STATE OF NEW YORK

PROCEEDINGS

OF THE

COURT FOR THE TRIAL OF IMPEACHMENTS

THE PEOPLE OF THE STATE OF NEW YORK

BY THE ASSEMBLY THEREOF

AGAINST

WILLIAM SULZER, AS GOVERNOR

Held at the Capitol in the City of Albany, New York
September 18, 1913, to October 17, 1913

VOLUME 2

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COURT FOR THE TRIAL OF IMPEACHMENTS

WEDNESDAY, OCTOBER 1, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10 a. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Hinman.— If the Court please, I am informed this morning by Mr. Fuller, who was a witness yesterday, that he would like to make a statement to the Court. Mr. Fuller, if you will take the stand.

MELVILLE B. FULLER resumed the stand.

The Witness.— If it please the Court, I wish to make a personal statement referring to the testimony given by me at this honorable Court yesterday. There appeared in one of yesterday evening papers in large bold type, front page headlines, the following: "Tells Court stock book entries have been juggled." In another: "Say brokers doctored books to hide Sulzer's speculations." In another: "Sulzer account was falsified to shield him, say accusers." In still another: "$180,000 Sulzer loans in Wall street 'books' doctored, new charge." I now present these newspapers for the inspection of the Court.

The President.—You may leave them there.

The Witness.— Now, if these statements were true it means absolute ruin to me and my associates in business as well. I think

this Court will bear me out in the statement that I have not deserved such treatment. I have not had and I have no interest in these impeachment proceedings except as a citizen and to tell the truth as a witness without reserve. I point to the record of my testimony as proof of that fact. I have been in attendance here for days with all my books and my papers at great inconvenience to myself and injury to my business. I have concealed nothing and I have nothing to conceal. I stated the facts frankly to the Frawley committee. I appeared several times before Messrs. Kresel and Levy, although I understood that they had no legal right —

The President.— Just omit that.

Mr. Stanchfield.— Just a moment; that is not a personal statement. Speaking for the board of managers, I have not any desire to curtail the right of Mr. Fuller to make any statement that he pleases with reference to sensational or erroneous headlines in the New York newspapers, but beyond that I cannot permit him to go.

The President.— Avoid any reference to other matters except what transpired in this Court.

Mr. Marshall.— I understand the witness is merely indicating his good faith and his entire willingness to testify under all circumstances.

Mr. Stanchfield.— The willingness of Mr. Fuller to testify, or his good faith, is not challenged by the board of managers.

Mr. Marshall.— I understand the witness complains that there has been misrepresentation as to what he said.

Mr. Stanchfield.— I am perfectly willing to say, and I trust the newspaper men in attendance will take the statement, that the board of managers in no way, at no time, and at no place, have ever desired to asperse or blacken the business reputation, standing or credit of this brokerage firm of Harris & Fuller. We are not a party to any such.

Mr. Marshall.— I suppose the witness can take care of himself.

The Witness.— I brought all my books and papers to Albany —

Mr. Stanchfield.— I submit, if your Honor please, he would have to do that as any other citizen would.

The President.— Mr. Witness, of course, if any newspaper, or anybody else, has aspersed you, they are liable in a suit for libel. The fact that it is in a judicial proceeding will not protect them. The truth of a situation does not justify comments on it, if they are unjustly founded on the evidence given. Further, it is a contempt of Court to publish false and inaccurate statements of what transpires in Court.

So that your attorney, or yourself, can apply to the Court, if you deem it wise to proceed against the paper.

This is hardly the regular proceeding you are adopting now. The Court is always appreciative, in its experience here not alone, of the difficulties under which a witness labors. He is bound to give up his time, often at great loss, always at annoyance, and subject to criticism as to the testimony he has given; therefore, the Presiding Judge has given you the privilege to make the statement and repudiate the suggestion that the testimony was false. You have done that.

The Witness.—I have not covered the points brought out by Mr. Kresel yesterday, sir.

The President.— That you could hardly argue with the counsel.

The Witness.— Can't I explain then?

Mr. Stanchfield.— I submit —

The President.— I think it is not wise.

Mr. Marshall.— May I be permitted to make this suggestion. I understand the witness claims not only did the newspaper headlines misrepresent the case, but innuendoes and insinuations were made by counsel for the managers during the examination, which the witness at the time thought had been thoroughly explained, and which he desires now to make clear. That is what I understand he wishes to say.

The President.— If he has any qualifications to make as to the testimony he has previously given, he has the right to do it. I think unless it is testimony of that kind it is not wise to proceed further in that direction. The Court gave him, however, the privilege of calling attention to that assertion in the newspapers against him and his right to repudiate it.

Mr. Herrick.— I have never seen that paper. I don't know what the witness proposes to say or has written down, but, in justice to him, will you look over the paper and see if there is anything in the nature of it which he has the right to read? It will take but a moment.

Mr. Stanchfield.— That question ought to be self-answering. Mr. Marshall's contention is that a witness has a right, in a court of justice where the rules of the Supreme Court for the introduction of evidence obtain, and where the conduct of a trial is within the rules of the Supreme Court, in a statement to criticise the conduct of counsel in the case. That is a very novel proceeding.

Mr. Marshall.— I had no such meaning.

The President.— I think it is wise, unless there is some explanation, that it should end. You may explain or qualify any answer you made, but beyond that you cannot go. You cannot make a statement in justification of your conduct.

The Witness. — I would like to state that my books are absolutely correct. That no balances have been forced. There has been nothing omitted there or concealed to protect Sulzer or anyone else. I am perfectly willing to bring my books to this Court, to bring every clerk in my office, if they wish to prove that statement.

The President.— I think that is sufficient. Now call your next witness.

Mr. Stanchfield.— I call Mr. Frank.

Mr. Hinman.— If I may be permitted, I inquired the day before yesterday regarding an admission concerning the testimony of Mr. Brady. Will that admission be made?

Mr. Kresel.— I will look at it now. I will let you know in a few minutes.

Mr. Hinman.— If not, we want Mr. Brady recalled for further cross-examination.

SAMUEL M. FRANK, a witness called in behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Frank, what is your occupation? A. Stenographer.

Q. And were you one of the staff of stenographers employed in the taking of testimony that was adduced from time to time during the past summer? A. Yes, sir.

Q. Before the so-called Frawley committee? A. I was.

Q. Were you in attendance as a stenographer before the session of the Frawley committee that took place on or about the 30th of July, 1913? A. Yes, sir.

Q. Where was that session of the committee held? A. In the Senate chamber.

Q. City of Albany? A. Yes, sir.

Q. Have you with you or before you the original stenographic notes of the testimony that you took at that session? A. I have.

Q. Have you likewise the volume or transcript of typewritten notes which were translated? A. I believe that is on your counsel table.

Mr. Stanchfield.— You may mark the stenographic notes for identification.

(The notes offered were marked Exhibit M-120 for identification.)

Q. Have you now before you the typewritten translation of the stenographic notes of the testimony given or adduced at that hearing? A. I have.

Mr. Stanchfield.— I will have that marked Exhibit 121 for identification.

(Typewritten translation was marked Exhibit M-121 for identification, commencing at page 540.)

Q. Do you, Mr. Frank, know one Louis A. Sarecky, a sometime stenographer to respondent, Governor Sulzer? A. I only saw him as a witness before the Frawley committee at this hearing I referred to.

Q. You know him by sight? A. Oh, yes.

The President.— You know he was the witness you saw there?

The Witness.— Yes.

Q. Did Louis A. Sarecky appear before the Frawley committee? A. He did.

Q. Was that while you were acting as official stenographer to that committee? A. It was.

Q. Was an oath administered to him? A. It was.

Q. By whom? A. By the chairman of the committee.

Q. And after the administration of that oath by the chairman of the committee did he give certain testimony by question and answer? A. He did.

Q. You have before you the typewritten testimony? A. Yes.

Mr. Stanchfield.— Is the objection to be raised that he must use his stenographic notes?

Mr. Herrick.— No.

Mr. Stanchfield.—Then you may read right from the typewritten.

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— Get to the point.

Mr. Stanchfield.— If Judge Herrick will explain what he means by using the word "incompetent" I will know perfectly well how to proceed. I ask in one breath whether he means to raise the question that it is not the best evidence and he says no; then he makes the objection that it is incompetent, and that is not the best evidence.

The President.— The Court rules against him on that because of his previous admission.

Mr. Herrick.— I thought it was incompetent and I said it was incompetent and immaterial. There ought to be some foundation laid, some connection of Louis A. Sarecky with the Governor before this testimony is taken.

Q. Was this question put to Mr. Sarecky: "Where do you live?" A. It was.

The President.—Any objection to this introductory matter?

Mr. Herrick.— No.

The President.— It simply goes to identify it first.

Mr. Herrick.— The Court having overruled our objection, he needn't spend any time, but can read right along.

