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IN MEMORY OF

JUDGE DOUGLASS BOARDMAN

FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS



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PROCEEDINGS

OF THE INVESTIGATION AS TO THE CAUSES OF THE
REMOVAL OF THE AGENT AND WARDEN OF AUBURN
PRISON, BEFORE A SPECIAL COMMITTEE OF THE
SENATE.

IN SENATE, *February 28th*, 1879.

Mr. POMEROY offered the following :

Resolved, That a committee of three senators be appointed by the President of the senate, to investigate and report whether the recent change made in the office of agent and warden of the Auburn prison was in violation of law ; that such committee have authority to send for persons and papers, and report the facts, with their conclusions thereon, to the senate at their earliest convenience.

Mr. JACOBS moved to amend by adding the following :

“ *Resolved*, That the committee are further authorized to examine and report as to whether said change has been for the public interest, and also whether the removed agent and warden at any time used his office to further the political interests of any individual.”

The PRESIDENT put the question whether the senate would agree to said motion, and it was decided in the negative, as follows :

FOR THE AFFIRMATIVE.

GOODWIN,	HUGHES,	J. F. PIERCE,	ST. JOHN,	WAGSTAFF.	
HOGAN,	JACOBS,	RAINES,			8

FOR THE NEGATIVE.

DAVENPORT,	LIPPITT,	R. V. PIERCE,	ROBERTSON,	WAGNER,	
EDICK,	LYNDE,	POMEROY,	ROCKWELL,	WENDOVER.	
HARRIS,	MCCARTHY,				12

Mr. J. F. PIERCE moved that the resolution be referred to the committee on the judiciary.

The PRESIDENT put the question whether the senate would agree to said motion, and it was decided in the negative.

Mr. JACOBS moved to strike out the words "committee of three," and insert the words "judiciary committee."

The PRESIDENT put the question whether the senate would agree to said motion, and it was decided in the negative.

The PRESIDENT then put the question whether the senate would agree to said resolution, and it was decided in the affirmative.

The PRESIDENT announced as such committee, Messrs. POMEROY, McCARTHY and JACOBS.

Pursuant to the above resolution the special committee, thereby constituted, met at the Capitol, *March 19th*, 1879, and proceeded to the consideration of the matter committed to their charge.

Present—Hon. THEODORE M. POMEROY, *Chairman*.

DENNIS McCARTHY.

JOHN C. JACOBS.

Mr. N. C. MOAK appeared before the committee, and stated that Hon. HENRY SMITH was counsel for Mr. Pilsbury, and that Mr. SMITH was confined to his residence by illness, and requested the committee to adjourn the matter, under consideration, to the 27th day of March, 1879.

The chairman of the committee announced that matter was adjourned to Thursday, March 27th, 1879, at 4 P. M.

ALBANY, *March 27, '79*—4 P. M.

The committee met pursuant to adjournment.

Present—Hon. THEODORE M. POMEROY, *Chairman*.

DENNIS McCARTHY.

JOHN C. JACOBS.

Hon. HENRY SMITH appears as counsel for Mr. Pilsbury.

LOUIS D. PILSBURY was sworn as a witness and examined by the CHAIRMAN.

Q. You are the superintendent of prisons?

A. I am.

Q. What time did you enter upon the duties of that office?

A. February 17th, 1877.

Q. Do you recollect what time in the year you made the appointment of warden of Auburn prison?

A. I do not; no, sir.

Q. It is immaterial; about what time?

A. I think in March, some time; I am not certain.

Q. Who was appointed as warden and agent of Auburn prison?

A. Leonard R. Welles.

Q. Do you recollect when he took possession of the office.

A. I think the first of April.

Q. And so continued until what time?

A. The first of December last.

Q. Until the first of December, 1878?

A. Yes, sir.

Q. How long had you been acquainted with Mr. Welles?

A. Forty-odd years.

Q. Been acquainted from boyhood?

A. Yes, sir.

Q. You were related?

A. We were.

Q. What relation?

A. First cousins.

Q. You had lived your whole lives on terms of close intimacy, had you not?

A. Yes, sir.

Q. What was Mr. Welles' business at the time he was appointed?

A. He was in the hardware commission business.

Q. In the city of New York?

A. Yes, sir.

Q. How came that appointment to be made?

A. Well, sir, we had talked over the amendment to the constitution several times—more than once, I think, it had been mentioned; some time, I think after the constitutional amendment was adopted, I asked Mr. Welles if he would accept the position of agent and warden of Auburn prison.

Q. I can get at it perhaps more directly: he was appointed upon your own motion and upon the application of no one?

A. It was upon the application of no one; no outsider.

Q. It was an appointment made from your personal knowledge of the man?

A. Yes, sir.

Q. I see the law of February 17th, of '77, provides that no appointment shall be made in any of the prisons of this State on the grounds of political partisanship; and honesty, capacity and adaptation shall constitute the rule of appointment;" what I wish to inquire is whether, at that time, you believed, from your acquaintance with Mr.

Welles, that he possessed those qualifications of honesty, capacity and adaptation?

A. I did.

Q. And now especially as to adaptation, of his qualification for the place—

Mr. SMITH—Does this question now relate to the time of his appointment?

Senator POMEROY—Yes, sir; he had been a prison officer for a good many years; some 15 years.

The WITNESS—I do not know the exact number of years he had, off and on.

Q. Do you recollect at what places?

A. He had been at Connecticut.

Q. At what prison?

A. At Wethersfield, also at the Albany penitentiary.

Q. Do you recollect in what capacity he was at Wethersfield prison?

A. I think as a clerk; I do not recollect fully; it was a good many years ago and I do not remember all the circumstances.

Q. What other prisons?

A. At the Albany penitentiary.

Q. That was when you were there?

A. Yes, sir.

Q. Do you recollect in what capacity he was there?

A. I think he was acting as clerk there for some time.

Q. At what other places?

A. He had been in Joliet, Ill.

Q. In a prison there?

A. Yes, sir, when one was building.

Q. Do you recollect what capacity he was in then?

A. It would be difficult to define the capacity. We were both there together. The prison in Illinois was built by contract. Perhaps I should explain a little about that. It was contracted out to persons who hired the prison labor for a number of years. Went out west to assist the man who had the lease in starting the prison—in getting it built, and Mr. Welles was then with me to assist in the same matter, and remained there until some time after I left.

Q. Then it was in the capacity of superintendent, or assistant superintendent?

A. Yes, sir; there were two prisons there; while I was at Joliet he had charge of one of the old prisons; I think a long time afterward was in charge of that prison, under the lessee.

Q. As superintendent ?

A. Yes, sir; "deputy warden," I believe, was the title given him.

Q. Agent and warden ?

A. No; "deputy warden," I think, was the title given him.

Q. He was also at one of the institutions on Blackwell's Island, was he not ?

A. Not in a prison, no, sir; he was at Ward's Island.

Q. His term of service as clerk and warden in the different prisons occupied a considerable number of years, did it not ?

A. Yes, sir.

Q. And a considerable part of it was subject to your own knowledge and inspection, to some extent ?

A. Yes, sir.

Q. So that you knew the character of his duties ?

A. Yes, sir.

Q. Did you not regard him as a man specially qualified at the time of his appointment for the Auburn prison ?

A. I did.

Q. For that position ?

A. I did.

Q. In respect to "honesty, capacity and adaptation ?"

A. Yes, sir.

Q. When was the first suggestion made by you to Mr. Welles, upon the subject of his removal from the Auburn prison ?

A. I think on or about the 23d day of November.

Q. November last ?

A. Yes, sir; 1878.

Q. Where was that interview held ?

A. At the penitentiary in this city.

Q. Was Mr. Welles here accidentally ?

A. No, sir.

Q. On request of yourself ?

A. I telegraphed him to come here.

Q. That was the first suggestion made by you to him, on the subject of removal ?

A. Yes, sir; by me.

Q. Was that suggestion of your own motion, or was that upon the suggestion of others ?

Mr. SMITH—Mr. Chairman, I do not know, of course, the range of inquiry contemplated by this committee; and I do not want to object to any question that by possibility may relate to any fact bearing upon the jurisdictional powers of the superintendent, in the removal of Mr. Welles and the appointment of his successor; of course I cannot antici-

pate your question ; whenever a question is put which will indicate a disposition to go farther by the committee, than to inquire into the matter of the functions of the office, and upon the facts bearing upon the jurisdiction of the office, I want to submit an objection to it for the consideration of the committee, or, in other words, at an appropriate stage of the examination I want to submit a consideration bearing upon the question, as to the propriety upon the part of a committee of the legislature, inquiring of an executive officer of the government as to the reason and motive by which he has exercised the functions of his office ; I do not want to detain the committee by objecting to any question, but that will raise the question ; I acquiesce entirely in the committee investigating as to the exercise of the official functions of the superintendent and the right of the committee to inquire whether they have been exercised within the prescribed limits of the law, but if the committee should be disposed to inquire of the reasons operating to produce that action, then I should want to take the objection as I would if you were to inquire of a judge or juror or any executive officer.

Senator POMEROY — I apprehend that question does not reach that point.

Mr. SMITH — Not quite, but it is upon the verge between the two.

Senator POMEROY — It is approaching it.

Mr. SMITH — When the point is up I want to present our views.

Senator POMEROY — It is due to say on behalf of the committee that I think we are all united in the intention to make the examination as narrow as is consistent with the one point covered by the resolution, and there is no disposition to travel beyond that, and that is embraced in section 3, chapter 24 of the Laws of 1877: "No appointment shall be made in any of the prisons of the State on the ground of partisanship," and that question we have a right to open — that "honesty, capacity and adaptation" shall constitute the rule for appointments ; beyond these two points I do not suppose there is any disposition upon the part of the committee to inquire ; it has already been shown Mr. Welles was appointed upon his (Pilsbury's) own motion — upon his knowledge of the man and his belief in his possession of these qualities ; now this question is whether this suggestion of removal was upon his own motion or whether it came from the instigation of other parties ; the present question does not reach that point.

Mr. SMITH — It does not ; I do not see as there is any objection to

this particular question ; it might be continued and I thought I would raise this question.

Q. You have already testified to the appointment of Mr. Welles upon your own motion ?

A. Yes, sir.

Q. Was the removal upon your own motion, or was it suggested by others ?

A. Upon my own motion.

Q. No suggestion was made by any one else to you upon the subject previous to your seeing Mr. Welles ?

A. Not — no, with the exception of one person whom I had consulted in regard to the matter ; spoke to in regard to the matter.

Mr. SMITH — I do not care to have you state what that was at this time ; that is the very point I want to make a suggestion about when it arises.

Q. You had previously conversed with one person upon the subject ?

A. Yes, sir.

Q. Did he come to you upon your request, or did he seek the interview ?

A. It was at my request.

Q. Now I will ask you who that person was ?

Mr. SMITH — Now I have not the least idea who he was, but I think perhaps it is as well for the committee to settle the range of this inquiry right here as at any other point ; I will not detain you but a few moments as I know how precious your time is, and I would not now at this almost preliminary branch of this subject if I did not feel entirely confident upon reflection at least that every mind will agree that there ought to be a limit to this inquiry ; the resolution directs this committee to investigate and report whether this recent change made in the office of the agent and warden of Auburn prison was in violation of law ; that means I suppose to inquire whether the superintendent in making the appointment or making the change had acted within the authority of the law ; not whether he had acted wisely or unwisely, justly or unjustly with a partisan spirit, or whether it was a pure unalloyed spirit of reform. It means whether the charge has been made in the proper exercise of the functions of his office, as you would inquire whether the judgment of a court had been legally rendered, or whether a process that had been issued had been legally made. So far as that resolution goes with that construction, I acquiesce with its entire propriety. It is entirely proper for the senate, as one of the branches of the legislature, to make inquiry by an investigating committee, or otherwise, as to whether an officer acted within the scope of

his authority, and according to the law which regulated his actions. Now it is proposed to inquire of the superintendent who talked with him in reference to making this change; standing alone, of course, there is very little importance to the question, but from the manner in which the questions have been put by the able chairman of the committee, it is reasonable to suppose they are to be followed down in regular stages by other questions which would involve an inquiry upon the part of this committee and call upon this superintendent to disclose the various suggestions that have been made to him in reference to the change in this office, and probably to be followed by reasons which influenced his mind in making this change. Now if that is to be attempted, I respectfully submit it would be the exercise upon the part of the legislature of an investigation in a branch that has been hitherto unknown, one that would be in the highest degree unwise, and one that would be plainly and manifestly against public policy. It would not do to bring the governor of the State before a committee of the senate and ask him his reasons for making various appointments to office; and if in the exercise of his constitutional powers he had made changes, would it be wise to summon him before a committee and ask him for the reasons which prompted him in making the change?

Would it be within the range of public policy to compel an executive officer, having this power, to disclose who had spoken to him upon the subject and what information he gave? Would it be serving public interests to have it known that no man could communicate a fraud he had discovered in one of the officers of the government to the appointing power, except at the peril of his own name being exposed and the information he gave being brought up? The whole policy of the exercise of this power is to protect and thus encourage giving information in relation to the various officers of the government; anything that may tend to show whether they had discharged them at their hazard; and public policy requires those in that position shall be protected, and that the officer who exercises the power should be protected from any inquiry as to the mode of reasoning or manner at which he arrived at the result. It would not do to have a committee of the assembly appointed to investigate the reasons for certain confirmations in the senate, and for the assembly to bring before it senators and ask them with what motive they voted when they cast their vote in favor of a nominee; I should be startled if the senator from the third should be thus called before an assembly committee and asked why he voted for the confirmation of some democratic friend in the senate — be gravely asked who first spoke to him in relation to casting that vote? And, what did he say? I need not elaborate it; you are all gentlemen of large experience, and upon a mere suggestion

of it you get the reasons I entertain and the reasons which exist; why it would not be within the range of proper inquiry to ask the superintendent of prisons of this State the names of persons who spoke to him recommending or objecting to appointments or the motive with which he acted in making them.

On the other hand under the Law of 1877 there is this high-toned, if I may use the expression, requirement here in reference to the appointee which seems to indicate that strange coincident would occur that they expected a man should be appointed without regard to his political relations, a result which I do not think will be ever attained under any law, while men are human and political parties exist; but, as I understand it, the provisions of that law are superseded by the provisions of chapter 107, an act passed the same winter, which it seems to me gives the unqualified power without limitation in reference to the manner of its exercise to the superintendent, without any limitation upon it as the chairman would have seemed to have supposed in view of the provisions of this law, chapter 24. I presume you have all looked at; the second section provides "the superintendent shall appoint the wardens," etc., and repeal all statutes inconsistent with it, so that it seems to me there is this question as to whether the provision of this law of February was not repealed by the law of April; but, suppose it was not? and suppose it was reasonably believed that the superintendent of prisons have and, as I would think myself, attempted to do his duty, although he ought to be strictly non-partisan — he ought to be non-partisan, in appointing a republican instead of a democrat, that is the way we all think on non-partisan questions — suppose he had removed a man of one party and appointed a man of another? Perhaps that is a fact to those who claim this law of February was proper; perhaps it would be proper to know and inquire in the removal of this man Welles, this superintendent was exercising the purposes of a party and carrying out the schemes of partisans, or faithfully and honestly exercising the functions of his office.

I am not here to say but that that inquiry ought to be made, and that he ought to declare upon that subject. Now, as I said in the first place, I must be allowed to insist here with earnestness and respectfully that this committee should, no matter what their suspicions are, nor how well they seem to be founded, that it is not wise now to make the precedent, which I apprehend has never been claimed before, of putting an executive officer of the government upon the stand who has exercised a constitutional power in discharge of that duty, and asking him for the motive which influenced him, the facts upon which he acted, or the names of persons who brought those facts to his consideration. If it can be done in this case it can be done in every appointment and every official act of every official of the State,

and men called upon to discharge these delicate duties, sometimes refusing the appointment of friends to office, sometimes putting their best friends out of office, in the discharge of a public duty it would involve the liability of their being arraigned before an investigating committee of either branch of the legislature who might choose to act in the matter, generally arising of course from the disaffected political party, and a trial after judgment, after execution, after the victim's head is off, a trial and a review of the official action of the officer. You can see in a great many ways better than I can what such an investigation might lead to and how the various public officers might become entangled with each other. They are public men; they have friends who are anxious to serve the public. I dare say you all find such friends among your constituents who are very anxious to enter the public service. Here are government officers who fill public places

There is a propriety in his consulting his associates in the government or in the same branch with which he is connected, otherwise how unseemly it would be. How palpably against public policy it would be to place it in the power of any committee to attempt to exercise the power of putting any one of these officers upon the stand and asking him to disclose the names of parties who have spoken with him in reference to appointments, what they have said, what influences were produced upon their minds, and what convictions were resting in his mind when he took the action. I do not know as I referred in the beginning to what extent this committee may extend this inquiry. I know that you will have no disposition to extend it beyond that which you believe a faithful discharge of your duties require. I make the inquiry at the beginning so that the question will not be complicated by the party answering it, with a hope that the committee, instead of putting this question, and if they shall be of the sentiment that I present, will make their questions in such form as not to involve the necessity or propriety of a disclosure upon the part of this officer of any of those things which ought to be deemed privileged; what I mean is the reasons, in a general way, whether there were objections to this man on account of his political position — whether the position was asked for at the hands of a political party, of a political partisan, in the name of and for the benefit of a political party; whether the removal was made because he thought the functions were not well performed; whether the charge was made because there was discordant elements in the prison and among its officers that made a change necessary; whether he has acted within the spirit of that law, and made the change for official reasons and not political reasons. I do not, on behalf of this gentleman, desire to delay this committee one moment. I will not trouble you with any further remarks for your consideration. Mr. Pilsbury will submit to any decision you may make.

He will be content with the judgment of this committee upon this question, and if you shall hold that it is a proper matter of inquiry and inquire of him, I think he will make a full statement of all the reasons and all the influences operating upon his mind, however unpleasant it may be to some others who have suffered by this removal; but I submit with all respect whether the committee had better determine whether they will enter into that course of inquiry or not, and guide the interrogations here as you may lay down the rule on that subject.

Senator POMEROY—So far as the general views expressed by the counsel are concerned, I could safely concur in this that the motives of the governor in nominating a man for any position, the motive of the senator voting for confirmation or rejection cannot be entered into anywhere, because there is no limit upon the exercise of a discretion. It is a general power without accountability, except to their constituents. It is not susceptible in its very nature of investigation or examination by anybody. The law does not permit it. But here is an exercise of a limited executive power; within a limited sphere; the statute defines it, that that power shall not be exercised except in a particular direction. Now whether the statute has been violated or not can only be arrived at in two ways—by acts and by declarations. There is no way in which we can reach motives. The two branches of limitation upon the discretion of the superintendent in the matter of appointment or removal are, first, that it shall not be partisan; second, that it shall be a person that is honest, capable and adapted to the position. There is one negative and one positive requirement of the statute, each of which it is competent for this committee to inquire into.

