be allowed to purchase

the same for the full amount of their liens, adding thereto, however, upon parcel 'B' $1,900.40 expended by your receiver in the betterments and further adding thereto the costs and expenses of this receivership not already paid, together with $1,000 borrowed from the Washington National Bank under order of this court, for the purpose of conducting affairs of this receivership."

The order approving the second report, filed December 3rd, following, provides that the "second report of the receiver be and the same is in all things approved," and "that a sale be had of all the property to the copartners Heckmann & Hanson belonging as in said report advised and according to the terms and conditions of the order of sale this day made, rendered, and entered."

The order of sale on that day made, provided in respect to the liens as follows: "That *any and all parties having liens* upon any parcel or parcels or the whole of said property be allowed to bid upon said property and to apply on their bid or bids the amount due upon their lien or liens; that unless a greater or larger bid shall be received for any parcel of said property subject to any such lien the party holding such lien will be allowed to purchase the same for the full amount of such lien or liens. * * * Le this order be entered and such sale made in accordance herewith."

The notice of sale and call for bids by the receiver pursuant to the order of sale followed in all respect the order so entered, using the exact words of the order.

January 14th, Mr. Mayhew presented to the receiver his bid reading, "pursuant to order heretofore entered, and to notice duly published, and in accordance with the terms of said order and notice, the undersigned submits the following bid: to wit, the undersigned will pay for and hereby bids the total sum of $24,125.00 subject to the conditions of said order and notice."

The third report of the receiver filed on the same day with the bid of Mr. Mayhew recommends the acceptance of Mr. Mayhew's bid; and the order approving the third report and directing the sale, filed March 7, directs that the receiver complete the sale, make good and sufficient deeds and bill of sale for the property, and receive therefor the sum of $24,125.00.

Apparent effort was made to provide for those *holding liens*, that they might bid and apply their liens upon their bids. But Mr. Mayhew, the successful bidder, was not a lien holder, nor did he sustain any relation to a lien holder—so they all tell us.

There is no place in the record where any pretense is made that the property was being sold free from incumbrances; and in the absence of any special provision to that effect, the rule is too well known to need the citation of authorities that property is sold subject to incumbrances. The doctrine of caveat emptor applies in full force to judicial sales.

Moreover, the special provisions in the various orders with regard to *lien holders* would indicate a deliberate intent to grant no special privileges.

The point that the alleged sale by the State court is void in point of law, we will try now to make.

Section 70A of the bankruptcy act reads as follows:

"The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt."

This section is plain, and must be interpreted to mean what it says. But if the title to the bankrupts' property vests in the trustee in bankruptcy, then only the trustee, acting in accordance with the orders of the court, can divest it.

"It is as true of the present law as it was of that of 1867 that the filing of the petition is a caveat to all the world, and in effect an attachment and injunction, Bank *vs.* Sherman, 101 U. S., 107; and on adjudication title to the bankrupts' property became vested in the trustee, Secs. 70, 21e, with actual or constructive possession, and placed in the custody of the bankruptcy court." (Mueller *vs.* Nugent, decided by U. S. Supreme Court, 7 Am. Bank. Rep., 234.)

We are aware there are cases wherein State courts have sold property and passed good title, after the owners of the property had become bankrupts and while proceedings in bankruptcy were pending; but in every such instance an examination of the facts will show that the State court had some purpose in view, and which purpose invariably involved the foreclosure of a lien of some character. Numerous instances could be cited illustrating the point, but the proposition seems so self-evident that to do so would unnecessarily encumber these pages.

The rule sustaining the action of the court in those instances is an old one, namely, that where two courts have concurrent jurisdiction over a particular subject-matter, that one which first takes cognizance of a cause falling thereunder will retain such jurisdiction to the end. And yet this rule, when applied in connection with bankruptcy proceedings, is necessarily limited. Using the words of a United States court:

"In cases of concurrent jurisdiction the court first obtaining possession of the property administers it; but where that court loses jurisdiction, and it is transferred by operation of valid laws to a court of the United States, which has exclusive jurisdiction of the subject-matter, the question becomes one of obedience to the paramount authority of the Constitution, and comity can have no influence in determining the right." (In re Tune, 8 Am. Bank Rep., 285.)

Further:

"When the only right of possession by a State court of attached property is based on an attachment lien, which is annulled by the adjudication in bankruptcy, the State court loses all jurisdiction of the rem, which is transferred into the exclusive jurisdiction of the court of bankruptcy. There is no longer any right of possession in the officer of the State court who then holds as bailee for the person rightfully entitled to possession, and becomes a trespasser if he fails to deliver on proper demand." (In re Tune, 8 Am. Bank Rep., 285.)

But in that case the court was foreclosing a lien, which, but for bankruptcy proceedings afterwards inaugurated, was a valid lien. The case at bar is not even that strong. In this case, the State court at the date of adjudication was caught with the naked, legal possession of the bankrupts' property, but with absolutely no purpose in view in attempting to sell same. It was not foreclosing a mortgage; it was not perfecting any lien—attachments, mechanic's or other. It had appointed a receiver in a suit upon an account stated, wherein absolutely no equities were shown or attempted to be shown. The proceedings could not even be termed insolvency proceedings, for in the affidavits supporting the motion for the appointment of the receiver it had been made to appear that the assets of the firm were four times in excess of their liabilities. The complaint that was made to the court to justify it in the exercise of its equity jurisdiction in appointing a receiver was, in effect, that this same Scandinavian-American Bank, even then a creditor of the firm holding mortgages on their property, had made and was making wanton and wicked attacks through the courts upon the business, credits, and assets of Heckmann & Hanson, which business, credits, and assets could be protected by the appointment of a receiver; and that if a receiver were appointed (thus stopping those attacks) he could soon pay off all the debts the firm owed from the profits the plant was then making. The order made appointing Larsson as receiver provided that he should take possession of the property and assets, manage the same, and carry on and operate the business (see complaint, motion, affidavits of Curtiss and Heckmann, and order appointing receiver in files No. 32817).

We do not purpose to ask your honor to determine whether the State court, under its common law jurisdiction had power to appoint a receiver over a partnership for the avowed purpose of continuing the business of the partnership and the implied purpose of interfering with a creditor in the collecting of his claim; nor whether the Washington statutes are broad enough to accomplish a similar object. We have emphasized the situation merely to propose the question, What was the duty of that court finding itself with the property in its possession under such circumstances as those related, when the owners of the property were adjudicated bankrupts and that fact called to its attention? In view of the section of the bankruptcy law before quoted, the question answers itself, and we are not surprised that the authorities are uniform in holding that the State court should surrender the property.

But whether or not the State courts followed its duty, what room is there to contend that it could pass the title to the property—a title that had vested in the trustee in bankruptcy the moment the order of adjudication was entered? A "sale" may be one way of letting go the property, but a sale by the State court under such circumstances passes no title.

Now, what excuse is offered for this alleged sale? Has your honor heard any? Did special referee Smith hear any? We never have. There is no excuse, and none can be offered.

Reluctant as your honor may be to accept the facts, and embarrassing as it may be to counsel to state them, the truth remains that the receivership proceedings had been appropriated bodily by a set of lawyers in the employ of the Scandinavian-American Bank, bent upon the confiscation of the property. There is no other way of stating the situation accurately. The original character of the proceedings had been changed. The parties to the suit had been obliterated. There was no longer any plaintiff; there were no longer any defendants, except in names. The plaintiff had abandoned the suit, having arranged for the payment of his claim by the bonding company on the bond of the receiver (R., p. 117, line 17 to 30); the defendants had been sold out by their counsel to the bank and to the bonding company. Moreover, the receiver himself, and his attorney, had abandoned the service of the court which appointed them, and were secretly drawing their pay from the bank. Nor was there even a creditor left to raise a voice in opposition to any measure proposed by the

bank, for the bank had bought up practically all the creditors; those it had not bought up had an arrangement made with the bonding company whereby their claims were to be paid in full (R., p. 200, line 5 to 13). Thus, the bank, though in no wise a party to the record, was in absolute control of the proceedings. It proposed, then, to appropriate to itself the property in the control of the court just as an ordinary robber in a dark alley might appropriate to himself the property on the person of his victim. The course pursued has been pointed out, and we shall not reiterate it.

Infinitely better would be the situation of the parties, from a moral standpoint—the legal situation would not be changed—had they taken a judgment in the case and sold the property to pay the judgment. But a judgment has not been taken to this day (R., p. 755, line 1 to 5). Some charity, too, might be extended had creditors moved in the matter. But, with two exceptions, no creditors ever appeared in the case until after the "sale" had been had, and when a division of the proceeds was proposed. Then it was made evident that the bank owned practically all the claims against the estate.

If your honor will but grasp the situation in the State court, it will become perfectly evident to your honor, as it is to the writer, why a coterie of lawyers, such as appeared in you honor's court, upon oral argument will spend upward of a whole year opposing proceedings in a matter in which no relief is asked against them, and in which they are not even referred to, and, indeed, in which they can not—or dare not—state to your honor what their interest in the matter may be.

The receiver and his attorney are earning that ten per cent.

To summarize, we have tried to establish these points:

First. That the sale of the property by the State court was void, both in law and in fact. Therefore, that the entire estate is in this court for administration.

Second. That the attorney for the bankrupts putting them into bankruptcy sold out his clients for a price to the party gaining possession of the property, and to the bonding company on the bond of the receiver of the State court. Therefore, that the "respondents" are estopped from asserting any advantage to be gained from the fact that proceedings in the bankruptcy court were at a standstill from the date of adjudication until after the alleged sale.

Third. That if any sale of the property was made by the State court, it was made subject to incumbrances. Therefore, that the $24,125.00, the alleged price of the property, belongs in the estate of Heckmann & Hanson, in bankruptcy, for distribution to the unsecured creditors who have proven their claims and, after them, to the bankrupts.

Fourth. That the creditors proving claims and controlling the bankruptcy proceedings before they were declared closed, did so for the purpose of stifling proceedings in your honor's court. Therefore, that the act of Congress vouchsafing to any citizen of the United States who owes debts the benefits of that act (bankruptcy act, § 4a) has been violated.

The proof of any one of these propositions is sufficient to warrant your honor in reopening the estate.

The law governing the situation we believe to be § 2, sub. 8, of the bankruptcy act, which reads that the courts of bankruptcy shall have power to "close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered."

The cases found in which the power has been invoked are few. We know of but two.

"Where it is desired to reopen the estate of a bankrupt after it has been closed and the trustee discharged, the first step is properly the making of an order for that purpose.

"To authorize the court to reopen the estate of a bankrupt under bank. 1898, sec. 2, subd. 8, it should 'appear' by some satisfactory evidence that there are assets unadministered, although no formal or technical procedure is required." (In re Newton, 107 Fed., 429.)

We also refer your honor to the case of Matter of Fulton G. Paine, 11 Am. Bank. Rep., 351, for a discussion of the question of reopening estates. We believe the case will be found suggestive, though the facts were entirely different from the case at bar.

In conclusion, we wish to say to your honor that we believe the one thing that really occasioned the reference to Judge Smith was what we had said in our petition relative to Judge Hoyt. Our position all along has been, as your honor knows, that matters touching the conduct of officers of the court are things to be investigated independently of those things giving rise to rights of litigants. However, we have not urged the position strongly, preferring to show our good faith to the court rather than to seem to want to hedge on anything we might have said.

But we have not presented in our argument anything touching on the conduct of the referee, for two reasons: We fear to exhaust the patience of the court with too

lengthy an argument; and we believe, too, from your honor's attitude at the time of oral argument, that we may assume your honor would have personal matters come up at a time special.

However, if your honor deems the truth of the statements made relative to the conduct of the referee in bankruptcy to be of any moment in determining the right of the bankrupts to have their estate reopened, then we ask that your honor so indicate before a decision on the matter is reached.

Respectfully submitted.

J. L. FINCH.

(Filing on back:) 2203. In the district court of the United States for the district of Washington, northern division. In the matter of Heckmann & Hanson, bankrupts. Supplemental argument. Original. Filed in the U. S. district court, dist. of Washington, July 11, 1904. R. M. Hopkins, clerk. H. M. Watthew, deputy.

[Exhibit No. 45 not printed.]

EXHIBIT NO. 46.

REPORT OF THE COMMITTEE IN RE JEROLD L. FINCH.

To Honorable Cornelius H. Hanford, judge of the U. S. District Court for the District of Washington, Northern Division:

The undersigned were on the 14th day of July, 1904, appointed at a meeting of the bar of your court to investigate the matters arising in connection with the charges made by Jerold L. Finch, Esq., against Richard A. Ballinger, Esq., and other members of the bar of your court, and the petition for disbarment of said Jerold L. Finch filed by certain members of the bar. Prior to our appointment both the master in chancery and your honor had found, and the bar by resolution had expressed their belief, that the charges made by Mr. Finch against the other members of the bar were entirely groundless. By the terms of our appointment we were directed to investigate the matters above specified so far as they might have a bearing upon the petition filed for the disbarment of Mr. Finch and to take such proceedings after that investigation as we might be advised. Upon consideration we have decided to submit to you this report of our proceedings and findings in the matter. As to whether or not it is best that another meeting of the bar should be called in connection with the matter, or that some other appropriate action should be taken upon this report, we most respectfully submit to your judgment.

Upon the appointment of the committee, Mr. E. C. Hughes was elected chairman and Mr. John H. Powell, secretary. By the courtesy of the court all of the records and files of the different actions and proceedings in this court having to do with the affairs and litigation of Heckman & Hanson, and the proceedings connected with the charges above referred to were placed in the hands of the committee, and at the suggestion of the committee Mr. Jerold L. Finch attended before the committee at three separate meetings thereof, and with the aid of the records and files above referred to made a somewhat extended statement regarding said matters. He also freely submitted to examination and so far as we are able to judge answered fully and freely as to all matters concerning which we desired information.

After fully hearing Mr. Finch, and without having heard anyone else, the committee were unanimously of the opinion that the charges made by Mr. Finch against the other members of the bar were entirely wanting in any substantial foundation. Thereupon we caused to be called before the committee Richard Saxe Jones, Esq., James B. Metcalfe, Esq., and Richard A. Ballinger, Esq., and heard from each of them a short statement, and propounded to them such inquiries as seemed to us pertinent for the purpose of advising the committee as to whether or not the groundless charges that had been made by Mr. Finch had been maliciously made. Having heard the statements of these gentlemen and carefully considered the whole matter, we have unanimously reached and hereby submit the following as our conclusions:

1. That the charges made by Mr. Finch against the several members of the bar were all without foundation and were made without a sufficient investigation of the facts.

2. We find that Mr. Finch made the charges believing and relying in great measure upon erroneous statements made to him by his client, Mr. Heckman. We think those statements, taken with certain facts and circumstances connected with the Heckman & Hanson litigation, were sufficient to cause Mr. Finch to make a careful investigation to determine their truth or falsity. They were wholly insufficient without such an investigation to justify the charges made, and in making them the conclusions reached by Mr. Finch were reached by illogical, erratic, and perverted reasoning.

3. In our opinion a member of the bar can not, nor should he, be disbarred for making unfounded charges of fraud against other lawyers if the charges are made with an honest purpose and without malice. We therefore find that no proceedings for disbarment should be taken against Mr. Finch. Nevertheless, we believe that in making such charges without any substantial foundation or reasonable ground for believing that they could be established, Mr. Finch justly deserves the censure of the bar of the Federal court.

4. From the testimony before us we think that certain remarks made by your honor at the time Mr. Finch applied for an order requiring the Scandinavian American Bank to produce its books may have induced the belief in Mr. Finch's mind that, having taken the order, he was then compelled either to maintain his charges or himself suffer disbarment. If such a belief existed in Mr. Finch's mind, which we think probable, it may afford some palliation of his conduct in further prosecuting the matter after the close of the hearing before the master. It would be indeed an unfortunate rule that a member of the bar preferring charges against other members must fully establish them on pain of disbarment, and we do not think that your honor intended to announce any such rule. If the charges made by Mr. Finch had been supported by any reasonable proof, or if the facts before him had, after a proper investigation by him, justified him in believing that they could be proved, it would have been his duty to promptly lay the matter before the district court. The persistency and ability which he has manifested in attempting to establish these charges would in that event have been as commendable as their misuse is now censurable.

Respectfully submitted.

E. C. HUGHES,
L. C. GILMAN,
JOHN H. POWELL,
L. T. TURNER,
JOHN ARTHUR,
Committee.

(Endorsed on cover:) Filed in the U. S. District Court, Dist. of Washington, Sept. 6, 1904. R. M. Hopkins, clerk.

EXHIBIT NO. 47.

ACTION OF THE BAR ASSOCIATION OF SEATTLE IN RE J. L. FINCH.

Whereas in a recent public print the personal integrity and professional character of the Honorable Richard A. Ballinger, a member and former president of this association, has been wantonly and viciously assailed by a recital of alleged facts touching his personal relations and conduct in matters culminating in and growing out of certain litigation in the Federal court at Seattle;

And whereas in said public print it is made to appear that the judicial investigation as to the conduct of R. A. Ballinger by the special referee in bankruptcy and the investigation by the bar of the Federal courts of Seattle were not made in good faith;

And whereas it appears by the records and files in cause No. 2203, in the United States district court, sitting in bankruptcy at Seattle, that in a petition of the bankrupts to reopen that cause the professional relations and conduct of R. A. Ballinger and others in the matters above referred to were assailed; that the court made an order referring that petition to a special referee in the person of the late Eben Smith, Esq., then standing master in chancery of the United States circuit court at Seattle, to hear evidence and to report among other things with respect to such conduct of the accused; that said hearing before said referee extended from April 24, 1903, to August 28th, 1903, during which nineteen days were occupied in hearing the testimony of twenty-one witnesses, the testimony for the bankrupts alone covering over 886 typewritten pages; that after the close of the testimony on January 25, 1904, the referee filed his report in said cause No. 2203, wherein he found among other things, as follows:

"And as to the conduct of the officers and attorneys of this court who have been engaged in these several matters, who appear to be accused by the allegations of the petition, such seeming accusations are not well founded in fact and are not sustained by the proof."

That pending the hearing before the referee, upon application of the bankrupts for an order of court compelling the production of certain books of the Scandinavian-American Bank of Seattle, and upon the statement of the bankrupts' attorney, in open court, that if given access to those books he could bring proof to disbar said R. A. Ballinger, an order was entered directing the production of the books before the referee;

that in the report of the referee the court's attention is called to certain excerpts of the testimony of the bankrupts' attorney, J. L. Finch, a witness before the referee, which are attached to said report and are in part as follows:

"Question. * * * Just tell the commissioner (special referee) what you find in those books or papers of the Scandinavian-American Bank that would disbar R. A. Ballinger?

"Answer. * * * I state that I do not think I found anything."

That after said report had been filed, and before the court had found opportunity to review the proceedings, the attorney for the bankrupts presented to the court a petition for the disbarment of R. A. Ballinger and others, action upon which was stayed by the court until a disposition of the bankrupts' petition to reopen the bankruptcy proceedings upon the affirmance or rejection of the report of the referee; that on July 11th following, the court filed its written memorandum decision, consisting of seventeen typewritten pages, on the petition, the referee's report, and the testimony on behalf of the bankrupts transcribed and filed, wherein the court, after reviewing the whole matter at great length, and after declaring that in view of the assault upon character, it deemed it unwise to shun the labor of an investigation by denying the petition upon technical grounds, and that its object had been to ascertain the merits of the controversy, and to that end technical rules of pleading and practice had not been permitted to have controlling effect, finds that there is no equity whatever in the petition of the bankrupts to reopen the administration of the case, and further finds as follows:

"The petitioner accuses Judge Ballinger of having betrayed the petitioners while acting in the double capacity of attorney for them and as an attorney and officer of the Scandinavian-American Bank. It is claimed that he induced Heckman & Hanson to borrow five thousand dollars from the bank, and with the design of ruining Heckman & Hanson he induced Heckman to sign a writing which he did not understand, which afterwards proved to be a general power of attorney, and then taking advantage of Heckman's absence, executed a mortgage to the bank to secure a short time loan, and induced Hanson to join in the execution of the mortgage. This accusation is not supported by a scintilla of evidence. On the contrary, it appears that he, in connection with Judge Ballinger, applied to the bank for a loan of five thousand dollars to be furnished when other arrangements were completed for the purchase of a certain interest in the premises upon which the shipyard is located, four thousand five hundred dollars of the money being required to pay for that interest. Heckman was anxious to have the purchase completed when the conditions were favorable, and, having to make a trip to Alaska, he left the business in charge of Judge Ballinger, with power to act, and not only executed, but himself wrote the power of attorney under which Judge Ballinger acted for him in executing the mortgage, and all of the money loaned was used by the firm as Heckman designed that it should be used" (which transaction is illustrated in said public print by a photograph of the note in question). And the court also concurs in the findings and conclusions of the referee that the accusations against R. A. Ballinger and others are not well founded in fact and are not sustained by the proof.

That from the formal order denying the petition to reopen the case the bankrupts sought a review in the United States Circuit Court of Appeals for the Ninth Circuit, upon a petition for revision of proceedings of the district court below, pursuant to the provisions of the bankruptcy act, which petition for revision of proceedings was denied and the proceedings dismissed at petitioners' cost by the circuit court of appeals.

That immediately following the filing of the memorandum decision, the judge of the district court called a meeting of the bar of the Federal courts at Seattle, for July 14th, which was attended by about 100 members of the bar, to whom he submitted a consideration of the charges against R. A. Ballinger and others and the charges in the meantime filed against the bankrupts' attorney, J. L. Finch. This bar meeting, after hearing and considering in full the report of the referee and the memorandum decision of the court confirming that report, adopted a resolution fully and completely exonerating R. A. Ballinger and others accused with him, and declaring it the judgment of the bar that each and all of them acted fairly in the entire proceedings involved and were wholly free from blame, and that there was not a scintilla of evidence to sustain any charges brought against them; and upon motion, a committee of five was appointed by the chair to investigate and report to the court on the matter of the charges against the bankrupts' attorney, J. L. Finch. All as appears by the written report of the chairman and secretary of said bar meeting, filed in said cause No. 2203. That the court, on the 26th day of July, 1904, having received the written report of the bar meeting, ordered to be spread upon the minutes of the court its own findings and order exonerating R. A. Ballinger and others accused with him from the charges laid against them.

That the committee of the bar meeting on the 6th of September, 1904, filed its written report with the court upon the charges against J. L. Finch, the bankrupt's attor-

ney, wherein it appears that, upon the statement of J. L. Finch alone, the committee were of the opinion that the charges made by him against R. A. Ballinger and others were entirely wanting in any substantial foundation and that in making them the conclusions reached by J. L. Finch were reached by illogical, erratic, and perverted reasoning; and while the committee find that J. L. Finch was not actuated by malice and that therefore no proceedings for disbarment should be taken against him, he justly deserved the censure of the bar of the Federal court.

Now, therefore,

Be it resolved by the Seattle Bar Association, That we affirm our conviction that the charges against the Honorable Richard A. Ballinger in the matters above referred to were without any foundation whatever in fact; and be it further

Resolved, That the wanton and vicious assault by said public print upon the character of R. A. Ballinger, its reflection upon the integrity of the special referee in bankruptcy, the late Eben Smith, Esq., and its attack on the good name of the bar of the Federal courts of Seattle, in the matters above referred to, warrant the condemnation of every fair and just man, be he lawyer or layman.

EXHIBIT No. 53.

46. *Teller's note and collection cashbook.*

APRIL 3, 1902.

Number.	Maker.	Remarks.	Amount.	Interest.	Total.
11325	Seattle Shipyards Company.	Charged in account	$500.00	$10.65	
11957	M. F. Mayhew	Charged in account Seattle Shipyards Co.	21,712.50	115.80	
11189	J. W. Kelly et al	Charged in account Seattle Shipyards Co.	2,000.00	48.90	
11448	J. E. Chilberg et al	Charged in account Seattle Shipyards Co.	2,500.00	44.45	
11840	J. W. Kelly et al	Charged in account Seattle Shipyards Co.	500.00	3.33	
11956	M. F. Mayhew	Charged in account Seattle Shipyards Co.	394.65	1.75	
			(27,607.15)	(224.88)	(27,832.03)

For authentication see record as follows: Notations at head of columns, p. 440, line 24, to p. 441, line 11; items, p. 441, line 11 to 28.

Number.	Maker.	Whose account.	Amount.	Discount.
.....	J. E. Chilberg et al	Receiving teller	$30,000.00	

For authentication see record, as follows: Notations at head of columns, p. 441, line 4 to 9; p. 442, line 1 to 4; item, p. 442, line 4 to 7; p. 372, line 15 to 20.

109. JUNE 17, 1902.

Number.	Maker.	Remarks.	Amount.	Interest.	Total.
12093	J. E. Chilberg	Balance check	$26,321.37	$351.15	
	J. E. Chilberg	Balance check	474.35	.50	
12374	M. F. Mayhew	Balance check	23.47	.15	
12240	M. F. Mayhew	Balance check	300.00	3.33	
12545	M. F. Mayhew	Balance check	535.10	2.05	
12214	M. F. Mayhew	Balance check	150.00	2.00	
12467	M. F. Mayhew	Balance check	65.00	.55	
			(27,869.29)	(359.73)	(28,229.02)

For authentication see record, as follows: Notations at head of columns, p. 440, line 24 to p. 441, line 11; items, p. —, line 4 to 14; p. 380, line 3 to 20.

Number.	Maker.	Whose account.	Amount.	Discount.
.....	J. W. Kelly	Credit account J. E. Chilberg, agt	$30,000.00	.....

For authentication see record, as follows: Notations at head of columns, p. 441, line 4 to 11; p. 442, line 1 to 4; item, p. 524, line 11 to 14; p. 380, line 20 to 30.

Ex 48

Seattle, Wash. Apr 17th 1902. No 23

The Snoqualmie American Bank

OF SEATTLE.

Pay to the order of Cash $150.00

One hundred fifty ~~no/100~~ Dollars

(to C. A. Reynolds, Hudson Settlement)

M. F. Mayhew

12214

TUCKER HANFORD CO SEATTLE

EXHIBIT NO. 48

Rec 7-7-13

Offered & Received

United States Master in Chancery

Ex 49

The Scandinavian American Bank

No. 30553

CERTIFICATE OF DEPOSIT.

Seattle, Wash. May 24 1902

$20064.77

Has deposited in this Bank

Twenty Thousand Sixty Four and 77/100 Dollars

payable to the order of C. C. Kobbé Clerk and Peter L. Larsen Receiver

on the return of this Certificate properly endorsed

NOT SUBJECT TO CHECK

J. F. Lane Asst Cashier

EXHIBIT NO. 49

Please enter as Exhibit

Attorney

Filed United States Master in Chancery

Clerk of the Supreme Court, Northern District

MAY 15 1907

Dec 3, 1902

Deliver to Kamm Clerk

C. C. Kobbé Clerk

By Frank Kamm Dep

EXHIBIT 50.

—THE—

Scandinavian American Bank

SEATTLE, - WASH.

IN ACCOUNT WITH

Petra L. Larsen

Rheims

NOTICE

☞ Always bring this book with your deposits.
☞ See that the entries agree with your ticket.
Books should be left for balancing as often as once a month.

METROPOLITAN PRESS, INC., SEATTLE

Ex 51

Dr. Scandinavian American Bank *In account with* [illegible] Cr.

1907
March 28 Dep. 200645.

Exhibit 52.

EXHIBIT NO. 52
Seattle, Wash., 190
The Scandinavian American Bank.
Pay to the order of
$
Dollars
No.
Date Olympia, Wash., 190
To N. Bautze
For
Balance $
Total $ This Check $
Deposit $

EXHIBIT No. 54.

Register certificates of deposit.

Date.	Deposited by—	Order of—	Number.	Amount.	Total.	Time.	Rate.	Paid.	Signature of depositor.
[1] Dec. 4, 1901	M. F. Mayhew	Self	27822	$2,000.00				Dec. 5, 1901	M. F. Mayhew.
[2] Dec. 24, 1901	M. F. Mayhew	Self	28456	500.00				Dec. 24, 1901	
[3] Jan. 10, 1902	M. F. Mayhew	Self	28839	2,500.00				Jan. 11, 1902	
[4] Mar. 1, 1902	J. W. Kelly et al	M. F. Mayhew	29929	500.00				Mar. 3, 1902	
[5] Mar. 12, 1902	Peter L. Larsson, receiver	Self	30236	21,712.50				Mar. 24, 1902	
[6] Mar. 24, 1902	Peter L. Larsson, receiver	Self	30912	19,706.05				Mar. 25, 1902	
[7] Mar. 24, 1902	We	C. A. Koepfli, clerk; Peter L. Larsson, receiver.	30553	20,064.77				Apr. 15, 1902	

[1] For authentication, see record, as follows: Notations at head of columns, p. 429, line17 to 21; item, p. 429, line 21 to 26.
[2] For authentication, see record, as follows: Notations at head of columns, p. 429, line 17 to 21; item, p. 430, line 1 to 5.
[3] For authentication, see record, as follows: Notations at head of columns, p. 429, line 17 to 21; item, p. 430, line 10 to 14.
[4] For authentication, see record, as follows: Notations at head of columns, p. 429, line 17 to 21; item, p. 430, line 14 to 22.
[5] For authentication, see record, as follows: Notations at head of columns, p. 429, line 17 to 21; item, p. 431, line 2 to 5.
[6] For authentication, see record, as follows: Notations at head of columns, p. 429, line 17 to 21; item, p. 506, line 29 and 30.
[7] For authentication, see record, as follows: Notations at head of columns, p. 429, line 17 to 21; item, p. 509, line 8 to 18.

EXHIBIT No. 55.

Bills receivable.

Number.	Date.	Maker.	Endorser or security.	When due (month, day, year).	Amount.	Interest.	Total.	When paid.	Remarks.
[1] 11189	Dec. 5	J. W. Kelly	E. L. Grondahl, J. E. Chilberg	On demand.	$2,000.00			Apr. 3, 1902	12/9/01.
[2] 11325	Dec. 24	J. W. Kelly, J. E. Chilberg, E. L. Grondahl.			500.00		$500.00	Apr. 3, 1902	
[3] 11448	Jan. 10, 1902.	J. E. Chilberg	J. W. Kelly, E. L. Grondahl		2,500.00		2,500.00	Apr. 3, 1902	
[4] 11840	Mar. 1	J. W. Kelly, J. E. Chilberg, E. L. Grondahl.	Receipt of M. F. Mayhew	On demand.	500.00			Apr. 3, 1902	

[1] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 443, line 24 to p. 444, line 11.
[2] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 448, lines 17 and 18.
[3] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 453, lines 9 to 21.
[4] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 456, line 26 to p. 457, line 4.

EXHIBIT No. 55—Continued.

Bills receivable—Continued.

Number.	Date.	Maker.	Endorser or security.	When due (month, day, year).	Amount.	Interest.	Total.	When paid.	Remarks.
[1] Mar. 14, 1902 11956	Mar. 12	M. F. Mayhew	Certified check, acct. Heckmann & Hanson.		$394.65			Apr. 3, 1902	
Mar. 14, 1902 11957	Mar. 12 (or 7)	M. F. Mayhew	Acct. Heckmann & Hanson		21,712.50			Apr. 3, 1902	
[2] Apr. 3, 1902 12093	Jan. 9	J. E. Chilberg; J. W. Kelly; E. L. Grondahl, by A. H. Soelberg, his attorney in fact.		On demand.	30,000.00	8% quarterly.		Apr. 17, 1902, p. p. Apr. 3, 1902, p. p. June 17, 1902, p. p. June 17, 1902	$3,618.48. $60.15. $26,321.37.
[3] Apr. 17 12214	Apr. 17	M. F. Mayhew	Check No. 3, Scandinavian-American Bank.		150.00			June 17, 1902	C. A. Reynolds Hanson settlement.
[4] Apr. 22, 1902 12240	Apr. 22	M. F. Mayhew	Kelly, Chilberg, et al		300.00			June 17, 1902	
May 9, 1902 12374	May 8	M. F. Mayhew	Check	Demand	23.47			June 17, 1902	
May 20, 1902 12467	May 19	M. F. Mayhew	Check		65.00			June 17, 1902	
[7] May 29, 1902 12545	Apr. 22	M. F. Mayhew			535.10			June 17, 1902	
[8] June 17, 1902 715	June 16	J. W. Kelly	J. E. Chilberg	O. D.	30,000.00	7 per ct.		Oct. 9, 1902, p. p. Jan. 6, 1903, p. p. Apr. 1, 1903, p. p. July 3, 1903, p. p. July 9, 1903, p. p.	60. 60. 60. 60. 29,760.

[1] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; 1st item, p. 440, lines 2 to 7; p. 381, lines 8 to 20; 2d item, p. 440, lines 7 to 10; p. 366, lines 8 to 16.
[2] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 439, lines 16 to 26; p. 378, lines 4 to 20.
[3] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 520, lines 26 to p. 521, line 4.
[4] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 521, lines 6 to 18.
[5] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 522, lines 3 to 6.
[6] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 522, lines 12 to 15.
[7] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 521, lines 18 to 28.
[8] For authentication, see record, as follows: Notations at head of column, p. 439, lines 11 to 16; item, p. 440, lines 15 to 24.

EXHIBIT No. 56.

[Exhibit "A."]

In the Superior Court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners, doing business in the firm name and style of Heckman & Hanson, defendants. No. ——. Complaint.

The plaintiff complains of the defendants, and for cause of action alleges:

I. That the defendant C. A. Heckman and M. E. Hanson are now, and were at all times hereinafter mentioned, copartners, doing business in the firm name and style of Heckman & Hanson.

II. That heretofore, to wit, during the past two years, the plaintiff sold and delivered to the defendant goods, wares, and merchandise, and performed labor for them, at their special instance and request, upon an open and running account, and the defendants have at divers times made payments thereon, and there is now due and owing to the plaintiff upon the said account the sum of fifteen hundred and twenty-eight and 18/100 dollars ($1,528.18), which said account and balance due thereon has been heretofore, to wit, on or about the 1st day of July, 1901, rendered and submitted to the defendants, and it was then and there agreed between the plaintiff and the defendants that the said balance due thereon in the sum of $1,528.18 was just and correct and due and owing from the defendants to the plaintiff.

III. That thereafter, and on or about the 1st day of July, 1901, the plaintiff demanded payment of the said sum of $1,528.18 from the defendants, but they have failed, neglected, and refused to pay the same, or any part thereof, and still fail, neglect, and refuse, to plaintiff's damage, in the said sum of $1,528.18 and interest thereon at the legal rate from the 1st day of July, 1901.

Wherefore plaintiff prays judgment against the defendants for the sum of fifteen hundred and twenty-eight and 18/100 dollars ($1,528.18) and costs of suit.

BENNETT, WHITMAN & LUND,
Attorneys for Plaintiff.

STATE OF WASHINGTON, *County of King, ss:*

William M. Curtiss, being first duly sworn on oath, deposes and says that he is the plaintiff in the above-entitled action. That he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

WILLIAM M. CURTISS.

Subscribed and sworn to before me this 11th day of July, 1901.

BURTON E. BENNETT,
Notary Public in and for the State of Washington, residing at Seattle.

[Exhibit "B."]

In the Superior Court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners doing business in the firm name and style of Heckman & Hanson. No. ——. Motion for appointment of receiver.

Now comes the plaintiff by the undersigned, his attorney, and moves this honorable court for an order appointing a receiver in the above-entitled cause, to take possession, charge, and control of the business and property of the defendants, and to care for and manage the same, and conduct and carry on the business of the defendants in the usual course of the business and trade, pending the final determination of this action, upon the ground that the defendants are engaged in divers and sundry litigation, wherein parties not justly entitled to the same are obtaining, and are about to obtain, unjust and unfair advantage of the defendants, and of their creditors, and that the properties of the defendants are thereby being wasted, and the business of the defendants destroyed to the extent that the whole thereof will be appropriated to parties not justly entitled to the same, and there will be nothing, or not sufficient remaining to pay the just creditors of the defendants, including the plaintiff.

This motion is based upon the affidavits of the plaintiff and C. A. Heckman, filed herewith.

BENNETT, WHITMAN & LUND,
Attorneys for plaintiff.

[Exhibit "C."]

In the Superior Court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman and M. E. Hanson, copartners doing business in the firm name and style of Heckman & Hanson, defendants. No. ——. Affidavit of plaintiff for receiver.

STATE OF WASHINGTON, *County of King, ss:*

William M. Curtiss, being first duly sworn, on his oath says: That he is, and was at all the times hereinafter mentioned, a citizen of the United States and a resident of King County, State of Washington, above the age of twenty-one years, and plaintiff in the above-entitled action. That the properties of the said defendants consist of a shipbuilding plant of great value at Ballard, in said King County, and the shipbuilding business carried on thereat. That the defendants have heretofore carried on a large and lucrative business at their said shipyards. That during the latter part of the month of June of the present year a controversy arose between the defendants and the Scandinavian-American Bank of Seattle, E. L. Grondahl, A. H. Soelberg, its vice president and cashier, respectively, and William M. Calhoun, acting for them, and others, as to certain repairs theretofore made by the defendants upon the schooner *Alice* at the instance and request of the said bank, Grondahl, Soelberg, and Calhoun, amounting to the aggregate sum of about $7,000, and as to certain money theretofore advanced by said bank to defendants, amounting to the aggregate sum of about $7,000, the defendants contending that the said bank, Grondahl, Soelberg, and Calhoun were personally liable for the said repairs so made at their instance and request, and that the money so advanced to the defendants by said bank was in lieu of payment for said repairs and to be repaid not by the defendants but by said bank, Grondahl, Soelberg, and Calhoun as payment for said repairs; on the other hand, the said bank, Grondahl, Soelberg, and Calhoun, denied all liability upon said repairs, and the said bank contended and claimed that the said money advanced was an overdraft by the defendants. That the said dispute resulted in the defendants libeling said vessel about the first of the present month for the said repairs in the United States District Court for the District of Washington, in admiralty, and also commencing a suit in personam in the same court against the said bank, Grondahl, Soelberg, Calhoun, and others, for the same amount, both which said suits are now pending and undetermined. That the said controversy also resulted in the said bank sueing the defendants in the above-entitled court for the money so advanced to them, claiming the same to be an overdraft, and also at the same time commenced two suits in the same court against the defendants foreclosing certain mortgages held by it against the defendants on their said shipbuilding plant, which, though overdue, have been overdue for a long time and carried by the said bank as such by mutual agreement between them and the defendants that the same should be so carried. That immediately upon commencing said suit upon the said alleged overdraft the said bank caused divers writs of garnishment to be issued and served, garnishing all available outstanding accounts due the defendants, and threaten to, and will continue to, so sue out writs of garnishment for all outstanding accounts due the defendants, and which may become due to them, and by so sueing out such writs of garnishment the said bank have completely and effectually stopped all business of the defendants and rendered it impossible for them to do any business whatever during the pending litigation, and have obtained, and are obtaining, an unfair and unjust preference and advantage over the creditors of the defendants, and among others the plaintiff.

That affiant is informed and believes that the said alleged overdraft is not a just debt of the defendants to the said bank, and that the said mortgage debts sued on as aforesaid are amply secured, and that the said foreclosure suits and the suit on said alleged overdraft and garnishment were commenced and are being prosecuted for the sole purpose of harrassing and annoying and crippling and destroying the business of the defendants and obtaining an unjust and unfair advantage of the defendants, and an unjust and unfair advantage and preference over the creditors of the defendants, including the plaintiff, and that unless a receiver is appointed by this honorable court to take charge of the properties and business of the defendants and care for and manage and carry on the same, pending said litigation and this action, the purpose aforesaid of said bank will be accomplished, and the business and properties of the defendants will be dissipated, wasted, ruined, and destroyed and appropriated by the said bank, and there will not be sufficient left to pay the just creditors of the defendants, including the plaintiff. That the defendants are not insolvent, in that they have ample property if justly administered to pay their debts, and is a going concern, and could and would earn large profits if permitted to run and carry on their said business,

and if so permitted to carry on their business they could and would earn enough to pay off all of their indebtedness within a reasonable time. That the defendants have many contracts on hand, and could procure many others from which a large profit could be realized for the benefit of their creditors, but that under existing conditions created by the unfair and unjust action of the said bank they can not perform any of such contracts and can not procure any others and can not pay the plaintiff or any of their just creditors. That the good will and business of the defendants is a valuable asset for their creditors, and unless the same is carried on through a receiver the whole of their good will and business will be destroyed to the irreparable injury and damage of their creditors, including the plaintiff.

WM. M. CURTISS.

Subscribed and sworn to before me this 11th day of July, 1901.

BURTON E. BENNETT,
Notary Public in and for the State of Washington, residing at Seattle.

[Exhibit "D."]

In the Superior Court of the State of Washington in and for the county of King.

William M. Curtiss, plaintiff, *vs.* C. A. Heckman et al., defendants. No.——. Order appointing receiver.

Be it remembered that the above-entitled cause came on regularly this day for hearing upon the application of the plaintiff for the appointment of a receiver herein. The plaintiff appeared in person and by Bennett, Whilam A. Lund his attorneys, and the defendants appeared in person and by their attorneys, Metcalfe & Jurey, and the court being fully advised in the premises, and good cause appearing herein,

It is by the court ordered, adjudged, and decreed that Peter L. Larsson be, and he is hereby, appointed receiver of the defendants to take immediate charge, possession, and control of all their properties and assets, to care for, manage, and control the same, and operate and carry on the business of the defendants in the usual course of business and trade, pending the final determination of this action or until the further order of this court.

This order to take effect upon said Peter L. Larsson giving a bond to the clerk of this court in the sum of twenty thousand dollars and upon said bond being approved by this court.

Done in open court this 11th day of July, 1901.

ARTHUR E. GRIFFIN, *Judge.*

Endorsed on back: Filed July 11, 1901. C. A. Koepfli, clerk. Filed in the U. S. District Court, Dist. of Washington. April 11, 1903. 11.30 a. m. R. M. Hopkins, clerk; A. N. Moore, deputy. Jerold Landon Finch, attorney for bankrupts. Seattle, Wash.

[Copy.

EXHIBIT NO. 57.

Int., $125.00
5,000.00

5,125.00

SEATTLE, WASH., *October 31, 1900.*

Ninety days after date, without grace, at 12 o'clock noon, for value received, we jointly and severally promise to pay to the order of the Scandinavian American Bank, of Seattle, Washington, the sum of five thousand ($5,000.00) dollars in gold coin of the United States of present standard weight and fineness, with interest thereon at the rate of ten per cent per annum from date until paid, interest payable at maturity. And if interest is not paid when the same is due, or if principal is not paid at maturity, then the interest and principal to draw interest from maturity hereof until paid at the rate of twelve (12) per cent per annum. And in case suit or action is instituted to collect this note or any portion thereof we promise and agree to pay, in addition to the costs and disbursements provided by statute two hundred and fifty dollars, as attorney's fee in said suit or action.

The maker hereof, and all sureties and guarantors hereto, for value received, severally waive presentment for payment, protest, and notice of protest for nonpayment of this

note, and guarantee payment thereof at maturity, and agree to remain bound, notwithstanding any extension of payment that may be made to any party liable on this note, and consent is hereby given to any such extension.

HECKMANN & HANSON,
By MARTIN HANSON.
ANDREW HECKMANN,
By R. A. BALLINGER,
His atty. in fact.

Due Jan. 29, 1901.
No. 8340.

(Written across end:) Mortgages securing this note duly stamped. $4.00. U. S. Int. Rev. stamps.

(EXHIBIT 57.—Reverse:) 32772. Department No. 4. Plaintiff's Exhibit F. Filed Dec. 18, 1901. C. A. Koepfli, clerk. Cleaves. Mar. 26, 01. Int. to Mar. 29, 01, chgd. to a/c, $208.33. May 29, 01. Int. to June 29, 01, chgd. to a/c, $125.00.

[Copy.]

EXHIBIT No. 58.

Int., $300.00
3,000.00

3,300.00

SEATTLE, WASH., *November 22, 1900.*

On or before one year after date, without grace, at 12 o'clock noon, for value received, we, jointly and severally, promise to pay to the order of the Scandinavian American Bank, of Seattle, Washington, the sum of three thousand dollars in gold coin of the United States of present standard weight and fineness, with interest thereon at the rate of ten per cent per annum from date until paid, interest payable quarterly. And if interest is not paid when the same is due, or if principal is not paid at maturity, then the interest and principal to draw interest from maturity hereof until paid at the rate of twelve (12) per cent per annum. And in case suit or action is instituted to collect this note or any portion thereof we promise and agree to pay, in addition to the costs and disbursements provided by statute, three hundred dollars, as attorney's fee in said suit or action.

The maker hereof, and all sureties and guarantors hereto, for value received, severally waive presentment for payment, protest and notice of protest for nonpayment of this note, and guarantee payment thereof at maturity, and agree to remain bound notwithstanding any extension of payment that may be made to any party liable on this note, and consent is hereby given to any such extension.

HECKMANN & HANSON,
By ANDREW HECKMANN.
ANDREW HECKMANN,
MARTIN HANSON.

Due Nov. 22, 1901.
No. 8498.

(Written across end:) Mortgage given to secure this note duly stamped as provided by U. S. rev. laws.

(EXHIBIT 58.—Reverse:) 32772. Department No. 4. Plaintiff's Exhibit A. Filed Dec. 18, 1901. C. A. Koepfli, clerk. Cleaves. Mar. 26, 01. Int. to May 22, 01, chgd. a/c, $150.00.

[Copy.]

EXHIBIT No. 59.

Int., $19.50
650.00

669.50

SEATTLE, WASH., *Oct. 18th, 1899.*

Three months after date, without grace, at 12 o'clock noon, for value received, we, jointly and severally, promise to pay to the order of the Scandinavian American Bank, of Seattle, Washington, the sum of six hundred fifty and no/100 dollars in gold coin of the United States of present standard weight and fineness, with interest thereon at the

rate of twelve per cent per annum from date until paid, interest payable at maturity. And if interest is not paid when the same is due, or if principal is not paid at maturity, then the interest and principal to draw interest from maturity hereof until paid at the rate of twelve (12) per cent per month. And in case suit or action is instituted to collect this note or any portion thereof, we, jointly and severally, promise and agree to pay, in addition to the costs and disbursements provided by statute, fifty dollars, as attorney's fee in said suit or action.

The maker hereof, and all sureties and guarantors hereto, for value received, severally waive presentment for payment, protest, and notice of protest for nonpayment of this note, and guarantee payment thereof at maturity, and agree to remain bound notwithstanding any extension of payment that may be made to any party liable on this note, and consent is hereby given to any such extension.

HECKMANN & HANSON,
C. A. HECKMANN,
M. E. HANSON.

Due Jan. 18th, 1900.
No. 5957.

(EXHIBIT 59.—Reverse:) Department No. 4. Plaintiff's Exhibit A. Filed Dec. 18, 1901. C. A. Koepfli, clerk. Cleaves. 32766. (3–5c. stamps.) Feb. 29, 1900. Pd. int. to Jan. 18, 1900, $19.50. May 26, 1900. Int. to June 18, 1900, chgd. to a/c, $32.50. Dec. 24, as int. to Dec. 18, 1900, as chgd. to a/c, $39.00. Mar. 26, 01, int. to Mar. 18, 01, chgd. to a/c, $19.50. May 29, 01, int. to June 18, 01, chgd. to a/c, $19.50.

EXHIBIT No. 60.

THE RIGHT DOCTOR BROWN WAS THE WRONG DOCTOR BROWN.

Many people who are looking for my offices at 713 First Avenue, in the Union Block, see the sign, "The Right Doctor Brown," in front of the Washington Block, and think that they are coming to my offices, but they soon discover that they are in the office of the wrong Dr. Brown.

Dentists of reputation. What do you think of the reputation of a dentist who claims to have practiced dentistry in Seattle for 20 years and is compelled to move next door to some namesake, who is a dentist of reputation, in order to make a living (by grabbing patients)?

Beware of dentists on First Avenue claiming to be the right Dr. Brown. I do not compete with Cheap John dentists. I have always aspired to be regarded as a real dentist. My offices have been located in the Union Block, at 713 First Avenue, for twenty years.

I aspired to be Seattle's leading dentist. I, myself, took charge of the offices on July 15th, 1901, when the offices afforded practice enough for one dentist only. Seattle had a population of about 75,000 those days, and I had become convinced that the dentist who charged reasonably for first-class work would get plenty of first-class work to do. I figured that this was the proper foundation upon which to build a dental practice. All dentists have notions about building a practice, and I have mine. I do strictly a cash practice for small profit.

It does not make any difference whether it is a set of teeth, a bridge, a gold or porcelain crown, a gold, silver, enamel or porcelain filling, treatment of pyorrhea, or your teeth cleaned; in fact, my guarantee is good, and long years of success prove that the people have indorsed my methods.

Read my article in next Sunday's Times on the termination of the Washington dental war.

DR. EDWIN BROWN, D. D. S.,
Seattle's Leading Dentist, 713 First Ave., Union Block.

One door south of the Postal Telegraph Building. Open evenings until 8 and Sundays until 4 for people who work.

EXHIBIT No. 61.

[By William A. Simmonds.]

That he had been selected by the so-called "white-slave syndicate" as a victim because of his many rigid rulings against its traffic; and that the charges caused to be filed against him in Congress by John H. Perry had been actuated by the same

"syndicate," to-day was the counter charge of Federal Judge Cornelius H. Hanford after long and careful gathering to evidence by the jurist and his attorneys.

The sensational turn to the congressional investigation into Perry's charges came during the progress of the morning session, when, after Hanford's attorneys had placed former United States Attorney Charles T. Hutson on the stand and through him placed in the record statistics as to prosecution of cases of this character during the five years Hutson served, and also intimated that further developments would be presented, the jurist himself in chambers declared that he had ample reason to believe that Perry's charges had been brought on by this "syndicate," and that it was financing his prosecution.

BEGINS GOOD WORK.

Judge Hanford first acquired prominence in the prosecution of the so-called "white-slave traffic" in May, 1910, when he called together a Federal grand jury and gave it carte blanche in investigating the traffic. This body indicted a remarkably large number of persons prominently engaged in the work, some of them being deported, others convicted and sent to the penitentiary. Many of the cases were tried in other districts, some of them in New York. The investigation covered the entire country from New York City to Alaska.

Since that time he has been no less active. During the recent Federal grand jury held in this city the indictments returned against alleged "white slavers" were greater than for any other cause, and the indicted persons who pleaded guilty were given rigorous sentences in the Federal penitentiary. One person, who was known to immigration officials to be engaged in the traffic, although the grand jury could not indict under the evidence, was held by order of Judge Hanford until evidence could be obtained, when the prisoner pleaded guilty before Judge Frank H. Rudkin in Tacoma and was sentenced to the penitentiary. Frank Hanford, a brother of Judge Hanford, was foreman of the grand jury.

Judge Hanford and his attorneys made the announcement of their belief only after they had acquired evidence which they plan to sift and draw together for presentation to the congressional investigating committee or to Congress as a body.

It is their belief that the expenses of the Burns investigation concerning the jurist, which still is going on, according to Judge Hanford's attorneys, are being paid indirectly by this syndicate. It is their contention that the attempt to remove the jurist by impeachment proceedings has been made because he is regarded as an enemy of the traffic.

The extent of the investigation was shown by the fact that a letter written by Judge Hanford to Hon. William B. Gilbert of the circuit court of appeals at Portland, was purloined from the mails and opened, presumably by detectives. Government sleuths were to-day placed on the trail of the parties who are believed to be responsible and sensational developments are expected.

The letter of the judge, it is declared, is only one of several which have been opened while in the mail. The one in question was mailed personally by Judge Hanford's secretary on June 18, in the slit at the main post office in this city, and was postmarked June 18. It asked Judge Gilbert to name some jurist to preside in this city while the congressional investigation was under way.

THIEF STEALS LETTER.

On June 21 Judge Gilbert had not yet received the letter, although it arrived in Portland, or at least left Seattle on the night of June 18. In response to a telegram from Judge Hanford, Gilbert replied he had not received it. Shortly afterwards the letter was found, opened, in the Portland mail slit, and the clerk said that it was turned in by a party who said he had found it on the floor of the Portland post office. It had been abstracted from the mails and kept out 48 hours.

Investigation is also being carried on into the motives believed by the Government to have actuated the attack on the House of the Good Shepherd, an institution devoted to rescue work in this city, by an anarchistic publication. It is said that this matter had been under probe for considerable time. Government sleuths also declare that the first Burns shadowing of Judge Hanford did not begin August 26, on the day after the Dreamland Pavilion affair, as alleged by witnesses in the congressional investigation, but had been in progress for some time before that date.

None of those engaged in the defense of the jurist before the congressional committee would go into any details in the matter, saying that they were not yet ripe for publication. It was recalled, however, that attorneys for Judge Hanford, when Manager Walter Thayer, of the Burns agency, was on the witness stand, attempted to ask him who else besides John H. Perry had been interested in the engaging of the agency to shadow Judge Hanford, and Chairman Graham had refused to permit the question to be answered.

PROBE CONTINUED.

The defense of the jurist to the charge filed by Perry alleging gross intoxication, which was opened Wednesday evening, was carried on throughout the entire session to-day, including the testimony of former Assistant United States Attorney Hutson.

J. J. Ward, a general contractor, who was mentioned by Councilman Oliver T. Erickson as on the same car with himself when he had seen Judge Hanford in a state of intoxication, remembered the incident, but flatly contradicted Erickson as to the condition of the jurist. Ward testified that he had seen Judge Hanford on the street cars for six years and had never seen him under the influence of intoxicants. He had seen him drowsy, and when he might have appeared to strangers to be intoxicated.

Ward said that Erickson had remarked to him that Judge Hanford was drunk, but that he had replied he did not think so, and that it was a peculiar habit of the judge's to sleep on the cars.

Elmer E. Todd, former United States attorney, who prosecuted the Holt murder trial during which Judge Hanford, according to Robert Jones, a Wednesday's witness, had dozed for 20 seconds and had not heard an objection made by an attorney for the defense, contradicted Jones's testimony.

EXHIBIT NO. 62.

Memorandum of compromise, settlement, and agreement, made and entered into this 30th day of August, 1901, by and between the Scandinavian-American Bank of Seattle, a corporation, E. L. Grondahl, Calhoun, Ewing & Company, William M. Calhoun, trustee, and Peter L. Larsson, as receiver of the firm of Heckmann & Hanson, copartners, appointed as such receiver in cause No. 32817 in the Superior Court of the State of Washington in and for the county of King:

Witnesseth that for and in consideration of the mutual concessions, stipulations, and agreements herein contained it is mutually agreed between all the parties hereto as follows, to wit:

1. That the said Scandinavian-American Bank shall immediately dismiss and release any and all garnishments by it had and taken upon the property and credits of the said Heckmann & Hanson in that certain action now pending in the superior court aforesaid in cause No. 32773, entitled "The Scandinavian-American Bank *vs.* Heckmann & Hanson," brought to recover a certain overdraft therein alleged, and shall permit and allow the said Peter L. Larsson, as receiver aforesaid, to proceed to an immediate collection of such credits and take possession thereof.

2. That said Peter L. Larsson, as such receiver, shall maintain and keep in a separate fund, subject to be accounted for as such separate fund, the sum of $889.64, to be received from the North American Transportation & Trading Company by release of such garnishment, and that he shall apply the same as follows: First, to the payment of all clerk's, marshal's, and commissioner's fees heretofore incurred or hereafter to be incurred in that certain cause in admiralty in the District Court of the United States for the District of Washington, entitled "Heckman & Hanson *vs.* the schooner '*Alice*'"; also insurance premiums incurred on said schooner "*Alice*" by said receiver and fees for libellants' proctors, not exceeding the sum of $200.00; also all keepers' fees, moving and care of said vessel, and other legitimate fees connected with said litigation and accruing until its final determination; and the balance of such fund so maintained in such separate fund shall be paid over by said receiver to A. J. Tennant for the use of said A. J. Tennant or his assigns in making such repairs on said schooner "*Alice*," now at the yards of said Heckmann & Hanson, as may be necessary to make said vessel seaworthy.

3. It is further agreed that said Peter L. Larsson, receiver, shall proceed at once, if possible, to perfect and establish the lien claimed by Heckmann & Hanson upon said schooner "*Alice*" under the libel against said schooner and now pending in the court aforesaid.

4. It is further provided that all parties hereto waive any and all exceptions to the libel of Heckmann & Hanson, heretofore filed in said cause in admiralty, and said William M. Calhoun, trustee and claimant, hereby waives his cross libels therein, and also waives all demand for security to answer for the same; and that testimony shall be taken as soon as possible and convenient, or stipulations entered into for the establishment of or disposition of all the claims pending in said action and the disposition of said vessel.

5. That if the court shall allow said receiver to bid upon the sale of said vessel under said libel of Heckmann & Hanson, and offset the claim of said receiver against his said bid, that then and in that event said receiver hereby agrees to bid upon said vessel to the full amount of the claim allowed to him, if necessary so to do for the purpose of purchasing said schooner "*Alice*" at marshal's sale, and further agrees that

if he, the said receiver, shall purchase said schooner at said sale that he will immediately transfer said vessel in its then condition to said A. J. Tennant, or to such person or persons as he shall by said A. J. Tennant be directed, and shall thereupon pay over to said A. J. Tennant the balance of such special fund then in his hands, as aforesaid.

6. It is further agreed that if upon the sale of said vessel by the United States marshal the court shall allow any other claim of lien against said schooner than that of said receiver as of equal or prior rank to that of said receiver, or shall allow any other claim against said vessel to share pro rata with the claim of said receiver in the proceeds of said sale, or if in any way it becomes necessary to pay any sum to any person other than said receiver out of the proceeds of said sale, then such sum so to be paid shall be paid by said A. J. Tennant, and under no circumstances shall said receiver be held liable for any payment of any sum to any person by reason of such marshal's sale and the proceeds of said sale thereat.

7. It is further agreed that upon the transfer of the said schooner *"Alice"* to said A. J. Tennant, as in the preceding paragraph set forth, by said receiver, the said Scandinavian-American Bank will immediately dismiss its said action No. 32773, now pending in the Superior Court of the State of Washington in and for the county of King, upon the alleged overdraft in admitted to be the sum of $6,959.97 for the purposes of this settlement, and shall satisfy and release every claim against said Heckman & Hanson and said receiver arising out of said action and said claim.

8. And it is further agreed that immediately upon said transfer of said schooner as aforesaid, said receiver will dismiss the action now pending in the District Court of the United States for the District of Washington, in personam, No. —— upon the docket of said court, wherein Heckmann & Hanson are libellants, and against the Scandinavian-American Bank, E. L. Grondahl, William M. Calhoun et al., without cost being taxed to either party.

9. It is further agreed that this agreement shall in no wise take effect or be in force until it has been signed by the parties hereto, submitted to a judge of the Superior Court for the State of Washington, in and for the county of King, and by such judge or court approved, whereupon the same shall immediately take effect and be binding upon the parties hereto.

THE SCANDINAVIAN-AMERICAN BANK,
By E. L. GRONDAHL, *1st Vice Pres.*
E. L. GRONDAHL,
WM. M. CALHOUN, *Trustee.*
CALHOUN, EWING & CO.,
By WM. M. CALHOUN.
PETER L. LARSSON,
Receiver of Heckmann & Hanson, copartners.

Executed in the presence of—
R. A. BALLINGER.
J. B. METCALFE.

ACCEPTED.

A. J. TENNANT.

SEPTEMBER 3RD, 1901.

The above agreement approved and P. L. Larsson, receiver, directed to carry out the same as per its terms.

GEO. MEADE EMORY, *Judge.*

(Filing on back:) No. 32817. In the Superior Court, King County, Washington. Wm. M. Curtiss, pltf., *vs.* Heckman & Hanson, defts. Stipulation for sale of schooner *Alice*, &c. Original. Filed Sep. 3, 1901. C. A. Koepfli. R. S. Jones.

EXHIBIT NO. 63.

[Chambers of United States district judge, district of Washington, rooms 32 and 33, Colman Building.]

SEATTLE, WASH., *October 20, 1896.*

Mr. PAUL S. HOGAN, *Mount Vernon, Wash.*

DEAR SIR: Your letter of October 19, addressed to Capt. W. D. O'Toole, together with the petition for appointment of Mr. Weppler to be United States court commissioner at McMurray, has been referred to me.

A recent act of Congress has abolished the office of circuit court commissioner, and provides that all commissioners in office shall cease to act on the 30th day of June next, and in lieu of the office abolished, United States commissioners are to be appointed

for terms of four years. The law is so obscure that I am in doubt whether any more court commissioners can be appointed at all and whether appointments of United States commissioners can take effect before the 1st day of next July. Therefore, being so much in doubt, I am disposed to allow matters to go on without making any new appointments until next July.

I do not usually inquire about the politics of persons recommended for appointment as commissioners, but loyalty and a belief that the National Government may rightfully exercise its lawful authority in all places are qualifications for the office, and when the time comes for making an appointment I will not regard Mr. Weppler as a suitable person unless I am assured that he is not a supporter of the Chicago platform, or of the candidates for office who subscribe to its declaration.

I say this because I am not personally acquainted with Mr. Weppler and do not know his position in this campaign.

Respectfully, C. H. HANFORD.

EXHIBIT NO. 64.

RE SALMON FISHERIES.

STATEMENT OF MR. PRESTON BEFORE THE SUBCOMMITTEE IN EXECUTIVE SESSION.

FRIDAY, JULY 12, 1912.

Mr. PRESTON. At your suggestion I have examined the files in two cases known as the Fishery cases. The first one I might say was the main one, being the case of the Colonial Trust Company and the Rudolph Pfeiffer Company against the Pacific Packing and Navigation Company, No. 1081. I have here a full statement that I made up. The files in that case are very voluminous; my notes on them cover ten or a dozen pages.

The CHAIRMAN. What would you propose that we should do now—that you should recite this?

Mr. PRESTON. I can recite from the paper that is given here with a brief statement of its contents. Many of them would not interest you.

The CHAIRMAN. Oh, well, you can just check them off on your paper, those that are not needed.

Mr. MCCOY. Perhaps the better way would be to check off those that we do need.

The CHAIRMAN. Suppose we start in and see how it goes.

Mr. HUGHES. Wouldn't it be entirely sufficient for your purpose to have Mr. Preston give a brief synopsis of each paper and then only put in such papers as you may think worth while, after he has given a brief history of the case?

Mr. PRESTON. I understand you are examining the case with a view to taking into consideration the allowance made to the attorneys and the receivers?

The CHAIRMAN. And the distribution of the assets generally and what went to the creditors.

Mr. PRESTON. I can make you a general statement of that.

To start with, the receivers handled $3,255,880. The total allowance to receivers and their attorneys was $87,885, which equals 27 mills on the dollar of the cash handled.

Mr. MCCOY. What was the allowance to each?

Mr. PRESTON. I will come to that in detail later. This is a general statement to start with. The creditors were paid 27 mills on the dollar, or 2.7 per cent. The creditors received seven and a fraction cents on the dollar, but the assets were taken over by a reorganization composed of a very large per cent of the creditors and the stockholders.

Mr. MCCOY. The stock was issued, I presume.

Mr. PRESTON. In the reorganization?

Mr. MCCOY. Yes.

Mr. PRESTON. I do not know; that will show here.

Mr. HIGGINS. That is entirely separate from the receivership proceedings?

Mr. MCCOY. Not necessarily; it might have been on a court order.

Mr. PRESTON. No; it did not appear in the court proceedings at all. It simply appears that there was a reorganization committee composed of the creditors, etc., and something over $2,000,000 of the creditors were present in court when the fees were fixed.

Bills filed March 3, 1903.—The Colonial Trust Company is a small contract creditor. Its cocomplainant, Pfeiffer, was a stockholder. The basis of the claim was the insolvency of the defendants.

Mr. HUGHES. The basis of the action of proceeding?

Mr. PRESTON. Yes; a large amount of outstanding claims and fisheries contracts, which I can explain to you from reading this.

Fisheries are operated by Chinese contractors contracting in advance of the season to supply necessary labor for each cannery, and they gave them a guaranty of so much of a run, and these contracts had been made in advance for the coming season of 1903, but the company did not have means to carry them out and continue its pack or its operation, I should say, and that the assets would be dissipated by suits being brought against the company for debts it was unable to pay in different jurisdictions. The complaint asks for the appointment of McGovern & Hallock, or alleges, I should say, the appointment of McGovern & Hallock as receivers by the United States court in New Jersey, and asking that they be appointed here, with J. A. Kerr. On the same day the answer of the defendant is filed, admitting allegations of the complaint. On the same day an order is made appointing those three receivers, they to be subject to removal by this court and required to report to this court. On the same day the oath and bond of Kerr was filed.

March 5th, Kerr petitions for leave to pay pay roll of $6,600, and insurance premiums that were passed due amounting to $9,120; and an order was made granting the petition.

On the next day, *March 6th*, the Seattle Hardware Company petitions, alleging that it has sold and partially delivered a large bill of goods in ignorance of the insolvency, and asks to have them set aside and kept separate from the assets or that provision be made to pay for them in cash.

On the same day Kerr petitions for leave to sign checks and conduct the business alone because his coreceivers are absent from the State; which order was granted.

Mr. McCoy. Where was Hallock?

Mr. Preston. Hallock was in New York State, I think, and McGovern in New Jersey.

Mr. Dorr. McGovern was in New York and Hallock in New Jersey.

Mr. Preston. That is right; I got it down wrong here.

On *March 9th*, Kerr, the receiver, petitions for leave to issue $80,000 of receiver certificates in order to secure supplies and labor to operate the Orca & Kenai canneries for the 1903 season; which order was granted.

On the 13th an order directing the return of the goods to the Seattle Hardware Company.

On the 21st the Pacific Coast Company asks leave to intervene, setting up a claim of $16,000, and the order is made granting leave to intervene.

The same day McGovern petitions for leave to issue receivers' certificates for 1¼ million dollars—$750,000 to be sold now at not less than par, but sets out the necessity for issuing $700,000 in order to operate canneries for 1903, of which I may say inferentially there were two or three in Washington and 12 or 13 in Alaska; $700,000 would be necessary for cannery supplies and $750,000 for cannery labor; $13,000 to protect margin on the 1902 pack, which had been hypothecated by the company. I will explain that a little fuller from my memory. It seems that the 1902 pack had been stored and warehouse receipts for the same hypothecated to borrow money with, and that the price of salmon had fallen so that the margin was so close now that the stockholders of the collateral would sell the salmon and nothing be realized from the margin. This petition was granted, but the order required the receiver to redeem the $80,000 previously issued for receiver certificates.

On the 31st, petition of McGovern was filed and April 23rd his bid.

April 6th, another creditor, the Linen Thread Company, comes in and sets up the same set of facts as the Seattle Hardware Company did in regard to its goods. That petition was granted. It seems they had sold a bill of goods to the receiver in ignorance of the insolvency.

April 7 the inventory is filed, which shows assets of the company of $4,635,827; liabilities, $4,868,973. Of these assets one and a fourth million was said to be in Alaska, $2,000,000 in Washington, and one and a third million in New Jersey—in round figures, $1,330,000. There was fifty pages of this inventory. I have simply brought in the lump of it.

On the *11th of April* the National Bank of Commerce petitions to intervene for a preference claim of $25,000 for cash loaned within six months to the receiver to pay supply and labor bills contracted within six months. This petition was granted on the same day and the receiver directed to pay that out of the proceeds of the certificates.

On the *25th of April* oath and bond of Hallock was filed.

On the *9th of May* petitions of the receivers recited that the New Jersey court and the Alaska court had also authorized a million and a quarter receivers' certificates, reciting sale of $750,000 of them, and asking leave to sell balance, $500,000. Order granted, providing they be sold at not less than par and requiring deposit of all cash that the receivers may receive in a bank to be selected by the receivers.

On the *11th of May* the plaintiff petitions reciting that John R. Winn had been appointed receiver in Alaska and New Jersey, and asking that the same be done here, and asking that there may be harmonized action between the different courts so that they would have the same receivers. This order was granted, but the order required Winn to be subject to the orders of this court. Same day his oath was filed and on the 20th his bond was filed.

On the 25th there was an order made——

Mr. McCoy. Who was this receiver?

Mr. Preston. John R. Winn. He was the attorney in Juneau, Alaska.

On the 25th there was an order made reciting that one of the devices used in canning salmon was protected by a patent, and of some infringement suit pending in which an injunction was asked. This order was that the receivers might give a bond and stay the injunction, so as to permit them to use the device which was in dispute.

On the *9th of June, 1903*, copy of order of Judge Brown, of the Alaska court, to remove the topping machine from Alaska to Washington.

July 29, 1903, petition of receivers for permission to make good guaranty against swells made to cover the 1902 pack, estimated to involve expenditure of $300, and to make a like guaranty for 1903 pack. Order granting said petition.

July 31, 1903, petition of Johnson and order granting same for leave to sue receivers in justice court for lost baggage.

On the *18th of August* affidavit of Receiver Kerr filed, showing that there had been an invasion of the fish traps of the company in Whatcom County by fish pirates and setting a contempt case against them for hearing on August 20th, requiring them to give bond of a thousand dollars each to appear at that time; but there had been previously on the 7th of August a petition of the receivers for an order on the United States marshal to protect the traps from the fish pirates and an order made on the same day to the marshal to protect them.

On the *8th of August* there was filed a petition for leave to make contract with salmon brokers in England for $500,000 worth of the 1903 pack and to receive advancements on same. Order granted.

September 3d the Alaska Commercial Company filed a petition for lien on assets of $3,380 for money received from the United States Government on mail contract. It seemed that the Alaska Commercial Company and the Pacific Packing and Navigation Company had taken a contract in the name of the Packing and Navigation Company to carry the mails, and had alternated their steamers so that the money had come to the receivers—all the money—and they were entitled to half of it. An order was made directing the payment of this.

On the *5th of September* there was a petition of the receivers for leave to make proof of loss. It seemed that the Kenai cannery had burned and there was a loss claimed of $77,286.20. An order was made granting this.

On *September 30th* P. F. Nordby petitioned for an order on the receivers requiring them to pay $227.94 for cash collected, and $110 additional for supplies furnished fisheries.

On November 3d petition of receivers recites that the order for receivers' certificates required net proceeds of the 1903 pack to be deposited to create a sinking fund. By an oversight the gross proceeds of certain sales of the pack had been deposited there that amounted to $22,000 and which ought not to have been deposited in the sinking fund; and they prayed for an order to transfer it from the sinking fund over to the general deposit; and this was granted on the same day.

On *November 27th* the receivers' petition recites that out of the proceeds of receivers' certificates $26,940 was used to pay interest on them which should have been paid out of the general funds; that there was $600,000 proceeds of the 1903 pack in the sinking fund, and there was $900,000 worth of salmon pack unsold, and they asked a transfer of that amount out of the sinking fund.

The Chairman. Where are their warehouses?

Mr. Kerr. We had a warehouse of our own on the Broad Street dock.

Mr. Preston. This was granted.

Then on the 28th of November there was an order permitting $7,800 which had been paid into the sinking fund which did not come from the salmon pack, to be withdrawn to the general fund.

On the *8th of December* an order limiting creditors to a period of seven weeks to present their claims, requiring notices of that limitation to be published for five weeks in the Post Intelligencer here in Seattle and mailed to all known creditors.

On *December 28th* a petition for leave to sell for $65,000 the steam schooners *Geanie*, *Newport*, and *Excelsior*, and the two mail contracts which pertained to them, reciting that those were inventoried at $115,000, but that two of them which were in this jurisdiction had been appraised at $39,000; that the other one, the *Newport*, was in Alaska, and they could not get to it to appraise it, but that its invoiced value was only $15,000. That petition was granted.

Mr. HIGGINS. That left the receiver with how many schooners?

Mr. PRESTON. I would have to go to the inventory for that.

Mr. KERR. Only the two power vessels and five or six ships. These power vessels were steamships which were carrying mail and passengers—steam tugs.

Mr. HIGGINS. And which was not a substantial part of the outfit which you used?

Mr. KERR. Those vessels were used in connection with the canneries, but we went out of the ocean transportation business.

Mr. HIGGINS. Those ships were used in connection with fishing?

Mr. KERR. They were used exclusively in carrying passengers and mail—those that we sold.

Mr. HIGGINS. But that left you with no passenger ships.

Mr. KERR. Well, it left us with ships so that we carried a few passengers to the canneries and along the coast, but we did not operate them for the passenger business.

Mr. HIGGINS. That is, you personally went out of the passenger-carrying business?

Mr. KERR. Yes.

Mr. HIGGINS. And did that also dispose of your mail contract?

Mr. KERR. Yes.

Mr. PRESTON. This petition, as I remember it, recites that there is no advantage or profit in the receivers handling that business—that they could conduct the cannery business without them.

Mr. KERR. We carried the mail from Seattle to Valdez and from Valdez to Canaie, and during all the time this contract was in effect, especially in the winter season, you will find that practically every trip we made we ran behind and that we lost money.

Mr. HIGGINS. How about carrying passengers; was that profitable?

Mr. KERR. No.

Mr. HIGGINS. Did you maintain the same rates for carrying passengers after you took charge of the property as was maintained before?

Mr. KERR. Just the same; we did not change it at all.

Mr. PRESTON. That petition was granted.

On the *8th of January, 1904*, there is a petition for leave to draw out of the sinking fund $16,207 more that was not a part of the net proceeds of the pack. That was granted.

On the *18th of January* the receivers' petition for leave to vacate their uptown office, saying that it will save $250 a month rent, and to sell the furniture in it for $1,800, and then to move down to Bellingham. That order was granted.

On the *19th of January* the Fireman's Fund petitioned to be paid insurance premiums of $14,869. Order granting leave to file petition, and on the 30th of January receivers answered, contesting their right to that money, and they filed a reply to them on the same day.

On the *30th of January* the receivers petitioned the court. Petitioner recites operation of the Alaska and Puget Sound canneries and steamers and that they spent one and a fourth million dollars from receiver certificates and $500,000 from pack and sale of property paid this item of same of property, $82,800 included in the $500,000—that refers to the 1903 pack that was carried on by the receivers themselves; that the pack that year had been disappointing all over the coast, but they had in the sinking fund $640,000, and they had supplies on hand for the next season of the value of $473,500; that the 1903 pack amounted to or involved $800,000 expenses. They advised a continuance of the business another year rather than liquidation; that they be allowed to issue new certificates for $750,000, taking up the outstanding issue of the old out of that; that is to say, they did not have funds in the sinking fund sufficient.

Mr. MCCOY. Was there any profit on the business the first year?

Mr. KERR. About $208,000.

Mr. MCCOY. What was the capital stock of the company?

Mr. KERR. Twenty-five million dollars.

Mr. PRESTON. On the same day there is a petition filed by creditors whose claims aggregated two and a half million dollars asking that that petition of the receiver be granted.