Q. You follow me and see whether what I read is a correct transcript of the typewritten minutes, and if it is not, stop me:

"Q. Mr. Sarecky, where do you live? A. 516 Monroe street, Brooklyn.

"Q. And are you connected with some of the departments of the State government? A. I am.

"Q. What one and in what capacity? A. At present I am connected with the State Hospital Commission as deportation agent for the State of New York of the alien insane.

"Q. And has your salary been fixed yet? A. That I don't know. I think it is $4,000 a year, but I cannot say definitely.

"Q. That is the understanding, that you expect to have $4,000 a year? A. So I have been informed.

"Q. Who informed you to that effect? A. The secretary to the State Hospital Commission.

"Q. Did you have any talk with Governor Sulzer about that? A. I asked him for the place.

"Q. Yes, and did he say anything about what the salary would be? A. No, he said nothing; it never came up.

"Q. You did not bother about that? A. No, sir.

"Q. How old are you, Mr. Sarecky? A. Twenty-seventh year.

"Q. Twenty-seventh year? A. That is, I am going on twenty-eight.

"Q. And what is your profession? Have you any profession in particular, or have you some general occupation? A. Well, I am a graduate of a law school; I have been acting as secretary; I have been connected with various businesses.

"Q. You have been connected with Governor Sulzer for some years, have you not? A. Since December, 1902.

"Q. And in what capacity have you acted for Governor Sulzer? A. Well, I was an assistant around the office and finally in a sort of confidential secretaryship."

Mr. Hinman.— Pardon me, if your Honor please, let us raise the question and the objection that this is incompetent and hearsay as against this respondent.

Mr. Stanchfield.— Will you let me state for a moment my contention?

The President.— Yes.

Mr. Stanchfield.— The accusation, if the Presiding Judge please, in article 4, is bribery, and in article 5 of the suppression of testimony. Our contention is that Governor Sulzer, when he approved the selection of Sarecky as one of the deportation agents of the alien insane, knew the manifest palpable unfitness for Sarecky to occupy that position. This testimony shows the acquaintance, the intimate acquaintance from boyhood to manhood of Governor Sulzer with Louis Sarecky; and it shows a request by Sarecky for designation and appointment to this place; and if I am permitted to read the record will further disclose the difference between the salary as confidential secretary that he was in receipt of before the appointment to the deportation commission and the salary of $4,000 a year thereafter attached to this place. It presents, as the managers contend, the strongest possible circumstantial evidence of bribery. Now, in using the word "bribery" I am using it advisedly. The word "bribery" does not necessitate that there should pass between the briber and the bribed something so tangible that one may take it in his hand or put it in his pocket or that it should be susceptible to human touch. It may be much more invidious than anything of that kind would imply.

In other words, a bribe is a reward bestowed for the purpose of perverting judgment. A bribe is bestowed for the purpose of corrupting conduct and when it appears that this witness, just as he was subpoenaed before the Frawley investigating committee asked this advanced position, for which he was hopelessly unfitted and incompetent, at the hands of this respondent, and that position was conferred upon him, with his tremendous increase, doubling, if you will, the salary, I have a right to submit, as matter of fact, to this tribunal that are triers of fact as well as judges of law, whether or no that does not establish the improper use of patronage to shade and color the conduct and the attitude that this man took before the Frawley committee.

The President.— That is not the question that is before the Court.

Mr. Stanchfield.— The question —

The President.— One moment, counselor. The facts may be all competent. The question is, Is the testimony of Sarecky competent evidence of these facts or hearsay? That is the point. On the question of whether Sarecky refused to be sworn, of course what he did there is necessarily the very thing that you can show; but as to these other declarations of Sarecky, they are hearsay.

Judge Werner.— Mr. President —

The President.— Yes, Judge Werner.

Judge Werner.— May I ask a question, in the interest of saving time, perhaps? I would like to ask if Mr. Sarecky is to be produced as a witness?

Mr. Hinman.— If your Honor please, I understand —

Judge Werner.— This question may very properly arise when he is on the stand.

The President.— Yes.

Mr. Hinman.— If I may be permitted to answer the question, I understand he is under subpoena by the board of managers, and has been for several days.

Mr. Stanchfield.— You must not take it from that that the board of managers intend to call him and make him their witness.

Mr. Herrick.— I did not understand they would.

The President.— It will be excluded. The objection is sustained.

Mr. Stanchfield.— I shall not transgress the Presiding Judge's ruling. (Reading.)

> "Q. When were you served with your subpoena to appear here before this committee? A. July 23d."

Now, under your ruling it would be — I will ask for information — under your ruling, would your Honor hold that it would be improper for me to read testimony that took place, as to what took place between Sarecky and the Governor after the subpoena was served?

The President.— Yes. That would be excluded. Not on the ground the fact is not competent, but on the ground that Sarecky's declarations in another proceeding are not evidence here.

Mr. Stanchfield (reading).— "Q. Did you discuss with Mr. Hennessy your refusal to answer the subpoena? A. I did."

Mr. Marshall.— One minute.

Mr. Hinman.— That is the same thing.

Mr. Fox.— Are not his conversations or declarations to Mr. Hennessy equally hearsay? I understood your Honor to confine this testimony to the blunt fact of the alleged refusal to testify.

The President.— Well, all the declarations accompanying his refusal.

Mr. Stanchfield.— Certainly.

The President.— But not the declarations that took place between him and others. It is what took place on that occasion relative to what he said he would do or would not do.

Mr. Herrick.— Of course.

Mr. Stanchfield.— I am keeping within your Honor's ruling. (Reading): "Q. Did you discuss with Mr. Hennessy your refusal to answer the subpoena?"

Mr. Fox.— We object to that.

The President.— I do not know who Mr. Hennessy is, but how could it do any harm?

Mr. Fox.— We suspect that Mr. Stanchfield's motives are innocent.

The President.— Proceed, Mr. Stanchfield.

Mr. Stanchfield (reading).— "Q. Did Mr. Hennessy advise you not to answer the subpoena? A. He concurred in the opinion rendered by Mr. Marshall."

Mr. Herrick.— I ask to have that stricken out.

The President.— Strike it out. That is not competent.

Mr. Stanchfield (reading).— "Q. Was Mr. Marshall the attorney that advised you?"

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— Objection sustained.

Mr. Stanchfield (reading).—"Q. Where is Mr. Marshall's office?"

Mr. Herrick.— That is objected to.

The President.— Sustained.

Mr. Stanchfield (reading).— "Q. Did you see him in Albany or New York?"

Mr. Herrick.— The same objection.

The President.— Sustained.

Mr. Stanchfield.— I am getting now technically to the refusal to answer, and I think the answer to that question, if your Honor please, is proper.

The President.— I think not.

Mr. Stanchfield.— To that question: "Did you see him in Albany or New York?"

Mr. Herrick.— That is objected to.

The President.— Objection sustained.

Mr. Stanchfield.— Do you know what his answer is?

Mr. Marshall.— Don't be a poor actor.

Mr. Stanchfield.— I am a good actor at times. Will your Honor do me the kindness to read that answer?

(The transcript from which Mr. Stanchfield was reading was handed to the Presiding Judge.)

The President.— Oh, I think you are right, Mr. Stanchfield. That answer makes it competent, while apparently the question did not call for it.

Mr. Stanchfield.— I mean precisely what I said, that I did not intend to transgress your ruling.

The President.— You are correct.

Mr. Stanchfield (reading).—"Q. Was anybody present when you saw Mr. Marshall excepting you and he? A. I refuse to answer that question, too."

The President.— Was there a refusal before that?

Mr. Stanchfield.— Yes.

The President.— Then you can read the question and the refusal there.

Mr. Stanchfield (reading).—"Q. Did you see him in Albany or New York? A. I refuse to answer that question."

The President.— That is competent.

Mr. Stanchfield (reading):

"Q. Did you see him uptown or downtown in New York? Or did you see him in Albany? A. I refuse to answer any

question as to where, when, and who was present when I saw Mr. Marshall.

"Q. I am not asking you for your communication with him. I am asking you for the place of communication? A. Well, I refuse to answer that question. It is purely a personal matter.

"Q. Referring to campaign contributions. Do you say he didn't give one? A. I refuse to answer that question, on the ground previously stated, that I refuse to answer any question whatsoever appertaining to the Governor's campaign fund unless I am represented here by counsel.

"Q. I am asking you now if, in October, 1912, you did not get a check from Mr. Marshall for the Governor's campaign fund, a contribution? A. I refuse to answer that question on the same grounds.

"Q. Do you remember this check that Mr. Elkus sent in for a campaign contribution?"

Mr. Herrick.—What page are you reading from?

Mr. Stanchfield.—Page 42 near the bottom. (Continuing reading.)

"A. I refuse to answer any questions appertaining to the campaign expenses of the Governor, unless I am represented here by counsel so that the whole story may by both sides —"

Mr. Herrick.— What is that language? I do not seem to be able to find where you are reading.

Mr. Stanchfield.—(Continuing reading):

"I am represented by counsel so that the whole story by both sides may be given and nothing be discolored.