Now in regard to the question of partisanship, I know of no way to arrive at that except by declarations of the purpose for which the charge was made; for instance, suppose Mr. Pilsbury had been approached by an individual and the suggestion made to him that by turning out Mr. Welles, and by appointing Mr. Moses, a different course of political conduct could be secured for Mr. Moses, and that act, at once, brings it within the statute, as being a partisan consideration, if it was entertained and acted upon; I do not know that such was the case; I have had no conversation with Mr. Pilsbury upon the subject; I only know of acts that transpired, but I consider it perfectly competent, if my associates agree with me, to inquire into declarations having reference to subsequent acts of Mr. Pilsbury in regard to the removal and appointment of the agent.

Mr. SMITH—Mr. Chairman, will you allow me to say a word before you go any farther? Now, it is suggested that when an officer has unlimited power conferred upon him to make an appointment or a

confirmation, he is only amenable to his constituents, and that here there is a legislative limitation upon the power of this superintendent, which makes it a matter of inquiry to see whether he has kept within the limitation. Now you are all familiar with the constitution, and I only read it to bring your attention directly to it.

Sec. 4, of Art. 5 of the constitution, provides * * * "The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which have heretofore been had and performed by the inspectors of State prisons; and from and after the time when such superintendent of State prisons shall have been appointed and qualified, the office of inspector of State prisons shall be and hereby is abolished" * * * Now if there is any law that limits that power that law is void.

The legislature could no more pass a law that he should make a non-partisan appointment than that he should make a partisan appointment; and if they could pass a law that he should appoint a man who had no politics they could pass a law that he should appoint a democrat, or that he should appoint a republican, or, in short, there is no appointing power anywhere conferred in the constitution that is made entirely free from restriction or limitation than the power of the superintendent to appoint the warden; so that it brings the case directly within the rule of the chairman of this committee; he has just as much power to appoint that warden as the governor has to appoint a State officer to fill a vacancy; he has just as much power to appoint that warden as the governor had to appoint him (Pilsbury), and, therefore, I submit this might have been a sort of prudential regulation.

Senator JACOBS — I suggest whether the general question should not be asked Mr. Pilsbury, whether he had been actuated by partisan or political considerations in making this removal.

Senator POMEROY — I intended to ask Mr. Pilsbury that question bye-and-bye.

Senator MCCARTHY — I understood the counsel in the statement of questions which he said might be asked properly to concede all that the chairman has so far claimed in this case; that he might ask questions as to the fact whether political considerations actuated him in making this removal.

Mr. SMITH — I do not mean to take back any thing; I mean to concede that, but I do not quite agree with your first proposition, that that was what the chairman of the committee was asking; the chairman of the committee was coming up by gradual approaches; he got a man talking with the superintendent, and then asked him who it was, and then I suppose he wants to know what he said.

Senator MCCARTHY — The only point in the matter is that you prefer

he should ask the question in a direct way? he prefers to take it in an indirect way, that the question of politics be allowed to be introduced.

Mr. SMITH — If you will let me make a suggestion? suppose the question was involved whether I was in Troy yesterday at twelve o'clock, and it was legal and proper to know whether I was there or not, but if I was not there it was nobody's business where I was; now would the inquiry be allowed whether I was at Troy yesterday, or "where were you at twelve o'clock yesterday?" that is just the difference between the question the chairman put, as I understood it, and my objection; I say it is entirely proper, as it seems to me, to know whether, even if this law is unconstitutional, to ascertain whether, in any unfair way, the power of the officer has been exercised in conformity with the law. But what I mean to deny is, that you may inquire what anybody said to me; you may inquire whether any thing was said upon the question, but that you may inquire who he was and what he did say, just as you would inquire where I was yesterday at twelve o'clock, instead of inquiring whether I was in Troy. The inquiry may be, who was it that spoke to you — what did he say — if that line is continued, there is no private conversation that this man may have had with anybody on earth, but what he would be compelled to disclose here, and what he will disclose.

Senator POMEROY — I shall ask for no conversation, Mr. Smith, but what had reference to this particular subject.

Mr. SMITH — You take one range, but, as you see, it would develop the very point he has in view to take the other way; but in doing that you see you are inquiring into matters, as I claim, that do not pertain to this inquiry, just as I said in my illustration as to Troy; if the inquiry is limited to what took place pertaining to this subject, very well, but if the committee ask him "Who spoke to you?" I think that was the question — "Who was it?" then the next step is, I suppose, "What did he say?"

Senator MCCARTHY — The learned counsel's comparison is not a good one, I think.

Mr. SMITH — That is quite likely; I have been wrong a great many times in my life.

Senator MCCARTHY — I have had the pleasure of hearing the counsel before, and of course when he wished to arrive at a certain point to get information, that he thought would not be given by a direct question, he would get at the fact by an indirect question, and I think that is the practice with counselors generally. Now, if it is supposed, for instance, that there may be a power behind the action of this superintendent of prisons, and that that is a political power, and that

that has had a controlling influence in this matter, is it wrong to investigate that ?

Mr. SMITH—Well, such an absolute question of morals as that I am not prepared to answer.

Senator JACOBS—The resolution directs us to inquire whether the recent change made in the office of agent and warden of Auburn prison was in violation of law ; that is, whether Mr. Pilsbury violated the law ; we are to ascertain that fact. I do not think we have a right to ask him, in case we discover that he violated the law, who instigated him to do it. We are to discover whether *he* violated it. In that case you are not trying Mr. Pilsbury, but somebody else, and we are not here for that purpose.

Senator McCARTHY—I propose to leave it to the chairman to ask the question in his own way.

Senator POMEROY—Upon the first question as to partisanship, I do not see that there is any other way to arrive at the fact, except by consultations, deliberations, and declarations.

Mr. SMITH—When we are trying a case in court, and it is charged that such a thing was done, we do not go into court and ask a man if he had such a conversation, and then ask him what that conversation was. That is not the way. But in the first instance, in making our case we confine ourselves to the legitimate scope of it, and that is, whether this man acted in reference to political matters.

Senator POMEROY—I do not ask this *as* a foundation to contradict him, by any means ; I ask it as evidence in chief as a part of the *res gesta*.

Mr. SMITH—You ask him who this man was. He may say it was John Smith, and if he should, I suppose you intend to ask him what John Smith said ?

Senator POMEROY—Upon *this* question.

Mr. SMITH—And then ask him as to all political matter ? then the inquiry is all right ; but, if it is to be a sweeping question, then I assume there would be no end to the inquiry.

Senator POMEROY—We will be very brief. It will not be a protracted examination. I will say here that I do not regard chapter 107 as repealing section 3 of chapter 24.

Mr. SMITH—I do not suppose that either of them repeal the constitution.

Senator POMEROY—I think it will be the duty of the committee to assume the law standing on the statute to be consistent with the constitution ; otherwise the investigation itself would have been an absurdity. The senate must have so assumed or it would not have ordered the investigation.

Q. Who was that person ?

A. Mr. Weed.

Q. Smith M. Weed ?

A. Yes, sir.

Q. When was this interview had with him ?

A. I am not certain whether it was Friday or Saturday now, or a day or two before.

Q. Was it on Sunday that Mr. Welles was here ?

A. Yes, sir.

Q. He came down Saturday night ?

A. Yes, sir.

Q. It was on the Saturday night before that you saw Mr. Weed ?

A. I think so ; yes, sir.

Q. I will not ask you how about the conversation any further than this, was it in consequence of something that passed between Mr. Weed and yourself, that you telegraphed for Mr. Welles to come ?

A. No, sir.

Q. It was not ?

A. Well, that might be answered in both ways.

Mr. SMITH — (to the witness) Answer it.

The WITNESS — Will you permit me ?

Q. Certainly.

A. I had an interview with Mr. Weed on matters entirely foreign to this subject ; no connection with this affair at all ; and before parting with him I spoke to him of certain troubles that will appear by-and-by existing between Mr. Wells and Mr. Underhill as clerk and consequently involving me more or less in the dispute and remarked to him that it was causing me a great deal of trouble and a great deal of anxiety, and all that was said on the occasion Mr. Weed spoke and says : “ I should advise you to make a change ” and spoke at the same time that he did not know Mr. Welles, and knew nothing about him whatever ; that was all there was to it.

Q. Did he say “ make the change ” ?

A. No ; he said he advised me as a friend to make a change.

Q. In the conversation was there a name mentioned ?

A. Afterward a name was mentioned.

Q. What name ?

A. The name of Mr. Moses.

Q. When had you said any thing if at all to Mr. Welles about any trouble between him and Mr. Underhill ?

A. It had been a continual topic between us for a year or more.

Q. How recently previous to this interview in November ?

A. I cannot tell you, sir.

Q. Had the subject been mentioned three months before ?

A. I think it had, sir.

Mr. SMITH — (to the witness) Well you know whether it had or not within three months ?

The WITNESS — Well, yes, I think it had ; I cannot specify any dates ; the trouble between Welles and Underhill.

Q. I do not care to go into that now ; the only point I wanted to ask there was, as nearly as you can recollect, how recently previously to this interview with Mr. Welles in November you had had a talk with him about any difficulty with Mr. Underhill.

A. I cannot say, sir.

Mr. SMITH (to Senator Pomeroy) Do you mean by that to include correspondence ?

Senator POMEROY—In any way ?

The WITNESS—I cannot say ; my impression is there was something passed between us in regard to that later in the month.

Q. You think in a month ?

A. Yes, sir ; but I am not certain.

Q. Do you remember about what time the democratic State committee was organized ?

A. I do.

Q. What day was that ?

A. I cannot tell you the date certainly ; it was some time in October.

Q. You do not recollect the day of the month ?

A. No, sir ; I did not attend there.

Q. How long previous to that had the name of Mr. Moses been mentioned to you in connection with this office, or by you ?

Mr. SMITH—I beg your pardon ; that it had been mentioned to him ?

Senator POMEROY—To or by him ?

A. It had not been mentioned to me at all.

Q. Previous to that ?

A. No, sir.

Q. Nor by you ?

A. No, sir.

Mr. SMITH (to the witness)—Nor by you, he asks now ; nor by you to anybody else ?

A. No, sir ; in fact—I do not think I had mentioned or thought of Mr. Moses in connection with that since about the time of my appointment as superintendent, nearly two years ago.

Q. That answers my question—that previous to the organization of the democratic State convention in October, the question of the appointment of Mr. Moses had not been mentioned by anybody to you nor by you to any one.

A. No, sir, it had not.

Q. Previous to that time had you left with the governor a resignation of your office?

Mr. SMITH — Previous to what time?

Senator POMEROY — Previous to the organization of the democratic State committee; do you recollect the date of their meeting?

A. I do not.

Q. The State convention, I am informed, was held the 26th of September.

Mr. SMITH — A gentleman at my left says it was Oct. 8th.

Senator POMEROY — The convention was held the 26th of September, I am informed, and the meeting of the State committee for organization Oct. 8th. You think before that time there had been no resignation left with the governor?

A. No, sir, I think not.

Q. Was there subsequently?

A. There was.

Q. About what time?

A. I think it was about the 8th or 9th of the month.

Q. Of October?

A. Yes, sir.

Q. Has that ever been acted upon by the governor?

A. No, sir.

Q. Still remains with him?

A. Will you allow me to explain, with reference to that resignation?

Q. I will if you wish to.

A. It still remains with him.

Q. This resignation was left with the governor?

A. Yes, sir.

Q. And remained with him without action being taken upon it?

A. Yes, sir.

Q. Until what time?

A. It is in his possession now, sir.

Q. In his possession now?

A. Yes, sir.

Q. When was your first acquaintance with Wm. J. Moses?

A. When he was deputy State treasurer.

Q. Here in Albany?

A. Yes, sir; I think I had met him some years before, but that was the first time I became well acquainted with him.

Q. What was his adaptation to the office of agent and warden of a prison?

A. Sir, I considered him from my acquaintance with him, and from what I had been told by other persons, a capable and an honest man, and I believed as warden he would succeed and do well, provided he carried out such orders as I should give him.

Q. Had he ever had any experience as a prison officer?

A. Not that I know of, sir.

Q. Never had charge of convicts that you know of?

A. Not that I know of; no, sir.

Q. In any capacity?

A. No, sir.

Q. Was any notice of the removal ever given to Mr. Welles?

A. I asked Mr. Welles for his resignation and sent Mr. Moses afterward, before I had received any answer from Mr. Welles, sent Mr. Moses his letter of appointment, and a few days afterward received a letter from Mr. Welles, a protest that he should not be removed; I wrote to him then that I considered the appointment of Mr. Moses, under my hand and seal, sufficient notice to him of removal.

Q. Then he never had any notice of the removal except the appointment of Mr. Moses?

A. No, sir; not until I wrote him on the 3d of December.

Q. Was any cause of his being superseded, ever given to Mr. Welles?

A. Yes, sir.

Q. By word or by letter?

A. By letter and by word both.

Q. Those reasons as contained in the letter were the correct reasons, were they?

A. Yes, sir; that is in the letter I remember writing to him, that the reasons were correct, lack of harmony; there was lack of harmony in the department.

Mr. SMITH — Do not let us go into that.

Q. You still stand by the reasons you gave in those letters?

A. I do, sir.

Q. You delivered to the legislature, in 1877 and in 1878, annual reports of the management of the prisons?

A. Yes, sir.

Q. Were your statements in them as to Mr. Welles' management of Auburn prison correct?

A. I certainly so considered them at the time I filed them.

Q. Well, you so consider them now, do you not?

A. Yes, sir; generally speaking I do.

Q. Well, if there is any reason to suppose your report was not correct you may so state. I propose to read from those reports and that is why I ask you.

A. Well, in regard to that, some things have been brought to my notice since Mr. Welles has been removed, which, if they had been brought to me officially before, I should have investigated, but did not.

Q. What were these things ?

A. Certain charges made by persons in Auburn.

Q. What are they ?

A. There were charges that he had not treated citizens of Auburn in a pleasant manner — in a manner that he should as warden ; and some others.

Q. You have never investigated those ?

A. Have never investigated at all.

Q. Then for aught you now know you do not know whether they were true or not ?

A. I do not know whether they were true.

Q. Your report stands correct so far as you know ?

A. Yes, sir.

Q. And so far as the management of the prison was concerned you have no reason to change your opinion contained in those reports at all, have you ?

A. No, sir.

Q. Will you state when first the determination was made to make the change ?

A. Well, on the Saturday night before I sent for Mr. Welles I had made up my mind to make the change.

Q. That was the day or the day after your interview with Smith Weed ?

A. Yes, sir.

Q. Who else had you talked with on that subject aside from Mr. Weed within say a period of two months previous ; I do not care to go back of that ?

A. In regard to the change at Auburn ?

Q. Yes ?

A. No, sir.

Q. Had talked with no one except Mr. Weed ?

A. No, sir.

Q. And the subject had not been discussed in your presence ?

A. No, sir.

Q. Nor had anybody made any suggestions to you upon the subject ?

A. No, sir.

Q. At the time of the removal did you consider Mr. Welles honest, capable and adapted to the position ?

A. I did.

Q. As near as you can recollect, Mr. Pilsbury, about what time was it that resignation was left with the governor?

A. I think about the 8th or 9th of October.

Q. About the 8th or 9th of October?

A. I think so ; yes, sir.

Q. You don't recollect whether it was before or after that organization of the State committee?

A. I do not.

Q. That, it seems, was held on the 8th?

A. So Mr. Rhodes says.

Q. What had been Mr. Moses' business — do you know what his business was at the time of the appointment?

A. I understood he had been the editor of a paper in Auburn.

Q. That that had been his business for several years?

A. So I understand.

Q. What is the paper?

A. The Auburn *News*, I believe.

Q. The Auburn *Morning News*?

A. I think so.

Q. It is a partisan paper?

A. That is more than I know ; I do not think I have seen it a half dozen times in the course of my life.

Q. You understand it to be a democratic paper?

A. Yes, sir.

Q. And a paper supporting Governor Robinson and Mr. Tilden?

A. I don't know any thing about that.

Q. You don't know about that?

A. No, sir ; I don't know whether I was aware of that fact or not.

Q. Do you know any thing about the pecuniary condition of that paper at the time of Mr. Moses' appointment?

A. I do not.

Q. Whether there was any necessity for assistance in that direction?

A. I do not know.

Q. That was never brought to your attention?

A. No, sir ; I do not recollect of ever having heard it mentioned at all.

Q. How came Mr. Moses to be suggested to you for the place, he never having had any prison discipline, to succeed a man like Mr. Welles?

A. As I said to you, I had thought of Mr. Moses at the time Mr. Welles was appointed.

Mr. SMITH (to the witness) — You haven't stated that.

Senator POMEROY—He stated that before, Mr. Smith.

Mr. SMITH (to the witness)—Then state it fully.

The WITNESS—At that time I had made up my mind if Mr. Welles did not accept the appointment that I should ask Mr. Moses if he would accept of it; from what I knew of him here in Albany, and feeling that I would have to make a change, having, as I did have at that time, a large number of applications.

Senator MCCARTHY—Why did you select Mr. Welles in place of Mr. Moses, at that time?

A. For the reason that I thought it was necessary in the commencement for me to have a man there who knew my method of managing prisons; who had been associated with me, and feeling as I did that I would have to take one person to commence with, and for a time at least trust the other officer in charge almost entirely to carry out my directions, and that I would have very little time to be there myself, and made up my mind that the prison that needed my attention first was Sing Sing, much more than either of the others—in fact Auburn prison was in much better condition than the others.

Q. The reason was, one was an experienced man and the other was not experienced?

A. Yes, sir; I thought at that time if I could obtain the service of an experienced man, that I should have him, commencing as I did under such unfavorable circumstances.

Senator POMEROY—Was it not a fact that Mr. Welles was very loth to accept the position when it was first tendered to him?

A. I have no recollection of that fact, sir.

Q. Did he accept it willingly when you tendered it to him?

A. I think he was willing to accept the place; it was some time ago; there may have something occurred that I do not remember in regard to it.

Examination of Mr. PILSBURY by Mr. SMITH:

Q. Did the act of yourself in placing your resignation in the hands of the governor grow out of a matter solely personal to yourself?

A. It did entirely.

Q. And was there any thing said by you to any one or by anybody to you either directly or indirectly, conveying the idea that there was any condition dependent upon your resignation relating to the appointment of a warden of Auburn prison?

A. Not one word.

Q. Or any other appointment?

A. No, sir; never.

Q. Was that act influenced in any degree, great or small, by any

consideration relating to appointments to office in the prisons or out; to the organization of committee or any party questions whatever?