Mr. HIGGINS. How long had the company been in operation when you took it?

Mr. KERR. It commenced operation in the middle of the pack of 1901. 1901 was a disastrous year on the Pacific coast for salmon. About five and a fourth million cases of salmon—they lost the first year they remained in business over $100,000, and the next year was almost as disastrous.

Mr. HIGGINS. What was it the last year?

Mr. KERR. That was the last year they operated.

Mr. PRESTON. On the same day the receivers petitioned for leave to draw $150,000 out of the sinking fund, leaving enough for the purposes of the formal order, and to

use the $150,000 to pay outstanding obligations and procure supplies for the 1904 season. That order was granted.

On *February 26th* there was an order made on the depositary of the sinking fund, which was a bank in San Francisco—I believe the Bank of California, to observe the order of January 30th for taking up the old issue of receiver certificates.

On *March 17th* petition for allowance of attorneys' fees to Mr. McCord, who appeared as attorney for the receivers from the beginning.

Mr. McCoy. Did that petition have annexed to it any itemized statement of the services rendered?

Mr. Preston. No. It recites that he acted as attorney for more than a year, and there is an order allowing $10,000 to him on account, and directing the receiver to pay it on the same day.

March 23d receivers petitioned for leave to sell gas schooner *Duxbury*, reciting that she is three years old and that she cost $3,500, and they have a chance to sell it for $2,750; and the order was made granting the petition.

On *March 25th* there was an order allowing the Fireman's Fund its claim—that was contested as I said before—for $1,108 as a preferred claim, and $13,769 as a common claim.

On *April 2d* the receivers petitioned for leave to sell the small schooner *Maid of Orleans*, inventoried at $5,000, and that they have an offer for $4,800; which petition was granted. On the 2d of April, 1904, the receivers petitioned to sell a vacant tideland lot in Anacortez for $1,000, that being the appraised value of it. An order made directing the master in chancery to sell the same at public auction at an upset price of $1,000.

On the *23d of April* there is a petition of Judge Winn asking for an allowance to him on account of services as receiver. There is filed with this an order of the Alaska court for allowance of $7,500, and this order here is confirmatory of that one. Now that $7,500 I did not take into consideration in counting up the allowance made by Judge Hanford for that reason—it was simply confirmatory of the order of the other court.

On the *3d of May* there is a petition filed by a Chinese firm at Chinmow claiming $850 for wages for firemen and testers, and $10,300 for guaranty on the 1903 pack on a contract, reciting that the contract guaranteed them 44,000 cases, and that it had fallen short of this supply to the Nushagak River cannery.

On the *17th of May* there is a master's return of sale on the Anacortez lot, $2,200.

On the *24th of May* an order for the master's fees and disbursments amounting to $104.70.

On the *27th of May* the receivers petition to order deed for the same; and that is granted.

On the *21st of June* the master's report of his deed and order that it be without redemption.

On *June 23d* another Chinese firm, Wing Hong Shing, filed a petition for leave to intervene, claiming part of the money that Shing Mow claimed to be due to him.

On *June 27th* petition of the receivers to exchange tideland contract they had for warehouse and building near it, reciting that they had no use for the tideland contract and that the warehouse and building would be useful. That is granted.

On the *30th of June* there is an intervention of the Federal Insurance Company having made a preferred claim for $3,581, or for premiums. Order was granted. Then there is an intervention of a company in England for a preferred claim of $181.80, and a common claim of $1,159 for insurance premiums. An order is made granting that.

On *July 14, 1904*, receivers petition to borrow $125,000 on warehouse receipts for use in putting up 1904 pack. Granted.

I overlooked that on the 10th of May here the receivers petitioned, reciting that they need $100,000 to pay bills preparatory to removing offices to Bellingham. That they have on hand at Seattle salmon worth $160,000, in New York salmon worth $235,000, in England salmon their equity in which is worth $200,000—that is, salmon for which they had received an advance under a previous order from the London brokers, and they pray leave to borrow $100,000 on warehouse receipts. That is granted.

On the *6th of September* petition of the Chong Fish Company filed.

On the *1st of October* receivers petition to sell bulk of assets. This petition receipts one and a fourth million original issue of receivers' certificates, and that they have been retired, and they have $750,000; that the receivers had operated canneries in 1903, the cannery at Blaine in Washington and 12 canneries in Alaska; packed 386,856 cases of salmon at a cost of $1,200,000 and sold 205,000 cases for $1,000,000 over and above brokerage, transportation, storage, and insurance charges, and also realized $2,900,000 out of sales of assets, most of which was the 1902 pack, including $88,156 under the Alaska court orders; they have on hand of the 1903 pack, in England 125,000 cases pledged for advances, in the east 50,000 cases, in Seattle 25,000 cases; that in the

season of 1904 they had operated five canneries in Alaska; the output was 247,000 cases, out of which they have and will realize $1,000,000; that when appointed there were labor claims of $136,000, of which $108,000 were paid, unsecured creditors $3,400,000; recites that the reorganization committee, composed of stockholders and the large creditors, wished a sale to be made of everything except salmon, receivers' bills receivable and supplies on hand; that all the costs of the 1903 operation had been paid except $2,000, and that they will be able to pay all expenses and leave a surplus.

Now, this petition describes the assets sought to be sold divided into 23 groups of eleven pages—each cannery will constitute a group in itself with the surrounding properties and then the steamers, etc.; that the cash on hand at the time they were appointed was $38,000; that they made betterments at an expense of $80,000; that they had handled up to February, 1904, which was the close of the 1903 pack business, $3,320,000; that they had expended $3,175,000; that the balance on hand at the end of the 1903 work was $144,600; that they had received as a result of the 1904 operation $753,000, including $144,600 that was on hand; that they disbursed $659,000, and the balance is $94,294; that it would require $350,000 more to close all the accounts exclusive of all the expenses of the receivership; that the net gain of the 1903 operation was $108,000, and 1904, estimate of $112,000, but not including—not deducting the expenses of administration—that means the receiver's compensation.

Now, they suggest that upset price be set upon each single group, and that there be an upset price put on the whole thing in case it should be sold in the aggregate, when there is on the same day an order to the clerk of the court to pay out of the registry of the court to the receiver the amount received from the sale of the Anacortez lot. On the same day there is an order of sale of the assets, excluding the pack on hand, etc., as it excludes it in the petition, two-thirds of the proceeds to go to the Alaska court and one-third to the Washington court.

Mr. McCoy. Why was that?

Mr. Preston. Why, that was recited to be a fair division of the values of the property according to their locations, as I understand it.

On *October 1, 1904*, there is an answer filed by the receivers to Shing Mow's intervention, an order of reference on it; an answer to the petition of Wing Hong Shing, an order of reference on it.

On November, 3, 1904——

The Chairman. Those Chinamen were handling the contract labor.

Mr. Preston. You would call them boss Chinamen; they were contractors.

On *November 3, 1904*, the receivers petitioned for leave to settle a $5,000 salvage claim made against them, for $500. That is granted.

November 18, 1904, they petitioned for leave to sell a $2;800 claim against an insolvent debtor for $750. That is granted.

November 23, 1904, they petitioned for leave to grant order of sale so as to include balance of property because they were not able to effect any sale without it; to permit the creditors to apply—if any creditor is a purchaser—to apply on his bid so much of his claim in amount equal to the dividend which would be coming to him on his claim, and requiring the purchaser, if he were a creditor, to retire the receivers, certificates. Supplemental decree of sale made on that petition.

On *December 19, 1904*, the receivers object to the confirmation of sale of certain groups—3, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, and 18.

December 21, 1904——

The Chairman. You mean objected to the results of the bidding?

Mr. Preston. To the results of the bidding. I would explain here that this sale was to be made by the master in chancery. He made the same and sold different groups to different people and the receivers object to certain groups.

December 21, 1904, the master's report is filed on groups 4, 9, 10, 11, 13, 14, for $6,600.

December 24, 1904, there is an order of confirmation of the sale of group 6 for $40,000, $1,982, and $25,000, a mortgage taken for $2,200, and a rejection of all other sales—or a refusal to confirm the other sales.

December 30, 1904, the receivers approve the sale of group 9 for $8,500; group 10 for $750, and object to others.

On *January 1, 1905*, there was a notice filed of the claim of the Pacific Selling Company. That was the one that was subsequently rejected.

January 9, 1905, the supplementary report of the master showing Alaska sale for $43,375.

January 29, 1905, an order allowing Mr. Kerr $15,000 on account of services as receiver.

February 4th, there is a supplemental report.

March 10th, the receivers petition and report claims filed with them of creditors; debentures $1,698,000, unsecured notes $1,215,000, collateral notes $121,000, which

collateral will pay judgments $17,575, general creditors $44,168; total $3,000,097. Their report rejected claims $677,000; contingent liabilities $670,000—that contingent liability is explained more in detail in the report, being the endorsement of this company on the notes of the Pacific American Fisheries Company, an allied company, which was also in receivership at the same time. This company owning all of the capital stock of the other company except either ten or fifteen shares—I forget exactly.

February 15, 1905, there was a lease of the Orca cannery.

February 15, 1905, motion of purchaser of one parcel to shorten the time for confirmation.

February 17, 1905, receivers report recommending acceptance of bid of $205,000 for the large bulk of the groups and the rejection of separate bids, but asking that first notice be given to all the creditors.

February 4, 1905, there is a master's supplemental report of the sale.

February 8, 1905, the receivers' petition to pay $225,000 on account of receivers' certificates out of the sinking fund for interest, reciting that they only got two per cent on the deposit and certificates were bearing six per cent.

February 14, 1905, receivers object to certain bids and recommend certain others, and there was an order confirming the sale of those they recommend. Then Humphreys, the purchaser of one of the groups, moves for confirmation of his sale, and his petition that the time for the consideration of the matter be shortened is granted by the order of February 15.

February 17, 1905, a creditor objects to the sale of Humphreys', and an order then fixing March 6th for the hearing and directing notice to creditors is made.

February 18, 1905, Humphreys again moved for confirmation and gives notice of his motion, and supports it by two affidavits of himself and one of another man. Then the bid of Spencer is received. He is a man who bids $205,000, and he objects to Humphreys' sale.

The CHAIRMAN. What was the amount of Humphreys' bid?

Mr. KERR. $38,000. That was one of the canneries along what we call the westward of Alaska. There was one at Nushigak and one at Karnick and one at Kanai and one at Orca, and we sold to the Northwestern Fisheries Company all this group at the same time that Humphreys bid on the Orca cannery. [Here Mr. Kerr makes some further explanation which is inaudible to the stenographer.]

Mr. PRESTON. *February 21, 1905*, there is a motion and affidavit of Humphreys filed; on the same day a man by the name of Talton files objections to the Spencer purchase of groups 2 and 3.

March 2, 1905, Humphreys files a bond—I do not remember what that bond was for.

Mr. KERR. Humphreys got a lease of the cannery and the bond was to secure the lease to Humphreys.

Mr. PRESTON. On the *2d of March* the court makes an order to the receivers to conform to Humphreys' sale.

March 3, 1905, he makes an order for the lease of the Orca cannery to Humphrey. Now, the reason for that as I gather it from the paper, was that the next season was so close, while that contest was going on for the sale, that they had better lease it for operation—maybe I am not right about that.

Mr. KERR. That is substantially right. It was leased and subsequently it was sold to him for $40,000. I do not know the exact amount; probably it will appear in there later.

Mr. PRESTON. *March 6, 1905*, Spencer, a large bidder, files objections to certain of the sales and then there is an objection to the sale of a certain tugboat to Spencer. Then the tugboat files objections to the Spencer sale, and then the tugboat files a motion against the master's report and asks for a confirmation of the sale made of the group to it; then Humphreys objects to the confirmation of the Spencer sale, and Humphreys files a motion attacking the master's report and asks for the confirmation of the sale to him. Then a man by the name of Field, who was a personal-injury plaintiff against the receivers, files an objection against any distribution of the funds of the creditors which would leave him out, and gives notice of hearing, and the receivers give notice of hearing his petition. Then there is a petition of the receivers to settle with a certain creditor who holds $100,000 of collateral and pay $22,500 in cash to the receivers—in other words, discounting $2,500. This is granted on the recommendation of the petitioners.

March 10, 1905, there is a petition to sell the tug *Alice* for $5,150. That is granted. On the same day the purchaser of the Blaine cannery petitions to be paid $1,700 for missing articles, showing that he bought according to the inventory, and when he came to inventory them that there was that much missing. That is granted. Then there is an order on that date establishing claims of the creditors, in accordance with the report of the receivers, rejecting those claims which the receivers rejected.

March 14, 1905, there is an order confirming the sale to Spencer, except the Orca cannery, and in so much as the Alaska judge is absent from his jurisdiction and they can not have a confirmation of that sale in time for the 1905 season the receivers recommend that they lease the canneries to Spencer for the 1905 season pending an opportunity to get a confirmation from the Alaska court.

April 1, 1905, order directing the clerk to pay the receivers the proceeds of the Blaine cannery, the masters having sold it and having returned the proceeds into the registry of the court.

April 3, 1905, the receipt of the receiver to the clerk for that amount is filed.

April 25, 1905, there is an order to retire the balance of receivers' certificates, $462,500.

May 2, 1905, the master petitions for leave to amend his return of sale, Blaine cannery. That is granted.

May 3, 1905, the receivers petition for leave to sell vessels to Humphrey for $38,500. There is a figure ⅓ in there somehow, and I can not translate it on my memorandum.

May 8, 1905, there is an order confirming the Spencer sale.

May 9, 1905, an order that the balance in excess in the sinking fund—that is to say, that is left after the retirement of the receivers' certificates—be paid over to the receivers.

May 25, 1905, there is a petition of the receivers for leave to sell a yacht which they say was built by the company for a pleasure yacht, and they have no use for it, and they can get ten thousand dollars for it, and it costs fifteen thousand dollars. That is granted.

May 29, 1905, an order fixing the master's compensation for the sale and his memorandum of expenditures and costs made in the sale; and then there is an order of the clerk to pay the receivers $29,000 out of the registry, proceeds of one of the master's sales.

June 20, 1905, Humphrey petitions for allowance for shortages on the Orca cannery, $4,454. That petition is the same in effect as the other one for shortages.

June 27, 1905, there is an order exonerating Humphrey from his bond.

June 30, 1905, order to clerk to pay receivers $44,394, proceeds of the master's sale.

August 2, 1905, there is a claim filed by Johnson claiming a preference by virtue of a judgment.

August 21, 1905, there is a stipulation extending time for the proofs in the Chinese cases.

September 11, 1905, the Northwestern Fisheries Company files a petition reciting that it has become the successor in interest of Spencer and Humphreys in their bids. And it claims a shortage of $3,300; that is granted.

Same date receivers report additional claims of creditors and an order of court establishing those claims. Then there is an order by consent dismissing Humphreys' petition for shortage on his own motion.

October 19, 1905, memorandum decision of 12 pages by Judge Hanford disallowing Chinese claims. I will not go into it except to say that it refers to the merits of their claim of guaranty that they are not entitled to any damages for the breach of guaranty.

November 3, 1905, there is a petition of Drew to correct a difference given him by the defendant before the receivership, reciting that there was an error in the description. That is granted.

November 4, 1905, there is a claim of Griffith Deering & Company for brokerage, and then there is a claim of Blair on the $5,000 debenture, a claim of Martin on $3,000 debenture—filed.

On *November 6th*, there is a claim of a man named Ross for professional services as attorney rendered the company, he claiming a lien on the papers in his hands, so as to entitle his claim to preference. There is a memorandum filed in support of that.

On the same date there is an order made by the court allowing compensation as follows:

To Kerr, reciting previous allowance of $15,000 and allowing $20,000 more; to McGovern, reciting previous allowance of $3,759.15—I can not find that in the records, that previous allowance, it may have been back east—for allowance, or payment or whatever it was, was approved in the order and he is allowed $21,240.85, so much more to bring it up to $35,000, on a par with Mr. Kerr's allowance. Mr. McCord was allowed previously $10,000, and in this order he is allowed $16,000 more, making $26,000 in all.

Now, this order recites an appearance of John P. Hartman and George De Steiguer for creditors whose claims aggregate $1,800,000; and the appearance of Peters and Powell for creditors whose claims aggregate $500,000; of R. A. Ballinger as attorney for the plaintiff; and that these attorneys and the receivers' attorneys have stipulated in open court that the matter be left to the court to decide the amount.

Mr. HUGHES. Is there anything in the record showing any exception to the amount allowed?

Mr. PRESTON. No objection or protest shown. There is a petition filed with the receivers to settle the infringement suit for $1,000, and an order granting that. That recites a very much larger claim for damages on the part of the patentee.

November 14, 1905, the receivers' petition to pay out $170,000 to creditors, which equals five per cent dividend. That is granted.

November 28, 1905, there is some proof filed in support of the Ross claim. An order allowing it in part as a preferred claim and in part as a common claim.

On December 30, 1905, Knowles files a claim against the receivers for alleged services rendered them, $1,150.

May 7, 1907, receivers' petition for leave to correct master's deed to the Anacortez lot for some misdescription, and there is an order directing the present master in chancery to make the correction. The old master in chancery was Judge Eben Smith, who died, and Judge Richard Greene succeeded him.

April 23, 1908, there is a memorandum decision by Judge Hanford disallowing the Knowles claim.

May 5, 1908, there is the receiver's final report showing total receipts $3,255,880.00; total disbursements $3,183,504.98; balance on hand, $72,375.13, which will pay a dividend to creditors of 2.47 or 2.47 per cent. There is an order made directing notice to be given to creditors.

May 22, 1908, proof on the publication of notice is filed and then an order is made directing that .0247 dividend be paid. This order bars all other creditors who had not presented their claims, and directs the receivers to store away and keep the books and records of the receivership for one year thereafter, then to be disposed of as they see fit. At this time is filed a notice of the withdrawal of certain creditors' claims.

February 23, 1909, the receivers' report, that is, Mr. Kerr makes this report of the filing dividend, showing that there is $1,885 left over, and authorizes an order allowing that amount to Mr. Kerr as additional compensation, inasmuch as he alone had done all the later work of closing up the estate, and on the same day an order was made discharging the receiver.

EXHIBIT NO. 65.

Puget Sound Sawmill & Shingle Company, a Washington corporation, plaintiff, *vs.* Pacific American Fisheries Company, a New Jersey corporation, defendant. No. 1079.

1903.

Mar. 3. Bill of complaint filed. Contract creditor $4,000 alleges capitalization of defendant $5,000,000, $1,000,000 preferred and $4,000,000 common. Defendant indebted to Washington people $50,000, and generally half a million. Defendant insolvent. Defendant's business consists of the operation of canneries in Washington and in connection therewith steam and sailing vessels, pound nets, and fish traps. Receiver necessary to prevent many suits in different jurisdictions tending to waste assets. Wherefore prays for appointment of receiver to operate during the fishing season of 1903. R. A. Ballinger, solicitor for complainant.

Answer admitting allegations. McCord for defendant.

Order appointing Thos. B. McGovern, George D. Hallick, and James A. Kerr as receivers.

Oath and bond of Kerr.

Mar. 9. Petition of Kerr, setting forth the unity of interest between the Pacific Packing & Navigation Co. and defendant, by unity of operation, and suggesting that receivers in this case indorse the $80,000 worth of receivers' certificates issued by the receivers of the P. P. & N. Co. and the certificates become a lien upon the properties of the defendant.

Order granting petition.

Mar. 28. Petition of receivers suggesting the operation of the defendant's canneries; expectation 200,000 cases. Ask leave to issue receivers' certificates $750,000 to obtain money to operate the canneries.

Order granting petition constituting certificates first lien upon all property and the proceeds of the salmon to be packed to be put into a sinking fund for the retirement of the certificates, except $500,000 for operating purposes.

1903.

Mar. 31. Oath of McGovern.

Apr. 3. Bond of McGovern.

Apr. 7. Inventory. Assets, $600,000. Liabilities, $870,000, consisting of canneries, saltery, boats, bills receivable, etc.

Apr. 13. Petition of receivers, reciting offer of $1,000 for three acres of land in Whatcom County; recommending the same.

Order granting the same.

Apr. 25. Oath and bond of Hallick.

May 11. Amended inventory. Assets, $1,100,000. Liabilities, $721,000.

May 25. Order authorizing receivers to enter a bond to suspend injunction in infringement case.

June 25. Receivers' first report, showing cash on hand at appointment $205.00. Receipts to May 31, including that, $170,000. All disbursed except $514.00.

July 2. Second report of receivers. Covers same dates as first report.

July 31. Order permitting receivers to institute action against steam schooner *Olympic* and owners.

Aug. 28. Second report to July 31st. Disbursed $109,265. Overdraft $120.00.

Oct. 30. Receivers' third report to August 31st. Disbursements $87,511.00, leaving overdraft $314.75.

Receivers' fourth report to September 30, 1903. Receipts $45,671.00; all disbursed except $24.00.

Nov. 18. Receivers' fifth report to October 31, 1903. Receipts $45,530.00 and disbursements $44,326, balance on hand $1,228.00.

1904.

Jan. 7. Receivers' sixth report to November 30, 1903. Receipts $15,256.93, disbursements $16,123.00, balance on hand $362.07.

Feb. 26. Receivers' seventh report to December 31, 1903. Receipts $5,130.00, disbursements $5,392.00, balance on hand $100.00.

Apr. 2. Order directing publication of notice to creditors, and also mailing notice to all known creditors requiring creditors to present claims within 30 days of first publication.

May 27. Petition of receivers for leave to operate at least one cannery during 1904. Expected output 50,000 to 75,000 cases; recommending better to continue operations than to liquidate. Shows a deficit of $55,000 in 1903 operation; that $357,000 only of the receivers' certificates were issued. Suggest the issuance of $300,000 more certificates, of which $100,000 to be issued for 1904 operations and balance for pro rata retirement of old issue.

Order granting petition.

Oct. 1. Petition of receivers recites 1903 operations resulted in 80,000 cases to cost $450,000. Net proceeds thereof $317,000. That in the season of 1904 receivers operated the Fairhaven cannery only. Output 45,370 cases. Will realize $260,000. 1903 run was only 30 per cent of expectations. 1904 run less than 50 per cent. Recites indebtedness of defendant $675,000. That in the opinion of the receivers and the reorganizing committee appointed by the stockholders and creditors the property should be sold. There is outstanding of the 1903 issue of receivers' certificates $76,000. Receivers' additional certificates issued $120,000. That the sales from the salmon pack will retire all of the certificates. Petition describes the assets divided into 16 groups. Recommends upset price on the several groups and upon the aggregate sufficient to clean up the accounts of receivers and the expenses of receivership.

Decree of sale as per plan of petition.

Oct. 15. Receivers' eighth report, January 1, 1904, to February 29, 1904:

Receipts	$41,700.00
Disbursements	41,300.00
Balance on hand	464.00

Receivers' ninth report, March 1, 1904, to May 31, 1904, showing:

Receipts	$28,700.00
Disbursements	28,900.00
Balance on hand	305.00

Receivers' tenth report, from June 1, 1904 to August 31, 1904, showing:

Receipts	$64,240.00
Disbursements	62,250.00
Balance on hand	2,292.00

Nov. 19. Master's report filed. Shows the properties sold as an entirety for $310,000 to W. A. Peters.

1904.

Dec. 12. Order of confirmation, showing that Peters was representing C. H. Payne, Colonial Trust Company, and Stuyvesant Fish, and reciting that Peters has assigned to E. B. Demming and his associates his rights under the purchase.

Dec. 31. Order directing the clerk of court to pay the proceeds of the master's sale from the registry of the court to Receiver Kerr.

Receipt of Kerr to the clerk for the same.

Order fixing compensation of master $3,500.00 and his expenses $318.00.

1905.

Jan. 9. Petition in intervention of the National Bank of Commerce et al., debenture holders of the Pacific Packing & Navigation Company, alleging that the packing company was insolvent but the Fisheries Co. solvent, and that the Fisheries Company had been wrecked by the Packing Company in to the interest of certain of its creditors. They ask to be heard in opposition the allowances of said conspiring creditors whose claims aggregate $500,000.

Order granting leave to intervene, and that upon answer the cause be referred to the master in chancery. In the meantime suspending proceedings on the contested claims.

Jan. 25. Receipt of Kerr, receiver, to clerk for balance purchase money, $24,019.00.

Feb. 1. Report on claims.

Mar. 31. Petition of receivers for compensation to themselves and attorney.

Order making following allowances on account:

To McGovern	$8,000
To Kerr	8,000
To McCord	8,000

May 10. Order to pay dividends to creditors recites withdrawal of objections to all of aforesaid contested claims, except that of Payne and Colonial Trust Company, aggregating $500,000.

Order fixing May 29th for hearing of matter, and directing notice to each creditor of Pacific Packing & Navigation Company by mail.

Protest of the Alaska Packers' Assn. against the said two claims.

June 1. Claim of National Storage Company filed, $4,049.00.

Order allowing that claim for $591.00 only, and other claims.

June 2. Decree allowing the contested claims directing a 30 per cent dividend.

Nov. 4. Claim of Sheehy.

Receivers' report of 357 cancelled certificates.

Nov. 13. Petition to compromise infringement claim for $5,000.

Order granting petition.

Nov. 16. Order of court upon petition of receivers for compensation to themselves and their attorney. Appearance in court for the receivers. Ballinger for the complainant, Peters & Powell for creditors representing $500,000. Hartman & De Steiguer for the syndicate of creditors of the Pacific Packing & Navigation Co. whose claims aggregate $1,800,000 recites stipulation in open court that the amount should be left to the court. Recites previous allowance of $8,000 to Kerr, $8,000 to McGovern, and $8,000 to McCord and makes further allowance of $9,000 to Kerr, $9,000 to McGovern, and $2,000 to McCord.

1906.

Jan. 8. Petition of receivers reciting amount on hand, $38,800.00, which warrants 5½ per cent additional dividend. Recites an agreement between Hallick and Alexander & Green, his attorneys, and the creditors of both companies, by which Hallich was to receive $3,000 and Alexander & Green $2,000.

Order making said allowances and directing 5½ per cent additional dividend.

Mar. 12. Receivers' twelfth report, from March 9, 1905, to March 9, 1906, shows balance on hand March 9, 1905, $292,583. Receipts since, $360,000. Disbursements to receivers and attorneys, $49,000; to creditors, $230,134. to plaintiff's attorney, $250.00. and other accounts, so as to leave a balance of $7,362. It appears from this that there were only six creditors.

Mar. 31. Eleventh report of receivers is an historical report of the operations with the canneries. Shows the total receipts of the receivers to have been $975,507, inclusive of the $310,000 realized at the master's sale.

Mar. 12. Order directing payment of further dividend of 1.7 per cent.

Mar. 19. Vouchers for payment of dividends.

Notice to creditors that receivers are to apply for discharge.

Order discharging the receivers.

EXHIBIT No. 66.

SEATTLE, WASH., *June 12, 1901.*

The undersigned, Heckman & Hanson, a copartnership composed of A. Heckman and M. Hanson, for value received, hereby sell, transfer, assign, and set over unto the Scandinavian American Bank of Seattle all that certain claim and demand now owned and held by the said Heckman & Hanson against the American schooner *Alice*, her tackle, apparel, and furniture, together with their maritime lien against said schooner for material and labor furnished in her repair, and for moneys advanced to said vessel, as is more particularly shown by the statements hereto attached and made a part hereof, amounting to the total sum of ——— 8017.26 (in pencil).

And the undersigned hereby assign any and all right to enforce said claim and lien by libel or otherwise against said vessel, her owner or owners, and hereby authorizes said Scandinavian American Bank, in their names or in the name of said bank, to bring such suit or action as may be necessary to enforce the claim and demand aforesaid, together with the maritime lien or liens thereto connected.

This assignment is made as collateral security to the said bank for obligations and overdraft now held by said bank against said Heckman & Hanson; and the undersigned hereby authorizes said bank to apply on their indebtedness to said bank any and all sums received by virtue of this assignment.

In witness whereof said Heckman & Hanson have hereunto set their hands and seal the day and year first above written. Executed in the presence of:

HECKMAN & HANSON, [SEAL.]
By ——— ———.

EXHIBIT No. 67.

THE SCANDINAVIAN AMERICAN BANK,
Seattle, Wash., June 13, 1901.

Messrs. HECHMAN & HANSON,
Ballard, Wash.

GENTLEMEN: Your overdraft at close of business to-night amounts to $6,917.62, which you will please cover by 12 o'clock noon to-morrow.

Yours, respectfully,

E. L. GRONDAHL, *1st Vice Pres.*

(Indorsed on back:) Aug. 7/03. Petitioners' Exhibit ——. Eben Smith, United States master in chancery, district Washington, northern division.

EXHIBIT No. 68.

[Cat. No. 528. Off. No. 105396. Ex. 68.]

Abstract of title of the schooner or vessel called the Alice, of Seattle.

Grantor.	Grantee.	Species of conveyance.	Date of conveyance.	Consideration.	Received for record—	Book of record.			Part conveyed.
						B/S.	Mtg.	Page.	
J. A. Hooper.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F. P. Hooper.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
			1900.		1900.				
C. F. S. Lass.....	W. S. Milnor.....	B/S...	May 11	$10	June 27, 9 a. m.	9	.....	97	All.
W. S. Milnor.....	E. L. Grondahl..	Mtge..	June 28	20,000	July 3, 9 a. m.	.....	6	13	All.
			1901.		1901.				
W. S. Milnor.....	D. A. McArthur.	B/S...	Mar. 1	1	Apr. 8, 9 a. m.	10	.....	61	All.
D. A. McArthur..	Wm. M. Calhoun, trustee.	B/S...	Mar. 29	1	Apr. 8, 9 a. m.	10	.....	62	All.
C. W. Ide..... / W. S. Marshal....	P. L. Larsson, as receiver of Heekman & Hanson.	B/S...	Sept. 23	6,000	Oct. 11, 9 a. m.	.....	3	416	All.
P. L. Larsson, as receiver of Heekman & Hanson.	Schooner Alice, incorporated.	B/S...	Sept. 28	15,000	Oct. 11, 9 a. m.	11	.....	14	All.

I hereby certify that the foregoing is a true abstract of conveyances of the schooner or vessel called the *Alice*, now of Seattle, as appears by the index of conveyances in this office.

CHAS. MILLER, *Dep. Coll. of Customs.*

CUSTOMHOUSE, PORT TOWNSEND, *Jany. 20th, 1902.*

(On back:) Aug. 7, 1903. Petitioners' exhibit. Eben Smith, United States master in chancery, district of Washington, northern division.

EXHIBIT No. 69.

United States Circuit Court of Appeals for the Ninth Circuit. No. 2050. The Western Dry Goods Company, a corporation, et al., petitioners, *v.* Sutcliffe Baxter, receiver and trustee of the estate of Charles Knosher & Co., a corporation, bankrupt, and John Anisfield Company, respondents. In the matter of Charles Knosher & Co., bankrupt. Transcript of record on petition for revision under section 24b of the bankruptcy act of Congress, approved July 1, 1898, to revise, in matter of law, certain orders of the United States District Court for the Western District of Washington, Northern Division.

In the United States Circuit Court of Appeals for the Ninth Circuit. No. —. In the matter of Charles Knosher & Co., bankrupt.

PETITION FOR REVIEW.

To the Honorable Circuit Judges for the Ninth Judicial District:

Your applicants, Western Dry Goods Company, a corporation; Smith, Daniels, Kelleher & Company, a corporation; Imperial Candy Company, a corporation; Black Manufacturing Company, a corporation; Seattle Dry Goods Company, a corporation; Tootle, Campbell Co., a corporation; Bradshaw Bros., True Shape Hosiery Co., Sutro Bros. Braid Co., Pioneer Suspender Co., American Paper Co., Harry E. Lewis, Love-Warren-Monroe Co., Gorham Rubber Co., Standard Oil Co., Superior Candy & Cracker Co., Lowman & Hanford Co., Pickard-Garde Co., Chas. Emmerick & Co., E. Reis & Company, J. B. Powles & Co., A. Stein & Co., Clement Dranger & Co., N. Y. & Chemnitz Netting Co., Stone & Co., H. A. Caesar & Co., J. S. Temple, Interwoven Stocking Co., Western Fancy Goods Co., J. B. Crowley, Moore-Watson Dry Goods Co., David Bros., L. Samter & Sons, Luscombe & Isaacs, Spool Cotton Co., Julius Kayser & Co., B. Hart & Bro., Nonotuck Silk Co., Clayburgh Bros., Pacific Coast Biscuit Co., Excelsior Quilting Company, Columbia Shade Cloth Company [1[1]], Green Shoulder Form & Pad Company, T. B. M. Gates, Coronet Manufacturing Company, Givine Manufacturing Company, Central Stamping Company, Western Manufacturing Company, Staadecker & Company, Richmond Paper Company, Armour & Company, Linen Thread Company, L. J. Clayburg, Hugo de Brock & Company, Springfield Knitting Company, George Frost & Company, Reny-Schmidt & Plesnor, Goodman Mandel, Henrietta Skirt Company, Levi Straus & Co., and Olympia Knitting Mills, creditors of the estate of the above-named bankrupt, do hereby represent as follows:

Your applicants will show unto your honors that on the 27th day of February, 1911, the above-named Charles Knosher & Co., a corporation, was adjudged a bankrupt by the United States District Court for the Western District of Washington, Northern Division, and thereafter, and on said day, one Sutcliffe Baxter was by said court appointed receiver of said bankrupt estate; and thereafter, and on the 20th day of March, the said Sutcliffe Baxter was elected by the creditors of said bankrupt estate as trustee thereof, and during all the times hereinafter mentioned the said Sutcliffe Baxter did act as the receiver and trustee of said bankrupt estate.

On the said 27th day of February, 1911, the said Sutcliffe Baxter, receiver as aforesaid, took possession of the estate of said bankrupt, the same consisting of a stock of goods, wares, and merchandise held for sale in the city of Seattle, Washington; and during the remainder of said day, to wit, the 27th day of February, 1911, the said Sutcliffe Baxter did keep the store, in which said stock [2] of goods, wares, and merchandise of the said bankrupt was contained, open for the sale of the said of goods, wares, and merchandise, to customers as they should appear at said store, and late in said day, the said Sutcliffe Baxter, receiver as aforesaid, did close said store and did keep the same closed, and thereafter the business in which said bankrupt was engaged at the time of the appointment of said receiver was no longer conducted, and thereupon the said receiver did cause an inventory and appraisement of the stock of goods, wares, and merchandise in the store of said bankrupt to be made, and did advertise for bids for the same; and thereafter, and on the 16th day of March, 1911, the said Sutcliffe Baxter, as receiver of said bankrupt estate, did sell said stock of goods, wares, and

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[1] Page number appearing at foot of page of original petition, etc.

merchandise, the same comprising all the property of said bankrupt estate, in bulk to John Ainesfield Co., and did thereupon make return of said sale to said district court and the same was confirmed.

On the 21st day of March, 1911, an order was entered in said district court allowing to the said Sutcliffe Baxter, as receiver of said bankrupt estate, the sum of twenty-five hundred dollars on account of his fees as receiver of said bankrupt estate; and thereupon the said Sutcliffe Baxter, receiver as aforesaid, did take and appropriate out of the funds belonging to said bankrupt estate the sum of twenty-five hundred dollars on account of his fees as receiver thereof.

That heretofore, and during the course of said bankruptcy proceedings, an allowance was made by said district court to McClure & McClure and Leopold M. Stern, attorneys for said receiver and trustee, in the sum of three thousand [3] dollars, and the said attorneys aforesaid have received out of said bankrupt estate said sum of three thousand dollars.

On the 23d day of September, 1911, the said district court made an order approving the allowance out of said bankrupt estate to said receiver and trustee of the sum of twenty-five hundred dollars, and approving the allowance to said attorneys aforesaid of the sum of twenty-five hundred dollars; and thereupon and at the time of the making of said order, your applicants duly excepted to the same and excepted to the allowance of any sum to the said receiver and trustee in excess of the sum of nine hundred ninety-seven and 52/100 dollars ($997.52); and excepted to the allowance of any sum to said attorneys in excess of the sum of nine hundred ninety-seven and 52/100 dollars ($997.52), which said exceptions were at said time duly allowed by said court; and your applicants do aver and urge by this petition that as a matter of law the said Sutcliffe Baxter, receiver and trustee as aforesaid, was the custodian of said bankrupt estate only, and did not carry on the said business of said bankrupt, and is, therefore, entitled to an allowance of fees as custodian of said estate, and not otherwise.

The said Sutcliffe Baxter, as receiver of said estate, received the sum of sixty-one thousand three hundred twelve and 87/100 dollars ($61,312.87), and no more, and as trustee of said estate has received the sum of fifty-four thousand four hundred ninety-six dollars ($54,496.00), and no more, and all the estate of said bankrupt has been sold and converted into cash.

On or about the 26th day of April, 1911, your applicants, as creditors of said bankrupt estate, filed an amended [4] petition herein, praying that the sale of the stock of goods, wares, and merchandise belonging to said bankrupt estate and the order of confirmation of said sale be set aside because of fraud, the items of which were set forth in said amended petition, all of which will more fully appear from the copy of said amended petition, which will be included in the transcript of the record transmitted herewith to this court. And on the 29th day of September, 1911, the said court did make an order dismissing said petition and denying to your applicants the relief prayed for in said petition, or any relief, on account of the matters and things set forth therein.

All of the foregoing facts will be made to appear unto your honors by a transcript of the record which will be transmitted to said court.

In consideration of the error thus apparent, your applicants pray that the order of said district court, dated the 23d day of September, 1911, and any order of said court in said proceedings made, granting an allowance to the said receiver and trustee out of said bankrupt estate in any sum in excess of nine hundred ninety-seven and 52/100 dollars ($997.52), and any order of said court granting to said attorneys out of said estate any sum in excess of nine hundred ninety-seven and 52/100 ($997.52) dollars, be reviewed and revised, and that no further proceedings be taken thereon except that the said receiver and trustee be required to return to said estate all amounts received by him out of said estate in excess of nine hundred ninety-seven and 52/100 dollars ($997.52), [5] and that the said attorneys be required to return to said estate all amounts received by them in excess of said sum of nine hundred ninety-seven and 52/100 dollars ($997.52), and that said order of said court dismissing said petition of your applicants for the setting aside of the sale of the property of said bankrupt estate to John Ainesfield Co. and the order of confirmation of said sale, as hereinbefore referred to, be reviewed and revised.

And your applicants pray that notice shall be given as required by the rules of this court commanding all parties interested at a certain time to show cause why the orders hereinbefore referred to should not be reviewed and revised as prayed for.

NELSON R. ANDERSON,
W. T. DOVELL,
Attorneys for Applicants.
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Of Counsel. [6]

STATE OF WASHINGTON,
County of King, ss:

E. G. Anderson, being first duly sworn, on oath deposes and says:

I am the president of the Western Dry Goods Company, a corporation, one of the applicants named in the foregoing petition for review; I have read the foregoing petition, and the matters and things therein set forth are true.

E. G. ANDERSON.

Subscribed and sworn to before me this 30th day of September, A. D. 1911.

[SEAL.] H. J. RAMSEY,

Notary Public in and for the State of Washington, residing at Seattle. [7]

(Indorsed:) Original. No. 2050. In the United States Circuit Court of Appeals for the Ninth Circuit. In the matter of Charles Knosher & Co., bankrupt. Petition for review. Filed Oct. 4, 1911. F. D. Monckton, clerk. [8]

(Indorsed:) No. 2050. United States Circuit Court of Appeals for the Ninth Circuit. The Western Dry Goods Company, a corporation, et al., petitioners, *vs.* Sutcliffe Baxter, receiver and trustee of the estate of Charles Knosher & Co., a corporation, bankrupt, and John Anisfield Company, respondents. In the matter of Charles Knosher & Co., bankrupt. Petition for revision under section 24b of the bankruptcy act of Congress, approved July 1, 1898, to revise, in matter of law, certain orders of the United States District Court for the Western District of Washington, Northern Division.

Filed October 4, 1911.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. [24]

In the United States Circuit Court of Appeals for the Ninth Circuit. No. —. In the matter of Charles Knosher & Co., bankrupt.

NOTICE OF FILING OF PETITION FOR REVIEW, ETC.

To Sutcliffe Baxter, Esquire, receiver and trustee of the above-entitled estate, and to Messrs. McClure & McClure and Leopold M. Stern, Esquire, his attorneys, and to John Anisfield Company, and to Harold Preston, Esquire, its attorney.

You and each of you are hereby notified that on the 3d day of October, A. D. 1911, at the hour of ten o'clock in the forenoon of said day, we will file in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, a petition for review in the above-entitled cause, a copy of which petition is hereto attached as a part of this notice; and we will then ask to have the case docketed and the necessary order made thereon to have such case set down for hearing.

NELSON R. ANDERSON,
W. T. DOVELL,
Attorneys for Petitioners.
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Of Counsel. [9]

(Here follows copy of foregoing petition for review.)

(Indorsed:) Original. No. 2050. In the United States Circuit Court of Appeals for the Ninth Circuit. In the matter of Charles Knosher & Co., bankrupt. Notice. Filed Oct. 4, 1911. F. D. Monckton, clerk. [17]

In the United States Circuit Court of Appeals for the Ninth Circuit. No. —. In the matter of Charles Knosher & Co., bankrupt.

ACCEPTANCE OF SERVICE OF PETITION FOR REVIEW.

The undersigned each hereby acknowledge the receipt of copy of petition of the Western Dry Goods Company, a corporation, et al., for review herein, and of notice thereof and service of the same this 2d day of October, A. D. 1911.

MCCLURE & MCCLURE,
Of Attorneys for Sutcliffe Baxter, as Receiver and Trustee.
HAROLD PRESTON,
Attorney for John Anisfield Co. [18]

(Indorsed:) Original. No. 2050. In the United States Circuit Court of Appeals for the Ninth Circuit. In the matter of Charles Knosher & Co., bankrupt. Acceptance of service. Filed Oct. 5, 1911. F. D. Monckton, clerk. [19]

STIPULATION FIXING TIME TO FILE RECORD.

[Telegram. 357zq. 112-N.L. 30 extra in signature. 1070.]

SEATTLE, WASH., *Oct. 2–11.*

Hon. F. D. MONCKTON,
Clerk United States Circuit Court of Appeals, San Francisco, Cal.:

In the United States Circuit Court of Appeals for the Ninth Circuit in the matter of Charles Knosher and Co., bankrupt. It is hereby stipulated that the time for hearing of petition of Western Dry Goods Company and others for review herein shall *not fixed* until after the filing of the transcript of record herein, it being agreed, however, that such trancsript of record shall be filed on or before the 23d day of October, nineteen hundred and eleven.

McCLURE AND McCLURE, [20]
Of Attorneys for Sutcliffe Baxter, as Receiver and Trustee.
HAROLD PRESTON, *Attorney for John Anisfield Co.*
HUGHES, McMICKEN, DOVELL AND RAMSEY,
Attorneys for Petitioners, Western Dry Goods Company et al.

626–p [21]

(Indorsed:) No. 2050. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation rehearing and fixing time to file record. Filed Oct. 3, 1911. F. D. Monckton, clerk. [22]

In the United States Circuit Court of Appeals for the Ninth Circuit. No. —. In the matter of Charles Knosher & Company, bankrupt.

STIPULATION EXTENDING TIME TO NOV. 3, 1911, TO FILE RECORD.

It is hereby stipulated by and between Sutcliffe Baxter, as receiver and trustee, the John Anisfield Company, and the Western Dry Goods Company et al., creditors, that the time for filing of transcript of record herein shall be, and is hereby, extended until and including the 3d day of November, A. D. 1911.

McCLURE & McCLURE,
Of Attorneys for Sutcliffe Baxter, as Receiver and Trustee.
HAROLD PRESTON,
Attorney for John Anisfield Company.
NELSON R. ANDERSON,
HUGHES, McMICKEN, DOVELL & RAMSEY,
Attorneys for Petitioners, Western Dry Goods Company et al. [23]

(Indorsed:) Original. No. 2050. In the United States Circuit Court of Appeals for the Ninth Circuit. In the matter of Charles Knosher & Company, bankrupt. Stipulation. Extending time to file record. Filed Nov. 3, 1911. F. D. Monckton, clerk.

TRANSCRIPT OF RECORD ON PETITION FOR REVISION.

ORDER DIRECTING RECEIVER TO MAKE CERTAIN PAYMENTS.

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Chas. Knosher & Company (a corporation), bankrupt.

Order of district judge directing payment of expenses, etc., of petitioning creditors.

On consideration of the separate petitions of the petitioning creditors and of the intervening petitioners for payment of costs incurred, and for allowances, it appearing that there are in the possession of the receiver moneys applicable thereto,

It is ordered:

1. That Sutcliffe Baxter, as receiver herein, be, and he is hereby, directed and ordered to pay the following amounts unto the following persons:

Shank & Smith, reimbursement of clerk's fees advanced by them in behalf of petitioning creditors, and marshal's fees..... $34.24
Shank & Smith, fees in the matter of preparing and filing the original petition for adjudication and obtaining adjudication..... 250.00
Calhoun, Denny & Ewing, premium on $5,000 bond of J. B. Locke & Potts, intervening petitioners, in the matter of appointment of a receiver before adjudication..... 25.00

[1] McClure & McClure, attorneys' fees for services as attorneys for said intervening petitioners in re appointment of receiver before adjudication and obtaining adjudication..... $100.00

Done in open court this 21st day of March, 1911.

C. H. HANFORD, *Judge.*

(Indorsed:) Order of district judge directing payment of expenses, etc., of petitioning creditors. Filed in the U. S. District Court, Western District of Washington. Mar. 21, 1911. R. M. Hopkins, clerk. [2]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company, bankrupt.

REPORT OF RECEIVER.

To the Hon. C. H. HANFORD, *Judge of said Court:*

I, Sutcliffe Baxter, do hereby make and file my report and account as receiver of the above-named bankrupt.

I. I was appointed receiver herein on the 27th day of February, 1911, and required to file a bond in the penalty of $5,000.00. Having been notified of my appointment, I obtained a certified copy of the order thereof, and filed my bond in the penalty required, and in company with McClure & McClure and Leopold M. Stern, whom I retained as my counsel, I visited the premises of the alleged bankrupt at the southeast corner of James Street and Second Avenue, in Seattle, Washington. I there met and interviewed Charles Knosher, the president of the company, and others.

II. The alleged bankrupt turned over the premises to me and gave me complete charge thereof. I found that the bankrupt was a corporation engaged in the operation of a department store at the time I took possession of said premises. The store was filled with customers who were attending a sale which had previously been extensively advertised. I thought it advisable to permit the business to remain open and the sale to go on for the balance of the day, and accordingly permitted the said store to remain open. [3]

III. During the day I consulted with numerous creditors and representatives as to the advisability of continuing the business at retail, and after such consultation, it was agreed by all parties, and it was also my own judgment, that it would be best to close the store at the conclusion of the day's business and proceed at once to take an inventory of all the property. I accordingly retained practically the entire force of employees in the store from the 27th day of February to the 6th day of March, 1911, inclusive, upon which latter day I concluded the inventory of all of the assets which came into my possession and control, and which inventory I duly filed in the office of the referee in bankruptcy. At the conclusion of said inventory I discharged all the employees excepting a few whom it was necessary to retain to assist me in taking care of the property, collect outstanding book accounts, and otherwise advise me regarding matters of importance to the estate. I also arranged to have a transfer of all insurance policies, and as I did not find sufficient insurance, the premium for which had been paid, I thought it best to place additional insurance on the property.

IV. After the filing of the inventory the referee in bankruptcy appointed J. J. Doheny, E. Y. Barr, and O. A. Kjos appraisers, and said appraisers duly appraised the property shown in the inventory and filed their report of appraisement in the office of the referee in bankruptcy. Thereafter the referee in bankruptcy made an order of sale of said property, which sale was set for March 13, 1911, upon sealed bids to be opened before the referee in bankruptcy, and that upon the opening of said bids it was found that one F. Campbell had bid a sum equivalent to $50,027. I made further efforts to obtain a larger bid for the assets, with the result that [4] the original bids were rejected, and upon the opening of new bids on the 15th day of March, 1911, a bid of $57,000 for said assets was received and accepted.

V. I further report that from the time I took possession of said business up to the present time, I have diligently endeavored to collect the outstanding book accounts, and have reduced the same to cash as rapidly as possible.

VI. I desire to report further that it became necessary for me to have an examination made of the books, and to that end I employed Nelson W. Parker, who is an experienced accountant, and that he rendered services on March 13th and 14th, 1911, in connection with the examination and experting of the books of account, for which service said Parker has rendered me a bill of $25.00, which sum I deem reasonable.

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[1] Page number appearing at foot of page of original certified record.

VII. Attached hereto is an itemized statement of all the receipts and disbursements during my period of service as receiver, and reference thereto is directed in the consideration of this report.

VIII. I have received no compensation for my services as receiver and in conducting the business of the bankrupt under the order of this court.

IX. I further desire to report that I have given my entire time and attention to the management and care of said business from the time I took possession thereof up to the 16th day of March, 1911, at which time I surrendered possession thereof to the purchaser. [5]

Wherefore I respectfully pray that my said account be passed as filed, and that suitable allowances be made to Messrs. McClure & McClure and Leopold M. Stern, and to the duly appointed appraisers, and to myself as receiver and for carrying on the business of said bankrupt, and that I be discharged as receiver herein.

All of which is respectfully submitted.

Seattle, Washington, March 20, 1911.

SUTCLIFFE BAXTER,
Receiver. [6]

SUTCLIFFE BAXTER, RECEIVER.

Cash receipts.

Dr. 1911.			
Feb.	27.	To cash on hand	$47.97
Feb.	28.	To cash sales, mdse. acct	1,026.30
		Mail order mdse. acct	.30
Feb.	29.	Cash sales & C. O. D.'s	72.88
Mar.	1.	Cash sales	34.75
		Philip A. Baillargeon, a/c receivable	61.15
Mar.	2.	Mdse. a/c, Mrs. Ritter, C. O. D	4.05
		Stamps & car tickets on hand, mdse. a/c	16.78
Mar.		Cash sales	26.62
Mar.	4.	To a/c receivable, Miss Warner	1.10
		To a/c receivable, Miss Evers	1.35
		To a/c receivable, Mr. Schmidt	3.19
		To a/c receivable, Mr. Henderson	13.84
		To a/c receivable, Miss Golay	.56
		To mdse. a/c, Lillian Tom, C. O. D	6.40
		To a/c receivable, Miss Bertrum	11.38
		To mdse. a/c, Mrs. Crewson, C. O. D	2.00
		To a/c receivable, Mrs. Phillips	6.83
		To a/c receivable, Miss Kroeger	15.58
		To a/c receivable, Miss Hopkins	2.33
		To mdse. a/c Mrs. McQuaid, C. O. D	1.85
		To a/c receivable, Mr. Post	10.55
		To a/c receivable, Ethel McKinstry	5.83
		To a/c receivable, C. H. Winslow	12.50
		To a/c receivable F. H. Kern	21.00
		To a/c receivable, J. W. Rine	18.00
		To a/c receivable, Mabel Kapke	13.00
Mar.	6.	To a/c receivable, Mrs. Dick	7.05
Mar.	7.	To mdse. a/c cash found in cash register	5.00
		Mrs. Shirpser, transferred to her debit of a/c on ledger as per contra entry	8.89
		To a/c receivable, cash from Mrs. Tracy, in payment of balance due on suit sold for	20.75
		To profit & loss, check No. 158326 of State of Washington for a something that I don't know anything about	1.20
		To a/c receivable, Mrs. Dick	7.05
		To a/c receivable, Mrs. St. George	1.80
		To a/c receivable, T. Ryan	13.54
		To a/c receivable, Mrs. Boughman	9.20
		To a/c receivable, Miss Bartino	7.00
Mar.	9.	To a/c receivable, Mrs. Berndt	10.50
		To a/c receivable, Mrs. Mortell	5.18
		To a/c receivable, fire ins. a/c refund on fire ins. a/c policy No. 4213801 Fire Ass. of Phil., cancelled 3/9/11	14.45
		To a/c receivable, Mrs. T. H. Powels	2.10
		To mdse. a/c Miss Wilde, C. O. D	.95

Dr.
1911.

Mar.	10.	To a/c receivable, Yesler Cafe		$30.12
		To a/c receivable, Great Western Refining Co		2.10
		To a/c receivable, fire ins. a/c refund of premium on policy No. 7194 Milwaukee Mechanics Ins. Co., cancelled by the company		12.05
[7]				
Mar.	10.	To a/c receivable, Providence Hospital		48.95
		To a/c receivable, J. S. Graham		2.06
		To a/c receivable, J. Redelsheimer		.10
Mar.	11.	To a/c receivable, E. Way		9.77
		To a/c receivable, Mrs. Downey		12.75
		To a/c receivable, J. F. Thorne		6.95
		To a/c receivable, Western Dry Goods Co		3.22
		To a/c receivable, J. W. Bullock		8.00
		To a/c mdse. Miss D. Dalgren, C. O. D		15.00
		To a/c mdse. Miss Stuart, C. O. D		3.65
	13.	To a/c mdse. E. M. Rhodes & Co., C. O. D		.28
		To a/c receivable, F. W. Stetson		2.04
		To a/c receivable, H. G. Stoelting		34.28
		To a/c receivable, J. P. Wall, check		9.25
		To contra a/c for legal services, J. P. Wall		123.65
		To a/c receivable, M. Furuya Co		34.89
	14.	To a/c receivable, Frederick & Nelson		.90
		To a/c receivable, The Moran Co		.10
	15.	To a/c receivable, Trick Printing Co		2.16
		To a/c receivable, Alma Peterson		6.66
		To a/c receivable, John Annon		7.15
	16.	To a/c receivable, A. J. Sagel		5.00
		Sale of mdse. furniture, fixtures, automobile & lease, being lot 5 as advertised for sale	57,000.00	
		Less inventoried goods from Ely Walker Sons & Co., ordered withheld from sale	$1,074.38	
		Less inventoried goods from Hanover, Arnstein & Sigel	$402.75 @	
		@ 78.63%=	1,161.46	
				55,838.54
		Memo.—Mr. Libby in making certified check overpaid $1,000.00, for which I gave him check No. 63 in settlement.		
				57,772.82

[8]

Cash disbursements.

			Cr.
Feb.	27.	American Express	5.82
		Wells-Fargo Express Co	2.15
		Stamps	.30
Feb.	28.	Express package, L. Connor	.45
		Lowman & Hanford, journals	1.25
		Typewriter ribbon	.50
		Car tickets	1.05
		Philip Nelson, salary	3.70
		F. C. Wolter & Co., paper & carbon	7.20
Mar.	1.	Car fare	.05
		Salary, Irving Benedict	1.15
	2.	Lowman & Hanford, journal	.15
	3.	By refund No. 1122	1.25
		Car fare	.10
	4.	Five locker keys, at 25 cents	1.25
		Pay roll:	
		By salary, J. H. Henderson	27.00
		By salary, W. Schmidt	29.50
		By salary, M. G. Howard	16.50
		By salary, Mary Howard	9.00
		By salary, Peblye Behrns	7.50
		By salary, Blance Golay	5.00
		By salary, E. Gierke	10.50

1911.			Cr.
Mar.	4.	By salary, Alice Bertrum	$5.00
		By salary, Mrs. Phillips	7.50
		By salary, T. Evers	8.50
		By salary, Flora Clarence	7.50
		By salary, P. Jeffries	1.33
		By salary, Alice Kroeger	29.00
		By salary, Grace Hopkins	4.17
		By salary, R. C. Post	40.00
		By salary, Motaro Unda	12.00
		By salary, Mrs. B. Wilkins	5.52
		By salary, Jim McDonald	8.00
		By salary, H. Warner	12.00
		By salary, Ethel McKinstry	5.83
		By salary, C. H. Winslow	12.50
		By salary, F. H. Kern	21.00
		By salary, J. W. Rines	18.00
		By salary, Mabel Kapke	15.00
		By salary, A. Ferguson	10.40
		By salary, C. J. Smith	13.75
		By salary, Clara Pederson	7.08
		By salary, Elsie Filmley	7.50
		By salary, Ida Schoenfeld	7.50
		By salary, Clara Olds	5.83
		By salary, Frieda Schultz	5.40
[9]			
		Pay roll:	
Mar.	4.	By salaries, L. E. Nebelhow	5.40
		By salaries, J. S. Frasier	10.00
		By salaries, Grace McKinnons	4.17
		By salaries, Clara Jorgensen	5.00
		By salaries, M. Opletd	5.00
		By salaries, Edith Rogers	5.00
		By salaries, Mary Miller	4.17
		By salaries, E. Anderson	5.00
		By salaries, H. Strickland	7.50
		By salaries, Cecil Piles	7.50
		By salaries, G. Chambers	5.40
		By salaries, Celia Nist	4.17
		By salaries, Mrs. A. J. St. George	14.50
		By salaries, A. Fountain	4.17
		By salaries, Mrs. Dittenfieler	5.83
		By salaries, Pearl Wasson	8.75
		By salaries, L. Christenson	9.00
		By salaries, M. Cassidy	12.00
		By salaries, E. Barr	28.50
		By salaries, Mrs. Hayman	14.00
		By salaries, Mrs. A. Yeager	8.34
		By salaries, Miss Westover	6.67
		By salaries, A. Skankey	40.00
		By salaries, C. Knosher	12.00
		By salaries, J. W. Lloyd	10.00
Mar.	4.	By expense a/c locker key	.25
		By expense a/c Babcocks, sundry dinner	1.95
	6.	Expense a/c locker key	.25
		Expense a/c F. C. Wolter, paper	1.35
		Expense a/c discount on English gold piece	.20
		Expense a/c clippers	.05
		Expense a/c Peblyn Behens, salary, typewriter, 2 days	5.50
		Expense a/c paper fasteners	.20
	8.	Expense transfer of Mrs. Shirpser a/c to debit on ledger as per contra entry No. 473	8.89
Mar.	8.	By expense a/c rent of typewriter 1 week	1.50
		By mdse a/c refund Mrs. Tracy cash advanced for alteration not made	2.00
Mar.	10.	By expense a/c A. Greenus & Co., sign on office door, 343 Arcade Annex	1.00
		By expense, car tickets	1.00

[10]

1911.			
			Cr.
Mar.	10.	By expense a/c J. H. Henderson two days services taking inv. of goods withheld from sale. Inventory awaiting order of court.	$7.50
Mar.	11.	By mdse. a/c discount on Western Dry Goods check No. 929....	.06
		Pay roll:	
		By expense a/c M. Unda	12.00
		By expense a/c Jim McDonald	8.00
		By expense a/c Mary Howard	10.50
		By expense a/c Mabel Howard	19.25
		By expense a/c E. Barr	33.25
Mar.	13.	By legal a/c, bill of J. P. Wall for legal services per contra entry.	123.65
Mar.	14.	By expense a/c stamps	.10
Mar.	16.	By expense a/c West & Surrey	1.00
		By fire insurance Stella G. Webster	315.00
		By fire insurance, E. Way & Co.	24.50
		By expense, Independent Tel. Co.	3.25
		By expense, salary E. Barr	19.00
		By expense, salary M. F. Howard	6.00
		By expense, salary Jim McDonald	5.35
		By expense, salary Mataro Unda	8.00
		By expense, salary M. G. Howard	11.00
Mar.	17.	By expense, a/c W. H. Barnes & Son garage, ½ month	10.00
Mar.	18.	By expense, a/c Jim McDonald, message boy	1.50
		By expense, a/c rubber stencil	.35
		By expense, a/c Mrs. H. M. Norton, typewriting	1.50
		By balance, cash on deposit in Seattle National Bank	56,486.17
			57,772.82

[11]

SUTCLIFFE BAXTER, *Receiver.*

Summary of cash receipts.

To collections of a/cs receivable	$641.80
To merchandise sales	1,199.08
To miscellaneous	55,931.94
	57,772.82

Summary of cash disbursements.

By expense a/c	$811.30
By merchandise a/c	3.31
By miscellaneous a/c	472.04
By balance, cash on deposit in Seattle National Bank	56,486.17
	57,772.82

UNITED STATES OF AMERICA,
District of Washington, ss:

Sutcliffe Baxter, being first duly sworn, on oath says: That he is the receiver in the above-entitled matter; that he has heard the foregoing report read, knows the contents thereof, and believes the same to be true. [12]

[SEAL.] SUTCLIFFE BAXTER.

Subscribed and sworn to before me this 20th day of March, A. D. 1911.

LEOPOLD M. STERN,
Notary Public in and for the State of Washington, residing at Seattle.

[Indorsed:] Report of receiver. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 21, 1911. R. M. Hopkins, clerk. [13]

OBJECTIONS OF SEATTLE MERCHANTS' ASSOCIATION ET AL. TO ALLOWANCE OF RECEIVER.

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

Objections to allowance of receiver.

Comes now the Seattle Merchants' Association, attorney in fact for Excelsior Quilting Company, Columbia Shade Cloth Company, Green Shoulder Form & Pad Company,

T. B. M. Gates, Coronet Manufacturing Company, Givine Manufacturing Company, Central Stamping Company, Western Manufacturing Company, Staadecker & Company, Richmond Paper Company, Armour & Company, Linen Thread Company, L. J. Clayburg, Hugo De Brock & Company, Springfield Knitting Company, George Frost & Company, Reny-Schmidt & Plesnor, Goodman Mandel, Henrietta Skirt Company, Levi Straus & Co., and Olympia Knitting Mills, by Hughes, McMicken, Dovell and Ramsey, and Nelson B. Anderson, their attorneys, and respectfully show the court:

I. That they are unsecured creditors of the bankrupt herein, and that their claims are approved and allowed as follows:

Excelsior Quilting Company	$25.52
Columbia Shade Cloth Company	66.00
Green Shoulder Form & Pad Company	11.94
T. B. M. Gates	13.00
Coronet Manufacturing Company	281.63
[14]	
Givine Manufacturing Company	163.00
Central Stamping Company	47.65
Western Manufacturing Company	54.50
Staadecker & Company	770.10
Richmond Paper Company	177.00
Armour & Company	30.05
Linen Thread Company	67.09
L. J. Clayburg	408.80
Hugo De Brock & Company	131.50
Springfield Knitting Company	231.88
George Frost & Company	67.13
Reny-Schmidt & Plesnor	170.65
Goodman Mandel	41.55
Henrietta Skirt Company	64.00
Levi Straus & Co	38.25
Olympia Knitting Mills	73.50

II. That they have read the objections filed in this court on May 15, 1911, by the Western Dry Goods Company et al., and that they hereby adopt them as their own and incorporate them herein by reference as fully as though set out in full herein.

Wherefore your petitioners pray the court to require the said receiver, Sutcliffe Baxter, to repay into the registry of this court the sum of twenty-five hundred dollars ($2,500.00) and take nothing for his services rendered herein as receiver; that the attorney for the receiver, McClure & McClure and Leopold M. Stern, have for their compensation a sum not in excess of $320.00; and that they be required to pay into the registry of [15] this court the sum of twenty-five hundred dollars, less the amount allowed them by the court.

HUGHES, MCMICKEN, DOVELL & RAMSEY,
NELSON R. ANDERSON,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Nelson R. Anderson, being first duly sworn, on oath deposes and says:

I am one of the attorneys for the petitioners in the foregoing objections to allowance of receiver; I have read the foregoing objections, know the contents thereof, and believe the same to be true, and make this verification for and on behalf of said petitioners.

NELSON R. ANDERSON.

Subscribed and sworn to before me this 24th day of May, 1911.

[SEAL.] GLENN C. BEECHLER,
Notary Public in and for the State of Washington, residing at Seattle.

Copy of within received and due service of same acknowledged this 24th day of May, 1911.

MCCLURE & MCCLURE.
LEOPOLD M. STERN.

(Indorsed:) Objections to allowance of receiver. Filed in the U. S. District Court, Western Dist. of Washington, May 25, 1911. R. M. Hopkins, clerk.
[16]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company, bankrupt.

ORDER APPROVING RECEIVER'S REPORT, ETC.

Sutcliffe Baxter, receiver of the above-named bankrupt, having presented his report and account of his doings, receipts, and disbursements as receiver, and having moved to confirm his report, and that allowances be made to him as receiver, and to his counsel for their services; now, therefore, on reading said account and report of the said Sutcliffe Baxter, receiver herein;

It is ordered that the same hereby is in all things allowed, approved, and confirmed.

It is further ordered that Sutcliffe Baxter, receiver herein, be, and he is hereby, allowed for his services the sum of $2,500.00, and that the disbursements expended by him in the administration and preservation of the estate and heretofore deducted by him, be, and the same are hereby allowed.

It is further ordered that Sutcliffe Baxter, receiver herein, pay to the following persons, who acted as appraisers, each the sum of $25.00, J. J. Doheny, E. Y. Barr, and O. A. Kjos.

It is further ordered that Sutcliffe Baxter, receiver herein, pay to Nelson W. Parker, for his services in examining and experting the books of account, the sum of $25.00.

It is further ordered that Sutcliffe Baxter, receiver herein, pay to McClure & McClure and to Leopold M. Stern the sum of $2,500.00 as and for an allowance to them as attorneys for the [17] receiver herein.

It is further ordered that Sutcliffe Baxter, receiver herein, after making the payments as herein directed, pay the balance remaining in his hands to the trustee in bankruptcy herein, who shall hereafter be appointed and qualify in this proceeding.

It is further ordered that, upon making such payment, Sutcliffe Baxter, as receiver herein, be discharged as receiver of the property, assets, and effects of the above-named bankrupt, and that the bond given by him for the faithful performance of his duties be canceled and discharged, and the sureties thereon released from any further liability thereunder.

Entered in open court this 20th day of March, A. D. 1911.

C. H. HANFORD, *Judge.*

(Indorsed:) Order approving receiver's report. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 21, 1911. R. M. Hopkins, clerk. [18]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

PETITION OF WESTERN DRY GOODS CO. ET AL. TO SET ASIDE APPRAISEMENT, ETC.

Come now the Western Dry Goods Co., a corporation, Smith, Daniels, Kelleher & Company, a corporation, Imperial Candy Company, a corporation, Black Manufacturing Company, a corporation, and Seattle Dry Goods Company, a corporation, by their attorneys, and respectfully show the court:

I. That on the 27th day of February, 1911, Charles Knosher & Co., a corporation, was duly adjudicated bankrupt by the above-entitled court, on which day a petition, alleging bankruptcy and an answer admitting bankruptcy was duly filed in said cause and court, and on said day Sutcliffe Baxter was appointed by this court as receiver of the estate of said bankrupt, and the said Sutcliffe Baxter thereupon qualified and acted as such receiver and has been such receiver continuously since the 20th day of March, 1911, and on the said 20th day of March, 1911, the said Sutcliffe Baxter was duly elected and appointed as trustee, and ever since that time he has been and now is the duly qualified and acting trustee herein.

II. Your petitioners are unsecured creditors of the bankrupt herein, and they have filed, proved, and been allowed [19] their claims herein as follows:

Western Dry Goods Co	$5,104.45
Smith-Daniels & Kelleher Co	178.20
Imperial Candy Co	637.91
Black Manufacturing Co	38.40
Seattle Dry Goods Co	512.34

III. On the 9th day of March, 1911, Ole A. Kjos, J. J. Doheny, and E. G. Barr were appointed as appraisers of said estate, and said appraisers did on the 9th day of March, 1911, return a purported appraisement of the estate of said bankrupt, estimating and appraising the same at the sum of sixty-nine thousand five hundred ($69,500.00) dollars.

IV. Your petitioners hereby allege the fact to be that said appraisement was and is grossly erroneous and was induced by fraud and misrepresentation upon and to said appraisers, and that in truth and in fact the fair market value of the estate of said bankrupt, so attempted to be appraised at said time, was, as your petitioners verily believe and allege the fact to be, an amount in excess of ninety thousand ($90,000.00) dollars.

V. On the 16th day of March, 1911, the estate of said bankrupt, consisting of a stock of goods, wares, merchandise, and fixtures, was sold in bulk to the John Ainesfield Co., a corporation, for the sum of fifty-seven thousand ($57,000.00) dollars, which said sale was afterward confirmed by the referee herein. [20]

VI. And your petitioners further represent that the appraisers of said bankrupt estate were induced to return their estimate and appraisement thereof at a grossly inadequate figure, as aforesaid, because of concealment and misrepresentation made to them by the said Charles Knosher & Co. and by the said John Ainesfield Co., whereby the said appraisers were prevented from having a view of the property belonging to the estate of the said bankrupt, and were deprived of an opportunity to truly estimate and appraise the same.

VII. That the said John Ainesfield Co. have taken possession of said estate, and since the date of the purchase thereof have been selling the same at special bankrupt sale, and, as your petitioners are informed and do verily believe, have realized the sum of about fifty thousand dollars ($50,000) in cash from the sale of said estate, and now have on hand a remaining portion of said bankrupt estate so purchased as aforesaid of the value, as your petitioners are advised and do verily believe, of approximately fifty thousand dollars ($50,000).

VIII. Your petitioners verily believe and so allege the fact to be that the said John Ainesfield Co. are now threatening to and will, unless enjoined by order of this court, dispose of the remainder of said stock to an innocent purchaser and place the same beyond the jurisdiction of this court; that the remainder of said estate of said bankrupt is now in the possession of the said John Ainesfield Co. within the jurisdiction of this court. [21]

IX. This application is based upon the affidavits of Eugene G. Anderson and Ole A. Kjos, which said affidavits are hereby expressly referred to and made a part of this petition.

Wherefore your petitioners ask that the appraisement and sale and order of confirmation of sale heretofore made in said proceeding be set aside and that the said John Ainesfield Co. be required to pay into the registry of this court all moneys heretofore received by them out of the sale of the estate of said bankrupt, and that the stock remaining on hand and now unsold be returned to the possession of the receiver herein.

And your petitioners do further pray that an injunctive order be forthwith issued commanding the said John Ainesfield Co., their representatives and agents, from selling, removing, disposing of, or in any way interfering with the remainder of said stock of said bankrupt now in their hands or under their control.

HUGHES, MCMICKEN, DOVELL & RAMSEY, and NELSON R. ANDERSON,
Attorneys for said Petitioners. [22]

UNITED STATES OF AMERICA,
Western District of Washington, County of King, ss:

I, Eugene G. Anderson, president of the Western Dry Goods Co., a corporation, one of the petitioners mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true, and that I make this verification for and on behalf of said corporation petitioner.

EUGENE G. ANDERSON.

Subscribed and sworn to before me this 20th day of April, A. D. 1911.

[SEAL.] H. J. RAMSEY,
Notary Public in and for the State of Washington, residing at Seattle. [23]

In the District Court of the United States for the Western District of Washington, Northern Division. In Bankruptcy—No. ——. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF EUGENE G. ANDERSON.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Eugene G. Anderson, being duly sworn, deposes and says:

I am the president and treasurer of the Western Dry Goods Co., a corporation, one of the creditors of Charles Knosher & Co., bankrupt. About the 12th day of April,

1911, I met one Henderson, who had been one of the department heads of Charles Knosher & Co., and at said time was and now is one of the department heads or employees of J. Ainesfield & Co. in the business now conducted by the latter company in selling the bankrupt stock of Charles Knosher & Co.; the said Henderson voluntarily told me at said time that the said John Ainesfield Co. had already realized from the sale of the bankrupt tsock of the said Charles Knosher & Co. a sum in excess of $40,000, and that there was remaining on hand a portion of said bankrupt stock which would inventory at a sum in excess of $50,000. That then and there the said Henderson told me that he, himself, had taken the inventory [24] of a portion of the stock and assisted in taking an inventory of other portions of the stock upon which inventory the appraisement returned by the appraisers herein was based. That the inventory was reduced so as to falsely represent in value and quantity the stock of said bankrupt; that the purpose in so reducing the inventory was that said stock might be purchased at a grossly inadequate value by the said John Ainesfield Co. under an agreement whereby the said John Ainesfield Co. would purchase said stock at said grossly inadequate value, realize enough therefrom to pay the full amount of their claim against said bankrupt, together with the purchase price at said bankrupt sale, and the balance of said stock would then be returned to the said Charles Knosher & Co.

About 11.40 in the morning of Saturday, April 15th, 1911, I had a conversation with one Hyslop, who is store manager for the said John Ainesfield Co. The said Hyslop, in the course of a conversation, showed me the returns of sales that had been made of said bankrupt stock since the purchase thereof by the said John Ainesfield Co. Said returns showed that there had been realized, over and above all expenses and sums expended for replenishment of stock, the net sum of about $42,000, out of said bankrupt stock, and the said Hyslop then and there stated to me that there was remaining on hand of said bankrupt stock goods, wares, and merchandise of the value of not less than $50,000, and that this could be proven by an invoice thereof.

About 9.30 o'clock in the forenoon of Monday, April 17th, 1911, I had a conversation with E. G. Barr, one of the department heads of Charles Knosher & Co., now an [25] employee of John Ainesfield Co. in the conduct of the sale of said bankrupt stock, and one of the appraisers of said bankrupt estate. The said Barr stated to me that at the time the inventory of the bankrupt estate of the said Charles Knosher & Co. was being taken, he, the said Barr, assisted therein. That at that time there was present in the city of Seattle one Libby, a representative and agent of John Ainesfield & Co., the purchaser of said bankrupt stock; that he, the said Barr, did from time to time confer with the said Libby and did furnish him the inventory figures upon the said stock as the inventory was taken by departments, and at said time furnished to the said Libby statements showing the true value of said stock; that said inventory value was in each instance placed at a sum less than the actual value thereof, and in many instances portions of said stock were omitted from the inventory for the purpose of reducing the inventory of said stock below the actual value thereof; and that as a result thereof the inventory of said stock which was made up and upon which the appraisement thereof was returned, was in a sum far less than the actual value of said stock. That said inventory was so made in pursuance of a plan and conspiracy whereby the said Libby was to purchase said stock at a sum far less than its actual value for the said John Ainesfield Co., and was to hold the same until there should be realized therefrom the purchase price thereof and the claim of the said John Ainesfield Co.; and thereafter the balance of said stock was to be returned to the said Charles Knosher & Co., and that the said Libby and the said Knosher had knowledge of and participated in said plan and conspiracy.

EUGENE G. ANDERSON. [26]

Subscribed and sworn to before me this 20th day of April, A. D. 1911.

H. J. RAMSEY,
[SEAL.] *Notary Public in and for the State of Washington, residing at Seattle.* [27]

In the district court of the United States, for the western district of Washington, northern division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF OLE A. KJOS.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Ole A. Kjos, being first duly sworn, on oath deposes and says:

I was one of the appraisers heretofore appointed by the referee in the matter of bankruptcy of the estate of Charles Knosher & Co., on the 9th day of March, 1911. Upon being notified of my appointment as such appraiser I went in company with J. J.