"Q. You have not told any part of the story yet? A. I have not, and I do not intend to, unless I am represented by counsel so that the whole story will be told."

"Q. In addition to the checks coming in every day, there was cash coming in, was there not? A. I refuse to answer that question on the same ground.

"Q. Every day during October, did not cash come in in

envelopes? A. I refuse to answer that question on the same ground I have previously stated.

"Q. Every morning, in the morning's mail, didn't there dozens of letters come in enclosing checks and enclosing cash, even down to so small an amount as $2? A. I refuse to answer that question on the same ground as I have refused to answer all previous questions relating to Governor Sulzer's campaign fund.

"Q. Did you ever report any of those campaign funds? A. I refuse to answer that question on the same ground as I have refused to answer all previous questions pertaining to the Governor's campaign fund.

"Q. I ask you to look at Exhibit 35, and tell us whether any of the amounts that are set forth there, aggregating $5,460, represent cash? A. I refuse to answer that question on the ground stated in answer to your previous questions, that anything relating to the Governor's campaign fund, any question asked by you, I refuse to answer unless you permit me to be represented by counsel, in order that the whole story may be told.

"Q. I thought you might be willing to tell about this, as you say you did make it up? A. I don't say whether I made it up.

"Q. Didn't you make it up? A. I don't say whether I did or not. I refuse to answer that question.

"Q. You refuse to answer that? A. Yes.

"Q. You made up this statement? A. I don't say I did. I refuse to answer that question.

"Q. Then you refuse to furnish to the committee any evidence whatsoever? A. Unless I am permitted to be represented by counsel, Mr. Chairman."

Mr. Stanchfield.— That is all.

Mr. Hinman.— If the Court please, I move to strike out all the testimony that has been read into the record with reference to this Sarecky testimony, or refusal to answer, on the ground that no foundation has been laid therefor, and that it is incompetent and hearsay as against this respondent and not binding upon him.

The President.— I am at a loss to see how the fact of a refusal to testify can be proved in any other way except by the declaration of the witness that he won't answer. The motion will be denied.

Mr. Herrick.— That is not the question precisely. He says there is no foundation laid for it. That there is no connection shown between his statement or refusal to testify and the respondent.

The President.— First he has got to show the fact that he did refuse.

Mr. Stanchfield.— I followed this order to prove it, your Honor.

The President.— The order of proof is correct.

Cross-examination by Mr. Hinman:

Q. At a period in Mr. Sarecky's examination before the Frawley committee, which Mr. Stanchfield has read into this record, was Mr. Sarecky asked this question:

"Q. And did you deposit checks which were received by Governor Sulzer and indorsed to you, in that account?"

The President.— You have been objecting to that and the Court has ruled that these declarations are hearsay on that. If you want it, the other side will have the same privilege.

Mr. Hinman.— This is the same thing precisely that they have asked along the same line.

Q. And did Mr. Sarecky answer — and this was what occurred before any of the questions were asked and answers given which Mr. Stanchfield has read —

The President.— This is in reference to his refusal?

Mr. Hinman.— Yes, sir.

The President.— Very good.

Q. And did Mr. Sarecky reply: "A. Now, gentlemen, I want to make a statement on record before I testify further. If you are delving into the Governor's campaign expenses, I am willing to

tell everything, on condition that I be represented by counsel, because, if the story is to be told, I want both sides told — " A. That was the question and answer.

Q. And then did the chairman of that committee interrupt the witness with this remark: " Mr. Sarecky, if Mr. Richards asks you any question that you feel you won't answer, you have a right to refuse "? A. Yes, sir.

Mr. Stanchfield.— Why don't you read the rest of that pertinent to it, what the witness said:

Mr. Hinman.— All right, if you want it in there.

Q. And then did the witness reply, " I feel that the committee has absolutely no authority at all to conduct the investigation."? A. He did.

Q. And then within a few minutes, and before there were put to him the questions which Mr. Stanchfield has read into the record, and before he made the answers which have been read into the record, was Mr. Sarecky asked this question: " Q. Where else, besides the Mutual Alliance Trust Company, in the city of New York, what trust company or banks did you personally make deposits in for the — of the Governor's campaign checks? " A. Is that going backwards or forwards?

Q. Going forward from where we were, just a page or two in your minutes; it will probably be three or four pages. And did Mr. Sarecky then reply: "A. I refuse to answer that question and all other questions pertaining to the Governor's campaign fund, unless I am permitted to be represented here by counsel, who will bring out the whole story and not one side of it, and he will give me full opportunity to explain any items that may appear doubtful on the face of it? " A. That was the question and the answer.

Mr. Hinman.— Nothing further.

Mr. Stanchfield.— I ask now in reply to read such portions of this testimony as we deem advisable, if the Presiding Judge please.

Mr. Herrick.— That is objected to.

Mr. Stanchfield.— They cannot select certain portions of it that are manifestly hearsay, that may be regarded by them as make-weight by them, and then close my mouth upon the proposition.

The President.— Undoubtedly they cannot. When I called the attention of counsel, I have not this record before me, I thought he was going to read some declarations or testimony of Sarecky as to matters that had transpired at other places.

Mr. Hinman.— No, sir.

The President.— But it turned out I was in error in that respect, so what he has read entirely relates to the refusal and I do not think it opens the door.

Mr. Stanchfield.— Very well, that is all.

Mr. Hinman.— Mr. Stanchfield, if I may be permitted, may it appear on the record that the examination of Mr. Sarecky before the Frawley committee, to which reference has been made, and from which record you have read this morning, took place on July 30, 1913.

Mr. Stanchfield.— I think that is correct.

JOHN C. BIRDSEYE resumed the stand.

Direct examination by Mr. Stanchfield:

Q. Mr. Birdseye, I think you stated yesterday that you occupied an official place in connection with the State Civil Service Commission? A. Yes, sir.

Q. What is your connection with the State Civil Service Commission? A. Secretary.

Q. How long have you been its secretary? A. More than thirteen years.

Q. How long have you been connected with it altogether? A. Nearly thirty years.

Q. Have you with you the — I will ask this just for information — have you with you the rules that were changed in regard to Sarecky? A. I have not.

Mr. Hinman.— That is objected to, if your Honor please, on the ground that it is leading and calls for a conclusion and assumes facts not proved.

Mr. Stanchfield.— I have tried to make it clear that I wanted to find out if the rules were here just for information.

The President.— He must characterize in some way the rules that he wants to see.

Mr. Hinman.— May I be permitted to say that he could characterize rules as those which relate to a person and not to the Commission.

Mr. Stanchfield.— I will adopt your exact phraseology, Senator.

Q. Did you say you have any rules with you? A. No, sir, I have not.

Q. On or about the 21st day of July, 1913, did the State Civil Service Commission receive a communication from the Secretary to the Governor? A. Yes, sir.

Q. Have you the original of that communication before you? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

Mr. Hinman.— That is objected to on the ground that it is incompetent, improper, no foundation laid and hearsay.

Mr. Stanchfield.— I am not proposing to prove a foundation. I can but take one step at a time.

The President.— Now of course he will have to call the secretary if you want him to do that. Do you wish him to do that?

Mr. Hinman.— No, sir.

The President.— Mr. Hinman says you need not produce the secretary.

Mr. Stanchfield.— I presumed they would not raise that question. I read that in evidence:

"STATE OF NEW YORK

"EXECUTIVE CHAMBER,

"Albany, July 21st, 1913

"To the Honorable State Civil Service Commission, Albany, N. Y.:

"GENTLEMEN.— You are hereby officially notified that Louis A. Sarecky, confidential stenographer to the Governor, has filed his resignation as of date July 18th, 1913. You are requested to note this vacancy on your records.

"Very truly yours,

"CHESTER C. PLATT,

"Secretary to the Governor."

Mark these copies.

(Copies were received in evidence and marked Exhibit M-122 of this date.)

Q. Under date of July 23, 1913, did the State Civil Service Commission receive a communication from the State Hospital Commission? A. I think, Mr. Stanchfield, the letter was received the 24th, the letter you refer to. We did not receive a letter on the 23d.

Q. You received it on the 24th? A. Yes, sir.

Q. Have you that communication before you? A. Yes, sir.

Q. It is dated, isn't it, the 23d? A. Dated the 23d; received the 24th.

Mr. Stanchfield.— I offer that in evidence.

"Albany, July 23, 1913

"To the Honorable the State Civil Service Commission, Albany, N. Y.:

"GENTLEMEN.— The State Hospital Commission directs me to request your Commission to suspend the rule requiring examination in the case of Louis A. Sarecky of Brooklyn for

appointment to the position of lay deputy in the bureau of deportation at an annual salary of $4,000. This application is made pursuant to section 15, subdivision 2 of the Civil Service Law.

"Mr. Sarecky is a person of high attainments and possesses qualifications which will make him a useful member of the force. He masters five modern languages and also knows the jargon of the different races and nationalities contributing to our hospital population.