A. It was not.

Q. Did the governor, or any one in his department, or Smith Weed, or any other Weed, or any other man, ever say to you any thing either directly or indirectly conveying the idea that any action on your part or the action of anybody else, was to be affected or influenced one way or the other by the filing of that resignation, except as it affected you personally?

A. No, sir.

Q. Now, in your interview with Mr. Weed, when you say the question of the removal of Welles was discussed, and he said something on the subject; who opened that interview so far as that subject was concerned?

A. I did.

Q. And you have said Smith Weed advised the change?

A. He did.

Q. Did he advise who the successor should be?

A. No, sir.

Q. Or intimate it in any way?

A. He did not.

Q. Did he give any reason why he thought it would be wiser on your part to make the change?

A. He did.

Q. Did that reason that he gave relate to any political party or interest of any political party, or the confirmation of any political party, or candidate, or appointment?

A. It did not; not in the least.

Q. Did it relate solely to the question of the efficient exercise of the duties of your office?

A. It did.

Q. As I understand you, Mr. Welles was your relative and your friend?

A. He was.

Q. And you removed him and appointed a man who was not your relative, and was connected with a newspaper?

A. I did.

Q. Would you state whether in your judgment, as a man and an officer, your official duty was best discharged by making that change?

A. It was.

Q. Were there facts existing in the relation of Welles as warden of the prison, your appointees and your officers, another officer of the prison appointed by another department of the government; were

there circumstances growing out of that change which led to embarrassment in the business department of that prison ?

A. Yes, sir.

Q. And subjected you to trouble and annoyance ?

A. Yes, sir.

Q. And you tried to obviate those ?

A. I did.

A. And with what success were you attended ?

A. I did not succeed.

Q. Did it grow from bad to worse ?

A. It did.

Q. Now, sir, was there, and I mean this without impugning the fidelity and integrity of Mr. Welles, for I understand there was nothing of that then, but it grew out of a difficulty in the co-operation of these gentlemen in business matters ?

A. Yes, sir, entirely.

Q. Now when this culminated, in this determination of yours, had you formed that determination before you saw Smith Weed, in your own mind, I mean.

A. I had been thinking the matter over seriously for a week or two, I found it was absolutely necessary to do something for my own sake, and then Mr. Weed speaking to me as he did, I went home, and thought the matter all over and made up my mind that it was best for me, for the interest of the State, best for the interest of the prisons, that there should be a change.

Q. And this interview with Mr. Weed, as I understand, did not occur by means of your contemplating this change ?

A. Not at all ; no, sir.

Q. You came together upon another matter ?

A. Yes, sir, that was a matter entirely foreign to this.

Q. Was that a political matter ?

A. No, sir, it had nothing to do with politics ; I think there was not a word of politics mentioned between us of any kind.

Q. What do you say as to whether this change was influenced in any degree, in the slightest, by any partisan consideration ?

A. It was not, neither have any of my appointments been, not one.

Q. You have been interrogated in reference to the absence of notice on your part of this gentleman's removal. State what the fact is as to there having been more than one request to him to resign, and whether it was orally or by letter ?

A. I requested Mr. Welles, both orally and by letter, to hand to me his resignation, as he had at various times said to me—had written me—that he was ready to do it at any time.

Senator POMEROY—I did not hear that.

The WITNESS—I say I requested Mr. Welles to give me his resignation.

Senator POMEROY—Not previous to that Sunday that he was here?

The WITNESS—I had not requested it before that; I supposed at the time that he would.

Mr. SMITH—You had requested him before this appointment was made to resign, as I understand you?

A. On this Sabbath; that was the only time.

Q. That was orally?

A. Yes, sir.

Q. Had the question been suggested before?

A. To ask him to resign?

Q. By either of you; you know and I do not; had the question of his resignation been up before?

A. Mr. Welles had frequently said to me and to others, in my hearing, and to others when I was not there, as I understand, that he was ready to resign and get out at any time in case the trouble continued between him and his clerk, and that he should have to ask me to relieve him.

Q. And that request and suggestion of Welles was the reason that ultimately influenced you to make the change that you did?

A. Yes, sir.

Q. To wit: the want of harmony between those two officers?

A. Yes, sir; I did not wish to take his resignation before I had tried to settle the matter, if possible.

Q. What matter?

A. The trouble between himself and the comptroller's appointee; my greatest desire was to have that point settled and have harmony, and to get along well without having any more trouble, and I found it was impossible.

Q. Now what is the fact with reference to any thing that may have been written in your report in reference to Mr. Welles, or may have been written of him in any other way; have you written or said any thing that you recollect to the exclusion of the idea that this difficulty existed, and did it go on with the hope that it might be adjusted between these men?

A. It has all the time been with the hope that it might be adjusted and settled to the satisfaction of the comptroller and myself.

Examination of Mr. PILSBURY continued by Mr. POMEROY:

Q. From the time of the appointment of Mr. Welles down to the time of his removal, how many times did you visit Auburn prison?

A. I cannot tell you, sir.

Q. Wasn't that prison left almost exclusively under the charge of Mr. Welles?

A. Yes, sir; on account of my frequent visits to Sing Sing—as I said to you in the first place—on account of my frequent visits there and to Clinton, I did not go to Auburn as often as I otherwise would; I had letters from Mr. Welles every week informing me of every thing that was going on.

Q. You had such confidence in Mr. Welles that you did not deem it necessary to go there as often as the other prisons?

A. Yes, sir; I did have confidence in him.

Q. The result was that you did not go there as much as to the other prisons?

A. No, sir; partly on account of the confidence I had in him and partly because of my time being occupied at the other prisons.

Q. The fact was you went there very little, as compared with the other prisons?

A. Yes, sir.

Q. And Mr. Welles exercised a more independent control there by reason of your absence than either of the other wardens?

A. Yes, sir, I suppose he probably did.

Q. Can you give any idea of the number of times during that period of nearly two years, that you were at Auburn?

A. I cannot; I can tell by reference at home.

Q. Do you think it would average more than one in three months?

A. I think about once in three months, or perhaps in two.

Q. Is it your impression it would average once in three months?

A. Yes, sir.

Q. As often as once in two months?

A. Yes, sir.

Q. Oftener than that?

A. I cannot tell without referring to my books.

Q. At the interview on Sunday, when the question of resignation was spoken of, was Mr. Underhill's name mentioned in that interview at all?

A. The trouble—I don't remember exactly whether Underhill's name was mentioned, but the trouble which had existed between him and Underhill or the comptroller's office was mentioned frequently.

Q. You think it was mentioned frequently during the conversation?

A. I do.

Q. Let me refresh your recollection a little; was not this the only mention that was made during the conversation that you suggested to

Mr. Welles, that if he would tender his resignation you would assign that as the cause of it? was not that the only mention — the only reference — that was made to Underhill in that conversation?

A. That I would do what?

Q. That you would assign that to the public as the reason for the resignation?

A. No, sir.

Q. If he would tender his resignation?

A. No, sir.

Q. That was not so stated?

A. No, sir.

Q. Underhill's name was mentioned several times during the conversation?

A. I do not remember that his name was mentioned, but the difficulty between him and Welles was.

Q. Between Underhill and Welles?

A. Yes, sir; and consequently the other office was spoken of several times.

Q. Mr. Underhill was the clerk of the prison?

A. Yes, sir.

Q. He is appointed by the comptroller?

A. Yes, sir; I have nothing to say about it.

Q. And has nothing to do with the discipline of the prison whatever?

A. None at all.

Q. How could any disagreement between Welles and Underhill affect the discipline of the prison?

A. It would affect the discipline so far as the officers were concerned, which is of much consequence.

Q. Mr. Welles made a written complaint, did he not, in regard to Underhill?

A. He did.

Q. These were submitted to you?

A. They were sent to me with the request that I should hand them to the comptroller.

Q. Were not they submitted to you for your approval?

A. No, sir; not as I understood it.

Q. You never did approve them?

A. No, sir; I have nothing to do with them.

Q. You did hand them to the comptroller?

A. I did, at his request.

Q. You are not ready to say whether you approved or did not approve of them?

A. I am not now; I merely received those apparently as coming from Welles and handed them to the comptroller of the State.

Q. Weren't they sent to you with your approval, and if you approved them to hand them to the comptroller?

A. I did not so understand it; it may have been so.

Q. Do you recollect whether it was so or not?

A. I do not.

Examination of Mr. PILSBURY continued by Mr. SMITH:

Q. I forgot to ask you one question, Mr. Pilsbury; have you any means of knowing to what political party Mr. Welles belongs?

A. I considered that Mr. Welles belonged to the same party I did myself.

Q. Things are kind of mixed up now; what political party does he belong to?

A. Mr. Welles is a democrat, always has been; so-called Tilden democrat.

Q. A Tilden democrat?

A. Yes, sir.

Q. Been a Tilden democrat for several years?

A. I have always understood him so to be; I may be mistaken; I cannot answer for any man's politics nowadays.

Senator JACOBS (to the witness) — Mr. Pilsbury, has the management of the prison been benefited by the change?

Senator POMEROY — To that I object.

Senator JACOBS — I have not objected to any of your questions.

Senator POMEROY — That opens the point that was considered in the senate when the resolution was under consideration, and that I will submit to my associates.

Senator JACOBS — There is nothing in the resolution that requires any thing to be asked in reference to the resignation of the superintendent; a man may resign without violating the law.

Senator POMEROY — I have not undertaken to protract the examination by going into the figures of what changes were made by Mr. Moses; nor do I propose for one to go into what changes have been made through Mr. Moses, because that would require an examination of the books, which would make a very prolonged examination and which is entirely outside of the investigation ordered by the senate, which was simply whether the change was made in violation of either one of these two provisions of chap. 24 of the Laws of 1877; if the change was made legally, then whether the State was benefited or not becomes immaterial.

Senator JACOBS — I think it would be well enough to have the opinion of the superintendent upon this matter.

Senator POMEROY — That was the very point the senate refused to adopt in the resolution.

Senator JACOBS — I would like to have the question ruled upon by the committee.

Senator McCARTHY — The question having been settled by the senate of course I agree with the chairman.

SMITH M. WEED, having been duly sworn, testified as follows :

Examined by the CHAIRMAN :

Q. You reside at Plattsburgh ?

A. I reside at Plattsburgh, sir.

Q. You had an interview here in Albany with Mr. Pilsbury in November last ?

A. I had an interview that he refers to ; I don't remember exactly when it was.

Q. Was that interview at your suggestion or at his ?

A. It was not at mine, sir.

Q. You came from Plattsburgh here, and met him here ?

A. I don't remember whether I came from Plattsburgh here, or from New York here ; I have an office in New York and am there about half of my time.

Q. Then you do not recollect, after arriving here, of telegraphing him to meet you here ?

A. No, sir.

Q. Well, now in that interview all I care about is what there was in reference to that change ; if you will state what the conversation was between Mr. Pilsbury and yourself in regard to the contemplated change at Auburn prison ; I do not care any thing about the other conversation ?

A. That conversation was incidental entirely ; at the same time there is a reason ; without Mr. Pilsbury's consent I cannot state it to you, and I will give you the reason briefly ; there had been a matter in which I acted as attorney for Mr. Pilsbury and I acted as his counsel.

Q. I do not ask you about that ?

A. A moment, if you will allow me ; he spoke to me in reference to it, and I do not know whether as an attorney I have the right to make the answer to your question without his assent ; with it I should be very glad to do it.

Q. Do you mean he consulted you as an attorney in making the change at Auburn prison ?

A. I did not say so ; I suggested to the reverse ; I said this conver-

sation of Mr. Pilsbury with me grew out of that matter in some respects.

Q. I don't care what it grew out of, all I want is what was said in reference to this matter?

A. You will recognize the fact that if there was the relation of counsel and client between us, that I cannot state it; if he will consent I will state it.

Q. I understand this was not the relation of attorney and client about the agent and warden of Auburn prison?

A. I said he consulted me about the agent and warden of Auburn prison.

Q. As an attorney?

A. I do not know that that grew out of the former relation.

Mr. SMITH—Perhaps it would be proper on behalf of Mr. Pilsbury, to say that inasmuch as the matter has been so far opened, he will waive any supposed protection or privilege of his in reference to this interview, and leave Mr. Weed at liberty to make any statement on the subject as to which it is appropriate to make inquiry.

The WITNESS—What is the question?

Q. State the conversation between Mr. Pilsbury and yourself so far as it related to the matter of agent and warden of Auburn prison?

A. I can only state the substance of it; after conversing upon other matters that I came to see him upon, or that I met him upon, he said that there was a continual wrangle between Mr. Welles and the clerk that made him trouble, and I suggested to him then "why don't you remove Mr. Welles?" and gave him the reason for making that change.

Q. Well?

A. I says, "Mr. Welles is your relative."

Mr. SMITH—Do you care for that, Mr. Chairman?

The CHAIRMAN—Yes.

Mr. SMITH—Whether it relates to politics?

The WITNESS—Politics was not mentioned in any shape; I will give you what it is; I stated Mr. Welles was his relative and that all these questions of difference put him at a disadvantage and brought up the question of nepotism, and if I were you I would not stand it, that I would have him out, that I would remove him; that is the substance of what we said, sir.

Q. Had you previously with others considered the subject of the change at Auburn prison and the appointment of Mr. Moses?

A. No, sir.

Q. You had been a party to no negotiations upon the subject?

A. No, sir.

Q. With anybody ?

A. No, sir ; I did not care a rush about it.

Q. You had not known any thing of the matter ?

A. I had known of an existing difference between Mr. Welles and Mr. Pilsbury.

Q. Did you have any talk with the comptroller on that subject ?

A. No, sir.

A. You did not think it would be advisable for the superintendent to remove the clerk ; say any thing about harmony in that way ?

A. I did not think it was my business to advise the comptroller.

Q. But you did advise Mr. Pilsbury ?

A. I did ; he asked me and I advised him.

Q. That was the substance of the conversation ?

A. It was, sir.

Q. And all that was said upon this subject ?

A. All that I remember ; the substance of all that was said, as I recollect it.

Q. And this interview with Mr. Pilsbury was not on account of any arrangement or conversation with any other parties ?

A. No, sir.

Q. In regard to this question at all ?

A. No, sir.

DANIEL MANNING, having been duly sworn, testified as follows :

Examined by the CHAIRMAN :

Q. You are acquainted, of course, with Mr. Pilsbury ?

A. Yes, sir.

Q. And recollect of the change being made of the agent and warden of Auburn prison ?

A. Yes, sir.

Q. Did you have any conversation with Mr. Pilsbury on that subject, previous to the change ?

A. None ; none that I recollect.

Q. Nor any in his presence ?

A. None in his presence ; none that I can recollect.

Q. Were you aware, previous to the change being made, of any change being contemplated ?

A. I think probably I heard something about it ; mere street talk, however.

Q. And of the appointment of Mr. Moses ?

A. And of the appointment of Mr. Moses.

Q. Do you recollect when you first heard any thing upon that subject ?

A. No, I do not.

Q. Can name no time nor place, nor person, when it was a matter of conversation in your presence?

A. I think not; I have been trying to recollect back and I won't be positive but that the auditor of the canal department once spoke to me saying that his friend Moses was a candidate for that place—something like that—I don't remember of having a conversation of any length about it.

Q. You don't recollect when that was?

A. No, I cannot fix the dates at all.

Q. Well, I will ask you the general question, Mr. Manning, whether you know of any suggestion to Mr. Pilsbury to make this change, from any political considerations whatever?

A. I do not.

Q. Either as coming from yourself, or any other party?

A. No, sir; I know of no suggestion, certainly not from myself; my relations are not such as to advise him, and I have never heard it suggested from others.

Q. And never heard the matter canvassed in his presence?

A. No, I never did.

LEONARD R. WELLES, having been duly sworn, testified as follows:

Examined by the CHAIRMAN:

Q. You heard the testimony of Mr. Pilsbury, Mr. Welles?

A. Yes, sir.

Q. What is your age?

A. Forty-six.

Q. And Mr. Pilsbury's?

A. He is the same age; he is nine months older than I am.

Q. What have your relations been through life?

A. Very close and intimate, sir.

Q. Will you state what your experience in prison discipline was previous to your appointment at the Auburn prison?

A. In prisons and kindred institutions about 14 years.

Q. Will you state in what capacity you were employed?

A. In every capacity except chaplain and physician?

Q. Where was your first experience?

A. Connecticut State prison.

Q. Where?

A. At Wethersfield, Connecticut.

Q. What were your duties there?

A. I was first as a watchman on the wall; guard it would be con-

sidered in this State ; afterward in charge of the shop, and afterward in charge of the office — clerk.

Q. Being in charge of the shop and as keeper ?

A. Yes, sir.

Q. After that where ?

A. In the Albany penitentiary.

Q. Mr. Pilsbury's father was an uncle of yours ?

A. Yes, sir ; he was the superintendent.

Q. Mr. Pilsbury, the present superintendent of prisons, was also employed there ?

A. A part of the time; a part of the time he was not present.

Q. What position did you hold there ?

A. I was a guard, keeper, clerk and deputy.

Q. Deputy superintendent ?

A. Yes, sir.

Q. And at what other prison ?

A. At Joliet and Alton, Ill.

Q. In what capacity there ?

A. Deputy superintendent or deputy warden ; I was under Mr. Pilsbury at Joliet, and had charge of the prison at Alton.

Q. In all, your experience covered a period of about 14 years ?

A. Yes, sir ; the places I have mentioned, however, do not cover the whole term, for I was at Ward's Island 7 years, 5 years as superintendent and 2 years as deputy.

Q. What ?

A. Of the emigrant institution, the State emigrant institution ; the whole period was about 14 years, something over 14 years.

Q. How recently, previous to your appointment at Auburn, had your prison experience terminated ?

A. I left Ward's Island in 1873.

Q. That was the last appointment ?

A. Yes, sir.

Q. Was appointed in Auburn when ?

A. March 24, '77.

Q. At the time of your appointment you were engaged in the hardware commission business in New York ?

A. Yes, sir.

Q. State how you came to be appointed agent and warden at Auburn ?

A. Mr. Pilsbury and myself had been in constant communication in regard to the amendment to the constitution, and had watched it, both of us, somewhat closely and with great interest, and the matter of his coming appointment had been discussed ; also in a friendly way,

not so much by himself as myself, hoping he would secure it, and believing he would; about February, some time in February, he came to New York and called upon me at my store and stated that the matter was settled, that the governor was going to send in his name, and that if he accepted the place he should insist on my taking one of the prisons, and that he had selected Auburn for me because he thought it would be a prison that would suit me, and as he would have to devote his time pretty closely to Sing Sing, that he wanted somebody there to take charge of it that he could leave with confidence; I told him it was a matter I should want to give a good deal of consideration to, that I knew my family would object to going, and I discouraged him; finally he secured my assent to a trip to Auburn to look the ground over to see what I thought after an examination; to make a long story a short one, after a month's consideration and argument with my family, etc., and so on, I did accept.