Doheny and E. G. Barr to the store of Charles Knosher & Co. for the purpose of making an estimate and appraisement of the value of said bankrupt estate, and thereupon offered to examine the stock of goods, wares, and merchandise in said store for the purpose of ascertaining the value thereof. I am an experienced dry-goods man and am able to tell from examination the value of such a stock as was comprised within said bankrupt estate. There was present at said store at such time Sutcliffe Baxter, the receiver and trustee, and a man who was represented to me as the attorney for the said Sutcliffe Baxter, whose [28] name I do not now recall. The said attorney thereupon told me that the making of the estimate and appraisement of said estate was a mere matter of form and that I would not be permitted to examine the stock of goods, wares, or merchandise in detail for the purpose of ascertaining their value, but that in making up said estimate and appraisement we, the appraisers, were to be guided by the inventory figures which were then and there shown to us, and that no one was to be permitted to reinventory said goods. At that time the stock in said store was covered and we were not given an opportunity to examine further into the value of said goods in detail for the purpose of verifying the inventory which was offered to us, and thereupon, relying upon said statement as to our duties in the premises, we signed an estimate and appraisement of said stock, being the figures returned upon the inventory which had been theretofore taken.

I have read the affidavit of Eugene G. Anderson, filed herewith, and so far as same relates to a conversation held with Mr. Barr on Monday, the 17th of April, I was present at said conversation and heard the same, and do depose and say that the statements were made by Mr. Barr as stated in the affidavit of the said Eugene G. Anderson; and I do further depose and say that I heard the said Henderson, referred to in the affidavit of Mr. Anderson, make the statements in form and effect as stated by Mr. Anderson in his said affidavit. And the said Henderson, in addition thereto, stated to me that in assisting in the making of the inventory of said bankrupt stock, gross fraud was practiced, and stated in my hearing that in many instances the inventory price was grossly reduced below the actual value of said goods, and that in many instances quantities of goods were omitted from the inventory list; and [29] also stated in my hearing, in particular, that in one instance broadcloth which had cost $2.12½ per yard was inventoried at 50 cents per yard, and afterward sold by John Ainesfield & Co. for $2.98 per yard; and the said Henderson further stated that in another instance a quamtity of Indian linen which had cost $750.00, and was of approximately that value, was inventoried at $250, and the said Henderson generally stated in my hearing that said inventory was knowingly and designedly made so as to show a figure far less than the actual cost of said stock.

OLE A. KJOS.

Subscribed and sworn to before me this 20th day of April, A. D. 1911.

[SEAL.] H. J. RAMSEY,
Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed:) Petition. Affidavit of Eugene G. Anderson. Affidavit of Ole A. Kjos. Filed April 20th, 1911, 11 a. m. John P. Hoyt, referee. Filed in the U. S. District Court, Western District of Washington. May 5, 1911. R. M. Hopkins, clerk. [30]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AMENDED PETITION [OF WESTERN DRY GOODS CO. ET AL. TO SET ASIDE APPRAISEMENT, ETC.].

Comes now the Western Dry Goods Co., a corporation; Smith-Daniels & Kelleher Co., a corporation; Imperial Candy Company, a corporation; Black Manufacturing Company, a corporation; and Seattle Dry Goods Company, a corporation, by their attorneys, and respectfully show the court:

I. That on the 27th day of February, 1911, Charles Knosher & Co., a corporation, was duly adjudicated bankrupt by the above-entitled court, on which day a petition alleging bankruptcy and an answer admitting bankruptcy was duly filed in said cause and court, and on said day Sutcliffe Baxter was appointed by this court as receiver of the estate of said bankrupt, and the said Sutcliffe Baxter thereupon qualified and acted as such receiver and has been such receiver continuously since the 20th day of March, 1911, and on the said 20th day of March, 1911, the said Sutcliffe Baxter was duly elected and appointed as trustee, and ever since said time he has been and now is the duly qualified and acting trustee herein.

II. Your petitioners are unsecured creditors of the [31] bankrupt herein, and they have filed, proved, and been allowed their claims herein as follows:

Western Dry Goods Co	$5,104.45
Smith-Daniels & Kelleher Co	178.20
Imperial Candy Co	637.91
Black Manufacturing Co	38.40
Seattle Dry Goods Co	512.34

III. On the 9th day of March, 1911, Ole A. Kjos, J. J. Doheny, and E. G. Barr were appointed as appraisers of said estate, and said appraisers did on the 9th day of March, 1911, return a purported appraisement of the estate of said bankrupt, estimating and appraising the same at the sum of forty-two thousand two hundred fourteen and 87/100 ($42,214.87) dollars.

IV. Your petitioners hereby allege the fact to be that said appraisement was and is grossly erroneous and was induced by fraud and misrepresentation upon and to said appraisers, and that in truth and in fact the fair market value of the estate of said bankrupt, so attempted to be appraised at said time, was, as your petitioners verily believe and allege the fact to be, an amount in excess of ninety thousand ($90,000) dollars.

V. On the 16th day of March, 1911, the estate of said bankrupt, consisting of a stock of goods, wares, merchandise, and fixtures, was sold in bulk to the John Ainesfield Co., a corporation, for the sum of fifty-seven thousand ($57,000) dollars, which said sale was afterward confirmed by the referee herein. [32

VI. And your petitioners do further represent that immediately upon the appointment of the receiver and trustee as aforesaid an inventory was taken of said bankrupt stock; that the said inventory was taken by certain employees of the said Charles Knosher & Co., and thereupon said employees conspired with the said John Ainesfield Co. to the end that the inventory of said stock of goods, wares, and merchandise so taken should show an amount greatly less than the fair market wholesale value of said stock. And thereupon said employees of the said Charles Knosher & Co., conspiring with the said John Ainesfield Co., as aforesaid, did fraudulently and for the purpose of deceiving the officers of this court make up an inventory showing the value of said stock of goods, wares, and merchandise as greatly less than the actual market value thereof; and said employees did at said time, in pursuance of said conspiracy, advise the said John Ainesfield Co. of the actual value of said stock, but did at all times conceal said information from all others; and the receiver and trustee did thereupon accept as a true inventory of said stock the false and fraudulent inventory so made up as aforesaid, and upon the assumption that the same did represent the true value of said stock, the said appraisers did return their appraisement and estimate thereof to this court.

VII. And your petitioners further represent that the appraisers of said bankrupt estate were induced to return their estimate and appraisement thereof at a grossly inadequate figure as aforesaid, because of the conspiracy aforesaid and concealment and misrepresentation made to them by the said Charles Knosher & Co. and by the said John Ainesfield Co., whereby the said [33] appraisers were prevented from having a view of the property belonging to the estate of the said bankrupt, and were deprived of an opportunity to truly estimate and appraise the same.

VIII. That the said John Ainesfield Co. have taken possession of said estate and since the date of the purchase thereof have been selling the same at special bankrupt sale, and as your petitioners are informed and do verily believe, have realized the sum of about fifty thousand dollars ($50,000) in cash from the sale of said estate, and now have on hand a remaining portion of said bankrupt estate so purchased as aforesaid of the value, as your petitioners are advised and do verily believe, of approximately fifty thousand dollars ($50,000).

IX. Your petitioners verily believe and so allege the fact to be that the said John Ainesfield Co. are now threatening to and will, unless enjoined by order of this court, dispose of the remainder of said stock to an innocent purchaser and place the same beyond the jurisdiction of this court; that the remainder of said estate of said bankrupt is now in the possession of the said John Ainesfield Co., within the jurisdiction of this court.

X. Your petitioners have heretofore received out of funds distributed by said trustee an amount equal to twelve and one-half per cent (12½%) of the face of their claims as hereinbefore set forth, which said amount your petitioners hold subject to the order of this court, and are ready and willing, and hereby offer, to turn the same, as a part [34] of the estate of said bankrupt, into the registry of this court. That no other or greater sum than an amount equal to 12½% of the face of the claims against said bankrupt estate has been paid.

XI. Reference is hereby made to the affidavits of Eugene G. Anderson and Ole A. Kjos, attached to the original petition herein, which said affidavits are hereby expressly referred to and made a part of this petition.

Wherefore you petitioners ask that the appraisement and sale and order of confirmation of sale heretofore made in said proceeding be set aside and that the said John Ainesfield Co. be required to pay into the registry of this court all moneys heretofore received by them out of the sale of the estate of said bankrupt, and that the stock remaining on hand and now unsold be returned to the possession of the receiver herein.

And your petitioners do further pray that an injunctive order be forthwith issued commanding the said John Ainesfield Co., their representatives and agents, from selling, removing, disposing of, or in any way interfering with the remainder of said stock of said bankrupt now in their hands and under their control.

NELSON R. ANDERSON.
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Attorneys for Petitioners. [35]

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, Eugene G. Anderson, president of the Western Dry Goods Co., a corporation, one of the petitioners mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true, and that I make this verification for and on behalf of said corporation petitioner.

EUGENE G. ANDERSON.

Subscribed and sworn to before me this 26th day of April, A. D. 1911.

[SEAL.] NELSON R. ANDERSON,
Notary Public in and for the State of Washington, residing at Seattle. [36]

Received copy, and I have no objection to amendments, but wish to call Judge Hoyt's attention especially to the new Paragraph VI, as it was not offered at the hearing.

PRESTON.

(Indorsed:) Amended petition. Filed April 26th, 1911, 2 p. m. John P. Hoyt, referee. Filed in the U. S. District Court, Western Dist. of Washington. May 5, 1911. R. M. Hopkins, clerk. [37]

MEMORANDUM DECISION ON PETITION TO SET ASIDE SALE, ETC.

United States District Court, Western District of Washington, Northern Division.
No. 4541. In the matter of Charles Knosher & Co., bankrupt.

Filed July 19, 1911.

Memorandum decision on petition of creditors to set aside the sale of the bankrupt's stock of merchandise and store fixtures made by the receiver and upon objections of creditors to the allowance of compensation for the receiver and his attorneys.

This is an involuntary bankruptcy case. On the petition of creditors the court appointed as receiver of the bankrupt estate Mr. Sutcliffe Baxter, an experienced business man in whose capacity and integrity I have perfect confidence. The story of his administration of the trust is well told in his report to the court as follows:

"I. I was appointed receiver herein on the 27th day of Frebruary, 1911, and required to file a bond in the penalty of $5,000. Having been notified of my appointment, I obtained a certified copy of the order thereof, and filed my bond in the penalty required, and in company with McClure & McClure and Leopold M. Stern, whom I retained as my counsel, I visited the premises of the alleged bankrupt at the southeast corner of James Street and Second Avenue in Seattle, Washington. I there met and interviewed Charles Knosher, the president of the company, and others.

"II. The alleged bankrupt turned over the premises to me and gave me complete charge thereof. I found that the bankrupt was a corporation engaged in the operation of a department store at the time I took possession of said premises. The store was filled with customers who were attending a sale which had previously been extensively advertised. I thought it advisable to permit the business to remain open and the sale to go on for the balance of the day, and accordingly permitted the said store to remain open. [38]

"III. During the day I consulted with numerous creditors and representatives as to the advisability of continuing the business at retail, and after such consultation it

was agreed by all parties, and it was also my own judgment, that it would be best to close the store at the conclusion of the day's business, and proceed at once to take an inventory of all the property. I accordingly retained practically the entire force of employees in the store from the 27th day of February to the 6th day of March, 1911, inclusive, upon which latter day I concluded the inventory of all of the assets which came into my possession and control, and which inventory I duly filed in the office of the referee in bankruptcy. At the conclusion of said inventory, I discharged all the employees excepting a few whom it was necessary to retain to assist me in taking care of the property, collect outstanding book accounts, and otherwise advise me regarding matters of importance to the estate. I also arranged to have a transfer of all insurance policies, and as I did not find sufficient insurance, the premium for which had been paid, I thought it best to place additional insurance on the property.

"IV. After the filing of the inventory, the referee in bankruptcy appointed J. J. Doheny, E. Y. Barr, and O. A. Kjos appraisers, and said appraisers duly appraised the property shown in the inventory and filed their report of appraisement in the office of the referee in bankrubtcy. Thereafter the referee in bankruptcy made an order of sale of said property, which sale was set for March 13, 1911, upon sealed bides to be opened before the referee in bankruptcy, and that upon the opening of said bids it was found that one F. Campbell had bid a sum equivalent to $50,027. I made further efforts to obtain a larger bid for the assets, with the result that the original bids were rejected, and upon the opening of new bids on the 15th day of March, 1911, a bid of $57,000 for said assets was received and accepted.

"V. I further report that from the time I took possession of said premises up to the present time, I have diligently endeavored to collect the outstanding book accounts, and have reduced the same to cash as rapidly as possible.

"VI. I desire to report further that it became necessary for me to have an examination made of the books, and to that end I employed Nelson W. Parker, who is an experienced accountant, and that he rendered services on March 13th and 14th, 1911, in connection with the examination and experting of the books of account, for which service said Parker has rendered me a bill of $25, which sum I deem reasonable.

"VII. Attached hereto is an itemized statement of all the recipts and disbursements during my period of service as receiver, and reference thereto is directed in the consideration of this report.

"VIII. I have received no compensation for my services as receiver and in conducting the business of the bankrupt under the order of this court.

"IX. I further desire to report that I have given my entire time and attention to the management and care of said business from the time I took possession thereof up to the 16th day of March, 1911, at which time I surrendered possession thereof to the purchaser." [39]

By choice of the creditors Mr. Baxter was appointed trustee of the estate under the bankruptcy law.

Subsequent to the approval by the court of the report above quoted, a number of creditors joined in an attack upon the receiver's administration of the trust by objecting to allowances of compensation to him and his attorneys, and by a petition presented to the referee to set aside the sale of the merchandise and store fixtures, alleging conspiracy between the purchaser and employees of the receiver to facilitate the sale for an inadequate price by the making of a fraudulent inventory and charging the receiver with negligence and incompetency. These charges are not supported by the evidence of any witness pretending to have personal knowledge of the facts, but in lieu of such evidence affidavits have been submitted to the court stating, in substance, that certain of the receiver's employees engaged in making the inventory had voluntarily told the affiants that the inventory fraudulently depreciated the value of the stock and that information as to the true value was privately given to the agent of the purchaser. The affidavits also state that the stock was undervalued by the appraisers, who were, by the interference of the receiver and his attorneys, prevented from making their own inventory and denied a fair opportunity to examine the stock. The most important fact in either of the affidavits is that 30 days after the sale one of the employees of the purchaser exhibited to affiant a purported statement of the purchaser's business, showing that in the space of one month, from sales of the stock, $42,000 had been received in excess of expenses and the cost of new goods purchased to replenish the stock, and told the affiant that there was yet on hand in the store an amount of merchandise which would inventory an aggregate amount exceeding $50,000. To corroborate this information the leading attorney for the objecting creditors has made an affidavit asserting "that he has in his possession what purports to be and is represented to him to be the true and original memorandum and data of the inventory as taken in certain departments of the store of said bankrupt; that he has compared such memorandum and data with the receiver's report, and finds a vraiance and difference of over 100 per cent in the items covered, aggre-

gating several thousand dollars, and that he is informed by responsible persons in position to know that this condition was general throughout the store."

It is to be especially noted that there is no pretense that any competitive bidder was deceived as to the value of the stock, or prevented from making his own estimate by an examination thereof in comparison with the inventory, nor that a better price could have been obtained from any would-be purchaser; nor that the bids for the property were in any manner influenced by the appraisement. The affidavits relating to the appraisement do not merit further consideration.

The attorney's affidavit above referred to, I must believe, would not have been made by a more experienced lawyer, for it necessarily creates suspicion as to his own good faith. If the document which he claims to have in his possession were genuine and of any importance, it should have been presented to the court and an opportunity given for scrutiny instead of making it the basis of an affidavit while kept in concealment.

The flimsiness of the evidence relied upon is illustrated by the hearsay statement that broadcloth which cost $2.12½ per yard had been inventoried at 50 cents per yard and after the sale the purchaser had obtained for it the price of $2.98 per yard. The facts as shown by counteraffidavit are that the broadcloth referred to was but a remnant of small value even at the price for which it was finally disposed of.

Since I began to study the record in this case for the purpose of deciding this controversy two additional affidavits have been submitted by the objecting creditors. One of them is made by the general manager of the wholesale department of a dry goods company doing business at Seattle. He claims to have qualifications for the work of estimating the value of bankrupt stocks and of stocks for sale in bulk generally and "that he, after examining the quality and quantities of merchandise in the store of the bankrupt, estimated conservatively that there was at least $80,000 to $85,000 worth of merchandise on hand and so reported to his firm; that his firm, on receiving the report of the receiver, believed, at that time and for the purpose of making its bid, that the receiver's report was a true and correct report and made its bid accordingly."

By this it appears that a man of experience and expert qualifications examined the stock for his firm and found it to be worth at a conservative estimate from $10,000 to $15,000 more than the value [40] shown by the receiver's inventory and so reported to his firm. The firm, however, although in a situation to buy the stock and interested as a creditor in seeing that other buyers should not obtain it for less than its salable value, rejected the report of its expert and relied upon the report of the receiver in making its bid, and now comes as one of the objecting creditors, submitting such an affidavit for the purpose, apparently, of persuading this court to condemn the inventory filed by the receiver which it relied upon and act upon the expert's report which it rejected, as though the mere estimate of value which he made were exact and true.

The other new affidavit referred to is by the proprietor and manager of a large merchandise house in Seattle, who was also one of the bidders for the stock. He states that he has had more than twenty years experience in the dry goods business and that he has made a specialty of estimating the value of stocks of goods in bulk and has handled many such stocks; that he looked at the stock of the bankrupt but had great difficulty in identifying in the shelves goods listed in the receiver's report; that he found it practically impossible to check up from the receiver's report the goods there for the purpose of determining whether the inventory had been taken high, fair, or low; that he estimated that there was from $80,000 to $85,000 cost value of merchandise on hand. This man undoubtedly relied upon his own judgment in fixing the amount which he could afford to pay for a stock in the condition in which it was before the sale, for his affidavit indicates that he was unable to use the inventory. I deem the value of his judgment, as evidenced by his bid for the property, to be much higher, for practical purposes, than his affidavit. His highest bid for the merchandise, store fixtures, and an auto delivery wagon was more than $12,000 less than the amount obtained by the receiver for the same property with the addition of the bankrupt's leasehold interest in the store, which I infer had no salable value separated from the merchandise and fixtures. The receiver obtained no bid for it as a separate item of property.

These two affidavits add nothing to the force of the attack which the objecting creditors are making, because the issue depends, not upon the theoretical value of the assets, but upon the question as to the largest amount of money which by prudence, diligence, and intelligence could have been obtained for the benefit of the creditors.

The entire showing made by the objecting creditors has been candidly met by counteraffidavits, which convince the court that the receiver, his attorneys and employees, transacted the business with fidelity and with due regard for the best interests of all concerned and that they have earned commendation as well as compensation. I will prove this by ciphering.

Assuming as true the statement that the purchaser after obtaining possession of the property realized from sales $42,000 net and adding to that amount $6,000 to cover

expenses, which is a high estimate, and deducting $8,000 for estimated difference between cost and selling price, the goods at invoice price would amount to $40,000. Add to this $50,000, the estimated invoice value of unsold goods and $5,000 for store fixtures and we have the total sum of $95,000 as the most extravagant estimate of the value of all the property included in the sale which can be based upon the hearsay evidence relied upon by the objecting creditors. Sixty per cent of that value was obtained by the receiver, and in the light of experience gained by administration of other insolvent estates, including stocks of merchandise, and tested by the bids for this identical property submitted by competent buyers who made their own estimates of its worth, I regard the achievement of the receiver in obtaining such a price in cash for such property by a quick sale as something extraordinary and commendable. A stock of dry goods and general merchandise in a store which has been in trade more than one year necessarily includes odds and ends and things depreciated in value by age. The instances are rare in which so large a stock as the one in question can be readily sold in bulk for spot cash at a price exceeding 50 per cent of the invoice price, or even that much net by selling at retail or in lots. Hence, practical equity dictates that caution should be observed in rejecting the highest bid at a forced sale of such a stock. Without a showing that a better price could have been obtained the court would not have vacated the sale, if an application to vacate had been made before goods had been sold by the purchaser, when no serious injustice would have resulted. There is no such showing now, and upon the consideration of all the papers filed, including the arguments of counsel, there appears to be no substantial ground, legal or equitable, for granting the extraordinary petition to set aside the sale after a large part of the stock of merchandise has been disposed of at retail and passed beyond the each of judicial [41] process whereby it might be restored to the court's custody, rherefore the order of the referee refusing to entertain jurisdiction will be confirmed.

Notwithstanding the objections, compensation will be allowed to Mr. Baxter, in a lump sum, to be computed on the basis of the maximum prescribed by the bankruptcy law, for all of his services as trustee of the estate as well as receiver, and an equal amount will be allowed to his attorneys for their compensation.

C. H. Hanford,
United States District Judge.

ADDENDA.

The attorney for the objecting creditors referred to in this decision has called upon me and exhibited to me the memorandum sheets to which reference was made in his affidavit and has shown that he had substantial grounds for not making profert of the same as evidence, although deemed of sufficient importance to influence him and his clients in instituting these proceedings. I am convinced that he acted in good faith, but the result of my investigations as above announced must remain unchanged.

C. H. Hanford,
United States District Judge.

(Indorsed:) Memorandum decision. Filed in the U. S. district court, western dist. of Washington. July 19, 1911. R. M. Hopkins, Clerk. [42]

ORDER SUSTAINING OBJECTIONS TO AMENDED PETITION.

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Chas. Knosher & Co., Inc. (a corporation), bankrupt.

This matter came on to be heard upon the amended petition of the Western Dry Goods Co., a corporation, and certain other creditors, praying for relief against John Anisfield Co., a corporation, and the objections of said John Anisfield Co. to the original petition, which by stipulation in open court are to be considered as objections to the amended petition, the said petitioners appearing by Nelson R. Anderson and Hughes, McMicken, Dovell & Ramsey, their attorneys, and said John Anisfield Co. by Harold Preston, its attorney, and the referee, having heard argument of counsel and being sufficiently advised in the premises, does order and adjudge:

That the said objections to the amended petition be, and they hereby are, sustained, and the prayer of the said petitioner for relief denied and said petition dismissed, to which ruling of the referee the said petitioners, by their attorneys, except, and their exception is allowed.

Dated at Seattle, in said district, this 29th day of April, 1911.

John P. Hoyt, *Referee in Bankruptcy.*

(Indorsed:) Order sustaining objections. Filed April 29, 1911, 11 a. m. John P. Hoyt, referee. Filed in the U. S. District Court, Western Dist. of Washington. May 5, 1911. R. M. Hopkins, clerk. [43]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

ORDER TO SHOW CAUSE.

This matter coming on to be heard and the court having examined the petition filed herein, and it appearing to the court that no notice of the application made herein by Sutcliffe Baxter, receiver, and his attorneys was ever given to the creditors herein or to petitioners herein, and it further appearing to the court that the compensation allowed was over and above that allowed by law, and the court being duly advised in the premises,

It is hereby ordered that Sutcliffe Baxter, receiver, and Sutcliffe Baxter, trustee, and McClure & McClure and Leopold M. Stern be and appear before this court on the 10th day of April, 1911, at ten o'clock a. m. to show cause, if any, why the order entered herein on the 20th day of March, 1911, should not be set aside and held for naught, and why the compensation allowed by said order to the receiver, Sutcliffe Baxter, and to his attorneys pursuant to said order, should not be repaid into this court and the proper officer thereof.

Done in open court this 4th day of April, 1911.

C. H. HANFORD, *Judge.* [44]

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed order to show cause, together with the petition on the therein named McClure & McClure, by handing to and leaving a true and correct copy thereof with Walter McClure, a member of the firm of McClure & McClure, personally, at Seattle, in said district, on the 5th day of April, A. D. 1911.

April 5, 1911.

JOSEPH R. H. JACOBY, *U. S. Marshal.*
By H. V. R. ANDERSON, *Deputy.*

Fees: $2.00.

RETURN ON SERVICE OF WRIT.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed order to show cause, together with the petition on the therein named Sutcliffe Baxter and L. M. Stern, by handing to and leaving a true and correct copy thereof with Sutcliffe Baxter and L. M. Stern, personally, at Seattle, in said district, on the 5th day of April, A. D. 1911.

April 5, 1911.

JOSEPH R. H. JACOBY, *U. S. Marshal.*
By H. V. R. ANDERSON, *Deputy.*

Fees: $4.24.

(Indorsed:) Order to show cause. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 4, 1911. R. M. Hopkins, clerk. [45]

In the District Court of the United States, for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

ORDER REQUIRING RECEIVER TO MAKE APPLICATION FOR HIS ALLOWANCE, ETC.

This matter coming on regularly to be heard on the 10th day of April, 1911, the same being the return day of an order to show cause issued herein on the 4th day of April, 1911, and the petitioners being present by their attorney, Nelson R. Anderson, and the respondents being present in person, namely, Sutcliffe Baxter and McClure & McClure and Leopold M. Stern, and it appearing to the court from the petition and the files herein and from the arguments of counsel that no notice had been given creditors of the application by the receiver for allowances to himself and attorneys, or either of them, and that petitioners and creditors had no notice of the application or of the order making allowances until after same were made and on file, and it

further appearing to the court that objection was made to the amount of the allowance to the receiver and also to the attorneys for the receiver, and the court being duly advised in the premises;

It is hereby ordered, adjudged, and decreed that the receiver make application for his allowance required by law, the referee to give ten days' notice by mail to all creditors, specifying the amount asked; that the application previously made herein be allowed to stand as the application required by law to be completed by the notice required aforesaid; that the objections made, or to be made, by the creditors to the allowance made, or to be asked for by, the receiver shall be [46] heard *de novo* at a time to be fixed by the notice required herein; that the objections made, or to be made, by the creditors to the allowance made, or to be made, to the attorneys for the receiver by the court shall be heard *de novo* at the same time that objections are made to the allowance to the receiver; that this order shall be, and the same hereby is, entered without prejudice to the rights of either party hereto.

Done in open court this 14th day of April, 1911.

C. H. HANFORD, *Judge.*

Service of within order and receipt of copy admitted this 11th day of April, 1911.

We hereby designate room 333–334, New York Building, Second Avenue and Cherry Street, Seattle, Washington, as the place where all subsequent papers herein, except writs and process, may be made upon the Atty. herein, and consent that service of all subsequent papers herein, except writs and process, may be made as the place hereinabove designated upon the said ———.

Dated April 14, 1911.

NELSON R. ANDERSON, *Attorney.*

(Indorsed:) Order. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 14, 1911. R. M. Hopkins, clerk. [47]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

PETITION OF WESTERN DRY GOODS CO. ET AL. FOR AN ORDER TO SHOW CAUSE.

Comes now the Western Dry Goods Co., a corporation, Smith-Daniels & Kelleher Company, a corporation, Imperial Candy Co., a corporation, Black Manufacturing Company, a corporation, Seattle Dry Goods Company, a corporation, petitioners herein, by their attorney and counsellor, Nelson R. Anderson, and respectfully show the court:

I. That Charles Knosher & Co., a corporation, was duly adjudicated bankrupt by the above-entitled court in the above-entitled cause on the 27th day of February, 1911, on which day and year a petition alleging bankruptcy and an answer admitting bankruptcy were duly filed in said cause and court; that on the same day and year Sutcliffe Baxter was appointed by this court and the honorable judge thereof, C. H. Hanford, as receiver of the estate of said bankrupt; that said Sutcliffe Baxter duly qualified and acted as *as* receiver herein from that time until the 20th day of March, 1911; that his duties as receiver were merely those of a custodian, and that he did not carry on the business of said bankrupt; that he, the said Sutcliffe Baxter, was on the 20th day of March, 1911, duly elected and appointed trustee herein; that he since that time was and now is the duly qualified and acting trustee herein.

II. That your petitioners herein are unsecured creditors [48] of the bankrupt herein; that they have filed, proved, and been allowed their claims herein as follows:

Western Dry Goods Co	$5,104.45
Smith-Daniels & Kelleher Co	178.20
Imperial Candy Co	637.91
Black Manufacturing Co	58.40
Seattle Dry Goods Co	512.34

III. That on the 20th day of March, 1911, said Sutcliffe Baxter, receiver, by his attorneys, McClure & McClure and Leopold M. Stern, prayed, *inter alia*, the court for an allowance for services rendered the estate herein by said Sutcliffe Baxter as receiver, and for an allowance to the said McClure & McClure and Leopold M. Stern as attorneys, for professional services rendered by them to said receiver; that pursuant to said petition and prayer, the above-entitled court and the honorable judge thereof, C. H. Hanford, made an order allowing Sutcliffe Baxter, as receiver, the sum of two thousand five hundred ($2,500.00) dollars as compensation for his services to the estate herein of the bankrupt, and to the above-named attorneys for the receiver the said court and judge allowed the sum of two thousand five hundred ($2,500.00) dollars for their compensation for services rendered the said receiver.

IV. That your petitioners as creditors and claimants with their claims and proofs of record, the same appearing in the schedules of the bankrupt and by separate proof in the manner provided by law, were entitled to the notices provided by law of the application by receivers and their attorneys, [49] in behalf of each and all of them, for compensation for services rendered in their respective capacities.

IV. That the notice to creditors of applications for allowance to receiver and attorneys required by law, or either of them, and in pursuance of which the order complained of here and now was entered, was not given by the above-entitled court nor by any of its officers, nor by the said receiver or his attorneys, nor by anyone whatsoever; that your petitioners had no knowledge, information, or notice of the application for compensation made or of any application, nor did your petitioners know in what amount the receiver or his attorney, or either of them, would ask for compensation or know anything concerning said application and the order entered in pursuance thereof until after the same were entered herein and filed of record on the 31st day of March, 1911.

VI. That by failure of the court to give and by failure of your petitioners, to receive, or either, or in any way waive their right to receive, the notice or notices required by law of such applications for compensation and the order made pursuant thereto, or either, the court herein was without jurisdiction and without right to hear, receive, or entertain such application as was made; that the order entered allowing compensation was made without due process of law, was illegal, void, and of no effect.

VII. In addition to the said failure to give and receive, or either, the notice required by law of applications for compensation required of receivers, your petitioners further show that the compensation of receivers who act as mere custodians and who do not carry on the business of the bankrupt is fixed [50] by law at not more than 2 per centum on the first one thousand dollars or less and one-half of one per centum on all over one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realized from property turned over by him to the trustee, and not more; that the receiver herein reported to this court that his cash receipts were $57,772.82 and also certain tracts of land valued at $4,000.00 and not more; that the receiver's compensation according to law was and is $320.00; that the allowance to the receiver's attorneys for services rendered was and is unreasonable, excessive, and contrary to law.

Wherefore, your petitioners pray the court that an order to show cause issue to the said Sutcliffe Baxter, receiver, to Sutcliffe Baxter, trustee, to McClure and McClure, and to Leopold Stern, commanding them, and each of them, to appear before this court and the honorable judge thereof, C. H. Hanford, at a certain hour and day to be set by the court, to show cause, if any, why the order entered herein on the 20th day of March, 1911, pursuant to their application for compensation as receiver and as attorneys for said receiver, both and each, which application and order were filed on the 21st day of March, 1911, with the clerk of the above-entitled court, should not be set aside and held for naught; and further, to show cause, if any, why the sums allowed by said order to the receiver and his attorneys should not be paid into this court and the proper officer thereof, and for such other further and necessary relief as appear meet.

NELSON R. ANDERSON,
Attorney for Petitioners. [51]

333–334 New York Block, Seattle, Wash.

STATE OF WASHINGTON, *County of King, ss.*

Nelson R. Anderson, being first duly sworn, on oath deposes and says: That he is attorney for petitioners herein; that he has read the foregoing petition, knows the contents thereof and believes same to be true; that he makes this affidavit because he is personally acquainted with the facts set forth therein.

NELSON R. ANDERSON.

Subscribed and sworn to before me this 4 day of April, 1911.

[SEAL.] GLENN C. BEECHLER,
Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed:) Creditors' petition. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 4, 1911. R. M. Hopkins, clerk. [52]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

OBJECTION OF WESTERN DRY GOODS CO. ET AL. TO ALLOWANCE OF RECEIVER.

Come now the Western Dry Goods Co., a corporation; Smith, Daniels Kelleher & Company, a corporation; Imperial Candy Company, a corporation; Black Manufacturing Company, a corporation; Seattle Dry Goods Company, a corporation; Tootle,

Campbell Co., a corporation; Bradshaw Bros., True Shape Hosiery Co., Sutro Bros. Braid Co., Pioneer Suspender Co., American Paper Co., Harry E. Lewis, Love-Warren-Monroe Co., Gorham Rubber Co., Standard Oil Co., Superior Candy & Cracker Co., Lowman & Hanford Co., Pickard-Garde Co., Chas. Emmerick & Co., E. Ries & Company, J. B. Powles & Co., A. Stein & Co., Clement, Dranger & Co., N. Y. & Chemnitz Netting Co., Stone & Co., H. A. Caesar & Co., J. S. Temple, Interwoven Stocking Co., Western Fancy Goods Co., J. B. Crowley, Moore-Watson Dry Goods Co., David Bros., L. Samter & Sons, Luscombe & Isaacs, Spool Cotton Co., Julius Kayser & Co., B. Hart & Bro., Nonotuck Silk Co., Clayburgh Bros., and Pacific Coast Biscuit Co., by their attorneys, Hughes, McMicken, Dovell & Ramsey and Nelson R. Anderson, and respectfully show the court:

I. That Chas. Knoshher & Co., a corporation, was duly adjudicated bankrupt by the above-entitled court in the above-entitled [53] cause on the 27th day of February, 1911, on which day and year a petition alleging bankruptcy and an answer admitting bankruptcy were duly filed in said cause and court; that on the same day and year Sutcliffe Baxter was appointed by this court and the honorable judge thereof, C. H. Hanford, as receiver of the estate of said bankrupt; that said Sutcliffe Baxter duly qualified and acted as receiver herein from that time until the 20th day of March, 1911; that his duties as receiver were merely those of a custodian and that he did not carry on the business of said bankrupt; that he, the said Sutcliffe Baxter, was on the 20th day of March, 1911, duly elected and appointed trustee herein; that he since that time was and now is the duly qualified and acting trustee herein.

II. That your petitioners herein are unsecured creditors of the bankrupt herein; that they have filed, proved, and been allowed their claims herein as follows:

Western Dry Goods Co	$5,104.45
Smith-Daniels & Kelleher Co	178.20
Imperial Candy Co	637.91
Black Manufacturing Co	38.40
Seattle Dry Goods Co	512.34
Bradshaw Bros	148.00
True Shape Hosiery Co	112.50
Sutro Bros. Braid Co	215.57
Pioneer Suspender Co	137.50
American Paper Co	169.47
Harry E. Lewis	95.88
Love-Warren-Monroe Co	122.95
Gorham Rubber Co	3.81
Standard Oil Co. [54]	42.58
Superior Candy & Cracker Co	16.90
Lowman & Hanford Co	89.04
Pickard-Garde Co	29.25
Chas. Emmerick & Co	36.90
E. Ries & Company	549.31
J. B. Powles & Co	160.75
A. Stein & Co	55.03
Clement, Dranger & Co	382.39
N. Y. & Chemnitz Netting Co	30.00
Stone & Co	97.83
H. A. Caesar & Co	178.84
J. S. Temple	71.16
Interwoven Stocking Co	128.40
Western Fancy Goods Co	130.42
J. B. Crowley	59.78
Moore-Watson Dry Goods Co	35.15
Davis Bros	136.25
L. Samter & Sons	113.39
Luscombe & Isaacs	812.21
Spool Cotton Co	226.14
Julius Kayser & Co	416.90
B. Hart & Bro	195.80
Nonotuck Silk Co	1,260.01
Clayburgh Bros	408.80
Pacific Coast Biscuit Co	77.55
Tootle, Campbell Co	26,000.00

III. That on the 20th day of March, 1911, said Sutcliffe Baxter, receiver, by his attorneys, McClure & McClure and Leopold M. Stern, prayed, *inter alia*, the court for an allowance [55] for services rendered the estate herein by said Sutcliffe Baxter as receiver and for an allowance to the said McClure & McClure and Leopold M. Stern

as attorneys for professional services rendered by them to said receiver; that pursuant to said petition and prayer, the above-entitled court and the honorable judge thereof, C. H. Hanford, made an order allowing Sutcliffe Baxter, as receiver, the sum of two thousand five hundred dollars ($2,500), as compensation for his services to the estate herein of the bankrupt, which he has received, and to the above-named attorneys for the receiver the said court and judge allowed and said attorneys have received the sum of two thousand five hundred dollars ($2,500) for their compensation for services rendered the said receiver, to which your petitioners object and except upon the ground that the same were excessive, unreasonable, and contrary to law.

IV. That the services rendered by the receiver herein, Sutcliffe Baxter, were detrimental and prejudicial to the interests of the creditors and all persons in interest therein; that the said receiver by his carelessness and inattention permitted those engaged in taking an inventory of the bankrupt stock to return said inventory in a sum greatly less than the fair value thereof, and by reason thereof the value of said stock was greatly depreciated and in a sum far less than its fair value; that the said receiver has entailed a great loss upon the creditors herein by rendering a false report into this court of the amount and value of the goods, wares, and merchandise of the bankrupt which he had in charge; that the true inventory of the goods, wares, and merchandise in the custody of the receiver exceeded the false inventory rendered [56] into this court by more than thirty thousand dollars ($30,000); that the false and fraudulent inventory was made pursuant to a conspiracy and agreement between the bankrupt and John Ainesfield Co., the purchaser from this court of the assets of the said bankrupt and those who took the inventory in behalf of and for this court.

V. That the appraisement of the bankrupt stock of goods, wares, and merchandise was a sham and a mere fiction, owing to the intervention and interference of the receiver herein in giving the said appraisers instructions that were contrary to law and detrimental to the estate of the bankrupt in this that the appraisers should confine themselves to the inventory and not concern themselves with the stock of goods; that their duties were merely formal; and that they should not survey the stock itself.

VI. That on the date bids were first opened for the purchase of the bankrupt stock, the receiver herein recommended the acceptance of the bid of McCormick Bros., of Tacoma, Washington, which bid was in an amount less than fifty thousand dollars ($50,000); that the creditors, through their own efforts, and without any assistance from said receiver asked the court for permission to offer new bids, which was granted and the bids increased to $57,000.

VII. That the compensation of receivers is limited and fixed by section 48, subdivision D of the bankruptcy act, to certain percentages therein set forth, in case a receiver conducts the business of the bankrupt, and certain other percentages where a receiver acts as mere custodian; that the [57] compensation of a receiver carrying on the business of a bankrupt is fixed by said act at six per cent (6%) on the first $500; 4 per cent on the next $1,000; 2 per cent on the next $8,500; and 1 per cent on all sums in addition; that the fees of a mere custodian are fixed by said act at 2 per cent on the first $1,000, and one half of 1 per cent on sums in excess of $1,000; that section 72 of the bankruptcy act provides that the receiver shall not receive in any form or guise, nor shall the court allow him, any other or further compensation for his services than those expressly authorized and prescribed in this act; that Sutcliffe Baxter, receiver herein, was a mere custodian within the meaning of this act, and in fact; that he did not carry on the business of the bankrupt; that his receiver's report shows the fact to be that he closed the store of the bankrupt at the close of the day of his appointment; that he was appointed in the afternoon of said day, and closed the store at the first opportunity and within a few hours of his appointment, and at the earliest practicable moment; that as such receiver he sold the goods, wares, and merchandise and fixtures of the bankrupt at a sum not exceeding fifty-seven thousand dollars ($57,000); that the real property of the bankrupt does not exceeding in value four thousand dollars ($4,000); that the total of moneys disbursed or turned over to any person, or funds handled by the receiver, do not exceed the sum of sixty-one thousand dollars ($61,000); that the compensation of a receiver carrying on the business of the bankrupt at the percentages fixed by the act in this case do not exceed seven hundred and forty dollars ($740.00); that the compensation of a mere custodian at the percentages fixed by this act, do not in this case exceed three hundred and twenty dollars ($320.00). [58]

VIII. That the said receiver herein, Sutcliffe Baxter, and the trustee herein, Sutcliffe Baxter, are one and the same person; that the said trustee has made application to this court for an allowance for his services, and has been allowed on account five hundred dollars ($500.00); that the services rendered by said receiver in taking an inventory, saved the said trustee, Sutcliffe Baxter, the necessity and labor of taking an inventory; that the compensation of said trustee is not less by virtue of his taking the inventory as receiver; that it would have been his duty as trustee to take an inventory had no receiver been appointed; and that he now, as trustee, is being

paid as if he had taken an inventory; that therefore, to take into consideration and to pay for the taking of an inventory by the receiver is in law and in fact to pay said Sutcliffe Baxter, the individual, twice for performing the same labors and duties.

IX. Your petitioners, in addition to the foregoing objections to the compensation of the receiver herein, Sutcliffe Baxter, also object to the allowance made to the attorneys for said receiver, viz: McClure & McClure and Leopold M. Stern, in the sum of twenty-five hundred dollars ($2,500), and for grounds of objection, respectfully show the court:

(a) That McClure & McClure were attorneys for certain creditors who joined with the petitioning creditors, praying for an adjudication against the bankrupt; that said McClure & McClure also prayed the court for the appointment of a receiver herein; that for such services this court allowed, and they have received, one hundred dollars ($100.00);

(b) That the services rendered by the attorneys [59] herein were of a routine character in preparing the notice of sale of the bankrupt stock, and of making the report submitted to the court; that the great labor of making said report was clerical, and not a professional service; that said attorneys rendered no services that added to the estate of the bankrupt; that they resolved no legal questions other than those mentioned; that the time consumed by them could not have exceeded one day; that $320.00 would be a reasonable and ample compensation for services that should be rendered in such a case.

Wherefore your petitioners pray the court to require the said receiver, Sutcliffe Baxter, to repay into the registry of this court the sum of twenty-five hundred dollars ($2,500), and take nothing for his services rendered herein as receiver; that the attorneys for the receiver, McClure & McClure and Leopold M. Stern have for their compensation a sum not in excess of $320.00; and that they be required to pay into the registry of this court the sum of twenty-five hundred dollars less the amount allowed them by the court.

NELSON R. ANDERSON,
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Attorneys for Petitioners. [60]

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Nelson R. Anderson, being first duly sworn, on oath deposes and says:

I am one of the attorneys for the petitioners in the foregoing objections to allowance of receiver. I have read the foregoing objections, know the contents thereof, and believe the same to be true, and make this verification for and on behalf of said petitioners.

[SEAL.] NELSON R. ANDERSON.

Subscribed and sworn to before me this —— day of May, A. D. 1911.

J. S. JACKSON,
Notary Public in and for the State of Washington, residing at Seattle. [61]

In the United States District Court for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF J. J. DOHENY.

STATE OF WASHINGTON, *County of King, ss:*

J. J. Doheny, being first duly sworn, on oath deposes and says: That he was an appraiser of the stock and fixtures of the above bankrupt; that he went to the store of the bankrupt at about 2 p. m. of the 9th day of March, 1911, and met there Sutcliffe Baxter, receiver, who told him to return about 4.30 p. m., when his attorneys could be present; that he returned at 4.30 p. m. and met there the said Sutcliffe Baxter, receiver, and Leopold Stern and Walter McClure, his attorneys, and the other two appraisers; that the said receiver and the said Stern, attorney for the receiver, informed the appraisers that their duties were merely formal; that they should take the receiver's inventory of stock and look at it and from it they should make their report as appraisers; that one of the appraisers, namely, O. A. Kjos, expressed surprise that they should not go through the stock and see the goods; that in answer thereto said receiver told the appraisers that their duties were merely formal; that they should confine themselves to the inventory; that the stock was for the most part covered; that the appraisers did not look at the goods for the purpose of putting a value thereon; that they made no survey of any kind of said stock; that their only information was the summary of assets shown in the inventory; [62] that they did not examine the items of the inventory, but merely inspected the summary; that when they had done

this the receiver, Sutcliffe Baxter, asked them what their services were worth; that one of the appraisers, namely, O. A. Kjos, said they were worth a cigar to the man who smoked, but he did not smoke and that they did not owe him anything; that, nevertheless, said receiver later gave me a check for $25.00 for services rendered as an appraiser.

J. J. Doheny.

Subscribed and sworn to before me this 12th day of May, 1911.

[SEAL.] Nelson R. Anderson,
Notary Public in and for the State of Washington, residing at Seattle. [63]

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF OLE A. KJOS.

United States of America,
Western District of Washington, ss:

Ole A. Kjos, being first duly sworn, on oath deposes and says:

I was one of the appraisers heretofore appointed by the referee in the matter of bankruptcy of the estate of Charles Knosher & Co. on the 9th day of March, 1911. Upon being notified of my appointment as such appraiser I went, in company with J. J. Doheny and E. G. Barr, to the store of Charles Knosher & Co. for the purpose of making an estimate and appraisement of the value of said bankrupt estate and thereupon offered to examine the stock of goods, wares, and merchandise in said store for the purpose of ascertaining the value thereof. I am an experienced dry-goods man and am able to tell from examination the value of such a stock as was comprised within said bankrupt estate. There was present at said store at such time Sutcliffe Baxter, the receiver and trustee, and a man who was represented to me as the attorney for the said Sutcliffe Baxter, whose name I do not now recall. The said attorney thereupon told me that the making of the estimate and appraisement of said estate was a mere matter of form and that I would not be [64] permitted to examine the stock of goods, wares, or merchandise in detail for the purpose of ascertaining their value, but that in making up said estimate and appraisement we, the appraisers, were to be guided by the inventory figures, which were then and there shown to us, and that no one was to be permitted to reinventory said goods. At that time the stock in said store was covered and we were not given an opportunity to examine further into the value of said goods in detail for the purpose of verifying the inventory which was offered to us, and thereupon, relying upon said statement as to our duties in the premises, we signed an estimate and appraisement of said stock, being the figures returned upon the inventory which had been theretofore taken.

I have read the affidavit of Eugene G. Anderson, filed herewith, and so far as same relates to a conversation held with Mr. Barr on Monday, the 17th of April, I was present at said conversation and heard the same and do depose and say that the statements were made by Mr. Barr, as stated in the affidavit of the said Eugene G. Anderson; and I do further depose and say that I heard the said Henderson, referred to in the affidavit of Mr. Anderson, make the statements in form and effect as stated by Mr. Anderson in his said affidavit. And the said Henderson, in addition thereto, stated to me that in assisting in the making of the inventory of said bankrupt stock gross fraud was practiced and stated in my hearing that in many instances the inventory price was grossly reduced below the actual value of said goods and that in many instances quantities of goods were omitted from the inventory list, and also stated in my hearing, in particular, that in one instance broadcloth, which had cost $2.12½ per yard, was inventoried at 50c. per yard and afterward sold by John Ainesfield Co. for $2.98 per yard, and [65] the said Henderson further stated that in another instance a quantity of Indian linen, which had cost $750.00, and was of approximately that value, was inventoried at $250.00, and the said Henderson generally stated in my hearing that said inventory was knowingly and designedly made so as to show a figure far less than the actual cost of said stock.

Ole A. Kjos.

Subscribed and sworn to before me this 20th day of April, A. D. 1911.

[SEAL.] H. J. Ramsey,
Notary Public in and for the State of Washington, residing at Seattle. [66]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF EUGENE G. ANDERSON.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Eugene G. Anderson, being duly sworn, on oath deposes and says:

I am the president and treasurer of the Western Dry Goods Co., a corporation, one of the creditors of Charles Knosher & Co., bankrupt. About the 12th day of April, 1911, I met one Henderson, who had been one of the department heads of Charles Knosher & Co., and at said time was and now is one of the department heads or employees of J. Ainesfield Co. in the business now conducted by the latter company in selling the bankrupt stock of Charles Knosher & Co., the said Henderson voluntarily told me at said time that the said John Ainesfield Co. had already realized from the sale of the bankrupt stock of the said Charles Knosher & Co. a sum in excess of $40,000, and that there was remaining on hand a portion of said bankrupt stock which would inventory at a sum in excess of $50,000. That then and there the said Henderson told me that he, himself, had taken the inventory of a portion of the stock and assisted in taking an inventory of other portions of the stock upon which inventory the appraisement returned by the appraisers [67] herein was based. That the inventory was reduced so as to falsely represent in value and quantity the stock of said bankrupt; that the purpose in so reducing the inventory was that said stock might be purchased at a grossly inadequate value by the said John Ainesfield Co. under an agreement whereby the said John Ainesfield Co. would purchase said stock at said grossly inadequate value, realize enough therefrom to pay the full amount of their claim against said bankrupt, together with the purchase price at said bankrupt sale, and the balance of aid stock would then be returned to the said Charles Knosher & Co.

About 11.40 in the morning of Saturday, April 15, 1911, I had a conversation with one Hyslop, who is store manager for the said John Ainesfield Co. The said Hyslop, in the course of a conversation, showed me the returns of sales that had been made of said bankrupt stock since the purchase thereof by the said John Ainesfield Co. Said returns showed that there had been realized, over and above all expenses and sums expended for replenishment of stock, the net sum of about $42,000, out of said bankrupt stock, and the said Hyslop then and there stated to me that there was remaining on hand of said bankrupt stock goods, wares, and merchandise of the value of not less than $50,000, and that this could be proven by an invoice thereof.

About 9.30 o'clock in the forenoon of Tuesday, April 18,1911, I had a conversation with E. G. Barr, one of the department heads of Charles Knosher & Co., now an employee of John Ainesfield Co., in the conduct of the sale of said bankrupt stock, and one of the appraisers of said bankrupt estate. The said Barr stated to me that at the time the inventory of the bankrupt estate of the said Charles Knosher [68] & Co. was being taken, he, the said Barr assisted therein. That at that time there was present in the city of Seattle, one Libby, a representative and agent of John Ainesfield Co., the purchaser of said bankrupt stock; that he, the said Barr, did from time to time, confer with the said Libby, and did furnish him the inventory figures upon the said stock as the inventory was taken by departments, and at said time furnished to the said Libby statements showing the true value of said stock; that said inventory value was in each instance placed at a sum less than the actual value thereof, and in many instances portions of said stock were omitted from the inventory for the purpose of reducing the inventory of said stock below the actual value thereof; and that as a result thereof the inventory of said stock which was made up, and upon which the appraisement thereof was returned, was in a sum far less than the actual value of said stock. That said inventory was so made in pursuance of a plan and conspiracy whereby the said Libby was to purchase said stock at a sum far less than its actual value for the said John Ainesfield Co., and was to hold the same until there should be realized therefrom the purchase price thereof and the claim of the said John Ainesfield Co.; and thereafter the balance of said stock was to be returned to the said Charles Knosher & Co., and that the said Libby and the said Knosher had knowledge of and participated in said plan and conspiracy.

EUGENE G. ANDERSON.

Subscribed and sworn to before me this 13th day of May, A. D. 1911.

[SEAL.] NELSON R. ANDERSON,
Notary Public in and for the State of Washington, residing at Seattle. [69]

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF NELSON R. ANDERSON.

STATE OF WASHINGTON,
County of King, ss:

Nelson R. Anderson, being first duly sworn, on oath deposes and says: That he is one of the attorneys of the creditors herein petitioning this court to set aside the sale of the stock of the bankrupt made by this court, on the ground that the inventory taken by the receiver herein was a false inventory, fraudulent and a gross misrepresentation and undervaluation of the stock of the bankrupt; that said inventory was taken pursuant to a conpsiracy of the bankrupt, the purchaser of said stock, and those employed by the receiver herein to take the inventory.

Affiant further states that he has in his possession what purports to be and is represented to him to be the true and original memorandum and data of the inventory as taken in certain departments of the store of said bankrupt; that he has compared said memoranda and data with the receiver's report and finds a variance and difference of over 100 per cent in the items covered aggregating several thousand dollars, and that he is informed by responsible persons in position to know that this condition was general throughout said store.

NELSON R. ANDERSON. [70]

Subscribed and sworn to before me this 11th day of May, 1911.

[SEAL.] GLENN C. BEECHLER,
Notary Public in and for the State of Washington, residing at Seattle.

Copy of within objections received and due service of same acknowledged this 13th day of May, 1911.

McCLURE & McCLURE,
L. M. STERN,
Attorneys for Receiver.

(Indorsed:) Objections to allowance of receiver. Affidavits. Filed in the U. S. District Court, Western Dist. of Washington. May 15, 1911. R. M. Hopkins, Clerk. [71]

In the United States District Court for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

PETITION FOR REVIEW OF REFEREE'S ORDER.

Your petitioners, Western Dry Goods Co., a corporation, Smith-Daniels & Kellehr, Co., a corporation, Imperial Candy Co., a corporation, Black Manufacturing Companey a corporation, and Seattle Dry Goods Company, a corporation, do respectfully show that they are creditors of the bankrupt estate of Charles Knosher & Co., whose claims have been duly presented and allowed, and as such are parties to a certain proceeding in said bankruptcy pending before the Honorable John P. Hoyt, referee in bankrudtcy, which said proceedings were based upon a petition whereby it was sought to have set aside the appraisement and sale and order of confirmation of the stock of goods, wares, and merchandise of said bankrupt estate, and to require John Ainesfield Co., a purchaser at said sale, to pay into the registry of this court all moneys received by them out of the sale of the estate of said bankrupt, and that the stock remaining in the hands of the said John Ainesfield Co. and unsold be returned to the possession of the receiver herein, and for other relief as will more expressly appear from said [72] petition.

Upon the hearing thereof an order was made by said referee dismissing said petition upon the ground that said bankruptcy court is without jurisdiction to hear the matters and things set forth in said petition, and upon the further ground that said petition does not state facts sufficient to entitle the petitioners to relief.

To which said order the petitioners duly excepted.

Said order is erroneous in this:

I. Said bankruptcy court has jurisdiction to determine the matters and things set forth in said petition and to grant the relief demanded, and said petition should not be dismissed for want of jurisdiction.

II. The said petition states facts sufficient to entitle said petitioners to relief and the said referee should entertain said petition and, upon the hearing thereof and proof adduced in support thereof, grant the said petitioners the relief demanded, or such other relief as shall be meet the premises considered.

Wherefore your petitioners pray that said order be reviewed and reversed, and that they be restored to all the things they have lost by reason of said order.

NELSON R. ANDERSON,
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Attorneys for said Petitioners. [73]

UNITED STATES OF AMERICA,
Western District of Washington, ss:

Nelson R. Anderson, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for the petitioners in the above-entitled action; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true, and that he makes this verification for and on behalf of said petitioners.

NELSON R. ANDERSON.

Subscribed and sworn to before me this 2d day of May, A. D. 1911.

[SEAL.]

C. J. FRANCE,
Notary Public in and for the State of Washington, residing at Seattle.

Copy of within received and due service of same acknowledged this 2d day of May, 1911.

HAROLD PRESTON,
Attorney for Respondent.

(Indorsed:) Petition for review of referee's order. Filed May 5, 1911, 1.00 p. m. John P. Hoyt, referee. Filed in the U. S. district court, western dist. of Washington, May 5, 1911. R. M. Hopkins, clerk. [74]

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

OBJECTIONS OF JOHN ANISFIELD CO. TO JURISDICTION.

Comes now John Anisfield Co., a corporation, and appearing specially for the purpose of making this objection to the jurisdiction and for no other purposes, objects to and contests the jurisdiction of the court to entertain or adjudicate upon the petition of the Western Dry Goods Co., a corporation, Smith, Daniels, Kelleher & Company, a corporation, Imperial Candy Company, a corporation, Black Manufacturing Company, a corporation, and Seattle Dry Goods Company, a corporation, filed April 20, 1911, because of the following facts appearing of record in this cause, to wit:

On the 6th day of March, 1911, an order was made by the Honorable John P. Hoyt, referee in bankruptcy, directing the sale upon sealed bids, after due advertising, of the stock of goods, fixtures, etc., referred to in said petition; that the receiver gave due notice of the time and place of receiving bids, and at that time and place received bids, among them the bids of certain of the petitioners and the bid of this objector, the bid of the latter being for $57,000.00 and being $500.00 higher than any other bid and being eighty per cent of the appraised value of said property, and that bid being $7,000 higher than any bid received at a prior call. Whereupon the sale of said property was made to this objector and was regularly confirmed by the order of the referee. The purchaser paid the receiver the amount of its bid and the receiver made conveyance to the purchaser of said property and delivered the same to the purchaser. Subsequently the trustee made report to this court of his receipt of said money, and pursuant to the order of the court distributed said [75] money to the extent of about one-half thereof in the payment of expenses of this proceeding and in dividends to the creditors of the bankrupt, including the petitioners and the creditors, including the petitioners, have received and do retain the said dividends, and the trustee has no funds in his possession sufficient, or anywhere near sufficient, to repay the purchaser the amount of its bid paid by it, as aforesaid, to the trustee; and because of the following facts admitted in the said petition, to wit:

That approximately one-half of the said stock of goods have been sold by this objector in the usual course of business at retail, necessarily involving a considerable expense for rent and clerk hire; and because of the following facts not appearing of record in the case, but which objector states to be true, to wit:

That the price at which the said property was sold by the receiver was largely in excess of prices usually and customarily realized for such properties in bankruptcy proceedings, and even if said property had been of the value of $90,000, as alleged in the petition, the price realized was sixty-four per cent of the same, which is a higher price than it is or has been customary to realize out of the sales in bankruptcy of like

properties; and since said purchase by this objector it has, in order to enable it to conduct the sale of said property, purchased new goods at an outlay of over six thousand dollars, and placed the same in with said stock and sold from the same as it has sold from said stock; that this objector is a wholesale merchant and any judgment which might be recovered against it upon an accounting in respect of the matters set forth in said petition can be immediately collected of the objector, and the objector hereby offers to submit [76] itself to the jurisdiction of the Superior Court of King County or the Circuit Court of the United States for the Western District of Washington, Northern Division, to any suit in equity which may be brought by any proper party in relation to the matters or any of them set forth in said petition.

If the court shall hold that it has jurisdiction to entertain the said petition the objector, preserving an exception to such holding, and not waiving its foregoing objections to the jurisdiction, or its special appearance, shows the court that the said stock of goods has reached the condition where it is no longer profitable or economical to continue selling same at retail, and such continued sales at retail could only be carried on at a loss; and that it has negotiated, and the negotiation is ready for conclusion, a sale of the balance of said stock and of the fixtures to a company already engaged in business in the State of Washington, the consummation of which sale would be to the interest of all interested; and it is able to give bond, if required by the court, for the safekeeping of the amount of the purchase price agreed to be paid in said negotiation.

JOHN ANISFIELD CO.,
By HAROLD PRESTON,
Its Attorney.

UNITED STATES OF AMERICA,
State of Washington, County of King, ss:

William T. Hislop, being first duly sworn, on his oath says: I am the manager of the property referred to in the foregoing objections to the jurisdiction; I have read the foregoing objections to the jurisdiction; know the facts stated therein and believe the same to be true.

WILLIAM T. HISLOP.

Subscribed in my presence and sworn to before me this 25 [77] day of April, 1911.
[SEAL.] DEVILLO LEWIS,
Notary Public in and for the State of Washington, residing at Seattle.

(Endorsed:) Objections to jurisdiction. Filed this 25th day of April, 1911, 2 p. m. John P. Hoyt, referee. Filed in the U. S. District Court, Western District of Washington, May 5, 1911. R. M. Hopkins, clerk. [78]

RETURN OF REFEREE IN BANKRUPTCY.

In the District Court of the United States for the Western District of Washington, Northern Division. In Bankruptcy. No. 4541. In the matter of Chas. Knosher & Co., Inc. (a corporation), bankrupt.

A petition for the review of the order made herein on the 29th day of April, 1911, having been filed herein, the undersigned referee in bankruptcy before whom said matter is pending, and who made said order, does hereby certify and return as follows, to wit:

That said order, as will appear from the face thereof, was founded upon the pleadings in the proceeding; that said undersigned was of the opinion that the objections to jurisdiction should be sustained for two reasons—

First. That there was no allegation in the original or amended petition of any improper conduct on the part of the trustee of the estate or of his attorneys.

Second. Neither was it alleged that there had been any demand made upon said trustee, or his attorneys, by the petitioning creditors; that said trustee should proceed against the said John Anisfield Co. to obtain the relief sought by said petitioners, or any other relief, in the interests of all the creditors.

That in the opinion of said undersigned an allegation alleging such misbehavior, or such request and refusal on the part of the trustee were necessary to authorize proceedings on the part of any creditor to obtain relief for the benefit of the estate, which could better and with less expense to the creditors be obtained by proceedings by the trustee for the benefit of all such creditors. [79]

Said undersigned was further of the opinion that under the circumstances shown by the proceedings in this matter and the fact that no want of knowledge on the part of the petitioning creditors was alleged of any of these proceedings, they were not entitled to seek relief against said John Anisfield Co. in a summary proceedings, but should procure the same, if entitled thereto, by a plenary action.

Said undersigned was further of the opinion that even conceding the jurisdiction of the court to grant the relief prayed for at the expense of the parties seeking it and in a summary proceedings, it would not be equitable for them to be allowed to do so, for the reason that in a plenary action where bonds and counterbonds could ordinarily be given by the respective parties the rights of all could be better protected.

Said undersigned was further of the opinion that even if jurisdiction could be entertained in this proceeding, neither the petition nor the amended petition, considered in the light of the objections thereto and of the facts disclosed by the records in the bankruptcy proceedings, stated facts sufficient to entitle the petitioners to the relief prayed for, or any other relief, and being advised as hereinbefore stated the said undersigned made and filed the order sought to be reviewed.

He transmits herewith the original and the amended petition hereinbefore referred to, the objections thereto, said order of April 29, 1911, and said petition for review as constituting a sufficient certificate and return, together with what has been hereinbefore said, to enable a judge of the above-named court to review said order.

Dated at Seattle, in said district, this 5th day of May, 1911.

JOHN P. HOYT,
Referee in Bankruptcy. [80]

(Indorsed:) Certificate and return. Filed in the U. S. District Court, Western Dist. of Washington. May 5, 1911. R. M. Hopkins, clerk. [81]

In the District Court of the United States for the Western District of Washington, Northern Division. In Bankruptcy. No. 4541. In the matter of Charles Knosher & Company, Inc. (a corporation), bankrupt.

ORDER OF ALLOWANCE TO RECEIVER AND TRUSTEE, AND TO HIS ATTORNEYS.

This cause hertofore came on for hearing on the objections of certain creditors of said bankrupt estate to the allowance hertofore made to the trustee and receiver and his attorneys herein, said objectors appearing by Nelson R. Anderson and Hughes, McMicken, Dovell & Ramsey, their attorneys, and the said respondents appearing by McClure & McClure and Leopold M. Stern, Esquire, their attorneys; and it appearing to the court that on the 20th day of March, 1911, on petition theretofore in this cause duly filed, an order was entered allowing the receiver the sum of two thousand five hundred dollars ($2,500.00) as compensation for his services herein, and allowing to the attorneys of the receiver the sum of two thousand five hundred dollars ($2,500.00) for their services as attorneys of the receiver, and that on the 4th day of April, 1911, certain of said objectors filed herein objections to said allowances, and that thereupon the court entered an order directing Sutcliffe Baxter as receiver and Sutcliffe Baxter as trustee and the said McClure & McClure and Leopold M. Stern as attorneys of the receiver and trustee [82] to show cause on the 10th day of April, 1911, why the said order of March 20, 1911, should not be set aside, and that on the 10th day of April, 1911, after hearing, the court ordered that the application previously made stand as the application required by law, the said sum of two thousand five hundred dollars ($2,500.00) to be treated as the compensation asked by the receiver, and that ten days' notice by mail to all creditors, specifying the amount asked, be given of the receiver's application for his allowance, and that objections to the allowance asked for by the receiver be heard at a time to be fixed by the court after the giving of such notice, and that objections to the allowance of the attorneys for the receiver be heard at the same time; that thereupon, pursuant to order, the referee in charge of said bankruptcy proceeding gave notice of at least ten days to all creditors by mail to the respective addresses of said creditors as same appeared in the list of the creditors of the bankrupt and as filed with the papers in the case, the said notice reciting that said Sutcliffe Baxter as receiver had made application for an allowance in the sum of two thousand five hundred dollars ($2,500.00) for his services as such receiver, and that a hearing upon such application would be had before this court at its court room in Seattle, in said district, on the 15th day of May, 1911, at ten o'clock in the forenoon; that on said May 15, 1911, said matter came on for hearing, and hearing thereof was postponed and adjourned by successive orders of continuance until July 10, 1911, on which last date said matter was argued and submitted; with leave to both parties to make such additional showing in writing as might be desired; that at such hearing the matter [83] of the compensation of the said Sutcliffe Baxter as trustee as well as receiver, and of the said attorneys of the receiver and trustee, was submitted by the creditors and said respondents to the court for decision; and it having been stipulated by said parties that the total amount of cash actually disbursed by the said Sutcliffe Baxter as receiver is the sum of sixty-one thousand three hundred twelve

and 87/100 dollars ($61,312.87), and that the total cash received by him as trustee, and now being disbursed, is the sum of fifty-four thousand four hundred ninety-six dollars ($54,496), and that said amounts are the sums to be considered by the court in determining the said matter of compensation and said matter having been finally submitted, and it further appearing that the total number of creditors of said bankrupt estate is at least three hundred and ten (310), and that the total indebtedness is at least one hundred sixty-four thousand seven hundred seventy-seven and 58/100 dollars ($164,777.58), and that in response to the notice given by the said referee, setting the date for the hearing of the receiver's petition for allowance, not to exceed sixty-one (61) creditors whose claims do not exceed forty-two thousand one hundred and sixty-four dollars and fifty cents ($42,164.50), appeared in opposition to the said allowances, and that no objection or exception is or has been made or filed by or in behalf of two hundred and forty-nine (249) creditors, whose claims aggregate the sum of one hundred twenty-two thousand six hundred thirteen and 08/100 dollars ($122,613.08), the same constituting the majority of said creditors; and the court, having fully considered said matter, and having made and having caused to be filed herein his memorandum decision in writing, does now [84] find that the matters and things set forth in the receiver's petition for allowance and the papers filed in support thereof and the reports made by the receiver and trustee herein are true, and that the said Sutcliffe Baxter as receiver conducted the business of the bankrupt and is entitled to compensation as receiver on said sum of sixty-one thousand three hundred twelve and 87/100 dollars ($61,312.87) for the performance of his ordinary duties as such officer, at the rate provided in section 48a of the bankruptcy act, and to extra compensation at the same rate on said sixty-one thousand three hundred twelve and 87/100 dollars ($61,312.87) for conducting the business of the bankrupt as receiver, and that the said Sutcliffe Baxter is entitled to compensation on said sum of fifty-four thousand four hundred ninety-six dollars ($54,496.00) for his services as trustee herein up to the date of the final submission of this matter at the rate provided in said section 48a, and that the said attorneys of the receiver and trustee are entitled to an equal amount for their services herein up to the date of the final submission of this matter as above set forth.

Wherefore it is ordered:

1. That Sutcliffe Baxter as receiver and trustee herein be, and he is hereby, allowed as compensation for his services herein, up to the date of the final submission of this matter, the sum of two thousand two hundred one and 20/100 dollars ($2.201.20).

2. That McClure & McClure and Leopold M. Stern, the attorneys of said receiver and trustee, be, and they are hereby, allowed, as compensation for their services herein up to the date of the final submission of this matter, the sum of [85] two thousand two hundred one and 20/100 dollars ($2,201.20).

Dated at Seattle, in said district, this 23rd day of September, 1911.

C. H. HANFORD, *Judge.*

At the time of the making of this order the said objecting creditors excepted to the making of the allowance hereinbefore specified to said receiver and trustee and excepted to the allowance of any sum to the said receiver and trustee in excess of the sum of nine hundred ninety-seven and 52/100 dollars ($997.52), and at said time and place the said objecting creditors duly excepted to the making of any allowance to the attorneys for said receiver and trustee, in excess of nine hundred ninety-seven and 52/100 dollars ($997.52), which exceptions were at said time duly allowed.

C. H. HANFORD, *Judge.*

(Indorsed): Order of allowance to receiver and trustee, and to his attorneys. Filed in the U. S. District Court, Western Dist. of Washington. Sep. 23, 1911. F. A. Simpkins, acting clerk. [86]

AFFIDAVIT OF C. H. WINSLOW.

In the District Court of the United States, Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

UNITED STATES OF AMERICA,
District of Washington, ss:

C. H. Winslow, being first duly sworn, on oath deposes and says: That he was employed by Sutcliffe Baxter, receiver, to assist in taking the inventory of the bankrupt's stock; that he was present when one Henderson and one Post, acting for the said Sutcliffe Baxter to take down the inventory from the clerk's memoranda of yards and prices, took down a certain piece of broadcloth at 1.00 *cents* per yard; that the cost price of said piece of broadcloth was $2.12½; that it contained 25 or more yards; that

he has no knowledge of any remnant of broadcloth in the store; that he was employed in the dress-goods department and knew the stock on hand.

Further, this affiant states that at the same time and place the said Henderson and Post also inventoried a certain piece of serge of the cost value of 47 cents at 25 cents; that there was about 25 yards of said serge; that it, like the broadcloth, was good and salable merchandise.

Further, that this affiant protested at this dishonest and false manner of inventory and was told by the said Henderson to attend to his own business and to keep his mouth shut as to what was going on there. That thereupon this affiant left the said Henderson and said Post and knows nothing more of said inventory.

C. H. WINSLOW. [SEAL.]

Subscribed and sworn to before me this 19th day of June, 1911.

NELSON R. ANDERSON,
Notary Public in and for the State of Washington, residing at Seattle. [87]

AFFIDAVIT OF LOLA CASSIL.

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

UNITED STATES OF AMERICA,
District of Washington, ss:

Lola Cassil, being first duly sworn, on oath deposes and says: That in April, 1911, she was a stenographer working for the Western Dry Goods Co.; that on the 18th day of April, 1911, Mr. E. G. Anderson, president of said Western Dry Goods Co., asked her to report a conversation to be had with one E. G. Barr; that she took down said conversation without the knowledge of said E. G. Barr; that then and there said Barr told Mr. Anderson the things and matters set out in the affidavit of Mr. Anderson, which she has read; that in addition thereto the following conversation took place:

Question (by Mr. ANDERSON). You had to make some variations?

Answer (by Mr. BARR). Yes.

Q. You fellows would have been in rather a funny position if the committee had gone through the stock, wouldn't you?—A. Owing to the rules of court, a committee is not allowed to do that. It is only a form as far as that is concerned.

Q. The only reason that you did this was that you fellows were trying to protect Knosher?—A. Yes.

Q. Then you figure the stock (referring to I. H. and K.) was worth about $230,000 instead of $160,000?—A. Yes.

Q. He had about $8,000 worth of underwear invoiced at $2,500. How did he fix that? Had to reduce underwear again, had to be reduced?—A. Yes. That was to make the quantities right rather than reduce [88] the price.

Q. Now, this is the invoice?—A. Yes.

Q. $16,000.00?—A. Yes.

Q. Give me the estimate.—A. You want the *real figures?*

Q. Yes.—A. L. $6,078.00, K $14,551.00, H $18,199.00. Between you two men I don't want them to know I was down here. Understand?

Q. Now, about how much has been taken out of your departments?—A. I have taken out of them about $8,734.00.

Q. You stated that somebody did not want to let you come down here?—A. They thought they had given me the figures. It was nothing underhand, but Mr. Knosher said to go on down. I have let you have the facts, Mr. Anderson.

LOLA CASSIL.

Subscribed and sworn to before me this 19th day of June, 1911.

[SEAL.] NELSON R. ANDERSON,
Notary Public in and for the State of Washington, residing at Seattle.

(Endorsed:) Affidavits of Lola Cassil and C. H. Winslow. Filed in the U. S. District Court, Western Dist. of Washington, Jun. 19, 1911. R. M. Hopkins, clerk. [89]

In the United States District Court for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company, bankrupt.

AFFIDAVIT OF R. C. POST.

STATE OF WASHINGTON, *County of King, ss:*

R. C. Post, being first duly sworn, on oath deposes and says:

That he was employed with the firm of Charles Knosher and Company, of Seattle, Washington, for about two years prior to the bankruptcy of said firm, in the capacity

of manager of the cloak and suit department in the business carried on by said Charles Knosher & Company; that after the store had been closed by reason of bankruptcy, this affiant was retained in the employ of Sutcliff Baxter to assist in taking the inventory of the stock contained in the store, and that he was so employed until Saturday night following the Monday upon which the receiver took possession of the business; that this affiant superintended the taking of the inventory of the merchandise in his particular department, to wit, the ladies' cloak and suit department, and that while this affiant had assistance from the sales people employed in said department, this affiant personally busied himself every day during said period in actually counting the merchandise in his department and setting down the quantities of merchandise as well as the price of said items in his own handwriting on a memorandum which was afterwards handed to Miss Howard, bookkeeper, to be used by her in the typewriting of the entire inventory.

Affiant states further that after the inventory was completed he knows of his own knowledge, that the same was transcribed and put into typewritten form by the receiver, numerous [90] copies of such inventory being prepared; that the original was filed by the receiver in the office of the referee in bankruptcy, and that carbon copies thereof were retained for the purpose of handing the same to bidders for inspection.

Affiant states that he saw such typewritten copies of inventory and had occasion to examine the figures relating to the cloak and suit department and knows that such figures in the typewritten inventory were a true and correct copy of the figures as prepared by this affiant in the form of the pencil memorandum and handed to Miss Howard, the bookkeeper, for transcribing.

Affiant states further that he has had fifteen years' experience in the cloak and suit business, and that the inventory as taken by this affiant, so far as it pertains to the cloak and suit department, was taken properly and correctly, both with respect to quantities of merchandise on hand and the valuation thereof, and that the figures as shown in the typewritten copies of inventory filed in the referee's office and circulated among bidders was correct both as to quantity and value.

Affiant states further that he saw Mr. Baxter, the receiver, in the store every day during the week during which said inventory was being taken.

[SEAL.] R. C. POST.

Subscribed and sworn to before me this 5th day of June, A. D. 1911.

B. F. WOODS, Jr.
Notary Public in and for the State of Washington, residing at Seattle, Wash.

Receipt of a copy and due service hereof admitted this 17th day of June, 1911.

NELSON R. ANDERSON,
Attorney for Creditors.

(Indorsed:) Affidavit of R. C. Post. Filed in the U. S. District Court, Western Dist. of Washington, June 11, 1911. R. M. Hopkins, clerk. [91]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher and Company (Inc.) bankrupt.

AFFIDAVIT OF SUTCLIFFE BAXTER.

UNITED STATES OF AMERICA,
District of Washington, ss:

Sutcliffe Baxter, being first duly sworn, on oath deposes and says:

I am sixty-nine years of age; have resided in the city of Seattle, State of Washington, thirty-four years, and in the State of Washington thirty-nine years, and have had forty-eight years' experience in merchandising.