"Very respectfully,
"J. H. B. HANIFY,
"Secretary."

Q. On the 24th of July, 1913, did the State Civil Service Commission make answer to the communication from the State Hospital Commission? A. Yes, sir.

Mr. Hinman.— The date of that, Mr. Stanchfield, please?

Mr. Stanchfield.— July 24th.

Mr. Hinman.— Thank you.

Mr. Stanchfield.— I offer that in evidence.

"July 24, 1913

"J. H. B. Hanify, Esq., Secretary State Hospital Commission, Albany, N. Y.:

"DEAR SIR.— Your communication of July 23d, with reference to suspending the rule requiring examination in the case of Louis A. Sarecky for appointment as lay deputy in the bureau of deportation, received and will be submitted to the Commission at a meeting to be held next week.

"Yours very respectfully,
"JOHN C. BIRDSEYE,
"Secretary."

Q. Under date of July 30th, did the Civil Service Commission receive a further communication from the State Hospital Commission? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

"*July 30, 1913*

"*To the Honorable the State Civil Service Commission, Albany, N. Y.:*

"GENTLEMEN.— By direction of the State Hospital Commission, I hereby respectfully request that the position of lay deputy in the bureau of deportation be classified in the exempt class under the State civil service rules. The claim for exemption of this position is made under subdivision 4, section 13 of the Civil Service Law. Competitive or non-competitive examination is not practicable for filling this position for the following reasons:

"First, That an immediate appointment is necessary because of the extraordinary need of assistants in this bureau.

"Second, That there is no eligible list from which such lay deputy could be appointed at this time.

"Third, That the Commission wishes to appoint Mr. Louis A. Sarecky who is familiar with the work of the bureau and who has become specially equipped as an investigator in some of the difficult fields to which he will be assigned for work in the State Hospital Commission.

"Peculiar and exceptional qualifications of educational character are required for the position and Mr. Sarecky is a linguist who masters five modern languages and also knows the jargon of the different races or nationalities contributing to our hospital population.

"Mr. Sarecky's service will be paid for at the rate of $4,000 per annum.

"Yours respectfully,
"STATE HOSPITAL COMMISSION,
"By J. H. B. HANIFY,
"*Secretary.*"

Q. On the 30th of July, 1913, did the State Civil Service Commission hold a meeting? A. It did, yes, sir.

Q. On July 30th the State Civil Service Commission held a meeting? A. Yes, sir.

Q. At that time was there a resolution passed in accordance with the correspondence that I have just been reading? A. A resolution was passed in accordance with the second letter, the letter of July 30th, which you have just stated.

The President.— That is, putting it in the exempt class?

The Witness.— Yes, sir.

Mr. Stanchfield.— I will read this:

"STATE OF NEW YORK

"STATE CIVIL SERVICE COMMISSION, ALBANY.

"At a meeting of the State Civil Service Commission held July 30, 1913, it was, on motion,

"Resolved, That subject to the approval of the Governor, the classifications of positions in the exempt class in the office of the State Hospital Commission be and hereby is amended by adding thereto the following:

"Lay Deputy, Bureau of Deportation."

"Competitive or noncompetitive examination for said position being found to be not practicable.

"Signed. JOHN C. BIRDSEYE,
"*Secretary.*

"Approved, July 31st, 1913,
"WILLIAM SULZER,
"*Governor.*"

Q. On the 31st day of July, 1913, did the State Civil Service Commission transmit on this subject a communication to Governor Sulzer? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

"*July 31st, 1913*

"*Honorable William Sulzer, Governor, Executive Chamber, Albany, N. Y.:*

"DEAR SIR:

"By direction of the State Civil Service Commission I transmit to you herewith for consideration and approval

copies of resolution classifying in the exempt class the position of lay deputy, bureau of deportation, office of the State Hospital Commission, which was adopted at a meeting held yesterday. This resolution is adopted upon the application of the State Hospital Commission reading as follows:

"'By direction of the State Hospital Commission I hereby respectfully request'"—

Mr. Herrick.— No use reading it again.

Mr. Stanchfield.— Yes there is, because this was sent to Governor Sulzer. I will read the original if you produce it but I suppose you take the same position with reference to this as you have to other communications.

Mr. Herrick— Oh, yes.

Mr. Stanchfield.— It is quite necessary in my judgment that I should read it:

"'By direction of the State Hospital Commission I hereby respectfully request that the position of lay deputy in the bureau of deportation be classified in the exempt class under the State civil service rules. The claim for exemption of this position is made under subdivision 4, section 13 of the Civil Service Law. Competitive or noncompetitive examination is not practicable for filling this position for the following reasons:

"'First, that an immediate appointment is necessary because of the extraordinary need of assistants in this bureau.

"'Second, that there is no eligible list from which such lay deputy could be appointed at this time.

"'Third, that the Commission wishes to appoint Mr. Louis A. Sarecky who is familiar with the work of the bureau and who has become specially equipped as an investigator in some of the difficult fields to which he will be assigned for work in the State Hospital Commission.

"'Peculiar and exceptional qualifications of educational character are required for the position and Mr. Sarecky is a linguist who masters five modern languages and also knows

the jargon of the different races or nationalities contributing to our hospital population.

"'Mr. Sarecky's services will be paid for at the rate of $4,000 per annum.'

"Yours very respectfully,

"JOHN C. BIRDSEYE,

"Secretary."

Q. On or about the 1st of August, 1913, did you send to the State Hospital Commission a communication? A. I did.

Mr. Stanchfield.— I will read that in evidence.

"State Hospital Commission, Albany, N. Y.

"GENTLEMEN.— I have to inform you that the following resolution adopted by the State Civil Service Commission, July 30, 1913, was approved by the Governor on July 31, 1913."

This is simply a copy of the resolution. I will not take the time to read it.

"In due time, kindly send formal notice of the appointments mentioned.

"Yours very truly,

"JOHN C. BIRDSEYE."

Q. On August 12th, did you receive a notification of the appointment from the State Hospital Commission? A. It was received August 13th.

Q. August 13th? A. Yes, sir.

Mr. Stanchfield.— (Reading):

"To the Honorable, the State Civil Service Commission:

"GENTLEMEN.— By direction, I beg to notify you of the following appointments in the office of the Commission's bureau of deportation:

"Louis A. Sarecky, lay deputy, July 18, 1913. Salary, $4,000 per annum.

"A. Bermann, secretary interpreter, August 1, 1913. Salary, $2,000 per annum.

"D. J. Jordan, clerk detailed as bookkeeper, August 5, 1913. Salary, $1,200 per annum.

"Very respectfully,

"J. H. HANIFY,

"Secretary."

Mr. Stanchfield.— You may cross-examine.

Cross-examination by Mr. Hinman:

Q. Mr. Birdseye, what constituted the State Hospital Commission in 1913? How was it constituted? A. Why, my answer is based only on newspaper records. Part of the time it was constituted, it consisted of Commissioners May, Parker, and another part of the time, Commissioners May, Parker and Straus. I don't know officially how it was constituted.

Q. Do you know how it was constituted in July and August of 1913?

Mr. Stanchfield.— What is that, the State Hospital Commission?

Mr. Hinman.— Yes, the State Hospital Commission.

A. On their letter head I understood it was Eugene M. Straus, James V. May, M. D., and Fred. N. Parker.

Q. Do you know what statute it was, and when the statute was passed, which provided for the creation of this Commission, of which Mr. Sarecky became a member? A. I do not.

Q. Wasn't your Commission advised of the creation of that board or body? And did your Commission have to do with the qualifications of members to be appointed to and in that board, on the staff of the board? A. The Commission was undoubtedly advised to the extent of being informed of the appointments which were made on that board, as to names, titles, duties and salaries.

Q. What is your recollection as to when that board first came into existence? A. I should say upwards of ten years ago.

Q. So this position was one that you knew had existed for a considerable period of time prior to July and August, 1913? A. I cannot say with reference to the position. I knew that the board existed, and as to the various titles of the members of the board, I cannot speak with knowledge.

Q. What was the official name or title of this board, in the beginning, when it first came into existence? A. I can't answer; I don't know.

Q. When did this board or bureau, known as the bureau of deportation, first come into existence, so far as you now recall? A. So far as I now recall, the title contained in these letters of lay deputy I think was the first it was brought to my knowledge or attention.

Q. Did you not know that for years there had been a board or bureau exercising these same functions, and that that law had been amended and revised during the year 1912? A. I didn't know it officially. I knew that there was a board of which I believed the title was the board of alienists.

Q. Originally? A. Originally, and what happened to the board by title or amendments to the statute since that original organization, I cannot state with knowledge and authority.

Senator Wagner.— Mr. President, may I ask Mr. Birdseye a question?

The President.— Senator Wagner.

By Senator Wagner:

Q. I notice that there were two letters, Mr. Birdseye, making application for the exemption of lay deportation deputy, one of them dated the 23d, and the other the 30th? A. Yes, sir.