Q. It was a position tendered by him?

A. It was a position tendered by him, and not sought for by me; I had no expectation of filling any position under him, and I did not ask for it, but I did take it, hoping I could aid him in carrying out the amendment to the constitution, as I believed he intended to carry it out?

Q. After the time you went there, when was the first suggestion made to you as to resignation or removal?

A. On that Sunday, the 16th day of November, or on the evening of the 15th of November; on Saturday evening, about eight o'clock, I received a telegram directing me to report to Albany, forthwith, either that night or early the next morning.

Q. Up to that time, had you notice or advice, of any kind, of the contemplated change in the agent and warden of Auburn prison?

A. No, sir; not the least.

Q. There has been something said about the trouble between you and Mr. Underhill; state when that was and what it was.

A. The trouble was brewing—growing for 4 months.

Q. When?

A. The previous spring, and up to the middle of summer, say covering about 4 months, April, May, June and July.

Q. At July, was the thing terminated?

A. So far as I believed, it was.

Q. Did you hear any thing more about it afterward?

A. No, sir; the charges were submitted to the comptroller and deemed by him not worthy of consideration, or he at least so wrote and the matter was dropped, and I supposed that all of us considered it settled.

Q. Was there any trouble between you and Underhill after July ?

A. Not at all, perfectly friendly.

Q. Had you any knowledge or suspicion that there was any trouble existing here on that account ?

A. Not at all.

Q. Between the comptroller and superintendent ?

A. Not the least.

Q. No intimation given to you in regard to it ?

A. After July, after the settlement, none at all.

Q. You preferred certain charges ?

A. I did.

Q. State what was done with them ?

A. Charges were made and sent to Superintendent Pilsbury, with a request that he look them over, and if they met with his approval—I have a copy of the charges in my pocket, if the committee want to see them.

Q. No, I do not think it is necessary to go into that; you understood afterward from Mr. Pilsbury that he approved of them and presented them to the comptroller ?

A. I knew he had presented them to the comptroller.

Q. And you knew the comptroller dismissed them ?

A. The comptroller wrote me that he had dismissed them; after that we had a friendly talk and considered the matter all settled; we both agreed, perhaps, that it had been hasty, and that it was like a family quarrel, and settled up and ended; Mr. Underhill has so published since that.

Mr. SMITH—It is not worth while the witness should take any active part in developing the evidence.

The WITNESS—I thought you wanted to bring out the facts in regard to the settlement, and I mentioned that as showing that the settlement had been effected.

Mr. SMITH—There is no use of his adding “that had been subsequently published.”

Senator POMEROY — I did not ask that, and the stenographer will not take down about its being published.

Q. You reached here in pursuance of that telegram, when ?

A. Sunday morning about day-light.

Q. When ?

A. It was the 16th of November.

Q. You went to the penitentiary, where Mr. Pilsbury lived ?

A. Yes, sir.

Q. Give the interview you had with Mr. Pilsbury, begin at the beginning and give it as near as you can.

A. I shall not be able to give the exact words, but I will give the spirit and subject of the interview, as near as I can; he met me in the morning in the parlor, and I saw by the expression of his face that he was in some kind of trouble.

Mr. SMITH—Oh, I submit we shall not have this—the expression of a man’s face on Sunday morning!

The WITNESS—Will the chairman allow me to state, do you wish me to answer your questions direct?

Q. State what was first said?

A. My first question was to him: “Why have you sent for me?”

Q. Give the conversation from that on?

A. He says, “I am in trouble.”

Q. He said, “I am in trouble?”

A. He said, “I am in trouble;” I said, “what is the trouble now?” He said, “I am full of trouble; I no sooner get out of one scrape than I am in another!” I made the remark, “is it in relation to the charges the governor holds over you?” I said, “those are settled, are they not?” He said, “yes”! I said, “what is it?” He said, “they want Auburn prison”!

Q. “They want Auburn prison”?

A. “They want Auburn prison;” I said, “who wants Auburn prison?” He replied, “I received a dispatch from Smith Weed yesterday directing me to report at Albany—come to Albany—I was there with my family—I came up and had a talk with him and he notified me I must get your resignation”! He replied, “I cannot remove Mr. Welles, he is one of my best officers”! And then said to Mr. Weed these words, “does the comptroller ask it—does the governor ask it?” He said Mr. Weed responded, “I am authorized to speak for them; if you do not believe it you can inquire of them”! He said he then went to Comptroller Olcott and had a talk with him and after some conversation he asked the comptroller if he knew in regard to this matter and he said he did; he asked him if it met his approval? He said, yes; then says he, “I think I can secure Mr. Welles’ resignation;” he then paused in his conversation and I replied, “you tell them they cannot have Auburn prison”! I then said what do *you* want; you have told me what *they* want; now tell me what *you* want”!

Q. You said so to him?

A. Yes, sir; he said, “I have not told you yet what I want;” I replied, “there is only one way they can get Auburn prison and that is by your removing me; I will not resign;” he made this response: “If you do not resign I wont remove you;” I said, “Very well;” we then had a general conversation in regard to the matter; I arguing all the time, that in my opinion it would be very bad judgment for

him to make the removal — that he would weaken himself by removing me, and by retaining me he would strengthen himself ; we had a long talk covering more or less a greater part of the day ; I did not know exactly what his feelings were ; I judged, however, from the remark he made to me that what he said was true—that if I did not resign he would not remove me and that it was outside pressure.

Mr. SMITH — I ask that these matters be not taken.

Senator POMEROY — Go on as near as you can without repetition.

A. Toward evening he asked me to sit down at the table and write my resignation, and stated he had thought the matter over and concluded he must have it ; I said, “ when do you want the resignation to take effect ? ” he said, “ the first of December ; ” I replied I thought that was rather hasty notice ; that it was not giving me time to get my family out of the prison in a decent manner ; I says, “ why this haste ? ” he says, “ they must have it by the first of December ; ” I protested, and said I could not consider it ; at all events that I should consult my family before I decide it, and I left ; there were one or two other remarks made, however, which I have omitted ; I said, “ why are you compelled to do this ? ” His reply was, “ the charges against me when suppressed were suppressed with the understanding that I was to do what was required of me ; ” I then went home and wrote a notification.

Q. Was there any thing said about Underhill in that conversation ?

A. Yes, sir ; there was.

Q. State that.

A. He said, “ if you will write your resignation I will write you a letter, indorsing your administration in the strongest terms, and if any one asks me about it I will state it was the result of a disagreement between Underhill and yourself.

Q. Was the matter of Underhill, of any disagreement between you and Underhill, mentioned in the conversation, except as stated there ?

A. Only in an incidental way.

Q. Any thing said on that subject ?

A. He mentioned things that were stated by the comptroller in regard to objections to me ; one was, I could not agree with Mr. Underhill.

Q. What did you answer to that ?

A. I do not recollect what my reply was ; I understood that matter was settled and did not consider ; I don't recollect what my reply was.

Q. You left there and went home ?

A. And returned to Auburn.

Q. Did you have any personal interview with Mr. Pilsbury after that?

A. No, sir.

Q. Previous to your leaving the prison?

A. No, sir.

Q. Did you receive any communications from him?

A. I did, sir.

Q. Have you them with you?

A. I have.

Mr. POMEROY (to the witness) — Produce them, please.

The WITNESS — Here they are.

Q. How many are there?

A. Two.

Q. Read them in the order in which you received them?

A. Do you wish me to read paragraphs which have no relation to the subject; there are some family matters here.

Q. Read the whole of them?

A. There is nothing I am ashamed of in them.

Senator POMEROY — The stenographer need take down only that which pertains to the investigation -- the witness may begin where he pleases.

Mr. SMITH — You may read what you claim is pertinent and mark it.

The WITNESS — I shall have to explain before reading this, that I had written him a letter from Auburn on my return, in which I stated that I saw no reason why he should remove me; because there had recently been made charges against him which he had declined to resign under, and they had been suspended; this paragraph explains that and you will understand it from that; the letter reads as follows:

OFFICE OF THE SUPERINTENDENT OF STATE PRISONS, }
ALBANY, N. Y., Nov. 19th, 1878. }

DEAR SIR: * * * You take the wrong view about "resignation." It is different from my case in which charges had been made, that were not true. As to you no charges are brought against you. It is simply a question as to whether, with the existing feeling between yourself and certain departments of State government, it is not for the good of all concerned that you should do so. I feel, under all the circumstances, that I must make the change, not that there is the least fault to be found with your official management, but for the sake of harmony, and because others have become firmly convinced that public interests will suffer from the personal feelings and animosities now

existing at the prison and in Auburn. I therefore still think that it is best for all parties that you send me your resignation to take effect Dec. 1st. We have been friends from boyhood, and you know that I would not ask you to do a wrong act, or one that could harm your future. My only object is harmony when it is imperatively necessary for the welfare of the prisons and all connected with them. * * *

L. D. P.

Q. That is Mr. Pilsbury's handwriting?

A. Yes, sir.

Q. Read the other letter?

A. The letter reads as follows :

OFFICE OF THE SUPERINTENDENT OF STATE PRISONS, }
ALBANY, *Nov. 25th*, 1878. }

DEAR LEN — I returned from New York last night. To-day I endeavored in vain to arrange matters. As I wrote you before, the feeling against you is very strong, and it is utterly impossible to have peace and harmony as matters stand, and I must have the support and confidence of both the governor and comptroller to succeed in my own duties. I regret it exceedingly, but they also have been informed that you have repeatedly declared in Auburn and New York that you "did not care for the place, and was ready to leave at any time," etc. Your resignation has not yet been received, but I suppose it will reach me before the 30th. By this mail I forward Mr. Moses his appointment. You are well aware that I thoroughly appreciate the manner in which you have discharged your official duties, and that my only reason for the change is that the public interests demand perfect harmony between all connected with the government of the prisons. I understand Dr. Harris desires to be soon relieved of his office. If you wish, you can have the appointment. In my opinion, it is a very desirable position. You will be responsible to me alone, and no trouble can possibly occur between you and any State officer. I regret that the contractors have interfered in this matter, at all. No one knows better than yourself that when they endeavor to "run" a prison it is the end of all government and discipline. They can rest assured that no matter who is warden he will be required to carry out my directions and keep the discipline up to the present standard, or vacate his position. I go to Plattsburgh to-morrow (Tuesday) night, shall be home Friday night, and hope to see you soon after.

In haste,
LOUIS.

Q. Who is the Dr. Harris mentioned there?

A. The State agent.

Q. What was the salary of that office?

A. Twenty-five hundred a year. I want to explain the first paragraph of the letter, where he says, "To-day I endeavored in vain to arrange matters." I suggested to him on that Sunday evening that he see the governor, Mr. Manning, Smith M. Weed, and the comptroller, and explain to him what I had said, and what he had said to me, and see if he could not arrange it. He said if you will write your resignation I will hand it to the governor, and explain to him, and try to have the matter settled.

Mr. SMITH—It is quite unusual to read letters from the other side, and then explain what they mean.

Senator POMEROY—The explanation is to show what it has reference to; I told the witness that he might explain, and there is no one responsible for it but myself.

Q. Mr. Moses presented his appointment when? after the receipt of that letter and the appointment sent to Moses? was the appointment of Mr. Moses sent to you?

A. He showed me his appointment on the 27th of November, dated the 26th of November, I think, to take effect the first of December.

Q. On that day he took possession?

A. The first of December came on Sunday, and at his request I stayed until Monday.

Senator MCCARTHY (to the witness)—It was stated you had made some remarks, or was charged with making some remarks against the governor and comptroller, etc., in the conversation.

A. No, sir, you misunderstood me; I do not think I made a remark of that kind.

Senator MCCARTHY—The remark was that the governor and comptroller were not satisfied with your stay there because you had made some remarks in reference to them, and their interference with the prison matter.

A. No, sir; he speaks in his letter in regard to the governor and comptroller.

Senator MCCARTHY (to the witness)—It was not a fact that you had spoken against the governor and comptroller, outside to the public?

A. No, sir; I had said nothing against the governor or comptroller, except that I did not think that the comptroller did me justice in regard to the matter between Mr. Underhill and myself; I might have said something in regard to that.

Senator MCCARTHY—Read that part in the second letter referring to it?

A. There is nothing in that regarding the governor, comptroller and myself; "I regret it exceedingly, but they have also been informed

that you have repeatedly declared in Auburn and New York, that you 'did not care for the place, and was ready to leave at any time.' "

Senator McCARTHY—That was the point; I want to know whether that is true that you made that remark in New York?

A. I did and meant it, but I protested against the manner of my going out; the superintendent's testimony is correct, and it is true that at various times I had told him I did not care for the place.

Q. Did you feel at the time of the removal that it was in consideration of some political considerations?

A. Did I feel it?

Q. Yes, and did you so understand it?

A. Certainly, from his own admissions to me I made the remark, if you will allow me, when he said he wanted my resignation, I says: "who do they want to put in my place? He said, "William J. Moses," said I, "do you know the man?" "Oh yes, I know him," I made this reply to them: "Is he honest? is he trustworthy? If he is not I shall remove him," and the response was they said, "if he does not suit you, you can remove him." The conversation was quite extended and lasted through the latter part of the day.

Senator POMEROY (to the witness) — Was there any thing said in that conversation about his (Pilsbury's) resigning in case you did not.

A. Oh, yes; he said, "I have got to do it. If I don't, I shall lose my own place."

Q. Got to do what?

A. "I must remove you or lose my own place."

Examination of Mr. WELLES continued by Mr. SMITH:

Q. Is it a fact as you seemed to state here, that you were opposed to being appointed?

A. I did not say that I was opposed to being appointed, sir. I said I hesitated a good while before I accepted the place.

Q. Is it a fact, after you were appointed you were opposed to holding the office?

A. I did not say that; I said there were times when I held the office that I was ready and felt willing to resign; there were times when I felt troubled and felt willing at the time to resign, when the burden of the office made me ill and sick, and I had repeatedly told the superintendent—

Q. What are you going on with this statement for; you did not understand me as asking for it?

A. I thought you wanted my opinion.

Q. What I was seeking for was facts?

A. Those are facts.

Q. The question is whether it was a fact that you wanted to get out after you got in ?

A. I said yes, with the explanation.

Q. And when they wanted you to get out you didn't want to get out?

A. No, sir.

Q. After you did get out, then you came to the legislature for relief—that's the plan?

A. I do not know what you mean, sir? I did not come to Albany till I was summoned here.

Q. Having been summoned here, you took part in carrying on this investigation?

A. As a witness, yes, sir.

Q. And making friendly suggestions in the course of the examination, did you not ?

A. I suggested when I thought it was necessary for my own protection.

Q. Did you understand your interest to be involved in any way in this investigation?

A. I understand my reputation was involved in the way I was removed.

Q. You understand that your reputation is involved, and as you understand you were removed for political reasons?

A. I so understand.

Q. And do you think it hurts a man's reputation by being removed for political reasons?

A. Yes, sir, when another reason is given for it.

Q. In this case the reason given for it is embodied in those letters, is it not; substantially they say a want of harmony?

A. That was the reason in the letters; yes, sir.

Q. That was the reason in the conversation, was it not?

A. It was to some extent in connection with others.

Q. And there was a want of harmony, was there not?

A. Between myself and the clerk?

Q. Between yourself and other officials of the prison?

A. There was no other want of harmony except between myself and Mr. Underhill.

Q. That continued on nearly to the time of your removal?

A. No, sir; it was settled in July.

Q. You are quite certain about that?

A. I am.

Q. No trouble with the comptroller after that?

A. None at all.

Q. Quite sure ?

A. Quite sure, except some estimates I may have made were cut off, as they had been previously ; that was the only thing.

Q. Down to how late a time ?

A. Possibly down to a month ; possibly down to two months.

Q. Estimates made by you for what ?

A. For the support of the prison.

Q. And cut down or out by the comptroller ; is that what you mean by cut out ?

A. Yês, sir.

Q. Cut down by the comptroller, so that you did not get the money ?

A. Yes, sir.

Q. In that respect was it a fact that this supervision or this act of the comptroller thus cutting down the estimates impaired the efficiency and management of the prison at Auburn ?

A. I don't know as they did.

Q. Got on just as well without money as with ?

A. No, sir.

Q. How about that ?

A. The comptroller, a superior officer —

Q. Was it a fact that these supplies being cut off, did impair the management of the prison ?

A. No, sir.

Q. Just as well without it as with ?

A. In my opinion perhaps not.

Q. In that respect there was a difference between you and the comptroller ?

A. No more than there had been during all my administration.

Q. I do not ask for comparisous ; I ask if there was then ?

A. There was no persoual difference between us, no, sir.

Q. Was there that official difference between you that you certified a bill in these estimates and he cut it out ?

A. No more than there had been during my whole time of office.

Q. Had there been during your entire term of office ?

A. From time to time he took the liberty and cut my estimates.

Q. Then there was this want of harmony between you and the financial department of the prison ?

A. I did not so consider it ; I considered it as a matter of business.

Q. A matter of business ; if that was not the matter between you and the comptroller, the financial officer, what was the trouble and was not the trouble from the beginning, so that they are constantly

hampered in their finances ; if that was not the trouble what was the trouble ; you have written on this subject and I have read and now if you will please to answer ?

A. I do not understand your question.

Q. What was the trouble between you and the other officers ?

A. There was no trouble except between me and Mr. Underhill ; do you want me to read the charges ? I will hand the charges to the chairman and they can be developed here if it is desirable.

Senator POMEROY — I do not think it has any bearing on this case.

Mr. SMITH — I don't know.

The WITNESS — I am willing they should be published.

Mr. SMITH — On whose account do you advise they should be published ? For whose benefit is that information given, yours or Underhill's ?

A. I don't think Mr. Pilsbury would care to have them published.

Q. I represent him this minute ; it is on Mr. Pilsbury's account that you object to their being published ?

A. Yes, sir.

Mr. SMITH (to the witness) — Let me see them then so that I can judge.

(The witness passed the papers over to Mr. Smith.)

Mr. SMITH — This is too long for me to read now ; let these be marked so that we can read them at our leisure and see what we will do with them.

Senator POMEROY — We have no objections to Mr. Smith's taking them.

Mr. SMITH (to the witness) — Have you any objection ?

The WITNESS — Just as you desire, sir.

Senator POMEROY — I do not think you want them in the case.

Mr. SMITH — Quite likely not ; but I do not like to take the cat in the bag ; I would like to see what color she is.