On or about the 27th day of February, 1911, I was appointed receiver of Charles Knosher & Company, bankrupt, by order of the district judge in the above-entitled proceedings; and thereafter on or about the 20th day of March, 1911, I was duly elected trustee of said estate by a majority of the creditors in amount and number, and now am acting as trustee of said estate.

Immediately upon being appointed receiver, I qualified by filing a surety bond in the sum directed by the court, and proceeded with my counsel to the place of business conducted by the said bankrupt at the southeast corner of James Street and Second Avenue, in Seattle, Washington, and took possession thereof. Said bankrupt was conducting a general merchandise business more commonly known as a department store. Under the orders of the court I was authorized to continue said business in the usual course of retail trade if I deemed such action advisable. At the time I entered the premises the store was full of customers who had been influenced to come to the store by reason of extensive advertising of a special sale in the daily

papers published [92] on the Sunday previous. I thought it best to keep said store open and running until I had an opportunity to determine the future policy of the business and to ascertain the wishes of the creditors.

That same afternoon a small meeting of creditors was held in the office of Leopold M. Stern, one of my attorneys, and at the said meeting the said creditors came to the conclusion that it would be best to close the store at the termination of the day's business and to proceed at once to the taking of an inventory. Learning the sentiment of the creditors, I did close the store at the conclusion of the day's business, and promptly on the morning following began the taking of the inventory, which was not concluded until Sunday, the 5th day of March, 1911.

The premises occupied by the bankrupt constitute a space equivalent to three full-size storerooms with a balcony and a full basement underneath the entire premises, and the basement as well as the main floor and likewise the balcony were occupied with goods. On taking possession of the premises as receiver I retained the entire working force and upon closing the doors for the purpose of taking inventory I thought it best to continue to retain the entire force so as to speed the conclusion of the inventory, the expense of rent and insurance being a considerable item. The general manager of the store was one E. G. Barr, who I learned was a man of reliable character and long experience, and I therefore retained him to superintend the taking of the inven tory. The total number of employees, including department heads, were somewhere between forty and fifty.

With reference to taking the inventory, I found upon inquiry that all merchandise was marked simply with the retail selling price and with absolutely no figures to show the original cost price. I further found that in fixing the selling price of merchandise no specific percentage was added [93] to the original cost price, but that some merchandise would be sold at 25 per cent profit, other merchandise at 50 per cent profit, and other merchandise at 100 per cent profit, so that it was not practicable to ascertain the original cost price by deducting a certain definite percentage to be regarded as a profit from the selling price with which the merchandise throughout the store was marked. I further found upon inquiry that the business had been divided into different departments, such as domestics, ladies' cloaks and suits, crockery and tinware, etc. Each department was under the management of some person who was called the manager of that particular department and who was understood to be experienced in the particular line of merchandise carried in that department and also acquainted with its original cost price, in most cases such department manager being also the original buyer of the merchandise.

After a discussion of the situation with Mr. Barr we came to the conclusion that the only practical way of taking the inventory was to have each department manager take the inventory of his particular department, fixing the cost price of the merchandise carried in his particular department according to his own personal knowledge, where he had a definite knowledge thereof, and where he was uncertain, to refer to the original invoice to be found in the office, if information could be obtained in that manner. I did not personally give the directions to the department heads, but gave them to Mr. Barr, who in turn communicated them to the department managers.

I was present in the store every day from morning until night from Tuesday, the 28th day of February, 1911, when the taking of the inventory began, up to and including Sunday, the 5th day of March, 1911, when the inventory was concluded. I saw to it that the different departments turned in the sheets showing the quantities and values of the merchandise in their particular departments, from day to day as the work was progressing, to the office where the bookkeeper, Miss Howard, superintended [94] the gathering together of the sheets and the transcribing thereof into a permanent inventory with numerous carbon copies thereof; in which work of transcribing Miss Howard was assisted by two stenographers. The original of such inventory, when completed, was filed in the office of the referee in bankruptcy, and the carbon copies thereof, which were seven in number, were retained in the store for the purpose of delivering the same to prospective bidders for examination.

That at the time the inventory was taken and completed and up to the present time this affiant believed, and still believes, that said inventory was taken correctly and properly with only such errors as naturally creep into a labor of that character and that magnitude, regardless of the amount of care taken to preserve accuracy; that very probably there were errors made, but such errors were errors in overestimating the values and quantities of merchandise as well as errors in underestimating the values and quantities of merchandise. As, for instance, in taking said inventory, twelve cash registers contained in the store were scheduled in said inventory as being of the cost value of $75.00 each. That putting that valuation upon said cash registers, this affiant questioned, believing that they were overpriced, and specifically called the attention of Mr. Barr thereto, but said Barr stated that he positively remembered that the cost price thereof was $75.00 each, and under these circumstances that was the price fixed therefor in the inventory. Thereafter affiant learned that the original

cost price paid by the said bankrupt to the National Cash Register Company was $35.00 each, thus making a clear overvaluation of $480.00 with respect to said cash registers. The errors thus creeping into the inventory were unintentional and practically unavoidable, and undoubtedly errors of one class were offset by errors of another class.

That immediately upon concluding the inventory I found that the general sentiment of creditors was in favor of [95] an immediate sale of the assets because of the great expense for rent, insurance, watchman's expense, etc., the item of rent alone being close to $75.00 per day, and, furthermore, much of the merchandise was of a character which was rapidly becoming more and more unseasonable, and if there were any material delay in effecting the sale thereof the merchandise would bring a proportionately lower price.

Therefore, I presented these facts to the referee in bankruptcy and procured an order of sale of the assets, which sale was set for the 13th of March, 1911; that in the interim I was in the store every day from morning until night attending to the correspondence and getting the accounts adjusted, attending to office work, getting the books posted to date, the books of account having been neglected for a long period, meeting prospective bidders who desired to look over the stock, and adjusting controversies over the merchandise which had come into the store immediately prior to bankruptcy and which the respective creditors shipping such merchandise desired to reclaim.

That on the said 13th day of March, 1911, I attended the sale for the referee in bankruptcy, and when the bids were opened it was found that there was one bid of approximately $50,000; that after the opening of said bids I was convinced that an appreciably larger bid could be obtained therefor, and after consultation and discussion of the matter with parties who I thought would make a materially higher bid, I finally procured from one bidder a guaranty of an increase of 10 per cent over the bid of $50,000, and thereupon I recommended to the court that all bids be rejected and that new bids be received with the understanding that upon such resale the minimum bid would be $55,000.00; that thereupon a resale was had upon the 15th day of March, 1911, and thereupon, upon the opening of bids on said date, it was found that one E. B. Libby had bid $57,000.00 for said assets, and thereupon, upon my recommendation, [96] the court accepted said bid and ordered the transfer to be made upon the receipt of said consideration.

I have read the objections to my allowance filed by certain creditors, and, referring to paragraph 6 of said objections, wherein it is stated that the creditors, through their own efforts and without any assistance from me, brought about the increase of $7,000 over the highest bid originally filed on March 13, 1911, I desire to state that that allegation is wholly untrue, and that the creditors had absolutely nothing to do with procuring such increased bid.

I desire to state, further, that the total amount of funds which I have handled as receiver approximates $60,800. This includes $57,000 realized from the sale of the assets, refund upon fire insurance premiums, cash sale of merchandise, cash on hand, and collections upon book accounts. Furthermore, there is some real property belonging to the estate which will be sold in the near future and from which approximately $5,000 will be realized.

I further desire to state that I have never received any compensation for acting as trustee in said estate, and the only compensation I have ever received in connection with my services in this estate is that heretofore allowed me as receiver by the district court.

I have read the affidavit of O. A. Kjos in which he swears that my attorney told him in my presence that in making the appraisement of the assets, he, the said Kjos, was not to be permitted to examine the stock of goods, wares, and merchandise in detail for the purpose of ascertaining their value, and that no one was to be permitted to reinventory said goods, and that he was denied the opportunity of examining the value of said goods in detail or to verify the inventory which was produced for the inspection of the appraisers. The statements of the said Kjos are wholly untrue. The facts are—the said Kjos, Barr, and Doheny, the three appraisers, assembled in [97] the store about 4.30 p. m. to make and sign up an appraisement. I was present with these three appraisers. I gave them a copy of the inventory to assist them in making the appraisement. Leopold M. Stern, one of my attorneys, came into the store with a blank form of the appraisement of the character prescribed by the bankruptcy act, which he left there for the purpose of being filled out by the appraisers. Mr. Walter A. McClure, also one of my attorneys, came in a few minutes after Mr. Stern had arrived. Mr. Stern, after turning over the form of appraisement to Mr. McClure, left the store. Mr. Kjos immediately busied himself with checking up the furniture, and fixtures shown in the inventory and to that end he examined the specific items of personal property and compared with the items as set forth in the inventory,

and did so completely and thoroughly, and after having done so, he and the other appraisers decided that the same should be appraised at the valuation of 33⅓ per cent of the cost price as set forth in the inventory. With respect to the merchandise, the said Kjos declared that he was a dry goods man and had on two previous occasions during the time the inventory was being taken, been in the store and had on each of these occasions spent considerable time in looking over the stock and he was satisfied in his own mind that the stock would not run over $65,000, and he was satisfied that the inventory was about right, and thereupon he and the other appraisers agreed that the appraisement of the stock should be returned at 60 per cent of the original inventory. Thereupon, the appraisement was so prepared and signed by the appraisers and verified before Mr. Walter A. McClure as notary public. I positively deny that Mr. Kjos or any other appraiser ever signified any desire to examine the stock of merchandise in detail, or that ever I, by inference or otherwise, denied that they had any such right or refused them such opportunity; that it is true that the usual dust curtains which are used nights, Sundays, and holidays, covered the goods, but if any of the appraisers had expressed any [98] desire to take the time and trouble to go through the stock, I would have been perfectly willing that they should do so. Mr. Barr, who was one of the appraisers, was the general manager of the store and had actively participated in taking the inventory, and he was therefore well acquainted with the stock. Doheny, the other appraiser, had come into the store about 1 o'clock in the afternoon and had walked around the store through the various aisles scanning the stock.

I have also read the affidavit of J. J. Doheny, in which he states that I told the said Kjos that he must confine himself to the inventory in making these appraisements, and in reply thereto I desire to state that the said Doheny is mistaken and that I never made any such statement to said Kjos.

Affiant states further that among other creditors who have joined in the objections to my allowance are the Seattle Dry Goods Company; that I am informed and believe the fact to be that the Seattle Dry Goods Company and the Stone-Fisher Company are one and the same corporation, conducting a wholesale business, which is operated under the name of the Seattle Dry Goods Company, and a retail business, which is operated under the name of the Stone-Fisher Company; that among the bidders for the assets were the Stone-Fisher Company, whose bid was approximately $45,050; that the said the Stone-Fisher Company, during the period elapsing between the completion of the inventory and the advertising of the sale of the assets, had a force of some six men almost every day going through the stock with great detail, preparatory to bidding thereon, and thereby had ample opportunity to form an estimate with a reasonable degree of accuracy regarding the true amount of merchandise contained in the store; that among the six so investigating the stock was one Starr, who, affiant is informed, is the general manager of the Stone-Fisher Company; that the said Starr, during the time the inventory was being taken, had also been in the store on many occasions, going through the same very carefully and examining the stock [99] with considerable degree of care and attention, and the said Starr at one time informed me that in his judgment, when the inventory was completed, it would be found that the stock would not run to exceed $75,000.

I state further that excepting as I may have admitted such allegations by this affidavit, I deny each and every allegation contained in the objections of said creditors and in the affidavits attached to the same to the effect that I was careless and inattentive in respect to the taking of the inventory and that I entailed any loss to the estate and that I hindered the appraisers in any way in the task of making a true appraisement, or that any other person than myself and my attorneys were instrumental in procuring the material increase in the price of the assets over the highest bid offered at the time the bids were opened, or that my duties in connection with the management of said business and the disposal of the same were perfunctory and merely those of a custodian.

I pray that this affidavit be construed as an answer to the objections heretofore filed by creditors.

SUTCLIFFE BAXTER.

Subscribed and sworn to before me this 17th day of June, 1911.

[SEAL.] B. F. WOODS, Jr.,
Notary Public in and for the State of Washington, residing at Seattle.

Receipt of a copy and due service hereof admitted this 17th day of June, 1911.

NELSON R. ANDERSON,
Attorney for Creditors.

(Indorsed:) Affidavit of Sutcliffe Baxter. Filed in the U. S. District Court, Western Dist. of Washington. June 19, 1911. R. M. Hopkins, clerk. [100.]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company (Inc.), bankrupt.

AFFIDAVIT OF E. Y. BARR.

UNITED STATES OF AMERICA,
District of Washington, ss:

E. Y. Barr, being first duly sworn, on oath deposes and says:

I am forty-eight years of age; have resided in the city of Seattle, State of Washington, for seven years, and have had thirty years' experience in the dry goods business.

Up to the 27th day of February, 1911, and for about eighteen months prior thereto, I was engaged as general manager and buyer in the business of Charles Knosher & Company (Inc.), at the southeast corner of Second Avenue and James Street in Seattle, Washington.

From the 27th day of February, 1911, until on or about the 15th day of March, I was in the employ of Sutcliffe Baxter, the receiver in the above-entitled estate, and from the 15th day of March, 1911, to the 27th day of April, 1911, I was in the employ of John Anisfield Company in the capacityof general manager of the business of the bankrupt which had been purchased by the said John Anisfield Company; and from the 27th day of April up to the present time, I was and am now in the employ of McCormack Brothers, who are operating said business, having acquired the same from John Anisfield Company on or about the 27th day of April, 1911.

On the 27th day of February, 1911, Mr. Sutcliffe Baxter, receiver in the above-entitled cause, took possession of the business of the bankrupt and employed me to continue to have [101] general charge of the said business under his direction. Said business was closed on the evening of the 27th day of February, 1911, and Mr. Baxter gave me instructions to begin the taking of the inventory on the morning of Tuesday, February 28, 1911. Mr. Baxter's instructions to me were to see that the inventory was taken at the original cost price, and that the labor be proceeded with as rapidly as possible so as to complete the taking of the inventory by an early day. I, in turn, communicated these instructions to the defferent department heads, who were four in number. I personally actively assisted in taking the inventory of the department embracing the laces, trimmings, neckwear, ribbons, leather goods, jewelry, gloves, and umbrellas, because I was the buyer for these particular lines.

I saw the sheets which were turned in from day to day by the different department heads to the office in order to be transcribed into one complete inventory, and I know of my own personal knowledge that the returns so made, as well as the returns of the merchandise of the particular department that I personally was taking, were approximately correct as to quantities and values, and that while errors may have crept in in making such returns, it was impossible to take an inventory of a stock of that size without making some minor mistakes. One difficulty in taking the inventory was the fact that the merchandise was ticketed only with the retail selling price and without the original cost price, and furthermore, there was no absolute rate of profit at which all the goods were marked, but a different percentage of profit was added to the original cost on different lines of merchandise.

As to the fixtures in the store we, of course, had to estimate the value of these on our best judgment, having no means of obtaining more definite figures; and in this respect for instance we erred in setting down the value of twelve cash registers at $75.00 apiece, while we afterwards learned the original [102] cost of same when purchased from the National Cash Register Company was $35.00 each.

I saw the original inventory after it had been transcribed and I know that the original was filed in the office of the referee in bankruptcy and a number of copies retained in the store for the purpose of exhibiting same to prospective purchasers. It is my opinion from observation at the time the inventory was taken, as well as during my continued employment in the store ever since, that said inventory was taken properly and fairly, and that the inventory prepared and filed in the office of the referee in bankruptcy and exhibited to the purchasers is a fair and correct inventory.

I have read the affidavit of O. A. Kjos in which he mentions that one Henderson had stated in his hearing that an item of broadcloth which cost $2.12½ per yard was inventoried at 50¢ per yard and afterwards sold by John Anisfield Company for $2.98 per yard, and the said Henderson further stated that a quantity of India linen which had cost $750 and was of that approximate value was inventoried at $250.

The merchandise referred to was in the department of the said Henderson, and if the said Henderson placed any unfair valuations thereon, it was without the knowledge of this affiant; I have made inquiry about this broadcloth referred to and I find that this was a remnant of from one-half to one yard, and a remnant of such small size really has no value whatsoever and should never have been taken and figured in the inventory. As to item of India linen, I do not know anything about it.

Affiant states further that he has read the affidavit of E. G. Anderson filed herein, and particularly that portion of the affidavit beginning with line 27 on page 2 and ending with line 27 on page 3. That the statements made by the said Anderson with respect to the subject of conversation held with this affiant on the 7th day of April, 1911, are [103] wholly untrue. That I did state to the said Anderson I knew positively that the inventory had been taken correctly so far as my department was concerned, and so far as the other departments were concerned I believe that the same were taken correctly, although I did not actually do the labor myself. I made none of the statements referred to by Mr. Anderson, or any statements from which he had any right to draw inferences of the character set out by him, and not only did I not make the statements set forth by Mr. Anderson but in fact no such transactions took place or were participated in by me as are mentioned and described by the said Anderson. It is true that I gave Mr. Libby the figures concerning the inventory shortly after this inventory was finished and before the inventory itself had been transcribed, but I gave these figures to Mr. Libby because he was representing a large creditor and was anxious to know the result at as early an hour as possible, and I thought he had a right to know the results. I did not furnish the said Libby with any other figures than those which were embraced in the inventory, and I repeat that the figures given Mr. Libby represent the true and correct figures respecting quantities and values of the merchandise on hand according to the best of my knowledge, information, and belief.

I have further read the affidavits of Kjos and J. J. Doheny with respect to the method by which the appraisement was made, and in answer thereto I desire to state that we had an appointment with the appraisers to meet at the store at 2 o'clock on the afternoon on which the appraisement was made. Mr. Doheny was present at that hour, but Mr. Kjos did not appear. We waited for him until 4 o'clock, when he finally came. When he did come, he suggested that we look over the fixtures first, and thereupon the three appraisers, with inventory in hand, went through the entire store examining all of the fixtures, and there was hardly a single item on which Mr. Kjos did not express the opinion that it had been valued too high in the inventory. [104] When it came to the merchandise, Mr. Kjos said to me that he thought he understood merchandise as well as anybody; that on a previous day he had come into the store and had taken the measurements of the different departments, and that same night he had worked at his office in the Western Dry Goods Company and had figured out the approximate value of the stock in hand, and I said to him, "What figures did you arrive at?" and he said that the stock would inventory $65,000, and I told him that he came very near it. About this time Leopold M. Stern, one of the attorneys for the receiver, came up to the office, bringing with him a blank form which we afterwards signed and filled in and which I learned was a form of appraisement. In response to some suggestion on the part of Mr. Kjos regarding the necessity of the appraisers to go through the entire stock, Mr. Stern did state that the appraisement was a formal matter required by the bankruptcy law; that it was not expected of the appraisers that they should go through the entire stock for the purpose of figuring up the quantities and values of the merchandise, for the reason that it would take a very long time and was impracticable and because the appraisers' fee was small and would not begin to compensate the appraisers for the time they would have to spend on such tasks; that the appraisers had a right to assume that the inventory was correct and the court merely expected them to form some estimate of the character of the stock and in their appraisement return the figures which they thought the stock ought to bring on sale, the purpose of these figures being to guide the court with reference to the amount of bid which they should accept upon the sale. Neither the receiver nor Mr. Stern made any suggestion that the appraisers should not examine the character of the stock if the appraisers desired so to do. After this explanation Mr. Stern left the store. In the meantime Mr. Walter A. McClure, one of the other attorneys for the receiver, had arrived, and after consultation among ourselves the appraisers decided upon the [105] figures which were afterwards incorporated in the appraisement.

I desire to state further that the Western Dry Goods Company, with which firm the said Kjos is associated, had a man come into the store after the appraisement and before the sale. That this man was in the store for a long period of time, going through the store and examining the stock very thoroughly, both on the main floor and the basement. The name of this man was Fairhurst.

I desire to state further that if the three appraisers had attempted to make a thorough appraisement by going through the entire stock, figuring for their own benefit the quantities and values of the merchandise, that it would have taken at least two months for the three men to have concluded their labors.

I desire to state further that Stone-Fisher Company, one of the bidders for the stock, had all their firm and all of their managers and department managers come into the store day after day and examine the stock very thoroughly, and their investigation

was so extended and thorough as to make it impossible for men of their experience to fail to detect any material discrepancy between the inventory and the stock itself as situated in the store if such discrepancy had existed.

I desire to say further that I have read the affidavit of Sutcliffe Baxter, and that his general statement of the method and manner by which the inventory was taken and the part that he took therein is correct.

E. Y. Barr.

Subscribed and sworn to before me this 16th day of June, 1911.

[seal.] B. F. Woods, Jr.,
Notary Public in and for the State of Washington, residing at Seattle. [106]

Receipt of a copy and due service hereof admitted this 17th day of June, 1911.

Nelson R. Anderson,
Attorney for Creditors.

(Indorsed:) Affidavit of E. Y. Barr. Filed in the U. S. District Court, Western Dist. of Washington. June 19, 1911. R. M. Hopkins, clerk. [107]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company (a corporation), bankrupt.

AFFIDAVIT OF WALTER A. M'CLURE.

State of Washington, *County of King, ss:*

Walter A. McClure, being first duly sworn, on oath says: That as one of the attorneys of the receiver he went to the store of the bankrupt about five p. m. on the day the appraisement was made herein, the object of his visit being to make certain that an appraisement would be returned, the appraisers having failed to meet earlier in the day, as had been theretofore arranged; that when affiant entered the store there were present the receiver and the three appraisers and L. M. Stern, one of the attorneys of the receiver; that all of said persons were in the office in the store of the bankrupt, and said Stern handed to affiant a form of return for the appraisers to fill out and sign, stating that he would remain no longer, and he thereupon left the store; that immediately thereupon the appraisers proceeded to make the appraisement, having, as affiant understood, theretofore made an examination of the assets to be appraised; that affiant remained until the appraisement was completed, and said appraisement was thereupon delivered to him by the appraisers and the next day lodged by him with the referee for filing; that no attempt was made by any person whomsoever to influence the appraisers in the making of the appraisement [108] while affiant was present, nor was any attempt made to prevent or induce them from making an examination of the assets; that affiant believes, and at the time the appraisement was made understood, that the appraisers each acted conscientiously in the discharge of their duties as appraisers, and that the figures returned into court were the value of the assets as agreed upon by the appraisers; that there was no disagreement among the appraisers as to the values; that if affiant had known that the figures returned by the appraisers were not their estimate of the value of the assets, or if the slightest suggestion had been made to affiant that the appraisers had not had an opportunity to investigate the assets as fully as they desired, affiant would have required that the appraisement be postponed until the appraisers were each fully satisfied as to the character, condition, and value of the assets and the inventories thereof placed before them by the receiver.

Walter A. McClure.

Subscribed and sworn to before me this 23d day of June, 1911.

[seal.] Emory E. Hess,
Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed:) Affidavit of Walter A. McClure. Filed in the U. S. District Court, Western Dist. of Washington. Jun. 24, 1911. R. M. Hopkins, clerk.

Service of within affidavit and receipt of copy admitted this 23 day of June, 1911.

Nelson R. Anderson,
Attorney for Creditors. [109]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company (Inc.), bankrupt.

AFFIDAVIT OF LEOPOLD M. STERN.

Leopold M. Stern, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys who acted for the receiver and trustee in bankruptcy in the above-entitled proceedings; that he has read the objections to the allowance

of compensation to the receiver and his attorneys filed herein as well as the affidavits in support thereof; that in so far as said objections state that Tootle Campbell Company, a creditor in the sum of $26,000, opposes the allowance heretofore made to the attorneys for the receiver, said objections are not correct; that at the time said copies of the objections and affidavits were served upon affiant, Nelson R. Anderson advised affiant that said firm of Tootle Campbell Company desired to oppose only the allowance made to the receiver and did not authorize any objection to be preferred to the receiver's counsel.

Affiant further states that he had personal knowledge of all the transactions relating to the sale of the assets by the receiver and that he does not know of any creditors who assisted the receiver or his counsel in procuring an increase of $7,000 over the highest bid received at the time first set for the sale of the assets.

Affiant states further that a true estimate of the value of the services of the receiver's counsel can not be made excepting by an examination of the files and records in the referee's office, which to some extent will show the numerous [110] petitions and orders which had to be prepared and drawn in connection with the administration of the estate; that furthermore, there were many controversies over merchandise which had been received into the store immediately prior to the filing of the petition in bankruptcy, the creditors shipping these goods desiring to procure their return; and that many other questions arose in the course of the administration of the estate and prior to the sale of the assets which necessitated the receiver consulting his attorneys every day and several times in each day and also required the receiver's attorneys to appear frequently before the referee.

With reference to the manner in which the appraisement was made by the appraisers, affiant states that when it came to the appointment of appraisers, affiant, knowing that the Western Dry Goods Company was a large creditor, called up said creditor and inquired for Mr. E. G. Anderson, the president of said company, and ascertained that said Anderson was absent from the city. Affiant stated to the party answering the telephone communication that he desired to recommend to the referee the name of an appraiser and believed that Mr. Anderson or some other person connected with the Western Dry Goods Company, should act as appraiser by reason of their experience in the line of merchandise contained in the business of the bankrupt, and further by reason of their being interested as creditor in a large sum; and thereupon the person answering this affiant suggested that O. A. Kjos be named as appraiser, because said Kjos was one of the officers and principal dry goods buyer in the firm of the Western Dry Goods Company, and thereupon this affiant suggested the name of O. A. Kjos to the referee in bankruptcy and procured his appointment as one of the appraisers.

Affiant states that some other person arranged for the meeting of the appraisers in the store of the bankrupt on the 9th day of March, 1911, at 4 o'clock p. m., and that this affiant [111] having the order appointing appraisers in his possession, which form also includes the return to be signed and served by the appraisers, was telephoned to bring same over to the store of the bankrupt and this affiant therefore brought the same over in person to the store and found assembled in the office the three appraisers. While delivering said blank form of appraisement to the appraisers, said appraiser Kjos in the hearing of this affiant made some remark which indicated that he thought it was perhaps the duty of the appraisers to go through the entire stock and examine every item of merchandise in the stock, figuring both the quantities and values and making their returns of appraisement thereon; and thereupon, this affiant informed said appraisers that it was not the duty of the appraisers to undertake a labor of that magnitude; that to do so would take several weeks of time, for which they would of course expect adequate compensation and the court would certainly not allow only a few dollars for their services; that the appraisement was purely a formal matter to guide the referee as to the percentage of the original cost at which the assets should be sold, and that it was not the practice in this jurisdiction and that it was not expected of the appraisers to go through the entire stock or to check up the receiver's inventory or to measure or count the merchandise for themselves or to fix the original cost price themselves, but that they had a right to assume that the inventory was correct, both as to quantity and original cost price and were simply expected to look over the stock and ascertain its character, seasonableness, and its condition and then make up their minds as to what percentage of the original cost the referee should accept upon the opening of bids. After stating to the appraisers substantially the foregoing this affiant left the office and was not present when the appraisement was determined and the return filled out.

Affiant states positively that neither he nor the receiver in the hearing of this affiant ever advised the appraisers [112] that they would not be permitted to examine the stock in detail or that they were not permitted to reinventory the goods, if they so desired, but this affiant simply pointed out to the appraisers that it was not expected of them to go to that extreme in the performance of their duties, and that they cer-

tainly could not expect compensation commensurate with the amount of time and labor they would have to expend, if they should endeavor to go into the inventory with as much detail as suggested by said Kjos, and in so advising appraisers he did so as the result of eleven years' personal experience in connection with the administration of bankruptcy estates in this jurisdiction.

LEOPOLD M. STERN.

Subscribed and sworn to before me this 16th day of June, 1911.

[SEAL.] B. F. WOODS, Jr.,
Notary Public in and for the State of Washington, residing at Seattle.

Receipt of a copy and due service hereof admitted this 17th day of June, 1911.

NELSON R. ANDERSON,
Attorney for Creditors.

(Indorsed:) Affidavit of Leopold M. Stern. Filed in the U. S. District Court, Western Dist. of Washington. June 19, 1911. R. M. Hopkins, clerk. [113]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF EDWIN LONDON.

UNITED STATES OF AMERICA,
District of Washington, ss:

Edwin London, being first duly sworn, on oath deposes and says: That he is the president and active manager of the Edwin London Dry Goods Stores; that he has had more than twenty years of experience in the dry goods business, and that he has made a specialty of estimating the value of stocks of goods in bulk and has handled many such stocks; that he looked at the stock of the bankrupt herein and found the greatest difficulty in identifying in the shelf the goods listed in the receiver's report; that he found it practically impossible to check up from the receiver's report the goods there for the purpose of determining whether the inventory had been taken high, fair, or low; that he noted the grade of merchandise to be good, merchantable and that the store was well stocked; that he estimated that there was from $80,000 to $85,000.00, cost value, of merchandise on hand; that in the linen department he noted the fact that the receiver had listed no linens over 60 cents per yard; that in examining some 10 or 15 pieces of linens he saw one bolt of from 8 to 10 yards that was worth at least $1.40, cost value per yard. Further affiant saith not.

EDWIN LONDON.

Subscribed and sworn to before me this 12 day of July, 1911.

[SEAL.] NELSON R. ANDERSON,
Notary Public in and for the State of Washington, residing at Seattle. [114]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

AFFIDAVIT OF A. H. SANFORD.

UNITED STATES OF AMERICA,
District of Washington, ss:

A. H. Sanford, being first duly sworn, on oath deposes and says: That he is general manager of the wholesale department of Seattle Dry Goods Co.; that he has had forty years of experience in the dry goods business; that he has been in the cities of Seattle and Tacoma for the past twenty-two years; that he had never heard of Sutcliffe Baxter, receiver, herein, being in the mercantile business, save as receiver, until he read such a statement in the affidavit of said Sutcliffe Baxter; that he has read affidavits filed herein to the effect that Seattle Dry Goods Co. or its agents had gone through the stock of the bankrupt making careful and detailed notes, memoranda, etc., of the stock, etc., on numerous occasions; that such statements are untrue; that affiant was not in the store of the bankrupt to exceed forty minutes, all told; that affiant has made inquiry and believes the fact to be that the combined time of himself and all others connected with Seattle Dry Goods Co. never *executed* two hours, all told, in said store; that at no time was a detailed or minute investigation made of said stock;

Further affiant says that he has been employed on many occasions, and has qualifications for such work, to fix an estimate of value upon bankrupt stocks and stocks for sale in bulk generally; that he after examining the quality and quantities of [115]

merchandise in the store of the bankrupt estimate conservatively that there was at least $80,000 to $85,000 worth of merchandise on hand and so reported to his firm; that his firm, on receiving the report of the receiver, believed, at that time and for the purpose of making its bid, that the receiver's report was a true and correct report and made its bid accordingly; and further saith not.

A. H. SANFORD.

Subscribed and sworn to before me this 13 day of July, 1911.

[SEAL.] NELSON R. ANDERSON,
Notary Public in and for the State of Washington, residing at Seattle.

Copy of within affidavit received and due service of the same acknowledged this 13th day of July, 1911.

McCLURE & McCLURE,
L. M. STERN,
Attorneys for Trustee.

(Indorsed:) Affidavits of Edwin London and A. H. Sanford. Filed in the U. S. District Court, Western Dist. of Washington. July 14, 1911. R. M. Hopkins, clerk. [116]

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

ORDER OR JUDGMENT DISMISSING PETITION.

Came on to be heard the petition of certain creditors of Charles Knosher & Co., heretofore adjudged a bankrupt, that the sale of the bankrupt stock heretofore made to John Ainesfield Co., and the order confirming said sale be set aside and that the remainder of said bankrupt stock in the hands of the said John Ainesfield Co., and the proceeds thereof be paid into the registry of this court, the said petitioning creditors appearing by Nelson R. Anderson and Hughes, McMicken, Dovell & Ramsey, their attorneys, and the said Sutcliffe Baxter, receiver and trustee herein, appearing by Messrs. McClure & McClure and Leopold M. Stern, Esquire, his attorneys, to resist said petition, and the said John Ainesfield Co. appearing by Harold Preston, Esquire, its attorney, to resist said petition, and the court being fully advised in the premises;

It is now considered, ordered, and adjudged that said petition be and the same is hereby dismissed.

Done in open court this 23 day of September, A. D. 1911.

C. H. HANFORD, *Judge.*

To the making of the order dismissing said petition, the said petitioners and each of them at said time duly [117] excepted, which exception is allowed.

C. H. HANFORD, *Judge.*

(Indorsed:) Order. Filed in the U. S. District Court, Western Dist. of Washington, Sep. 23, 1911. F. A. Simpkins, acting clerk. [118]

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Company, Inc. (a corporation), bankrupt.

AFFIDAVIT OF HOWARD J. SHEEHAN.

STATE OF WASNIHGTON, *County of King, ss:*

Howard J. Sheehan, being first duly sworn, on oath says: That he is an experienced dry-goods man, having been in the dry-goods business for the past thirteen years covering every line in the business, and in particular the lines contained in the stock of the above-named bankrupt sold by Sutcliffe Baxter as receiver; that affiant was desirous of submitting a bid for the purchase of said assets, and with that in view carefully examined same during a period of four or five days, and after the inventory was completed spent about five hours in checking the inventory with the merchandise; that affiant became thoroughly familiar with said merchandise and familiar with the inventory thereof by reason of such examination and comparison; that in the opinion of affiant the merchandise was correctly listed on the inventory and the valuations of the merchandise set forth in the inventory were correct; that affiant found no errors in the inventory except that twelve cash registers were inventoried at seventy-five

[119] dollars ($75.00) a piece instead of about thirty-five dollars ($35.00) apiece, an error to which he called the attention of the receiver and trustee.

HOWARD J. SHEEHAN.

Subscribed and sworn to before me this 5th day of July, 1911.

[SEAL.] WALTER A. MCCLURE,
Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed:) Affidavit of Howard J. Sheehan. Filed in the U. S. District Court, Western Dist. of Washington, July 6, 1911. R. M. Hopkins, clerk. [120]

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. No. 4541. In the matter of Charles Knosher & Company, Inc. (a corporation), bankrupt.

AFFIDAVIT OF J. J. DOHENY.

STATE OF WASHINGTON, *County of King, ss:*

J. J. Doheny, being first duly sworn, on oath says: That pursuant to appointment with other appraisers affiant, as appraiser of the stock of merchandise and fixtures of the bankrupt, went to the store of the bankrupt at about two o'clock p. m. on the day of the making of the appraisement herein, expecting to meet there the two other appraisers, who, affiant afterward learned, were E. G. Barr and O. A. Kjos; that said Barr was at the store, but the said Kjos was not there; that affiant and said Barr waited half or three-quarters of an hour for said Kjos, whereupon said Barr telephoned the Western Dry Goods Company as to the whereabouts of said Kjos, and after the telephone conversation informed affiant that said Barr had been advised that Mr. Kjos was out and could not be at the store until four or five o'clock p. m.; that while waiting for said Kjos affiant and said Barr looked over the stock of merchandise, and then affiant left the store, making an arrangement with the receiver that affiant would return about four-thirty p. m., when said Kjos could be present; that at four-thirty p. m. affiant returned to the store and met there the receiver [121] and L. M. Stern and the said Barr and said Kjos; that thereupon the three appraisers carefully went through the furniture and fixtures, checking same on the inventory, and looked over the merchandise inventory; that no attempt was made by any person to influence the appraisers in their appraisement nor was any attempt made to prevent the appraisers from examining the assets to be appraised or to induce them not to make such examination; that the statement contained in the affidavit of E. G. Barr is correct as to what occurred prior to the filling out of the appraisement; that as far as affiant is concerned he, as appraiser, conscientiously endeavored to perform his duty as such appraiser, and is of the opinion that the other appraisers did the same; that the appraisement was made on the basis of the inventory submitted to the appraisers by the receiver and his attorneys.

That the foregoing affidavit is correct, and is made as supplementary to the affidavit heretofore signed by this affiant, and for the purpose of more fully stating what occurred at the time of making said appraisement.

J. J. DOHENY.

Subscribed and sworn to before me this 23d day of June, 1911.

[SEAL.] EMORY E. HESS,
Notary Public in and for the State of Washington, residing at Seattle.

Service of within affidavit and receipt of copy admitted this 23d day of June, 1911.

NELSON R. ANDERSON,
Attorney for Creditors.

(Indorsed:) Affidavit of J. J. Doheny. Filed in the U. S. Distict Court, Western Dist. of Washington, June 24, 1911. R. M. Hopkins, Clerk. [122]

ORDER DIRECTING TRUSTEE TO MAKE CERTAIN PAYMENTS.

In the United States District Court, Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Company, bankrupt.

ORDER OF DISBURSEMENT.

It appearing to the court that the referee has made certain allowances for certain expenses and costs of administration, and for the payment of preferred claims, and a

dividend of twelve and one-half (12½%) per cent on the unsecured claims, it is therefore,

Ordered that the trustee herein shall make the payments as herein designated, by checks upon the depository, countersigned by the referee:

J. P. Wall, bankrupt's attorney, fee	$100.00
McClure & McClure and Leopold M. Stern, for services as attorney for trustee	500.00
Seattle Electric Company, for light	52.80
Seattle Post-Inteliigencer	8.70
Seattle Times	7.90
Treasurer of King County, for taxes	2,729.50
John B. Agen, for rent	2,729.09
Star Publishing Co	785.98
Calhoun, Denny & Ewing, premium on bond	22.50
William Maloney, for wages	28.50
Altman Neckwear Co., 12½ per cent dividend	71.77
American Pin Co., 12½ per cent dividend	23.93
American Express Co., 12½ per cent dividend	1.67
American Paper Co., 12½ per cent dividend	21.18
The John Ainsfield Co., 12½ per cent dividend	2,749.68
Armour & Co., 12½ per cent dividend	1.64
W. H. Barnes, 12½ per cent dividend	7.50
L. Bauman & Co., 12½ per cent dividend	9.37
[123]	
J. P. Bauman & Sons	14.06
Beach Quality Candy Co., 12½ per cent dividend	4.33
Black Mfg. Co., 12½ per cent dividend	7.30
Blue Wagon Service, 12½ per cent dividend	.72
Blumenfeld, Locher & Brown Co., 12½ per cent dividend	7.63
Bradley Knitting Co., 12½ per cent dividend	37.67
Bradshaw Bros., 12½ per cent dividend	18.50
Buchanan Lawrence Co., 12½ per cent dividend	20.46
T. Buettner & Co., 12½ per cent dividend	1.17
Butler Bros., 12½ per cent dividend	379.52
H. A. Caesar & Co., 12½ per cent dividend	22.35
Carman Mfg. Co., 12½ per cent dividend	8.10
Cassady Fairbanks Mfg. Co., 12½ per cent dividend	15.18
Central Knitting Co., 12½ per cent dividend	7.73
Chris. Sign & Wallpaper Co., 12½ per cent dividend	.37
Clayburgh Bros., 12½ per cent dividend	51.10
Clement, Dranger & Co., 12½ per cent dividend	47.79
Cluett, Peabody & Co., 12½ per cent dividend	81.36
Coon Bros., 12½ per cent dividend	7.40
Creed, Kellogg & Co., 12½ per cent dividend	1.31
C. H. Crowley, 12½ per cent dividend	3.91
J. B. Crowley, 12½ per cent dividend	7.47
Davis Bros (Inc.), 12½ per cent dividend	17.03
Andrew Demetre, 12½ per cent dividend	16.26
Hugo DuBrock & Co., 12½ per cent dividend	16.34
Ely Walker Dry Goods Co., 12½ per cent dividend	93.08
Chas. Emmerich & Co., 12½ per cent dividend	4.61
Englehart Davidson Merc. Co., 12½ per cent dividend	75.14
Enterprise Mfg. Co., 12½ per cent dividend	74.43
Felsenthal Bros. & Co., 12½ per cent dividend	7.25
Marshall Field & Co., 12½ per cent dividend	272.21
Fleischner, Mayer & Co., 12½ per cent dividend	177.04
Fownes Bros., 12½ per cent dividend	148.43
Frank & Miller, 12½ per cent dividend	29.75
[124]	
J. L. Frankel & Co	5.14
Foster & Kleiser (Inc.), 12½ per cent dividend	61.87
G. H. & E. Freydburg, 12½ per cent dividend	6.06
G. H. & E. Freydburg, 12½ per cent dividend	4.59
Friedman & Herskovitz, 12½ per cent dividend	135.12
Geo. Frost Co., 12½ per cent dividend	8.39
H. Gallert Mfg. Co., 12½ per cent dividend	12.81
Gateway Printing Co., 12½ per cent dividend	6.22
Giaun Mfg. Co., 12½ per cent dividend	20.39

H. B. Glover & Co., 12½ per cent dividend	$56.39
L. Goldstein, 12½ per cent dividend	12.68
Gerham Rubber Co., 12½ per cent dividend	.48
L. N. Gross Co., 12½ per cent dividend	24.29
Guiterman Bros., 12½ per cent dividend	277.08
W. H. Hagleberg, 12½ per cent dividend	3.94
B. Hart & Bro., 12½ per cent dividend	24.47
Horwitz & Horwitz, 12½ per cent dividend	7.59
C. P. Howes & Co., 12½ per cent dividend	6.09
Hull Bros. Umbrella Co., 12½ per cent dividend	168.22
Hyman Bros., 12½ per cent dividend	7.58
Imperial Candy Co., 12½ per cent dividend	79.74
Interwoven Stocking Co., 12½ per cent dividend	18.55
Kawana Knitting Co., 12½ per cent dividend	48.87
Julius Kayser & Co., 12½ per cent dividend	52.12
C. Kenyon Co., 12½ per cent dividend	17.84
James Klåber, 12½ per cent dividend	8.89
Nelson Kershaw, 12½ per cent dividend	18.64
Klauber Bros., 12½ per cent dividend	295.49
Kunstadter Bros., 12½ per cent dividend	41.85
Kursheedt Mfg. Co., 12½ per cent dividend	19.99
Lamson Consolidated Store Service Co., 12½ per cent dividend	3.06
Levy Simson & Co., 12½ per cent dividend	30.65
Harry E. Lewis, 12½ per cent dividend	11.98
Linen Thread Co., 12½ per cent dividend	8.38
[125]	
Alfred Linz	6.99
Lobel & Lausick, 12½ per cent dividend	12.84
Locke & Clarke Co., 12½ per cent dividend	55.37
J. B. Locke & Potts Co., 12½ per cent dividend	136.71
Laeser-Auslander Co., 12½ per cent dividend	19.56
Love-Warren-Monroe Co., 12½ per cent dividend	15.37
Lowman & Hanford Co., 12½ per cent dividend	10.88
Luscombs & Isaacs, 12½ per cent dividend	101.53
Martins, 12½ per cent dividend	45.64
May Malone, 12½ per cent dividend	16.93
Merchants' Towel Supply Co., 12½ per cent dividend	1.62
Minneapolis Knitting Mills, 12½ per cent dividend	6.94
Modern Garment Mfg. Co., 12½ per cent dividend	22.84
Moore-Watson Dry Goods Co., 12½ per cent dividend	4.39
Robert Morris, 12½ per cent dividend	50.64
John A. Murphy, 12½ per cent dividend	54.76
McCallum Hosiery Co., 12½ per cent dividend	44.53
R. L. McDonald, 12½ per cent dividend	12.67
N. Y. & Chemnitz Netting Co., 12½ per cent dividend	3.75
Nonotock Silk Co., 12½ per cent dividend	157.50
Novelty Veiling Co., 12½ per cent dividend	28.93
Olympia Knitting Mills, 12½ per cent dividend	9.18
Oppenheimer, Alder & Co., 12½ per cent dividend	145.29
Pacific Coast Biscuit Co., 12½ per cent dividend	9.70
Pacific Neckwear Mfg. Co., 12½ per cent dividend	29.83
Palace of Sweets, 12½ per cent dividend	6.75
Pickard-Garde Co., 12½ per cent dividend	3.65
Pioneer Suspender Co., 12½ per cent dividend	17.19
John Pullman Co., 12½ per cent dividend	37.87
J. B. Powles & Co., 12½ per cent dividend	20.09
Puget Sound News Co., 12½ per cent dividend	4.98
Remy Schmidt & Pleissner, 12½ per cent dividend	21.33
J. N. Richardson, Sons & Owden, 12½ per cent dividend	85.93
H. N. Richmond Paper Co., 12½ per cent dividend	22.13
[126]	
E. Ries & Co	68.66
J. R. Roberts Agency, 12½ per cent dividend	41.55
Robinovitz & Koen, 12½ per cent dividend	15.75
Rothschild Bros. & Co., 12½ per cent dividend	17.18
Chas. Rubens & Co., 12½ per cent dividend	8.13
Reichenbach & Co., 12½ per cent dividend	50.60
Salem China Co., 12½ per cent dividend	3.25
L. Samter & Sons, 12½ per cent dividend	14.17

Schefer, Schramm & Vogel, 12½ per cent dividend	$21.16
Schlang & Livingston, 12½ per cent dividend	22.59
Schwabacher Bros. & Co., 12½ per cent dividend	29.93
Seabord Oil Co., 12½ per cent dividend	.28
Searight, Waldeck Co., 12½ per cent dividend	18.64
Seattle Electric Co., 12½ per cent dividend	45.12
Seattle Hardware Co., 12½ per cent dividend	3.36
M. Seller & Co., 12½ per cent dividend	.34
Mrs. A. Shirpser, 12½ per cent dividend	5.14
D. Sieher & Co., 12½ per cent dividend	187.14
Smith, Daniels & Keller, 12½ per cent dividend	22.27
Springfield Knitting Co., 12½ per cent dividend	28.99
Staadecker & Co., 12½ per cent dividend	96.26
Standard Fashion Co., 12½ per cent dividend	119.51
Standard Oil Co., 12½ per cent dividend	5.32
Star Skirt Co., 12½ per cent dividend	17.22
A. Stein & Co., 12½ per cent dividend	6.88
A. Steinhardt & Bro., 12½ per cent dividend	5.40
Sterne & Klein Co., 12½ per cent dividend	16.88
Stewart & Holmes Drug Co., 12½ per cent dividend	7.03
Stone & Co., 12½ per cent dividend	12.23
R. S. Stokes and C. J. Erickson, 12½ per cent dividend	250.00
Stone & Fisher (Seattle Dry Goods Co.), 12½ per cent dividend	64.04
Levi Strauss, 12½ per cent dividend	4.78
Sundheimer Bros., 12½ per cent dividend	48.12
Sutro Bros. Braid Co., 12½ per cent dividend	26.93
Superior Candy & Cracker Co., 12½ per cent dividend	2.11
[127]	
J. S. Temple	8.89
Thread Agency, 12½ per cent dividend	1.33
Times Printing Co., 12½ per cent dividend	240.94
Tootle-Campbell Dry Goods Co., 12½ per cent dividend	337.76
Tootle-Campbell Dry Goods Co., 12½ per cent dividend	3,380.91
True Shape Hosiery Co., 12½ per cent dividend	13.81
Union Savings & Trust Co., 12½ per cent dividend	3,056.62
Voss & Stern, 12½ per cent dividend	47.55
Warren Featherbone Co., 12½ per cent dividend	2.25
Hubert H. Watkins, 12½ per cent dividend	1.51
Western Dry Goods Co., 12½ per cent dividend	638.06
Western Fancy Goods Co., 12½ per cent dividend	16.30
Western Mfg. Co., 12½ per cent dividend	6.81
Wiener Bros., 12½ per cent dividend	146.26
Williams Garment Co., 12½ per cent dividend	1.56
York Mfg. Co., 12½ per cent dividend	18.47
Lowengart & Co., 12½ per cent dividend	57.15
Brueck & Wilson Co., 12½ per cent dividend	289.50
H. F. Norton Co., 12½ per cent dividend	60.12
Star Publishing Co., 12½ per cent dividend	92.85
Butler Bros., 12½ per cent dividend	76.89
Gilbert Mfg. Co., 12½ per cent dividend	76.23
Burton, Price & Co., 12½ per cent dividend	38.17
M. H. Rosenberg & Co., 12½ per cent dividend	63.85
Friedman Bros. & Son, 12½ per cent dividend	6.75
O'Callaghan & Fedden, 12½ per cent dividend	17.18
C. R. De Bevoise Co., 12½ per cent dividend	8.53
Frank & Bauer, 12½ per cent dividend	31.37
C. E. Bentley Co., 12½ per cent dividend	2.81
Alberts Mfg. Co., 12½ per cent dividend	6.00
American Lady Corset Co., 12½ per cent dividend	136.71
M. M. Bernstein & Co., 12½ per cent dividend	17.09
Coronet Mfg. Co., 12½ per cent dividend	35.20
Excelsior Quilting Co., 12½ per cent dividend	3.19
Goodman & Mandel, 12½ per cent dividend	5.19
[128]	
Green Shoulder Form & Pad Co	1.49
T. B. M. Gates, 12½ per cent dividend	1.62
Wm. P. Harper & Son, 12½ per cent dividend	.87

Henrietta Skirt Co., 12½ per cent dividend	$8.00
Ireland Bros., 12½ per cent dividend	11.21
J. M. Weissman & Co., 12½ per cent dividend	4.12
United States Glass Co., 12½ per cent dividend	9.53
Regent Shirt Co., 12½ per cent dividend	44.18
Raphael Tuck & Sons Co., 12½ per cent dividend	18.79
Carson, Pirie, Scott & Co., 12½ per cent dividend	703.08

Entered in open court this 19th day of April, 1911.

C. H. HANFORD, *District Judge.*

Certified correct.

JOHN P. HOYT, *Referee in Bankruptcy.*

(Indorsed:) Order of disbursement. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 19, 1911. R. M. Hopkins, clerk. [129]

In the District Court of the United States for the Western District of Washington, Northern Division. In Bankruptcy. No. 4541. In the matter of Charles Knosher & Co., Bankrupt.

BOND.

Know all men by these presents: That we, Western Dry Goods Co., a corporation; Smith-Daniels & Kelleher Co., a corporation, Imperial Candy Company, a corporation; Black Manufacturing Company, a corporation; and Seattle Dry Goods Company, a corporation; as principals, and National Surety Company of New York, a body corporate, duly incorporated under the laws of the State of New York and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto John Ainesfield Co., a corporation, in the full sum of fifteen hundred dollars ($1,500), for the payment whereof well and truly to be made we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of September, A. D. 1911.

The condition of the above obligation is such that—

Whereas the above-entitled principals filed a motion in the above-entitled cause seeking to set aside an order of sale and order of confirmation of sale of a stock of goods, wares, and merchandise heretofore made in said cause; and

Whereas Sutcliffe Baxter, receiver and trustee of [130] said bankrupt estate, refused to file said motion or undertake the setting aside of said orders;

Now, therefore, if the above-bounden principals shall pay to the said John Ainesfield Co. all costs or damages which it, the said John Ainesfield Co., shall suffer by reason of the filing of said motion or the carrying on of said proceedings, then this obligation to be void; otherwise to be and remain in full force and effect.

WESTERN DRY GOODS CO.,
By NELSON R. ANDERSON, *Atty.*
SMITH-DANIELS & KELLEHER CO.,
By NELSON R. ANDERSON, *Atty.*
IMPERIAL CANDY COMPANY,
By NELSON R. ANDERSON, *Atty.*
BLACK MANUFACTURING COMPANY,
By NELSON R. ANDERSON, *Atty.*
SEATTLE DRY GOODS COMPANY,
By NELSON R. ANDERSON, *Atty.*
NATIONAL SURETY COMPANY,
By JOHN W. ROBERTS, *Resident Vice President.*

Attest:
[SEAL.]

EDW. P. WELCH,
Resident Assistant Secretary.

Copy of within bond received and due service of same acknowledged this 13th day of September, 1911.

HAROLD PRESTON,
Atty. for John Ainisfield Co.

(Indorsed:) Bond. Filed in the U. S. District Court, Western Dist. of Washington. Sept. 14, 1911. F. A. Simpkins, acting clerk. [131]

In the District Court of the United States for the Western District of Washington, Northern Division. No. 4541. In the matter of Charles Knosher & Co., bankrupt.

STIPULATION CONCERNING PREPARATION AND CERTIFICATION OF RECORD.

It is hereby stipulated by and between the parties hereto that the clerk of the above-entitled court, in preparing and certifying to the United States Circuit Court of Appeals

the record herein on appeal or petition for review of the Western Dry Goods Company, a corporation; Smith, Daniels, Kelleher & Company, a corporation; Imperial Candy Company, a corporation; Black Manufacturing Company, a corporation; Seattle Dry Goods Company, a corporation; Tootle, Campbell Co., a corporation; Bradshaw Bros.; True Shape Hosiery Co.; Sutro Bros. Braid Co.; Pioneer Suspender Co.; American Paper Co.; Harry E. Lewis; Love-Warren-Monroe Co.; Gorham Rubber Co.; Standard Oil Co.; Superior Candy & Cracker Co.; Lowman & Hanford Co.; Pickard-Garde Co.; Chas. Emmerick & Co.; E. Reis & Company; J. B. Powles & Co.; A. Stein & Co.; Clement, Dranger & Co.; N. Y. & Chemnitz Netting Co.; Stone & Co.; H. A. Caesar & Co.; J. S. Temple; Interwoven Stocking Co.; Western Fancy Goods Co.; J. B. Crowley; Moore-Watson Dry Goods Co.; David Bros.; L. Samter & Sons; Luscombe & Isaacs; Spool Cotton Co.; Julius Kayser & Co.; B. Hart & Bro.; Nonotuck Silk Co.; Clayburgh Bros.; Pacific Coast Biscuit Co.; Excelsior Quilting Company; Columbia Shade Cloth Company; Green Shoulder Form & Pad Company; T. B. M. Gates; Coronet Manufacturing Company; Givine [132] Manufacturing Company; Central Stamping Company; Western Manufacturing Company; Staadecker & Company; Richmond Paper Company; Armour & Company; Linen Thread Company; L. J. Clayburg; Hugo De Brock & Company; Springfield Knitting Company; George Frost & Company; Reny-Schmidt & Plesnor; Goodman Mandel; Henrietta Skirt Company; Levi Straus & Co.; and Olympia Knitting Mills, creditors of the estate of the above-named bankrupt, shall include therein transcript of the following papers and proceedings, and none other, which papers and proceedings contain a full and complete record in said cause of all that is necessary to a determination of the matters involved in said appeal or said petition for review, and that the same shall be so certified by the clerk of said court, to wit:

1. Order of district judge directing payment of expenses, etc, of petitioning creditors.
2. Report of receiver (including cash receipts and cash disbursements), including summary of cash receipts and summary of cash disbursements.
3. Objections to allowance of receiver.
4. Order approving receiver's report.
5. Amended petition (Hughes, McMicken, Dovell & Ramsey).
6. Memorandum decision.
7. Order of referee sustaining objections.
8. Order to show cause.
9. Order (April 14th—Nelson R. Anderson, Atty.).
10. Creditors' petition (April 4th).
11. Objections to allowance of receiver, with affidavits by J. J. Doheny, Ole A. Kjos, Eugene G. Anderson, and Nelson R. Anderson.
12. Petition for review of referee's order.
13. Objections to jurisdiction.
14. Certificate and return.
15. Order of allowance to receiver and trustee and to his attorneys. [133]
16. Affidavits of Lola Cassil and C. H. Winslow.
17. Affidavit of R. C. Post.
18. Affidavit of Sutcliffe Baxter.
19. Affidavit of E. Y. Barr.
20. Affidavit of Walter A. McClure.
21. Affidavit of Leopold M. Stern.
22. Affidavit of Edwin London and A. H. Sanford.
23. Order (Sept. 23d) Hughes, McMicken, Dovell & Ramsey.
24. Affidavit of Howard J. Sheehan.
25. Affidavit of J. J. Doheny, filed June 24, 1911.
26. Bond.

26. Order of disbursement (April 19)—Leopold M. Stern.

Dated October 17, A. D. 1911.

HUGHES, McM., D. & R.,
NELSON R. ANDERSON,
Attorneys for Creditors.
LEOPOLD M. STERN,
McCLURE & McCLURE,
Attorneys for Sutcliffe Baxter, as Receiver and Trustee.
HAROLD PRESTON,
Attorney for John Ainsfield Co.

(Indorsed:) Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Oct. 19, 1911. A. W. Engle, Clerk. [134]

In the District Court of the United States for the Western District of Washington, Northern Division. In Bankruptcy. No. 4541. In the matter of Charles Knosher & Company (a corporation), bankrupt. Western Dry Goods Company (a corporation), et al., petitioners, *vs.* Sutcliffe Baxter, as receiver and trustee, and John Ainsfield Company, respondents.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
Western District of Washington, ss;

I, A. W. Engle, clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing 136 typewritten pages, numbered from 1 to 136, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause as is called for by the stipulation of the attorneys for said petitioners and respondents, as the same are of record and on file in the office of the clerk of said court and the same is a full, true, and correct copy of so much of the record and proceedings in the above and foregoing entitled cause as is necessary to a determination of the matters involved on the petition of said Western Dry Goods Company et al., for review, filed in the United States Circuit [135] Court of Appeals for the Ninth Circuit, according to the stipulation of the attorneys for said petitioners and said respondents.

I further certify that the cost of preparing and certifying the foregoing transcript of the record on such petition for review is the sum of eighty-three and no/100 dollars, and that the said sum has been paid to me by Messrs. Hughes, McMicken, Dovell & Ramsey, of counsel for petitioners.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Seattle, in said district, this 28th day of October, A. D. 1911.

[SEAL.] A. W. ENGLE, *Clerk.*

(Indorsed:) No. 2050. United States Circuit Court of Appeals for the Ninth Circuit. The Western Dry Goods Company, a corporation, et al., petitioners, *vs.* Sutcliffe Baxter, receiver and trustee of the estate of Charles Knosher & Co., a corporation, bankrupt, and John Anisfield Company, respondents. In the matter of Charles Knosher & Co., bankrupt. Transcript of record on petition for revision under section 24b of the bankruptcy act of Congress, approved July 1, 1898, to revise, in matter of law, certain orders of the United States District Court for the Western District of Washington, Northern Division.

Filed November 3, 1911.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

EXHIBIT NO. 70.

United States Circuit Court of Appeals for the Ninth Circuit. The Western Dry Goods Company (a corporation) et al., petitioners *vs.* Sutcliffe Baxter, Receiver and Trustee of the estate of Charles Knosher & Co. (a corporation), bankrupt, and John Anisfield Company, respondents. In the matter of Charles Knosher & Co., bankrupt. No. 2050. Upon review from the United States District Court for the Western District of Washington, Northern Division.

Under section 24b of the bankruptcy act, approved July 1, 1898, to revise, in matter of law, certain orders of the United States District Court for the Western District of Washington, Northern Division.

On the 27th day of February, 1911, Charles Knosher & Co., a corporation engaged in general merchandise and department store business in the city of Seattle, Washington, was adjudged bankrupt in an involuntary proceeding brought for that purpose in the District Court of the United States for the Western District of Washington, the adjudication being had upon a petition alleging bankruptcy, and an answer admitting the same. Thereupon and on the same day Sutcliffe Baxter, upon the choice of the creditors, was appointed receiver by the court and qualified and took possession of the property of the bankrupt. On March 20th he was elected trustee by the creditors, and continued to act as such.

On the 27th of February when the receiver took possession of the estate of the bankrupt, consisting of goods, wares, and merchandise held for sale, there was a clearance sale going on. He allowed this sale to go on until the close of business on that day, then closed the store, and at once began to take an inventory. The inventory was begun on February 27th and completed March 6th. In taking this inventory

the receiver found that the merchandise was marked only with the retail selling price, there being nothing to show the original cost price; that in fixing the price no specific percentage had been added to cost, the merchandise being offered for sale at a profit ranging from 25 to 100 per cent, so that it was not practicable to ascertain original cost by deducting a certain definite percentage to be regarded as profit from the market selling price of the goods.

After the filing of the inventory and on March 9, 1911, the referee in bankruptcy appointed three appraisers, who made a formal but not an actual appraisement of the property shown in the inventory and filed their report of the appraisement on the same day in the office of the referee of bankruptcy. The value of the stock was returned by the appraisers at $42,214.87. Thereafter the referee made an order of sale and the sale was set for March 13th upon sealed bids. Among the bids received was one for $50,027. The receiver adjudged the bids insufficient and they were rejected, and new bids were called for and opened on the 15th. Among these bids was that of the respondent in this case, John Anisfield Company, whose bid was $57,000, which was received and accepted, and the stock of merchandise was sold to him in bulk on March 16, 1911.

On April 20, 1911, the Western Dry Goods Company and other creditors of the bankrupt filed their petition, and on April 26, 1911, their amended petition with the referee reciting the proceedings that had been had in the case and alleging that the employees of the bankrupt had fraudulently conspired with John Anisfield Company for the purpose of deceiving the officers of the court, and had made up an inventory of the stock of goods, wares, and merchandise belonging to the bankrupt, which were sold for an amount greatly less than the fair market wholesale value of said stock, and greatly less than the actual market value thereof; that in pursuance of the conspiracy other employees of the bankrupt advised the John Anisfield Company of the actual value of the stock; but concealed the information from all others; that the receiver and trustee accepted the said false and fraudulent inventory as true, and upon assumption that said inventory did represent the true value of said stock the said appraisers did return their appraisement into court; that John Anisfield Company had taken possession of said estate, and since the date thereof had been selling the same at special bankrupt sale and as petitioners were informed and believed had realized the sum of $50.00 and was threatening to sell the remainder of the stock to an innocent purchaser and remove the same from the jurisdiction of the court.

The prayer of the petition was that the appraisement, order of sale, and confirmation of sale be set aside, and that the John Anisfield Company be required to pay into the registry of the court the money theretofore received by them out of the estate of the bankrupt, and that the stock remaining on hand and unsold be returned to the possession of the receiver. The petition also prayed for an injunction commanding the said John Anisfield Company, their agents and representatives from selling, removing, disposing of, or in any manner interfering with the remainder of said stock of the bankrupt then in their hands and under their control. The petition was supported by the affidavits of Eugene C. Anderson, the president and treasurer of the Western Dry Goods Company, and Ole A. Kjos, one of the appraisers appointed by the referree in bankruptcy. Both affidavits refer to conversations with two employees of the bankrupt, Henderson & Barr, in which it was stated by them that the inventory was reduced in the value and quality of the stock and the information as to such reduction in value and quantity conveyed to John Anisfield Company, so that they might purchase the stock at a grossly inadequate value and thereby realize enough to pay their own claim in full and return the balance to the bankrupt.

To this petition John Anisfield Company interposed the objection that the court had no jurisdiction to entertain the petition, because of the facts appearing of record in the case showing the proceedings therein. This petition came on to be heard before the referee in bankruptcy, together with objections made thereto. The objections were sustained, and the prayer of the petition denied and the petition dismissed.

A petition for review was taken to the district court upon the return of the referee showing that the objection to jurisdiction had been sustained by the referee for two reasons:

First. That there was no allegation in the original or amended petition of any improper conduct on the part of the trustee of the estate, or his attorneys.

Second. That it was not alleged that there had been any demand made upon said trustee, or his attorneys, by the petitioning creditors, that said trustee should proceed against the said John Anisfield Company to obtain the relief sought by said petitions, or any other relief, in the interest of all the creditors.

Without passing upon the question of jurisdiction the district court proceeded to consider the petition upon its merits upon hearing upon affidavits and upon such hearing the court denied the petition.

On March 20th, the receiver having filed a report of his proceedings, an order was entered approving his report and making an allowance to the receiver of $2,500, with a like sum of $2,500 to his attorneys. It later appearing that this allowance to the receiver and his attorneys had been made without notice to the creditors, an order was made requiring the receiver to make application for his allowance and give notice of such application, which was done.

On July 10, 1911, the matter was submitted to the court for its determination, and as a basis for this determination it was stipulated by the parties to the proceedings that the total amount of cash actually disbursed by Baxter as receiver was $61,312.87, and the total amount of cash received by him as trustee and then being disbursed was $54,496, and that said cash amounts were the sums to be considered by the court in determining the matter of the compensation of the receiver and trustee, and the attorneys of the receiver and trustee. Thereafter, on September 23, 1911, the court determined that Baxter as receiver had conducted the business of the bankrupt and was entitled to compensation as receiver in the sum of $61,312.87 for conducting the business of the bankrupt as receiver; and that Baxter was entitled to compensation in said sum of $54,496 for his services as trustee of said estate up to the date of the final submission of the matter at the rate prescribed in section 48a of the bankruptcy act, and that the attorneys of the receiver and trustee were entitled to an equal amount for their services up to the date of the submission of the matter to the court.

Thereupon the court made an order allowing the receiver and trustee $2,201.20 and allowing a like sum of $2,201.20 to the attorneys for such receiver and trustee, in full of all services rendered up to the date of the final submission of the matter to the court.

The questions involved in these proceedings are brought here by petition for review under section 24b of the bankruptcy act.

Nelson R. Anderson, Hughes, McMicken, Dovell & Ramsey, for petitioners.

Leopold M. Stern, Walter A. McClure, McClure & McClure, for respondents other than John Anisfield Company.

Harold Preston and O. B. Thorgrimson for respondent, John Anisfield Company.

Before Gilbert, Ross, and Morrow, circuit judges.

Morrow, circuit judge (after stating the facts as above, delivered the opinion of the court):

The respondents (not including John Anisfield Company) have filed their motion to dismiss the petition on the ground that the questions are reviewable only by appeal and because the determination of this case involves a consideration of evidence and a determination of disputed questions of fact.

Section 24b of the bankruptcy act provides as follows:

"The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of the law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved."

The effect of bringing the proceedings of the district court to this court for revision under this section is to limit the review to matters of law. Where facts are to be reviewed the proceedings must be brought here by appeal or writ of error. The facts recited in these proceedings and material to the question at issue do not appear to be in doubt, or, at most, they are not a subject of controversy upon this petition for review. The only controversy is as to their legal import in the bankruptcy proceedings. Such questions may be reviewed upon a petition for revision. (In re Lee, 182 Fed., 579; In re Frank, 182 Fed., 794; Coder Trustee *v.* Arts, 213 U. S., 223.)

In Schuler *v.* Hassinger (177 Fed., 119, 100; C. C. A., 531) the Circuit Court of Appeals for the Fifth Circuit had before it appeals and petitions for revision involving among other questions the objection that the property of the bankrupt had been sold for a grossly inadequate sum and the objection that the sale was collusive, and was absolutely unfair, illegal, and void. The appeals were dismissed and the questions reviewed upon the petition for revision. The same construction of the statute applied in this case sanctions the review of the questions presented by the petition for revision in this case.

The motion for the dismissal of the petition is therefore denied.

The first question to be considered upon this review of the proceedings is the sufficiency of the amended petition filed with the referee in bankruptcy by the Western Dry Goods Company and other creditors praying that the appraisement, order of sale, and sale of the stock of goods of the bankrupt estate be set aside, and that John Anisfield Company be required to pay into the treasury of the court the money received by them out of the estate of the bankrupt, and that the stock remaining on hand and unsold be returned to the possession of the receiver. The objection to this petition was in the nature of a demurrer, raising the question as to its sufficiency. No improper

conduct is charged in the petition against Baxter, the receiver, or against Baxter, afterwards the trustee, or against his attorneys. It is not alleged that demand was ever made by the complaining creditors upon the trustee to recover the property of the bankrupt estate or its value from John Anisfield Company. It appears that at the time the amended petition was filed the sale of the bankrupt property had been made by the bankruptcy court, and the sale had been confirmed; that the purchaser had gone into possession of the property; had disposed of about one-half of the stock purchased together with new stock mixed with the bankrupt stock; that the purchase price had been paid, and about one-half of the purchase money had been distributed by the trustee to the creditors as dividends and for the expenses of administration; that no tender had been made to the purchaser of the purchase price, and no tender appears to have been practicable under the circumstances, and no surety or indemnity had been offered the purchaser. It is clear that if the creditors of the bankrupt were entitled to any relief by reason of the alleged inadequacy of the price received for the stock of goods it was not by summary proceedings, but should have been obtained through the trustee in an action against John Anisfield Company for an accounting, and if the trustee and his attorneys were hostile to the proceeding, as intimated, but not established, he could have required by order of the bankruptcy court to permit the use of his name in such an action with new attorneys, or failing in that, the trustee could have been removed and a new trustee appointed, with new attorneys instructed to proceed by proper action to determine the rights of the bankrupt estate in plenary action.

We think the petition and amended petition were insufficient, and properly dismissed by the referee.

It is next contended that the referee, having refused to consider the petition by reason of its failure to set up jurisdictional facts, the district court, upon the certificate of review, should have determined the question, and not proceeded as it did to consider the petition upon the merits and upon a hearing upon affidavits. But it appears from the record that the objecting creditors participated in the hearing in the district court upon affidavits without objection, and submitted at least two affidavits upon the merits of the controversy as to the value of the merchandise in the store of the bankrupt at the time of the sale to John Anisfield Company. Having participated in such a hearing without objection and having offered affidavits in support of their petition, the petitioners are not now in a position to raise the objection that the district court heard and determined the matter in controversy upon its merits and by affidavits.

It is next objected that the allowance of compensation to the receiver and trustee and to his attorneys were in excess of the compensation provided by the statute. Section 48a of the bankruptcy act, as amended by the act of June 25, 1910 (36 Stat., 838, 840), provides:

"SEC. 48. COMPENSATION OF TRUSTEES, RECEIVERS, AND MARSHALS. (a) Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, * * * as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand.

* * * * * * *

"(d) Receivers or marshals appointed pursuant to section two, subdivision three, of this act shall receive for their services, payable after they are rendered, compensation by way of commissions upon the moneys disbursed or turned over to any person, * * * as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars: *Provided*, * * * That when the receiver or marshal acts as a mere custodian and does not carry on the business of the bankrupt as provided in clause five of section two of this act he shall not receive or be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one-half of one per centum on all above one thousand dollars on moneys disbursed by him.

* * * * * * *

"(e) Where the business is conducted by trustees, marshals, or receivers, as provided in clause five of section two of this act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person, * * * such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars,

two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars."

Under this statute the court allowed the receiver under section 48 (d) on the stipulated amount disbursed by him from February 27th to March 20th, namely, on $61,312.87, the following amounts:

Deposit	$5.00
$500 at 6 per cent	30.00
$1,000 at 4 per cent	40.00
$8,500 at 2 per cent	170.00
$51,312.87 at 1 per cent	513.12
Making a total of	758.12

The court also allowed the receiver under section 48 (e) an additional compensation for conducting the business on the percentages, as above (excluding deposit of $5) the sum of $753.12, making a total of $1,511.24.

The court also allowed the trustee under section 48 (a) on the stipulated amount of cash received, and the amount then being disbursed by him, from March 20th to date of final submission, namely, $54,496, as follows:

Deposits	$5.00
$500 at 6 per cent	30.00
$1,000 at 4 per cent	40.00
$8,500 at 2 per cent	170.00
$44,496 at 1 per cent	444.96
Making a total of	689.96
Total compensation of receiver	1,511.24
Total compensation of trustee	689.96
Total amount allowed receiver and trustee	2,201.20

The court also allowed the attorneys for the receiver and trustee as part of the costs and expenses of administration a like amount, namely, $2,201.20.

The objection urged against these allowances is that the evidence does not support the conclusions reached as to the legal compensation to which the receiver and trustee and his attorneys were entitled to under the law. There is no question as to the service rendered by the receiver. The question is as to the compensation which the receiver was entitled to receive for the services rendered. In the receiver's report to the court, dated March 20, 1911, as to his administration of the estate, he stated, among other things:

"The alleged bankrupt turned over the premises to me and gave me complete charge thereof. I found that the bankrupt was a corporation engaged in the operation of a department store at the time I took possession of said premises. The store was filled with customers who were attending a sale which had previously been extensively advertised. I thought it advisable to permit the business to remain open and the sale to go on for the balance of the day, and accordingly permitted the said store to remain open.

"During the day I consulted with numerous creditors and representatives as to the advisability of continuing the business at retail, and, after such consultation, it was agreed by all parties and it was also my own judgment that it would be best to close the store at the conclusion of the day's business and proceed at once to take an inventory of all the property."

In Mr. Baxter's affidavit, filed in the district court on June 19, 1911, he sets forth the same facts as to the closing of the store on the day of his appointment as receiver.

It does not appear from this report that the receiver conducted the business of the bankrupt even for the part of one day. What he did was to permit the employees of the bankrupt concern to go on with the business during the remainder of that day. The store was then closed, and was not again opened, except to deliver the stock in bulk to John Anisifeld Company. Clause 5 of section 2 of the bankruptcy act provides that the courts of bankruptcy are invested with jurisdiction to "authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustee, if necessary in the best interests of the estates, and allow such officers additional compensation for such services as provided in section forty-eight of this act."

We do not think that the continuing of the business of the bankrupt by his employees for the remainder of one day constituted the carrying on of the business by the receiver within the meaning of the statute. On the other hand, we think the receiver was

something more than a custodian, and that he was entitled to compensation as receiver under section 48d. We shall, therefore, disallow the additional compensation to the receiver of $753.12 for conducting the business of the bankrupt. Deducting this amount from the amount allowed, $2,201.20, the allowance for the receiver and trustee will then be $1,488.08.

The petitioners contend that no allowance should be made to the attorneys employed by the receiver and trustee for the bankrupt estate for the reason that no showing is made as to the value of their services. The employment of attorneys for a bankrupt estate is largely a matter of discretion in the court, and the value of the services is a matter generally known to the court. The showing made in opposition to the allowance would call upon this court to consider and determine facts which, as we have stated, we can not do on this petition for revision. We are limited to questions of law. The court appears, however, to have been of the opinion that the attorneys for the receiver and trustee were entitled to receive the same compensation as the receiver and trustee. Treating that as a finding of fact, it follows that the attorneys are entitled to receive for their services a sum the equivalent of the sum allowed the receiver and trustee, to wit, the sum here allowed of $1,448.08 in full for their services for the entire period from the appointment of the receiver up to the period of the submission of their claim to the court.

The orders of the district court will be modified as indicated, and, as thus modified, will be affirmed, with costs in favor of the respondents and against the petitioners.

(Indorsed:) Opinion. Filed June 3, 1912. F. D. Monckton, clerk.

EXHIBIT No. 71.

In the United States Circuit Court of Appeals for the Ninth Circuit. The Western Dry Goods Company, a corporation, et al., petitioners, *vs.* Sutcliffe Baxter, receiver and trustee of the estate of Chas. Knosher & Company, bankrupt, and John Annisfield Company, respondents. No. 250.

PETITION FOR MODIFICATION OF OPINION.

In the matter of Chas. Knosher & Company, bankrupt.