Q. Is that true? A. Yes, sir; there were two letters; they were different letters, though, however, the applications were different.

Q. Well, my recollection is that they made a request for the same thing.

The President.— No; the first requested a suspension of the rules, Senator; the second requested a reclassification so as to put it in the exempt class, is that correct?

The Witness.— Exactly.

Q. And there was no action taken by the Commission upon the first application? A. The first letter of July 23d was presented to the Commission at a meeting held in Poughkeepsie July 29th. At that meeting the letter of July 23d and its request was ordered continued on the calendar. The Commission met in Albany the

following day, July 30th, at which time the letter of July 30th was presented. The letter of the meeting of July 30th shows that the letter of July 23d was ordered filed; another application relating to the same matter, under date of July 30th, being before the Commission. So that is the history of the letter of July 23d.

The President.— Does that answer the question of the senator?

Senator Wagner.— Yes, sir.

Redirect examination by Mr. Stanchfield:

Q. Now, Mr. Birdseye, you stated that the designation of Mr. Sarecky was the first designation of a layman to that board of which you knew since you have been connected with the Civil Service Commission? A. It was the first appointment of a layman that I recall.

Q. And had the places on that deportation board theretofore been filled by physicians? A. So far as my memory serves me at this time, yes.

Q. Now, do you know Mr. J. B. Hanify, whose name is appended to this correspondence, as secretary to the State Hospital Commission? A. Yes, sir.

Q. When was he appointed to that place? A. I can't tell exactly, without referring to the records of the office; it was on or about the 1st of July, if my memory serves me rightly.

Q. Of this year? A. 1913, yes, sir.

Mr. Stanchfield.— That is all.

By Senator Pollock:

Q. I would like to ask Mr. Birdseye, whether as a result of the official action on the part of the State Hospital Commission and the State Civil Service Commission, and the subsequent approval of the Governor, the result was that Louis A. Sarecky received his salary as deportation deputy, beginning with July 18, 1913? A. Yes, sir.

Recross-examination by Mr. Hinman:

Q. Who were the members of the State Civil Service Commission in July, 1913? A. Jacob New, Meyer Wolff, M. D., James A. Lavary.

Q. How many of those members were present at the meeting at Poughkeepsie to which you have referred? A. Three, all of them.

Q. How many of those members were present at the time when this resolution to which you have referred was moved and adopted? A. Two.

Q. Who were those two? A. Commissioners Wolff and Lavary.

Q. By whom was the resolution offered? A. I don't recall.

Q. Have you the official records of the minutes of that meeting and of the resolution that was passed? A. I have in the office the minutes of that meeting, and I have here the actual resolution signed by the secretary of the Civil Service Commission and the Governor.

Q. And is that the resolution — has that communication or that paper been read in evidence? A. It has, yes, sir.

Q. And do you know of your own knowledge that the resolution, as set forth in that communication or letter, is an exact copy of the original resolution as moved and adopted? A. It is, yes, sir; there are three of those resolutions, one in the office of the Secretary of State, one in the office of the Governor, and the third I hold in my hands.

Mr. Hinman.— If the Court please, in this connection I offer in evidence section 19 of the insanity law, as amended by chapter 100 — by section 7 of chapter 121 of the Laws of 1912.

Mr. Stanchfield.— You have already ruled that you would take judicial notice of the statutes of the State.

Mr. Hinman.— Let me call the attention of the Court to it and read it.

The President.— Read it without offering it at all.

Mr. Hinman.— (Reading). "There shall be established by the Commission"— that is, the Commission in Lunacy —"a bureau of deportation for the examination of insane, idiotic, imbecile and epileptic emigrants and alien and nonresident insane, and to attend to the deportation or removal thereof, which shall consist of a medical examiner and such number of medical or lay deputies as may be necessary to be appointed by the Commission."

The President.— Which statute is that, Senator? Is that the original statute, or the amendment of 1912?

Mr. Hinman.— The amendment of 1912, as I have read it.

Mr. Stanchfield.— Is that all, gentlemen?

The President.— Is that all of the witness, gentlemen?

Mr. Hinman.— Yes.

Mr. Stanchfield.— If the Presiding Judge please, I notice the first letter of this correspondence between the Hospital Commission and the Civil Service Commission, I had marked Exhibit M-122. May that stand for the entire correspondence, as one exhibit?

The President.— Yes, if there is no objection. There will probably be no dispute.

Mr. Marshall.— Yes.

Mr. Stanchfield.— That is all, Mr. Birdseye.

(Witness excused.)

Mr. Todd.— Mr. Cumming.

ROBERT C. CUMMING, a witness called in behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. You are the chief of the legislative bill drafting department of the State of New York? A. Yes, sir.

Q. How long have you occupied that office? A. Thirteen years.

Q. Are you acquainted with Governor Sulzer? A. Yes, sir.

Q. Was there an occasion when Governor Sulzer sent for you and gave you some instructions in reference to drafting certain bills affecting the New York Stock Exchange? A. Yes, sir.

Q. When was that? A. Early in February, 1913.

Q. You went to the executive chamber? A. Yes, sir, at his request.

Q. And you had a conversation with the Governor? A. Yes, sir.

Q. Will you please state that conversation? A. The Governor submitted to me certain memoranda, and said that he wished to have bills prepared in accordance with those memoranda. These memoranda related to transactions in securities.

Mr. Marshall.— Have you got those memoranda?

The Witness.— I have not. He also suggested one or two other bills which were not incorporated in memoranda. Accordingly, I prepared the bills, or our department prepared them, and submitted copies to him. Later, perhaps a week later, he requested me to prepare several other bills, among them the bill incorporating the Stock Exchange, and these were prepared in accordance with his suggestion and the copies submitted to him.

Q. Now, in reference to the preparation of the Stock Exchange incorporation bill, what were your instructions, the particular instructions, from the Governor, in reference to that? A. I don't know as there were any particular instructions, except that he desired to have it prepared as speedily as possible, saying that he wished to have it introduced for the consideration of the Legislature.

Q. And how long did you take in the preparation of it? A. I think the bill was — I think the matter was submitted to me on, oh, noon of one day, and we prepared the bill for introduction the following day; possibly the second day.

Q. After you had prepared this proposed bill for incorporating the Stock Exchange, what did you do with it? A. I delivered copies to the Governor personally.

Q. Was there any conversation at that time between you and the Governor? A. I don't think so, except that he sent for members of the Legislature, and in my presence delivered copies to them for introduction.

Q. What members of the Legislature did he send for? A. Senator Stilwell, and Mr. Levy of the Assembly.

Q. What did he do or say in reference to this bill at that time? A. Simply that he desired them — that these were additional bills relating to the Stock Exchange which he desired to have them introduce. I don't think there was very much conversation.

Q. He told them he desired to have them introduce these bills in their respective houses? A. Yes, sir.

Mr. Todd.— In order to make the record complete, and with the permission of the other side, I would like to ask a few leading questions, calling attention to the exact number of the bill, in order to save time.

Mr. Marshall.— You may, to identify them.

Mr. Todd.— To identify the bill.

Mr. Todd.— Q. Did you prepare the bill which was enacted into chapter 475 of the Laws of 1913, entitled "An act to amend the Penal Law in relation to false representations concerning securities?"

Mr. Herrick.— What page are you reading from?

Mr. Todd.— From page 915.

A. We prepared a bill of that title. Some of those bills may have been amended in the Legislature after they left our department.

By Mr. Todd:

Q. What I want to know is, these bills that I refer to now, are they the bills that the Governor requested you to prepare, and which you did prepare, and after having prepared them as you have stated, deliver them to him? A. That is one of them.

Q. Was another one of those bills, chapter 476 of the Laws of 1913, entitled "An act to amend the Penal Law in relation to reporting or publishing fictitious transactions in securities?" A. Yes, sir.

Q. Is another one of those bills enacted into law known as chapter 500 of the Laws of 1913, entitled "An act to amend the Penal Law in relation to transactions by brokers after insolvency?" A. Yes, sir.

Q. And is another one of those bills Senate bill, introductory number 597, entitled "An act to amend the Penal Law, in relation to bucket shops?" A. Yes, sir.

Q. And is another one of those bills what is now chapter 236 of the Laws of 1913, entitled "An act to amend the Penal Law, in relation to trading by brokers against customers' orders?" A. Yes, sir. We prepared such a bill.

Q. And is another one of those bills Senate bill number 641, entitled "An act to amend the Penal Law, in relation to the manipulation of prices of securities, and conspiring movements to deceive the public?" A. Yes, sir.

Q. And is another one of those bills, Senate bill number 831, entitled "An act to amend the Penal Law, in relation to delivery to customers all memoranda of transactions by brokers?" A. Yes, sir.

Q. Is another one of those bills Senate bill number 832, entitled "An act to amend the Penal Law, in relation to discriminations by exchanges or members thereof?" A. Yes, sir.