Senator POMEROY — I will consider myself responsible for the papers.

Q. Didn't you have trouble with the comptroller ?

A. No personal trouble — no, sir.

Q. Official trouble ?

A. Nothing except what I have mentioned.

Q. Official differences ?

A. Nothing that involved his rights to cut my estimates ; he had that right and did it.

Q. That is the only trouble that existed between you ?

A. Yes, sir ; that I recollect of.

Q. You are quite certain ?

A. That I recollect of, my relations with Comptroller Olcott have always been pleasant.

Q. That was not asked you ?

A. You asked me whether we had any differences, but official.

Q. I asked you if you had any official difference ; you have written to Mr. Pilsbury repeatedly, have you not ?

A. Yes, sir.

Q. Giving an account of your management up there ?

A. Yes, sir.

Q. How many letters would you say you had written on that subject ?

A. I might have written one hundred.

Q. Did you make it a constant theme of complaint in those letters, the management of Underhill ?

A. I presume so.

Q. And of the differences existing between you ?

A. At that time ; yes, sir.

Q. And you indulged pretty largely in criticisms upon the clerk, did you not ?

A. I may have done so.

Q. Do you remember that you did so ?

A. I don't remember ; I was writing every day almost.

Q. When you finally came to a conversation upon this subject, you say that Mr. Pilsbury said that you must resign or he would lose his place ?

A. I do.

Q. And you concluded it was a place you did not want, and had threatened to resign ; that you would let him lose his place ?

A. I did not believe he would lose his place.

Q. Then you thought it was all humbug ?

A. I didn't say it was all humbug ; that I did not think he would lose his place.

Q. Is not this what Mr. Pilsbury said, that these differences continued, and as that letter said he must have officers who could act in harmony with the other officers ; that if this discord was to continue, and you would not resign, he would resign ?

A. No, sir ; he did not ; did not say any such thing as that.

Q. Did not say any such thing as that ?

A. He always sustained me on the Underhill charges.

Q. Did not he use this language, that if you did not resign, he would ?

A. I do not remember it ; he may have said so ; my impression is and I have thought it over repeatedly his remarks were that he would lose his place if I did not resign.

Q. Are you confident which expression he used?

A. I am very confident he used that expression.

Q. He may have used the other?

A. He may have used the other, but I do not think he did.

Q. Did you tell him you would not have any objection at all to his resigning, that it would be all right except that you did not want to have Moses in?

A. I did not have any animosity toward Mr. Moses.

Q. I did not ask that?

A. It was very immaterial to me who he put in my place.

Q. Just answer my question; I asked you whether you said to him that you would be quite willing to resign if Mr. Moses was not to be your successor?

A. I have no recollection of making any such remark.

Q. Is that as far as you will go?

A. I will say I do not think I made any such remark. I won't say positively that I did not, but I do not think I did. I wish the chairman would instruct me in relation to my privileges as a witness; if I cannot explain questions it leaves me in a position where I may be misunderstood.

Senator POMEROY—Just answer the questions, and go no farther.

Mr. SMITH—Is there any point upon which you wish to explain, at this stage of the case?

The WITNESS—I simply ask the privilege of making explanations when you ask me questions which seem to require them.

Senator POMEROY—That you have the right to do.

Mr. SMITH—I want an answer to my question, and you can explain afterward.

The WITNESS—I am ready, Mr. Smith.

Q. Did you go to see the comptroller during the time you were down there?

A. No, sir.

Q. Did you ever see him upon this subject?

A. In relation to Underhill? or of the removal?

Q. Either?

A. I met him casually, in the cars, going to New York, and spoke to him of the Underhill matter.

Q. When?

A. In April, or June, or May—along in the summer.

Q. Have you seen him since?

A. I think I did call with the superintendent once, in his office—possibly in July, August or June; I do not think I have seen him, until I saw him in this room, for six months.

Examination of Mr. WELLES resumed.

By Senator POMEROY :

Q. During your incumbency of the office of agent and warden, how much time was Mr. Pilsbury at the Auburn prison ?

A. I think his visits, perhaps, would be once in three months.

Q. And for what length of time, on an average ?

A. He would generally come in in the afternoon and go out the next day.

Q. In regard to those questions of estimates ; by law it is made your duty monthly to estimate for the next month for the prison ?

A. Yes, sir.

Q. And did you send them to the comptroller ?

A. I sent them to the superintendent and he sent them to the comptroller.

Q. And then the comptroller has the right by law to strike out any item you have estimated for that he thinks had not better be expended ?

A. Yes, sir.

Q. And there has been no trouble between Comptroller Olcott and yourself unless sometime he thought the estimate was not proper, and you thought it was proper ?

A. That was all ; I bowed to his decision and accepted it as he sent it to me.

Q. Did not call for any personal feeling ?

A. None at all.

Q. Was not it almost invariable that in the monthly estimate some item of the estimates was objected to by the comptroller ?

A. Some little item or items ; that was customary with all the institutions.

LOUIS D. PILSBURY recalled by Senator MCCARTHY :

Examined by Senator MCCARTHY :

Q. I desire to ask you whether it is not the custom and common practice in all the prisons to make monthly estimates and submit them to you and through you to the comptroller, and by him supervised, and generally some alterations made ?

A. It is, sir.

Q. It is not considered a question of difference at all as to any personal failing in the management ?

A. Oh, I suppose not ; the comptroller very probably uses his judgment in reference to it.

Senator POMEROY — Mr. Olcott is not here and Mr. Moses I did not

wish to bring from the prison unnecessarily, and so I had an understanding with him that I would telegraph him when he was wanted, and the idea of the committee is to adjourn until next week, when Mr. Olcott and Mr. Moses can be here, and the evidence can probably be finished at that time.

Mr. SMITH — I shall want to ask Mr. Pilsbury some further questions?

Senator POMEROY — He will be here, I have no doubt.

The committee hereupon adjourned to Thursday, April 3, at 3 o'clock, P. M.

ALBANY, *April 3, 1879, 3, P. M.*

The committee met pursuant to adjournment.

Present — Hon. THEO. M. POMEROY, *Chairman.*

DENNIS MCCARTHY.

J. M. OAKLEY, *pro tem.*

WILLIAM J. MOSES, being duly sworn, testified as follows:

Examined by the CHAIRMAN:

Q. You are the present agent and warden of Auburn prison?

A. I am.

Q. Do you recollect the day when you received the appointment?

A. I received it to take effect the first of December; I received it a day or two before that; I do not remember the exact day when I received the official notice.

Q. The official appointment?

A. Yes, sir.

Q. You received that a day or two before the first of December?

A. Yes, sir.

Q. The appointment took effect on the first of December?

A. On the first.

Q. Was this the first intimation to you of your probable appointment?

A. No, sir, it was not.

Q. When was the subject first mentioned to you?

A. It was about the 18th of December, I think; about the 18th of December.

Q. Of November?

A. I beg your pardon; the 18th of November; I think it was the

18th ; I did not bring any dates with me ; I know it must have been ten days before the 1st of December ; at least ten days.

Q. Was that orally or by letter ?

A. Orally.

Q. From whom ?

A. From Mr. Pilsbury.

Q. Where ?

A. In this city.

Q. Can you state the day of the week ?

A. It was Monday.

Q. Do you know whether it was before or after the Sunday Mr. Welles was here ?

A. After.

Q. The day following ?

A. The day following.

Q. Were you here by appointment or request ?

A. I was not ; I was here on business on Saturday ; I stayed here until Monday.

Q. Accidentally met Mr. Pilsbury on Monday ?

A. Yes sir.

Q. And he then stated his determination to appoint you a warden ?

A. He did.

Q. When previous to that time had the subject been mentioned to you by any one ?

A. A number of times.

Q. What ?

A. A number of times and for several years.

Q. We will take it after the 1st of September, 1878 ?

A. It had not been mentioned to me by any one who had any authority to talk about it ; it was not until Saturday I was here.

Q. Until Monday ?

A. Until Monday.

Q. I don't care whether they had authority to talk about it ; take it after the 1st of September, 1878, when do you recollect any interview with any body upon that subject ?

A. Not until the Saturday before the Monday.

Q. I understood you to say you had talked with persons not having authority ?

A. Well I — perhaps you misunderstood me, or I misconveyed my idea — the question you asked me was when I had been talked with on the subject of the prison, and I said a number of times during a number of years ; at different times.

Q. Was there any such occasion after the 1st of September and previous to the Monday that you talked with Mr. Pilsbury in Albany ?

A. No, sir ; not previous to the Saturday previous to the Monday.

Q. Who had you talked with on the Saturday about it ?

A. With some person that had no authority ; simply suggested to me the idea.

Q. Where was that interview ?

A. In this city.

Q. State who was present at that interview ?

A. I think it was in the auditor's office.

Q. The canal auditor's office ?

A. Yes, sir.

Q. State who was present ?

A. I think the auditor was there and myself.

Q. Who else ?

A. Nobody else.

Q. Who else ?

A. Nobody else.

Q. Did you meet Smith M. Weed on that day ?

A. I met him on the street.

Q. State who you talked with on that day on the subject of Auburn prison ; you talked with the auditor ; did you talk with Smith M. Weed ?

A. I did not talk with Smith Weed at all ; I did not have any talk with him on the subject.

Q. Who beside the auditor ?

A. I think it was the auditor and Mr. Beardsley ; Mr. Charles S. Beardsley was present.

Q. Who else ?

A. No one else that I remember.

Q. Was Mr. Beardsley at the auditor's office ?

A. He was ; yes, sir.

Q. State what was said then on the subject of Auburn prison ?

A. Really, I could not state it ; it was a social conversation.

Q. Did you learn at that time that Mr. Beardsley and Mr. Smith M. Weed had had or were to have an interview on that day ?

A. I did not, sir.

Q. Your coming here at that time was accidental ?

A. On business of another matter ; accidental as far as that was concerned.

Q. Were you expecting to meet Mr. Beardsley ?

A. Yes, sir, I was.

Q. That was Chas. S. Beardsley, the former member of Assembly ?

A. Yes, sir.

Q. Who now resides at New York ?

A. Now resides at New York.

Q. I will go back a little, Mr. Moses ; the democratic State convention was held on the 26th of September ; at that convention you were a delegate, were you not ?

A. No, sir.

Q. Were you present at the convention ?

A. I was, sir.

Q. And on that day were elected a member of the democratic State committee ?

A. Yes, sir.

Q. That State committee met in the city of New York for organization on the 8th of October ?

A. Yes, sir.

Q. Now between these two periods, do you yet recollect any person from New York being at Auburn upon that subject of the organization of that committee ?

A. I do not know of any one, sir.

Q. Do you recollect an interview with Chas. N. Ross ?

A. I recollect several of them.

Q. I mean during that period between the 26th of September and the 8th of October ?

A. Several of them.

Q. Did he mention to you any person being there to interview him ?

A. He did, sir.

Q. That was in the morning, was it not ?

A. I really don't know ; I don't remember.

Q. Don't recollect the person who was there was desirous of leaving on the 10 o'clock train ?

A. No, sir ; I don't recollect of any thing of the kind.

Q. And this interview was earlier in the day than that ?

A. I don't know any thing about it ; I never heard of that before, Mr. Pomeroy.

Q. That there was any person there ?

A. That was desirous of leaving or any thing of the kind.

Q. It is sufficient for my purpose that you understood from Mr. Ross that there was a person there ?

A. Yes, sir.

Q. To ascertain your position on the State committee ?

A. Yes, sir.

Q. Did you, on that day, authorize Mr. Ross to make an appointment with that person to meet you in the city of New York the day before the meeting of the State committee ?

A. I did not.

Q. What ?

A. I did not, sir.

Q. You made no appointment to meet anybody ?

A. I authorized Mr. Ross to make no appointment for me there.

Q. Well, now, in that interview with Mr. Ross on that day, did you state to Mr. Ross that in case you voted for Mr. Faulkner, that you were promised the patronage of Auburn prison ?

A. I did not, sir.

Q. Nor any words to that effect ?

A. Nor any words to that effect, nor any thing that had any tendency in that direction.

Q. I want to call your attention, Mr. Moses, to the one particular interview, so that there may be no question on that subject ?

A. I understand the interview, Mr. Pomeroy, and I am perfectly willing to state it; it is not in the way you put it, correct.

Q. Was there any thing said about Auburn prison ?

A. Not a word.

Q. In the conversation with Mr. Ross ?

A. Not a word, that I have any recollection of; there could not have been any thing of that kind, for there never had been a promise of any name or nature of any kind, whatever, made to me.

Q. Just answer my question, and we will come to it bye and bye; in the election of a State committeemen from our district, Mr. Meacham was voted for ?

A. Yes, sir.

Q. What has been Mr. Meacham's political affiliations always ?

A. Always ?

Q. Well, heretofore, for several years ?

A. A Democrat.

Q. What particular school ?

A. Really, I couldn't tell you.

Q. He has been a pretty pronounced anti-Tammany Democrat ?

A. I don't know, I was not aware of it.

Q. Do you recollect whether or not upon that election you received the vote of the Tammany men, and Mr. Meacham those of the anti-Tammany men ?

A. I know I did not; I know I received the votes of Tammany and anti-Tammany both.

Q. You received the votes of all the Tammany men ?

A. No, sir; Mr. Meacham received one from my own district if not two—certainly one.

Q. You reach New York on what day to attend the meeting of the State committee ?

A. On Monday.

Q. What day was the organization ?

A. Tuesday.

Q. You stopped at French's hotel ?

A. I did.

Q. Did you meet any person there by any previous arrangement ?

A. I met a person then ; you asked me if I authorized Mr. Ross to say I would meet a person in New York ; I told Mr. Ross I had no objection to meeting any one in New York and I met a person.

Q. A gentleman called upon you ?

A. No, sir ; not a gentleman—a man.

Q. Well, a man called upon you and stated that he called pursuant to an arrangement with Mr. Ross ?

A. No, sir ; he did not ; he asked me if he could see me and I told him he could.

Q. You were expecting him ?

A. I did not know whether any one would come or not.

Q. Were you expecting that some body would come ?

A. No ; I was not.

Q. Didn't that individual say any thing about having come pursuant to an appointment made with Mr. Ross ?

A. I have no recollection of any such statement.

Q. Were you previously acquainted with him ?

A. Yes, sir.

Q. And you say you were not expecting to meet him there at that time ?

A. I was not.

Q. Will you state the conversation you had with him upon this subject ?

A. The conversation I had with him ?

Q. Yes.

A. Well, sir, he introduced another gentleman to me, and he was very anxious I should vote for Mr. Purcell as chairman of the committee, and I declined to commit myself to any person.

Q. Just state the interview, Mr. Moses.

A. I don't know that I can recall it, Mr. Pomeroy ; if I could I cheerfully would.

Q. Well, perhaps it will refresh your recollection a little, Mr. Moses ; were not there three several interviews that morning with this same person ?

A. No, sir ; unless you call meeting casually an interview.

Q. I mean there were three times you were together.

A. The person asked me if he could see me, and I said, yes ; and if he could bring anybody with him, and I said, yes.

Q. And that made the second interview?

A. Yes, if you call the other the first interview.

Q. Did you in that conversation say this in substance, that you had been promised the patronage of Auburn prison in case you voted for Mr. Faulkner, but that they had cheated you once in the matter of a canal question, and you did not know whether to depend on them or not?

A. I said nothing of the kind ; nor any thing connected with it, nor like it in any way, shape or manner ; I made no allusion to the prison in any way or shape to any man.

Q. Do you recollect whether in this interview with Mr. Ross there was any thing said upon the subject of your not stopping at Albany when you went to New York to attend the meeting of the State committee?

A. I don't remember that any thing was said about it.

Q. At the second time you met an individual at French's hotel, do you recollect saying this, that you must consult another party before you give him your answer ?

A. I did not.

Q. In regard to your action on the State committee ?

A. I did not, sir.

Q. Do you recollect his asking you about the close of the interview, whether you had stopped at Albany on your way down ?

A. I don't remember ; I do not recall any thing of the kind.

Q. Do not remember his asking that question ?

A. Do not remember any question being asked.

Q. Then you do not remember any answer you may have given ?

A. No, sir.

Q. What was the fact about your stopping at Albany ?

A. I stopped at Albany, over Sunday, on my way going down.

Q. That was not the occasion you referred to when Mr. Beardsley was here ?

A. No, sir.

Q. Who did you see on that occasion, on Sunday ?

A. I saw Mrs. DeForrest's family, where I stopped.

Q. You had no conversation with any body, at that time, in regard to the Auburn prison ?

A. I had no conversation on the subject of politics or the prison with any person at that time.

Q. Do you recollect where about it was you met Mr. Weed on the Saturday preceding ?

A. I think it was on—I don't remember where it was—somewheres on the street, I know.

Q. Don't recollect which street or where ?

A. No. I don't.

Q. And you were not expecting to meet Mr. Weed here ?

A. No, sir ; I had no acquaintance with Mr. Weed of any consequence ; had no idea that he was here whatever.

Q. And so far as you know it was entirely accidental your being here ?

A. Yes, sir.

Q. And the whole thing was an accident as far as you know ?

A. Yes, sir.

Q. Do you know whether or not, on that day, Mr. Welles was telegraphed to come here ?

A. No, sir.

Q. You didn't know on that day ?

A. I did not know on that day.

Q. How came you to call on Mr. Pillsbury on Monday ?

A. We were to meet on Monday.

Q. By what appointment ?

A. The appointment he made himself.

Q. When ?

A. On Saturday.

Q. I did not know you saw Mr. Pillsbury on Saturday ?

A. I did not ; he sent word to me.

Q. By whom ?

A. I think it was by Mr. Olcott.

Q. Who ?

A. I think it was by Mr. Olcott, the comptroller ; Mr. Olcott told me Mr. Pillsbury would like to see me.

Q. I did not know that you saw Mr. Olcott on Saturday ; you said you saw the auditor ?

A. You asked me about a conversation about the prison ; that was the answer I gave you.

Q. Was there no conversation between Mr. Olcott and yourself ?

A. I don't remember of any conversation on Saturday between him and me.

Q. Except that he made an appointment for you to meet Mr. Pillsbury on Monday ?

A. On Monday.

Q. Did not state the nature of it ?

A. It was on the matter—no I don't think he did.

Q. Simply that Mr. Pillsbury wanted to see you on Monday ?

A. Yes, sir.

Q. Where was that ?

A. That was in the auditor's office later in the day ; he came in the auditor's office and told me.

Q. Then Mr. Olcott was in the office with Beardsley ?

A. Not at the time ; not at the time the conversation occurred.

Q. What time did you get to the auditor's office ?

A. Well, I think it was 11 o'clock perhaps ; I was in there two or three times in the course of the day, Mr. Pomeroy.

Q. Was your business here business at the auditor's office ?

A. No, sir ; it was private business.

Q. Was the business at the auditor's office in connection with Auburn prison ?

A. No, sir.

Q. Then that subject accidentally came up ?

A. I always called in the auditor's office when I came to Albany ; sometimes two or three times a day and I did on that occasion.