Come now Western Dry Goods Company, a corporation, et al., petitioners, by their attorneys, Nelson R. Anderson and Hughes McMicken, Dovell & Ramsey, and respectfully show the court:

I. That the following is a copy of that part of the court's opinion relating to the merits of the petition filed against John Annisfield Company:

"It is next contended that the referee having refused to consider the petition by reason of its failure to set up jurisdictional facts, the district court upon the certificate of review should have determined that question and not proceeded, as it did, to consider the petition upon the merits and upon a hearing upon affidavits; but it appears from the record that the objecting creditors participated in the hearing in the district court upon affidavits without objection, and submitted at least two affidavits upon the merits of the controversy as to the value of the merchandise in the store of the bankrupt at the time of the sale to John Annisfield Company. Having participated in such a hearing without objection, and having offered affidavits in support of their petition, the petitioners are not now in a position to raise the objection that the district court heard and determined the matter in controversy upon its merits and by affidavits."

II. That the court was mistaken in its conception of the facts and misunderstood the purpose of the affidavits referred to in its opinion, for the record shows that no affidavits were filed in conjunction with the suit agianst John Annisfield Company before the referee or before the United States district judge, except the affidavits of Eugene G. Anderson and Ole A. Kjoe, filed before the referee, John P. Hoyt, on April 20th, 1911 (record, p. 42); that said affidavits were filed for the purpose of securing an injunction (record, pp. 47–48); that objections to the jurisdiction were filed by the John Annisfield Company (record, pp. 91–95); that said objections were sustained; that a petition for review of the referee's decision sustaining the objections was filed by the petitioning creditors (record, pp. 88–91); that thereupon the referee made his return certifying to the United States district judge the question of law involved for a ruling of said United States district judge (record, pp. 95–97); that upon said record as above given the United States district judge rendered his memorandum decision.

III. That at the time said record relating to the suit of petitioners against John Annisfield Company was presented to the United States district court by a petition for review (which writ of review presents questions of law only) there was pending before the United States district judge certain objections to receiver's allowances,

filed by creditors of the bankrupt on the ground as stated in Paragraph IV of said objections (record, p. 74):

"That the services rendered by the receiver herein, Sutcliffe Baxter, were detrimental and prejudicial to the interests of the creditors and all persons in interest therein; that the said receiver, by his carelessness and inattention, permitted those engaged in taking an inventory of the bankrupt stock to return said inventory in a sum greatly less than the fair value thereof, and by reason thereof the value of said stock was greatly depreciated and in a sum far less than its fair value; that the said receiver has entailed a great loss upon the creditors herein by rendering a false report into this court of the amount and value of the goods, wares, and merchandise of the bankrupt which he had in charge; that the true inventory of the goods, wares, and merchandise in the custody of the receiver exceeded the false inventory rendered (56) into this court by more than thirty thousand dollars ($30,000); that the false and fraudulent inventory was made pursuant to a conspiracy and agreement between the bankrupt and John Annisfield Company, the purchaser from this court of the assets of the said bankrupt and those who took the inventory in behalf of and for this court."

And a further ground was set up in Paragraph VII (record, pp. 75–76), that said compensation was made in disregard of the percentages fixed by the bankruptcy act; that to sustain the allegations contained in Paragraph IV numerous affidavits were filed by the petitioning creditors establishing the fraud alleged. Among said affidavits were those of Lola Cassil (record, 104–106); Nelson R. Anderson (record, 87–88); C. H. Winslow (record, 103–104); Edwin London (record, 135–136), and A. H. Sanford (record, 137–139), the last two affidavits being the ones referred to by the court in its opinion; that said affidavits were filed by the receiver and trustee to combat and disprove the showing made by the petitioning creditors' affidavits, including those of Walter A. McClure (record, 128–130); Leopold M. Stern (record, 131–135); Howard J. Sheehan (record, 140–141); R. C. Post (record, 196–209); Sutcliffe Baxter (record, 109–121); E. Y. Barr (record, 121–128).

IV. That the record shows that none of the above affidavits or any other affidavits were ever served by the petitioning creditors or by the receiver or trustee upon John Annisfield Company; that the record shows that John Annisfield Company never submitted a single affidavit relating to the merits of said controversy or any other affidavits in said cause.

V. That it was never intended by the petitonoers herein to submit a controversy involving thirty thousand dollars ($30,000) to the court upon the filing of affidavits; that it was never understood by any of the attorneys in the cause that the matter should be decided by the court on the merits.

Wherefore, your petitioners pray the court for a modification of that part of the opinion holding that the suit against John Annisfield Company was decided upon the merits and by affidavits, and that said opinion make it clearly to appear that said controversy was one of law only involving the right of petitioners to proceed by summary petition.

NELSON R. ANDERSON,
HUGHES MCMICKEN,
DOVELL & RAMSAY,
Attorneys for Petitioning Creditors.

STATE OF WASHINGTON,
County of King, ss:

I, Nelson R. Anderson, one of counsel for the petitioners herein, hereby certify that in my opinion the foregoing petition is well founded and that the same is not interposed for delay.

NELSON R. ANRERSON.

EXHIBIT NO. 72.

In the United States Circuit Court of Appeals for the Ninth Circuit. In bankruptcy. The Western Dry Goods Company, a corporation, et al., petitioners, *vs.* Sutcliffe Baxter, receiver and trustee of the estate of Charles Knosher & Co., a corporation, bankrupt, and John Anisfield Company, respondents, in the matter of Charles Knosher & Co., bankrupt. No. 2050. Upon review from the United States District Court for the Western District of Washington, Northern Division.

BRIEF OF PETITIONERS ON PETITION FOR REVIEW.

STATEMENT.

The facts are these:

On the 27th day of February, 1911, Charles Knosher & Co., a corporation, was adjudicated bankrupt in a proceeding brought for that purpose in the District Court of the United States for the Western District of Washington, the adjudication being

had upon a petition alleging bankruptcy, and an answer admitting the same. On said day Sutcliffe Baxter was appointed by the court as receiver of the estate of said bankrupt, and he thereupon qualified as such. (Record, p. 17.) The bankrupt concern was engaged at that time in the operation of a dry goods store in the city of Seattle, and was upon that day conducting a clearance sale. (Record, p. 17.) The receiver, immediately upon his appointment, took charge of the store of the bankrupt company and permitted the same to remain open until the evening of that day, when he closed the store. (Record, pp. 17, 18.) The store was never afterwards opened, and the receiver proceeded at once to realize upon the assets, as follows:

He at once commenced the taking of an inventory, employing for that purpose some of the clerks who had been employed in the store, and concluded the taking of the inventory within about one week, or upon the 6th day of March, 1911. (Record, p. 18.) He caused the inventory to be filed, and requested the referee to appoint appraisers of the estate, and thereupon the referee appointed three appraisers. These appraisers came into the store room which contained the stock of goods, made no examination thereof, being told by the receiver or his attorneys that they were not expected to do so, and they thereupon, without examination or investigation, signed up and returned into court an appraisement, returning the value of the stock as it was represented in the inventory. (See affidavit of Ole A. Kjos and J. J. Doheny, two of the appraisers, record, pp. 40, 79, and 81.)

The value of the stock was returned by the appraisers at $42,214.87. (Record, p. 44.)

On the 16th day of March, 1911, the stock was sold to John Anisfield Co., a corporation, for the sum of $57,000, which sale was afterwards confirmed.

On the 20th day of March, 1911, the receiver, having filed a report of his proceedings, an order was entered approving this report and making an allowance to the receiver of $2,500.00 (Record, p. 30), with a like sum of $2,500.00 to his attorneys. It later appearing that this allowance to the receiver and his attorneys had been made without notice to the creditors, an order was made requiring the receiver to make application for his allowance and give notice of such application, which was done. (Record, p. 63.) And on September 23, 1911, the court made an order allowing the receiver and trustee $2,201.20, and allowing a like sum of $2,201.20 to the attorneys for such receiver and trustee. (Record, p. 102.) To the granting of such allowance the petitioners excepted at the time.

On April 26, 1911, the Western Dry Goods Company, and other creditors of said bankrupt, filed an amended petition (Record, p. 43), in which was set forth amongst other things the following facts:

First. That Chas. Knosher & Co. was duly declared a bankrupt, and that Sutcliffe Baxter was duly appointed receiver of said bankrupt estate.

Second. That Ole A. Kjos, J. J. Doheny, and E. G. Barr were duly appointed as appraisers of said estate, and that they did return into court a purported appraisement of the estate of said bankrupt, estimating the same at $42,214.87.

Third. That said appraisement was grossly erroneous and was induced by fraud and misrepresentation upon and to said appraisers, and that the fair market value of said estate at said time was an amount in excess of $90,000.

Fourth. That certain employees of Chas. Knosher & Co., who were retained by the receiver of said estate for the purpose of making an inventory thereof, conspired with John Anisfield Co. to the end that an inventory should be taken of said stock which should represent its value at a sum greatly less than its actual value.

And thereupon "said employees of the said Charles Knosher & Co., conspiring with the said John Anisfield Co., as aforesaid, did fraudulently and for the purpose of deceiving the officers of this court, make up an inventory showing the value of said stock of goods, wares, and merchandise as greatly less than the actual market value thereof."

It was further alleged "that said employees" taking said inventory did "advise the said John Anisfield Co. of the actual value of said stock," but concealed "said information from all others."

And it was alleged that such false inventory was made in pursuance of a conspiracy whereby the stock of the said bankrupt should be inventoried at a sum greatly less than its actual value, and that John Anisfield Co., being one of the principal creditors, should purchase and sell the same at special bankrupt sale until John Anisfield had realized the amount of its claim against the bankrupt, together with the amount paid for the stock, the balance of the stock to be turned over to the bankrupt

It was further alleged that the purchaser, John Anisfield Co., had taken possession of said property and at the time of the filing of the petition referred to had sold sufficient of the same to realize the sum of $50,000 in cash, and that they had on hand the remaining portion of said bankrupt estate of the value of approximately $50,000.

The petitioners asked that the appraisement and sale and order of confirmation thereof be set aside, and that John Anisfield Co. be required to pay into the registry of the court all moneys which had been received by them out of the sale of said stock,

and that an injunctive order be issued restraining them from disposing of the remainder of said stock. Accompanying this petition there was filed the affidavits of Eugene G. Anderson (record, pp. 36, 84), and the affidavits of Ole A. Kjos (record, pp. 40, 81); also the affidavit of Lola Cassil (record, p. 104), and the affidavit of J. J. Doheny, one of the appraisers (record, p. 79). In the affidavits of Anderson, Kjos, and Lola Cassil were set forth statements which had been made to the affiants by parties who assisted in the taking of the inventory, which substantiated the allegations in the petition that the figures upon which the inventory was based were falsified for a fraudulent purpose. These affidavits were filed with the petition for the purpose of securing an injunctive order. More specific reference will not be made to them in this statement, but the attention of the court is invited to them as they are set forth in the record.

Upon the filing of this petition the said John Anisfield Co. appeared and filed objections contesting the jurisdiction of the court to adjudicate upon the petition. (Record, p. 91.) These objections were sustained by the referee. (Record, p. 60.) We thereupon filed a petition for review; the referee certified the matter to the district court, setting forth in his return the grounds upon which he sustained the objections to the jurisdiction. (Record, p. 95.)

After the referee had, as aforesaid, certified the matter up to the district court, the attorneys for John Anisfield Co. filed certain affidavits designed to combat the allegations in our petition. (Record, pp. 106, 109, 121, 128, and 131.) The district court thereupon made an order dismissing the petition. (Record, p. 139.)

The opinion filed by the district judge (record, p. 49) indicates that the question of whether or not the bankruptcy court had jurisdiction to entertain our petition (which was the question certified up by the referee) was not considered by the district judge, but he, considering only the affidavits which had been filed, assumed to settle the matter upon its merits and dismissed our petition as not having been sustained.

We thereupon filed a petition for revision by this court. It will appear, therefore, that this petition for revision presents two questions:

First. The question of whether or not the referee had jurisdiction to adjudicate the matters and things set forth in our petition.

Second. The propriety of the allowance made to the receiver and trustee and to his attorneys, which we contend is in excess of the amount contemplated by the statute.

ARGUMENT.

It was unfortunate that we did not have an expression of the district court upon the matter which was certified to that court by the referee; that is, whether or not the bankruptcy court had jurisdiction to entertain the petition. It was the view of the referee in bankruptcy, as expressed in his return, that he had no jurisdiction to entertain the petition for two reasons:

(1) That there was no allegation of improper conduct on the part of the trustee.

(2) That it was not alleged that any demand had been made upon the trustee that he should proceed to obtain the relief which was sought by the petitioners. The referee further stated that he was of the opinion that such relief could not be had in this summary proceeding, but could only be had in a plenary action brought for that purpose. Furthermore, that the petition, considered in the light of the objections thereto, did not state facts sufficient to entitle the petitioners to any relief.

The referee, having given this expression of his views and certified the matter to the district court, we had a right to assume that that court would pass only upon the question of jurisdiction which had been suggested by the objections filed by John Anisfield Co., and that if, in the view of the district judge, these objections were not well taken, the referee would be so instructed, opportunity given to anyone interested in the estate to traverse the allegations in our petition, and that a hearing would then be had, at which the petitioner would be given an opportunity to establish by appropriate evidence the allegations of the petition. (In re John H. Livingston Co., 144 Fed., 971.)

It appears manifestly irregular that the referee, having refused to consider our petition for want of jurisdiction, and his action having been certified for review, the district judge should proceed to determine the matter upon the facts.

We filed certain affidavits with our petition, and in support thereof. We had asked for an injunctive order to restrain John Anisfield Co. from selling the remainder of the bankrupt stock which at that time they were selling at forced sale. The affidavits we filed for the purpose of making a prima facie showing to justify the issuance of such an injunctive order pending the action, and we had no right to anticipate that after the referee had taken the action he had, and the matter had all been certified up, the court would permit the filing of affidavits on behalf of John Anisfield Co. and would determine the matter finally with nothing before it but the affidavits.

We assume, therefore, that the question to be considered by this court is the correctness of the ruling of the referee in dismissing our petition for want of jurisdiction.

It appears to have been the view of the referee that the court could not entertain the petition filed at the instance of objecting creditors in the absence of a showing that demand had been made upon the trustee, or his attorneys, that he should proceed against John Ainsfield Co.

Our answer to this suggestion is that the law never requires the doing of a useless thing.

The affidavit filed by Sutcliffe Baxter, the trustee (record, p. 109), and the affidavits filed by his attorneys, Walter A. McClure and Leopold M. Stern (record, pp. 128 and 131), demonstrates that not only the trustee, but his attorneys, are hostile to our proceeding. In view of the statements made by the trustee and his attorneys in the affidavits, it is quite apparent that any request for them to initiate the proceeding begun by us would have been fruitless.

The principle of the following cases makes them analogous to the case at bar: Howard *v.* National Telephone Co. (182 Fed., p. 221); Monmouth Investment Co. *v.* Means (151 Fed., 159); Universal Savings & Trust Co. *v.* Stoneburner (113 Fed., 251); Harrison *v.* Thomas (112 Fed., 22).

It was furthermore the view of the referee that the relief we sought could not be obtained in a summary proceeding, such as we sought to initiate, but could only be given us in a plenary action brought for that purpose in an appropriate court of equity. In this view we believe the referee to have been entirely wrong, as we think can be demonstrated by the authorities.

The rule is this: The bankruptcy court may, by a summary proceeding, determine any controversy that grows out of the administration of the bankrupt estate, or any controversy between the estate of the bankrupt on the one hand and one claiming by or under the estate of the bankrupt upon the other hand. The plenary, independent proceeding is required to determine controversies arising between the estate of the bankrupt and one having an adverse claim which did not arise in the course of the bankruptcy proceeding.

The rule is announced in Babbitt *v.* Dutcher (213 U. S., p. 113) as follows:

"There are two classes of cases arising under the act of 1898 and controlled by different principles. The first class is where there is a claim of adverse title to property of the bankrupt, based upon a transfer antedating the bankruptcy. The other class is where there is no claim of adverse title based on any transfer prior to the bankruptcy, but where the property is in the physical possession of a third party or of an agent of the bankrupt, or of an officer of a bankrupt corporation, who refuses to deliver it to the trustee in bankruptcy.

"In the former class of cases a plenary suit must be brought, either at law or in equity, by the trustee, in which the adverse claim of title can be tried and adjudicated.

"In the latter class it is not necessary to bring a plenary suit, but the bankruptcy court may act summarily and may make an order in a summary proceeding for the delivery of the property to the trustee without the formality of a formal litigation.

"The former class falls within the ruling in the case of Bardes *v.* Hawarden Bank (178 U. S., 524) and in the case of Jaquith *v.* Rowley (188 U. S., 620), which hold that such a suit can be brought only in a court which would have had jurisdiction of a suit by the bankrupt against the adverse claimant, except where the defendant consents to be sued elsewhere.

"In the latter class of cases a plenary suit is not necessary, but the case falls within the rule laid down in Bryan *v.* Bernheimer (181 U. S., 188) and Mueller *v.* Nugent (184 U. S., 1), which held that the bankruptcy court could act summarily."

The rule as we have stated it is recognized by this court in Graessler *v.* Reichwald (154 Fed., 478).

The principle is recognized in Mueller *v.* Nugent (184 U. S., 1); Bryan *v.* Bernheimer (181 U. S., 188); In re Breslauer (121 Fed., 910); In re Mott (Federal Cases, 9878); In re Hyde (6 Fed., 587); In re Eppstein (156 Fed., 42).

By subdivision 7, section 2, of the bankruptcy act of 1898, courts of bankruptcy are expressly given the power to "cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided;" and as was stated in Mason *v.* Wolkowich (150 Fed., 699):

"Aside from the power of the district court with regard to the assets of bankrupts, which is especially given it by the statutes, it has all the authority which any court exercising equitable jurisdiction has to protect its receivers and the contracts made by them."

It would seem clear that the allegations of our petition, wherein it is alleged that John Ainsfield Co. has by fraud obtained from the receiver the estate of the bankrupt, which, because of such fraud, they are not entitled to retain, presents a controversy in relation to the estate of the bankrupt, and if it does, the court of bankruptcy has the power to determine such controversy.

Following the rule which we have attempted to sustain, it would appear that purchasers at judicial sales by trustees and receivers are, until the close of the bankruptcy proceeding, subject to the summary jurisdiction of the bankruptcy court, and such is the doctrine announced by Mr. Remington in his work on bankruptcy, volume 1, section 1804.

If, therefore, our petition presented a case which was cognizable in the bankruptcy court, this court should make an order directing the district court to remand the case to the referee, with directions to him to hear proof upon the allegations of our petition.

Upon question of allowance to receiver and trustee and his attorneys.

The statute (see amended bankruptcy act of 1910, sec. 48, 3 Remington on Bankruptcy, p. 853) provides that the trustee shall receive not to exceed 6 per cent on the first $500; 4 per cent on moneys in excess of $500 and less than $1,500; 2 per cent on moneys in excess of $1,500 and less than $10,000; and 1 per cent on moneys in excess of $10,000.

Fifty-four thousand four hundred and ninety-six dollars being the amount upon which he is entitled to assume his allowance as trustee (record, p. 101), he is entitled for his services as trustee to $684.96.

The statute further provides (3 Rem. on Bankruptcy, p. 854):

"That when the receiver or marshal acts as a mere custodian and does not carry on the business of the bankrupt, as provided in clause five of section two of this act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less and one-half of one per centum on all above one thousand dollars on moneys disbursed by him."

Sixty-one thousand three hundred and twelve dollars and eighty-seven cents is the amount disbursed by the receiver. (Record, p. 101.) Figured upon this basis he would be entitled as receiver to $321.56, or in all as receiver and trustee to $1,006.52.

As if to emphasize the desire of Congress to inhibit any exaggeration of the allowances specified, section 72 of the amended bankruptcy act provides:

"That neither the referee, receiver, marshal, nor trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services than that expressly authorized and prescribed in this act." (36 Stat. L., Pt. I, p. 842; 3 Rem. on Bankruptcy, p. 868.)

The court below, however, allowed Mr. Baxter as receiver and trustee the sum of $2,201.20, and did this upon the theory that as receiver he had acted as more than a mere custodian and carried on the business of the bankrupt.

The court will appreciate the fact that while the amount involved in this phase of the controversy is the difference between what was allowed the receiver and trustee and what we contend should have been allowed if the statute has been observed, and is not in this particular instance a large sum, it is nevertheless important to these petitioners and to the mercantile interests generally that a rule be laid down which will prevent the diminishing of bankrupt estates in this jurisdiction by improvident allowances to receivers.

The statute is so clear that it would seem difficult to misinterpret it. It provides that the additional allowance shall not be made except when the business of the bankrupt shall be carried on, as provided in clause 5 of section 2.

That clause is as follows:

The courts of bankruptcy are invested with jurisdiction to

"Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section forty-eight of this act." (36 Stat. L., Pt. I, p. 838; 3 Rem. on Bankruptcy, p. 835.)

It would seem clear that this case does not fall within the provisions of subdivision 5 of section 2 of the act, inasmuch as it is not pretended that the bankruptcy court authorized the receiver to conduct the business of the bankrupt, and the receiver did not conduct the business of the bankrupt, unless his action in keeping open the store for a scant half day, marshaling the assets, and, after taking an inventory, selling them, can be so construed.

Subdivision 5 of section 2 is plainly intended to apply to those cases where the receiver is authorized, pending the appointment of a trustee, to carry on the business which had been carried on by the bankrupt, as, for instance, would have been the case here if the receiver had been directed to keep open the store and sell merchandise in the regular course of business as that business had been theretofore conducted by the bankrupt. The receiver expressly states, however, that he did nothing of this character, but, upon the contrary, within a few hours after his appointment, closed the store and therefore ceased to conduct the business.

It will be borne in mind that the receiver and trustee in this instance were one and the same person, and it certainly cannot be within the spirit or meaning of the bankruptcy act that such a person shall receive additional compensation merely because he performs as receiver certain acts which the law requires him to perform later as trustee.

The purpose of the bankruptcy act is to preserve the assets for the creditors and to so economically administer the estate as to give effect to the statute. It is believed, therefore, that the court will adopt that construction of the statute which tends toward economy and the shutting out of exorbitant allowances.

In Remington on Bankruptcy, volume 2, at page 1247, it is said:

"The policy of the act is that of strictest economy in expenses and cost of administration.

"The greatest foe to the permanency of national bankruptcy laws in this country seems in the past to have been the opportunity they have apparently afforded for extravagance in administration. The framers of the present act repeatedly manifest in the words they have used the utmost solicitude to guard against extravagance. The chief cause of the downfall of the act of 1867 was its extravagance. Estates were swallowed up in fees and expenses, until finally the very name of bankruptcy law became a synonym for licensed plundering of creditors' estates, and its administration became odious in the eyes of the people."

See also In re Mercantile Co. (95 Fed., 123); In re Mercantile Agency Co. (11 A. B. R., 451); In re Daniels (130 Fed., 597).

It was stated In re Woodard (95 Fed., 955):

"One of the purposes of the act of 1898 in establishing a uniform system of bankruptcy was to avoid what was the principal cause of repeal of the bankrupt act of 1867—excessive fees and great expense."

In the case of In re Oppenheimer (17 A. B. R., 60) it is said:

"Economy is strictly enjoined by the well-known policy of the bankruptcy act in the administration of bankrupt estates."

See also In re Goldville Mfg. Co. (123 Fed., 579).

It will not escape the attention of the court that the receiver in this case exercised authority and performed functions which it is doubtful anyone but a trustee was entitled to perform, but inasmuch as the receiver and the trustee were the same person, it would be a strange perversion of the act if the receiver were entitled to receive additional compensation for the performance of acts which in the regular conduct of the estate he would have been required to perform as trustee. (In re Richards, 137 Fed., 772.)

The theory of the bankruptcy act clearly is that the creditors shall appoint a person to take charge of and administer the bankrupt's estate, but inasmuch as this appointment requires some time, it is provided that a receiver shall be appointed by the referee, who will preserve the estate until the trustee shall be selected by the creditors. The function of the receiver, therefore, is that of a mere custodian.

In Remington on Bankruptcy, volume 1, page 253, it is said:

"Receivers in bankruptcy derive their powers from the bankruptcy act and are limited thereby. The object of their appointment is the preservation of the property so as to prevent its deterioration, waste, or loss."

In the case of In re Kelly Dry Goods Co. (102 Fed., 747) it is said:

"The purpose of the appointment of a receiver in bankruptcy is one of mere temporary custody, and the duties are generally of the utmost simplicity."

In the case of In re Benedict (140 Fed., 55) it is said:

"The act * * * provides in case of necessity for the appointment of a receiver, who is practically a custodian."

In the case of In re J. C. Winship Co. (120 Fed., 93) it is said:

"The receiver had no interest. He was a mere caretaker. He had no title."

In Loveland on Bankruptcy (p. 253), the author says:

"He is not a general receiver in the sense that receivers are appointed by courts of equity. A receiver in bankruptcy is a temporary custodian until a trustee is appointed. He does not exercise the powers of a trustee."

Common sense and a fair regard for economy require that the administration of this estate should be viewed as a whole. Waiving the question of his authority to do so, the receiver performed certain functions which he would otherwise have been required to perform as trustee, and it is clear that whatever service Sutcliffe Baxter, receiver, performed by way of taking an inventory and making a sale, he to that extent relieved Sutcliffe Baxter, trustee, of the labor which the law would have otherwise devolved upon him. His compensation as trustee is not abridged on this account, and it would, therefore, appear unfair if his compensation as receiver were increased thereby.

Or it may be put this way: The statute prescribes that there shall be set aside out of the bankrupt estate a certain maximum sum to pay for the services of the receiver and the trustee, except in certain instances where the receiver shall carry on the

business of the bankrupt, in which case a larger allowance is made, and it is contemplated by the act that this sum will cover all the expenses of both a receivership and trusteeship of the estate.

Now, it would seem to be a clear perversion of the act if this maximum amount provided for by the act were permitted to be enlarged merely because the receiver undertook to perform certain duties which ordinarily would devolve upon the trustee, and the absurdity of such a condition is more manifest in a case where the receiver and trustee are one and the same person.

It will not escape the notice of the court that the report of the receiver shows that in keeping possession and making sale of this estate Mr. Baxter was employed from the 27th of February until the 16th of March, a period of seventeen days, and that four days later, or on March 20th, he had his report in court showing that all the property of the bankrupt had been disposed of and a detailed account of his receipts and disbursements. For this service he is entitled to receive, according to our contention, $1,006.52.

Surely a court will not be inclined to strain for a construction of the statute which would allow him a sum greater than this, because to do so would scarcely be consistent with the purpose of the bankruptcy act, which is to accomplish the economical administration of bankrupt estates.

Without doubt a full and fair compensation should be made to the party who is chosen to administer a bankrupt estate. This allowance should be commensurate with the services which have been rendered and the effort and time required of the administrator. Surely it cannot be said that one who receives the sum of upwards of $1,000 for work which has occupied him a little more than a fortnight, and which involves merely the taking of an inventory and the sale of a stock, with abundant clerical service at his command, has been poorly paid.

Upon the question of allowance to the attorneys we have only this to say: It appears by the record that Messrs. McClure & McClure and Leopold M. Stern were allowed the sum of $2,201.20 as attorneys for the receiver and an additional sum of $500.00 as attorneys for the trustee. (Record, pp. 102, 144.)

It is a matter of the greatest delicacy to object to the allowance of fees to an attorney. The record in this case does not disclose any extraordinary service which was performed by the attorneys. One of the attorneys, Mr. McClure, presented the original application upon which Knosher & Co. was declared a bankrupt and upon which the receiver was appointed. For this he was allowed the sum of $100.00 in addition to subsequent allowances which were made to him. After the appointment of the receiver it does not appear that any service was rendered by the attorneys except the routine service of advising the receiver and trustee, and assisting him, perhaps, in the preparation of his account. What we have stated as to the impropriety of the allowance attempted to be made to the receiver we believe applies with equal force to the attorneys, and an allowance to them in excess of the amount which the statute permits to the receiver and trustee would seem to be exorbitant and contrary to the spirit of the bankruptcy act.

Respectfully submitted.

NELSON R. ANDERSON,
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Attorneys for petitioners.

EXHIBIT NO. 73.

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., bankrupt. In bankruptcy. No. 4541.

BRIEF OF THE JOHN ANISFIELD COMPANY.

The question is, has the bankruptcy court jurisdiction, and, if it has, ought it to exercise jurisdiction in a summary or other proceeding upon the application by a few of the numerous creditors of the bankrupt to have set aside a sale of a stock of merchandise made by the bankruptcy court and duly confirmed, where the purchaser has gone into possession, disposed of one-half of the stock, purchased and commingled new stock with the old; where the purchase price has been paid and one-half of the purchase money distributed by the trustee to the creditors as dividends; where a tender back of the purchase price was not made and is impossible, and no security or indemnity of any kind is offered to the purchaser?

It is to be noted that the petitioning creditors are asking relief in a summary proceeding where a petition by them would not be entertained in a plenary suit in equity; that since the question arose in its original form as above stated all of the property has been converted into cash by the purchaser, so that the relief sought now in money is the difference between the price which the property would have brought if it had been inventoried at ninety thousand dollars and the price which it did

bring, that the property brought sixty-three per cent of ninety thousand dollars, which is rather a large percentage even if the property had been inventoried at ninety thousand dollars; that the sale which is attacked was the second sale made of the said property by the bankruptcy court.

If the creditors of the bankrupt are entitled to any relief at all, it is through the trustee that they should obtain such relief. If the trustee is unfriendly to the proceeding (as volunteered in the brief), he may be required by order of the bankruptcy court to permit the use of his name in a proper action, or, failing that, he may be removed and a new trustee appointed.

If the trustee—the proper party—was seeking relief, it would be for an accounting as above stated, and certainly the bankruptcy court has no jurisdiction to entertain a bill for an accounting. The remedy is a plenary suit in equity in the circuit court of the United States or the State court, at the plaintiff's election.

The referee's ruling upon the question was as follows: "I prima facie hold that the court is without jurisdiction, and I prima facie hold that the petition does not state sufficient facts to entitle to relief. I am inclined to think that when the matter has gone as far as this has it should be plenary; and there is a want of proper parties. I doubt the authority of a creditor to interfere on both grounds."

In the plaintiff's brief no authority whatsoever is submitted in support of the affirmative of the proposition. The case In re Ethier (118 Fed., 107) comes nearer to the question than any other case cited in the brief, but in that case it only appears in an inferential way that the sale there attacked had been confirmed, and it does not appear that the possession of the property had changed in any respect in the interim between the confirmation and the attack.

The cases In re Mott and In re Hyde involved the sale of real estate.

The exact question was passed upon in the case entitled In re Hurdic (40 Fed., 360). In that case the property was sold, the sale confirmed, the price paid, and the purchase money distributed among the creditors. Later the sale was attacked on the ground that the purchase was made in trust for the bankrupt, and that therefore it was a concealed fraud. The court held that even if the bankruptcy court has the power to alter or amend its records at any time until the bankruptcy proceeding is formally ended, still for matters dehors the record the court may not summarily vacate a sale regular upon its face, after distribution of the proceeds, and that the remedy in such a case is by a plenary suit in equity.

In the case of In re Finlay Brothers (104 Fed., 675) it is held that, where a stock of goods has been sold in a bankruptcy proceeding, the money paid by the purchaser must be refunded if the sale is to be set aside; and that, where the purchaser has disposed of the stock of goods in the meantime, the only proper proceeding is a bill in equity by the trustee for an accounting; and further, that in no event should the sale be set aside without security being given for costs, etc.

The Circuit Court of Appeals for the Sixth Circuit in Hinds *v.* Moore (134 Fed., 221, 224), and of the Second Circuit in In re Rothchild (154 Fed., 194), held that, where a court of bankruptcy has parted with the custody of goods of a bankrupt and they have since been sold by the purchaser, the bankruptcy court has not the jurisdiction to proceed summarily for their value.

It seems to me that, regardless of precedent or authority, it is clear the bankruptcy court has not the jurisdiction to proceed in an accounting, whether the complainant is the proper one, to wit, the trustee, or even if the petitioning creditors were considered proper complainants. A court of bankruptcy has not the means to adjust the equities of the different parties. It has no means to refund the purchase price, and is not a court of equity for such a purpose as a bill for an accounting, and its jurisdiction must be limited by its powers to give complete relief to all parties.

Therefore Judge Hoyt properly declined to proceed since, if the case were within his jurisdiction, nevertheless his court was unfitted, both in respect of the parties and the subject matter, to further proceed.

Respectfully submitted.

HAROLD PRESTON,
Attorney for the John Anisfield Company.

I do not mean to press the point of the sale by consent of the remainder of the stock, as alone defeating the jurisdiction. But the remedy was for an accounting before that happened as well as after.

Received copy of the within and service of the same admitted this 18th day of July, 1911.

HUGHES, MCMICKEN, DOVELL & RAMSEY,
Attorneys for Western Dry Goods Co.

(Indorsed:) Brief of John Anisfield Company. Filed in the U. S. District Court, Western Dist. of Washington, July 19, 1911. R. M. Hopkins, clerk.

56249°—H. Rept. 1152—62-2——106

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., bankrupt. In bankruptcy. No. 4541.

BRIEF.

The petitioners, certain unsecured creditors of the bankrupt, by their amended petition, set forth in effect that on the 27th day of February, 1911, Sutcliffe Baxter was appointed receiver of the bankrupt estate of Charles Knosher & Co., a corporation, and that he was afterwards elected as trustee of said estate.

On the 9th day of March, 1911, appraisers were appointed of said estate, and said appraisers returned a purported appraisement of the estate of the bankrupt, estimating the same at the sum of forty-two thousand two hundred fourteen and 87/100 ($42,214.87) dollars.

It is further alleged in the petition that said appraisement was grossly erroneous and was induced by fraud and misrepresentation, and that the fair market value of the estate of the bankrupt was the sum of ninety thousand ($90,000) dollars.

It is alleged that a sale was made of the property so appraised by the receiver to John Ainesfield Co. for the sum of fifty-seven thousand ($57,000) dollars, which sale was confirmed.

It is alleged that immediately upon the appointment of the receiver an inventory was taken of the stock by the employees of Charles Knosher & Co., and that thereupon said employees conspired with the said John Ainesfield Co. to the end that said stock should be inventoried for a sum greatly less than its real value. That in pursuance of such conspiracy, an inventory was returned to the receiver showing a valuation far less than the actual value of said stock, and that the receiver did thereupon accept said false and fraudulent inventory as representing the true value of the stock, and that upon said inventory the appraisers did return their appraisement and estimate. And it is further alleged that the appraisers were induced to return their estimated appraisement at a grossly inadequate figure because of said false inventory, so returned in pursuance of said conspiracy.

It is further alleged that at the time of the filing of the petition, the said John Ainesfield Co. had taken possession of said bankrupt stock and realized from a sale of a portion thereof at said time the sum of about fifty thousand ($50,000) dollars in cash, and that the said John Ainesfield Co. had remaining about fifty thousand dollars ($50,000) worth of stock.

Reference was made in said petition to affidavits of Eugene G. Anderson and Ole A. Kjos, which were filed at the time. These affidavits set forth, amongst other things, conversations had with certain employees of Charles Knosher & Co., some of whom were at the time of the filing of the petition in the employ of John Ainesfield Co., in which conversation these employees stated that they had taken part in the making up of the inventory and had returned the same at a sum less than that which would represent its true value. That during the taking of the inventory, a representative of John Ainesfield Co. was furnished with lists showing the actual value of the stock, and that this course was pursued in pursuance of a plan whereby John Ainesfield Co., who were large creditors of the bankrupt, would purchase said stock at a sum far less than its actual value, being made acquainted, as aforesaid, with its true value, and would hold said stock and sell the same out until it received back the purchase price and the amount of its unsecured claim, and the balance of the stock was then to be turned over to Charles Knosher & Co.

Upon the filing of the petition it was asked that the appraisement and sale and order of confirmation of sale be set aside, and that the said John Ainesfield Co. be required to pay into the registry of the court any moneys received by them out of the sale of the stock of said bankrupt, and that the stock remaining on hand and then unsold should be returned to the possession of the receiver. Later it was stipulated that the stock remaining on hand should be sold for a lump sum by the said John Ainesfield Co. without prejudice in this matter.

John Ainesfield Co. appeared before the referee in bankruptcy and objected to the jurisdiction of the court to entertain this petition as a summary proceeding. The referee sustained the objections to the jurisdiction, and thereupon the proceeding has been certified by this court for review.

It is our contention that our petition is sufficient, if the allegations are taken as true, to establish fraud and conspiracy participated in by John Ainesfield Co. whereby an inventory was returned grossly depreciating the value of the property, and that, therefore, John Ainesfield Co. were able to secure the same for a sum greatly less than its actual value, to the injury of the petitioners and other creditors.

The affidavits, which are referred to in the petition and made a part thereof, set forth the details of this conspiracy, and while they are not made by parties who have

actual knowledge of the conspiracy, they nevertheless relate statements made by those who participated in the conspiracy, and are, therefore, in any event sufficient to create the presumption that evidence may be had upon a hearing to establish this conspiracy.

It was once suggested that the bankruptcy court would not entertain our petition in the absence of a showing of a reason why the proceeding was not initiated by the trustee, Sutcliffe Baxter. We are advised now that this objection will not be urged, inasmuch as counsel will concede that Mr. Baxter is unfriendly to this proceeding, and will decline to follow it.

The controversy between the representatives of John Ainesfield Co. and ourselves is over the question of whether or not the bankruptcy court has jurisdiction to entertain this proceeding, it being our contention that the controversy may be determined in a summary proceeding of this character, and it being their contention that it can only be contended in a plenary, independent action brought for that purpose.

In many instances the authorities throw but little light upon the question of the summary jurisdiction of bankruptcy courts. We believe, however, this to be the true rule.

The bankruptcy court may by summary proceeding determine any controversy that grows out of the administration of the bankrupt estate or any controversy between the estate of the bankrupt upon the one hand and one claiming by or under the estate of the bankrupt upon the other hand. The plenary, independent proceeding is required to determine controversies arising between the estate of the bankrupt and one whose claim is adverse to that estate. This, we believe, will be sustained by a careful reading of the authorities.

See Babbitt *v.* Dutcher (216 U. S., 102; 23 A. B. R., 519):

"There are two classes of cases arising under the act of 1898 and controlled by different principles. The first class is where there is a claim of adverse title to property of the bankrupt based upon a transfer antedating the bankruptcy. The other class is where there is no claim of adverse title based on any transfer prior to the bankruptcy, but where the property is in the physical possession of a third party or of an agent of the bankrupt, or of an officer of a bankrupt corporation, who refuses to deliver it to the trustee in bankruptcy. In the former class of cases a plenary suit must be brought, either at law or in equity, by the trustee, in which the adverse claim of title can be tried and adjudicated. In the latter class it is not necessary to bring a plenary suit, but the bankruptcy court may act summarily and may make an order in a summary proceeding for the delivery of the property to the trustee, without the formality of a formal litigation. The former class falls within the ruling in the case of Bardes *v.* Hawarden Bank (178 U. S., 524; 4 Am. B. R., 163) and in the case of Jaquith *v.* Rowley (188 U. S., 620; 9 Am. B. R., 525), which hold that such a suit can be brought only in a court which would have had jurisdiction of a suit by the bankrupt against the adverse claimant, except where the defendant consents to be sued elsewhere. In the latter class of cases a plenary suit is not necessary, but the case falls within the rule laid down in Bryan *v.* Bernheimer (181 U. S., 188; 5 Am. B. R., 623) and Mueller *v.* Nugent (184 U. S., 1; 7 Am. B. R., 224), which held that the bankruptcy court could act summarily."

The Ninth Circuit Court of Appeals, In re Grassler *v.* Reichwald (154 Fed., 478), held summary proceedings for the recovery of property taken trom the actual possession of the receiver by attachment from the State court were valid.

The court made the distinction heretofore set out between property in the possession of the bankrupt before adjudication and property in his possession after adjudication.

White *v.* Schloerb (178 U. S., 542): Held that "the judge of the court of bankruptcy was authorized to compel persons who had forcibly and unlawfully seized and taken out of the judicial custody of that court property which had lawfully come into its possession as part of the bankrupt's property, to restore the property to its custody; and therefore our answer to the first question must be the district court sitting in bankruptcy had jurisdiction by summary proceeding to compel the return of the property seized." (In re Epstein, 156 Fed., 42; In re Rose Shoe Mnfg. Co., 168 Fed., 39; Whitney *v.* Wenman, 198 U. S. 540 (inferentially).)

A receiver's sale is a judicial sale in which the court is the real seller.

In re Maloney (21 A. B. R., 502): The court has inherent power to protect its own sales and may proceed summarily.

Mason *v.* Wolkowick (150 Fed., 699; C. C. A., Mass.):

"Aside from the power of the district court with regard to the assets of bankrupts which is especially given it by the statute, it has all the authority which any court exercising equitable jurisdiction has to protect its receiver in the contracts made by them. Whenever a receiver, by direction of the court appointing him, makes a sale of assets in his possession, the parties concerned in the sale are bound to recognize him as an officer of the court; and consequently the court, appointing the receiver,

not only has power to influence in a summary manner the completion of the contract of sale, but the parties involved are deemed to have consented to such an undertaking.

Citing the foregoing case to sustain a rule, Remington on Bankruptcy, volume 1, page 1100, says:

"Purchasers at judicial sales by trustees and receivers are subject to the summary jurisdiction of the bankruptcy court."

Confidential information received from the receiver or his agents disbars a purchaser. (In re Frazen *v.* Oppenheim, 174 Fed., 713.)

It is alleged in the petition filed herein that John Ainesfield Co., respondent, had such information.

Loveland on Bankruptcy lays down the following rule:

"The court will not refuse to confirm a sale or set it aside after it has been confirmed merely because the price is inadequate; there must be circumstances impeaching the validity of the sale or such gross inadequacy as to shock the conscience."

Judicial sales in bankruptcy will be vacated on the ground of fraud or collusion. (In re Ethier, 118 Fed., 107.)

The district court has jurisdiction summarily to set aside a conveyance by an assignee if improvidently, irregularly, or without due authority where rights of third persons have not intervened. (In re Mott Federal cases, 9878; In re Hyde, 6 Fed., 587.)

The statutory law pertaining to this subject is found in section 2 (7).

The bankruptcy court shall be empowered to "cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided."

The exception is found in section 23 (a):

"The United States circuit court shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustee in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted, and such controversies had been between the bankrupts and such adverse claimants."

Respectfully submitted.

NELSON ANDERSON,
HUGHES, MCMICKEN, DOVELL & RAMSEY,
Attorneys for Petitioners.

(Indorsed:) Brief. Filed in the U. S. District Court, Western Dist. of Washington, July 19, 1911. R. M. Hopkins, clerk.

Copy of within brief received, and due service of same acknowledged this 14th day of July, 1911.

HAROLD PRESTON.

United States District Court for the Western District of Washington. In the matter of Charles Knosher & Company, a corporation, bankrupt. No. 4541. Præcipe.

To the clerk of the above-entitled court:

You will please furnish the congressional committee, under one certificate, copies of the following files in above matter: Petition of J. B. Locke & Potts; petition of petitioning creditors; brief of John Anisfield Company; brief of petitioners.

JAMES M. GRAHAM,
Chairman Subcommittee.

(NOTICE.—Attorneys will please indorse their own filings.—Rule 11.)

(Filing on back:) No. 4541. United States District Court, Western District of Washington. In re Chas. Knosher & Co., bankrupt. Præcipe. For process, etc. Filed in the United States District Court, Western District of Washington. July 5, 1912. A. W. Engle, clerk. By B. O. Wright.

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Company, a corporation, bankrupt. No. 4541.

PETITION OF PETITIONING CREDITORS FOR REIMBURSEMENT OF EXPENSES, ETC.

To the honorable judges of the above-entitled court:

Come now John Anisfield Co., The Palace of Sweets (Inc.), and F. H. Kern, petitioning creditors herein, and represent and show to the court as follows:

I. That through their counsel, Messrs. Shank & Smith, of Seattle, Washington, your petitioners prepared and filed in this court and in this cause the original petition for adjudication of bankruptcy herein, and caused subpœna to be issued and served by

the marshal; that your petitioners also paid to the clerk thirty dollars on account of his fees as required by law, and have paid the marshal on account of such service four and 24/100 dollars.

II. That no compensation has been paid to the attorneys of your petitioners for their services in preparing and filing said petition, and that by reason of the filing of said petition the property and assets of the said Charles Knosher & Company were conserved for all the creditors thereof, and that it is proper that such allowance should be made as to the court shall appear equitable.

Wherefore your petitioners pray that they be repaid the said advancement of thirty dollars so paid to the clerk and the further sum of four and 24/100 dollars paid to the marshal, and that such allowance be made to their attorneys as to the court shall seem proper in the premises.

SHANK & SMITH,
Attorneys for Petitioning Creditors.

UNITED STATES OF AMERICA,
District of Washington, Northern Division, ss:

Corwin S. Shank, being first duly sworn, on oath deposes and says: I am one of the attorneys for the petitioning creditors herein. I have read the foregoing petition for allowances, know the contents thereof, and believe the same to be true.

CORWIN S. SHANK.

Subscribed and sworn to before me this 21st day of March, 1911.

[SEAL.]

H. C. BELT,
Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed:) Petition of petitioning creditors for reimbursement of expenses, etc. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 21, 1911. R. M. Hopkins, clerk.

In the District Court of the United States for the Western District of Washington, Northern Division. In bankruptcy. In the matter of Chas. Knosher & Co. (Inc.), a corporation, bankrupt. No. 4541.

PETITION OF J. B. LOCKE & POTTS, AS PETITIONING CREDITORS HEREIN.

To the honorable judges of the above-entitled court:

Come now J. B. Locke & Potts, petitioning creditors herein, and respectfully represent and show to the court:

1. That through their attorneys McClure & McClure, of Seattle, Washington, these petitioners prepared and filed with the clerk petition for appointment of a receiver before adjudication herein, and also petition and order that they be permitted to intervene herein and join in the petition for adjudication herein, and also obtained and filed herein bond of these petitioners as petitioning creditors for the appointment of a receiver before adjudication, said bond being in the sum of five thousand dollars ($5,000.00) and expense of premium thereon being $25.00; that hearing was had upon said petition for a receiver and a receiver appointed, who forthwith took charge of the assets and has since administered same under the direction of the court.

2. That in the opinion of these petitioners the services performed by them as aforesaid were a benefit to the estate and that it is proper that an allowance should be made to these petitioners on account thereof.

Wherefore petitioners pray that such order may be entered as to the court shall seem proper.

J. B. LOCKE & POTTS,
By WALTER A. MCCLURE,
Their attorney hereunto authorized.

STATE OF WASHINGTON, *County of King, ss:*

Walter A. McClure, being first duly sworn on oath says: That he is one of the attorneys for the petitioners herein, and makes this affidavit in behalf of said petitioners, J. B. Locke & Potts, for the reason that said petitioners are absent from the State of Washington; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

WALTER A. MCCLURE.

Subscribed and sworn to before me this 18th day of March, 1911.

[SEAL.]

EMORY E. HESS,
Notary Public in and for the State of Washington, residing at Seattle.

(Indorsed:) Petition of J. B. Locke & Potts, as petitioning creditors herein. Filed in the U. S. District Court, Western Dist. of Washington. Mar. 20, 1911. R. M. Hopkins, clerk.

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., bankrupt. No. 4541.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, A. W. Engle, clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing typewritten pages to be a full, true, and correct copy of the record and proceedings in the above and foregoing entitled cause as is called for by the præcipe of the chairman of the congressional committee, as the same remain of record and on file in the office of the clerk of the said court.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of nine and 90/100 ($9.90) dollars, chargeable to the United States of America, and that the said sum will be included in my account against the United States for clerk's fees for the quarter ending September 30, 1912.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Seattle, in said district, this 13th day of July, 1912.

A. W. ENGLE, *Clerk.*
By F. S. SIMPKINS.

EXHIBIT NO. 74.

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., a bankrupt. No. 4541. Praecipe.

To the referee in bankruptcy of the above-entitled court:

You will please furnish the congressional committee, in brief form, a statement indicating the volume of files in your office in above matter.

JAMES M. GRAHAM, *Chairman.*

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., a corporation, bankrupt. No. 4541. In bankruptcy.

To the honorable congressional committee:

In compliance with the subpœna or praecipe duly served upon me, a copy of which is attached hereto, I have the honor to report and certify as follows, to wit:

That the files in the above-entitled matter now remaining in my office are briefly summarized as follows:

First. The record in the appearance docket covers 12¼ record pages.

Second. There has been filed in said proceeding 250 proofs of claims.

Third. The attention of the court and counsel was required at meetings and formal hearings had therein on twenty different days.

Fourth. Twelve formal petitions were filed herein.

Fifth. Thirty formal orders were made and filed herein.

Sixth. Five formal reports of the trustee were filed herein.

Seventh. Nine objections to claims were filed herein.

Eighth. The papers on file in my office, exclusive of proofs of claims, cover 311 pages, not including the backs or the endorsements thereon. Certain other papers have been on file in my office but have been transmitted to the clerk of the above-named court as a part of my return upon petitions for review, such papers covering probably fifty pages or more. And the undersigned, the referee in bankruptcy before whom the above-entitled matter is pending, being of the opinion that the foregoing is a compliance with said subpœna or praecipe, hereby certifies the same as appearing from the records and files in his office, with the statement that if anything further is required by the honorable committee it will be supplied at once.

Dated at Seattle, in said district, this 9th day of July, 1912.

JOHN P. HOYT, *Referee in Bankruptcy.*

(Filing on back:) No. 4541. In the U. S. District Court, Western District of Washington, Northern Division. In the matter of Charles Knosher & Co., a corporotion, bankrupt. Certificate made in compliance with subpœna.

Exhibit 75 not printed.

EXHIBIT No. 76.

In the District Court of the United States for the Western District of Washington, Northern Division. In the matter of Chas. Knosher & Co. (Inc.), a corporation, bankrupt. No. 4541. In bankruptcy.

This being the day appointed for the first meeting of creditors under the said bankruptcy, of which due notice has been given, the undersigned referee of the said court in bankruptcy sat, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy, and he does hereby certify:

That the creditors whose claims had been allowed and were present, or duly represented, unanimously elected Sutcliffe Baxter, of Seattle, in said district, as trustee of said bankrupt's estate, and fixed the penalty of his bond in the sum of $5,000.00, which action was and is approved by said referee and this order made and filed accordingly.

Dated at Seattle, in said district, this 20th day of March, 1911.

JOHN P. HOYT, *Referee in Bankruptcy.*

I, John P. Hoyt, the referee in bankruptcy before whom the above-entitled matter is pending, do hereby certify that the foregoing is a true copy of the original order on file in my office, and of the whole thereof.

In witness whereof I have hereunto set my hand this 16th day of July, 1912.

JOHN P. HOYT, *Referee in Bankruptcy.*

(Filing on back:) No. 4541. In the U. S. District Court, Western District of Washington, Northern Division. In the matter of Chas. Knosher & Co. (Inc.), bankrupt. Appointment of trustee. Filed March 20th, 1911, 3 p. m. John P. Hoyt, referee.

EXHIBIT No. 77.

In the United States Circuit Court of Appeals for the Ninth Circuit in Bankruptcy. The Western Dry Goods Company, a corporation, et al., petitioners, *vs.* Sutcliffe Baxter, receiver and trustee of the estate of Charles Knosher & Co., a corporation, bankrupt, and John Anisfield Company, respondents. In the matter of Chas. Knosher & Co., bankrupt. No. 2050. Upon review from the United States District Court for the Western District of Washington, northern division.

BRIEF OF RECEIVER AND TRUSTEE.

Leopold M. Stern, Walter A. McClure, McClure & McClure, attorneys for repondents other than John Anisfield Company.

ON MOTION TO DISMISS PETITION.

Respondents (not including John Anisfield Company) have heretofore served and filed their motion to dismiss the petition upon the following grounds:

1. Because the case involves a controversy arising in bankruptcy proceedings under either section 24a or section 25a (3) as distinguished from proceedings in bankruptcy under section 24b, and the decision in it is reviewable by appeal only.

2. Because the determination of this case involves a consideration of evidence and a determination of disputed questions of fact.

Before proceeding with the consideration of the case on its merits, we urge our motion to dismiss and support it with the following brief of the law:

I. The petition to revise under section 24b of the bankruptcy law, filed in this court, challenges the propriety of allowances made to the receiver and trustee, and to his attorneys, the sums allowed to each being in excess of $500. In such a controversy arising in a bankruptcy proceeding as may be reviewed by appeal under section 24a or under section 25a (3).

These sections of the act are as follows:

"Section 24a. The Supreme Court of the United States, the circuit court of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia."

"Section 24b. The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved."

"Section 25a. That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit: (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be."

In re Theodore E. Curtis (91 Fed., 737; 4 Am. B. R. 17, C. C. A., Ill.) involved a controversy between the trustees of a bankrupt estate and counsel for the petitioning creditors over the allowance made to the latter for services in procuring the adjudication in bankruptcy. An allowance was made and ordered paid out of the estate. The trustees, regarding the compensation fixed by the district court as excessive, brought the order to the court of appeals for review on appeal. Justice Jenkins, delivering the opinion, said:

"In the administration of an estate in bankruptcy the law permits the allowance of 'one reasonable attorney's fee for the professional services actually rendesed * * * to the petitioning creditors in involuntary cases.' (30 Stat., c. 541, sec. 64b, subd. 3.) The act grants an appeal to this court from an order of the district court sitting in bankruptcy, allowing or rejecting any claim exceeding $500 against the bankruptcy estate. (30 Stat., c. 541, sec. 25a, subd. 3.) This clearly lodges in the appellate court the right to review the allowance of any such claim."

Smith *v.* Cooper (120 Fed., 230; 9 Am. B. R. 755, C. C. A., Ga.) was likewise a case involving compensation claimed by attorneys for their services on behalf of the petitioning creditors, *and for services rendered under employment on authority of the court to the receiver and trustee in the bankruptcy matter.* In this instance, the attorneys, being dissatisfied with the allowance fixed by the district judge and desiring a review thereof by the appellate court, and being uncertain in respect to the proper procedure, prosecuted simultaneously an appeal and a petition for review, to review the same judgment. The court of appeals dismissed the petition for review at the costs of the petitioner, but on the appeal amended the decree in favor of the appellants and assessed the costs of the appeal against the trustee.

The court after considering and quoting extensively from In re Curtis, *supra*, said:

"In this view of the law, both as to the right of appeal and the determination of the amount of a reasonable fee for services actually rendered in involuntary bankruptcy, we fully concur."

Further on the court said:

"It thus appears that the services for which compensation is claimed were actually rendered in the bankruptcy court, in this court, and in the Supreme Court of the United States; that they were meritorious, and so far successful that all the funds brought into the bankruptcy and in the hands of the court for distribution were thereby obtained.

"The section of the bankruptcy act of 1898 (U. S. Comp. St., 1901, p. 3447) authorizing and requiring the payment of such fees as claimed herein is headed 'Debts which have priority,' and clause 'b' provides that such fee shall be paid as a part of the costs of administration, and before wages due workmen, etc."

The allowances sought to be reviewed in this court come within the purview of section 64b (3) of the bankruptcy act referred to in the two cases above cited. These allowances are part of the costs of administration, as are allowances for petitioning creditors' attorneys' fees. The sums awarded exceeded $500; therefore the remedy of the petitioners was by appeal under section 25a (3), and probably also under section 24a.

II. This court may perhaps, without rejecting the rule announced in the two cases above cited, hold that while appeal will lie to bring the controversy here for review, that procedure is not exclusive; that the order complained of is an administrative one, a part of the intermediate administrative steps in the "proceedings in bankruptcy," and the aggrieved parties had their choice between appeal and petition for review under section 24b.

Even so, the petition should be dismissed because it attempts to invoke the consideration of evidence to determine disputed questions of fact, whereas, under the procedure, the court can not do this, but is limited by the terms of the act to the determination of questions of law only, arising in the proceeding, and must accept the facts as found by the district court. It is only in cases of appeal that the court can review the evidence.

This court so construed the act In re Grassler & Reichwald (154 Fed., 478; 18 Am. B. R., 694), wherein Gilbert, J., said:

"Section 24b of the bankruptcy act of July 1, 1898, gives the circuit court of appeals authority to superintend and revise in matters of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. It was intended thereby to provide a summary method for revising the orders and decisions of courts of bankruptcy upon questions of law, and the section does not contemplate any review of facts."

(In re Rouse, Hazard & Co., 1 Am. B. R., 231; 91 Fed., 96; In re Purvine, 2 Am. B. R., 787; 97 Fed., 192; 37 C. C. A., 446; In re Whitener, 5 Am. B. R., 198; 105 Fed., 180.)

Likewise, In re Blanchard Shingle Co. (164 Fed., 311; 21 Am. B. R., 142) this court dismissed the appeal, because the case was not appealable, and in response to the request of appellant that the appeal be treated as a petition for review, the court, speaking through Ross, J., said:

"As in the case, a consideration of the facts is essential to any review of the decision of the court complained of, it is clear that the appeal can not be treated as a petition for revision, as is suggested by the appellant may be done. That is only permissible where questions of law only are involved. * * *

"In the light of these authorities, it seems to us that the case at bar is not appealable under section 23a of the bankruptcy act, and, as the record shows that the asserted lien of the appellant depends upon controverted facts, it clearly is not subject to revision under section 24b. The appeal is dismissed."

This subject was also considered at length by this court, and the distinction between appeal and review on petition pointed out, in Morehouse *vs.* Hardware Company (177 Fed., 337; 24 A. B. R., 180).

Turning to other jurisdictions and examining recent cases, we call particular attention to In re Kirkpatrick (148 Fed., 711; 17 A. B. R., 594; C. C. A. Mich.), because that was a petition to review an order of the district court fixing the receiver's compensation. The court said:

"On this petition for a review of the order of the district judge made in conformity with his opinion as above stated, two questions are stated by counsel for the petitioner:

"1st. Did the judge err in respect to the question of law touching the limitation of the receiver's compensation? and

"2nd. If he did and the amount allowable is not limited by the bankruptcy act as held by the judge, whether the sum allowed by the referee was a resaonable sum?

"We shall have occasion to deal only with the first of these questions."

The opinion then goes on to state that upon the face of the record the district court had followed the wrong section of the bankruptcy act in measuring the receiver's fees, and for that reason directs that the order under review be reversed, but concludes the opinion as follows:

"Inasmuch as upon this petition we can not find facts, but decide only questions of law, and the district judge did not consider the facts upon the proper legal basis, it seems the proper course to simply reverse the order with a direction to proceed in conformity with this opinion. It was competent for the district judge to have ordered a further hearing before himself on additional evidence, if he had not adopted the erroneous rule of law."

In the case of Schuler *vs.* Hassinger (177 Fed., 119; 24 A. B. R., 184; C. C. A. Ala.) an attempt was made by petition for review to set aside an order of sale of certain property. The court said:

"To determine as the ultimate proposition that the sale was unfair, illegal, and void would require, in the absence of an agreed statement of facts or finding of facts by the referee or court, a consideration of all the evidence in the record entirely beyond inquiries this court can make on a petition for revision in matters of law."

In the matter of Otho L. Hays (24 A. B. R., 691; C. C. A. Ohio), which was a petition to revise an order of the district court approving the account of an assignee of the state court and requiring payment of the balance to the trustee, the court said:

"We are urged to reverse these findings and to determine the question of the assignee's right to further compensation and to the disbursements in question in accordance with the assignee's contentions. But in a proceeding to revise under section 24b this court is limited to a review in matters of law, and only questions of law arising out of the facts found or conceded can be considered. We can not determine questions of fact involved in a finding or order sought to be reviewed. We call attention to the following decisions of this court and of the supreme court." (Court cites numerous cases.)

In re Leech (171 Fed., 662; 22 A. B. R., 600; C. C. A. Ky.) was a review of a summary proceeding instituted by a trustee to compel the bankrupt to surrender concealed property. The court said:

"If this were an appeal, we might ourselves review the evidence, but on a review of the proceedings we are limited by the terms of the act to a determination of questions

of law arising in the proceedings, and must accept the facts as found by the district court."

In re Dunlop (166 Fed., 545; 19 A. B. R., 360; C. C. A. Minn.) was a controversy brought to the circuit court, the ruling assigned as error being presented both by petition to revise and by appeal. The court said:

"As it involves the consideration of the evidence of the relation of the parties, and of their acts in making and performing the contract, it will be considered on the appeal, and the petition to revise is dismissed."

Hendricks *vs.* Webster (159 Fed., 927; 20 A. B. R., 112; C. C. A. Iowa) involved the priority of liens in a bankruptcy proceeding. The court said:

"James Hendricks appealed from said decree to this court and also filed an original petition asking for a review of the same. As we are asked to consider evidence in the record, we dismiss the petition to review, and will hear the case upon the appeal."

In re Frank (25 A. B. R., 486; C. C. A. N. Dak.), involved a summary proceeding to compel a bankrupt to deliver concealed assets to the trustee. An order requiring such delivery having been entered, the bankrupt sought to review the same in the circuit court of appeals by petition for review. The court said:

"The petition to revise under section 24b can properly present for determination only questions of law and not doubtful or disputed questions of fact. But when facts are agreed upon, or are proven or admitted, that leave nothing for determination but their legal import, such a determination of them by a court of bankruptcy may be reviewed upon a petition to revise. But the review of decisions which require the consideration of conflicting evidence, or evidence though not conflicting from which different deductions or conclusions may reasonably be drawn, may not be reviewed upon a petition to revise, but upon appeal only. (In re Lee, C. C. A. 8th Cir.; 25 A. B. R., 436; 182 Fed., 579)."

In re Lee, cited by the court, was a petition to review an order of the district court determining the validity of a lien. The trustee moved to dismiss the petition upon grounds similar to those we urge in support of our motion. The court denied the motion, using the following language:

"Undoubtedly there is a controversy here arising in a bankruptcy proceeding which is reviewable by appeal under section 24a, but there is no prohibition in the bankruptcy law of the revision in matter of law of such a controversy under section 24b, and if no controversy arising in bankruptcy proceedings may be reviewed under the latter section, then nothing may be reviewed under it, because where there is no controversy there is nothing to review or to decide. The fact is that the grant of jurisdiction to the circuit court of appeals to review by appeal the final decision of a controversy arising in bankruptcy proceedings of which that court would have had appellate jurisdiction if it had arisen in any other case in a Federal court under section 24a, and the grant of jurisdiction to revise and superintend in matter of law the proceedings of the inferior courts of bankruptcy under section 24b, are not exclusive of each other, but cumulative or concurrent grants, the former of jurisdiction to review questions of law and of fact, the latter of jurisdiction to review questions of law alone. An aggrieved party often has a choice of these methods. A decision of a controversy arising in bankruptcy proceedings which involves the validity of the claim of a creditor to a lien upon the property of the bankrupt, or its proceeds, under administration in possession of the court, is a proceeding in bankruptcy within the meaning of section 24b of the bankruptcy law and reviewable in matter of law upon a petition to revise. (The court cites numerous cases.)

"There is no doubt that a petition to revise will not lie to invoke the consideration of evidence to determine disputed questions of fact, but the record is that this controversy was tried and decided upon agreed facts which are spread before us."

In re Irwin (174 Fed., 642; 23 A. B. R., 487; C. C. A. Pa.) involved a review of an order of the district court increasing a bankrupt's attorney's fee above the sum fixed by the referee. The amount to which the fee was raised by the district court was one hundred dollars. The matter was brought up by petition for review filed by the trustee. The court refused to consider the question of the reasonableness of the fee and stated:

"On a petition to this court to revise, we can consider only questions of law. We are not at liberty to disturb the district court's findings on the facts."

In the case of Coder, trustee, *vs.* Arts (213 U. S. Sup. Ct., 223; 22 A. B. R., 1) the court, speaking through Justice Day, said:

"By paragraph b of section 24 the circuit courts of appeals have jurisdiction to superintend and revise, in matters of law, proceedings of the several inferior courts of bankruptcy within their jurisdiction. The proceeding under this section is designed to enable the circuit court of appeals to review questions of law arising in bankruptcy proceedings and is not intended as a substitute for the right of appeal upon controverted questions of fact under the right of appeal given in controversies arising in

bankruptcy proceedings (section 24), or the special appeal given in certain cases under section 25."

The court then goes on to discuss a proceeding in bankruptcy as distinguished from a controversy arising in the course of bankruptcy proceedings, and finds that the controversy in that case was a proceeding in bankruptcy, and, the matter involving the priority of a lien and the amount of the claim being in excess of $500, an appeal under section 25a (3) was the proper remedy for reviewing the order of the district court.

In re Friend (134 Fed., 778; 13 A. B. R., 595; C. C. A. Ill.) was a petition for review. The court in an extended opinion discussed the distinction between sections 24b and 25a and speaking of the proceeding under 24b said:

"The intention is expressed that a review of the summary orders and judgments shall not extend to an examination of the correctness of the facts, but only to the law applied to the facts on which the court admittedly acted."

Other cases, ruling along the same lines as the cases from which we have heretofore quoted, and holding in effect that where the record in the case involves a mixed question of law and fact, review must be by appeal and not by petition for revision, and that upon review by petition, an appellate court is not at liberty to disturb the district court's finding of facts, are the following:

Thomas *vs.* Woods, 170 Fed., 764; 23 A. B. R. 132; C. C. A. Kans.; Steiner *vs.* Marshall, 140 Fed., 629; 15 A. B. R. 486; C. C. A. Md.; In re Whitener, 105 Fed., 180; 5 A. B. R., 198; C. C. A. Tex.; Francis *vs.* McNeal, 170 Fed., 445; 22 A. B. R., 337; C. C. A. Pa.; Thompson *vs.* Mauzy, 174 Fed., 611; 23 A. B. R., 489; C. C. A. W. Va.; In re Moore & Bridgeman, 166 Fed., 689; 21 A. B. R., 651; C. C. A. Tex.; Landry *vs.* San Antonio Brew. Ass'n, 159 Fed., 700; 20 A. B. R., 226; C. C. A. Tex.; Lennox *vs.* Allen, 167 Fed., 114; 21 A. B. R., 648; C. C. A. Mass.

To sum up our argument, this controversy was certainly not tried below upon agreed or admitted facts. The character, importance, and efficiency of the services performed by these respondents was a vital issue of fact which was tried upon numerous affidavits filed by the parties to the controversy. The court below read these affidavits, besides examining the records and files reporting the acts and doings of the receiver and his counsel. No separate findings of fact and conclusions of law were made, but the final order of the district judge entered September 23rd, 1911, and brought here for review (record, page 102), amounts to more than a mere order. It is in effect his findings of fact, conclusions of law and judgment.

This court in this proceeding cannot consider the evidence. It cannot review the conflicting evidence in the record. The petition should therefore be dismissed.

Even if our motion to dismiss the petition is denied, this court in the consideration of the petition is limited to the recitals of fact as made by the court below in its order of September 23rd, 1911 (record, page 102), in determining whether the allowances made by the court are within the law. These recitals are conclusive upon this court. The correctness of the facts as found by the court below can not be questioned, although, of course, this court may determine whether the district judge applied the law correctly to these facts.

At this time, also, we desire to object to the consideration of any affidavits as a part of the record. Affidavits are not a part of the record unless incorporated by bill of exceptions.

If our objection is sustained, there is nothing before this court but the order of September 23rd, 1911. The recitals of fact in that order of September 23rd, 1911, legally stand as proven and their legal import only is before this court.

ON THE MERITS.

Without waiving the foregoing motion, and expressly saving and reserving all rights thereunder, these respondents, for the purpose of fully complying with rule 24 of this court, submit the following discussion of the case on the merits, for consideration by the court in case the motion to dismiss shall be denied.

STATEMENT OF THE CASE.

This is an involuntary bankruptcy proceeding originally brought by certain creditors against Chas. Knosher & Co., a corporation engaged in general merchandise business in the city of Seattle. Another creditor intervened under section 59f of the bankruptcy act, and joined in the petition for adjudication. The intervenor also filed a petition for the appointment of a receiver before adjudication, accompanying said petition with the bon required by section 3e. (Record, pp. 15–16.) The district court thereupon appointed Sutcliffe Baxter receiver before adjudication, the order of appointment authorizing the receiver to continue the business in the usual course of retail trade if such action should be deemed advisable by the receiver. (Record, p. 110.)

The appointment was made February 27, 1911, and Mr. Baxter qualified and took possession on the same day. March 20, 1911, Mr. Baxter was elected trustee by the creditors and has continued as trustee. Mr. Baxter is a first-class business man, having had 49 years' experience in merchandising (record, p. 109), and in his capacity and integrity the district judge had perfect confidence (record, p. 49).

When the receiver took possession he found the store full of customers attracted by extensive advertising of a special sale, and the receiver deemed it best to keep the store open until he had opportunity to determine the future policy of the business and to ascertain the wishes of the creditors. (Record, p. 110.) During the day the receiver consulted with numerous creditors and representatives as to the advisability of continuing the business at retail and after such consultation it was agreed by all parties that it would be best to close the store at the conclusion of the day's business and proceed at once to take an inventory of all the property. (Record, pp. 17, 50, 111.)

The premises occupied by the business were three full sized store rooms (with balcony) and a full basement under the entire store. The main floors, the basement and the balcony were filled with merchandise. (Record, p. 111.)

When the receiver took possession, he retained the entire force of employees, and upon closing the doors for the purpose of taking inventory the same force was retained to speed the completion of the inventory, the expense of rent and insurance being large. The total number of employees was between 40 and 50. (Record, p. 111.)

The inventory was begun February 28, 1911, and completed March 5, 1911. (Record, p. 111.) The receiver found that all merchandise was marked only with the retail selling price, there being nothing to show cost; that in fixing the selling price no specific percentage was added to cost, but that some merchandise was offered at 25 per cent profit, other merchandise at 50 per cent profit, and other merchandise at 100 per cent profit, so that it was impossible to ascertain original cost by deducting a certain definite percentage, to be regarded as profit, from the selling price with which the merchandise throughout the store was marked; that the business was divided into different departments, such as domestics, ladies' cloaks and suits, crockery and tinware; that each department was under the management of a manager, experienced in the particular line of merchandise carried in that department, and acquainted with its original cost, in most cases such department manager having been also the original buyer of the merchandise. (Record, p. 111–112.)

The general manager of the store was E. Y. Barr, 48 years of age, of 30 years' experience in the dry-goods business, a reliable and trustworthy man. (Record, pp. 111, 112.) Mr. Baxter retained Barr to superintend the inventory, and after discussion it was decided that the only practical way to take the inventory was to have each department manager take the inventory of his own department, fixing the cost according to his personal knowledge, and by reference to the original invoices. (Record, p. 112.)

The receiver was personally present in the store from morning until night from Tuesday, the 28th day of February, 1911, when the inventory was begun, up to and including Sunday, the 5th day of March, 1911, when the inventory was completed. He saw to it that the different departments turned in the sheets showing the quantities and values of the merchandise in said departments, from day to day, as the work progressed, to the office, where the bookkeeper superintended the assembling of the sheets and the transcribing thereof into a permanent inventory with numerous copies thereof. The original inventory, consisting of 129 pages, was filled, when completed, in the office of the referee in bankruptcy, and the copies retained in the store for bidders. The inventory was correctly taken and transcribed. (Record, pp. 107–108, 114, 122–124, 127, 128.)

When the inventory had been completed, the receiver found that the general sentiment among the creditors was in favor of an immediate sale, because of the great expense for rent, insurance, watchmen, and similar itens (rent alone being $75 per day), and because the merchandise was largely of such a character that it was rapidly becoming more and more unseasonable and because if any material delay occurred in effecting sale the merchandise would bring a proportionately lower price. (Record, p. 114.)

The receiver presented to the referee these facts and the desire of the creditors for immediate sale and obtained an order that the merchandise and fixtures be offered for sale March 13, 1911, on sealed bids. (Record, p. 114.)

In the interim the receiver was in the store every day from morning until night, attending to correspondence and getting accounts adjusted, attending to office work, getting the books posted to date (the books of account having been neglected for a long period), meeting prospective bidders who desired to look over the stock, and adjusting controversies over certain merchandise which had come into the store imme-

diately prior to bankruptcy and which the respective creditors shipping said merchandise desired to reclaim. (Record, p. 115.)

The receiver also arranged a transfer of all insurance, and placed additional insurance on the property. (Record, p. 18.) He diligently endeavored to collect the outstanding book accounts, and reduced same to cash as rapidly as possible. (Record, p. 19.)

He gave his entire time and attention to the conduct, care, and management of the business from the time he took possession until the business was delivered to the purchaser on March 16, 1911. (Record, pp. 19–20.)

March 13, 1911, the receiver attended the sale before the referee. When the bids were opened the highest bid was $50,000.00. The receiver became convinced that an appreciably higher bid could be obtained, and after effort and trouble obtained from one bidder a guaranty of an increase of 10 per cent over the $50,000.00 bid. Thereupon the receiver recommended to the court that all bids be rejected, and that new bids be received, with the requirement that upon resale the minimum bid should be $55,000.00, and order was entered accordingly. Resale was had March 15, 1911, and a bid of $57,000.00 was received, which was accepted by the court. (Record, p. 115.)

The price so realized was 79.9 per cent of the invoice value as shown in the receiver's inventory, which inventory (not including auto delivery wagon, separately listed and correctly deemed by the receiver as having no place among either the merchandise or fixtures), with the appraisement, was as follows:

	Inventory.	Appraisement.
Merchandise	$66,858.13	$40,114.87
Fixtures	4,477.00	1,500.00
Auto delivery wagon		600.00
	71,335.13	42,214.87

It seems necessary for us to volunteer the foregoing footings of the receiver's inventory and of the appraisement. These figures were brought to the attention of this court by appellants, although the alleged errors in respect to these very figures constitute the gravamen of the attack upon both respondents.

Take the most extravagant estimate of the valuation of the merchandise and fixtures deducible from the assertions made by the appellants (Record, pp. 57–58), at at $95,000.00; the merchandise and fixtures brought 60 per cent of this estimate. Upon the estimate of $90,000.00, suggested by the appellants in their brief as the true valuation of said assets, and upon which valuation they base their attack upon the receiver, the price realized was equivalent to 63.5 per cent.

In the inventory made by the receiver the fixtures are priced by the same standard as the merchandise, to wit, the original cost price to the bankrupt. It will be noted, however, that while the appraises' figures on the merchandise were approximately 60 per cent of the receiver's inventory, their figures on the fixtures were but 33⅓ per cent of the receiver's inventory. No attack has been made on the correctness of either the receiver's or the appraisers' estimates on the fixtures.

The purpose of an appraisement is to advise the court as to the approximate price which a sale of the assets should realize. The appraisers' opinion that the fixtures could not be expected to bring more than 33⅓ per cent of the invoice value, while the stock should bring 60 per cent of the invoice value, will not strike any person of average experience as unreasonable. Fixtures removed from a store in which they were originally built or installed lose 75 per cent of their original cost, while the loss on the merchandise is much less.