Q. And was the bill in relation to the incorporation of a Stock Exchange, which was known as Senate bill 883, and was entitled "An act to amend the banking law, in relation to the organization and regulation of stock corporations" one of the bills? A. Yes, sir.

Mr. Marshall.— 833, isn't it.

Mr. Todd.— 833, that should be.

Q. Was another one of those bills Senate bill number 902, entitled "An act to amend the general business law, in relation to the listing of securities for sale on stock exchanges?" A. Yes, sir.

Q. And was another one of those bills Senate bill number 638, "An act to amend the general business law, in relation to interest permitted on advances on collateral security?" A. Yes, sir.

Mr. Todd.— That is all.

By the President:

Q. You prepared such bills, but you cannot say whether they were amended in particulars in the Legislature before they were passed? A. I cannot. I have made no comparisons since they became laws.

Mr. Marshall.— No cross-examination.

Mr. Todd.— That is all.

Mr. Kresel.— Now, Mr. Hinman, I can answer your question in regard to Mr. Brady.

Mr. Hinman.— May it be conceded that the check referred to by the witness Daniel M. Brady, on pages 677 and 673 of the printed record as having been drawn by him and delivered to Judge Conlon, was so delivered to Judge Conlon at about 11 o'clock on election night, November 5, 1912.

Mr. Kresel.— I should prefer, if you do not mind, to read five or six questions with reference to that, then we will have just what he said.

Mr. Marshall.— Let us look at it.

Mr. Hinman.— I have it here.

Mr. Kresel.— I am reading from page 5.

Mr. Hinman.— You mean by this, the questions that were asked by you on behalf of the board of managers of Mr. Brady —

Mr. Kresel.— Yes, sir.

Mr. Hinman (continuing).— When he appeared before the board of managers?

Mr. Kresel.— Right.

Mr. Hinman.— And that date was September 12, 1913?

The President.— Yes. You have that by other witnesses.

Mr. Kresel.— Yes, that is right, September 12th.

Mr. Hinman.— Then it may be conceded that at that time, before the board of managers, Mr. Brady —

The President.— He is going to read this into the evidence.

Mr. Kresel.— Just what he said.

Mr. Hinman.— I understand that Mr. Daniel M. Brady, who has been a witness in this proceeding, was asked the following questions and made the following replies.

Mr. Kresel.— Yes.

Mr. Marshall.— And that they may be read into the record here.

Mr. Hinman.— And that they may be read into the record here.

Mr. Kresel (reading):

"Q. Having destroyed the check, will you now describe the check, and what bank it was drawn on? A. It was drawn on the National City Bank.

"Q. In this city? A. Yes, sir.

"Q. And on the account of Daniel M. Brady? A. My personal account.

"Q. Do you remember what date? A. I think it was dated the day before election.

"Q. The day before election? A. Yes, sir."

Mr. Hinman.— No.

Mr. Kresel.— That is all right (reading):

"Election day was on the 5th of November, then this was the 4th of November? A. It might have been the 2d or 3d.

"Q. It was on the day shown by the date on the check that you handed to Judge Conlon? A. I handed it to him about 11 o'clock election night. About 11 o'clock.

"Q. Are you quite sure of that, Mr. Brady? A. I am very sure."

I think that answers your inquiry.

Mr. Hinman.—Your record is not like ours, but it is not very material.

Mr. Kresel.— That is the official record. I don't know what you have before you.

Mr. Marshall.— That is all right.

The President.— There you have the evidence of the witness, that it was 11 o'clock, and he is very sure of it.

Mr. Kresel.—Yes.

The President.—What more do you want?

Mr. Todd.— We offer in evidence the message of Governor Sulzer to the Legislature, dated April 10, 1913, and I desire to read from it the following.

Mr. Hinman.— If you will give me the date again, please.

Mr. Todd.—April 10, 1913. (Reading):

> "I further recommend reducing the number of names required on a nominating certificate. The authorization of registration on primary day and a proper limitation of the amount that may be expended by any candidate for the purpose of securing a nomination.
>
> "The law should also prescribe the expenses which may be lawfully incurred in connection with the candidacy for nomination, and should insure the publicity of all expenses."

(The message was marked Exhibit M-123.)

Mr. Todd.— I also offer in evidence the special message of Governor Sulzer to the Legislature on June 16, 1913, and I desire to read into the record the following from that message:

> "14. The Penal Law should be amended, limiting to a reasonable sum the amount of money that may be expended by a candidate, or any one on his account, for the purpose of seeking a nomination to public office, any violation of the same to be a felony and make the nomination, if secured, a nullity."

(The message was received in evidence and marked Exhibit M-124.)

Mr. Todd.— May I ask the other side if they are ready to make a concession about that?

Mr. Marshall.— We have not had time to make any examination. We don't know anything about the accuracy of it.

Mr. Kresel.— Call Mr. J. B. Gray.

JOHN BOYD GRAY, a witness called in behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Brackett:

Q. Mr. Gray, your age? A. 33.

Q. Residence? A. New York City.

Q. Your occupation? A. Broker.

Q. Individually or a member of a firm? A. Member of a firm.

Q. What is the name of your firm, Mr. Gray? A. Fuller & Gray.

Q. Where is its office, or are its offices located? A. 71 Broadway, Temple Bar Building, Brooklyn; Yonkers, White Plains, 501 Fifth avenue.

Q. In which office have you given your personal attention? A. No particular office.

Q. Do you mean to say all of them indifferently? A. All of them at times.

Q. How long has the firm been in existence? A. About two years.

Q. Has there been any change since it was formed in the personnel of the partnership? A. No, sir.

Q. Are you a member of the Stock Exchange? A. No, sir.

Q. Was the other member of the firm? A. He is.

Q. Of whom has the firm been composed? A. Arthur L. Fuller and myself.

Q. Where has been your residence? A. Haddon Hall, Riverside drive and 137th street.

Q. Do you know F. L. Colwell? A. I do.

Q. How long have you known him? A. About three years.

Q. What relations have you had with him during that time? A. I don't know what you mean.

The President.— Has he been a customer of yours?

The Witness.— He has been a customer of the firm.

Q. Any other relations, employee or otherwise? A. No, sir.

Q. During that time has he rendered services for the firm? A. No, sir.

Q. In any capacity? A. None whatsoever.

Q. Has the firm paid him any salary or wages during that time? A. Haven't paid him any money.

Q. Whatever? A. Whatever.

Q. Did he have an office anywhere to your knowledge? A. We allowed him the use of a desk at 71 Broadway, for his convenience.

Q. And his name is in the telephone book at the same telephone number as the name of the firm at that place, is it not? A. Yes, sir.

Q. When did you last see him? A. Just previous to his disappearance. I don't know just when that was.

Q. I did not catch your answer? A. I say about the middle of August.

The President.— He said just previous to his disappearance.

Mr. Brackett.— Yes.

Q. Do you know where he is now? A. I do not.

Q. Have you had any communications from or message of any kind in any way since the time you have mentioned, about the middle of August? A. I have not.

Q. Have you sent him any? A. I have not.

Q. Or has the firm or any member of the firm, to your knowledge? A. No, sir.

Q. But he has received his mail at the office of Fuller & Gray, do you know that? A. Yes, sir.

Q. At the 71 Broadway office? A. Yes.

Q. Were there times he was in the other offices of the firm? A. I think so, yes.

Q. Where was his home just prior to the time you saw him last? A. Yonkers.

Q. Will you tell me what street in Yonkers, and the number? A. North Broadway, 790.

Q. Do you know whether it was a house of his own or a rented house? A. I do.

Q. Which? A. A rented house.

Q. And who was the owner? A. I am the owner.

Q. How long had he been your tenant? A. Six or eight months.

Q. Is he related to you in any way or any member of your firm? A. No, sir.

Q. Do you know whether he is married or single? A. A widower, I believe, or divorced; I don't know which.

Q. In this house, does he keep house, or does he board? A. I believe he kept house.

Q. And do you know what family he has? A. Yes, I think I do. He has a daughter and a son.

Q. And did the son live there with him? A. I believe so.

Q. And did the daughter, do you know? A. I believe so.

Q. Where was it that you last saw him? A. 71 Broadway.

Q. What time of the day? A. I think about noon time.

Q. Did you have any conversation with him that day? A. I did.

Q. What do you know about his going away?

Mr. Hinman.— That is objected to in so far as it calls for or the witness attempts to give any conversation with Colwell, on the ground that it is incompetent, improper and hearsay.

Mr. Brackett.— I suppose it is competent for us to show the reason we don't produce him.

The President.— You showed you cannot get him. That is a very good reason.

Mr. Brackett.— This is the same line.

The President.— That is the best reason.

Mr. Brackett.— I want to show it again.

The President.— Now, you can show that you have had a process server, and he was unable to serve him.

Mr. Brackett.— I want to show by this man he has not been in his office since that time.

The President.— That you may show.

Mr. Brackett.— And the circumstances under which he went away.