Q. You went in about 11 o'clock ?

A. Probably about that time.

Q. Who was there at that time ?

A. I have stated already, Mr. Pomeroy ; the only persons I can remember were Mr. Beardsley and—I don't remember of any body else that was there ; I met the auditor and I don't know but that I may have gone with Mr. Beardsley.

Q. When you went in there you went in there accidentally and found the auditor ?

A. Yes, sir.

Q. Was there any body else present at the first interview except the auditor and yourself ?

A. I stated I did not know, but I might have gone in with Mr. Beardsley ; I cannot recall.

Q. Then you went out and went back again ?

A. Yes, sir.

Q. Do you recollect whether or not Mr. Beardsley was with you then ?

A. No, sir.

Q. Nor the third time ?

A. No ; I think he was there twice ; two different times.

Q. What time was it you met Mr. Olcott there ?

A. In the afternoon.

Q. Was it the second or third time you were in the office ?

A. Well—I could not tell you ; I don't remember.

Q. I suppose he dropped in accidentally ?

A. Dropped in accidentally.

Q. You don't know he was coming ?

A. No, I did not.

Q. Was Mr. Beardsley there when Mr. Olcott came in ?

A. I don't remember ; I don't think he was.

Q. Was the subject of Auburn prison then being talked over when Mr. Olcott came in ?

A. No, sir.

Q. That had been concluded, all that had been said on that subject ?

A. Very little said any way about it.

Q. Who opened up the conversation on that subject ?

A. I really don't remember.

Q. Whether it was Mr. Beardsley, the auditor, or yourself ?

A. No, sir.

Q. Do you recollect what was said ?

A. No, sir.

Q. No part of it ?

A. No, sir.

Q. What else did Mr. Olcott say except to say the superintendent would like to see you on Monday ?

A. That was all.

Q. Nothing further passed ?

A. Nothing except some hour was fixed — 11 o'clock — some time of day.

Q. You did not ask him what for ?

A. No, sir.

Q. Did not know what for ?

A. Well — no, I did not ; I could guess, perhaps, but I did not know.

Q. From what had transpired during the day, had you any doubt as to what you were wanted for ?

A. Well, that is a question that I can hardly answer.

Q. What time did you arrive here on Saturday ; you came down on the night train ?

A. I have no recollection what train I did come on.

Q. Whether you started that night ?

A. I do not remember whether I started at 6:40 or on the midnight train ; my usual course is to take the midnight train and get here in the morning, but I don't remember what train I did take.

Q. Was that upon an appointment by Mr. Beardsley ?

A. No, sir.

Q. With nobody ?

A. No, sir.

Q. And all these occurrences you have named as having transpired on Saturday, so far as you know, were entirely accidental ?

A. Entirely accidental.

Q. What is your occupation, Mr. Moses?

A. A printer.

Q. And editor and publisher of a paper?

A. I don't know but Mr. Beardsley might have telegraphed me that he was here; I often have business here, and it is barely possible on that occasion I might have received a telegram; those things occur very frequently, but so far as meeting any of the other parties were concerned, it was purely and absolutely accidental.

Q. If you have any recollection on the subject, I would like it?

A. I think it was quite possible I did.

Q. Have you any recollection on the subject?

A. Not absolutely, but I know it is a very common thing for him or me to telegraph that we are to be in Albany and to meet him there on that occasion, and I think it is quite likely he did, but I have no present recollections of it. I would not swear there was not any thing of that kind, as it was a very common occurrence; I do not keep any record of it.

Q. So far as your recollection goes, you came here on private business, not expecting to meet Mr. Olcott, Beardsley, Weed or anybody, upon any political subject?

A. So far as my recollections are concerned.

Q. You say your occupation is a printer?

A. Yes, sir.

Q. And also the editor and publisher of a democratic paper?

A. Yes, sir.

Q. That has been your business, how long, Mr. Moses?

A. Which do you mean — the printing, or publishing of a democratic paper?

Q. Both combined?

A. The printing business I have been in from a boy, and the democratic paper I have been in for 6 or 7 years.

Q. Had you until your appointment to the Auburn prison any experience in prison matters?

A. No, sir.

Senator McCARTHY — I understand Mr. Moses to say, in conversation with Mr. Ross at Auburn, prior to his going to New York, that you had no arrangement or expectation of meeting any one in the city of New York?

A. I told Mr. Ross that I had no objection to meeting any one, but I made no arrangement to meet them there.

Q. Did you tell Mr. Ross or did he know at the time at what hotel you would stop?

A. I told him I should stop down town at French's hotel.

Q. Have you any doubt but that it was through that information from Mr. Ross that Mr. Meacham knew where you were stopping?

Senator POMEROY — That was not Mr. Meacham.

Senator MCCARTHY — That the gentleman got the information from Ross where you were stopping; have you any doubt of that?

A. I have no reason to doubt it, as I know of, for I said I had no objection to meeting any one there.

By Senator POMEROY :

Q. In that interview with Mr. Pilsbury on Monday it was there arranged, I suppose, that you were to be appointed agent and warden in the course of the conversation?

A. Yes, sir; yes, sir.

Q. And the time fixed when the appointment should take effect?

A. Yes, sir.

Q. And had that time ever been suggested previous to that occurrence, the first of December?

A. Not to my knowledge.

Q. To your knowledge?

A. Not to my knowledge.

Q. That is on Monday?

A. On Monday.

Q. That was the first time a day was ever fixed for a change to take place at Albany?

A. The first time as far as I know of any time fixed upon.

Q. That was the first time the date was brought to your attention?

A. Yes, sir; the only reason I answered the question in that way was the answer might lead to a day and that I did not know any thing about.

By Senator MCCARTHY :

Q. What impression did you have of the cause of your being invited to visit Mr. Pilsbury?

A. I suppose it was in regard to the prison.

Q. Was it necessary for him to say to you that it was in relation to your appointment at the prison that you should understand that was the object?

A. Yes, sir.

Q. It was necessary that he should?

A. Yes, sir; if he had not said it I should not have known what the object was; if he had not said any thing about it, I should not have known what the object was.

Q. I understood you to say you did not know any thing of the object of seeing Mr. Pilsbury?

A. I say so now.

Q. Was it necessary for him to say any thing for you to understand it?

A. For who to say any thing?

Q. The comptroller, for you to understand that was the purpose for which you were to see Mr. Pilsbury; didn't you understand just as well as though he had mentioned the purpose?

A. Didn't I understand what?

Q. That you were to see Mr. Pilsbury in reference to this appointment in the prison?

A. Yes, sir, I understood it in my own mind.

Q. It was not necessary for the comptroller to say what it was, you understood it without?

A. Well, I could only guess at it.

By Senator OAKLEY:

Q. Mr. Moses, your call at the auditor's office was accidental, a social call?

A. Yes, sir.

Q. You met the comptroller there by accident?

A. Yes, sir.

By Senator McCARTHY:

Q. Would the comptroller very likely looked you up or found you in the city if he had not called there to have delivered that message?

A. He might have done it.

Q. Is it probable, quite probable?

A. Yes, sir; the comptroller and I are pretty good friends.

Q. You think then that under all the circumstances, first your meeting at the comptroller's office, your meeting Mr. Richardson, your meeting Mr. Pilsbury, and your meeting Mr. Weed on the street were all accidental?

A. So far as my meeting Mr. Weed on the street, I hadn't any thought of it.

Q. Was the calling of the comptroller accidental?

A. Yes, sir.

Q. Had nothing to do with the appointment of warden of Auburn prison?

A. No, sir.

Q. Nor Mr. Richardson?

A. Mr. Richardson.

Q. Mr. Beardsley, I mean?

A. O, I said that Mr. Beardsley and I met here and it is very pos-

sible, as I said before—I wish that to be understood, that we met here by appointment; I came on business of my own, but came at that time.

Q. With reference to the prison ?

A. No, sir.

Q. That is the point, if this meeting was accidental, without any previous knowledge or conversation as to your appointment as warden of the prison ?

A. Yes, sir.

Q. Have you, in the course of your life, ever had such a concatenation of favorable circumstances ?

A. Some men have ; I once in a while meet a concatenation of favorable circumstances and some quite as unfavorable ; they seem to come in concatenations.

Q. Mr. Moses, do you know where Mr. Weed resides ; have you any knowledge, information or belief as to where Smith M. Weed resides ?

A. I think Plattsburgh.

Q. Where does Mr. Beardsley reside ?

A. New York city.

Q. Where does Mr. Olcott reside ?

A. Albany, I suppose.

Q. Where do you reside ?

A. Auburn.

FREDERIC P. OLCOTT, being duly sworn, testifies as follows :

Examined by the CHAIRMAN :

Q. You reside at Albany and are comptroller of the State ?

A. I am, sir.

Q. Mr. Moses has just stated to us that on Saturday, the 15th of November last, you delivered a message to him to meet Mr. Pilsbury at eleven o'clock on Monday following ?

A. I delivered a message of that kind on Saturday ; I will not be sure whether it was the 15th or not ; it was on Saturday, I think.

Q. Do you think it was Saturday when Smith M. Weed was here ?

A. I have no recollection of that.

Q. You did not meet him ?

A. No, sir ; not to my knowledge.

Q. Mr. Beardsley was here from New York ?

A. I believe Mr. Beardsley was here ; yes, sir, I think Mr. Beardsley was here.

Q. On that day ?

A. On that day.

Q. You found Mr. Moses at the auditor's office ?

A. Yes, sir.

Q. When were you requested to deliver that message?

A. I think it must have been in the neighborhood of five o'clock, P. M.; half-past four or five.

Q. By whom?

A. By Mr. Pilsbury.

Q. Where did you meet him at that time?

A. Meet Mr. Pilsbury?

Q. Yes.

A. He was at my office.

Q. Did he state to you at that time he had telegraphed Mr. Welles to come down here?

A. No, sir.

Q. Simply requested you to give this message?

A. That he would like to see Mr. Moses on Monday at 11 o'clock.

Q. Did he speak of Mr. Moses being here, or did you state to him that Mr. Moses was here?

A. I think I told him Mr. Moses was in town; that I had seen him that morning, and that I presumed he was in town.

Q. Now did you know, Mr. Oleott, at that time whether any change of the agent and warden of Auburn prison was contemplated by Mr. Pilsbury?

A. No, sir.

Q. Had you had any previous conversation with him on that subject?

A. No, sir; not directly on that subject; I had always told him I thought Auburn prison could be made to pay; I had talked to him several times strongly about that, and he knew my opinion in reference to that matter.

Q. You were in favor of the removal of Mr. Welles?

A. Yes, sir.

Q. And the appointment of somebody else?

A. Yes, sir.

Q. Now, do you recollect whether that removal was made on account of any misunderstanding with Underhill?

A. I think very likely he may have had something to do with it, in Mr. Pilsbury's mind.

Q. On your mind?

A. Well, Mr. Underhill was pretty safely established in the prison. He was appointed, and could not be removed except by me, and the charges which were preferred by Welles against him, were looked into by me, and investigated and were dismissed.

Q. That was in July preceding?

A. It was in July, during the summer sometime, in June or July.

Q. Didn't that end that matter so far as you know ?

A. As far as I knew.

Q. You heard nothing about it after that ?

A. I think Mr. Pilsbury spoke to me after that, that he had letters and complaints after that ; but I wont be positive about that ; that is my impression ; my impression is, that Mr. Pilsbury mentioned it once or twice to me ; I do not know but he may have shown me a letter, but I wont be positive about that ; I don't think the thing was ended at all. I think the feeling was bitter between Underhill and Welles at that time as it was previously.

Q. You talked over this matter with Mr. Pilsbury a number of times in regard to making a change at Auburn prison ?

A. Yes, sir ; I had talked recently with him about the fact, the prison was not made to pay. The prison had come to a point where it was very near it, and I was very anxious to see it get over that.

Q. I want to call your attention to the cause of removal, whether it was stated at the time in the public press that the attempted removal of Underhill had any thing to do with it ?

A. It had not with me, I do not know how far that may have affected Mr. Pilsbury. I asked if Mr. Welles was asking Mr. Pilsbury to rid him of Underhill, and I was constantly asking Mr. Pilsbury to make his prison pay, that after awhile it would become troublesome to Mr. Pilsbury, that is, that he would get tired of the matter ; but I think I never made a direct request, so far as I recollect, to remove Mr. Welles.

Q. To remove him ?

A. I don't think I ever did, I have no recollection of it, but I approved of it.

Q. That is pretty well understood ; what I want to get definitely from you, Mr. Olcott, is in regard to that matter with Underhill, there were specific charges made which you dismissed ?

A. Yes, sir.

Q. As far back as July ?

A. Yes, sir.

Q. Can you state definitely, coming to your knowledge of any difference between Welles and Underhill after that ?

A. I could not say definitely ; my impression is Mr. Pilsbury had spoken to me several times since the charges were dismissed, between that and the time of Welles' removal ; but still I wont be positive about it, Mr. Chairman, but that is my impression, that the thing had not ended, that the feeling existed.

Q. Was it your impression at the time the removal was made, that that had any controlling influence on the removal ?

A. I cannot say what Mr. Pilsbury had in his mind at the time of the removal, or what brought him to the conclusion, definitely. I should assume that had something to do with Mr. Pilsbury, with his connection with it, but I don't want to have the impression go out, that that was the controlling influence so far as I was concerned; my object was to make that prison pay if it could.

Q. It is sufficient that that was not the controlling motive in your mind. When previous to that Saturday had you had any conversation with Mr. Pilsbury in regard to the change there?

A. It would be impossible for me to state.

Q. Was it a subject of conversation between you — a subject of frequent conversation between you?

A. I had spoken to him, I dare say very likely, as often as the monthly estimate came, and every time the estimates would come, they were looked over by Mr. Pilsbury and myself, and then I would discuss Auburn prison with him.

Q. They were uniformly looked over?

A. Not uniformly together; sometimes he looks them over and sometimes brings them; they always bear his approval; sometimes he brings them personally.

Q. So that no estimate can come to you until approved by him?

A. No, sir.

Q. That is a requirement of law?

A. Yes, sir.

By Senator McCARTHY:

Q. Had the question of the estimate and your supervision over them, and cutting them down somewhat, any thing to do with the misunderstanding between Underhill and Welles?

A. Not that I know of, sir.

By Senator POMEROY:

Q. Then, as I understand you, every monthly estimate, before it came to you, had, and was required by law, to have the approval of the superintendent?

A. Yes, sir; a general certificate that the articles are necessary for the use of the prison.

Q. So that whenever you had disapproved of any matters which had been estimated for it was a simple business difference?

A. A simple business difference; I would deduct it.

Q. It involved no matter of personal feelings so far as Mr. Welles was concerned or Mr. Pilsbury?

A. No, sir.

Q. Entirely a business transaction ; the final determination is left to you by law ?

A. Left with me.

Q. And you exercised your judgment on the monthly estimates, and if there was any thing you thought was not necessary to be expended, you struck out that item ?

A. Yes, or if I thought the estimated price was extravagant, I would frequently strike the item out and allow a re-estimate for it when the explanation came.

Q. Was there any ill-feeling of any kind engendered on that account that you know of, between yourself and Mr. Pilsbury, or between yourself and Welles ?

A. I never saw Welles very frequently ; I don't suppose I have seen Welles to speak to him more than six or eight times since he was connected with the prison, and we had no opportunity of having any personal difference.

Q. And there was none between you ?

A. Except that his prison did not pay.

Q. So far as striking out the items, there was none between you growing out of any such cause ?

A. No, sir.

By Senator McCARTHY :

Q. Does the control of the clerk over the financial matters have any thing to do with the economical management of the prison, as to making it pay ?

A. No, sir, I don't think it has.

Q. How long did you continue Underhill clerk in the Auburn prison ?

A. I appointed him shortly after I was made comptroller, shortly after the constitutional provision went into effect ; and he is there still.

Q. He is there yet ?

A. He has not been removed ; of the three clerks I appointed two of them are still in the prisons ; one resigned his position and took a position under Mr. Clark, the superintendent of public works.

Q. Then the difference between Welles and Underhill had nothing to do with the economical management of the prisons ?

Examination of Mr. OLCOTT continued by Mr. SMITH :

Q. While Mr. Pilsbury has been acting as superintendent of prisons you and he have been in frequent consultations upon the subject of the management of the prisons ?

A. Frequently.

Q. And have frequently discussed the question with the view to the economical and profitable management of the prisons?

A. Yes, sir.

Q. Is it a fact that upon his going into office, that the Auburn prison among them all had been the most prosperous financially before the constitution was amended?

A. I think it was considered to have been the best managed prison.

Q. The result after the change and under the administration of Mr. Welles, as I understand you, was unsatisfactory to you?

A. They were satisfactory up to a certain point; then the prison got to a point where it came within an ace of being a paying prison and could not get beyond that.

Q. Leave out the ace, because we don't want any such thing in the columns of a newspaper; what I want to know is, whether its general management was not as profitable and prosperous and satisfactory to you — whether you complained of its not being as profitable as it ought to be?

A. I constantly complained of that.

Q. That was a matter of complaint on your part to the superintendent?

A. Yes, sir.

Q. In that you were discussing it with a view of advancing the interests of the State?

A. Yes, sir.

Q. In that discussion and conversation, was it talked of or understood, assumed, that this unfavorable result in any degree was attributed to the management of agent and warden?

A. He is the manager of the prison; it must have been; any favorable or unfavorable result must be owing to him, except so far as he is controlled by his superior officer.

Q. Then in effect, you were constantly complaining to the superintendent of the results produced by this agent and warden?

A. Yes, sir.

Q. Whether you recommended a change or not? It is a fact that the result of your judgment as expressed to the superintendent was that this man was not discharging the duties successfully?

A. As successfully as I believe he ought to.

Q. And that you continued down to the time it culminated in a change?

A. Yes, sir.

Q. Now, if it is not objected to—I mention this because I understood there was some question about the propriety of it the other

evening the question was put by Senator Jacobs in this connection — I will ask this witness whether this change having been consummated, it resulted in an improved state of things ?

Senator POMEROY — That was excluded.

Mr. SMITH — I got some impression there was a ruling on the subject; I want to show that after Mr. Welles was deposed and Mr. Moses was appointed, the prison was more profitable; I only state this to show our willingness to show all we can if you will let us.

Senator POMEROY — It would take several weeks to go through the accounts of Auburn prison and show the result, but the Senator passed upon that very point when the committee was raised.