In figuring the percentage realized upon the invoice value of the merchandise and fixtures by the sale at $57,000.00, no distinction was made between the merchandise and fixtures; that is to say, we assumed that the purchaser bid a like percentage upon the fixtures as he did upon the stock. This assumption, however, is not correct. Regarding the matter in the light of ordinary business experience, it must be believed by the court that in making up his bid of $57,000.00 for the merchandise and fixtures, the purchaser did not figure the fixtures at 79.9 per cent of the invoice value thereof, but say at 33⅓ per cent of the invoice value thereof. This would mean that of the $57,000.00 bid for the merchandise and fixtures, $1,392.33 was for the fixtures, and $55,607.67 for the merchandise. On this basis the price of $55,607.67 amounted to 83.2 per cent of $66,858.13, the receiver's merchandise inventory.

In considering the above phase of the controversy, the district judge in his memorandum decision pertinently said (record, p. 58):

"A stock of dry goods and general merchandise, in a store which has been in trade more than one year, necessarily includes odds and ends and things depreciated in

value by age. The instances are rare in which so large a stock as the one in question can be readily sold in bulk, for spot cash, at a price exceeding 50 per cent of the invoice price; or even that much net, by selling at retail or in lots. * * * In the light of experience gained by administration of other insolvent estates, including stocks of merchandise, and tested by the bids for this identical property submitted by competent buyers who made their own estimates of its worth, I regard the achievement of the receiver in obtaining such a price in cash for such property, by a quick sale, as something extraordinary and commendable."

The same counsel who represented the receiver from the time of his appointment continued to act for him after he had been appointed trustee. Like Mr. Baxter, they are still engaged in the administration of the estate. As stated in the affidavit of one of the counsel (record, p. 132):

"A true estimate of the value of the services of the receiver's counsel can not be made excepting by an examination of the files and records in the referee's office, which to some extent will show the numerous petitions and orders which had to be prepared and drawn in connection with the administration of the estate; that furthermore, there were many controversies over merchandise which had been received into the store immediately prior to the filing of the petition in bankruptcy, the creditors shipping these goods desiring to procure their return; and that many other questions arose in the course of the administration of the estate and prior to the sale of the assets, which necessitated the receiver consulting his attorneys every day and several times in each day and also required the receiver's attorneys to appear frequently before the referee."

Appellants did not bring before this court the files and records in the lower court, which would aid in advising this court as to the volume and character of the labor performed by counsel for the receiver. These records were before the district judge in the consideration of this question. They were very material. In his opinion (record, p. 55) the district judge states that he studied the records for the purpose of deciding the controversy. Unquestionably these records were such as to satisfy the district judge that the allowance made to respondents was reasonable. These records should have been brought before this court by opposing counsel. Their failure so to do deprives this court of the opportunity to study these records, and in the absence of such showing, this court must conclude that the court below found ample evidence in these records, substantiating the claim of counsel for the receiver respecting the volume, importance, and necessity of their labors.

Any attorney of experience and standing well knows the labor entailed upon counsel responsible for the administration of an estate of the magnitude of this, and how such labors are greatly enlarged and made more onerous when the insolvent has been as reckless and improvident and careless as the record sufficiently shows the bankrupt to have been, and how such labors are further increased when the assets are crowded to an early sale. The sworn statement in behalf of the objecting creditors that the attorneys of the receiver "rendered no services that added to the estate of the bankrupt, * * * that the time consumed by them could not have exceeded one day" (record, p. 78) shows an ignorance of the duties and labors of attorneys employed in the administration of insolvent estates, and lack of investigation—or a bias—making correct conclusion impossible, which reduce the statement to an absurdity.

In passing upon the question of allowances, the district judge found as facts:

That on March 20, 1911, on petition theretofore filed, an order was entered allowing the receiver $2,500.00 and his attorneys $2,500.00; that on April 4, 1911, certain creditors filed objections to said allowances and thereupon an order was entered that the receiver and his attorneys show cause April 10, 1911, why said order of March 20, 1911, should not be set aside, the petition previously filed to stand as the application required by law, said sum of $2,500.00 to be treated as the compensation asked by the receiver; that ten days' notice by mail to all creditors, specifying the amount asked be given of the receiver's application for his allowance, and that objections to the allowance asked by the receiver be heard at a time to be fixed by the court after the giving of such notice, and that objections to the allowance of the attorneys of the receiver be heard at the same time; that thereupon, pursuant to order, the refereee in charge of said bankruptcy proceeding gave notice of at least ten days to all creditors by mail to the respective addresses of said creditors as same appeared in the list of the creditors of the bankrupt and as filed with the papers in the case, the said notice reciting that the receiver had made application for an allowance of $2,500.00 for his services, and that a hearing upon such application would be had before the court May 15, 1911, on which last date hearing was postponed and thereafter adjourned by successive orders of continuance until July 10, 1911, when the matter was submitted, with leave to both parties to make such additional showing in writing as might be desired; that at such hearing the matter of the compensation of Sutcliffe Baxter as trustee as well as receiver, and of the attorneys of the receiver and trustee, was sub-

mitted by the creditors and these respondents to the court for decision; that the total amount of cash actually disbursed by said Sutcliffe Baxter, as receiver, was the sum of $61,312.87, and the total cash received by him as trustee and in process of disbursement is $54,496.00, and that said amounts are the sums to be considered by the court, pursuant to stipulation of the parties, in determining the said matter of compensation; that the total number of creditors of said bankrupt estate is at least 310, and the total indebtedness at least $164,777.58; that in response to the notice given by the referee, fixing the date for hearing the receiver's petition for allowance, not to exceed 61 creditors, whose claims do not exceed $42,164.50, appeared in opposition to the said allowance (elsewhere in the record, at page 131, it appears that one of those creditors, the Tootle-Campbell Company, with a claim of $26,000.00, authorized no objection to the allowance to the receiver's counsel, thus leaving only 60 creditors, having claims not exceeding $16,164.50, as objectors to the attorney's allowance), and that no objection was made or filed by or in behalf of 249 creditors whose claims aggregate $122,613.03, the same constituting the majority of said creditors; that the recitals of the receiver's petition for allowance and the papers filed in support thereof and the reports made by the receiver and trustee are true, *and that the said Sutcliffe Baxter, as receiver, conducted the business of the bankrupt*(record, pp. 99–101); that the entire showing made by the objecting creditors was candidly met by counter-affidavits which convinced the court that the receiver, his attorneys, and employes transacted the business with fidelity and with due regard for the best interests of all concerned, and that they earned commendation as well as compensation (record, p. 57); that compensation should be allowed Mr. Baxter, in a lump sum, to be computed on the basis of the maximum prescribed by the bankruptcy law, for all of his services as trustee of the estate as well as receiver, and an equal amount to his attorneys for their compensation. (Record, p. 59.)

The district judge accordingly found Mr. Baxter entitled to compensation as receiver on $61,312.87, for the performance of his ordinary duties as such officer, at the rate provided in section 48a of the bankruptcy act, and to extra compensation at the same rate on said $61,312.87 for conducting the business of the bankrupt as receiver, and further found him entitled to compensation on $54,496.00 for his services as trustee to the closing of the estate at the rate provided in section 48a, and further found the attorneys of the receiver entitled to an equal amount for their services to the date of the closing of the estate. (Record, p. 101.)

Accordingly an order was entered by the district judge on September 23, 1911, allowing the sum of $2,201.20 to Mr. Baxter in full of all services rendered and to be rendered by him, and the same sum to his attorneys in full of all services rendered and to be rendered by them. (Record, p. 102.)

That is the order sought to be reviewed and revised by this court. (Record, p. 5.)

We have deemed it incumbemt upon us to make the foregoing statement at the risk of being tedious, because the transcript of record is neither chronologically nor logically arranged, nor does the brief of appellants accurately present the necessary history of the case.

In passing we must mention the statement in appellant's brief (p. 21) that an allowance of $2,201.20 was made to the receiver's attorney (record, p. 102) and an additional $500.00 was allowed to the attorneys of the trustee (record, p. 144). The statement is a half truth. The $500.00 allowance to the trustee's attorneys was ordered April 19, 1911. (Record, pp. 144, 151.) Notwithstanding said order, and the fact that the statutory time for appeal had expired, the trustee's attorneys thereafter voluntarily submitted the matter of their fees to the district judge for determination (as did Mr. Baxter, also, his fees as trustee), when the question as to the fees of the receiver and his attorneys was raised by appellants, and Judge Hanford's order (entered September 23, 1911), was that the $2,201.20 should be in full of all fees. (Record, pp. 59, 100–102.) The fact is incontestable (and well known to opposing counsel) that the attorneys finally had in all only the $2,201.20. We are at a loss to know why the statement should have been made. But even if opposing counsel should say that a total of $2,701.20 has been retained (which they will not), that is not the question here. The sole question here for determination is whether or not the order of September 23, 1911 (record, pp. 98–102) shall stand. This court can certainly trust Judge Hanford to enforce his own orders.

We must also call the court's attention to that preliminary recital in the district judge's order dismissing the creditors' petition for vacation of sale, wherein it is stated that the receiver and his attorneys appeared "to resist said petition." (Record, p. 139.) This is an error which is at once clearly apparent when it is remembered that the hearing before the district judge as to the sale was entirely upon the record as certified by the referee, and that neither the memorandum decision of the district judge, nor the referee's record and certificate show any opposition whatever by Mr. Baxter or his counsel. (Record, pp. 60, 95–97.)

What has been above stated applies also to the last paragraph on page 9 of appellants' brief, the statements in said paragraph being purely volunteer and meriting criticism, and we challenge their accuracy and propriety.

The objecting creditors attack the allowance to receiver and his counsel largely upon the ground that they had been negligent and careless in the preparation of the inventory. Of course, we were compelled to defend ourselves against this charge. An issue was also raised between the Anisfield Company, the purchaser, and the objecting creditors regarding the correctness of the receiver's inventory, and that fact alone is the basis of opposing counsel's assumption set forth on page 9 of their brief, that the trustee and his counsel were hostile to the efforts of the objecting creditors to vacate the sale, and that any request upon them to initiate the proceeding would have been fruitless. Such a deduction is wholly unjustified from the mere fact that the receiver and his counsel were forced to defend the correctness of the inventory. We can not permit such a statement to go unchallenged, because it may have the effect, even though mentioned in connection with the controversy between the Anisfield Company and the objecting creditors, of leading the court to believe that the trustee and his counsel were not loyal to their trust.

Situations arise when the trustee and his counsel may in good faith differ from creditors regarding the advisability of pursuing a certain line of action. The courts have recognized such contingency, and have held that if a trustee refuses to commence litigation recommended by the creditors because in his opinion the results will be unfavorable, the trustee may tender to such creditors the right to wage such proceeding in his name, with proper indemnity to the estate against loss or damage which may be sustained by reason of such litigation. If the trustee refuses this privilege, the creditors may appeal to the court for an order to that effect, and such relief will always be granted.

What there is in this proceeding to justify the objecting creditors' insinuation that the trustee and his counsel were recreant to their trust, and that this fact should enter into the consideration of the court in fixing their compensation? Does the record show that any demand was ever made upon the trustee and his counsel to institute proceedings to vacate the sale to the Anisfield Company, and that such demand was refused? The record affimatively shows just the contrary. (Record, pp. 96–97.) If such demand had been made, is there any reason to believe that the trustee would not have been willing to let the action be commenced in his name and under the very direction of creditors' counsel, to insure that is was prosecuted in the best faith?

ARGUMENT.

The question presented by this case is stated by opposing counsel to be "the propriety of the allowance made to the receiver and trustee and to his attorneys," which they contend "is in excess of the amount contemplated by the statute." (Appellants' brief, p. 7.)

1. *As to the attorneys' fees.*

With respect to the attorneys' fees no explanation is offered as to the contention that they are "in excess of the amount contemplated by the statute." The statute is absolutely silent upon the question of attorneys' fees. Such fees must be reasonable, and what is reasonable is within the discretion of the court.

The court below had before it all of the records and files in this proceeding, which after all are the best evidence of the volume, character, importance, and necessity of the work performed by the attorneys, and this court, in the absence of these records and files, which guided the court below in its determination, cannot hold that there was any abuse of discretion on the part of the district judge in allowing the amount recited in his final order.

(In re Irwin, C. C. A., Pa., 23 A. B. R., 487; 174 Fed. 642; In re Hoffman, D. C., Wis., 23 A. B. R., 19; 173 Fed., 234; In re Berkowitz, Referee N. J., 22 A. B. R., 236; In re Huddleston, D. C. Ga., 21 A. B. R., 669; 167 Fed., 428.)

In re Hoffman (D. C. Wis., 23 A. B. R., 19; 173 Fed., 234), where counsel for the trustee attempted to recover $6,000 in concealed assets by litigation which was unsuccessful, $1,500 was allowed for fees.

In the matter of Berkowitz (Referee N. J., 22 A. B. R., 236), where an estate of $15,000 had been created by counsel for trustee, they were allowed $5,000. The court said on page 238:

"In my opinion the bankruptcy courts should see that the allowance for such services is sufficient to encourage like services in other cases, and to encourage other attorneys of like ability and energy to come into bankruptcy proceedings."

In re Huddleston (D. C. Ga., 21 A. B. R., 669; 167 Fed., 428) the property of the bankrupt brought $2,500. The attorneys for the receiver were allowed $300. The court (Judge Speer), on page 671, said.

"This, it is claimed, is exorbitant; but in view of the fact that they not only acted as attorneys for the bankrupt and for the trustee, but that they acted as auctioneer, * * * and rendered other valuable services to the trustee, while the fee is liberal, I do not regard it as at all exorbitant."

Further, in commenting on the former case of In re Macon Sash, Door & Lumber Co. (Smith v. Cooper, 9 A. B. R., 756; 120 Fed., 231; 56 C. C. A., 578) where an order was entered below reducing attorney's fees to 10 per cent upon the amount in the hands of the trustee, Judge Speer (on page 672) said:

"These views of the court were reversed by the Circuit Court of Appeals of the Fifth Circuit in the case of Smith *v.* Cooper (9 A. B. R., 761; 120 Fed., 230; 56 C. C. A., 578), Judge Pardee rendering the opinion in the following language:

"'In considering the master's report the learned judge seems to concede that for the services actually rendered the amount allowed by the master was not in excess of a reasonable fee; but for considerations of economy * * * he considered it proper to reduce the amount recommended by the master, and allow only a small percentage, not of the amount actually recovered, but upon the amount left in the hands of the trustee * * * .While we agree with the learned judge in the bankruptcy court that to aid the parties and under the law there should be an economical administration of the bankrupt's estate, we are unable to concur with him in his reasons for reducing the fee to be allowed appellants in this case.'

"The allowance made by this court was thus *increased on appeal by 500 per cent*, without any regard to the balance in the hands of the trustee for general creditors, and the fee allowed was that reported by the master and amounted to $1,000 on a $2,500 recovery."

But even if the entire record and files had been brought here, this court will not disturb the finding of the lower court that the fees allowed the attorneys were reasonable, as the finding of the trial judge, made in the exercise of a sound discretion, is conclusive upon the appellate court, unless abuse of discretion is clearly and convincingly shown. In this connection we desire again to cite the case of In re Irwin (C. C. A. Pa., 23 A. B. R., 487; 174 Fed., 642), where the court, on page 489, said:

"In considering the services performed, the district judge had power to review the facts on which the referee had fixed the fee in each case at $37.50. It concluded that a reasonable fee in each case was $100. On the petition to this court to revise, we can consider only questions of law. We are not at liberty to disturb the district court's findings on the facts. The orders of the district court, so far as they relate to attorney's fees, will therefore be affirmed."

We again call the attention of the court to the fact that the allowance of attorneys' fees made by the lower court covers not only their services on behalf of the receiver, but their services on behalf of the trustee, to the final closing of the estate.

2. *As to the fees of the receiver and trustee.*

The district judge allowed Mr. Baxter full statutory compensation for his services as receiver in conducting the business of the bankrupt, and also full statutory compensation for performing his ordinary duties as receiver and in addition full statutory compensation for his services as trustee, said fees computed on the basis set forth in section 48a.

The contention of appellants is that said fees are in excess of the amount contemplated by the statute.

That contention requires an examination and discussion of the act.

The act of 1898 provided, and the present act provides, that the administration of bankrupt estates shall be by a trustee, or by trustees, appointed by the creditors (bankruptcy act, section 44 and 47). Receivers are to be appointed when necessary to protect and preserve the property and in cases of emergency, and these receivers may carry on the business whenever the best interests of the estate require it (section 2, subdivisions 3 and 5).

The original act allowed to trustees no extra compensation for any service. That was a great injustice which the amendment of 1903 sought to remedy by allowing additional compensation for conducting the business.

(Remington on Bakruptcy, Vol. II, pp. 1303–1305.)

The compensation of receivers was left in the discretion of the court even after the amendment of 1903.

(In re Kirkpatrick, receiver, C. C. A. Mich., 17 A. B. R., 597; 148 Fed., 811; In re Martin Borgeson Co., D. C. N. Y., 18 A. B. R., 178; 151 Fed., 780.)

That led to abuses. Estates were kept for unreasonably long periods in the hands of receivers (with compensation allowable in the unlimited discretion of the court)

rather than in the hands of trustees elected by the creditors, with compensation controlled by the act. Therefore the amendment of 1910 was enacted limiting the compensation of receivers to that of trustees. The reasons impelling the enactment of that amendment and its spirit and purpose are important in applying the amendment to the case at bar, and we therefore have deemed it essential to place before the court the substance of the report of the Senate Judiciary Committee of the Sixty-first Congress, second session, resulting in the enactment of the amendment, as follows:

"As the law originally stood there was no provision whatever regulating the compensation of receivers, although the compensation of trustees (* * * for performance of their ordinary duties) was most carefully and economically prescribed and limited. The idea of the framers of the law of 1898 undoubtedly was that the administration of bankrupt estates would be placed in the hands of trustees who were to be elected by creditors and whose compensation was carefully limited. However, it was necessary to provide for the contingency, frequently occurring, of a period of time elapsing after the filing of the petition in bankruptcy and before the election of the trustee, during which interval assets might be in danger of destruction and depreciation, and for this purpose it was provided that receivers might be appointed 'when absolutely necessary for the preservation of the estate' and that these receivers (as well as the trustees afterward) might carry on the business whenever the best interests of the parties required it, though only for 'limited periods.' While the compensation of trustees (at least their 'ordinary' compensation) was carefully limited, yet the compensation of receivers was left wholly to the discretion of the court, a defect which the amendment of 1903 did not correct.

"Such unlimited discretion in the allowance of compensation has offered opportunity for certain serious abuses to creep in. Indeed, in some sections of the country the appointment of receivers and the conducting of the business by them have become the rule rather than the intended exception, a custom which has resulted in estates being kept for prolonged periods, sometimes, indeed, for almost their entire administration, in the hands of receivers appointed by the courts, with compensation allowable in the unlimited discretion of the courts, rather than in the hands of trustees elected by creditors, with compensation carefully and economically limited.

"As to the matter of additional compensation for the conducting of the business by the receiver or trustee, the act of 1898, as originally passed, gave no such additional compensation. This was an injustice, because the conducting of the business of the insolvent is frequently necessary, particularly when adjudications are contested *or when the assets consist of an active business which can best be sold as a going concern.*

"The amendment of 1903 sought to correct this injustice by an amendment of section 2, clause 5, of the act. * * * The courts have construed the amendment of 1903 as allowing additional compensation for conducting the business, * * * but have held that there is no limit upon the amount allowable * * * except the discretion of the court. (In re Shiebler & Co., 23 A. B. R., 162; 174 Fed., 336.)

"A careful reading of the proposed amendments forming new clauses d and e of section 48, in conjunction with section 48a of the law as the latter clause continues to stand, * * * will exhibit fully the method proposed to be adopted by the present amendment for compensating receivers for their ordinary duties and for giving additional compensation to trustees or receivers for the conducting of business.

"As a basis from which to start, the established rate of compensation already prescribed in section 48a for trustees for the performance of their ordinary duties is adopted. Trustees for their ordinary services already are compensated in section 48a of the act by way of commissions on moneys actually disbursed by them, the rate being 6 per cent on the first $500, 4 per cent, on the next $1,000, 2 per cent on the next $8,500, and 1 per cent above $10,000, averaging in an estate of $50,000 less than 3 per cent on the whole, in an estate of $10,000 less than 2½ per cent on the whole, *and in an estate of $20,000 less than 2 per cent,—a very low rate of commission.*

"The present amendment fixes the maximum compensation that can be allowed receivers for the performance of their ordinary duties at precisely the same rate, instead of leaving it to the unlimited discretion of the court. It also fixes the extra compensation, whether it be to the receiver or trustee, for the conducting of the business, to once again this same rate.

"So that, at best, the ordinary and extraordinary compensation taken together, in the event that both a receiver and a trustee have successively had charge of the estate and even have both conducted the business, can not exceed four times the amount allowable to a trustee by section 48a of the act for the performance of his ordinary duties. * * *

"The changes proposed will, it is thought, tend to prevent extravagance in the administration of insolvent estates and to remove the temptation which now exists toward the creation of prolonged receiverships, and will also tend to put the administration of bankrupt estates promptly into the hands of trustees elected by the creditors,

in accordance with the actual design of the framers of the bankruptcy act, rather than in the hands of receivers appointed by the courts." (Report No. 691, Senate Judiciar Committee of the 61st Congress, second session.)

(Rem. on Bankruptcy, Vol. III, sec. 2116, pp. 640–642.)

Accordingly Congress enacted the amendment of 1910, the material portion whereof as to this case is sound in clauses d and e of section 48, as follows.

d. Receivers or marshals appointed pursuant to section two, subdivision three, of this act shall receive for their services, payable after they are rendered, compensation by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees, as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: *Provided*, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition; *Provided further*, That when the receiver or marshal acts as a mere custodian and does not carry on the business of the bankrupt as provided in clause five of section two of this act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one-half of one per centum on all above one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realized from property turned over by him in kind to the trustee: *Provided further*, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this act.

e. Where the business is conducted by trustees, marshals, or receivers, as provided in clause five of section two of this act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and in cases of receivers or marshals, also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees; such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: *Provided*, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition: *Provided further*, That before the allowance of the compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this act.

On this branch of the case, the propositions set forth in appellants' brief (as we understand them) are as follows:

First. The act requires economical administration and the court must construe same accordingly.

Second. Mr. Baxter was not authorized to conduct or carry on the business, and did not do so, but was a mere custodian; and he therefore is entitled to receiver's fees as a custodian only.

The first proposition we concede. It is too plain for argument. Not only is it manifest from the spirit and purpose of the act, but it sufficiently appears in the letter as well; and it has been declared in many decisions. We concede the proposition and we contend that the allowances made to the receiver and trustee and his counsel do not violate the spirit of economy which all parties agree should prevail in the administration of bankrupt estates. The extent and character of respondent's services have already been discussed in detail in the statement of the case and need not be repeated. The total amount of money which passed through the receiver's hands as stipulated by the parties and as found by the court (record, p. 100), was $61,312.87. The allowances made to Mr. Baxter for all his services, both as receiver and as trustee, amount to exactly 3.6 per cent of that sum, and the allowances made to his attorneys to cover their services during the entire administration of the estate to the final discharge of the trustee likewise amount to 3.6 per cent of the total sum. Certainly this percentage can not be regarded as excessive. We have found no decision which would designate this percentage as anything but economical. In this connection what Judge Holt said In re Sully (13 A. B. R., 22; 142 Fed., 895) with reference to allowances to receivers is equally applicable to allowances made attorneys:

"The amounts paid for services in administering the bankruptcy act should never be lavish or extravagant, and should always be rigidly scrutinized, but I know of

no reason why they should not be reasonable and adequate. I think it unwise to establish a scale of compensation for services in administering bankrupt estates at so low a rate that the best class of lawyers will refuse to practice at the bankruptcy bar and the best class of business men refuse to serve as trustees or receivers."

In the second proposition appellants assert that Mr. Baxter as receiver was a mere custodian; that "it is not pretended that the bankruptcy court authorized the receiver to conduct the business of the bankrupt, and the receiver did not conduct the business of the bankrupt, unless his action in keeping open the store for a scant half day, marshaling the assets, and, after taking an inventory, selling them, can be so construed." (Brief, p. 15.) This assertion is made without citation of authority and without setting forth the facts except as a portion of the above quotation may be deemed a recital of fact.

The facts set out in our statement of the case, where the details of the services rendered are shown, establish that Mr. Baxter as receiver did *conduct the business of the bankrupt*, and the district judge so found. They also show that the receiver was authorized to *conduct and carry on the business*. There is no question about the original order so providing, and the record shows it (p. 110).

All the authorities defining the word "custodian" use substantially the same words:

"Custodian—A keeper, a curator." (Worcester.)

"Custodian—One who has care or custody, as of some public building; a keeper." (Webster.)

"Custody—The care and possession of a thing." (Bouvier, p. 463.)

"The words 'charge' and 'custody' are frequently used as synonymous. The lexicographers give them as synonyms." (State *v.* Clark, 86 Me., 194–195; 29 Atl., 984.)

"'Custody' means keeping, and implies responsibility for the protection and preservation of the thing in custody." (Martin *v.* U. S., 168 Fed., 198.)

The expression "conducting business" or carrying on business" is also clearly defined.

"Conduct (as a verb)—To *carry on;* to manage; to regulate." (8 Cyc., 561.)

"Conduct (as a verb)—To * * * have the direction of; to manage; to direct; to *carry on*." (Webster.)

"To 'conduct' is defined by Worcester as to carry on, to manage, to regulate; and hence the use of the term 'as heretofore conducted' * * * refers to how the fishery was *carried on*, managed and regulated, and has no reference to the extent of the fishery, where the extent of the grant was clearly defined." (Harvey *v.* Vandergrift, 89 Pa. St., 346.)

"An order of the court directing a receiver to 'conduct and run' a hotel is sufficient authority to perform acts necessary to the conduct of the business, and hence to make purchase of merchandise on credit." (Highland Av. & B. R. Ry. *v.* Thornton (Ala.), 16 So., 699.)

"The 'conduct of business' of necessity includes necessary agents or servants." (People *v.* Feitner, 61 N. E., 762.)

The words "conducting business" and "carrying on business" seem to be used by the courts generally as synonymous. See the following:

"The phrase 'power to carry on the business' in a will giving the executor power to conduct the business * * * was construed to imply * * * to carry on all business interests." (Furst *v.* Armstrong, 51 Atl., 996.)

"Receivers were appointed on an involuntary petition, and for some time 'carried on' the business of the bankrupt. * * * The receiver is not, strictly speaking, performing a part of the duties of a trustee. Under the involuntary petition, the receiver's duty is often to maintain, as far as possible, the continuity of the respondent's affairs, so that if no adjudication is made, his property and business may be redelivered to him damaged as little as possible by the proceedings in bankruptcy." (Re Richards et al., 11 A. B. R., 581; 127 Fed., 772.)

"But two exceptions, therefore, remain; the first of which is directed to a claim made by the trustee * * * incurred in attending and 'conducting' the sale of the bankrupt stock. * * * To accomplish this the trustee had to be on hand every day for a period of nearly three weeks. * * * The bankruptcy act expressly authorizes the business of bankrupts to be 'continued' for a limited period by the trustee when deemed advisable." (Re Dimm & Co., 17 A. B. R., 119; D. C. Pa.)

"All the courts sustain the proposition that the court in bankruptcy has power to authorize a receiver to * * * 'conduct' the business for the purpose of preserving the bankrupt's estate. * * *

"The business was 'conducted' by the trustee. * * * By the general order of the court he was authorized to 'continue' the business." (Re Restein, 20 A. B. R., 832; 162 Fed., 986; D. C. Pa.)

Even adopting the narrow construction of counsel for appellants that "conducting the business" means keeping the doors open for admission of customers and the sale

of merchandise at retail, the receiver in this case conducted the business during the greater portion of the day on which he was appointed. His total cash receipts as a result of that day's business are shown in his report to have been approximately $1,026. (Record, p. 20.) We contend, however, that the meaning of the work "conduct" in the connection used in the bankruptcy act is not confined to sale of merchandise at retail. The labors of the receiver in this case, involving as they did the collection of accounts, the adjustment of errors over merchandise, the employment of between forty and fifty employees for a number of days, the transfer of insurance policies and the writing of new insurance in an amount fully covering the assets, and the solution of many other problems which must naturally arise in connection with an estate of the magnitude of this, certainly necessitated close supervision and intelligent business judgment. The receiver undoubtedly conducted the business of the bankrupt if the word is given the meaning suggested in the authorities heretofore cited.

The amendment to the bankruptcy act permits the court to allow to the receiver who conducts the business of the bankrupt additional compensation for such service, according to the scale provided in section 48. The act does not make any distinction between a receiver conducting a business one day and a receiver conducting a business during a longer period of time. If the narrow construction urged by opposing counsel is accepted as to the significance of the words "conducting business," the appellant's counsel can not deny that the receiver conducted the business at least during the first day of his appointment. His services in that connection, even if rendered for less than a day, give him the right to receive the additional compensation for such services authorized by section 2 (5) of the act. The scale of such compensation is set forth in section 48, that scale being not to exceed six per cent on the first $500; four per cent on moneys in excess of $500 and less than $1,500; two per cent on moneys in excess of $1,500 and less than $10,000; and one per cent on moneys in excess of $10,000. These figures represent the maximum percentage which the court may allow for additional services rendered by the receiver and trustee, and it is within the discretion of the court to allow a lesser percentage.

We contend, therefore, that the receiver having conducted the business under the statute, became entitled to this extra compensation, and to have the percentage within the figures above mentioned. The court may in its discretion take into consideration the length of time during which the receiver conducted said business, the amount of money he so realized, the advantage to the estate, the size and importance of the business, and the responsibility undertaken by the receiver, in determining whether the receiver should be awarded the maximum of such percentage or an amount less than the maximum. What we desire to emphasize is that the receiver unquestionably rendered such services as entitled him to additional compensation, not according to the scale provided for a mere custodian, but according to the scale which it was in the discretion of the court to allow for services rendered by the receiver in conducting or carrying on the business.

If the court concedes our position to be correct, then the only remaining ground upon which counsel can criticise the action of the court below is that the court allowed the maximum fee. This court, however, will not disturb the allowance made by the court below where such allowance is within the discretion of the court and the allowance was within the percentage authorized by the bankruptcy act.

"The question of allowance of compensation to receivers and attorneys is largely committed to the sound discretion of the court under whose direction the service was performed." (Dunlap Hardware Co. *v.* Huddleston, C. C. A. 5th Cir., 21 A. B. R., 731, 167 Fed., 433.)

The appellants concede that the amount which they contend constitutes an overpayment of fees to the receiver and trustee and to his counsel is not a large sum, and their desire for a reversal of the order of the court below in this respect seems based, not so much on any serious complaint of improvident allowance, as upon the desire to obtain from this court a rule which shall guide the bankruptcy courts in this jurisdiction in allowances to be made in estates hereafter. It appears to us that this is an idle request, for no rule can be formulated respecting the amount of compensation to be allowed to a receiver or trustee or to his counsel. In fixing such allowance many things must be considered, including the size and character of the estate, the nature and importance of the business transacted, the intricacy and difficulty of the legal and business problems involved, the results obtained, and many other circumstances peculiar to each individual case. The admission by counsel that the overpayment of fees is not large and is not the primary reason for this review (brief, p. 14) is tantamount to an admission that the court below did not abuse its discretion in making the allowances.

Furthermore, of what practical benefit would it be to the estate if this court should hold that the court below in making its allowances should not have done so upon the theory that these allowances should cover the future services of the trustee and the

future services of his attorneys. If this court should hold that the allowances as made by the court below should have been based only upon the services as performed up to the time of the application for compensation, and should send this case back to the district court with directions to consider and allow compensation only to the time of the filing of the application therefor, it would simply mean that the trustee and his attorneys must make new application to the referee for compensation for their services subsequent to the appointment of the trustee. Conceding, for the argument, irregularity in the court fixing the compensation at a point, say, midway in the administration of the estate, and requiring that this compensation should cover services to be thereafter rendered by both the trustee and his counsel to the point of final closing of this estate, still, if this court should believe that the total amount allowed by the court below was not excessive, taking into consideration the future services to be rendered by the trustee and his counsel, this court should not disturb the judgment of the lower court. There is perhaps an equal probability that the trustee and his counsel might have earned even larger compensation had the allowances been made after all the services had been rendered.

"Unless the error be prejudicial it shall be disregarded." (Rem. on Bankruptcy, Vol. III, p. 826, sec. 3010.)

"An omission quite general, and not at all peculiar to this case, arises from the fact, to which we have referred, that parties seem to overlook that it is not sufficient to show that a certain ruling was technically erroneous, but that it must also be shown that it was prejudicial, or at least that there is a presumption that it was prejudicial, within the liberal rules of the Supreme Court in this respect. With all the various matters brought to our attention, we do not recall that there was a single one as to which it was pointed out to us that the alleged error was prejudicial or that there was any presumption that it was so." (Jacobs v. United States, 20 A. B. R., 550; 161 Fed., 694; C. C. A. Mass.)

"Likewise, where only moot questions are involved, the petition for review will be dismissed." (Rem. on Bankruptcy, Vol. III, p. 826, sec. 3010; In re Altieri, 19 A. B. R., 459; C. C. A. N. Y.)

No objection at all has ever been made to the allowances by the great majority of creditors, either in number or amount. Due notice of the application for compensation was given by the referee. Only sixty-one creditors (with claims aggregating $42,164.50) opposed the allowance to the receiver and trustee, and only sixty creditors (with claims aggregating $16,164.50) opposed the allowance to the attorneys. No objection whatever is made or filed by or in behalf of 249 creditors whose claims aggregate $122,613.03. The total number of creditors is 310 and the total indebtedness $164,777.58.

In conclusion we desire to point out that no criticism has been made by the appellants concerning the appointment of the receiver. The necessity of such appointment seems to have been admitted. Likewise, all of the acts and doings of the receiver, barring the controversy over the correctness of the inventory, seem to have been approved by the objecting creditors. That the receiver made a conscientious and earnest effort to consult and follow the best judgment of all the creditors who could be reached, and that he was unselfish in his efforts to promote the interests of the creditors and refused to take advantage of the opportunity to claim for himself larger compensation, is shown by his act in closing the store at the conclusion of the first day's business instead of keeping its doors open, as he had discretion to do, and is evident from all of the remaining facts shown in the record. It is not claimed for him that he is entitled to any larger compensation than the maximum prescribed by the bankruptcy act, but we do claim that his conduct in the entire proceeding has been fair, open, and honorable; that his services have been unusually efficient; and that he is entitled to receive at the hands of the court as liberal compensation as the bankruptcy act will permit. The court below did not go beyond the limit fixed by the bankruptcy act. It did not abuse its discretion in making such allowance as was made. So far as that is concerned, the percentage of fees allowed the receiver and trustee under any circumstances is so moderate that it is no exaggeration to state that it is simply impossible for the court to abuse its discretion in allowing the maximum of such compensation.

It seems to us that the order sought to be reviewed should be affirmed.

Respectfully submitted.

LEOPOLD M. STERN,
WALTER A. MCCLURE,
MCCLURE & MCCLURE,
Attorneys for Respondents other than John Anisfield Company.

EXHIBIT No. 78.

Bond subscription.

A. L. Flewelling, appraiser	10,000	R. M. Hopkins, Seattle	2,000
J. W. Clise, banker, Seattle	15,000	H. M. Walthew, Seattle	500
Thomas Burke, attorney, Seattle	10,000	W. R. Rust, theater manager, Tacoma	12,500
M. B. Haynes, Seattle	5,000	Chester Thorne, banker, Tacoma	12,500
Kerr & McCord, Seattle	5,000	Grant T. Hicks, doctor, Tacoma	2,500
H. K. Owens, Seattle	5,000	Fred T. Fogg, attorney, Tacoma	1,000
A. E. Hanford, Seattle	5,000	F. S. Blattner, merchant, Tacoma	1,000
H. C. Henry, railroad contractor, Seattle	5,000	H. Winchester, merchant, Tacoma	2,500
Clarence Hanford, Seattle	5,000	C. A. Sayer, merchant, Tacoma	2,500
Lester Turner, banker, Seattle	5,000	C. McCutcheon, doctor, Tacoma	1,000
J. B. Howe, attorney, Seattle	2,500	Ellis Fletcher, merchant, Tacoma	1,000
C. H. Hanford, Seattle	2,500	A. C. MacGinnis, merchant, Tacoma	1,000
J. E. Chilberg, banker, Seattle	10,000	William Clark, merchant, Tacoma	1,000
J. M. Frink, manufacturer, Seattle	5,000	G. W. Bullard	500
Hanford & DeVeuve, Seattle	10,000	L. D. Campbell, doctor, Tacoma	2,000
T. J. Gorman, fish packer, Seattle	5,000	G. C. Schemp, merchant, Tacoma	1,000
Gerald Frink, manufacturer, Seattle	5,000	George J. Smith, merchant, Tacoma	500
Michael Earles, Seattle	5,000	R. J. Davis, merchant, Tacoma	1,000
C. E. Patton, lumberman, Seattle	5,000	J. M. Ashton, attorney, Tacoma	1,000
W. D. Mackay, real estate, Seattle	2,500	J. J. Toltz, Tacoma	5,000
Alfred Battle, attorney, Seattle	5,000	F. H. Huggins, capitalist, Tacoma	10,000
J. H. McGraw, exporter, Seattle	5,000		
W. T. Dovel, attorney	1,000		
E. C. Hughes, attorney, Seattle	1,000		
Lester Turner, banker, Seattle	3,500		

EXHIBIT No. 78½.

United States circuit court for the western district of Washington. Benjamin H. Greenwood, a minor, plaintiff, *vs.* Puget Mill Company, defendant. No. 1354.

RULING BY THE COURT UPON DEFENDANT'S MOTION FOR NONSUIT.

The COURT. There is no doubt but what if this plaintiff were a person of mature years and judgment the case would fall directly within the ruling of the Supreme Court of the United States in what is commonly stated as the Wheland case that went up from one of the Alaska mills, where recovery was claimed on the ground that a foreman in charge of the mill ordered the man who was injured to go into a place of danger to do a dangerous thing, and it was held by the Supreme Court that there was no legal liability on the part of the employer because that foreman was no more than a fellow servant, and they could not require a fellow employee to do a dangerous thing at the risk of the employer. This case involves just the difference I have indicated, and that is that this plaintiff is a boy sixteen years old. Now, from his own testimony, he knew the danger of coming in contact with that revolving shaft. His testimony is that when he stepped upon the sawdust which gave way under him and brought him down upon the shaft he took no thought of the shaft being there. It is simply a question whether on account of his immature years he can be supposed to be there at the risk of his employer—that an employer, by reason of taking a young boy and putting him in that place, must be responsible for injuries that happened to him.

I think this motion ought to be granted for failure of proof to sustain what is alleged in the complaint—in the amended complaint. The wrong that is specifically charged here is that this plaintiff was ordered to go aloft among the machinery, and that there was no safe or convenient method provided for him to get up aloft, and that he was ordered to go up on this pile of sawdust and that he slipped and fell. Now, it appears from the testimony that there was a ladder there by which Pearson got up aloft; he did not go up on the sawdust. It appears by the testimony that there was no order given except a mere motion, which was not certainly a specific order to climb up on

that loose sawdust, and the evidence is that he did not slip and fall, but he stepped over from a plank upon the sawdust which was heaped up above the revolving shaft. I think that there is more than an immaterial variance. There is a total failure of proof to prove the substantial ground of the charge in the complaint that there was no safe means provided to get aloft and that there was a specific order to go up on the sawdust, which the plaintiff's testimony all disproves.

Mr. BROWN. I call the court's attention to the fact that there was two belts off and one man was going up to one and the boy was ordered to go up to the other one, and there was no way provided to get up to this particular belt.

The COURT. Well, I do not know how that may be, but I can hardly be mistaken about the fact that there was no order given to go up on the sawdust.

I suppose that this court is bound by the decision of the supreme court in giving consideration to this factory act which changes the law in regard to the assumption of risk, although this court has previously declined an invitation to amend the work of the legislature by making a penal statute effective to change the rights of the parties in a civil action. I can find nothing in the statute that indicated in the remotest degree an intention in the legislative mind to change the rights of the parties in a civil action for injury. There was a plain declaration in making it unlawful to operate machinery which could be protected by being boxed or covered, without being boxed or covered, and providing a penalty which is applicable not only to the employer but to every employee—every person who operates and carries on the operation of dangerous machinery without its being protected as the law requires is subject to a fine and punishment; which would indicate that the legislature, instead of intending to encourage damage litigation, had proposed to have the government take a hand and put a check to the exposure of persons, even those who should voluntarily expose themselves to the risk of being injured by the operation of their own machinery. It would be a legitimate purpose, as much as to legislate against a person committing mayhem or crippling or injuring himself. The supreme court of this State has given that statute an effect entirely different; taking away one of the defenses, which had previously existed in the law, of an employer who is sued for injury happening to an employee. There is not a word or suggestion in the statute itself that the legislature had any such intention.

I will grant the motion for a nonsuit, for the reason I have stated, that there is a failure of proof to prove what is alleged in the complaint.

EXHIBIT NO. 79.

In the Superior Court of the State of Washington in and for King County. In the the matter of the guardianship of Benjamin H. Greenwood, a minor.

PETITION FOR APPOINTMENT OF GUARDIAN.

To the Honorable W. P. BELL, *judge of said court:*

Now comes Sarah Small and respectfully represents to the court:

That the said Benjamin H. Greenwood was sixteen years of age in the month of November, 1904; that your petitioner is the mother of said minor and was, by a decree of this court, granted a divorce from her husband, the father of said minor, and the custody of said minor was awarded to her; that on the 17th day of December, 1904, the said minor was in the employ of the Puget Mill Company, his duties being to supply the furnace with sawdust; that while adjusting a belt on a pully, which was out of the line of his duty, he slipped and fell into a belt and received personal injuries; that in the opinion of this petitioner there is no legal liability on the part of said Puget Mill Company for said injuries; that the said Puget Mill Company have offered to pay tbe expenses attending the treatment and cure of said injuries, amounting to not exceeding the sum of five hundred dollars, for a full release and discharge on account of any claim or demands arising and growing out of, or which may hereafter arise and grow out of, said injuries.

That said minor has no other property or estate. That it the opinion of your petitioner it is for the benefit of said minor that said proposition be accepted.

Wherefore your petitioner prays an order of this court appointing her as guardian of the estate of said minor, Benjamin H. Greenwood, and that she be given authority by this court to accept the said offer of the Puget Mill Company and upon the payment of said expenses and medical services not exceeding the sum of five hundred dollars, she release and discharge the said Puget Mill Company from any and all liability arising and growing out of, or which may hereafter arise and grow out of, the said injuries received by said minor on said 17th day of December, 1904, and while in the employ of the said Puget Mill Company.

SARAH SMALL, *Petitioner.*

STATE OF WASHINGTON,
County of Pierce, ss:

Sarah Small, being first duly sworn on oath, says: That she is the above-named petitioner; that she has read the foregoing petition, knows the contents thereof, and says the same are true.

SARAH SMALL.

Subscribed and sworn to before me this 22d day of December, 1904.

F. S. BLATTNER,
Notary Public.

To the Honorable Judge of the above entitled court:

I have read the foregoing petition and assert that I am the identical Benjamin H. Greenwood named therein; that I am under the age of 21 years, to wit: The age of 16 years; that the statements contained in said petition are true; that I request that Sarah Small, my mother, be appointed my guardian herein for the purpose of effecting the settlement recited in the foregoing petition.

B. H. GREENWOOD.

Witnesses:
C. T. MUNYON.
KENELIN WINSLOW.

Filed Dec. 23, 1904.
C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington in and for King County. In the matter of the guardianship of Benjamin H. Greenwood, a minor.

ORDER.

This matter came on regularly to be heard on this the day of December on petition of Sarah Small for the appointment of a guardian of the estate of Benjamin H. Greenwood. It appeared to the court from the petition on file herein and from evidence produced that the said B. H. Greenwood is a minor over the age of 14 and under the age of 21 years; that he has an estate in King County consisting of an offer by the Puget Mill Company to pay the sum of $500 for a full release and discharge of any claim or demand arising or growing out of or which may hereafter arise and grow out of personal injuries received by said minor on December 17, 1904, while in the employ of said Puget Mill Company. That said minor has no other property or estate. It further appeared to the court that there is no legal liability against said Puget Mill Company because of said injuries and that the offer of said sum of $500 is for the benefit of said minor and that it is advisable that the same be accepted. It further appeared to the court that the said minor requested the appointment of said Smalley, who is his mother, as his guardian herein and that his father is divorced. It appeared further that practically all of said sum of $500 will be necessarily expended in and about the cure and treatment of said injuries.

It is therefore ordered that Sarah Smalley be and is hereby appointed as guardian of the estate of said B. H. Greenwood, a minor, and that she file a bond in the sum of $500; it is further ordered that upon the payment of the sum of $500 by the Puget Mill Company to the said guardian, the said guardian execute and deliver to the said Puget Mill Company a full release and discharge of any and all claims or demands which the said minor or his said guardian may have on account of the aforesaid personal injuries received by the said minor on the 17th day of December, 1904, while in the employ of the said Puget Mill Company or which may hereafter arise or grow out of said injuries.

W. R. BELL, *Judge.*

Filed Dec. 23, 1904.
C. A. KOEPFLI, *Clerk:*

In the Superior Court of the State of Washington, for the county of King. In the matter of the guardianship of Benjamin H. Greenwood, a minor. No. 6003.

STATE OF WASHINGTON, *County of King, ss.*

I, D. K. Sickels, county clerk of King County, and ex-officio clerk of the Superior Court of the State of Washington for the county of King, do hereby certify that I have compared the foregoing copy with the original petition for appointment of guardian and order appointing guardian in the above entitled matter as the same appear on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Superior Court at my office at Seattle this 5th day of July, 1912.

[SEAL.] D. K. SICKELS,
Clerk.

By PERCY F. THOMAS,
Deputy Clerk.

(Filing on back.) No. 6003. In the Superior Court of the State of Washington, for the county of King. In the matter of the guardianship of Benjamin H. Greenwood, a minor. Certified copy. Petition for appointment of guardian. Order appointing guardian.

EXHIBIT No. 80.

In the United States District Court for the District of Washington, Northern Division, in bankruptcy.

In the matter of Seattle Paint & Varnish Company, a corporation. Bankrupt. No. 2817. Statement of administration of Sutcliffe Baxter, receiver.

October 8th, 1904, Sutcliffe Baxter appointed receiver and instructed to continue the business in the usual course until the further order of the court.

Inventory by the receiver:

Book accounts receivable	$21,706.98
Bills receivable	977.83
Advertising matter, as per books	663.30
Formulæ, as per books	5,000.00
Furniture and fixtures, as per books	1,898.44
Horse and wagon	400.00
Insurance unearned premiums	500.22
King County Fair Assn. stock, par value	250.00
C. K. McConnaughey, account	231.89
J. W. and D. F. McConnaughey, acct	1,148.21
J. W. McConnaughey, acct	628.45
Machinery and tools	5,102.67
Stationery and stamps	106.70
Suspense acct	1,834.67
Washington Trust Company, acct	496.96
Cash	812.95
Scandinavian American Bank	223.75
Difference in trial balances	61.69
Cash and credit sales Oct. 10th and 11th, less 25 per cent profit	337.38
Accounts assigned to John Schram within 90 days before filing petition	11,067.40
Collected on above and paid over to receiver and kept in separate account, subject to order of the court	2,769.50
Merchandise sold to John Schram within 90 days before filing petition, and all now in the possession of the receiver, subject to order of the court	11,290.88
Liabilities, accounts payable	63,496.91

Cash statement in final report of receiver:

Total cash receipts	18,937.97
Total cash disbursements in ordinary course	16,987.46
Total cash paid by receiver to trustee	1,950.51
	18,937.97

Merchandise statement in final report of receiver:

Inventory value of merchandise	34,737.56
Merchandise purchased by receiver, including freight, cartage, and sundry items of merchandise returned	8,812.74
	43,552.30
Cash sales by receiver	14,133.45
Merchandise turned over to trustee	29,418.85

Statement in final report of receiver of assets turned over to trustee:

Book accounts receivable	$20,635.69
Bills receivable	776.82
Advertising material	708.80
Cash	1,950.50
Formulae	5,000.00
Furniture and fixtures	1,917.89
Improvements	1,078.83
Insurance unearned premiums	786.32
King County Fair Assn. stock	250.00
Machinery and tools	5,102.67
Merchandise	29,418.85
Stationery and stamps	110.49
Suspense account	1,834.67
Washington Trust Company, account	496.96
Horse and wagon	400.00
C. K. McConnaughey, acct	231.89
J. W. and D. F. McConnaughey acct	1,148.21
J. W. McConnaughey acct	628.45
Miscellaneous dead accounts	43,734.73
Total	116,211.77

The business carried on by the receiver in the usual course of business from Oct. 8, 1904, to Dec. 31st, 1904, pending the adjudication of bankruptcy.

Dec. 23, 1904, stipulation in writing between all parties in interest, fixing compensation, as follows:

Sutcliffe Baxter, receiver	$1,000.00
Metcalfe & Jurey, attys. for receiver	1,000.00
R. S. Jones, atty. for bankrupt	600.00
Tucker & Hyland, McClure & McClure, Pipes & Tifft, and John G. Gray, attys. for petitioners and creditors	1,800.00

Dec. 24, 1904: Order fixing compensation and directing payment as per above stipulation.

Dec. 31st, 1904: Receiver turned over all remaining assets to trustee, and discharged.

Exhibit 81 not printed.

EXHIBIT NO. 82.

Western Steel Corporation, bankrupt.

RECEIPTS.

Oct. 13, 1911, cash on hand and balances in bank	$580.64	
Oct. 13 to Dec. 13, 1911:		
Receivers' certificate, dated Nov. 28 ,1911, cashed by First National Bank	2,500.00	
Miscellaneous collections and settlements of sundry accounts per contra entries	83,218.61	
Per receivers' report, dated Dec. 13, 1911		$86,299.25
Dec. 14, 1911, to Jan. 13, 1912:		
Trustees' certificate, dated Dec. 28, 1911, cashed by First National Bank	3,000.00	
Miscellaneous collections and settlements of sundry accounts per contra entries	20,564.02	
Per trustees' report, dated Jan. 13, 1912		23,564.02
Jan. 14 to Apr. 2, 1912:		
Metropolitan Trust Co.—		
Cash-a/c purchase of properties	80,000.00	
Balance of purchase price of properties paid by surrender and cancellation of bonds held by Met. Trust Co	647,010.00	
Miscellaneous collections and settlements of sundry accounts per contra entries	18,406.71	
Per trustees' report, dated Apr. 2, 1912		745,416.71

April 3 to May 31, 1912:		
Miscellanous collections and settlements of sundry accounts per contra entries		$11,834.47
Total receipts		867,114.45

DISBURSEMENTS.

Oct. 13 to Dec. 13, 1911:		
S. Baxter, on a/c receivers' compensation	$500.00	
L. Turner, on a/c receivers' compensation	500.00	
Administrative expenses, payments made on secured loan and allowances per contra entries	82,229.76	
Per receivers' report, dated Dec. 13, 1911		83,229.76
Dec. 14, 1911, to Jan. 13, 1912:		
Taxes on Graham Island property	4,074.00	
Fire insurance on plant	1,888.92	
Administrative expenses, payments on secured loans and miscellaneous disbursements and allowances per contra entries	18,643.84	
Per trustees' report, dated Jan. 13, 1912		24,606.76
Jan. 14 to Apr. 2, 1912:		
Trustees' certificate and interest	3,032.08	
Receivers' certificate and interest	2,542.78	
Lester Turner, balance receivers' compensation	4,500.00	
Sutcliffe Baxter, balance receivers' compensation	4,500.00	
Bausman & Kelleher, fees and compensation as attorneys for receivers	10,000.00	
Metropolitan Trust Co., cancellation and surrender of note and bonds per contra entry	647,010.00	
Administrative expenses, payments on secured loans and miscellaneous disbursements and allowances per contra entries	12,323.28	
Per trustees' report, dated Apr. 2, 1912		683,908.14
April 3 to May 31, 1912:		
Taxes on Jefferson, Skagit, Snohomish, Pierce, King, and Stevens Counties, Washington, and Lyon County, Nevada	6,143.04	
Munn & Brackett, attorneys for trustees on % compensation	7,500.00	
John P. Hoyt, referee, on % compensation	6,000.00	
Appraisers' compensation	1,000.00	
Leopold Stern and A. W. Buddress, attorneys for petitioning creditors	1,000.00	
Lyter & Folsom, attorneys for bankrupt	1,500.00	
Lester Turner, trustee, on % compensation	2,000.00	
Sutcliffe Baxter, trustee, on % compensation	2,000.00	
Edgar Ames, trustee, on % compensation	2,000.00	
Labor claims allowed and paid	22,762.37	
Administrative expenses, payments on secured loans and miscellaneous disbursements and allowances per contra entries	5,107.73	
		57,013.14
Total disbursements		848,757.80
Balance in First National Bank May 31, 1912, to credit of trustees		18,356.65
		867,114.45
Total labor claims allowed and paid		23,602.27
Total of labor claims filed and unpaid because of defective proof or because of the filing of conflicting claims, 11; amount		463.60
Total of labor claims filed and payment refused because not entitled to priority under the provision of the bankruptcy act, 12 claims; amount		2,848.90

Administrative expenses of the receivership and trusteeship from Oct. 13, 1911, to May 31, 1912	$11,715.22
Lester Turner, receiver	5,000.00
Sutcliffe Baxter, receiver	5,000.00
Bausman & Kelleher, attorneys for receivers	10,000.00
Lester Turner, trustee, on % compensation	2,000.00
Sutcliffe Baxter, trustee, on % compensation	2,000.00
Edgar Ames, trustee, on % compensation	2,000.00
Munn & Brackett, attorneys for trustees, on % compensation	7,500.00
John P. Hoyt, referee, on % compensation	6,000.00
Leopold M. Stern, attorney for creditors	500.00
A. W. Buddress, attorney for creditors	500.00
Lyter & Folsom, attorneys for bankrupt	1,500.00
Appraisers' fees	1,000.00
Labor claims:	
Paid to May 31, inc	22,411.27
Paid June 1 to July 15	1,191.00
Total	23,602.27

Receivers appointed October 12, 1911; qualified October 13, 1912.
Western Steel Corporation adjudicated a bankrupt October 26, 1911.
Receivers discharged and trustees appointed December 12, 1911.

EXHIBIT No. 83.

SEATTLE, WN., *April 13th, 1903.*

Messrs. LETSON & BURPEE,
Fairhaven, Washington.

GENTLEMEN: We had a letter from Mr. Wheaton this morning saying that he would send us at once a printed copy of the record in your case. We ought to get this within a day or so when we will take up the matter at once and get ready for the oral argument. I also wrote to Mr. Wheaton to send us a copy of his brief as soon as he could let us have it.

On Saturday Judge Hanford called me into his private office and showed me the plan for his proposed machine for can topping. He is desirous of having a sample machine made as soon as possible and says he would like to have you make it for him. He left for Spokane to-day and will return here Saturday night. He would like to have an interview with you next Sunday along with myself. I think it would be well for you to bring down a little drawing of your machine so that you can show it to him in advance. I would like for the court to see your plan of your machine before he submits his plan to you. I think it is worth while for you to come down and see him in regard to this machine. Whether you make any agreement with him about it or not, I very much desire that you meet him next Sunday. Kindly let me know at once whether you can come down on that day. We will consider it a personal favor if you will do so.

Yours, very truly, KERR & MCCORD.

EXHIBIT No. 84.

Western Steel Corporation, a coporation, bankrupt. No. 4746.

1911.

Oct. 12. Creditors' petition filed; Metropolitan Trust Co., of the city of New York; M. Barde & Sons, of Portland, Oregon; Port Townsend Pile Driving Co., a corporation. Metropolitan Trust Company's claim is for $578,504 for cash loaned in addition to a $2,000,000 indebtedness on bonds; Port Townsend Co., labor and materials, $3,896; Barde & Sons, goods sold and promissory notes. $12,756. Bausman & Kelleher for trust company; Budress for Townsend Company; Stern for Barde.

Oct. 12. Petition for appointment of receivers by the same creditors—absolutely necessary for preservation of property in that the estate has been grossly wasted and mismanaged and is being; wages due workmen are in default, supplies exhausted, liens permitted to accrue; enormous sums have been borrowed, numerous suits brought and applications are pending for receiver in State court. The best interests of the bankrupt and its creditors require that its business be continued in order to prevent depreciation and lapse of contracts.

Prayer that Edgar Ames should be appointed with power to continue business.

1911.

Oct. 12. Order approving petitioners' bond, order appointing Sutcliffe Baxter and Lester Turner receivers; bond $20,000; authorized to continue business until qualification of trustee in bankruptcy adjudicated.

Oct. 26. Stipulation of Bausman & Kelleher for petitioners, Lyter & Folsom and Kerr & McCord withdrawing appearances; motion and demurrer of bankrupt and that creditors' petition may stand unanswered and in default.

Oct. 26. Order adjudicating bankruptcy.

Oct. 27. Receivers' petition to sell 675 tons of steel pledged to the Union Savings Bank & Trust Co. for $14,000. The bank is offered $25 a ton, it is worth $30. 69 tons of steel pledged to the Scandinavian American Bank for $1,942. 43 tons of steel pledged to Citizens' National Bank for $85; 79 tons to J. C. Eden, $213. Storage expense is diminishing its value. Receivers have less than $100 cash on hand. Reports employment of Bausman & Kelleher as counsel; compensation to be fixed by the court.

Oct. 27. Order to sell the steel and confirm employment of B. & K.; compensation subject to order of court.

Oct. 27. Order of reference to Hoyt, referee.

Oct. 28. Receivers' petition showing monthly expense of preservation to be $2,000, and receivers have incurred liability of $385 insurance; asks leave to borrow $2,500 to be a first lien.

Order granted.

Nov. 3. Ratification by trust company of acts of B. & K.

Dec. 6. Order directing surrender to vendor of 2,000 tons of Chinese pig iron upon surrender of purchase price note.

Dec. 12. Order reciting that Turner, Baxter, and Edgar Ames have been appointed trustees.

Ordered that the receivers turn over assets to trustees subject to the compensation of the receivers and attorneys; fixes compensation of receivers $5,000 each, of which they may pay themselves $500 each; compensation of attorneys for receivers reserved for future determination.

Dec. 18. Bankrupt's schedule filed.

Dec. 21. Ordered that trustees show cause December 23, '11, why Ernest Wagner's petition that the trustees appear in superior court and defend his action against the bankrupt should not be granted.

Dec. 21. Wagner's petition reciting that before the bankruptcy proceeding be brought an action for personal injuries for negligence for $40,000, and asking that the trustees be substituted for the bankrupt.

Dec. 23. Order granting Wagner's petition.

Dec. 29. Order directing payment of B. C. Custom's claims $4,074.

Dec. 30. Order authorizing payment of sundry small claims aggregating $1,573.

1912.

Jan. 6. Order directing payment of indebtedness incurred in administration, total $2,018.

Jan. 11. Order for the same purpose, $439.

Jan. 24. Order directing trustees to pay to Merchants' Bank of Port Townsend a secured claim of $1,200.

Feb. 1. Order for sundry disbursements, $1,190.

Feb. 6. Objections of Metropolitan Trust Company to claim of the First National Bank of Seattle, alleging that the note which is the basis of the claim was without consideration, was not the corporate act, was fraudulently issued, and is not owned by the claimant.

Feb. 6. Petition of Bausman & Kelleher for compensation as attorneys for the receivers, referring to the files and records as to extent and value of services; praying that the court fix, in its own discretion, adequate compensation, to be paid out of funds which may be available for such purpose.

Order fixing $10,000 and disbursements; that it be paid as one of the expenses of administration but that it is conditional upon petitioners waiving all compensation for its attorneys. (This condition is written in pen upon the typewritten form of order.

Feb. 16. Order authorizing payment of some incidentals of administration amounting to about $150.

Feb. 24. Order upon trustees' petition ratifying their action in paying off $3,000 trustees' certificate and authorizing them to pay the $2,500 receivers' certificate.

Feb. 28. Trustees' petition for leave to pay the receivers $750 more each granted.

Feb. 28. Order directing trustees to disburse sundry incidentals of administration aggregating $1,145.

1912.
Mar. 26. Referee's return upon exceptions of certain creditors recites that the orders to be reviewed grew out of proceedings looking to the sale of the bankrupt's assets; that upon petition for the sale being filed a meeting of creditors was called at which the orders were made; that the objectors participated in the meeting and none of them objected to the making of the order of sale of February 17th or the supplemental order of sale of March 2; that the objecting creditors raised a question as to whether the trust company might use in bidding the bonds it held at their face value or for a lesser amount; that it was subsequently agreed upon and found by the referee that the trust company might use the bonds, for bidding purposes only, to the extent of $650,000.

Referee returns that the question of ownership of the bonds was not thereby determined, but it was determined that if they were used and the user was not the owner, but held them only as security, the extent of use of them would *pro tanto* cancel the creditor's claim; that the sale took place by sealed bids March 15, 1912, at which sale the reviewing creditors were present or represented and made no objection to the sale proceeding; that the bids made were taken under advisement by the trustees, and they, on March 16, filed their report recommending the acceptance of the bids of the trust company.

The report was set down for hearing for March 19th, at which time the reviewing creditors and one other filed objections to the confirmation. The referee on March 20, at a meeting of creditors, confirmed the sale.

The return is accompanied by the petition for review of the objecting creditors, to wit: First National Bank of Seattle, by Hughes, McMicken, Dovell & Ramsey; Bank of Vancouver, by Hayden & Langhorne, reciting that the objectors are general creditors and reciting that the total claim of the trust company was $600,000, with interest from August 1, 1911, evidenced by promissory note, with which there was deposited as collateral, not otherwise, $2,000,000 of the bankrupt's bonds secured by mortgage covering certain of the assets of the bankrupt estate; recites that the sale had been confirmed without requiring the trust company to cancel the note, leaving them free to assert a claim for $2,000,000 on the bonds, less the amount of the bid; recites that liens had been asserted for $40,000 or more for portions of the property of the bankrupt, the validity of which liens the trustees have attacked, and claims that a sale made while that matter is undetermined must be prejudicial; that the amount of the bid is grossly inadequate; that the appraisement is indefinite, misleading, and confusing; that the property was sold in bulk and not in parcels.

Prays the order of confirmation be set aside, or, in any event, modified so as to require the trust company to surrender for cancellation evidence of all indebtedness held by it.

There is also returned the objections of the objecting creditors filed with referee going into greater detail by parcel; also the referee's order confirming the sale. Order finds that the highest and best bid is that of the Metropolitan Trust Company for $680,000, of which $647,010 is to be paid by first mortgage bonds, the remainder, $32,990, is payable in cash; that the bid received is the appraised value and is a fair price; that the best bid for the other assets brought into the sale by the supplemental order of sale is that of the trust company for $40,000 cash, which is a fair price; that the total bid of the trust company is $261,000 in excess of the appraised value; recites that by the terms of the order of sale it was provided that if the bondholder should be the successful bidder and the net cash proceeds of the sale and moneys in the hands of the trustees should not be sufficient to pay the expenses of administration, taxes and prior labor claims and labor liens, the successful bidder, as a condition precedent to the acquirement of title should be bound to pay to the trustees the amount of the deficit in cash; that the trustees state this further amount to be $12,000, of which the successful bidder must deposit in cash $7,000 and should be bound by the order of confirmation to advance the further sum of $5,000, if necessary; recites further that a notice of which sale was mailed by the referee to each creditor more than ten days prior to March 15th.

Recites that the acts of the trustees under the orders of sale conform to the orders and to the bankrupt act; that the sale was fairly conducted, therefore, the trustees' acts under the order of sale ratified and trustees directed that upon tender of the $2,000,000 bond issue for endorsement and upon trust company paying $72,990 less the amount deposited by the trust com-

pany to qualify it as bidder, and upon the trust company depositing with the trustees a further sum of $7,000, for the purposes aforesaid, the trustees execute proper instruments of conveyance.

Further ordered that the $7,000 be used by the trustees in the payment of the expenses of administration, taxes and prior labor claims and liens in the event it is needed, and, if that is insufficient, the trust company must advance $5,000 more, and that any part of the $12,000 advanced by not necessary for the purposes stated shall be refunded by the trustees to the trust company without interest.

The order of sale also accompanies the return, reciting that at the meeting, of which due notice was given all creditors, and all persons in interest having been heard, directs the sale of the assets clear of the mortgage and clear of all lien claims and labor claims, but subject to all other valid liens and encumbrances, and that the rights of the bondholders be transferred to the fund realized; that there be excepted from the sale cash on hand, bills and accounts receivable and all other assets not included in the exhibit; that for the purposes of the sale the bonds shall be considered a first lien upon parcels 1, 2, 3, and 4 described in "Exhibit A" to the extent of $2,000,000 and accrued interest, unless there is modification of the order as provided in it; that the bondholders may use the bonds in bidding for said parcels, but the bondholder, if purchaser, if the moneys in the hands of the trustees and the proceeds of the sale of the property not covered by the mortgage shall be insufficient to pay the costs of administration and prior labor liens, must make payment in cash of any sum required for that purpose. As a condition precedent to the use of the bonds in bidding, the holder must file them with the referee, with proof of ownership; must deliver up all stock certificates of the Western Coal & Iron Company pledged under the mortgage, and these shall go to the purchaser upon the sale; that upon the filing of the bonds any interested person may object thereto, and, upon notice, a hearing shall be had, at which hearing the referee may modify this order respecting the use of the bonds in bidding. Parcels 5, 6, and 7 shall be sold free from the lien of the mortgage and for cash only, and free from labor claims; that the personal property described in parcels 8 to 20 is free from the mortgage and is to be sold for cash, free from labor claims. Sealed bids shall be received up to ten a. m., March 15, 1912. All bidders must accompany their bid with cash or certified check for 10%. The successful bidder's deposit shall be credited on the bid, the other deposits returned. Any bids and coupons deposited with the referee shall, upon being received in payment of any bid, have endorsed thereon the sums in payment of which they have been received, and the indebtedness secured by the mortgage shall be deemed paid only to the extent of such credit.

The trustees shall ask for separate bids upon each parcel, and, in addition, a bid upon the entire property, and if the aggregate bid is the greatest it shall be accepted, otherwise the sales shall be by parcels;

Directs notice of the sale in the P. I. and Times, a daily in Jefferson County, at least ten times prior to date of sale. In the case of a lump sale proceeds shall be apportioned among the several parcels in the proportion that the highest bid made for each parcel when offered separately shall bear to the total amount of the highest of all separate bids, but if there are no separate bids then trustees shall make a just apportionment, but the sales shall be subject to the approval of the court.

Exhibit A attached contains a description of the separate parcels.

Return also has a copy of the order modifying the order of sale. It recites that objections have been filed to the use of the bonds as directed under the order of sale; also that the bonds and stock have been deposited; finds that the bonds are sold by the trust company and bought in by itself in foreclosure of the pledge agreement without fraudulent intent, but the procedure followed was legally insufficient to vest title in the trust company to the bonds and discharge it of its own trust obligation; hold the same as security for the sum of $600,000, with interest and expenses, for which they were pledged; that the bonds constitute a first lien upon the properties described in parcels 1, 2, 3, and 4 to the amount of $650,000, and the trust company having submitted the bonds and stock to the jurisdiction of the court and consented to a sale of the assets free from the lien of the mortgage bonds and to the transfer of the lien of the bonds to the proceeds of the sale there is due the trust company for accrued interest and compensation and counsel fees and expenses incurred in the execution of the trust, $50,000; therefore, it is ordered that the original order of sale be

accordingly modified so that the bonds are adjudged a first lien upon parcels 1, 2, 3, and 4 to the extent of $650,000 only, and may be used for that amount and no more, and when used in bidding the trustees shall indorse upon each bond the pro rata credit for the same for which it has been used in bidding, but that this is not an adjudication as to the right of the bondholder to prove up on the balance as a common claim.

There is also attached to the return a supplemental order of sale which directs that all the assest of the bankrupt not uncluded in the original order of sale be sold, except the cash on hand, bills, and accounts receivable, books of account, insurance policies, title papers and records and the bankrupt's interest in manufactured steel; that the added assets be sold for cash, clear of taxes, labor liens, and claims, but subject to all other valid liens or encumbrances; contains directions as to receiving bids, deposits, parcel and gross sale, and requires notice to be mailed by the referee to all creditors.

Attached to the supplemental order of sale is Exhibit "A," setting out parcels by description.

1912.

Apr. 1. Order authorizing payment of sundry administration expenses aggregating about $1,200.

Apr. 1. Order dismissing exceptions and petition for review reciting that the objectors and petitioners had come voluntarily and in open court withdrawn their exceptions and petitions and consented that they be dismissed.

Apr. 2. Order authorizing trustees to pay balance of receivers' fees and receivers' attorneys fees; recites previous allowance to receivers of $5,000 each and part payment of $1,250 each; recites fixing of fees of receivers' attorneys at $10,000; recites that the estate has been reduced to cash and there are funds sufficient to pay all expenses of administration; ordered that Lester Turner be paid $3,750; Baxter, receiver, $3,750; Bausman & Kelleher, $10,000.

Apr. 2. Referee petitions that more than $600,000 have been disbursed and he is entitled to a commission of 1%; that owing to the large number of labor claimants there will be a delay of some months in closing the estate; prays that he be allowed and paid $6,000.

Apr. 2. Order granting.

Apr. 5. Order reciting that the estate has been reduced to cash; there is money enough to pay taxes, labor claims, and costs of administration, including an allowance of $7,500 to Munn & Brackett, as attorneys for the trustees, and the payment of the same having heretofore been allowed and approved by the referee, ordered that that amount be paid them.

Apr. 5. Order directing payment of labor clains aggregating about $5,800.

Apr. 5. Order directing payment of taxes amounting to about $6,000.

Apr. 11. Order directing payment of labor claims aggregating about $3,500.

Apr. 12. Order reciting that by the supplemental order of sale the trustees sold certain contracts for the sale of bankrupt's lands and were directed by the order of sale to hold in trust for the purchaser at the sale all moneys paid by the contract holders subsequent to February, 1912; that of that money there has been received $231; that the sale covered some manufactured stee, but the trustees sold it separately for $448; order directing trustees to pay both these amounts to the trust company.

Apr. 15. Referee's return to petition for review reciting that on April 1, 1912, he made an order finding that the attempted sale of the bonds to the trust company could not be sustained and it being stipulated before him that the trust company, the alleged owner of the bonds and of the indebtedness secured thereby, had received payment thereon to an amount equal to the indebtedness for which it held the bonds as collateral, and therefore all claims of the trust company as to the debt for which it held the bonds as collateral and upon the bonds themselves should be canceled because the full amount of the true indebtedness had been used in bidding in the property and directing that the bonds and the note which they secured should be canceled.

With the return is the trustees' objection to the claims of the trust company, reciting the facts found by the referee.

Attached to the return is also the referee's order referred to which concludes with the rejection of any claim of the trust company on the note or bonds in excess of the amount used in the bid.

Attached is also the petition of the trust company for review of the referee's order.

1912.
Apr. 16. Order directing payment of $1,000 appraisers' fees.
Apr. 16. Order directing payment of labor claims aggregating about $7,500.
Apr. 18. Petition for allowance to two of the petitioning creditors, viz: Barde and Port Townsend Company.
Order allowing $1,000, one-half to Stern and one-half to Budress. and recites that in making the allowance the court takes into account that B. & K., attorneys for the other petitioning creditor, did the greater part of the work and their claim has been waived.
Apr. 19. Order directing the payment of certain expense items aggregating about $85.
Apr. 20. Order directing payment to Stern and Budress of the said $500 each.
Apr. 24. Order directing payment of labor claims aggregating about $2,500.
Apr. 25. Order directing payment of bills for publication of notices of sale in the two Seattle papers, aggregating $480.
Apr. 29. Order directing payment of $460 trust money by the trustees to the trust company, because the trustees sold certain manufactured steel for that amount at private sale when it was covered by the bid of the trust company.
Apr. 30. Order allowing attorneys for the bankrupt $1,500 and directing payment.
May 3. Order directing the payment of certain labor claims aggregating about $700.
May 4. Order directing payment of certain expense items amounting to about $200.
May 9. Order directing payment of certain labor claims aggregating about $700.
May 13. Order directing payment to the hospital of $342 hospital fees collected from laborers.
May 15. Order directing payment of certain labor claims aggregating about $1,500.
May 16. Order allowing the three trustees $2,000 each, reciting previous authorization by the referee.
May 28. Order directing payment of certain labor claims aggregating about $250.
June 3. Order directing payment of certain expense items aggregating about $400.
June 4. Order directing payment of labor claims aggregating $303.
June 6. Order directing payment of $63 trust moneys.
June 27. Order directing the payment of labor claims aggregating about $770.
July 8. Order directing payment of certain administration expenses aggregating about $175.
July 9. Order directing payment of certain labor claims aggregating about $130.

Exhibit No. 85.

[Post-Intelligencer, September 23, 1909.]

Conservation theories and conservationists were subjects of pointed attack in a speech delivered by Federal Judge C. H. Hanford at the Yakima Valley day exercises in the auditorium at the Alaska-Yukon-Pacific Exposition yesterday morning.

Conservation theories were branded as impractical and reactionary; the "big stick" policy of withdrawing public lands from entry came in for severe criticism, and both John Barrett and former Governor Pardee were recipients of Judge Hanford's sarcasm.

Judge Hanford represented the chamber of commerce on th program of welcome to the people of the valleys of the Yakima. He said in part:

"Twenty years ago the central part of our State, which we call the Yakima country, was mostly a cattle range, and a hundred acres of sage brush plains yielded not more than sufficient to support one cow in addition to the jack rabbits and coyotes which infested it. The aboriginal inhabitants were slothful and incompetent to the task of making the land produce the rich harvests for which it is by nature adapted, and so, in obedience to divine law, they have been displaced by the class of people who have created on this continent one of the foremost nations of the earth.

PROGRESS WITH GOVERNMENT HELP.

"Without aid from the National Government other than the liberal policy by which each citizen or head of a family has been granted the right to acquire the title to one quarter section of land for a nominal price, they have created wealth amounting to many millions of dollars and have founded new cities of which the nation may be proud. With industry and the application of scientific methods of husbandry, the same area of the sage bush lands of central Washington, which in its wild state afforded sustenance for one cow, now yields an abundance for the comfortable maintenance of twenty families.