The President.— Now, Senator, you can confine that to simply asking him what his proposed journey was when he spoke, or something of that kind. I think you have a right to do that, but don't get any extraneous matter as to the reasons why he left.

Mr. Brackett.— I will adopt the words of the Presiding Judge.

Q. What was his proposed journey?

By the President:

Q. When he last saw you, did he tell you he was going away? A. Yes, sir, he did.

Q. Where did he tell you he was going? A. To Albany.

Q. Was that all he told you about him? A. No, sir, it is not.

Q. Don't give the reason, but he told you he was going to go nowhere else from Albany? A. No, he did not tell me he was going anywhere else. He said he was going to Albany.

Q. Did he say whether he was coming back or not, or about his staying away? A. No, he did not say he was coming back, or how long he was going to stay away.

By Mr. Brackett:

Q. Did he add anything or say anything with respect to his preparations or his baggage that gave you any information as to whether he was going farther than Albany or not?

Mr. Hinman.— Objected to on the same ground, that it is hearsay, improper and no foundation laid.

The President.— That qualifies an act, and I think it is competent. Did he give any directions about his mail or baggage, or anything of that character?

The Witness.— He did not give me any directions.

The President.— Did you hear him give any directions?

The Witness.— I heard him call up his house and tell them to bring his luggage to the Yonkers station.

Q. At what train? A. I cannot remember what train.

Q. At a north or southbound train? A. He was going to Albany. I suppose a northbound train.

Q. I understood that the language was a northbound train. That was my reason for pressing it. You will pardon me a minute. The last time I saw Mr. Colwell was the last day that the Frawley investigating committee was in session. That will place the date. I cannot remember the exact date.

Q. Do you know whether he had been subpoenaed for that day before that committee? A. Well, he had told me he was under subpoena.

Q. Did he tell you where he was going, except to Albany? A. I don't know how to answer that.

Q. Did he say anything further in that conversation indicating the precise place he was going, or whether he was going or whether he was going to stay?

Mr. Hinman.— I object to it, except so far as the answer is yes or no.

The Witness.—Yes.

The President.— I don't understand the objection, Senator.

Mr. Hinman.— The witness has already stated he was going to Albany.

The President.— He can test his recollection and see if the witness cannot recollect any further statement on the subject.

Q. Where did he say he was going in Albany? A. To see William Sulzer.

Q. Do you recall whether that was in the early part or latter part of the day? A. I believe it was noontime, around the middle of the day.

Q. When you say you believe, you mean that is your best recollection? A. That is my best recollection.

Q. Was there a time in the month of October, 1912, when you had a conversation with Mr. Colwell with respect to an account in your office, or opening an account in your office? A. Yes, there was.

Q. About when? A. The books will show it. I don't know the date.

Q. About the 21st of October.

The President.— The date as fixed by your partner of the opening of the Colwell account, is what?

Mr. Kresel.— October 23d.

Mr. Brackett.— 1912.

The President.— Is it about the time that account was opened?

The Witness.—About two or three days previous to that.

Q. Where was the conversation? A. In the Yonkers office.

Q. State it. A. He asked me to get a quotation on Big Four, and said he expected to give me an order on it.

Q. What did you do? A. I quoted it and gave him the bid and asked price. He gave me an order, that is my recollection, but whether it was in two or three days before we secured the first 100, I cannot say.

Q. To buy it at a specific sum or at the market price? A. To buy at a specified price.

Q. Was there any deposit made? A. I think when the order was executed there was a deposit made, or just previous to the order being executed.

Q. Was there any at the time the order was given? A. No, I don't think so.

Q. The exhibit in evidence, No. 72, which is a transcript of an account with Fuller & Gray, shows that there was 100 CCC purchased at 60 on the 21st of October, charged at $6,012.50, and that on the 22d of October the first credit appears in the account of cash $1,500. Does that refresh your recollection as to the time of the transaction, or of the original conversation you had, and as to whether or not there was any deposit at the time the purchase was made? A. Evidently, from that statement, the deposit was made the day the stock was purchased.

Q. Although not credited until the 22d? A. There is a reason for that.

Q. I understand that. I am presently coming to it. Where was the deposit made? A. Our check books will have to show. I cannot answer that question. I presume in Yonkers.

The President.— He may think that is the bank, Senator. Explain to him what you mean.

Q. You cannot tell in which office the deposit was made without the books? A. Oh, yes, I think I — from memory I would say that it was made in the Yonkers office.

Q. Was it handed to you personally? A. I believe it was.

Q. Was there more than one on the same day? A. I cannot answer that. I don't know.

Q. I show you two check books or stubs that are in evidence, and ask if that will refresh your recollection? A. Two separate deposits made.

Q. Does that refresh your recollection any more certainly as to where the deposit was made? A. Of course I know where the deposits were made.

Q. In the Yonkers office? A. In the Yonkers office.

Q. You know that, because the deposit is marked made in your bank in Yonkers? A. One was made in Yonkers and the other was made in Brooklyn.

Q. There were two credits or two payments made on this one of the 22d of October, were there not? A. One of $1,500 and one of $1,000, yes, sir.

Q. And they were both to you? A. It is my belief that they were made to me.

Q. And both in the Yonkers office? A. Yes, I think.

Q. Which deposit is in the Brooklyn bank, the $1,000 or the $1,500? A. The $1,000 deposit in the Brooklyn, and the $1,500 one in the Yonkers bank.

Q. Does the deposit of $1,000 in the Brooklyn lead you to believe that the deposit of that amount was made in the Brooklyn office? A. It does not lead me to believe that, no.

Q. It may have been remitted over to Brooklyn? A. That is it.

Q. Did you loan any money to Colwell on the day he went away? A. No, sir.

Q. Give him any? A. No, sir.

Q. Give him anything for his expenses when he went away? A. No, sir.

Q. Do you know how his expenses were made? A. I do not.

Q. Was he under a salary to your firm? A. He was not.

Q. And do you mean to say that he did not receive any money from your firm for services, either as wages, commissions, or in any other way? A. He did not.

Q. There was no $50 a week paid to him, or any other sum? A. He acted as private secretary to me at one time, and I paid him personally, but that was not paid by the firm. He has never been employed by the firm. It was simply a personal matter.

Q. When was he your private secretary? A. For about six or eight months.

Q. During what period? A. Well, from October back about eight months.

Q. And ending what time in October? A. About the time this transaction took place.

Q. About the 21st of October? A. Somewheres along in there.

Q. And not extending as far as November? A. I don't believe so.

Q. You swear positively? A. To the best of my recollection that is true.

The President.— October of what year?

Q. 1912. Of course you mean October, 1912? A. Yes, sir.

Q. What compensation did he receive as your private secretary? A. $50 a week.

Q. And what were his duties? A. Look after my personal affairs.

Q. Do you mean by that to keep your own private bank account and look after your real estate, and things of that kind? A. Yes, sir.

Q. Anything else? A. Anything that was required of him of a personal nature.

Q. Did he report any orders at any time for the purchase of stocks, or the sale to your firm? A. No, sir.

Q. Without it being a part of his stated duty as your private secretary, is it not a fact that there were times when he did give or report orders, either of purchase or sale, to the firm, that were executed by the firm? A. I don't understand exactly what you mean.

Q. The question is substantially this, to repeat it? Without it being his stated duty, as your secretary, or any part of his

stated duty, did he not at times report to the firm purchases or sales of stocks that it was desired the firm should execute? A. You mean did he bring any business to us?

Q. Yes. A. He brought in what he could, yes.

Q. He had formerly been a broker himself? A. Yes, formerly.

Q. About how old a man is Colwell? A. I think he is in the fifties.

Q. Having made the purchase of 100 shares of stock, when was it delivered to the firm?

The President.— You have got it there on that exhibit. Show it to him.

Q. Delivered to Fuller & Gray? A. Well, usually it takes a couple of days after we purchase.

Q. Does the 21st of October, entered on that exhibit, indicate the day the firm received it, or the day the contract of purchase was made on the Stock Exchange? A. It indicates the day the purchase was made.

Q. On the floor? A. On the floor.

Q. Is there anything there that will help you, so that you can tell when the stock was actually received, and delivery made to the firm? A. Not to the firm.

Q. Well, to anybody representing the firm? A. No, it does not show on this statement. It would only show the delivery to the customer.

Q. What date was the stock purchased on the 21st of October, delivered to the customer? A. October 31st.

Q. Shown how on the exhibit? A. By 200 Big Four delivered. That is all. It balances the account.

Q. On the credit side of the account? A. On the credit side of the account.

Q. How was the 100 shares purchased on the 22d of October, paid, other than the $1,500 and the $1,000 that you have already mentioned? A. Well, on the 28th of October, there was a deposit of $500, and on the 31st of October, the day that the 200 shares were delivered, the balance was paid, $8,825.

Q. What was the first payment of $1,500, made by check or in currency? A. Cash.

The President.— What does that mean, currency?