By Senator MCCARTHY :

Q. I would like to ask Mr. Olcott this question—in the management of your office do you generally for the most important position select experienced men ?

A. Experienced men.

Q. Then why did you sanction the selection of an inexperienced man to take the place of Welles in this prison ?

A. I had always looked upon Mr.—

Q. That is not answering my question.

A. Allow me to explain.

Q. No, you can say why; I should like to know why ?

A. Your question assumes that Mr. Moses is an inexperienced and incompetent man.

Q. Mr. Moses has sworn that he had no experience whatever; why did you select an inexperienced man, or rather, why did you counsel the selection of an inexperienced man to put in the place of an experienced man ?

A. Because I believed he could perform the duties of the office better than they were being performed.

Q. From his want of experience, I suppose ?

A. From his general ability.

Q. Then you mean to say, no experience is necessary to manage a State prison successfully ?

A. I think any competent business man can manage the business of agent and warden successfully—the duties of the principal keeper—he administers the discipline, he is the ruler of the prison. It is very necessary for the principal keeper to have a man of strength and firmness, and indomitable courage. I think any good substantial business man can manage the affairs of a prison, and carry out the orders of the superintendent, and make a good prison manager. We have an example of that kind at Sing Sing; Mr. Davis was never in a prison

before he went there, and I am willing to say to day, that I believe him to be the most—

Q. Is it not a fact that Mr. Pilsbury has spent most of his time at the Sing Sing prison?

A. That I can't say.

Q. Has not he so sworn before the committee?

A. I was not aware of that fact.

Q. So that comparison is not a good one?

A. I think he did early in the change of prison management, I do not think he did within the past year.

Q. I want to know if you thought an unexperienced man could take the place of an experienced one and make it as successful?

A. It seems he did so.

Q. Is it derived from the fact that he went in there when it was in excellent order or under good discipline, or do you think this man stepped in there and improved upon it?

A. I think this man stepped in there and improved it.

By Senator POMEROY:

Q. That same principle would apply to the superintendent as to the agent, as to experience or inexperience?

A. I think the superintendent would have to be a man of wider experience.

Q. And the agent need not be?

A. And the agent need not be.

By Senator MCCARTHY:

Q. If you knew that a man had fourteen years of successful experience in prisons, and having good report and reputation from all the places he had filled, would you not have more confidence in such a man than in one who had no prison experience at all?

A. Not necessarily.

By Senator POMEROY:

Q. Now, you recollect the time of this resignation being tendered to the governor, do you not?

A. Yes, sir.

Q. When was that in reference to the 8th of October, the day the State committee met?

A. I could not say.

Q. Was it previous to that?

A. I could not say whether it was previous or subsequent.

Q. Do you recollect of stating to anybody on the day the State com-

mittee organized that that resignation had been handed to the governor ?

A. No, I have no recollection ; I never saw the resignation.

Q. It was a fact that it was within your knowledge ?

A. I may have said so, but I have no recollection of saying so.

Q. I did not know but I might refresh your recollection ?

A. I don't remember the day upon which the State committee met; I have forgotten that.

Q. Then you cannot recollect ?

A. No, sir ; I very likely may have said so.

Q. Calling your attention to that particular day ?

A. That does not seem to refresh my recollection ; I think very likely I did ; I stated to several persons.

Q. Whether it was on that day ?

A. I could not state positively whether it was previously or subsequent.

The committee hereupon adjourned to Tuesday, 3 P. M., April 8, 1879.

ALBANY, April 8, '79—3 P. M.

The committee met pursuant to adjournment.

Present—HON. THEODORE M. POMEROY, *Chairman*.

DENNIS MCCARTHY.

J. M. OAKLEY, *pro tem*.

CHARLES H. SWAN, being duly sworn, testified as follows :

Examined by the CHAIRMAN :

Q. Where do you reside, Mr. Swan ?

A. Well, I have a place in New Jersey, where I live ; I have lived there now for nearly two years ; I reside more or less in New York.

Q. New York city ?

A. Yes, sir.

Q. Are you acquainted with Wm. J. Moses, the agent and warden of Auburn prison ?

A. I am.

Q. Did you go to Auburn in October, 1878, on business connected with the democratic State committee ?

A. I did.

Q. Who did you see there ?

A. I saw Mr. Charles Ross, late State Treasurer, ex-treasurer of the State.

Q. You met him there at Auburn ?

A. Yes, sir.

Q. Whereabouts did you meet him ?

A. I met him at his house and afterward by appointment at his bank.

Q. Do you recollect at what time of day it was that you met him at his house ?

A. It was very early in the morning before he had his breakfast.

Q. And by appointment you met at the bank ?

A. Yes, sir, at half-past ten.

Q. Had your going there any thing to do with the appointment of Mr. Moses as agent and warden of Auburn prison ?

A. No, sir; on the contrary I went there in the interest of Mr. Purcell, as chairman of the State committee.

Q. You went to procure Mr. Moses' vote for that purpose ?

A. I did.

Q. In whose interest were you acting ?

A. I acted in the interest of the regular organization of the city of New York—so declared by the State convention.

Q. Why did you single out that particular district ?

A. Well, for several reasons; I will have to go back some time in order to make it clear to the committee.

Q. Well, make it as brief as possible to show your connection with the transaction.

A. In 1875 I was the assistant secretary to the democratic State committee; at that time I was in the Comptroller's office, under Andrew H. Green.

Q. The Comptroller's office in New York city ?

A. Yes, sir, Mr. Green and Tammany Hall had differences. I was the representative of the finance department here at Albany; used to attend to Mr. Green's political matters and I entered the so-called Anti-Tammany organization which called forth a letter from Tammany Hall to Mr. Apgar, asking whether I was assistant secretary of the executive committee which he failed to answer till about the time the State committee convened at Saratoga. I went to Saratoga expecting that matter would be brought up in the State committee. They failed in the State committee to take action upon it. After the adjournment of the committee they assembled, Mr. Apgar, Mr. Pelton and a few others—assembled in Mr. Tilden's room, a cottage, and there wrote a letter in answer to the one from Tammany Hall. I learned of it. I went in and saw Mr. Tilden personally.

Q. That is not important! Get the thing down to this matter.

A. And as Mr. Apgar was the one that took the authority of the whole entire State committee to write the letter without consultation, I then and there told Mr. Apgar—he was a candidate for State Treasurer at the coming State convention—that I would do all I could to defeat him at the State convention. I went to the State convention, and results show that Mr. Apgar was the only one defeated of the slate, and Mr. Ross nominated. Mr. Ross, after the nomination, told me up in his room that his nomination, he considered, was principally due from my onslaught on Apgar on matters I brought out at the State convention, and he told me then, “at any time I can do you a favor consistently, do not hesitate to call on me and I will do it.” I never asked him for a favor from that time down to the election of Mr. Moses to the State committee. I then went to Auburn and saw Mr. Ross in the morning, and told him what I wanted. I wanted he should see if he could not get Mr. Moses to sustain Mr. Purcell as chairman of the State committee—in other words, to sustain the candidates of the regular organization throughout the State. He then and there told me, “you know we have always been intimate with Mr. Purcell; father and myself have always worked with that part of the Democratic party, and I have received a letter and I think father received a letter from Mr. Purcell asking for Mr. Moses’ support for his candidacy for chairman of the State committee,” and he called my attention to the fact, “we like Mr. Purcell, but Mr. Purcell is the candidate of Tammany; notwithstanding Mr. Purcell gave me support for my renomination, Tammany did not, and therefore I feel sometimes as though we had not ought to support the candidate of Tammany.” I told him that was a matter of very small importance. I says, you have always been anti-Tilden; he said that was true.

Q. It is not necessary to go through that. Come down to Mr. Moses.

A. I then and there asked him if he could not see Mr. Moses and have the matter attended to, as I wanted to get away early; that I wanted to get away on the 11 o’clock train; he said, “I will go and see Mr. Moses, and I will let you know at half-past ten if you will come to the bank.” I went to the bank and met him; he had seen Mr. Moses; I did not see Mr. Moses; he told me he had had a talk with Mr. Moses, that he had arranged with Mr. Moses to see me in New York at French’s hotel.

Q. At what time?

A. I think Monday, the day before the meeting of the committee; however, I called there about the time I was expected to call; found Mr. Moses without any trouble; he (Ross) called my attention to the

fact that Mr. Moses had been offered the patronage of Auburn prison to sustain Mr. Faulkner, and whoever they might decide upon for secretary, and then he says, "Mr. Moses is running a newspaper here and needs some help; we have pledged him as much as we feel as though we ought to; we have mortgages on the property, etc., and we believe he should have some outside help in keeping up his paper." I told him I thought I could arrange some funds to keep his paper alive; I left him with the understanding I was to meet him at French's hotel.

Q. Meet Mr. Moses?

A. Yes, sir, on Monday; to meet Mr. Moses at French's hotel; I called upon Mr. Moses at French's hotel and found him without any trouble; I asked him if he had made up his mind how he should vote? well, he said he had not yet; I then went over the ground with him, and told him that wing was always with us, and the committee was close, and we would be very glad to have his vote; I called his attention to the matter that I discussed with Mr. Ross.

Q. State what you said to him on that subject?

A. I called his attention to the point of giving him aid for his newspaper, and he—without saying how much the amount would be—he asked me how much I supposed I could subscribe. I asked him to name the amount; he declined to do it; I left him at his request, and came back again with the understanding from him that he had to go out; I went back within an hour, and I found him again; he desired me to come back again, and he told me that he had been offered the patronage of Auburn prison; previous to that—I want to correct myself in one thing—at Auburn Mr. Ross called my attention to the fact, "you know," he says, "they have offered him once the appointment of canal appraiser and they cheated him, and we don't know but they will cheat him again." Mr. Moses did not call my attention to that fact, that he had been offered the position of canal appraiser, and was afraid of being cheated; he called my attention to the fact that he had been offered the patronage of the prison.

Q. That was at French's Hotel?

A. Yes, sir; the third time I was there he says, "I can't give you any answer now; how will it do if I vote for Mr. Purcell, and vote for their secretary whoever they desire?" "No; we want the whole organization or none." "Well," he says, "I shan't hurt Mr. Purcell; I can't make up my mind now how I will go, but I shan't hurt Mr. Purcell." I left him then and there.

Q. Did he state in the conversation in what interest he had been offered the patronage of Auburn prison?

A. It came from the Tilden interest.

Q. You proposed to give a pecuniary consideration for the paper?

A. I offered him a subscription to his paper as I had done to other papers, while in the State committee, to help them along.

Q. His answer to that was, that he had been offered on the other side the patronage of Auburn prison?

A. The patronage of Auburn prison, and when we got into the committee the next day, or at least the gathering of the committee, the gentlemen on the outside saw that Mr. Moses was very closely guarded, when he went into the committee.

Q. That was the end of your conversation?

A. That was the end of my conversation.

Q. How did he vote in the committee?

A. I understood he voted for Mr. Faulkner and Mr. Manning; Mr. Faulkner for chairman, and Mr. Manning for secretary.

Q. You had no conversation with him, personally, after the conversation at French's hotel?

A. No; I went away with the impression that he was going to vote for Mr. Purcell.

By Senator MCCARTHY :

Q. Did he intimate in any way who it was that had offered him that?

A. He used the word "they."

By Mr. SMITH :

Q. Was there any thing said by which you understood what they meant by the expression, "patronage of the prison?"

A. Not at all; except in general terms "patronage of the prison;" whether it was a third, or a quarter, or the whole.

Senator POMEROY—Mr. Ross is not here to-day; I have received a telegram from him that he will be here to-morrow.

Mr. SMITH—There is a bare possibility that we may desire to recall Mr. Pillsbury, and if we do, we do not desire to do so until after Mr. Ross has been sworn.

The committee hereupon adjourned to Wednesday, 3 P. M., April 9, 1879.

The committee met pursuant to adjournment.

Present—Hon. THEODORE M. POMEROY.
DENNIS MCCARTHY.
JOHN C. JACOBS.

CHARLES N. ROSS, being duly sworn, testified as follows :

Examined by the CHAIRMAN :

Q. You reside at Auburn ?

A. I do.

Q. Were you the late State Treasurer ?

A. I was.

Q. You are acquainted with Mr. Moses ?

A. I am.

Q. And with Mr. Charles Swan ?

A. I am.

Q. Do you recollect the circumstance of Mr. Swan's being at Auburn between the 26th of September and the 8th of October ?

A. He was at Auburn in the autumn of 1878, but at what time I cannot say.

Q. Between the time of the State convention and the organization of the State committee ?

A. Yes, sir.

Q. He called upon you at your house ?

A. He did.

Q. And made an appointment to meet you at the bank at half-past ten ?

A. He made an appointment to meet me, but at what time I could not say.

Q. At some later hour ?

A. Yes, sir.

Q. And in the meantime you were to see Wm. J. Moses ?

A. I was.

Q. Mr. Swan stated to you his business in coming ?

A. He did.

Q. Did you see Mr. Moses upon that subject ?

A. I did.

Q. Did you meet Mr. Swan afterward ?

A. I did.

Q. Well, now, will you state the conversation between Mr. Swan and yourself at the bank ?

* A. Perhaps I ought to state the conversation before that.

Q. No, all I want is what took place between Mr. Swan and yourself.

A. I met Mr. Swan at the bank; I told him that Mr. Moses said that he was going to New York and if any gentleman wished to see him, that he was going to stop at a certain hotel.

Q. At French's hotel?

A. I don't know at what hotel.

Q. What hotel it was you stated to Mr. Swan?

A. Yes, sir.

Q. Did you state in that conversation, to Mr. Swan, as to any proposition to Mr. Moses, in regard to the State committee?

A. I went to see Mr. Swan—I did not understand your question.

Q. In that conversation at Auburn, in that ten o'clock conversation, did you state to Mr. Swan any thing that Mr. Moses said in regard to a proposition for organizing the State committee?

A. No, I don't know as I did.

Q. State what you did say to him?

A. That was the main point; the main point was that Mr. Moses was going to New York and was to stop at a certain hotel, and if any gentlemen wished to see him that they could probably find him there.

Q. Were any propositions named?

A. No, sir.

Q. In that interview?

A. No, sir.

Q. Well, you stated, it was understood, with Mr. Moses, that if anybody wished to see him that he could see him there?

A. He said he was going to stop there, and if anybody wished to see him they could see him probably.

Q. Did you tell Mr. Moses who came to see him?

A. I told him he was in Auburn.

Q. You told him it was Mr. Swan who was there?

A. Yes, sir.

Q. And that you had sought the interview at Mr. Swan's request?

A. Yes, sir.

By Senator JACOBS:

Q. He simply stated that Mr. Swan or any other gentleman that wanted to see him, could see him at the hotel in New York?

A. Yes, sir.

By Senator POMEROY:

Q. Did he name the hotel?

A. Yes, sir; there was some hotel named, but I don't remember what it was.

Q. You made no report to Mr. Swan of any proposition of any kind ?

A. No, sir.

Mr. SMITH—When it is convenient I would like to ask Mr. Pilsbury two or three questions.

Senator POMEROY—You may ask him now if you wish.

LOUIS D. PILSBURY re-called and examined by Mr. SMITH.

Q. On page five of this printed case, near the middle of the page, is the following: "I think on or about the 23d day of November;" T that date correct?

A. No, sir; it should have been the 16th.

Q. Sixteenth or 19th?

A. Sixteenth; the week before.

By Senator POMEROY :

Q. The 16th was Saturday?

A. Yes, sir; that was the day Mr. Welles came down to see me; I think Sunday was the 16th.

By Mr. SMITH :

Q. On page 25, at the top of the page, the answer occurs, "I cannot tell you, sir," in answer to this question: "From the time of the appointment of Mr. Welles down to the time of his removal, how many times did you visit Auburn prison?" are you able to answer that question now?

A. I am.

Q. What is the answer?

A. I visited Auburn twelve times in the twenty months that Mr. Welles was there.

Q. On page 35 of this printed case, the interview between Welles and yourself is reported as testified to by him; the interview that occurred on Sunday; I wish you would give the committee the substance of that interview, according to your recollection as to what it was.

A. I think the first thing I said to Mr. Welles after breakfast was that I was sick; that I had suffered from lack of sleep a great deal, caused by overwork and anxiety; I then went on to speak to him in regard to the trouble we had had in the comptroller's office; the trouble he had had with Underhill, and afterward said to Mr. Welles that under the circumstances I must ask him for what he had often offered to give me, namely, his resignation; the substance of the conversation that morning, as I remember it, was the same as I wrote to him two days afterward by letter.

Q. I don't care to go further through the details of that ; now, sir, did you say to him in words or in substance, " They want Auburn prison ? "

A. I did not ; I have no recollection of speaking of " they " in any sense whatever. I did say to him that I wanted his resignation ; I might have said I wanted Auburn prison.

Q. You have read this conversation that he relates, in which he relates what you said had occurred between yourself and Smith Weed, in which Smith Weed talked of this office, and said he was authorized to speak for the governor and comptroller ; did any such conversation as that take place ?

A. I don't think the governor's name was mentioned at all ; I spoke to him about the comptroller, and as I had said to Weed in that conversation, I had spoken about the trouble existing in the comptroller's office, the same as I testified before ; I did not say to Mr. Welles that if he did not resign I should lose my place.

Q. What was it you said upon that subject ?

A. I did say to Mr. Welles that if he did not resign I should ; these were the very words I used, after telling him how much work I had, and how I felt.

Q. Did you tell him (Welles), either in words or substance, that the charges against you when suppressed, were suppressed with the understanding that you, was to do what was required of you ?

A. I did not, sir ; nor any thing of that kind.

Q. Will you state very briefly what was said about that effect upon him of his resigning ?

A. Mr. Welles said to me when I asked him to resign, that he did not like to do any thing, of course, that would look bad on his part, or look as though there was any thing wrong ; I then said to Mr. Welles — allow me before I say any thing about that, this conversation in the morning that I had with Welles was very brief, I do not think it exceeded an hour altogether. Mr. Welles complained of fatigue and laid down, and there was nothing more passed between us at all until toward night on the subject, and then in speaking to him about his resignation he said he did not want to do any act, or any thing, that would look as though there was any thing wrong ; and I said, there could be nothing construed as being wrong about it at all ; that I would give him a certificate that his acts as warden had been well performed, and that the only cause for his resignation was the trouble then existing between him and the clerk who was appointed by the comptroller, which was the truth.

Q. Was there ever in fact any such conversation between you and Smith Weed, as Welles says you related to him ?

A. There was not.

Q. Can you state definitely what day of the month this was?

A. It was on Sunday; it was on Sunday the 17th of November; I was under the impression it was the 16th; in my former testimony I said it was the 23d; I was mistaken in the date.