"The results of individual enterprise and the liberal policy of our Government in its disposition of the public domain are good to contemplate and deserve grateful recognition, and yet, in recent times, impractical theorists have raised an alarm and are now crying that the nation has been despoiled; that the natural resources of the country have been wasted and future generations robbed of their inheritance because individuals have been permitted to acquire vested rights to the wealth which they have created. A new doctrine is being preached that the public domain and all its undeveloped wealth of timber, minerals, and waters belongs to all the people, and that the use thereof should not be permitted except on terms which will yield revenue to the National Treasury.

CALLS NEW DOCTRINE FALSE.

"This is a false doctrine, for by natural law and the divine economy land, timber, minerals, and water are for the benefit of the users; by industry only can they be made to serve the purposes for which they were created. The general public derives benefit from the enterprise of individuals and the taxes which they pay upon the wealth which they acquire, and the general public can not rightfully exact more. Therefore, each individual who claims no more than a reasonable portion of wild, unproductive land and subjects it to a beneficial use has the first and best right to it for his own benefit and as an inheritance for his heirs.

"This theory has become crystallized in the public land laws of the United States, under which public lands in the older States have passed into private ownership, and the changes now advocated by the theorists will necessarily impose upon the industries of the States and Territories in which public lands are now held by the Government, new burdens not shared by the industries of the older States and will augment the evils of bureaucracy and graft.

"We have been told repeatedly by the advocates of the 'big stick' policies that the proposed new system will not hurt the West, but will aid in the development of the natural resources of the regions in which vast areas are reserved and to be reserved. These professions of kindly intentions bring to mind a case tried in one of our courts some years ago in which, according to the testimony, a murderer consoled his victim by beseeching him to not mind having his throat cut because the pain would soon be over and he would be in heaven.

RESOURCES NOT USED.

"In our State the reservations comprise more than 27 per cent of its total area into which no homeseeker dares to set his foot. The water runs down our mountains and most of it now flows idly to the sea without turning a wheel. But to prevent grabbers from acquiring vested rights the theorists insist that it must keep on flowing idly until it can be made to yield tribute to the National Treasury perpetually as agents of the Government shall dictate.

"These new policies have their root in paternalism; their tendency is toward despotism and, if not checked, they will choke to death our boasted Government of the people, by the people, and for the people.

"Happily, we have ground for hope that our wise President and his cabinet and Congress will not be carried by any tide of sentiment to so change our national policy as to work permanent or irreparable injury. But they must be supported in maintaining steadfastly true principles by a strong counter sentiment opposed to ultra doctrines. The people must think and give free expression to their own independent ideas concerning matters which affect the welfare of the nation at large, for now, as in times past, 'Eternal vigilance is the price of liberty.'"

Exhibit No. 86.

SPEECH BY JUDGE C. H. HANFORD IN SUPPORT OF HIS MINORITY REPORT OF COMMITTEE ON RESOLUTIONS.

Mr. President, ladies, and gentlemen, I do not consider that the only argument in support of this minority report is contained in the report itself, but it is the argument upon which I am willing to rest it for the judgment of this assembly. My object in speaking, briefly, is to make clear the exact issue which the minority have made the report of the committee.

I should have concurred in the report entirely if there had been left out of it the suggestion that the National Government should participate in the limitation of the use and the burdening of the use of the natural resources of this country in the public

domain. I am not here to oppose for a moment the exercise of the governmental power by States in the regulation and conservation of these resources and the imposition of proper and reasonable taxes. We have in this country a dual system of government, the National Government and the State government, each within its own sphere is supreme. When each occupies its own sphere and operates within it, there is no danger of collision, but when both attempt to occupy the same field and to cover the same ground by laws and regulations, we are apt to get too much government for the general good.

Now, in what way can the National Government restrict the acquisition of franchises and rights in the use of the public resources of the country or subject them to the payment of compensation? It is only by reason of its proprietorship of the public lands of the United States. This controversy is to be confined strictly to the consideration of water rights for commercial and power purposes. The committee in their report have restricted their recommendation to waters which may be used for those purposes, thereby eliminating every question with regard to navigable waters and waters for irrigation.

The United States Government as proprietor of the public domain may put its hand on any part undisposed of and say, "This shall not be occupied except as now or in the future regulations prescribed or to be prescribed may limit the use." In that way it is in the power of the National Government to restrict the use and to impose burdens.

Yesterday at sunset the Olympic Mountains were on parade. All of you who may have been looking to the westward from a favorable viewpoint doubtless admired that grand natural outline with its gorgeous tints of coloring at mountain top and sky. But those mountains contain more than a grand picture. They contain power. Their sides are cut into chasms by flowing water perpetually fed and replenished from the clouds. Those streams are now flowing down to the sea without turning any wheels. And they will go on idly until the hand of industry and genius places the machinery to be operated by that grand natural power. That power will be used, and unless this Government of ours becomes a greater trust than the bogeyman with which we have been threatened, it will have to be by the exertion of individuals. The people in their aggregate capacity are not going to put these powers into beneficial use; it requires individuals to do it. It is proposed by the committee that these powers shall not be acquired for beneficial use by individuals, except for limited periods of time and upon payment of rent or taxes, so that this vast power will be made a source of income to the National Treasury perpetually, and the difference between the majority and the minority of the committee is on this point. In other sections of the country where vast wealth has been taken from the public domain the people who have the benefit pay no such revenue to the Government. Therefore, what the committee recommends is unequal taxation, imposing on the industries of the Western States and Alaska, a burden of taxation which is not shared by the people of other sections.

This is the issue which I wish to have considered by this congress.

The undersigned minority of your committee on resolutions concurs in the report submitted, except in so far as the same is suggestive of a change in national policy in disposing of the public domain of the United States whereby water rights, will be held in reserve indefinitely, or disposed of subject to burdens not imposed on lands with appurtenant water rights, which have already become private property pursuant to the land laws enacted by Congress. Heretofore the policy has been to grant fee-simple titles, the grantee paying only the specified price and thereafter paying tribute to the National Government only as other citizens and property owners do.

To apply a new rule granting less than fee simple titles, or subjecting the granted lands to be payment of perpetual rental or taxes into the National Treasury, will be unfair to those States and Territories in which the undisposed of public lands are situated, because, it will subject them to burdens not shared by other sections.

The man who claims one man's share and no more of the natural resources of the country and is first to select it and bring it into beneficial use has, by natural law, the first and best right to it, and that is the true principle of conservation. In recognition of that principle the following additional resolution is respectfully submitted for the consideration of this congress:

Resolved, That this congress views with gratitude the liberal national policy which encouraged the pioneers of this country, to contend against savage foes and all natural obstacles, by giving to home builders, miners and manufacturers, a limited but sufficient amount of land, minerals, timber, and water for actual and beneficial use. Under that policy the public domain east of the Missouri River, with all the natural wealth of minerals, timber, and water power, has passed into private ownership. That policy instead of being wasteful or extravagant, was founded upon the truest principle of conservation and has been vindicated by the subjugation of the wilderness, the maintenance of the American title to the Oregon country south of the forty-ninth parallel,

the rapidity with which our Nation has grown great and the general prosperity of our people in every section. Therefore, so long as public land of the United States, not specially adapted by nature for national parks, not required for any particular use by the National Government, nor for protection of the sources of water supply, nor for storage of water in mountainous regions, remains undisposed of, citizens who are bona fide homeseekers should be precluded from selecting, occupying and acquiring perfect titles to land in sufficient quantities, to each, to yield under industrial use, sufficient for the support of a family. And we oppose arbitrary reservations of public land for the mere purpose of preventing the beneficial use of timber, minerals or water.

EXHIBIT NO. 87.

Frank H. Scobey, plaintiff, *v.* Wm. J. Bothwell, city comptroller, and members of the city council, defendants. No. 1937.

1910.

Dec. 30. Bill of complaint filed; Hoyt & Frye. Plaintiff alleges diverse citizenship. That plaintiff is a taxpayer owning certain described real property situated in the city of Seattle. The plaintiff first attacks the validity of the charter amendment providing for the method of further amendment of the charter. It is alleged, but only in a very general way, that the manner of amendment was contrary to the direction of the State constitution and that, therefore, the amendment never went into effect. That shortly prior to March —, 1906, certain persons presented a petition to the electors of the recall amendment to the city charter. It is alleged that the alleged amendment was not properly published to comply with the constitution and laws of the State, nor ever submitted to vote in the manner required by law; it never became valid. Paragraph 7 of the complaint alleges that Gill was elected mayor for the term beginning March 8, 1910, and ending the same day, 1912, and he duly qualified and is now mayor. Paragraph 8 alleges the organization of the Public Welfare League and that that league immediately began to solicit signatures to the petition for the recall of Gill. That the association canvassed through the summer and fall for signatures, and expended large sums of money in employing solicitors extending up through October. That in September the city council made its estimates for the tax levy. That notice of it was given and that although it was well known that this recall petition was being circulated there was not included in the estimate any amount for it nor was any tax levied for it. Paragraph II alleges that the city council has appropriated by ordinance out of tax levy sums far in excess of its amount. That the expense of holding the recall election would be more than $15,000, and that the city has no funds and will have none legally available for the purpose. Paragraph 12 alleges that the recall petition was presented by the Welfare League to the comptroller December 20, 1910. Paragraph 13 alleges that the requisite number was 8,671. That the recall petition did not have so many as that of genuine signatures of qualified electors. On the contrary, that not one of the signers was authorized to vote at an election of a successor to Gill. Paragraph 14 alleges that the petition is wholly fraudulent and void. That over 800 signatures were obtained by fraudulent representation in that the solicitors represented that it was a petition to the city council praying the condemnation of a site for a museum. In other cases, that it was a system of double tracking of street-car lines and that at least 800 signatures were obtained by signers relying upon said false representations. Paragraph 15 alleges that a large number of the signatures in the petition were forgeries, the number of forgeries exceeding 300. Paragraph 16 alleges that a large number of signatures were obtained by paid solicitors accosting people promiscuously on the street who were unknown to the solicitor, and that a great many signatures were obtained that way by persons absolutely unknown to the solicitors, but nevertheless they made affidavit that the signatures were genuine signatures of the persons whose names were signed. That it was impossible for them to know the fact. The number of these cases exceeds 500. Paragraph 17 alleges that the city comptroller is giving forth and maintaining that on December 31st he will certify to the council that there has been filed with him a petition signed by 8,671 persons entitled to vote, etc., praying for the recall election. That the petition purported to contain

over 11,000 signatures. That between December 20, the date of filing, and December 31, the date of transmission, it is impossible for the comptroller to properly check and count the signatures and determine the genuineness thereof. That so far as the checking and comparison has gone it it grossly inaccurate. That the conptroller has counted a number of people not registered and a number of forgeries, all of which go to make up the 8,671 which he proposes to qualify. Paragraph 18 alleges that there are over 800 signatures of women, all of whom prior to November 28, 1910, were not entitled to vote. All of the females registered subsequent to November 28th. That none of them were qualified to vote at the time they signed the petition, but the comptroller is counting their names to make up the 8,671. Paragraph 19 alleges that the city council intends to call the election upon that erroneous certification by the comptroller. That the election will cost more that $15,000 and that the expenditure of that money is wholly illegal and unauthorized. Wherefore prays temporary injunction upon notice, among other things, restraining the expenditure of public funds for that purpose. Also restraining the city comptroller from certifying the petition, enjoining the council from calling or holding the election or appropriating any money for that purpose or incurring any indebtedness for that purpose. Subpoenas issued to 12 of the defendants were served on the 30th, to five of them on the 31st.

1910.

Dec. 30. Order made by Judge Hanford setting down the application for temporary injunction for hearing January 3d, 10 a. m., and directing that notice of the motion and hearing be given to the defendants forthwith. Complainant's solicitors gave such notice and service of the same is accepted and acknowledged on the same day by Scott Calhoun, solicitor for defendants.

1911.

Jan. 3. Filed an amendment to the bill of complaint, setting up that subsequent amendment of the charter annuled by the recall amendment.

There was served and filed demurrer of the defendants in which they object to the jurisdistion and demurrer to the plaintiff's complaint:

1. General.
2. No jurisdiction, and that the amount involved is not certain, and if certain would be less than $2,000.
3. That the plaintiff is without equity.
4. Does not state facts sufficient, etc.

Jan. 6. Memorandum decision on application for injunction. The court points out that after hearing arguments, the demurrer to the jurisdiction was overruled on the authority of 207 U. S., 205; 205 U. S., 332–336. The court says that the litigation cannot be defeated by a demurrer which admits the truth of the averments. The sum of the facts alleged and which the court is obliged to believe to be true in passing upon a demurrer, are that there is a large number of not genuine signatures, many obtained by fraud and misrepresentation, and that a proper check of the petition is impossible so as to segregate the genuine from the spurious. The court says: "It is the opinion of the court that any tax payer, resident or non resident, is entitled to all the relief which a court of equity has power to grant in a suit intended to frustrate the efforts of a minority to reverse the result of a general election by ousting the choice of the majority when the means adopted for that purpose include fraud, forgery, and false official certificates. It is the intention of the court to interfere as little as possible with the members of the city council and other officials of the city in the performance of their duties, but as at present advised it will restrain the misappropriation of public money raised by taxation for the expenses of a special election under this recall petition. Demurrer overruled and injunction granted."

On the same day there is filed a typewritten brief of 36 pages on behalf of the defendants, and on the same day a typewritten brief of 14 pages on behalf of the complainant.

The brief is divided into two questions:

1. Jurisdiction.
2. Is the complainant entitled to relief?

To the first point 10 pages are devoted, the contention being that the jurisdictional amount is tested by the money value of the plaintiff's interest in the litigation. In the course of that discussion it is stated that there

were cited on oral argument to the court the Hill case, 41 Wash., 610, a suit by estoppel for an injunction, the individual money interest of the plaintiff being less than $2,000. The cases cited in the brief are largely where plaintiff sought to enjoin a tax levy in which it was held that the plaintiff's own tax must amount to $2,000.

The second point argues that an injunction will not be issued to restrain the election:

2. That any tax on plaintiff's property would be paid by him under protest and recovered back, that if the tax is illegal he could appear before the equalization board and appeal from an adverse decision of the courts.

The complainant's brief is devoted, first, largely to support of the points of legality set forth in its complaint. Points out that insomuch as the fund was created by tax levy, as the statute requires, for the purpose, it necessarily follows that the expense of the election must be derived from some amount levied for another or other purposes, the doing of which is a misdemeanor under section 9211 of Rem. & Bal. Code. They cite 101 U. S., Crampton case, in which the court, in the suit of a tax payer, enjoined the diverting of public money out of a fund created for other purposes.

Notice is given by plaintiff that upon a hearing certain affidavits will be read. Also a certified copy of the comptroller's certificates relating to the submission of the recall amendment. Also certain extracts from the city councils meetings. They are filed with the notice. One of them is that of one of the solicitors, that he secured signatures from absolute strangers, 235 in all, without knowing their names nor asking them, but made the required affidavit on the assumption that the names signed were the names of the signers. To only one of his petitions did he swear to the affidavit. The others he merely signed and turned in without being sworn. Some of the affiants swear that they signed their names to the petition, but their names are not signed by them, but are forgeries.

1911.

Jan. 7. Temporary injunction issued enjoining the defendants "from issuing any warrant or paying out any money of the city of Seattle whatsoever for the purpose of holding an election to elect a successor, etc.," and from ordering or permitting any other person, officer or employee of the city to issue any warrants or expend any money of the city for such purpose.

Order denying stay pending appeal.

Jan. 7. Order requiring plaintiff to give $10,000 bond before injunction operative.

Defendants' petition for appeal indorsed and allowed by the judge.

Order fixing appeal bond $300.00.

Appeal bond filed.

Assignment of error filed:

1. No jurisdiction.
2. Demurrer should have been sustained for want of jurisdiction.
3 and 4. Refusal to permit a stay.
5. Demurrer should have been sustained for want of equity.

Praecipe for record on appeal.

Concluding the court's opinion.

Jan. 13. Petition for appeal dated at Portland, Oregon, 11th of January, indorsed, allowed January 10, 1911. Gilbert, judge.

Citation on appeal, Jan. 7th. Signed by Hanford.

Answer filed; denies exceptions 1 and 5 of article 19 were in force as alleged. Denies that the submission of the amendment relating to further amendment was contrary to the constitution and statutes. Denies the allegation of not proper publication and denies that the further amendment is not in force. Admits Gill's election; denies all the allegations impeaching the recall petition. Denies that there was no provision made in the tax levy for the expense of such an election. Allege that in fact a sufficient sum was levied to pay for any election. Alleges that the female singers were qualified.

Defendants' motion to dissolve temporary injunction because of the filing of the answer under oath supported by affidavits of numerous persons.

Jan. 17. Order upon stipulation dismissing the action without costs. Stipulation for same filed Jan. 17, dated January 16th.

Feb. 24. Stipulation permitting plaintiff to withdraw the injunction bond for cancellation.

Order upon stipulation.

EXHIBIT No. 88.

Augustus S. Peabody, trustee, *v.* City of Seattle and Seattle, Renton & Southern Railway Company. No. 2012.

1911.

Aug. 21. Complaint filed. Complainant citizen and resident of Illinois. Defendants Washington corporations.

Complaint alleges that from 1891 the railway company has operated over its own right of way from Washington Street south to Lake Washintgon, which line, in October, 1896, was extended to Renton over a private right of way.

Paragraph 4 recites a deed of trust made in 1899 to the State Street Trustee Company of Massachusetts to secure a $150,000 bond issue. Subsequently the old owner, Seattle & Renton Railway Company, deeded the property to the defendant railway company subject to said trust deed; then this defendant made another trust deed to the Merchants Loan & Trust Company of Illinois for $285,000, out of which the bonds issued ($105,000) under the first-trust deed were to be retired. There was a change of trustee under the latter, the American Trust & Savings Bank of Chicago succeeding. Later, in May, 1908, the defendant company made another trust deed to the First Trust & Savings Bank of Illinois and Peabody to secure $1,000,000 bonds; $600,000 of these bonds were issued and the former issue taken up by exchange, so that of the $1,000,000 issue there now is outstanding $825,000. Refers to the original franchise ordinance 1441 amended by 1448 and later one under ordinance 15919 as interpreted by 17068.

The railway company surrendered its franchise under 1441, as amended by 1448, and quit-claimed to the city its ownership and right of way from Washington Street to the common corner of sections 26, 27, 34, and 35, known as Kenyon Street.

Ordinance 15919 was amended by 25038, which became effective 17th September, 1910.

February 3, 1909, a franchise was granted under ordinance 20088. Under 15919 railway company built double track here on Fourth Avenue from Washington Street to Pine Street, thence extended to Stewart Street.

After the passage of 25038 the railway company spent $115,000 in complying with their terms.

The complaint sets out various grading work being done by the city necessitating the shifting of railway lines and involving considerable expense to the railway company in paying for grading of its line.

The line Rainier Beach was through unplatted land. The owner platted it, but subsequently the city limits were extended to include that plat. The streets in the plat had not been used at all for over five years and section 3803, Ballinger's Code, vacates such a street after five years, and the Supreme Court held, in Murphy *v.* King County (45 Washington 587), that the said streets had been vacated by nonuser. Subsequently the city started to grade the streets in that plat, making expenditure of $10,000 necessary for temporary readjustment of tracks; that the grading of streets on said plat over which the line extends, as intended by the city, will destroy the line for nearly half a mile and prevent the railway from operating from Seattle to Renton and thereby impair the security of the plaintiff and the regrading work will really be a taking of a thirty-foot strip of the railway company's right of way for a distance of nearly a mile without compensation, the city never having acquired the right to take it or damage it; that in December, 1910, two ordinances were passed by the city—25963 and 62—purporting to revoke the railway company's franchises for reasons set forth, none of which are true; that the city, in the two later ordinances, acted illegally and contrary to the constitution of the State and of the United States; that the ordinances are void, would cast a cloud upon the title of the property held by the plaintiff as security, and impair the value of the bonds; that since the passage of the two later ordinances the city has been paid and received from the railway company $3,741, being 2 per cent of its gross revenue under the earlier ordinances; that in 1907 the State legislature passed an act bringing interurban railways under the exclusive jurisdiction of the State railway commission; that ordinance 15919 was not passed until after the State law aforesaid, and that portions thereof prescribing regulations for the operation of cars and the regulation of fares were in conflict with the supreme jurisdiction of

the railway commission and therefore ultra vires of the city; that the public service commission act was passed by the State legislature and went into effect June 9, 1911, it creating a public service commission, with exclusive jurisdiction to regulate interurban railways like that of the defendant railway company; that the city has been demanding for a long while that the railway company interchange transfers with the Seattle Electric Company, upon an equal division of the fares collected, contrary to the direct provisions of the transfer clause contained in 19519 as amended by 25038, and contrary to the laws of the State and the constitutional laws of the United States; that before the last demand of the city the city construed the transfer clause of the ordinance and found and notified the railway company that it was entitled to receive 59½ per cent of the fare paid and transfers received; that this construction by the city was accepted by the railway company, and since said construction the railway company has extended its mileage, having 14 per cent more mileage, in relation to the transfer right, thus increasing its proper percentage of the fares to 73½ per cent. The city now demands, however, the exchange on an equal basis; that this demand of the city has incited a large number of people to demand transfers, which would be honored by the Seattle Electric only upon equal division, and, upon the railway company's refusal to issue them, these people refused to pay any fare at all, and they entered into a concerted plan and scheme to enter the cars in a body and refuse to pay any fare whatever. Because of those conditions the railway company has for some days last past been unable to operate some of its cars at all, so that the traveling public have been unable to secure transportation; that this has resulted in great confusion and disturbance, and will lead to riots and destruction of the railway company's property, and endangers the lives and personal safety of law-abiding passengers and of the car employees; that complainant has been informed, and upon information and belief, charges the fact to be that unless the unlawful and illegal demands of the city for the equal interchange be complied with, the cars and barns, the power houses, etc., will be seized, damaged, and destroyed by unlawful and riotous people, resulting in the inability of the railway company to pay the interest upon the bonds, and that the city is either unwilling or unable to prevent these threatened acts of destruction by rioters; that the city has, purporting to act under some ordinance, served notice on the railway company that its property within the city limits has been appraised at $380,000, and it is the city's intention to demand that the railway company sell its said properties for such price to the city, or, failing that, the city will construct and operate a double-track line of railroad, with one track on each side of the defendant railroad company's line throughout the entire route within the city; that this demand is a part of the conspiracy aforesaid to destroy the value of the railway company's property to the irreparable loss of the bond holders; that to accede to the demand for equal interchange would result in a loss of 35 per cent of the gross revenues, which would render the railway company unable to pay its operating expenses, fixed charges, and interest, or the principal of the bonds as they become due.

That the original ordinance, 15919, as amended by 25038, specifically describes the franchise route as ending at Kenyon Street on the south. Subsequently the city annexed territory south of Kenyon Street, after the railway line had been constructed and operated there. This annexation brought into the city limits 2¾ miles of the defendants' railway line south of Kenyon Street, all of which is operated upon the railway company's own private right of way and none of it upon any street or highway. Nevertheless, the city demands that the railway company transport passengers at a five-cent fare clear to the present city boundaries, although the railway company has a published rate of five cents to Kenyon Street, and five cents additional for any point south. On account of the aforesaid unlawful action of the city, the railway company has been not for some months able to collect its lawful rates of fare—any attempt to collect them has been met by offense and mob violence. In order to operate at all, it has been compelled to accede to the unlawful demand in regard to fare or else collect none, meaning a monthly loss of $1,500 for six months last past; that the railway company can only operate at a loss upon those terms; that this condition will be carried on unless restrained

in this action, and if notice were given to the city and the railway company of an application for temporary injunction, the city will demand and the railway company will yield to the demand, and immediately proceed to construct temporary tracks at Rainier Beach and thereby jeopardize the rights of the bond holders, and the railway company being powerless to resist, will have to yield to the demands in regard to the 50 per cent basis of transfer, or if the railway company does not yield in that respect, the persons will tie up the operation of the railway, and the city will be unable to protect the property and operation of the line, and the properties of the railway company will be destroyed to the damage of the trust.

Paragraph 31 alleges that the amount in controversy, etc., exceeds $2,000.

Section 32 quotes article 15 of the trust deed empowering Peabody to proceed alone if his cotrustee is unable or unwilling to join; that as matter of fact the cotrustee had declined to join and that Peabody is acting alone at its request.

The prayers are: First, for subpœna. Second, temporary restraining order restraining the defendant and its officers from demanding or compelling the railway company from: (*a*) To remove or adjust its tracks at Rainier Beach off its present right of way; (*b*) interchange transfers upon the 50 per cent basis; (*c*) transport passengers throughout the line for a single fare of five cents; enjoining the railway company from the sme things; adjudicating ordinance 15919 as amended by 25038 so far as they conflict with the laws of the State to be void; adjudicating ordinances 25962 and 3 void; adjudicating that the railway company is owner and entitled to peaceable occupation of its 33 feet right of way as located through Rainier Beach. (Signed.) Kerr & McCord. (Verified.) McCord.

Order issued requiring the defendants to show cause August 28, 1911, why temporary injunction should not issue as prayed, and, in the meantime, an emergency appearing, ordered, upon the plaintiff giving $10,000 bond, temporary order is hereby issued temporarily restraining and enjoining the defendant from the three things specified in the prayer above and enjoining the railway company from the same until the hearing be had and until the further order of the court; further, that all persons having knowledge of the order are enjoined from in any manner interfering with the property of the railway company and the operation of the railroad and the moving of the cars; further, that a copy of this order be posted in the cars of the railway company so as to give notice to the traveling public of the issuance of this order.

Restraining order served on the city the same day.

1911.

Aug. 21. Complainant's bond, $10,000, U. S. Fidelity & G. Co., surety.

Aug. 22. Amended complaint filed. The only change that I catch is in paragraph 5. The amendment inserts the date of recording and place of record of the trust deed and the prayer is amplified so as to include a prayer for a permanent injuction upon final hearing.

Aug. 22. Petition of the defendant railway company reciting that upon being served with a certified copy of the restraining order it posted a printed copy of same in all its cars and notified its car men instructing them to notify all intending passengers of the order and call their attention to it; that on the morning of the 22d a number of people residing along the line of the railway by concerted movement boarded the cars and refused absolutely to pay any fare unless they were handed a transfer to the S. E. Co. or a receipt good for 2½ cents. The company refused to accept those persons as passengers, but the conductors and motor-men were crowded out of the way, the people entered and took possession of the cars without paying, and, in fact, declining to pay any money for their passage. The consequence of this was that the railway's operation was suspended for four hours. Wherefore, the railway company asks a modification of the restraining order: First, permitting it to issue transfers to passengers upon their paying 3 cents in addition to 5 cents so that the railway company be allowed to receive transfers from the S. E. Co. upon the payment, with each transfer, of 3 cents, each passenger paying the additional 3 cents being given a receipt, the receipt to be taken up and cash refunded if, upon the final determination, the issue be decided in favor of the lower division of transfer; that the railway company be allowed to charge 10-cent fare to all passengers traveling beyond Kenyon Street north or south and issue a receipt for five cents.

1911.

Aug. 22. Order made modifying restraining order as suggested.
The modified order served on the railway company the same day.

Aug. 26. Order allowing Paul Wilson, Earl & Steinert, his attorneys, to file petition in intervention.

Aug. 26. Wilson's petition filed shows that he lives down near Rainier Beach on the line of the railway and he is dependent upon that line for transportation and his business is dependent upon it also; sets forth passage or ordinances 15919 and 25038 and alleges that under those ordinances which were accepted came the duty of the railway company to carry passengers throughout its line within the city limits for a five-cent fare, and to issue transfers on the payment of a five-cent fare; that the railway company has refused to do this; that in case 74231 in the superior court, State ex rel Dennison, the superior court construed the ordinance as petitioner claims, entered an order requiring its observance, and, on July 14, 1911, the supreme court of the State affirmed. This case related only to the through fare. That the superior court, in case 71874, State ex rel Linhoff, construed that part of the franchises relating to the transfer provision as claimed by the intervenor it ought to be, and this was, on March 23, 1911, affirmed by the supreme court.

Recites the passage of ordinance for the regrading of streets in Rainier Beach. The work was entered on and it became necessary for the railway company to remove its tracks, but the company refused to do it. Later it agreed to and actually began the construction of other tracks in accordance with the agreement; that the track of the railway company crosses intervenor's land—the tracks being laid there by virtue of the lease. It is said that the terms of the lease were to continue until Rainier Avenue was graded, when it should cease; that a large number of people have located in the valley upon the promise of the railway company to charge only a 5-cent fare; that on account of the railway company's refusal to carry out these agreements the growth of the locality has been delayed; that the defendant and complainant are in collusion in this action and are seeking to relitigate the matters aforesaid decided by the supreme court of the State.

Aug. 28. Order permitting the intervention of the Hulbert Investment Co. and H. H. A. Hastings, as executor of the estate of George W. Dunlap.

Aug. 28. That complaint in intervention filed—Hastings & Stedman, attorneys—sets forth that the right of way was donated originally upon an oral agreement for a 5-cent fare; aggregate donations of land and money, $96,000. Dunlap made a donation of 10 acres upon that agreement; that that agreement was carried out from 1891 to 1910, and a great many people have purchased homes in that vicinity upon that agreement; that recently the railway company has ignored it and established a 10-cent fare.

Refers to the Dennison suit and the Linhoff suit and charges that the railway company is endeavoring to ignore those judgments and decisions; that the complainant and the railway company are acting in collusion to that end; that there is no actual controversy between the complainant and the railway company, and that the object of the suit is to avoid or delay the performance of the mandates of the supreme court.

Prayer that the temporary restraining order be vacated and that upon the final hearing the injunction issue against the railway company to require it to carry out the mandates of the supreme court of the State.

Aug. 31. Wilson demurred to complaint filed.

Aug. 31. Demurrer of the city filed. Points as follows:

1. Complainant's own showing is that he is not entitled to relief prayed.
2. That the court had no jurisdiction.
3. That the bill is without equity.
4. That the bill does not state facts sufficient.
5. That there is a misjoinder of defendants.
6. That two or more causes of action are improperly united.
7. That there is another action now pending for the same relief; and
8. That the plaintiff has no legal capacity to sue.

Aug. 31. Answer of the city filed, consisting of admissions and denials and affimative matter.

Sets up the passage of the regrading ordinance of Rainier Avenue. The company refused to remove its tracks, as would be necessary for the regrading, and brought an action—S. R. & S. *v.* City. Copy of complaint attached. Trial was had of that case before Judge Dykeman,

who held that the city had the right to require the tracks to be moved without paying compensation. The judgment went accordingly. Then the railway company entered into a written agreement with the city for temporary removal of the tracks, and no appeal was taken; that the removal of the tracks complained of was necessary and proper under the agreement, and that the city has agreed, in case it should be decided that the company was not bound to remove its tracks, to pay the expense of the temporary removal; sets up the lease referred to by Wilson; that in the case above referred to the court found that the right of way was not privately owned at Rainier Beach but was part of a public street; sets up the passage of ordinance 15919 and amendatory ordinance 25038, and shows that by the terms of it the company is required to carry passengers for a single 5-cent fare and issue transfers on a 50 per cent basis, and that the railway, the S. E. Co., is ready to exchange on that basis, but the defendant railway company has refused.

Refers to the Linhoff case and the Dennison case; that the same contentions that are made here were made there, particularly in the supplemental complaint in the Dennison case, a copy of which is attached; that there is now pending before Judge Donworth the case of Railway Co. *v.* City, 1932, in which is presented every contention made in this case—copy of supplemental complaint attached—and that a temporary injunction was issued in that case enjoining the enforcement of said ordinances; that the action is brought in collusion between the plaintiff and the railway company and that the railway company is the real complainant. It is a citizen of Washington and there is therefore no jurisdiction; that the trustee was cognizant of the State litigation and consented thereto and they are bound thereby; that the denial of injunction will in no wise injure the railway company or its bondholders, but will greatly increase its traffic and earnings.

Prayer that the temporary restraining order be dissolved and the prayer for temporary and permanent injunction denied and case dismissed.

1911.

Aug. 31. Affidavit of W. R. Crawford, president of the railway company; he says no decision has ever been rendered by the State courts in any way affecting the interpretation of ordinance 15919 and amendatory ordinances; that there is no collusion and the action was not instituted for the sole benefit of the railway company.

Refers to the right of way case by Dykeman; says that it was dismissed with costs, and by stipulation the railway company agreed not to supersede, but did reserve the right to appeal and will, within proper time, appeal, and, on August 30, it did appeal; that the superior court refused to make any findings; that for the city to go ahead with its grading work will stop the operation of the railway. No action has been brought to determine the compensation to be paid. Says that the city work is being done on private property which is not a street.

Refers to the Linhoff case; that the Linhoff case has been taken by writ of error to the Supreme Court of the United States on August 2, 1911; that the city was not a party to the Linhoff case.

Refers to the Dennison case and that a petition for rehearing in the supreme court is now pending and that supercedeas bond was given in both cases by the railway company. The city is not a party to the Dennison case. That an action was brought in the superior court by the railway company against individuals who refused to pay the cash fare of 5 cents to and from points south of Kenyon Street; restraining order was granted by Gilliam, but the people refused to obey it; that the railway company endeavored to enforce the provisions of Gilliam's injunctional order, but the police department of the city refused to prevent rioting and arrested a car man for endeavoring in a peaceful manner to eject passengers who refused to pay their fare.

Sets up the passage of the public service commission act since the decisions in the Dennison and Linhoff cases, and that the railway company is now under that jurisdiction; that the railway company has always obeyed the provisions of its franchises; that the action before Judge Donworth is pending, but that the city in its answer claims that the railway company has no rights whatsoever under said ordinances and is occupying its line in the streets of Seattle without authority; that after the order was issued in this case and while the company was trying to enforce it Mayor Dilling appeared with policemen and ordered the arrest of 19 conductors and motormen together with the superintendent, took the men off the cars and

the superintendent out of his office, carried them in patrol wagons to police headquarters, 5 to 8 miles distant—all of which was done pursuant to the preconcerted plan of the city and mayor; that the modified restraining order in this action was posted in the cars and on the morning of the 23d the railway company tried to carry it out, but the people announced they would not obey it and would prevent the railway company from obeying it, and the railway company has not been able to obey it. Later warrants were issued out of the justice courts in the city against the officers and agents, etc., of the railway company and arrests made; that later in order further to harass the railway company the mayor called a special meeting of the council for the passage of an ordinance making it a penalty for cars to stop over five minutes. Ordinance passed as an emergency provision. That there is no collusion and the railway company refused to have anything to do with the bringing of this case.

1911.

Aug. 31. Affidavit of McCord filed denying collusion; the action was brought at the direction of L. L. Summers, a representative, at present in Seattle, of Peabody, and setting up that the trustee has never been a party to any proceedings in the State court.

Aug. 31. Appears the following minute in the order book: "Court overruled the demurrer to the complaint and suggested that a plea in abatement be filed by the attorneys for the defendant city of Seattle by two o'clock p. m., Friday, September 1, 1911, to determine the jurisdiction of this court in said action and the restraining order was continued in force."

Sept. 1. The city files the plea setting up the action is collusive for the purpose of avoiding the effect of the State decisions; that the trustee had knowledge of the State litigations and consented to them; sets up the same matter of of the proceedings in court and by ordinance as is set up in the answer, although not so fully.

Sept. 1. Affidavit of Dilling filed in support of the answer.

Sept. 1. Affidavit of Valentine filed for defendant.

Sept. 13. Is filed an order dissolving the temporary restraining order reciting that the matter come on for hearing on the 2d, and the defendant city having filed its plea and answer together with its affidavits, therefore ordered that the temporary restraining order be dissolved and the application for temporary injunction denied.

Sept. 13. Complainant granted leave to file amended and supplemental complaint.

Sept. 16. Amended and supplemental complaint filed.

Sept. 21. Complainant filed petition that the court call to his assistance two additional Federal judges, reciting the application is made under sec. 17 of the act of June 18, 1910, 36 Statutes at Large, p. 557, and asks that the court fix a time for hearing the application.

Sept. 21. Affidavit of Crawford filed.

Sept. 21. Complainant files motion for injunction pendente lite.

Oct. 2. Stipulation filed that the plea and answer stand as against the amended complaint with leave to the city to amend both.

Oct. 2. City demurs.

Oct. 2. Affidavit of H. D. Hughes filed claiming that there have been no prosecutions under any State statute compelling the issuance of transfers; sets out that the public service commission act was foreign to the case.

Oct. 19. City demurrer filed.

Oct. 30. Ordered, after hearing of counsel, holding that this case is not one within the act of 1910, the application, therefore, for additional federal judges is denied.

Oct. 30. Order overruling the demurrer of the city.

Nov. 8. Demurrer of prosecuting attorney filed.

Dec. 4. Answer filed by the city in support of plea.

Exhibit 89 not printed.

EXHIBIT NO. 90.

Remarks of the court in the case of Peabody *v.* City of Seattle on August 31, 1911, at 2.45 p. m.

The COURT. My suggestion this forenoon about an answer was prompted to some extent by the information previously given that you had an answer ready. It occurred to me that if it had been filed it might place the matter in proper shape for me to grasp it. As at the present time advised I believe that this answer ousts the court

of its jurisdiction; that is, the face of their pleading was sufficient to oust the court's jurisdiction. I am skeptical on the point as to whether the complainant can by any amendment sustain the jurisdiction. It may be that he can, but I don't want to be too dogmatic about that now. But I would like to have this record made up with respect to the rules of practice and my suggestion about an answer may have been misleading. The rules of this court, rule 20, contemplate that —— the matters in bar; that is, matters of fact in bar. —— matters in abatement should be by plea and not by answer. You know we have quite a —— equity practice. But there is a difference more in —— than anything else between a plea and an answer. This answer is brought to be on file in support of a plea. I think you ought to specially plead the matters in abatement. Now, a plea in other suit involving matters already in evidence here in this suit that is binding in this court in any injunction that is in force and that should be a subject of plea in abatement.

(The judge quoted chancery rule 93 (33?), and added:)

Matters alleged in paragraphs 16 and 17 of this answer constitute a good plea. In a plea against the jurisdiction of the court. As against the bill as it stands. Whether the court would entertain jurisdiction on the other ground of a Federal question involved is a matter that can be raised on the question of filing an amended bill. The order I make now will be an order taking the case under advisement on the demurrer that has been submitted and continuing the restraining order in force until the further order of the court, and you can have leave to file a special plea in abatement or in bar of the action by to-morrow afternoon at two o'clock, and at the same time—I will not say at the same time—the application now made for leave to amend the bill is denied with leave to renew it. I don't limit you. You can present it to-morrow afternoon if you have it ready; but if you want further time I won't finally dismiss the case until you have had an opportunity to act as you are advised whether you persist in trying to amend. What I expect to do is to hear the case on the plea. When a plea is —— you don't have to amend it with a replication. It can be set down to be heard on the sufficiency of the plea. If the plea in bar is sufficient the case will be dismissed for want of jurisdiction.

EXHIBIT No. 91.

In the United States District Court for the Western District of Washington, northern division. Augustus S. Peabody, of Chicago, Illinois, trustee, *v.* City of Seattle, Seattle, Renton & Southern Railway Company, a corporation. No. 2012. Before Hon. C. H. Hanford, judge.

SEPTEMBER 1ST, 1911—2 O'CLOCK P. M.

(Argument.)

The COURT. Has the answer that you presented yesterday been filed?

Mr. HUGHES. Yes, your honor; I filed it with the clerk—asked to have it filed.

The COURT. Well, you may take leave to file this plea now, and the answer will be regarded as filed in support of the plea. Especially in cases where there is an application pending for injunction pendente lite, it is a safe practice, where you plead or file a special plea, to support the plea with an answer. Now, the answer, in my opinion, denies the equity of the bill, and while it is a practice that is a little hard to explain, nevertheless it is a fixed rule of practice in the Federal court that when an answer comes in denying the equity of the bill, if an injunction has been issued, the injunction will be dissolved. In the face of this answer I can't continue this restraining order in effect any longer. You can take whatever time is reasonably necessary to work out the case and bring it on, if you want to, to a final hearing for an injunction, but the preliminary injunction that is applied for will have to be denied and the restraining order issued dissolved. That is the order I will make now, and you may set this plea down for hearing on its sufficiency, or reply to it, or take whatever course you are advised.

Mr. McCORD. I would like an exception to your honor's ruling.

The COURT. Exception allowed.

Mr. McCORD. I want to ask the court in this matter at this time about the order dissolving the restraining order. I don't know whether we have a right to appeal or not, but if we have we would like for the court to indicate at this time what amount of supersedeas bond would be required in order to take it up, to continue the restraining order in force?

(Argument.)

The COURT. Well, you may look that up. I am not able to make a good guess right now how much of a bond ought to be required if you are entitled to keep this restraining order in effect by a bond.

(Argument.)

Mr. McCord. We have a right to exercise our legal rights, and upon appeal there is a legal right given to us, at least I construe the law to be that way, and we ask the court to now fix the supersedeas bond, the amount of it.

The Court. The latest amendment to the statute reads as follows: "That where upon a hearing in equity in the district or in a circuit court, or by a judge thereof in vacation, an injunction shall be granted or continued, or a receiver appointed, by an interlocutory order or decree in any cause, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction or appointing such receiver to the circuit court of appeals." Now, the general rule is that you can not appeal from an interlocutory order; you must wait for a final judgment before you can appeal. This is a special statute that allows an appeal from an interlocutory order that grants an injunction or continues an injunction, but it does not allow an appeal from an order denying an injunction. So I will not bother myself to fix any amount of supersedeas bond. It wouldn't do any good.

Exhibit No. 92.

Peabody, trustee, *v.* City of Seattle et al.

The Court. * * * I think it will be extra burdensome and not just at all to undertake to segregate and have the questions involved tried out in piecemeal between different parties. In the exercise of my discretion I will not be willing to have brought into one lawsuit all the contentions of different parties affecting the rights of the complainant, but where the whole matter is so involved that you can not place this corporation where it belongs, neither as an injured party nor as a wrongdoer in the discharge of its obligations as a public service corporation, without taking into account all these different questions, to adjudicate those questions all parties concerned must be in court and have their day and opportunity to be heard. I will overrule the demurrer.

Now, on the part that you have here as to the application for an injunction, I am pretty doubtful whether you have got a case here that entitles you to call for a hearing on the question of constitutionality of the State law. You allege that sections *25, 94, and 95* of the State utilities law would be unconstitutional if applicable to this case, but you have got an allegation in there that section 25 is not applicable, and, if section 25 is not applicable, the other sections are not applicable, so that you are not attacking the constitutionality of the law, but you are attacking the right of the prosecuting attorney to prosecute under that law. It is a question of applicability of the law to the case.

Mr. McCord. We only say that as to section 25, your honor. The other sections impose penalties for any violation of the act, of a thousand dollars—a gross misdemeanor, and imprisonment.

The Court. You do not allege that there are any prosecutions under any other section than section 25, and if section 25 is not applicable then you have a complete defense of the allegation that the collection of more than 5 cents for passage within the city is not within the terms of that law, and the case can be decided without ever touching the question of constitutionality. If the circuit judges should come here and hear your case, they could pass on the question of your right to an injunction without saying one word about this law, whether it is constitutional or unconstitutional. If they should be of the opinion that you are right when you say section 25 is not applicable, then they would not go a step further, they would not give the least intimation of whether they think the law is constitutional or unconstitutional.

I am very sorry that I can not shirk the responsibility of this case on three other judges, but I don't see how I can call on them to come here and hear this case.

Mr. McCord. The court will allow us an exception to the order refusing to call them in, will you?

The Court. Yes; you may take an order overruling the demurrer, and an order denying the petition for a hearing before three judges, on your application for an injunction. To which an exception is allowed.

Exhibit No. 93.

Comparative statements of number of decisions rendered by Federal judges in district and circuit courts as reported in vol. 42 to advance sheets No. 3, vol. 195, inclusive, Fed. Rep.

Comparative statements showing:

1st. Relative rank of 14 judges now remaining on bench out of 70 judges on bench at commencement of vol. 42, Fed. Rep., as to number of decisions rendered in district and circuit courts. (Page 2.)

2d. Relative rank of 216 judges as to number of decisions rendered in district and circuit courts, reported in vol. 42 to advance sheets No. 3, vol. 195, inclusive, Fed. Rep. (Page 3.)

3d. Relative rank of 216 judges as to average number of decisions per volume of Fed. Rep. rendered in district and circuit courts, vol. 42 to advance sheets No. 3, vol. 195, inclusive, Fed. Rep. (Page 4–5.)

4th. Alphabetical list of 216 Federal judges, with number of their decisions in district and circuit courts, vol. 42, to advance sheets, No. 3, vol. 195, inclusive, Fed. Rep. (Page 6–13.)

I. In number of decisions by the 14 judges in the district and circuit courts remaining on the Federal bench at the close of advance sheets No. 3, vol. 195, Fed. Rep., out of the 70 judges on the bench at the commencement of vol. 42, Fed. Rep., the rank is as follows:

Rank.	Name.	Volume.	Number of decisions.
First	Lacombe	42/195	836
Second	Coxe	do	525
Third	*Hanford*	do	*514*
Fourth	Newman	do	294
Fifth	Colt	do	205
Sixth	Speer	do	194
Seventh	Ross	do	172
Eighth	Toulmin	do	160
Ninth	Morris, J. J.	do	142
Tenth	Maxey	do	88
Eleventh	Pardee	do	79
Twelfth	Locke	do	22
Thirteenth	McCormick	do	9
Fourteenth	Boarman	do	1

II. In number of decisions by 216 judges in the district and circuit courts, as reported in vol. 42 to advance sheets No. 3, vol. 195, Fed. Rep., inclusive, the rank is as follows:

Rank.	Name.	Volume.	Number of decisions.
First	McPherson, J. B	91/195	867
Second	Lacombe	42/195	836
Third	Brown, A	42/109	732
Fourth	Wheeler	42/146	663
Fifth	Coxe	42/195	525
Sixth	*Hanford*	*42/195*	*514*
Seventh	Townsend	49/152	505
Eighth	Hazel	102/195	476
Ninth	Adams, G. B	112/188	465
Tenth	Ray	166/195	425
Eleventh	Simonton	42/129	384
Twelfth	Thomas, B. B	84/149	348
Thirteenth	Platt	113/195	343
Fourteenth	Holland	129/195	327
Fifteenth	Archbald	106/105	308

15 judges.
12 judges, between 200 and 300 decisions.
36 judges, between 100 and 200 decisions.
153 judges under 100 decisions.

216 total number of judges.

III. In average number of decisions per volume of 216 judges in the district and circuit courts as reported in Fed. Rep., vol. 42 to advance sheets No. 3, vol. 195, inclusive, the rank is as follows:

Rank.	Name.	Volume.	Decisions.	Average per volume (Fed Rep.).
First	Reed	45/47	35	11.66
Second	Brown, A	42/109	732	10.76
Third	McPherson, J. B	91/195	867	8.25
Fourth	Blodgett	42/53	81	6.75
Fifth	Chatfield	151/195	298	6.62
Sixth	Brown, H. B	42/44	19	6.33
Seventh	Wheeler	42/146	663	6.31
Eighth	Adams, G. B	112/188	465	6.03
Ninth	Lacombe	42/195	836	5.42
Tenth	Sawyer	42/47	32	5.33
Eleventh	Roy	116/195	425	5.31
Twelfth	Thomas, E. B	84/149	348	5.27
Thirteenth	Hand	169/195	132	5.07
Fourteenth	Hazel	102/195	476	5.06
Fifteenth	Holland	129/195	327	4.88
Sixteenth	Townsend	49/152	505	4.85
Seventeenth	Simonton	42/129	384	4.36
Eighteenth	Platt	113/195	343	4.13
Nineteenth	Shiras	42/124	293	3.53
Twentieth	Billings	42/59	62	3.33
Twenty-first	Archbald	106/195	308	3.42
Twenty-second	Coxe	42/195	525	3.40
Twenty-third	Hill	42/46	17	3.40
Twenty-fourth	Benedict	42/87	155	3.36
Twenty-fifth	*Hanford*	*42/195*	*514*	*3.33*
Twenty-sixth	Butler	42/193	173	3.32
Twenty-seventh	Hough	145/195	163	3.19
Twenty-eighth	Holt	121/195	232	3.09
Twenty-ninth	Hoffman	42/46	15	3.00

29 judges.
12 judges average per volume between 2 and 3 decisions.
57 judges average per volume between 1 and 2 decisions.
118 judges average per volume under 1 decision.

216 total number of judges..

IV. Alphabetical list of 216 Federal judges with number of decisions in district and circuit courts, number of volume in which reported, vol. 42 to advance sheets, No. 3, vol. 195, inclusive, Fed. Rep.:

Name.	Volume.	Number of decisions.	Name.	Volume.	Number of decisions.
Acheson	42/145	163	Bruce	42/111	14
Adams, E. B	72/195	118	Bryant	112/177	1
Adams, G. B	112/188	465	Buffington	48/195	168
Aldrich	42/195	71	Bunn	42/135	34
Allen	42/116	19	Burns	115/195	6
Amidon	78/195	30	Butler	42/93	173
Anderson	120/195	11	Caldwell	42/121	43
Archbald	106/195	308	Carland	79/184	37
Baker, F. E	112/195	17	Carpenter, G. A	173/195	33
Baker, J. H	49/195	192	Carpenter, G. M	42/81	53
Barr	42/91	51	Chatfield	151/195	298
Bean	172/195	41	Clark	64/159	47
Beatty	45/151	47	Cochrane	109/195	39
Bellinger	42/138	203	Colt	42/195	205
Benedict	42/87	155	Conner	168/195	19
Bethea	135/170	3	Cotteral	156/195	4
Billings	42/59	62	Coxe	42/195	525
Blodgett	42/53	81	Cross	135/195	104
Boarman	42/195	4	Dallas	51/166	249
Bond	42/57	15	Day, W. L	185/195	5
Boyd	102/195	8	Dayton	134/195	76
Bradford	82/195	88	Deady	42/54	26
Brawley	59/195	102	De Haven	86/195	190
Brown, A	42/109	732	Denison	185/195	26
Brown, A. L	75/195	197	Dick	42/86	26
Brown, H. B	42/44	19	Dietrich	151/195	36

Name.	Volume.	Number of decisions.
Dodge	134/195	85
Donworth	172/195	20
Dyer, D. P	152/195	16
Edgerton	43/78	3
Elliott	185/195	9
Evans	93/195	164
Ewart	87/101	9
Ewing	146/157	23
Farrington	148/195	22
Finkelnburg	136/151	13
Foster, C. J	42/92	26
Foster, R. E	171/195	23
Geiger	185/195	1
Gilbert	49/195	48
Goff	49/195	40
Gray	93/195	38
Green	42/80	65
Gresham	42/54	34
Grosscup	42/193	103
Grubb	169/195	44
Hale	115/195	123
Hallett	42/139	60
Hammond	42/133	93
Hand	169/195	132
Hanford	42/195	514
Hawley	42/145	205
Hazel	102/195	476
Hill	42/46	17
Hoffman	42/46	15
Holland	129/195	327
Hollister	185/195	5
Holt	121/195	232
Hook	91/195	16
Hough	145/195	163
Hughes	42/87	67
Humphrey	106/195	16
Hundley	151/167	22
Hunt	129/176	43
Jackson, H. E	42/69	35
Jackson, J. J	42/134	19
Jenkins	42/134	66
Jones	111/195	40
Keller	109/195	27
Key	42/71	17
Killetts	185/195	21
Kirkpatrick	82/129	118
Knappen	148/195	17
Knowles	42/128	118
Kohlsaat	93/195	183
Krepel	42/61	2
Lacombe	42/195	836
Landis	132/185	12
Lanning	130/195	125
Lewis	132/195	11
Lochren	76/159	79
Locke	42/195	22
Lowell	87/184	244
Lurton	42/171	29
Marshall	72/195	31
Martin	146/195	81
Maxey	42/195	88
Mayer	192/195	4
McCall	134/195	20
McCormick	42/195	9
McCoy	42/61	3
McCrary	42/81	18
McDowell	110/195	45
McHugh	72/81	1
McKenna	42/79	48
McKennan	42/61	6
McPherson, J. B	91/195	867
McPherson, S	102/195	22
Meek	93/195	22
Miller	42/61	12
Morris, P	124/195	8
Morris, T. J	42/195	142
Morrow	46/195	251
Munger, T. C	150/195	5
Munger, W. H	78/195	32
Nelson, R. R	42/79	53
Nelson, T. L	42/86	23
Newman	42/195	294
Niles	46/195	13
Noyes	154/195	42
Orr	167/195	41
Pardee	42/195	79
Parker	42/79	20
Parlange	61/149	28
Paul	42/110	77
Phillips	42/175	250
Platt	113/195	343
Pollock	125/195	56
Preest	62/69	18
Pritchard	128/195	21
Purdy	161/168	4
Purnell	79/164	142
Putnam	49/195	203
Quarles	134/195	54
Ray	116/195	425
Reed, T. H	127/195	107
Reed, J. H	45/47	35
Rellstab	168/195	45
Rector	47/89	4
Richards	120/167	1
Ricks	42/148	95
Riner	45/195	36
Rogers	76/185	112
Rose	177/195	28
Ross	42/195	172
Rudkin	184/195	18
Russell	177/195	3
Sage	42/90	141
Sanborn, A. L	133/195	75
Sanborn, W. H	49/195	34
Sanford	159/195	22
Sater	150/195	20
Saunders	149/169	8
Sawyer	42/47	32
Seaman	53/195	152
Sessions	184/195	1
Severens	42/188	59
Seymour	42/86	19
Shelby	91/95	24
Sheppard	152/195	10
Shipman	42/113	162
Shiras	42/124	293
Showalter	65/90	40
Simonton	42/129	384
Smith	154/195	3
Speer	42/195	194
Swan	42/184	55
Swayne	42/155	11
Taft	44/99	108
Tayler	133/182	38
Tenney	81/86	5
Thomas, A. D	43/82	12
Thayer	42/135	101
Thomas, E. B	84/149	348
Thompson	88/175	70
Toulmin	42/195	160
Townsend	49/152	505
Tricber	102/195	113
Van de Vanter	140/178	7
Van Fleet	150/195	58
Van Valkenburg	178/195	11
Veedes	184/195	1
Waddill	85/195	102
Wales	42/82	24
Wallace	42/151	143
Wanty	99/144	9
Ward	152/195	83
Webb	42/115	12
Wellborn	65/195	127
Wheeler	42/146	663
Whitson	135/184	21
Willard	168/195	44
Williams	42/102	42
Wing	105/135	26
Witmer	184/195	27
Wolverton	139/195	151
Woods	42/109	31
Woolson	46/98	56
Wright	134/195	10
Youmans	186/195	5
Young	157/195	4

EXHIBIT NO. 94.

ABSTRACT OF JUDGE HANFORD'S PUBLISHED DECISIONS.

The written decisions of a judge during his incumbency in office covering a period of more than twenty-two years must necessarily bear testimony as to his judicial temperament, capacity for work, and industry. This abstract cites the volumes and pages containing 551 opinions written by Judge Hanford with index words or explanatory notes indicating the topics of each. Those blue penciled in the margin [indicated by a *] are cases in which poor litigants have prevailed, or the decisions were adverse to big interests or monopolies. Special attention is invited to cases numbered 84, 99, 389, 477, and 532. Case No. 84 is a decision against a monopoly, the reasoning and conclusions of which are in perfect accord with the opinions and sentiments of the courts, lawyers, and people now, but when rendered it was too progressive and so it was reversed by the circuit court of appeals as the abstract shows.

Case No. 99 was a suit in equity to cancel patents for about 3,000,000 acres of public land obtained by a syndicate of wealthy landgrabbers by glaring fraud. The dissenting opinion given by Judge Hanford as a member of the circuit court of appeals is a strong protest against judicial sanction of fraud and sound according to present day ideas.

Case No. 389, held ocean carriers to accountability for violations of the rights of passengers.

Case No. 477 is a humanitarian as well as judicial affirmance of the rights of sailors.

Case No. 532 defeated a vigorous assault upon the admiralty jurisdiction of the United States district courts of cases of maritime torts in a case involving the right of a widow of a working man to recover damages for negligence causing the death of her husband. The decision overrules an earlier decision of the circuit court of appeals which has embarrassed the courts and litigants.

Abstract of Judge Hanford's Published Decisions.

1. Holland *v.* Hyde..... 41 Fed., 897.
   Jurisdiction of Federal courts—Suit in equity for cancellation of patent of public land.
2. Emmons *v.* United States..... 42 Fed., 26.
   Void entries of public lands—Right of assignee to sue the United States—This decision was overruled by Judge Deady (48 Fed., 43), but subsequently followed by Judge Bean in 189 Fed., 415, and is sustained by the Supreme Court 218 U. S., 345.
*3. *Craigend*, The ship..... 42 Fed., 175.
   Rights of seamen.
4. Steel *v.* Rathbun..... 42 Fed., 390.
   Jurisdiction of Federal court in action by assignee.
5. A raft of piles..... 42 Fed., 917.
   Salvage.
6. United States *v.* Harned..... 43 Fed., 376.
   Extortion by public officers.
7. *George E. Wilton*, The..... 43 Fed., 606.
   Chinese exclusion law—Forfeiture of a vessel for violations of law while in the control of parties wrongfully in possession—Held to be not forfeited.
8. United States *v.* Budd..... 43 Fed., 630.
   Suit for cancellation of a patent for public lands—For alleged fraud—Decision adverse to the Government—Affirmed by the Supreme Court in 144 U. S., 154.
9. Oleson *v.* N. P. R. Co..... 44 Fed., 1.
   Suit for an injunction—Jurisdiction denied.
10. United States *v.* Taylor..... 44 Fed., 2.
    Judgments of Territorial courts—Contempt proceedings.
11. *Walla Walla*, The..... 44 Fed., 4.
    Appeals in Admiralty.
12. McBride *v.* Pierce County..... 44 Fed., 17.
    Interpretation of statutes—Injunction denied.
13. Mann *v.* Tacoma Land Co..... 44 Fed., 27.
    Tacoma tide lands—Valentine script—Surveys of public land—Affirmed by Supreme Court (153 U. S., 273).

14. United States *v.* Osborn..... 44 Fed., 29.
Unlawful occupancy of public land—Railroad land grant.
15. Isaacs *v.* McNiell..... 44 Fed., 32.
Female suffrage—Stare de cisis.
*16. Padmore *v.* Piltz..... 44 Fed., 104.
Damages for abuse of a seaman.
17. Bishop of Nesqualley *v.* Gibbon..... 44 Fed., 321.
Grant of missionary stations in organic law of Oregon Territory—Claim of the Catholic Church to the Vancouver Military Reserve—Rejected—Affirmed by the Supreme Court (158 U. S., 155–172).
18. *Alex Gibson*, The..... 44 Fed., 371.
Charter parties—Demurrage—Reversed by C. C. A. (56 Fed., 603).
19. United States *v.* Wan Lee..... 44 Fed., 707.
Interpretation of act of Congress dividing the district of Washington in four divisions.
20. Carr *v.* Fife..... 44 Fed., 713.
Jurisdiction of Federal court—Conflicting claims to public land—Affirmed by the Supreme Court (156 U. S., 494).
21. United States *v.* Brooks..... 44 Fed., 749.
Practice in criminal cases.
22. United States *v.* Harned..... 44 Fed., 751.
Practice in criminal cases.
23. *Walla Walla*, The..... 44 Fed., 796.
Fraudulent importation of merchandise.
24. United States *v.* Opium (two cases)..... 44 Fed., 798.
Fraudulent importation of merchandise.
25. United States *v.* Manion..... 44 Fed., 800.
Land Office regulations—Perjury—Sustained by Supreme Court in Williamson *v.* U. S. (207 U. S. 461–2).
26. Carr *v.* Fife..... 45 Fed., 209.
Jurisdiction of Federal courts.
27. Murray *v.* Blue Bird Mining Company..... 45 Fed., 385.
Jurisdiction of Federal courts.
28. Murray *v.* Blue Bird Mining Company..... 45 Fed., 387.
U. S. circuit court as successor of Territorial court.
29. Blue Bird Mining Company *v.* Murray..... 45 Fed., 388.
Removal of causes.
30. Nickerson *v.* Crook..... 45 Fed., 658.
Removal of causes.
31. Lathum *v.* N. P. R. Company..... 45 Fed., 721.
Right of sublessees to dispute landlord's title denied.
32. Smith *v.* Skagit County..... 45 Fed., 725.
Held that a nonresident owner of property within the limits of a proposed municipal corporation may maintain a bill to restrain the canvassing of the returns of an election held under certain statutes of Washington for the purpose of effecting the incorporation on the ground that it was void because of a failure to comply with the statute.
The newspapers failed to roast the judge for that decision.
33. United States *v.* Scholl..... 45 Fed., 758.
Suit in equity for the cancellation of a patent to public land.
34. United States *v.* Perry..... 45 Fed., 759.
Suit in equity for cancellation of a patent to public land.
35. Stimson *v.* Clarke..... 45 Fed., 760.
Power of the Commissioner of the General Land Office to cancel entries of public lands.
*36. *Rainier*, The..... 45 Fed., 773.
Seamen's wages.

37. Connor *v.* Skagit Cumberland Coal Company..... 45 Fed., 802.
Practice on removal of causes.

38. Carson *v.* Donaldson..... 45 Fed., 831.
Order remanding.

39. Chapman *v.* Keindel et al..... 46 Fed., 99.
Public land—Contested entry—Injunction.

*40. Spokane St. Ry. Co. *v.* City of Spokane Falls et al..... 46 Fed., 322.
Injunction against city sued for by a street-railway corporation—Refused.

41. Cowley *v.* Northern Pac. R. Co..... 46 Fed., 325.
Equity—Adequate remedy at law—Vacation of judgment—Reversed (159 U. S., 569).

42. Renner *v.* Northern Pac. Ry. Co..... 46 Fed., 344.
Contributory negligence.

*43. Johnson *v.* Northern Pac. Ry. Co..... 46 Fed., 347.
Action for damages by a lady passenger for being wrongfully ejected from a train. Judgment was rendered in her favor on a verdict for $1,000.

44. Humason, In re..... 46 Fed., 388.
"Due process of law"—Information—Habeas Corpus—Federal courts.

45. Hershberger et al. *v.* Blewett et ux..... 46 Fed., 704.
Quieting title—Pleading—Community property—Husband and wife—Nonresidents.

46. Magee *v.* Oregon Ry. & Nav. Co..... 46 Fed., 734.
The plaintiff sued for damages for being elected from a passenger steamboat on which he attempted to travel as a passenger without paying fare—Nonsuit granted.

47. United States *v.* Trumbull..... 46 Fed., 755.
Chinese—Unlawful landing—Aiding and abetting—Indictment.

48. *Manhattan*, The..... 46 Fed., 797.
Maritime contracts—Lien—Admiralty jurisdiction.

49. McDougall *v.* Hayes..... 46 Fed., 817.
Federal courts—Jurisdiction—Parties.

50. Forrest et al. *v.* Union Pac. R. Co..... 47 Fed., 1.
Removal of causes—Waiver of objections to service—Process—Service on agent.

51. Buckeye Engine Co. *v.* Donau Brewing Co. et al..... 47 Fed., 6.
Creditor's bill—Return of nulla bona—Jurisdiction of Federal courts—Receivers—Appointment.

52. First Nat. Bank of Clarion *v.* Hamor..... 47 Fed., 36.
Action on judgment—Variance—Pleading—General denial—Reversed by C. C. A. (49 Fed., 45).

53. Stockstill et al. *v.* Bart et al..... 47 Fed., 231.
Estoppel—Quitclaim deed—Community property—Separate conveyance by wife—Gifts.

54. Holmes et al. *v.* Wintler..... 47 Fed., 257.
Suit to try title—When maintainable—Deed and mortgage—Construction—Foreclosure of mortgage.

55. Leo Hem Bow, In re..... 47 Fed., 902.
Deportation of Chinese—Review of habeas corpus.

56. United States *v.* Ah Toy..... 47 Fed., 305.
Deportation of Chinese laborers—Unlawful imprisonment.

57. *The New City*..... 47 Fed., 328.
Alien seaman—Foreign ship—Seamen's wages—Failure to complete voyage—Discharge for ill health.

58. United States *v.* Jim..... 47 Fed., 431.
Exclusion of Chinese—Ratification of treaty—Evidence of former residence.

*59. Evans *v.* Carbon Hill Coal Co..... 47 Fed., 437.
Personal injury—Master and servant—Fellow servants.

60. Grant *v.* Spokane Nat. Bank et al..... 47 Fed., 673.
National banks—Receivers—Actions against—Parties—Jurisdiction.

61. Chase *v.* Cannon et al. ..... 47 Fed., 674.
National banks—Insolvency—Recovery of assets—Jurisdiction—Equity—Pleading—Multifariousness—Execution—Levy—Custodio legis—Courts—Conflict of jurisdiction.

62. Brooks *v.* Northern Pac. Ry. Co. ..... 47 Fed., 687.
Personal injury—Master and servant—Risks of employment—Defective machinery—Contributory negligence.

63. Woodruff *v.* Northern Pac. R. Co. ..... 47 Fed., 689.
Personal injury—Trespasser on railroad track—Pleading—Unlawful speed.

64. *George E. Starr*, The ..... 47 Fed., 749.
Collision—Between steamers—Fog—Excessive speed—Lateral motion under port helm—Stopping in fog—Mutual fault—Going ahead instead of astern.

65. McDonald *v.* Donaldson et al. ..... 47 Fed., 765.
Title to real estate—Partition of syndicate lands—Effect of invalid voluntary partition—Gift of stock—Partition of corporate lands.

66. Boman et al. *v.* Boman ..... 47 Fed., 849.
Wills—Validity—Disinheriting children reversed by C. C. A. (49 Fed., 329).

67. Gratton *v.* Weber ..... 47 Fed., 852.
Community property—Rights of nonresident wife—Decree of foreign court—Transfer of title—Estoppel.

68. Richards *v.* Bellingham Bay Land Co. ..... 47 Fed., 854.
Dower—Abolition by statute—Effect on existing marriages—Affirmed by C. C. A. (54 Fed., 209).

69. *Henry Dennis*, The ..... 47 Fed., 918.
Libel in rem—When maintainable—Failure to show lien.

70. Stevens *v.* Ferry et al. ..... 48 Fed., 7.
Courts—Jurisdiction in foreclosure—Lands outside district—Foreclosure of mortgage—Rights of mortgagor—Defective sheriff's deed.

71. English et al. *v.* Spokane Commission Co. ..... 48 Fed., 196.
Sale—Breach of warranty—Waiver—Acceptance of goods—Reversed by C. C. A. (57 Fed., 451).

*72. Van Dresser *v.* Oregon Ry. & Nav. Co. et al. ..... 48 Fed., 202.
Corporations—Where suable—Writs—Corporation doing business in State—Service on agent—Service on lessee—Service on foreign corporation—Following State practice.

73. Coulter *v.* Stafford ..... 48 Fed., 266.
Tax deeds—Limitation of actions—Statutes—Adoption from another State—Construction—Reversed by C. C. A. (56 Fed., 564).

74. *Pilot*, The ..... 48 Fed., 319.
Shipping law—Foreign waters—Foreign tug boats—Straits of Juan de Fuca—Reversed by C. C. A. (50 Fed., 437).

75. United States *v.* Baird ..... 48 Fed., 554.
Criminal law—Chinese—Duty of customs officers—Opposing arrests.

76. United States *v.* Lee Hoy ..... 48 Fed., 825.
Chinese merchants—Re entry without certificate—Decision of collectors—Affirmed by C. C. A. (50 Fed., 271).

77. Blewett *v.* Front-Street Cable Ry. Co. ..... 49 Fed., 126.
Bonds—Actions—Measure of damage—Penalty—Deeds—Delivery—Escrows—Parol evidence—Harmless error—Interest—Affirmed by C. C. A. (51 Fed., 625).

*78 Northern Pac. R. Co. *v.* Sanders et al. ..... 49 Fed., 129.
Railroad grants—Reservations—Location of mining claims—Affirmed by Supreme Court (166 U. S., 620).

79. Lem Hing Dun *v.* United States ..... 49 Fed., 145.
Appeal—Dismissal—Records and briefs.

80. Gee Fook Sing *v.* United States ..... 49 Fed., 146.
Chinese—Exclusion of immigrants—Habeas corpus—Evidence of place of birth.

81. Lem Hing Dun *v.* United States; Lee Foo et al. *v.* United States ..... 49 Fed., 148.
Appeal—Dismissal—Records and briefs.

82. United States *v.* Durwood..... 49 Fed., 446.
Customs duties—Violation of laws—Breaking open bonded cars—Criminal law.

83. Hinchman *v.* Kelley et al..... 49 Fed., 492.
Equity—Jurisdiction—Suit to declare trust—Affirmed (54 Fed., 63).

*84. United States *v.* California & O. Land Co..... 49 Fed., 496.
In a suit in equity to cancel patents to a large body of public land obtained by fraud, the defendants pleaded that they were bona fide purchasers without notice of the alleged fraud and gave testimony, in support of their plea. The trial court refused to admit evidence to rebut their testimony and rendered a decree in their favor. The Government appealed—The case was heard in the C. C. A. by District Judges Hanford, Hawley, and Morrow—The majority of the court affirmed the circuit court, Hanford filed a dissenting opinion. The majority opinion was affirmed by the Supreme Court (148 U. S., 31).

*85. *The Karoo*..... 49 Fed., 651.
Seamen's wages—British vessel—Jurisdiction—Shipping articles—Informality—Rights of sailors—Kidnaped sailors—Rate of wages—Insufficient food.

86. Norton *v.* Jensen..... 49 Fed., 873.
Patent case.

87. Blackburn et ux. *v.* Wooding..... 49 Fed., 902.
Specific performance—Fraud—Equitable relief—Reversed for lack of jurisdiction (56 Fed., 546).

88. *The Hope*..... 49 Fed., 279.
Maritime liens—Insurance premiums.

89. *James G. Swan*, The..... 50 Fed., 108.
Penalties and forfeitures—Killing fur seals in Alaska waters—Sovereignty over Bering Sea—Indian tribes—Makah Indians—Treaty.

90. United States *v.* Meeker..... 50 Fed., 146.
Timber land—Cancellation of patent—Evidence.

91. Pac. Postal Telegraph Cable Co. *v.* Western Union..... 50 Fed., 493.
Telegraph companies—Grant by railroad—Construction—Exclusive right of way—Ultra vires.

92. Herman, in re..... 50 Fed., 517.
Attorney—Dismissal by receiver—Security for services rendered.

93. *Favorite*, The..... 50 Fed., 569.
Tugs and tows—Negligence—Unseaworthy tow.

94. Gilmour *v.* Ewing et al..... 50 Fed., 656.
Mortgage—Insolvency—Assignee—Pleading—Federal jurisdiction.

95. Weber et al. *v.* Spokane Nat. Bank et al..... 50 Fed., 735.
National banks—Limitation of indebtedness—Construction of statute—Defense—Estoppel—Notice to creditor—Presumptions—Reversed (64 Fed. Rep., 208-211).

96. McDonald *v.* Hannah et ux..... 51 Fed., 73.
Tax title—Estate acquired—Action to recover lands—Common source of title—Evidence—Prior decision—Dower—Conveyance—Reversed (59 Fed., 977).

97. United States *v.* Wong Sing..... 51 Fed., 79.
Chinese exclusion—Indictment—Summary proceedings..

98. Haller *v.* Fox et al..... 51 Fed., 298.
Admiralty jurisdiction—Maritime contract.

*99. Ore. Short Line & U. N. Ry. Co. *v.* Ilwaco Ry. & Nav. Co... 51 Fed., 611.
Carriers—Use of wharf of railroad company by steamboats—Facilities at railroad wharf—Reversed by (C. C. A. 57 Fed., 673.)

100. Green *v.* City of Tacoma et al..... 51 Fed., 622.
Eminent domain—Illegal taking—Ejectment.

101. Dexter, Horton & Co. *v.* Sayward..... 51 Fed., 729.
Contract — Construction — Novation — Action—Defense — Counterclaim—Parties to contract—Pleadings—Federal courts—Action by assignee.

102. Dexter, Horton & Co. *v.* Sayward ..... 51 Fed., 732.
Attachment—Dissolution—Contract.

103. Friedrich, in re ..... 51 Fed., 747.
Constitutional law—Due process—Modifying verdict—Habeas corpus—Conviction by State court—Criminal law—"Verdict" and "judgment" defined—Affirmed by Supreme Court (149 U. S., 70).

104. Fristad *v.* The Premier ..... 51 Fed., 766.
Collision—Vessel at anchor—Mutual fault.

105. Cloud *v.* City of Sumas ..... 52 Fed., 177.
Federal courts—Jurisdiction—Action by assignee.

106. United States *v.* Chin Quong Look ..... 52 Fed., 203.
Chinese exclusion acts—Mercantile domicile.

107. *Rapid Transit*, The ..... 52 Fed., 320.
Admiralty pleading—Departure—Shipping—Damage to freight—Fire—General average—Cargo injured in suppressing fire—Basis of shipowner's contribution—Insurance—Costs.

108. Northern Pac. R. Co. *v.* City of Spakane et al ..... 52 Fed., 428.
Injunction—Preliminary order—Questions of title—Contract rights—city ordinance—Affirmed by C. C. A. (64 Fed., 506).

*109. Seattle & M. Ry. Co. *v.* State et al ..... 52 Fed., 594.
Removal of causes—Separable controversy—Condemnation proceedings—Federal corporations.

110. Hatch et al *v.* Fergusen et al ..... 52 Fed., 833.
Fraudulent decree—Equitable relief—jurisdiction.

*111. Hastings *v.* Northern Pac. R. Co ..... 53 Fed., 224.
Carriers—Injury to passenger—Contributory negligence—Question for jury—New trial—Application—Court rules—Argument to the court—Reading decisions—Presence of jury.

112. Mangels *v.* Donau Brewing Co. et al ..... 53 Fed., 513.
Federal courts—jurisdiction—Diverse citizenship.

113. Clapp *v.* City of Spokane et al ..... 53 Fed., 515.
Street railway—Damage to franchise by construction of sewer—Rights of mortgagee—Circuit court—Vested rights—Municipal corporations—Location of sewers—Jurisdictional amount.

114. United States *v.* Hurshman ..... 53 Fed., 543.
Indians—Sales of liquor.

*115. *Wasco*, The ..... 53 Fed., 546.
Admiralty—Rights of passengers.

116. Greene *v.* City of Tacoma et al ..... 53 Fed., 562.
Jurisdiction of Federal courts—Municipal corporations—Ejectment.

117. Levy *v.* Brown (U. S. marshal, et al) ..... 53 Fed., 568.
Husband and wife—Community property—Liability to execution for debts of husband.

118. *Willamette*, The ..... 53 Fed., 602.
Admiralty—Suit in rem—Venue.

119. *Guy C. Goss*, The ..... 53 Fed., 826.
Admiralty—Practice—Motion to Dismiss—Shipping—Carriage of goods—Liability for damage—Pleading and proof.

120. *Guy C. Goss*, The ..... 53 Fed., 839.
Corporations—Actions—Proof of corporate existence.

121. *Sirius*, The ..... 54 Fed., 188.
Admiralty—Agency—Bottomry bonds.

122. *State of California*, The ..... 54 Fed., 404.
Admiralty—Collisions—Damages.

123. Hofman et al *v.* Keane ..... 54 Fed., 986.
Vendor and vendee—Cancellation of sale and conveyance—Fraudulent representations.

*124. Puget Mill Co. *v.* Brown et al ..... 54 Fed., 987.
Public lands—Soldiers additional—Homestead scrip—Affirmed by C. C. A. (59 Fed., 35).

125. Hershberger et al. *v.* Blewett et ux ..... 55 Fed., 170.
Equity practice—Public lands—Conflicting jurisdiction of State and Federal courts—Heirs.

126. *Governor Ames*, The ..... 55 Fed., 327.
Maritime law—Rights of seamen.
127. Calif. Safe Deposit & Tr. Co. *v.* Cheney Elec. Light, Telephone & power Co. et al ..... 56 Fed., 257.
Removal of causes—Mortgages—Jurisdiction in equity—Case remanded.
*128. Nestelle *v.* Northern Pac. R. Co ..... 56 Fed., 261.
Damages for death by wrongful act—Statute of limitations—This decision adverse to railroad corporation.
129. *Marion*, The ..... 56 Fed., 271.
Collision—Steam and sail—Lights—Lookouts.
130. *Itata*, The (concurring) ..... 56 Fed., 518.
Concurring opinion—International law—Neutrality.
131. Hicklin *v.* Marco et al. (dissenting) ..... 56 Fed., 549.
Jurisdiction of Federal courts—Parties—Foreclosure of mortgage.
132. Riley et al. *v.* Jackson ..... 56 Fed., 582.
Patent case.
133. Ross *v.* Eells et al ..... 56 Fed., 855.
Indian reservation—Railroad right of way—Injunction granted—Reversed by C. C. A. (64 Fed., 417).
*134. Earle et al. *v.* Seattle, L. S. & E. Ry. Co. et al ..... 56 Fed., 909.
Corporations—Ultra vires—Right of minority stockholders—Receiver appointed.
*135. Northern Pac. R. Co. *v.* City of Spokane et al ..... 56 Fed., 915.
N. P. R. land grant—Streets in a city—Ultra vires—Injunction sued for by railroad company refused and case dismissed—Affirmed by C. C. A. (64 Fed., 506).
136. Puget Sd. Nat. Bank of Seattle *v.* King County et al ..... 57 Fed., 433.
Taxation of national bank—Pleadings.
137. Lewis *v.* Shaw et al ..... 57 Fed., 516.
Public land—Cancellation of entry—Rights of bona fide purchaser—Aff. (70 Fed., 289).
138. *A. R. Robinson*, The ..... 57 Fed., 667.
Admiralty—Liability of tug for loss of tow.
139. Wash. Nat. Bank of Tacoma *v.* Eckels, et al ..... 57 Fed., 870.
National banks—Voluntary liquidation.
140. Davidson, Ex parte ..... 57 Fed., 883.
Public land—Littoral rights—Railroad right of way—Jurisdiction of courts.
141. Adams *v.* Spokane Drug Co ..... 57 Fed., 888.
Insolvent national bank—Rights and liabilities of a depositor who is indebted to bank—Set-off.
142. Hatch *v.* Ferguson et al ..... 57 Fed., 959.
Indians—Conveyances of real estate—Jurisdiction of Federal courts—Equity—Affirmed by C. C. A. (66 Fed., 669).
143. Hatch et al. *v.* Ferguson et al ..... 57 Fed., 966.
Jurisdiction of Federal courts—Venue—Guardian & Ward—Community property—Wills—Affirmed by C. C. A. (68 Fed., 43).
144. Hatch *v.* Ferguson et al ..... 57 Fed., 972.
Equity—Deeds—Cancellation—Estoppel.
145. Pauly *v.* State Loan & Trust Co ..... 58 Fed., 666.
National banks—Insolvency—Statutory liability of stockholders—Pledgee of shares—Affirmed by Supreme Court (165 U. S., 606).
146. Grant *v.* United States ..... 58 Fed., 694.
Seamen—Harboring and secreting.
*147. Atlantic & Pac. R. Co. *v.* Laird ..... 58 Fed., 760.
Rights of passengers—Amendment of pleadings—Affirmed by Supreme Court (164 U. S., 393).
148. Benson In re ..... 58 Fed., 962.
Indictment for conspiracy—Reversed by C. C. A. (70 Fed., 591).
149. United States *v.* Warner ..... 59 Fed., 355.
Post office—Obscene sealed letters.

150. United States *v.* Jarvis..... 59 Fed., 357.
Post office—Obscene sealed letters—Epithets on envelope.
151. Ah Yow, In re..... 59 Fed., 561.
Chinese—Exclusion acts—Laborers.
*152. *Premier*, The..... 59 Fed., 797.
Admiralty—Collisions—Rights of passengers—Damages for death—Caused by wrongful act—Affirmed by C. C. A. (70 Fed., 874)—Modified by C. C. A. (72 Fed., 79).
153. United States *v.* Jefferson..... 60 Fed., 736.
United States—Eight-hour law—Seamen.
154. Walla Walla Water Co. *v.* City of Walla Walla..... 60 Fed., 957.
Constitutional law—Obligation of contracts—Federal jurisdiction—Municipal corporations—Limit of indebtedness—Annual payments for water supply—Affirmed by Supreme Court (172 U. S., 1).
155. Moore *v.* City of Walla Walla et al..... 60 Fed., 961.
Injunction refused—Municipal corporations—Public utilities.
156. Pac. Rolling Mill Co. *v.* Hamilton et al..... 61 Fed., 476.
Merchanics' liens—Who entitled to—Construction of statute—Affirmed by C. C. A. (68 Fed., 966).
157. Spokane County *v.* Clark..... 61 Fed., 538.
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158. Seattle, L. S. & E. Ry. Co., In re..... 61 Fed., 541.
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159. Stimson Land Co. *v.* Rawson et al..... 62 Fed., 426.
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160. La Chapelle *v.* Bubb et al..... 62 Fed., 545.
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161. Puget Sd. Nat. Bank of Seattle *v.* King Co. et al..... 62 Fed., 546.
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162. First Nat. Bank of Walla Walla *v.* Hungate..... 62 Fed., 548.
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163. *Flyer*, The..... 62 Fed., 615.
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164. Booth et al. *v.* Brown et al..... 62 Fed., 794.
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165. Johnson *v.* Richmond Beach Imp. Co..... 63 Fed., 493.
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166. Matthias' Estate, In re..... 63 Fed., 523.
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167. Lichty et ux. *v.* Lewis et ux..... 63 Fed., 535.
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168. J. M. Arthur & Co. *v.* Blackman et al..... 63 Fed., 536.
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169. Boyle *v.* Great Northern Ry. Co. et al..... 63 Fed., 539.
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170. Winston *v.* United States..... 63 Fed., 690.
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171. Klein *v.* City of Seattle..... 63 Fed., 702.
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172. United States *v.* Jose..... 63 Fed., 951.
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173. Jensen et al. *v.* Norton et al..... 64 Fed., 599.
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174. Jensen *v.* Norton et al..... 64 Fed., 662.
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175. Front St. Cable Ry. Co. *v.* Drake, Marshal et al. ..... 65 Fed., 539.
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176. German Sav. & Loan Soc. *v.* Cannon et al. ..... 65 Fed., 542.
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177. Cotting et al. *v.* Grant St. Elec. Ry. Co. et al. ..... 65 Fed., 545.
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178. Ralston *v.* Wash. & C. R. Ry. Co. ..... 65 Fed., 557.
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179. *Scottish Dale*, The ..... 65 Fed., 810.
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180. *Annie Faxon*, In re The ..... 66 Fed., 575.
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181. Jensen Can-Filling Mach. Co. et al. *v.* Norton ..... 67 Fed., 236.
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*182. Selby *v.* Mutual Life Ins. Co. of New York ..... 67 Fed., 490.
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*183. Phinney *v.* Mutual Life Ins. Co. of N. Y. ..... 67 Fed., 493.
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184. *Columbia*, The ..... 67 Fed., 942.
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185. La Chapelle *v.* Bubb, U. S. Indian Agent et al. ..... 69 Fed., 481.
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186. Nelson, In re ..... 69 Fed., 712.
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*187. Bolden *v.* Jensen et al. ..... 69 Fed., 745.
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188. Farmers' Loan & Trust Co. *v.* Northern Pac. R. Co. ..... 69 Fed., 871.
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189. Cookerly *v.* Great Northern Ry. Co. et al. ..... 70 Fed., 277.
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190. Lewis *v.* Shaw et al. ..... 70 Fed., 289.
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191. Sabin *v.* Fogarty ..... 70 Fed., 482.
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*192. Bolden *v.* Jensen et al. ..... 70 Fed., 505.
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193. Cox *v.* Robinson ..... 70 Fed., 760.
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194. Wood *v.* Drake et al. ..... 70 Fed., 881.
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195. Farmers' Loan & Trust Co. *v* Northern Pac. R. Co. ..... 71 Fed., 245.
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196. United States *v.* Bellingham Bay Boom Co. ..... 72 Fed., 585.
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197. American Loan & Trust Co. *v.* Olympia Lgt. & P. Co. ..... 72 Fed., 620.
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198. Bausman *v.* Denny et al..... 73 Fed., 69.
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199. United States et al. *v.* Winans et al..... 73 Fed., 72.
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*200. Dubley *v.* Front Street Cable Ry. Co. et al..... 73 Fed., 128.
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201. Humboldt Lumber Mfg. Ass'n *v.* Christopherson..... 73 Fed., 239.
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202. Collins *v.* Bubb..... 73 Fed., 735.
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*203. Occidental & O. S. S. Co. *v.* Smith et al. (two cases)..... 74 Fed., 261.
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204. Farmers' Loan & Trust Co. *v.* Northern Pac. R. Co..... 76 Fed., 15.
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205. Brigham et al. *v.* Kenyon et al..... 76 Fed., 30.
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206. American Exch. Nat. Bank *v.* Northern Pac. R. Co..... 76 Fed., 130.
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207. Bishop *v.* Averill et ux..... 76 Fed., 386.
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208. Mallon *v.* Hyde et al..... 76 Fed., 388.
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209. *Strathnevis*, The..... 76 Fed., 855.
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210. State of Washington *v.* Northern Pac. R. Co. et al..... 75 Fed., 333.
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211. McAleer et al, *v.* Lewis et al..... 75 Fed., 734.
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212. Hallam *v.* Tillinghast..... 75 Fed., 849.
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213. Carpenter *v.* Northern Pac. R. Co. et al..... 75 Fed., 850.
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214. Burleigh *v.* Chehalis County et al..... 75 Fed., 873.
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215. Stimson Land Co. *v.* Hollister..... 75 Fed., 941.
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216. Hawley et al. *v.* Diller..... 75 Fed., 946.
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217. Mathews *v.* Columbia Nat. Bank of Tacoma et al..... 77 Fed., 372.
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218. United States *v.* The *James G. Swan* et al..... 77 Fed., 473.
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*219. *City of Kingston*, The..... 77 Fed., 655.
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220. Rudland et al. *v.* Mastic et al..... 77 Fed., 688.
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221. Bowers Dredging Co. et al. *v.* N. Y. Dredging Co..... 77 Fed., 980.
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222. Dexter, Horton & Co. *v.* Sayward..... 78 Fed., 275.
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223. Harrisburg Trust Co. *v.* Shufeldt..... 78 Fed., 292.
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224. Baker *v.* Ault et al..... 78 Fed., 394.
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*225. *M. M. Morrill*, The..... 78 Fed., 509.
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226. United States et al. *v.* Alaska Packer's Ass'n..... 79 Fed., 152.
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227. Dexter, Horton & Co. *v.* Sayward..... 79 Fed., 237.
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228. Krug, In re..... 79 Fed., 308.
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229. Addison *v.* Pac. Coast Milling Co. et al..... 79 Fed., 459.
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230. Matthews *v.* Columbia Nat. Bank et al..... 79 Fed., 558.
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231. City of Great Falls *v.* Theis et al..... 79 Fed., 943.
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232. Sabin *v.* Barnett et al..... 79 Fed., 947.
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233. Wilhelmsen *v.* Ludlow..... 79 Fed., 979.
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234. *City of Puebla*, The..... 79 Fed., 982.
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235. American Loan & Trust Co. *v.* Union Depot Co..... 80 Fed., 36.
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236. Bowers Dredging Co. et al. *v.* N. Y. Dredging Co..... 80 Fed., 119.
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237. U. S. *v.* La Chappelle et al..... 81 Fed., 152.
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238. Clark et al. *v.* Great Northern Ry. Co. et al..... 81 Fed., 282.
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239. Moore, In re..... 81 Fed., 356.
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240. Snohomish Co. *v.* Puget Sd. Nat. Bank of Everett..... 81 Fed., 518.
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241. Smithson *v.* Hubbell et al..... 81 Fed., 593.
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242. Follett *v.* Tillinghast..... 82 Fed., 241.
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243. Northern Pac. Ry. Co. *v.* Kurtzman..... 82 Fed., 241.
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244. Northern Pac. Ry. Co. *v.* Balthazar et al..... 82 Fed., 270.
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245. Feurer *v.* Stewart..... 82 Fed., 294.
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246. Tillinghast *v.* Carr..... 82 Fed., 298.
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247. Calif. Safe Deposit & Tr. Co. *v.* Yakima Inv. Co..... 82 Fed., 542.
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248. Leary *v.* Columbia River & P. S. Nav. Co. et al..... 82 Fed., 775.
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249. United States *v.* Gue Lim..... 83 Fed., 136.
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250. Yee Gee, In re..... 83 Fed., 145.
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275. Baker *v.* Beach et al..... 85 Fed., 836.
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276. Baker *v.* Reeves et al..... 85 Fed., 837.
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277. *Lyman D. Foster*, The..... 85 Fed., 987.
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278. Northern Pac. Ry. Co. *v.* Soderberg..... 86 Fed., 49.
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279. McRae *v.* Bowers Dredging Co..... 86 Fed., 344.
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280. *Humboldt*, The..... 86 Fed., 351.
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281. *Wasp*, The..... 86 Fed., 470.
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282. McFadden et al. *v.* Mountain View Mining & Milling..... 87 Fed., 154.
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283. Tustin *v.* Adams et al..... 87 Fed., 377.
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284. *Occidental*, The..... 87 Fed., 485.
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285. Creagh *v.* Equitable Life Assur. Soc. of U. S. et al..... 88 Fed., 1.
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286. United States *v.* Eisenbeis et al..... 88 Fed., 4.
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287. Lamont *v.* Leedy et al..... 88 Fed., 72.
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288. *Highland light*, The..... 88 Fed., 296.
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289. *Victorian*, The..... 88 Fed., 797.
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290. McElroy *v.* British-American Assur. Co..... 88 Fed., 863.
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291. Northern Pac. Ry. Co. Co. *v.* Cunningham..... 89 Fed., 594.
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*292. *Guardian*, The..... 89 Fed., 998.
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293. Lawrence *v.* Times Printing Co. et al..... 90 Fed., 24.
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*294. *Mary A. Troop*, The..... 90 Fed., 307.
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295. McRae *v.* Bowers Dredging Co..... 90 Fed., 360.
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296. Lewis et al. *v.* Johnson..... 90 Fed., 673.
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297. United States *v.* Four Bottles Sour-Mash Whisky..... 90 Fed., 720.
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298. United States *v.* Murphy..... 91 Fed., 120.
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299. Sommers *v.* Carbon Hill Co..... 91 Fed., 337.
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300. One thousand dollars..... 91 Fed., 374.
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301. Provident Life & Tr. Co of Philadelphia *v.* Mills..... 91 Fed., 435.
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302. *Bella*, The..... 91 Fed., 540.
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303. Sharkey *v.* Port Blakely Mill Co..... 92 Fed., 425.
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304. United States *v.* Younger..... 92 Fed., 672.
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*305. *Lakme*, The..... 93 Fed., 230.
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*306. *A. M. Baxter*, The..... 93 Fed., 479.
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307. *Retriever*, The..... 93 Fed., 480.
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308. United States *v.* Tennant et al..... 93 Fed., 613.
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309. Durant *v.* Corbin..... 94 Fed., 382.
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310. Ledoux *v.* Forester et al..... 94 Fed., 600.
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311. *Evangel*, The..... 94 Fed., 680.
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312. George et al. *v.* Riddle et al..... 94 Fed., 689.
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313. Doremus *v.* Root et al..... 94 Fed., 760.
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314. Cronenwett *v.* Boston & A. Transp. Co..... 95 Fed., 52.
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315. Fees payable by voluntary bankrupts, In re..... 95 Fed., 120.
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316. *C. F. Sargent*, The..... 95 Fed., 179.
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317. *South Portland*, The..... 95 Fed., 295.
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318. Yamasaka, In re..... 95 Fed., 652.
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*319. *Marion Chilcott* et al., The..... 95 Fed., 688.
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320. *Jane Grey*, The..... 95 Fed., 693.
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*321. *Fred E. Sander*, The..... 95 Fed., 829.
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322. Credo Mining & Smelting Co. *v.* Highland Min. & Mill Co..... 95 Fed., 911.
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*323. Adams et al. *v.* Northern Pac. Ry. Co..... 95 Fed., 938.
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324. Stout *v.* Weedin..... 95 Fed., 1001.
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*325. Erickson *v.* Pacific Coast Steamship Co..... 96 Fed., 80.
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326. McBride *v.* Sunset Telephone Co..... 96 Fed., 81.
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327. Puget Sound Reduction Co., In re..... 96 Fed., 90.
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328. Chung Fat et al., In re..... 96 Fed., 202.
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329. United States *v.* Saunders et al..... 96 Fed., 268.
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330. *Sir Robert Fernie*, The..... 96 Fed., 348.
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331. Jefferson, In re..... 96 Fed., 826.
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332. Thomas, In re..... 96 Fed., 828.
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333. Neustadter et al *v.* Chicago Dry Goods Co..... 96 Fed., 830.
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334. Plastic Fireproof Construction Co. *v.* City & Co. of San Francisco..... 97 Fed., 620.
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335. *Humboldt*, The..... 97 Fed., 656.
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336. Conhaim, In re..... 97 Fed., 923.
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337. Buelow et ux., In re ..... 98 Fed., 86.
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338. United States *v.* Saunders, collector, et al ..... 98 Fed., 196.
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339. Gilbert *v.* Seatco Mfg. Co. et al ..... 98 Fed., 208.
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*340. *Carrier Dove*, The ..... 98 Fed., 313.
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341. Aldrich *v.* Skinner ..... 98 Fed., 375.
Bankruptcy—Insolvent national bank—Assessment of stock.

342. Aldrich *v.* McClaine ..... 98 Fed., 378.
National banks—Actions to enforce assessment—Limitation—Affirmed (197 U. S., 154), reversing 106 Fed., 791.

*343. *Forteviot*, The ..... 98 Fed., 440.
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344. *Cleveland*, The ..... 98 Fed., 631.
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345. United States *v.* Hadley ..... 99 Fed., 437.
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*346. Northern Pac. Ry. Co. *v.* Soderberg ..... 99 Fed., 506.
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*347. Hathaway et al. *v.* Mutual Life Ins. Co. of N. Y ..... 99 Fed., 534.
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348. Williams, In re ..... 99 Fed., 544.
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349. *Jane Grey*, The ..... 99 Fed., 582.
Admiralty—Rights of passengers—Harter Act.

*350. *Homer*, the ..... 99 Fed., 794.
Admiralty—Damages for a personal injury—In this case an award of $1,200.00 was by the C. C. A. reduced to $6,000 (109 Fed., 572).

351. Cowley et al. *v.* city of Spokane et al ..... 99 Fed., 840.
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*352. *Ida McKay*, The ..... 99 Fed., 1002.
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353. Conhaim, in re ..... 100 Fed., 268.
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*354. Mutual Life Ins. Co. of N. Y. *v.* Dingley ..... 100 Fed., 408.
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355. Dueber *v.* Northern Pac. Ry. Co ..... 100 Fed., 424.
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356. *Dode*, The ..... 100 Fed., 478.
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*357. *Prussia*, The ..... 100 Fed., 484.
Admiralty—Jurisdiction—Procedure—Rights of shippers.

358. *Ernest A. Hamill*, The ..... 100 Fed., 509.
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359. *Gen. McPherson*, The ..... 100 Fed., 860.
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360. Ripon Knitting Works et al. *v.* Schreiber ..... 101 Fed., 810.
Bankruptcy—Procedure for contempt—Power to coerce bankrupt to surrender assets—Petition for revision dismissed by C. C. A. (104 Fed., 1006).

*361. *Occidental*, The ..... 101 Fed., 997.
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362. Davenport, In re ..... 102 Fed., 540.
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363. Bibbs *v.* McNeeley et al ..... 102 Fed., 594.
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364. Rudnick, In re ..... 102 Fed., 750.
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365. Pierce, In re ..... 102 Fed., 977.
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366. Calderhead *v.* Downing et al ..... 103 Fed., 27.
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367. *Progreso*, The ..... 103 Fed., 504.
Admiralty—Charter parties—Rights of passengers.

368. Hoge *v.* Canton Ins. Office of Hongkong, Ltd ..... 103 Fed., 513.
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369. *Ravenscourt*, The ..... 103 Fed., 668.
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370. Northern Pacific Ry. Co. *v.* Cunningham ..... 103 Fed., 708.
Jurisdiction of Federal courts—Amount in controversy—Injunction sued for by railroad company granted.

371. United States *v.* 246½ pounds of tobacco ..... 103 Fed., 791.
Internal revenue—Forfeitures—Existence of mortgage on property of cigar manufacturer.

*372. *Mermaid*, The ..... 104 Fed., 301.
Admiralty—Rights of seamen—Decree awarding wages reversed by C. C. A. (115 Fed., 13).

373. Roberts *v.* Pac. & A. Ry. & Nav. Co. et al ..... 104 Fed., 577.
Removal of causes—Diverse citizenship of parties—This decision cited with approval by Supreme Court (199 U. S., 259)—Affirmed by C. C. A., but case reversed for error subsequent (121 Fed., 785).

374. Hill et al. *v.* Northern Pac. Ry. Co ..... 104 Fed., 754.
Release—Impeachment in action at law—Federal courts—Confirming to State practice—Equitable issues in actions at law—Affirmed by C. C. A. (113 Fed., 914).

375. Pellett *v.* Great Northern Ry. Co. et al ..... 105 Fed., 194.
Removal of causes—Costs on remand.

*376. Peterman *v.* Northern Pac. Ry. Co ..... 105 Fed., 335.
Wrongful death—Right of action for damages—Idaho statute—Parties entitled to sue—Parent.

377. *James G. Swan*, The ..... 106 Fed., 94.
Admiralty — Unlawful Sealing — Condemnation — Judgment—Res judicata—Liens—Limitation of lien—State statute—Validity—Application.

378. *Charles D. Lane*, The ..... 106 Fed., 746.
Admiralty—Rights of seamen.

379. *Northern Light*, The (two cases) ..... 106 Fed., 748.
Admiralty—Bottomry—Bonds—Maritime liens.

380. *Elm Branch*, The ..... 106 Fed., 952.
Admiralty—Salvage.

381. Erickson *v.* United States ..... 107 Fed., 204.
Action on contract to build a lighthouse for the Government.

382. *Santa Ana*, The ..... 107 Fed., 527.
Admiralty—Salvage.

383. Brigham-Hopkins Co. *v.* Gross et al ..... 107 Fed., 769.
Jurisdiction of Federal courts—Amount in controversy—Joinder of causes of action—Parties—Claims against partnership—Action against surviving partners—Limitations.

384. *City of Aberdeen*, The ..... 107 Fed., 996.
Admiralty—Collision.

385. White *v.* City of Tacoma ..... 109 Fed., 32.
Municipal corporations—Assessment for street improvement—Constitutional law.

386. Kromer *v.* Everett Imp. Co. et al ..... 110 Fed., 22.
Federal jurisdiction—Citizenship—Intervention.

387. Lawler et al., In re..... 110 Fed., 135.
Bankruptcy—Debts having priority—Wages under Washington statutes.

388. United States *v.* Kopp..... 110 Fed., 160.
Indians—Status of Puyallups—Intoxicating liquors.

*389. *Valencia*, The..... 110 Fed., 221.
Admiralty—Rights of passengers—Affirmed by C. C. A. (117 Fed., 68).

390. Smith et al. *v.* Northern Pac. Ry. Co..... 110 Fed., 341.
Witnesses—Depositions—Examination of adverse party—State statute—Overruled by Supreme Court (194 U. S., 303–310).

391. Brown *v.* Puget Sound Reduction Co..... 110 Fed., 383
Patent case.

392. *Del Norte*, The..... 111 Fed., 542
Admiralty—Charter party—Affirmed by C. C. A. (119 Fed., 118).

393. *Bertha*, The..... 111 Fed., 550.
Admiralty—Rights of seamen—Discharge of officer for intoxication.

*394. *South Portland*, The..... 111 Fed., 767.
Admiralty—Rights of seamen—Damages awarded for attempt to coerce seamen to involuntary servitude.

395. Clark, In re..... 111 Fed., 893.
Bankruptcy—Evidence to establish partnership—Evidence considered—Reversed (122 Fed., 561).

396. Van Horn *v.* Kittitas County..... 112 Fed., 1.
Contracts—Illegal condition—Feigned suit—Federal courts—Jurisdiction—Allegation of jurisdictional facts.

397. *Laura Madsen*, The..... 112 Fed., 72.
Admiralty—Authority of shipmaster to pledge the credit of the ship—Maritime liens.

398. *Flottbek*, The..... 112 Fed., 682.
Admiralty—Salvage.

*399. Hill et al. *v.* Mutual Life Ins. Co. of N. Y..... 113 Fed., 44.
Appeal—Reversal on single point—Retrial—Law of case—Affirmed by C. C. A. (118 Fed., 708)—Reversed (193 U. S., 551).

400. United States *v.* Freeman et al..... 113 Fed., 370
Eminent Domain.

401. *Laurel*, The..... 113 Fed., 373
Admiralty—Maritime contract—Liens—Shipmaster.

402. *Juneau*, The..... 113 Fed., 514.
Admiralty—Rights of Seamen.

403. *Lakme*, The..... 113 Fed., 772.
Collision—Steam vessels meeting—Negligent navigation—Affirmed by C. C. A. (118 Fed., 972)—Admiralty—Rights of seamen.

*404. *Falls of Keltie*, The..... 114 Fed., 357.
Admiralty—Rights of seamen—Foreign ships.

*405. Wade *v.* National Bank of Commerce of Tacoma..... 114 Fed., 377.
Malicious prosecution of civil action.

406. Monroe, In re..... 114 Fed., 398.
Bankrupts—Discharge—Effect—Setting aside.

407. Stoddart, In re..... 114 Fed., 486.
Bankruptcy—Discharge—Concealment of assets.

408. Celestine, In re..... 114 Fed., 551.
Habeas corpus—Status of Indian allottee—Jurisdiction of Federal courts.

409. *Robert Dollar*, The..... 115 Fed., 218.
Maritime liens—Supplies—Defense by charterer—State statutes—Constitutionality applicability to foreign ships—Washington statutes—Necessary supplies—Bar fixtures and supplies.

410. *Robert Dollar*, The..... 116 Fed., 79.
Admiralty—Costs—Disbursement for surety company bond.

411. Schenck, In re..... 116 Fed., 554.
Discharge of bankrupt—Fraudulent conveyance—Gifts—Rights of creditors—Limitation as to time.

412. Carlisle et al. *v.* Sunset Telephone & Tel. Co..... 116 Fed., 896.
Removal of causes—Diversity of citizenship.

413. O'Callaghan et al. *v.* O'Brien et al..... 116 Fed., 934.
Jurisdiction of Federal courts—Nuncupative will—Washington statutes—Reversed by C. C. A. (125 Fed., 657)—Reversed by Supreme Court (199 U. S., 89).

*414. *Troop*, The..... 117 Fed., 557.
Admiralty—Rights of seamen—Foreign ship affirmed (125 Fed., 672)—Sustained (190 U. S., 170).

415. State of Washington *v.* Island Lime Co..... 117 Fed., 777.
Removal of causes—Federal question—Case remanded to State court.

416. Lownsdale et al. *v.* Gray's Harbor Boom Co..... 117 Fed., 983.
Title to real estate—Equity jurisdiction of Federal courts.

417. McCune *v.* Essig et ux..... 118 Fed., 273.
Removal of causes—Federal question—Public lands—Title acquired under homestead law—Effect of patent to widow of settler—Affirmed by C. C. A. (122 Fed., 588)—Affirmed by Supreme Court (199 U. S., 382).

*418. *Troop*, The..... 118 Fed., 769.
Admiralty—Rights of seamen—Foreign ships—$4,000 awarded as damages—Affirmed by C. C. A. (128 Fed., 856)—Certiorari refused by Supreme Court (195 U. S., 632).

*419. Alaska Packer's Ass'n *v.* Letson et al..... 119 Fed., 599.
Patent case—Affirmed as modified by C. C. A. (130 Fed., 129).

420. Van *v.* Pacific Coast Co..... 120 Fed., 699.
False imprisonment—Facts justifying arrest without warrant—Malicious prosecution—Probable cause—Malice.

421. *Pinmore*, The..... 121 Fed., 423.
Admiralty—Salvage.

422. *Glenogle*, The..... 122 Fed., 503.
Admiralty—Salvage.

423. *Kaga Maru*, The..... 123 Fed., 139.
Admiralty—Collision.

424. *Albion*, The..... 123 Fed., 189.
Admiralty—Maritime tort—Pleadings.

425. Seattle Gas & Electric Co. *v.* Citizens' Light & Power Co..... 123 Fed., 588.
Corporation—Ultra vires—Power of New Jersey corporation as limited by law of its domicile—Injunction granted. This decision was not defended in the C. C. A., the parties having settled their controversy and the judgment was reversed (125 Fed., 1001).

426. *Energia*, The..... 124 Fed., 842.
Admiralty—Charter party—Liens—Washington statutes.

427. Oregon R. & Nav. Co. *v.* Shell et al..... 125 Fed., 979.
Jurisdiction of Federal Court—Amount in Controversy. (See 143 Fed., 1004.)

*428. Smith et al. *v.* Empire State Idaho Mining & Development Co. 127 Fed., 462.
Jurisdiction of Federal Courts—Transitory action—Damages for death by wrongful act—Motion to dismiss denied.

429. Holden et ux., In re..... 127 Fed., 980.
Bankruptcy—Exemptions—Wages—Head of a family—Statutes—Amendment.

430. Page, In re..... 128 Fed., 317.
Customs duties—Live Stock—Animals imported for breeding purposes.

431. *Trader*, The..... 129 Fed., 462.
Admiralty—Collision.

432. Bird *v.* Terry..... 129 Fed., 472.
Indians—Allotment of lands in severalty—rights conveyed by patent under Treaty—Appeal dismissed by C. C. A. (128 Fed., 592).

433. Kelly *v.* Grand Circle, Women of Woodcraft..... 129 Fed., 830.
Federal Courts—Removal of Cause—Special proceedings—Mandamus.
434. Bevis *v.* Markland et al..... 130 Fed., 226
Adverse claims to mining property.
435. Gaskill et al., In re..... 130 Fed., 235.
Insolvency—Trust fund—Sales in bulk—Statutes—Compliance—Trust funds—Bankruptcy—Preferred claims.
436. Olson *v.* Buffalo Hump Min. Co..... 130 Fed., 1017.
Foreign corporation—Transitory action—Jurisdiction of defendant—Smith case (127 Fed., 462) distinguished.
437. Clifford *v.* Williams et ux..... 131 Fed., 100.
Federal Courts—Jurisdiction—Habeas corpus—States—Judgments—Husband and wife.
438. O'Connell et al. *v.* Pinnacle Gold Mines Co..... 131 Fed., 106.
Mining claims—Statutes—Ejectment—Administrators—Heirs—Nonsuit—Affirmed (140 Fed., 854).
439. *Robert Rickmers*, The..... 131 Fed., 638.
Admiralty—Collisions—Affirmed by C. C. A., but amount of damages reduced (142 Fed., 305).
440. *Alcalde*, The..... 132 Fed., 576.
Admiralty—Maritime liens—Authority of ship master.
441. United States *v.* Ah Sou..... 132 Fed., 878.
Aliens—Constitutional law—Chinese exclusion—Reversed by C. C. A. (138 Fed., 775).
442. Nottage *v.* Sawmill Phoenix..... 133 Fed., 979.
Master and Servant—Use of Unguarded Machinery—Washington statute—Sawmills—Interpretation of statutes—Damages—Ambiguity.
443. *Amiral Cecille*, The..... 134 Fed., 673.
Admiralty—Collision.
444. Weir et al. *v.* Northwestern Commercial Co..... 134 Fed., 991.
Admiralty—Charter party—Demurrage.
445. United States *v.* Seattle Brewing & Malting Co..... 135 Fed., 597.
Action for Penalty—Statutory crimes—Interpretation of Statutes—Judgment—Pleadings—Cause of action.
446. *Cottage City*, The..... 136 Fed., 496.
Admiralty—Salvage.
447. Hutchinson, Ex parte..... 137 Fed., 949.
Habeas Corpus—Constitutional law—City ordinance—Trading stamps—Petitioner discharged.
*448. *Neck*, The..... 138 Fed., 144.
Admiralty—Rights of seamen—Foreign ship—International treaties.
449. *Bellingham* et al., The..... 138 Fed., 619.
Admiralty—Collision.
450. Viles, Ex parte..... 139 Fed., 68.
Habeas corpus—Status of Indian allottees—Petitioner discharged.
*451. *Elihu Thompson*, The..... 139 Fed., 89.
Admiralty—Rights of Seamen.
452. *South Bay*, The..... 139 Fed., 273.
Admiralty—Salvage.
453. Brown *v.* Urquhart, sheriff..... 139 Fed., 846.
Habeas corpus — Constitutional law — Petitioner discharged—Reversed by Supreme Court (205 U. S., 179).
454. Jackson, Ex parte..... 140 Fed., 266.
Habeas corpus—Petitioner discharged—Reversed by C. C. A. (143 Fed., 783).
455. Hutchinson et al. *v.* Smith, Sheriff, et al..... 140 Fed., 982.
Suit against State officers to test constitutionality of State law—dismissed.
*456. Geiger *v.* Tacoma Ry. & Power Co..... 141 Fed., 169.
Organization of Federal Courts—Rights of passengers—Affirmed by C. C. A. (145 Fed., 504).

457. Royea's Estate, In re ..... 143 Fed., 182.
Bankruptcy—Preferred claims—Trusts—Equity—Creditors.

458. Oregon R. & Nav. Co. *v.* Shell ..... 143 Fed., 1004.
Jurisdiction of Federal Courts—Amount in controversy—Same as case No. 427 in this abstract.

459. Klenk et al. *v.* Byrne et al ..... 143 Fed., 1008.
Jurisdiction of Federal Courts—Tax title.

*460. *Amazon*, The ..... 144 Fed., 153.
Admiralty—Rights of seamen.

461. Columbia George, Ex parte ..... 144 Fed., 985
Habeas corpus—Petitioner remanded—Kindred case affirmed by Supreme Court (212 U. S., 542).

462. United States *v.* Simon ..... 146 Fed., 89.
Bankruptcy—Immunity from prosecution.

*463. *Barbara Hernster*, The ..... 146 Fed., 734.
Admiralty—Rights of Seamen—Affirmed by C. C. A. (146 Fed., 732).

464. Connor, In re ..... 146 Fed., 998.
Bankruptcy—Exemptions—Washington statute.

465. Perfection Pile-Preserving Co. *v.* United States ..... 147 Fed., 922.
Customs duties—Classification—Round timber.

466. Migliavacca Wine Co. *v.* United States ..... 148 Fed., 142.
Customs duties—Evidence of origin of goods—Revenue laws.

*467. Caffyn *v.* Peabody et al ..... 149 Fed., 294.
Admiralty—Rights of seamen.

468. Bartleson *v.* Feidler et al ..... 149 Fed., 299.
Judgments—Res judicata—Order of distribution of probate court—Partnership—Evidence to establish—Creditors' suit against heirs—Affirmed by C. C. A. (161 Fed., 30).

469. United States *v.* Newth ..... 149 Fed., 302.
Criminal law — Alaska — Jurisdiction — Venue — Indictment—Interpretation of statutes.

470. Baker *v.* Duwamish Mill Co ..... 149 Fed., 612.
Removal of causes—Judgment—Jurisdiction—Time.

471. *Grace Dollar*, The (two cases) ..... 149 Fed., 793.
Admiralty-Rights of seamen—Affirmed by C. C. A. (160 Fed., 906).

472. *Charles Nelson*, The ..... 149 Fed., 846.
Admiralty—Rights of passengers.

473. Plummer *v.* Two hundred tons of rails et al ..... 149 Fed., 887.
Admiralty—Contract of affreightment—Liens.

474. Woodward *v.* Davidson et ux ..... 150 Fed., 840.
Specific performance of contract—Res judicata—Reversed by C. C. A. (156 Fed., 915).

*475. Malloy *v.* Northern Pac. Ry. Co ..... 151 Fed., 1019.
Employers' liability act of June 11, 1906.

*476. Plummer *v.* Northern Pac. Ry. Co ..... 152 Fed., 206.
Constitutional law—Employers' liability act of June 11, 1906—Overruled by Supreme Court (207 U. S., 463).

*477. Turtle et al. *v.* Northwestern S. S. Co ..... 154 Fed., 146.
Admiralty—Rights of seamen—Damages awarded for deceit in securing crew—Affirmed by C. C. A. (162 Fed., 256).

478. Tacoma Ry. & Power Co. *v.* Pac. Traction Co. et al ..... 155 Fed., 259.
Injunction—Grounds—Establishment of legal right—Necessity—Appeal dismissed (160 Fed., 1023).

479. *Printer*, The ..... 155 Fed., 441.
Towage—Damages—Ships and shipping—Affirmed by C. C. A. (164 Fed., 314).

480. Dodge *v.* Frank Waterhouse & Co. et al ..... 156 Fed., 57.
Trusts—Contracts creating—Violation of duty by trustee—Equity—Necessary parties—Affirmed by C. C. A. (162 Fed., 1).

481. Warren et ux. *v.* Oregon & Wash. Realty Co. et al ..... 156 Fed., 203.
Reversed and remanded (176 Fed., 336)—Quieting title—Jurisdiction of Federal court—Statutory right of action.

482. Adler *v.* Galbraith, Bacon & Company..... 156 Fed.. 259.
Admiralty—Jurisdiction—Shipping—Charter party—Authority of agent to bind principal—Pleadings—Fraud—Interpretation of contracts—Foreign laws—Foreign ships—Laches—Notice—Demurrage—Damage.

483. Korsstrom *v.* Barnes et al..... 156 Fed., 280.
Wills—Effect as passing title—Devise to trustees—Limitation of actions—Accrual of cause of action.

484. Alaska Banking & Safe Dep. Co. of Nome, Alaska, *v.* Insurance Companies..... 156 Fed., 710.
Insurance—Marine insurance—Defenses against liability—Deviation from voyage.

485. *Charles E. Falk*, The..... 157 Fed., 780.
Maritime liens—Authority of master to pledge credit of vessel—Unauthorized loan—Agency—Ships and shipping.

*486. *J. G. Lindauer*, The..... 158 Fed,. 449.
Shipping—Negligent obstruction of slip by mooring line—Liability for damages caused—Damages—Personal injury—Amount of award.

487. Osborne et al. *v.* McDonald et al..... 159 Fed., 791.
Bastards — Property — Inheritance from bastard—Presumptions — Marriage — Proof — Evidence — Affirmed by C. C. A. (167 Fed., 894).

488. *Tremont*, The..... 160 Fed., 1016.
Collision — Steam vessels crossing—Fog—Affirmed by C. C. A. (161 Fed., 1).

*489. Northwestern S. S. Co. *v.* Maritime Ins. Co..... 161 Fed., 166.
Insurance—Construction of policy—Law governing—Marine insurance—Policy against war risks—Avoidance of policy—Failure to disclose "material facts."

490. Lung Wing Wun, Ex parte..... 161 Fed., 211.
Habeas corpus—Chinese exclusion law—Writ refused.

491. Roberts *v.* Great Northern Ry. Co..... 161 Feb.; 239.
Death—Action for wrongful death—Construction of statute—Appeal dismissed by C. C. A. (138 Fed., 711).

492. Morreau Gas Fixture Co. *v.* Cox..... 161 Fed., 381.
Husband and wife—Partnership—Liability of wife as partner.

493. Tang Tun et ux., Gang Gong, Can Pon, In re..... 161 Fed., 618.
Habeas corpus—Chinese exclusion law—Tang Tung et ux. and Gang Gong discharged—Can Pon ordered to be deported—Tang Tun case reversed (168 Fed., 488)—Gang Gong case reversed (168 Fed., 488)—Can Pon case affirmed (168 Fed., 479).

494. Alaska American Fish Co. et al., In re..... 162 Fed., 498.
Involuntary bankruptcy—Manufacturing corporation.

495. Columbia Val. R. Co. *v.* Portland & S. Ry. Co..... 162 Fed., 609.
Jurisdiction of Federal Court—Railroad right of way—Public lands—Affirmed by C. C. A. (162 Fed., 603).

496. Ontario Land Co. *v.* Wilfong et al..... 162 Fed., 999.
Tax title—Reversed by C. C. A. (171 Fed., 51).

497. Buntaro Kumagai, In re..... 163 Fed., 922.
Naturalization of alien—Japanese not eligible.

498. Korsstrom *v.* Barnes et al..... 167 Fed., 216.
Wills—Charities—Trust estate in perpetuity.

499. Alaska Fishing & Developing Co., In re..... 167 Fed., 875.
Bankruptcy—Marshalling assets—Maritime liens.

500. Perry *v.* London Assur. Corporation..... 167 Fed., 905.
Fire insurance policy—Affirmed by C. C. A. (167 Fed., 902).

501. United States *v.* Holt..... 168 Fed., 141.
Murder case—Affirmed by Supreme Court (218 U. S., 245).

502. United States Nisbet..... 168 Fed., 1005.
Naturalization of aliens—Cancellation of certificate.

503. Corrigan *v.* Brown et al..... 169 Fed., 477.
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504. United States *v.* O'Brien et al..... 170 Fed., 508.
Indians—Title to real estate—States title to shore.

505. United States et al. *v.* Ashton et al..... 170 Fed., 509.
Indian reservations—Tacoma tide land case—Appeal dismissed (220 U. S., 604).
506. United States *v.* Northern Pac. Ry. Co..... 170 Fed., 854.
N. P. R. land grant—Abandoned homestead entry.
507. Crowder, Ex parte..... 171 Fed., 250.
Habeas corpus—Peddling without license—Writ refused.
508. *Alice*, The..... 172 Fed., 527.
Admiralty—Carriers of merchandise—Liens.
509. Independent Transp. Co. *v.* Canton Ins. Office..... 173 Fed., 564.
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*510. United States *v.* Portland Coal & Coke Co. et al..... 173 Fed., 566.
Fraudulent entries of coal land—Patents cancelled.
511. Gill *v.* Waterhouse..... 175 Fed., 805.
Liability of guarantor—Statute of limitations.
512. *Celtic Monarch*, The..... 175 Fed., 1006.
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513. United States *v.* Yamashita..... 175 Fed., 1018.
Customs duties—Construction of Dingley tariff law of 1897.
514. Seattle Brewing & Malting Co. *v.* United States..... 176 Fed., 125.
Customs duties—Construction of Dingley tariff law of 1897.
515. United States *v.* M. Furuya & Co..... 176 Fed., 480.
Customs duties—Construction of Dingley tariff law of 1897.
516. Calif. Nav. & Improvement Co. *v.* Union Transp. Co..... 176 Fed., 533.
Admiralty—Collisions—Measure of damages.
517. Mills *v.* Smith..... 177 Fed., 657.
Bankruptcy—Chattel mortgages—Washington statute—Reversed by C. C. A. (177 Fed., 652).
518. Nelson *v.* Svea Publ. Co. et al..... 178 Fed., 136.
Bankruptcy—Fraudulent transfer of assets.
*519. *General De Sonis*, The..... 179 Fed., 123.
Admiralty—Maritime tort—Personal injury—$1,500 awarded.
*520. Hovden *v.* Seattle Electric Co..... 180 Fed., 487.
Damages for personal injury—Judgment for $1,500—Affirmed by C. C. A. (190 Fed., 7).
521. Murray *v.* Seattle Cedar Lumber Mfg. Co..... 181 Fed., 843.
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*522. Knohr & Burchard *v.* Pacific Creosoting Co..... 181 Fed., 856.
Charter party—Damage to cargo.
523. Nippon Trading Co., In re..... 182 Fed., 959.
Bankruptcy—Procedure.
524. David *v.* McRae et al..... 183 Fed., 812.
Equity practice—Specific performance of contracts—Affirmed by C. C. A. (184 Fed., 988).
525. Calif. Nav. & Improvement Co. *v.* Stockton Milling..... 184 Fed., 369.
Admiralty—Contract of affreightment—Damage to cargo.
526. Meyer, Wilson & Co. *v.* Everett Pulp & Paper Co..... 184 Fed., 945.
Sales by sample—Implied warranty—Reversed by C. C. A. (193 Fed., 857).
*527. Pac. Creosoting Co. *v.* Thames & Mersey Marine Ins..... 184 Fed., 947.
Marine insurance policy.
528. North American Dredging Co. *v.* Pac. Mail S. S. Co..... 185 Fed., 698.
Admiralty—Obstruction to navigation—Harbor of Honolulu.
529. United States *v.* Munday et al..... 186 Fed., 375.
Indictment for conspiracy—Alaska coal claims reversed by Supreme Court (222 U. S., 175).
*530. Southern Pac. Co. *v.* Arlington Heights Fruit Co..... 191 Fed., 113.
Sherman antitrust law—Suit for injunction to restrain increase of railroad rates, pending action by Interstate Commerce Commission—Jurisdiction denied by majority—Dissenting opinion by Hanford.

531. Northwestern S. S. Co. *v.* Cochran ..... 191 Fed., 146.
Action on assigned cause of action—Attorneys—Alaska code—Judgment for plaintiff affirmed by majority—Dissenting opinion by Hanford.

*532. Aurora Shipping Co. *v.* Boyce ..... 191 Fed., 960.
Admiralty—Damages for death—Caused by wrongful act—Oregon statutes—Judgment for plaintiff affirmed.

533. Matsumura *v.* Higgins, sheriff ..... 187 Fed., 601.
Order for deportation of alien—Importer of girl for immoral purpose—Affirmed.

534. Amalgamated Sugar Co. *v.* U. S. Nat. Bank of Portland, Oregon. 187 Fed., 746.
Banks and banking—Checks—Transfer—Bona fide purchaser—Indorsement—Rights of indorsee.

*535. San Pedro, L. A. & S. L. R. Co. *v.* Thomas et al ..... 187 Fed., 790.
Damages for death by wrongful act—Judgment for plaintiff affirmed.

536. United States *v.* Axman et al ..... 193 Fed., 644.
Contractors bond—Decision of appellate court—Law of the case.

537. Corcoran *v.* Dist. Court for Dist. of Alaska ..... 187 Fed., 813.
Mandamus—Disbarred attorney.

*538. Tacoma Ry. & Power Co. et al. *v.* Pierce County ..... 193 Fed., 90.
Taxation—Suits for injunction for alleged invidious discrimination in assessment of property of corporation—Dismissed on final hearing.

539. Liberman, In re ..... 193 Fed., 301.
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540. Davis *v.* McEwen Bros ..... 193 Fed., 305.
Guaranty—Contract executed by agent of undisclosed principle.

541. Chaplin *v.* United States ..... 193 Fed., 885.
Indictment for conspiracy—Desert land law—Judgment of conviction affirmed by majority—Dissenting opinion by Hanford.

542. *Tokai Maru*, The ..... 190 Fed., 450.
Penalty for fishing by aliens in waters of Alaska.

543. *Europe*, The ..... 190 Fed., 475.
Admiralty—Collision—Vessel at anchor in navigable river.

*544. City & Co. of San Francisco *v.* United Railroads ..... 190 Fed., 513.
City ordinance—Injunction sued for by street car corporation refused—Concurring opinion by Hanford.

545. Sperry & Hutchinson Co. *v.* City of Tacoma et al ..... 190 Fed., 682.
City ordinance — Trading stamps — Injunction granted.

546. Loggie *v.* Puget Sound Mills & Timber Co ..... 194 Fed., 158.
Patent case.

547. Hawley, In re ..... 194 Fed., 751.
Bankruptcy—Unliquidated demands of creditors—Bond of contractor for Government work.

*548. Puget Sd. Sheet Metal Works et al. *v.* Great Northern Ry. Co. 195 Fed., 350.
Removal of causes—Judicial code—Section 28—Remanded to State court.

549. Young, In re ..... 195 Fed., 645.
Naturalization of aliens—German—Japanese—Half-breed held to be not eligible.

*550. United States *v.* Chicago M. & P. S. Ry. Co ..... 195 Fed., 783.
Interstate railroads—Penalty for violating hours of service statute.

*551. Northern Pac. Ry. Co. *v.* Pacific Coast Lumber Mfrs. Ass'n .... 165 Fed., 12.
Interstate commerce—Sherman antitrust law—Injunction against increase of rates pending determination of Interstate Commerce granted—Affirmed by C. C. A. (165 Fed., 1).

EXHIBIT No. 95.

United States Circuit Court of Appeals for the Ninth Circuit.

King County, Washington, et al., appellants, *vs.* Northern Pacific Railway Company (a corporation), appellees. No. 2065.

John F. Murphy and Robert H. Evans, for the appellant.
Geo. T. Reid, J. W. Quick, L. B. da Ponte, and C. H. Winders, for the appellee.
Before Gilbert and Ross, circuit judges, and Wolverton, district judge.

The appellee filed its bill to enjoin the appellants from proceeding to collect a tax levied upon its roadbed and operating property by the county board of equalization of King County in the year 1907. The injunction was sought on the ground that the tax was illegal and in conflict with the statutes of the State. The bill alleged that the State board of tax commissioners in January, 1906, classified the different railroad properties of the State for the purpose of assessment and taxation for the years 1906 and 1907, and that it did fix the valuation and assessment for the purposes of taxation of different classes of railway tracks as follows: All railway tracks classified as first class, at $14,520 per mile; all railway tracks classified under first class B at $10,560 per mile; all tracks classified as second class at $7,920 per mile; all railway tracks of third class, at $4,752 per mile; all railway tracks of fourth class, at $2,112 per mile, and all railway tracks classified as second track at $7,920 per mile. The bill further alleged that the board of tax commissioners gave the various county assessors of the State advice and direction to place the said valuation upon the property of railroad companies for assessment purposes, and that those directions were followed throughout the State in the year 1906. The bill then alleges that for the purposes of assessment and taxation for the year 1907, the county assessor of King County listed the appellee's lines of tracks at the valuation as equalized by the county board of equalization in the year 1906, but that in the month of August, 1907, the board of equalization of King County, acting at the instance and direction of one of the members of said board of tax commissioners, who claimed to represent the board, raised the valuation of the assessment so fixed in the year 1906, for the years 1906 and 1907, to $25,140 per mile for first class railroad tracks, and made similar increase of assessment on other classes of the appellee's property, and that this was done against the protest of the appellee, which was duly made to said board of equalization. The bill alleges that the board of tax commissioners did not give directions to any other assessor or board of equalization in any other county of the State than King County in 1907, to raise the valuation as fixed in 1906, and that as the result thereof, the value of the lines of the track of the appellee was not proportioned among the several counties through which its road passes in the proportion that the mileage of each county bears to the entire mileage of the State. It was further alleged in the bill that the property of the appellee had been overvalued in the assessment complained of, as compared with the assessment and valuation of other property in King County, that the appellee's property had been assessed at 30 per cent of its value, whereas other property had been assessed at but 25 per cent of its value. This ground for relief was subsequently abandoned, and counsel for the appellee withdrew from consideration in the case that feature of the bill. A separate ground of relief alleged was that for the year 1907, the assessor of King County assessed the appellee's operating franchise, and placed a valuation thereon of $100,000 as an assessment against its personal property, whereas the same had been covered by, and formed a part of the valuation fixed and assessed upon the operating property of the appellee, the result whereof was double taxation upon the appellee's property. The appellee alleged due tender of taxes on its property in King County as it had been assessed for the year 1906. The answer denied that the classification made by the board of tax commissioners in January, 1906, was made for any other than that year, and it alleged that the county board of equalization of King County, in the month of August, 1907, acting at the instance and direction of the State board of tax commissioners, raised the valuation of the assessment for the year 1907 on all rights of way and substructures and superstructures of the appellee situated in King County. Upon the issues and the testimony, the court enjoined the appellants from further proceeding to collect the tax, and directed that the appellants issue to the appellee upon the payment of the sum tendered, a receipt in full for all taxes for the year 1907.

Section 2, article 7, of the constitution required that the legislature shall provide by law a uniform and equal rate of assessment and taxation of all property in the State, according to its value in money, and shall prescribe such regulation by general laws as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his or her or its property. The

revenue act of 1897 (Laws of 1897, p. 150) in section 32 provides as follows: "The value of the railroad track shall be listed and taxed in the several counties in the proportion that the value of the main line in such county bears to the whole length of the road in the State, except the value of the side or second tracks and all turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county in which the same are located." Section 34 provides that "the rolling stock shall be listed in the several counties in the proportion that the length of the main track used or operated in said county bears to the whole length of the whole road used or operated by such person, company, or corporation." Section 42 provides that "all property shall be assessed at its true and fair value in money. In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation." By the laws of 1905 a board of tax commissioners was created (Laws of 1905, p. 224), and subdivision of section 2 provides that the commissioners "shall have power, and it shall be their duty to exercise general supervision over assessors and county boards of equalization, and the determination and assessment of the taxable property in the several counties, cities, and towns of the State, to the end that all taxable property in this State shall be placed upon the assessment rolls and equalized between persons, corporations, and companies in the several counties of this State, and between the different municipalities and counties therein, so that equality of taxation shall be secured according to the provisions of existing laws."

Gilbert, circuit judge, after stating the case:

We find no error in the ruling of the trial court that the case was of equitable cognizance. In Dows *v.* City of Chicago (11 Wall., 108) it is said: "A suit in equity will not lie to restrain the collection of a tax on the sole ground that it is illegal. There must exist in addition special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant." It is not alleged here that there are any special grounds of equitable jurisdiction except the fact that the enforcement of the assessment would throw a cloud upon the title of the appellee's property. In Ogden State *v.* Armstrong (168 U. S., 224) the doctrine was reaffirmed that a court of equity will interfere to enjoin an illegal tax which will create a cloud upon title to real property. Nor is the case one in which there is an adequate remedy at law. The contention that the appellee may pay the tax and thereafter recover it in an action at law, does not suggest an adequate remedy, nor, indeed, any remedy at all as to a portion of the tax, for a portion of it goes to the State, and no action may be brought against the State to recover the same. (Raymond *v.* Chicago Traction Co., 207 U. S., 20.)

In the case of Great Northern R. Co. *v.* Snohomish County (48 Wash., 478) the supreme court of the State held that the act creating the board of tax commissioners gave them general supervision over assessors and county boards of equalization in the matter of assessment of property lying in different counties of the State. In that case the county assessor of Snohomish County had disregarded the instruction of the State's tax commission and had assessed railway property within that county at a higher rate than that adopted in the other counties by order of said commissioners, and the court said: "The acts of the Snohomish County officials in disregard of the lawful orders and directions of their superior officers were void and of no effect." The case was before the court on a demurrer to the complaint. It was subsequently again before the court on the merits in Great Northern R. Co. *v.* Snohomish County (54 Wash., 23), where further discussion was had of the law applicable to the case. It is contended that the decisions in those two cases are decisive of the questions involved in the case at bar. There is this difference, however, in the issues which were there presented and those which are now before this court. In that case the court assumed that the property of the railroad company had been assessed as high as other property and the fact which controlled decision was that the county assessor in Snohomish County had disregarded the instructions of the board of tax commissioners, and had increased the assessment in that county. In the present case the board of equalization of King County followed and obeyed the instructions of the board of tax commissioners. It is true that the officers of the other counties received no such instructions, but the irregularity of the proceedings consists not so much in the fact that the assessment in King County was increased, as it does in the fact that the assessments in the other counties were not increased proportionately thereto. We are not primarily concerned, however, with what was done in those counties. The question here is, Was the action of the board of equalization of King County, which was done in pursuance of authority from the board of tax commissioners, rendered void by the fact that that board omitted to give like instructions to other county officials?

The appellee comes into a court of equity seeking relief against a tax by which according to the allegations of its bill, its property was assessed at but 30 per cent of its value, in the face of a statute which required that it be assessed at its full value. By the proofs in the case it is established beyond dispute that other property in King County was assessed as high as 60 per cent of its full value, and that the appellee's property by the assessment which is complained of was still underassessed as compared with other property in the county. If the board of tax commissioners had required the board of equalization of all the other counties through which the appellee's road extends to raise their assessments proportionately, confessedly the appellee would have no ground for complaint against the tax of 1907. But it is said that the assessment made by the board of equalization in King County was illegal, not because the appellee's property was overassessed in that county, but because its road was not assessed in the same proportion in the other counties. The statute which requires that all property shall be assessed at its full fair value is certainly not less authoritive than the statute which requires that the value of the railroad track shall be assessed proportionately in each county. It being established that the tax on the appellee's property in King County is not unjust or inequitable and is not greater than the appellee ought to pay, we are unable to see where there is ground for its application to a court of equity for relief. In State Railroad Tax cases (92 U. S., 613, 615), Mr. Justice Miller said: "A court of equity is therefore hampered in the exercise of its jurisdiction by the necessity of enjoining the tax complained of in whole or in part, without any power of doing complete justice by making or causing to be made a new assessment on any principle it may decide to be the right one. In this manner it may, by enjoining the levy, enable the complainant to escape wholly the tax for the period of time complained of, though it be obvious that he ought to pay a tax, if imposed in the proper manner." It is well settled that the collection of a tax will not be enjoined on account of disregard of statutory requirements in the process of assessing property, "which are not of such a nature as to affect the substantial justice of the tax itself or work irreparable injury to the rights of the complainant." (37 CYC., 1262; Mercantile Nat. Bank *v.* Hubbard, (98 Fed. 465), affirmed in 186 U. S. 458, sub nom; Lander *v.* Mercantile Bank; Kansas City H. S. & M. R. Co. *v.* King, 120 Fed., 614; Hixon *v.* Oneida Co., 82 Wis., 515; McCrory *v.* O'Keefe, 162 Ind., 534; Ryan *v.* Commissioners of Lebanon County, 30 Kan., 185; Albany & Boston Min. Co. *v.* Aud. Gen., 37 Mich., 391; Wagoner *v.* Loomis, 37 Ohio St., 571; Welch *v.* Clatsop Co., 24 Oreg., 457.) In Albany State Natl. Bank *v.* Maher, (6 Fed., 417), Judge Wallace said: "In dealing with the rights of parties to resist taxation, courts of equity proceed upon considerations quite unknown to courts of law, and hold not only that it must appear the tax is one unlawfully imposed, but also one that justice and good conscience do not require the party to pay." In paying the tax which has been assessed against it in King County the appellee will pay no more than its just proportion of the public burdens. King County in collecting it will receive do more than what, under the law had it been complied with, it is entitled to receive. As the resort is to a court of equity, the appellee must show itself entitled to relief which accords with equity and good conscience. This it has failed to do, for it has not shown that any unjust burden is sought to be imposed upon it.

We find no error in the decree of the court below so far as it afforded relief against the assessment on the franchises of the appellee. (Western Union Tel. Co. *v.* Kansas, 216 U. S., 1.) The decree is reversed as to all thereof excepting the relief awarded against the tax on the franchise of the appellee, and the cause is remanded to the court below with instructions to enter a decree accordingly.

(Indorsed:) Opinion. Filed May 13, 1912. F. F. Monckton, clerk.

J. J. O'Connor *vs.* Bothwell and members of city council. No. 1939.

1911.

Jan. 3. Complaint filed; William Martin, attorney. This complaint is, I believe, identical with the complaint in the Scobey case, as amended, except that the description of the property owned by the complainant is different—that in this case is said to be worth $550,000—and except that in this case there is an express allegation that the amount in dispute, exclusive of interest and costs, exceeds $2,000.

This complaint bears the acceptance of service of Scott Calhoun and the date of January 3d.

On the same date there is filed a stipulation of counsel that the affidavits and other evidence served and used in the Scobey case may be considered as having been served and may be used upon the hearing of the motion for temporary injunction in this case.

Jan. 3. Demurrer of defendants, identical with that in the Scobey case.

Jan. 17. Stipulation that the action be dismissed without costs.

Jan. 17. Order dismissing upon stipulation.

Benjamin H. Greenwood, a mnior, by Sarah Small, his guardian ad litem, Plaintiff, *vs.* Puget Mill Company, Defendant. No. 48755.

1905.

Oct. 3. Complaint filed in the Superior Court alleges plaintiff's employment at defendant's sawmill at Port Gamble, his duties being to supply the furnace with sawdust by shoveling and do generally whatever ordered by defendant's superintendents and agents, and especially the defendant's fireman.

That on 17th of December, 1904, while so employed, the defendant disregarded its duties toward him by carelessly and negligently ordering and directing him to go up among the machinery and adjust a belt which had slipped from one of the pulley wheels, the pully being above a large pile of sawdust. The defendant negligently failed to provide any safe way for him to get up to the wheel or any safe way for adjusting the belt on the wheel. Defendant negligently ordered him to climb up on the sawdust pile in order to get up on the conveyor box, and from thence to a point where he could adjust the belt. That the sawdust pile was unsafe and unsecure. That while plaintiff was climbing up on it he slipped and fell, his clothing was caught by a large revolving shaft which the defendant had negligently failed to have safeguarded. Both legs were broken, one in two places. Defendant negligently failed to give plaintiff any warning or instructions whatever of the dangers, he then being only 16 years of age and inexperienced. Also, defendant neglected to keep posted any notice of the danger. Prayer for $15,000 alleging long sickness, great suffering, partial paralysis, one leg one-half inch short.

On the same day was filed in the Superior Court petition of Sarah Small for appointment as guardian ad litem, setting forth that she is the mother; that she appears of record as general guardian, but by reason of irregularities in her appointment that certain false representations made by defendant to her and by reason of nonconsent of the minor to her appointment.

At the same time was filed a petition of the boy himself for the appointment of his mother, and on the same day an order was made by Frater, judge, appointing the mother guardian ad litem.

Oct. 19. Removal papers filed.

Oct. 28. Order of removal made by Albertson, judge.

Nov. 6. Transcript filed in Federal court.

On the same day defendant's motion that the complaint be made more definite and certain so as to take the name and character and nature of employment of the person who gave the order and direction to Greenwood to go up among the machinery and adjust the belt. With it was filed defendant's point relied upon in support of motion, pointing out the allegation in the complaint that the defendant ordered and directed, and it is, therefore, manifestly within the knowledge of the plaintiff who the agent or servant of the defendant was that gave the direction.

Nov. 24. Appearance for the plaintiff of A. J. Speckert and R. B. Brown.

Nov. 27. A memoranda opinion by Judge Hanford "Upon examination of the papers I find no evidence of compliance with rule 37 of this court, nor waiver of the required notice on the part of the plaintiff, and it is my opinion that the motion is one that cannot be properly made ex parte motion."

(Rule 37 referred to requires notices of the motion to be given 5 days before the day named for hearing. It appears, however, that the motion and points were served upon defendant's attorneys, the latter November 6th; the other November 20th).

1906.

Feb. 5. The motion was heard and an order made granting same.

Feb. 14. Amended complaint filed, in which it is alleged that the order and direction was given through the fireman, Gust Strand.

Mar. 14. Defendant's answer filed, containing denials of all the substantive allegations of the complaint, and setting up affirmative defenses as follows:

1. Contributory negligence of the plaintiff and negligence of fellow servants of the plaintiff.
2. Assumption of risk.
3. Appointment by Sarah Small by the superior court as general guardian and qualification as such on December 23, 1904. And that an order was made by the superior court on the same day directing the guardian to compromise the claim of damages embraced in this action for $500.00, which was piad with full satisfaction and converted to the use of the minor by the guardian.

1906.

Mar. 24. Reply filed denying the first and second affirmative defenses and as to the third, alleging that the appointment of the general guardian was secured by fraud and undue influence as follows: That she was sick and her family were sick, and on account of grief, anxiety, etc., she was incapacitated from transacting business or intelligently understanding documents, and that F. S. Blattner stated to her that he was the agent of the defendant and was looking after its interests and the boy's as well; that it wanted to do the right thing by the boy to pay his expenses in the hospital, but before he could do it it would be necessary for her to sign a receipt and some papers to be filed in court which would enable him to show the defendant that he had done so. At the same time prevent the boy's father from interfering. It was not necessary for her to read the papers; he was in a great hurry; must be at the court house, and that she could read copies of the same which he would furnish her later. That her son was not seriously hurt and that he would be well in two weeks and able to go home. That the defendant was not liable to him for any damages, but wanted to pay the expenses incident to his sickness, not to exceed $500. All these statements were false and known to be such and made for the purpose of misleading her, to the prejudice of herself and son and to unduly influence her to sign the papers which she did not fully understand, and had no opportunity to read. Relying upon this representation, she signed the papers without knowing what they were. That the order of her appointment was procured by the same fraudulent representation. That the order was made subsequent to the alleged settlement. That on the same day she signed a receipt for $500.00, induced thereto by said fraudulent statements, but that she received only $120.00. That is all they paid except $150.00 physician's fees. That at that time, prior thereto, and for a long time thereafter, the boy was dangerously sick in the hospital in the care of the defendant's physician and was unconscious, incapable of transacting business or nominating a guardian or consenting to any settlement, which the defendant well knew, but that Blattner, agent of the defendant, knowing that condition and taking advantage of it, procured the boy's signature to some papers which he did not understand, but he was informed that the paper was a petition nominating his mother guardian and giving his consent to the $500.00 settlement. That no notice was given of the application for the appointment of a guardian to the minor, or any time ever set for the hearing of it, nor did he ever appear in court for that purpose, nor was he ever represented there by any person. Prayer that the reported settlement and release be declared null; that the defendant be credited with whatever sum it may be found to have actually paid on the settlement, and that the plaintiff recover, as prayed in the complaint.

Mar. 29. Defendant demurred generally to that, particularly addressed to the third affirmative defense of the answer.

Apr. 12. Defendant's attorneys filed a written statement of points and authorities relied upon in support of the demurrer. Hill *v.* N. P., 113 Fed. 914; Hill *vs.* N. P., 104 Fed. 754.

Apr. 19. Order of court over-ruling the demurrer.

June 21. The next paper on file is a motion of plaintiff to set aside the order granting a non suit upon three grounds:

First, error in granting the motion upon the ground of a variance between the allegations of the complaint and plaintiff's proofs. Second, because under the law of this State the court has no right to grant a nonsuit upon the ground of variance. Third, error in holding that the plaintiff failed to prove a sufficient cause for the jury. Fourth, error in holding that the evidence did not sustain the allegations of the complaint.

June 29. Plaintiff's attorneys filed points and authorities in support of the motion, claiming that defendant moved for nonsuit upon the ground of contributory negligence proven by the plaintiff's own testimony, but the motion was granted upon the ground "that the testimony did not support the allegations of the complaint—in other words, that there was a variance between the allegations of the complaint and the proof." Authorities cited are:

1. Sections of the statute of Washington on variance.
2. If there was a variance, the court should have treated the complaint as amended. Citing 5 Wash., 693.
3. When a motion was made for a nonsuit upon one ground that it is a waiver of all other grounds. Citing 52 Am. Dec., 303 and note.

4. Where there is any evidence tending to support plaintiff's case, defendant not entitled to nonsuit upon any ground. Citing 21 Wash., 699; 26 Wash., 606.

In conclusion, that the only right of the court to grant a nonsuit is when the testimony shows the plaintiff so palpably negligent as to enable the court to say, as a matter of law, that he is not entitled to recover. Citing Kirby *v.* Wheeler-Osgood Co., — Wash., —; Whalen *v.* Wash. Lumber Co., — Wash., —; Williams *v.* Ballard Lumber Co., — Wash., —; Hansen *v.* Seattle Lumber Co., — Wash., —; Hall *v.* West & Slade Mill Co., — Wash., —.

1906.

Oct. 22. Order taking motion under advisement after argument.

Nov. 6. Order granting new trial.

(The next file is the second amended complaint.)

1907.

May 1. Changes are that where the first amended complaint said that Gust Strand was the fireman, here it calls him a foreman, and that in order to reach the pulley where it was necessary for him to pass over a revolving shaft, which the defendant had negligently permitted to become concealed from view, by it becoming covered with sawdust and that that shaft was not boxed or safeguarded as required by law, and that plaintiff in attempting to pass from the plank paralleling the shaft on the southerly side to a plank paralleling it on the northerly side stepped upon the sawdust pile, the top of which was level or nearly level with the planks and beneath the surface of which sawdust pile was concealed the said shaft, and that the sawdust gave way beneath the plaintiff's feet and he slipped and fell and his clothing was caught by the said shaft.

May 7. Answer filed to second amended complaint. Has the same denials and affirmative defenses as before.

May 21. Reply filed, setting up the same affirmative defenses to the answer as before. Defendant's demurrer to the affirmative matter in the reply, and moves the court for judgment upon the pleadings. Files points and authorities pointing out that the reply admits that $120.00 was paid to the plaintiff in the settlement and $150.00 to the physician in consideration of the release, and that the action cannot be maintained without the returning of that sum, and the setting aside of the release; citing Price *v.* Connors, 146 Fed., 503; Hill *v.* N. P., 113 Fed., 914.

July 1. Order taking motion under advisement after argument.

Aug. 1. Memoranda decision by Judge Whitson, pointing out that the doctrine is well settled in this circuit upon the authority of the Hill and Price cases. That one who has executed acquaintance and received money for it must, if he repudiates it, return the money if he would bring an action for damages. The court points out that for the purpose of the demurrer it was admitted that the action of the superior court in appointing the general guardian was fraudulent. The question is whether the release executed by the guardian under such circumstances is an exception to the general rule aforesaid. Judge Whitson points out that the reason underlying the general rule is not equity in allowing one to deny the validity of a contract at the same time retain the fruits of it. Therefore, a person appearing as guardian ad litem who is the same person who, as general guardian executed the release and received the money, can keep the benefits of and, at the same time, repudiate the contract for want of power on her part to execute the same. In Price *v.* Connor it is alleged that the plaintiff, when he executed the release was in condition of mental incapacity and totally irresponsible, and there the incapacity was mental, here it is legal. Although she was not legally guardian she could not deny her liability to account for any money received, any more than could an administrator de son tort. The rule is one based on common history. Therefore, the question is whether the case rests upon the theory that the action is one of guardian ad litem, or an action by the minor through his guardian ad litem. In either case, the result is the same. If the former theory should prevail, the guardian cannot wage the contest while she retains the money paid to her on behalf of one then supposed to be, but now in fact, her ward. If the latter theory, that is to say an action of the minor through next friend, the action cannot be maintained because the minor is equally bound as one who has reached the age of consent to act in good faith. "To hold otherwise would be to subordinate substantial justice to refinements and to ignore conclusive inferences as to what became of the money which the defendant paid." Directed that demur-

rer be sustained and that action be dismissed without prejudice, and this excepting an opinion as to whether an action could be maintained in the Federal court upon such pleadings without first setting aside the action of fraud.

1907.

Aug. 15. Plaintiff files motion to set aside Judge Whitson's order of dismissal for the following reasons:

1. No motion was ever made by defendant for dismissal.
   (In point of fact, the motion was for judgment dismissing the action).
2. That the order of dismissal was in violation of rule 17.
   (Rule 17 provides that upon the sustaining of a demurrer the losing party shall have 10 days within which to amend his pleadings; but no party shall have leave to amend after sustaining a demurrer to an amended pleading, except upon special order of the court.)
3. Filing of the demurrer operated as a waiver of the motion. (They are in one document.)

The plaintiff further moves to vacate the order sustaining the demurrer, for the following reasons:

1. The order is based upon statement of facts different from that disclosed in the reply.
2. That the order is contrary to law.

With it is filed under the heading of points and authorities a written argument. It is claimed:

1. That no money was ever paid Mrs. Small in settlement of the claim for damages. It was paid and received for a different purpose. The reference is to subdivision I of the 3rd paragraph of the reply, which alleges that the papers enabling the defendant to pay the hospital expenses, by the answer to which the reply was directed, alleged that the papers constituted a full release and discharge of any and all claims for damages. The next point criticizes the opinion for saying the guardian relied upon the order of the superior court, whereas it is alleged that the money was paid before the order of appointment was made. Reference is to subdivision III of said paragraph III of the reply, in which it is alleged that the order directing the settlement was made after the money was paid and the documents executed. The allegation of the answer is that the appointment and order directing the settlement, and the settlement, were all made on the same day.

The next point is that Mrs. Small could not have supposed she was guardian, not executing the papers when she had been appointed guardian or any steps taken for that purpose.

The next point is that the defendant can not plead equity when it is guilty of fraud itself.

The next point is that the equitable defense can not be interposed to an action at law under rule 10.

(Rule 10 provides that in an action at law the pleadings shall be in accordance with the laws of the state, but no equitable defense can be entertained in an action at law.)

Opinion calls attention to the former order of Judge Hanford overruling the demurrer to the original reply which is identical with the present reply, citing 89 N. W., 68; 104 Fed., 440; 94 Am. St., 158; 66 Fed., 35. In support of the right of the court to grant the present motion cites 15 Enc. P. & Pr., 205; 93 U. S., 412; Sage *v.* R. R. Co.

Aug. 20. Order by Judge Hanford setting aside Judge Whitson's order and permitting plaintiff to file amended reply.

Aug. 30. Amended reply filed. The only material difference in the two amended replies except that it brought out more clearly that the money was paid and the papers signed before the petition was filed, and that only $120 was paid and that the services of the physicians were furnished as a donation on the part of the defendant.

Sept. 17. Defendant moves for judgment dismissing the action upon the pleadings.

Sept. 16. Recites appearance at the hearing and dismissing the action, directing defendant to recover its costs. That this order carried upon it an O. K. as to form purporting to be signed by R. B. Brown, attorney for the plaintiff.