By Senator POMEROY:

Q. You say what you said to Mr. Welles was, that if he did not resign you would?

A. Yes, sir; I did, sir.

Q. Your resignation was already written?

A. It was, but what I intended—

Q. That is enough; you have answered my question.

By Senator MCCARTHY:

Q. This difficulty between the clerk and warden was in July?

A. It continued. Senator McCarthy, for a long time afterward.

Q. I only judge by the sworn testimony of the comptroller?

A. I have a letter in my pocket now in which it is referred to under date of September 7th from Mr. Welles.

Q. The comptroller says, "Mr. Underhill was pretty safely established in the prison; he was appointed and could not be removed except by me, and the charges which were preferred against him by Welles were looked into by me, and investigated and dismissed.

"Q. That was in July preceding?

"A. It was in July, during the summer some time in June or July.

"Q. Didn't that end the matter so far as you know?

"A. So far as I knew."

Q. Mr. Olcott's testimony; yours seems to be directly opposite.

A. There was more or less feeling, senator.

Q. This occurs in Mr. Olcott's testimony?

"Q. You heard nothing about it afterward?

"A. I think Mr. Pilsbury spoke to me after that, that he had letters and complaints after that; but I won't be positive about that; that is my impression; my impression is that Mr. Pilsbury mentioned it once or twice to me."

Q. Now, I desire to ask you if you mentioned it to him between July and November?

A. I did; yes, sir.

Senator POMEROY—Mr. Smith, do you desire to call any other witness?

Mr. SMITH—No, sir.

Senator Pomeroy then put in evidence the following extract from Superintendent Pilsbury's report for the year 1878:

“On my first official visit at this prison I found its discipline and general management superior to the condition of things at Sing Sing. Yet scarcely half the number of men confined there were employed at contract labor, or such as might be supposed to exhibit the appearance of occupation. Hundreds, in truth, were congregated in the “idle shops,” masters of themselves, and concocting all kinds of mischief. This state of disorder afforded the most liberal opportunities to the bold and desperate among the convicts; and, as might have been naturally expected, it was here that most of the plots for escapes had originated. One of my first orders provided for the immediate isolation of these desperate characters, by locking each man in his cell, and taking them out, at regular hours daily, for necessary exercise. This course of treatment quickly effected a wholesome change in the feelings and conduct of the individuals to whom it was applied; and, after a short interval, they were earnestly pleading for work, which before they had stubbornly refused or got excused from on some idle or false pretense.

“Soon after Warden Welles received his appointment, that gentleman employed some hundreds of the idle prisoners just referred to at grading and clearing the grounds, and under his supervision the Auburn prison inclosure of to-day is hardly to be recognized by those who had visited it before the transformation wrought in its surface and outline by the judgment and taste of Mr. Welles.

“The so-called system of *overwork* had become a settled policy here as well as at Sing Sing, and, in fact, more time and labor were required for its abolition in Auburn than at the former place. All difficulty from this source, however, is now over, and the convicts in this prison are working from *bell to bell*. As a striking proof of the benefits arising from this change in the labor system, it will state that the work produced by the convicts has not only been largely increased in quantity, but its quality shows a decided improvement also. Contracts for the labor of convicts have been entered into with some of the old contractors, but at an increased rate of compensation per day, and several new contracts with other parties have also been secured, at satisfactory rates.

“All things considered, the prospects of Auburn prison must be considered fair at least, and, should the hope of returning business prosperity be realized, it must rank among the self-supporting penal institutions of the country.”

Senator Pomeroy also put in evidence the following extract from the report of Superintendent Pilsbury for 1879:

“It affords me much gratification to be able to state that this prison has substantially reached a paying basis. The deficiency for the fiscal year amounted to \$34,179.24, while that for the previous year amounted

to \$95,886.88. This saving of \$61,707.64 is mainly the result of the contracts for labor at increased rates of compensation. These did not, however, take effect until the 1st of May last, since when the earnings fell short of the expenditures only \$1,600. Since the close of the fiscal year the monthly earnings show a small balance over the expenditures; and, unless events now unforeseen should occur, I have every reason to hope that this prison will hereafter continue to maintain itself, if not to contribute materially to the revenues of the State. Every man fit to work has been kept employed, and those not required in the shops have been used in repairing the buildings, walls, drains, etc., in improving the grounds, and otherwise contributing to the value of the property and to the improvement of its sanitary condition. This prison is not so favorably located as Sing Sing for shipments of stock and finished work, and, as the demand for contract labor is less, there is a larger proportion of men not thus employed. But the improvement in the discipline of the prison and in the condition of the men, resulting from the reforms noted in my last report, has created an increased demand for their labor, and the contractors are now better satisfied to employ them, even at the increased rate of compensation."

The committee announced that the testimony was closed.

MAJORITY AND MINORITY REPORT

OF THE SPECIAL COMMITTEE TO INVESTIGATE AS TO THE
CAUSES OF THE REMOVAL OF THE AGENT AND WARDEN OF
AUBURN PRISON.

MAJORITY REPORT.

To the Senate:

The undersigned, a majority of the committee appointed by a resolution, adopted on the 28th day of February last, to investigate and report whether the recent change made in the office of agent and warden of the Auburn prison was in violation of law, respectfully report:

That, pursuant to such resolution, they have subpœnaed before them numerous witnesses, and have taken their evidence, which is herewith submitted.

That the only statute law bearing upon the subject (and to the provisions of which the committee have endeavored to direct their examination) is section 3 of chapter 24 of the Laws of 1877, which provides that "no appointment shall be made in any of the prisons of this State on the grounds of political partisanship; and honesty, capacity and adaptation shall constitute the rule of appointment."

It is conclusively proved that, on or about the 8th day of October last, the Superintendent of Prisons placed in the hands of the Governor his resignation of office, to be used by the Governor at his discretion; and that such resignation has so remained unacted upon to the present time. The Constitution provides that the Superintendent of Prisons may be removed by the Governor "*for cause*;" but we have here the anomalous condition of an existing arrangement between the Governor and the Superintendent of Prisons, by which the provision of the Constitution is abrogated, and the Governor left free to remove *without cause*. This con-

dition of the tenure of a high public office is one certainly not contemplated by the Constitution, and which can only exist in implied violation of its provisions. Your committee invite the attention of the Senate specially to this fact. If such arrangements may be entered into by officers appointed with the confirmation of the Senate, they may be entered into as a condition of nomination, previously to confirmation by the Senate, and the requirements of the Constitution as to the independent tenure of office of all the appointive officers of the State be thus set at defiance. It is clear that since the 8th day of October last the office of Superintendent of Prisons has not been filled in the manner specified in the Constitution, and that the present incumbent is now holding office simply at the will of the Governor.

It is further proved that the Superintendent of Prisons, in appointing Leonard R. Welles to the office of agent and warden of the Auburn prison, in the spring of 1877, was acting strictly within the requirements of his oath of office, and that his removal on the 1st day of December, 1878, was contrary to his personal wishes, and to his convictions of official duty, and was wholly compelled by other and foreign considerations. In corroboration of this finding of the committee, they invite attention specially to the evidence of Messrs. Welles and Pilsbury.

It was claimed before the committee, as it has been claimed in the Senate, that, by section 4 of title 5 of the Constitution, the power of appointment and removal on the part of the Superintendent was absolute; and that the attempted abridgment or control of that power contained in chapter 24 of the Laws of 1877 was unconstitutional and void. Your committee have accepted the Constitution and laws as they found them, and have assumed that the Senate, in directing this investigation, had reference to the law of 1877 (chapter 24), as being consistent with the Constitution, and as forming the legal rule of action which was to govern the Superintendent of Prisons in making appointments to and removals from office at the respective prisons.

The evils of the former partisan management of the prisons are too recent to require comment. That the correction of those evils was the principal inducement to the adoption of the constitutional amendment of 1876 no one can deny.

Regarding the appointment of Mr. Moses, your committee find the following facts as indisputably established :

1st. That the position of Mr. Moses, who was appointed a mem-

ber of the Democratic State Committee at the convention held on the 26th day of September, 1878, was one of doubt and anxiety to the two sections of the party, and his co-operation in the organization of the committee desired by each.

2d. That on or about the 8th day of October, 1878 (the day on which the committee was to meet in the city of New York for organization), the resignation of the Superintendent of Prisons of his office was placed in the hands of the Governor, and there remains.

3d. That such resignation was not the voluntary act of the Superintendent, as, if so, he would have compelled its acceptance and vacated his office.

4th. That thereafter the Superintendent, holding office at the mere will of the Governor, and liable to arbitrary removal, must at any time accept removal from his office, or acquiescence in whatever was demanded from him by the Governor, or by those whom he, whether rightfully or wrongfully, might suppose to be acting under the Governor's authority.

5th. That, in the organization of the Democratic State Committee on the 8th day of October, 1878, Mr. Moses did act in concert with that portion of his party in sympathy with the Governor, and with the Superintendent of Prisons, the Canal Auditor, the Comptroller, Mr. Smith M. Weed, and Mr. Charles S. Beardsley.

6th. That on Saturday, November 16, 1878, which was in the week following the last State election, a telegram was sent by Mr. Pilsbury from Albany to Mr. Welles at Auburn, requesting his immediate presence at Albany. That such presence was desired for the purpose of procuring his resignation, in order to create a vacancy to be filled by Mr. Moses. That no previous intimation had been given to Mr. Welles that his resignation was desired or his removal contemplated. That such telegram was the result of interviews and conversations on that day held at Albany by and between the Superintendent of Prisons, the Comptroller, Mr. Smith M. Weed, Mr. Moses, the Canal Auditor, and Mr. Beardsley. That although Mr. Pilsbury and Mr. Moses might not have known of the precise day upon which the things then done were to be done until telegraphed to by Messrs. Weed and Beardsley respectively, what was then done was the result of previous deliberation and determination; and the appointment was made by the Comptroller, with Mr. Moses, to meet the Superintendent to receive the appointment before the telegram was sent to Mr. Welles to appear for removal.

7th. That while your committee are compelled to believe that the Governor, in the exercise of the high functions of his office, and in the maintenance of its dignity, would not have personally used the resignation in his hands to coerce the Superintendent of Prisons into action hostile to his convictions of official duty, the existence of such resignation, and the assumption of Mr. Smith M. Weed and others to represent the power of the Executive, did compel the Superintendent, in his desire to retain his own office, to accept as authority their suggestions upon the subject, and to make the appointment of Mr. Moses ; and that such appointment was compulsory, and not the voluntary official act of the Superintendent.

8th. That the only cause assigned by the Superintendent for the change, to wit: the alleged disagreement between the agent and warden and the clerk of the Auburn prison, is not sustained by the testimony, and is not even hinted at by the Superintendent in either of his annual reports.

9th. That the sole ground of removal of Mr. Welles was to create a vacancy in the office ; and the only grounds of appointment of Mr. Moses were political considerations.

Your committee, therefore, in conclusion, find and report, that Louis D. Pilsbury, the Superintendent of Prisons, in the appointment of William J. Moses to the position of agent and warden of the Auburn prison, on the first day of December last, acted solely upon "grounds of political partisanship," and in disregard of the statutory requirement of "adaptation ;" and that the action of the Superintendent in each of these respects was in violation of the act of February 17, 1877.

THEO. M. POMEROY,
D. McCARTHY.

Dated *April* 23, 1879.

MINORITY REPORT.

To the Senate :

The undersigned, a member of the committee appointed by resolution of the Senate, adopted on the 28th day of February last, to investigate and report whether the recent change made in the office of agent and warden of the Auburn prison was in violation of law, respectfully reports :

That he regrets his inability to agree with the majority of said committee in the conclusions which they have reached.

The Constitution is the paramount law, and all statutes must be made in conformity with its provisions. Section 4 of article 5 of the Constitution provides for the appointment of a Superintendent of State Prisons, and invests that officer with "the superintendence, management and control of said prisons, subject to such laws as now exist or may hereafter be enacted. He shall appoint the agents, wardens, physicians and chaplains of the prisons." It will be perceived that while the superintendence, management and control of the prisons are subject to legislative authority, the power of appointment of the officials named is vested absolutely in the Superintendent. The power of appointment, in the absence of any other provision, involves the power of removal. It is evident that it was the intent of the Constitution to invest the Superintendent with absolute authority as to the selection and removal of the subordinates, who were under him to manage the several prisons. Under this provision of the Constitution, Mr. Leonard R. Weiles was appointed to the office of agent and warden of Auburn prison, and under it he was removed ; and in the exercise of this power the Superintendent was not subject to any inquiry as to his motives on the part of this legislature, or either branch of it. He simply exercised his discretionary authority.

If, in the exercise of this right of removal, or in any other matter, Mr. Pilsbury committed a wrongful act, the Governor alone has the right to call him to account ; for it will appear by the said article of the Constitution, already cited, that the Governor alone has jurisdiction in the case of malfeasance on the part of the Superintendent. A simple reference to these plain provisions of the Constitution, had it been made at the outset, would have saved the time and labor expended on this inquiry. The action of the majority of the committee is based upon the act of 1877 (chapter 24, section 3), which

would never have met the approbation of the Legislature had the provisions of the Constitution, already quoted, been borne in mind.

But admitting, for the purposes of this investigation, that the law in question is constitutional, the undersigned contends that the testimony taken by the committee establishes no violation of its provisions; nor does it sustain, in the slightest degree, the charge implied in the resolution of the Senate under which this inquiry has proceeded. The only question at issue under the circumstances is whether Mr. Welles was removed for political reasons. The undersigned, after a careful review of the evidence, finds that Mr. Welles, who was removed, and Mr. Moses, who was appointed to succeed him, were both members of the democratic party, and both belonged to what is popularly known as the Tilden wing of that organization.

This fact, as to which it is believed there is no dispute, would seem of itself sufficient to settle the question that there was no political motive in the change. It has been sought to establish the contrary conclusion by the testimony of the witness Swan. He testified that he visited Auburn previous to the organization of the Democratic State Committee of 1878, for the purpose of securing the vote of Mr. Moses for what was known as the anti-Tilden interest. He saw Mr. Charles N. Ross, the late State Treasurer, and asked him to communicate with Mr. Moses. It does not appear that he saw Moses on that occasion at all. Mr. Ross, however, communicated with Mr. Moses as requested, and learned from him that he absolutely refused to converse upon the subject of the State committee until he went to New York to attend the meeting of that committee, when he said that he should be glad to confer with any gentleman who felt interested in the subject. This conclusion Mr. Ross communicated to Mr. Swan, and it does not appear that Mr. Swan saw Mr. Moses until they met in New York. Mr. Swan gives a version of his conversation with Mr. Moses in New York, which appears in the testimony on the files of the Senate. This conversation occurred in the presence of a third party. It is a very significant circumstance that this third party was not produced before the committee, nor is his name given; and the version of the conversation given by the witness Swan is specifically contradicted by Mr. Moses, a witness whose character has never been assailed, and, moreover, has been emphatically vouched for by the chairman of this committee. That, Senator, may be left to decide between the respective characters for veracity of Mr. Moses and the witness

Swan. And it must further be observed, in estimating the credibility of the two witnesses named, as to the points upon which their testimony differs, that Mr. Swan is contradicted by Mr. Ross, a witness conceded to be of the highest character, as to the substantial points of the conversation between them at Auburn, already referred to.

The report of the majority of the committee lays much stress upon the fact that the Superintendent, on the eighth day of last October, made out his resignation, and placed it in the hands of the Governor, and seeks to deduce from that fact the conclusion that the resignation was demanded for political purposes. In other words, that a place was to be made for Mr. Moses at the expense of Mr. Welles, in order to secure Mr. Moses' vote in the organization of the State committee. The fact is, and the majority of this committee must understand it as well as the undersigned, that Mr. Pilsbury's resignation was due to purely personal reasons, in no way connected, directly or indirectly, with politics, or with the change made in the administration of the Auburn prison. And yet, while the reasons for this resignation were purely personal, and members of this body had been notified that they might receive full information as to such reasons by applying at the executive chamber, the majority of the committee have chosen to go on in willful ignorance, and assume other reasons as the motives for the change.

The undersigned, in conclusion, reports, in review of the several conclusions arrived at by the majority :

First. That the evidence does not show any doubt or anxiety as to the position of Mr. Moses in political matters, except in the mind of Mr. Swan, a witness whose credibility has been very seriously assailed by the testimony of unimpeached witnesses.

Second. It is conceded that the resignation of Mr. Pilsbury was made out and delivered to the Governor at or about the time named in the report of the majority of the committee.

Third. The resignation of Mr. Pilsbury, like every other resignation of a public officer, must be presumed to have been voluntary, inasmuch as there is no power vested anywhere to compel such resignation.

Fourth. That the undersigned, having the highest respect for his associates — the majority of this committee — regards this specification as too frivolous to be seriously controverted.

Fifth. That, in the organization of the Democratic State Committee, Mr. Moses did act in accordance with his political friends.

The undersigned, in this one conclusion of the majority of the committee, heartily unites.

Sixth. The undersigned also agrees with the majority of the committee, that a telegram was sent from Mr. Pilsbury to Mr. Welles on the 16th day of November, 1878, requesting his presence in Albany. But he does not concede that Mr. Welles' resignation was required at that time for the purpose of making a place for Mr. Moses, and he submits that there is no evidence to show it. And he furthermore says that there is not a particle of evidence to show that any officer of the State or any other man in any way connected with politics, advised or recommended the change in the wardenship.

Seventh. That in relation to the charges made in the seventh specification of the majority report, the undersigned will only say: That he dismisses them as utterly unsustained by evidence, and unworthy of serious consideration.

Eighth. That as to the eighth specification of the committee, the undersigned holds: That a full and sufficient reason for the removal of Mr. Welles is furnished by the evidence before the committee, viz., that there was an irreconcilable difference between the agent of the prison and the representative of the Comptroller, as to the manner in which the business of the prison should be conducted.

Ninth. As to the ninth proposition of the majority, viz., that the sole ground of the removal of Mr. Welles was to create a vacancy in the office, and the only grounds of the appointment of Mr. Moses were political considerations, the undersigned says: That Auburn prison, under the administration of Mr. Welles, showed every month a deficit, while, under the administration of his successor, it has every month shown a balance in favor of the State. This fact alone settles the question of the benefit of the change; and while the undersigned does not agree with the Superintendent as to the propriety of employing convict labor in competition with the honest labor of the State, yet he must acknowledge that, under the existing system, the superintendency of the new warden has been attended with the most gratifying results.

In conclusion, I find and report: That Louis D. Pilsbury, in the removal of Leonard R. Welles, exercised an authority imposed upon him by the Constitution and laws, and justified by every consideration of expediency and public policy

JOHN C. JACOBS

Dated ALBANY, *April* 25, 1879.