The Witness.— Currency.

Q. Bills? A. Bills.

Q. The second, or $1,000 credit? A. Same thing.

Q. The third, $500? A. Same thing.

Q. And the fourth, $8,800? A. Cash, currency.

Q. Did you make the delivery? A. I make the delivery?

Q. Yes? A. I don't remember that I did. I think Mr. Coe made the delivery.

Q. Were these amounts severally handed to you? A. I think the three first amounts were paid to me, and the large amount, $8,800, was paid to Mr. Coe when he delivered the stock.

Q. Was there anything said at the time that these three cash items were passed to you, as to where it came from? A. By whom?

Q. Either you or Mr. — the person with whom you had the conversation? A. Was there any conversation in regard to it?

Q. Yes? A. I don't remember any particular conversation.

Q. Did you make any inquiries to where — as to why this was paid in cash or where it came from? A. No, sir.

Q. Is it a customary transaction for cash to be used in such matters? A. I would not call it customary, no, sir.

Q. Well, checks are usually used almost universally? A. Usually.

Q. It did not excite your attention, so that you made any comment on the subject, as to why cash was thus tendered to you and given to you, or made any inquiries on the subject? A. No.

Q. By whom were those amounts given to you? A. Mr. Colwell.

Q. Your private secretary? A. Yes, sir.

Q. Who was living in your house? A. (Interrupting) He was not at that time.

Q. What? A. He was not at that time.

Q. You say down to what time? A. About that time.

Q. Well, by which I gather that you mean it may have been a few days before or a few days after? A. Yes.

Q. That his employment ceased? A. Yes, sir.

Q. Which? A. A few days before, I think.

Q. Well, this man who had been your private secretary and who was your tenant, he was the man? A. He was the man.

Q. When he was accustomed to bring in orders to you, as you say occasionally he did, was he in the habit of stating for whom the orders were? A. He was not.

Q. In whose name were purchases made or carried on your books where he brought in an order for the firm? A. In No. 500 account.

Q. How long had that account been in existence? A. This was the opening of it, October —

Q. (Interrupting) I am referring to other times. You say that he occasionally, while your private secretary, brought in what business he could? A. He did.

Q. Now, when he brought in an order did he state to you for what or for whom the order was being executed?

Mr. Hinman.— We object to the form of the question on the ground that, as I recall it — I may be in error — but it assumes facts which the witness has not testified to, I think. The testimony of the witness was that this man did bring in orders, but I don't think it was limited or that he said that it was during the time he was secretary. I may be wrong.

The President.— He said that he brought them in on occasions. I do not think he qualified it.

By the President:

Q. Well now, on those occasions, Witness, that the — what was this man's name?

Mr. Kresel.— Colwell.

Q. (Continuing.) Colwell brought you in any orders, did he give you any information as to who his principal was, for whose account it was? A. He did not.

By Mr. Brackett:

Q. I do not now refer to this account 500; but at other times when he brought in orders did he give you such information? A. I don't know as he brought in any other orders except what is included in the 500 account.

Q. I understood you to say a few moments ago that he did

hunt up business and bring in some orders? A. What I referred to was this account.

Q. And none other? A. No, sir.

Q. Did he never give any other orders to the firm, to your knowledge? A. He on several occasions attempted to get orders executed, but I do not believe that they ever were executed.

Q. Why? A. Well, owing to our inability to either buy or sell at the prices named.

Q. Did the question of having any margin ever enter into the equation of whether the orders were executed or not? A. Well, we would not have — I would not have executed an order for him without the necessary margin or the stock certificate, or some form of security.

Q. That is your universal custom? A. Yes, sir.

Q. Well, having executed the order, and Colwell having paid you the three payments, there came a time when delivery was to be made of the stock, did there not? A. There did.

Q. What do you recall with respect to that transaction? A. Why, I was telephoned to by Mr. Colwell from New York to deliver the securities, and the balance would be paid, and I notified Mr. Coe to make the delivery. That is my recollection.

Q. Who was Mr. Coe? A. He is in our employ in the Yonkers office.

By the President:

Q. The same one who has been a witness here, as you understand it? A. Yes, sir.

By Mr. Brackett:

Q. Where were you when the telephone came to you? A. In the Yonkers office.

Q. Where was Colwell, or did he say he was? A. I have no means of knowing where.

Q. What did he say to you on the subject of delivery? A. He said that he was prepared to take up the stock.

Q. Well, what else? A. Pay for it, take the certificates.

Q. Go on. A. There is not anything else to say.

Q. Did he say he would be around somewhere to have delivery? A. Oh, of course, naturally.

Q. Go on.

The President.— Why don't you call his attention.

By the President:

Q. Did he say anything, where he would be ready to take it up? What office? You had two or three.

Mr. Brackett.— That is the precise question.

The President.— Put it so he understands it then.

The Witness.— He notified me where to make delivery of the certificate.

By Mr. Brackett:

Q. Where, what did he say? A. My recollection is he told me to deliver them in the Nassau Bank in Brooklyn. I think that is where the deliveries were made.

Q. State anything else that he said at that conversation? A. Well, he said he had the money to take up the certificates and to deliver them.

Q. Was he in the Brooklyn office at the time? A. Mr. Colwell?

Q. Yes. A. No, sir.

Q. Where was he? A. I don't know.

Q. Did he say why he wanted delivery at the Nassau Bank in Brooklyn? A. Why, it was for the reason —

By the President:

Q. No. Did he say anything? A. I don't know whether he said anything at that particular time.

By Mr. Brackett:

Q. Where was the certificate that you had thus purchased on his order at the time that he thus telephoned you? A. In the Brooklyn office.

Q. How had it gone to the Brooklyn office? A. It had been sent there.

Q. From where? A. From Harris & Fuller.

By the President:

Q. Did you receive deliveries of stock purchased by you in your New York office, do you? A. At that time we had our bookkeepers made our headquarters in Brooklyn, and the stock was delivered to the Brooklyn office.

By Mr. Brackett:

Q. When he thus telephoned you that he was ready for delivery and wanted it delivered at the Nassau bank, did you say that the stock was in the Brooklyn office? A. I must have, yes, sir.

Q. Did you suggest to him to go to the Brooklyn office and get the stock there and make payment? A. I did not make any suggestions.

Q. Let us see if you are sure about that. Where was Mr. Coe at the time? A. In Yonkers.

Q. There were clerks and cashiers and floor paraphernalia in the Brooklyn office, which was your main office at that time? A. Yes, sir.

Q. What did you do with respect to delivery? A. Sent Mr. Coe down and he got the certificates and delivered them to Colwell.

Q. Where did he get the certificates, did you understand? A. At the Brooklyn office.

Q. How far from Yonkers office? A matter of forty miles, isn't it? A. No.

Q. Twenty or thirty? A. Twenty miles I guess.

Q. Why did you send Mr. Coe down to the Brooklyn office to make delivery? A. For the same reason, that the account was opened under a number.

Q. No.

The President.— No. Give the reasons.

A. The account was opened under No. 500, and the delivery was made by Mr. Coe, all at the request of Mr. Colwell.

Q. Made when? When did he request it? A. When the account was opened.

Q. Did he say, when the account was opened, that he wanted delivery made to himself? A. There was nothing said about delivery at the time the account was opened.

Q. Get in your mind the point of my inquiry. A telephone comes to you in the Yonkers office that this man is ready to accept delivery and make payment and wants the stock? A. Yes, sir.

Q. And the stock was then in the Brooklyn office. Why did you send Mr. Coe from the Yonkers office down to Brooklyn to make delivery at the Nassau Bank? A. For the same reason that the account was opened under a number.

By the President:

Q. You don't understand. The point is this: Why didn't you send word to the Brooklyn office for them to make delivery, instead of your sending Coe down from Yonkers?

By Mr. Brackett:

Q. Or telephone back to Colwell to go to the Brooklyn office?

By the President:

Q. To go to the Brooklyn office and get it? A. Mr. Colwell had requested, at the time the account was opened, and it was understood that he did not care to have anybody connected with the firm except myself know whom the business was done for.

By Mr. Brackett:

Q. And that is the reason you sent Coe down to make delivery? A. Exactly.

Q. What else did he say at the time the purchase was made? A. I don't know of anything else.

Q. You say he says who the business was done for. Whom did he say the business was done for? A. For himself.

Q. At the time of the order originally? A. No, sir. There was no question — the question did not enter into it at the time the purchase was made. There was a deposit made and that is all we required.

Q. You have said he said at the time of the purchase that he did not want anybody but yourself to know for whom the purchase was made? A. Meaning himself.

Q. I didn't ask you what he meant. I ask that that be stricken out.

The President.— Go along. Go to the exact point you want to bring out.

Q. Is that the reason you sent Coe to Brooklyn to deliver? A. Yes, sir; that is the reason.

Q. Well then, Mr. Coe knew about it besides yourself, didn't he? A. Mr. Coe knew about it, yes, sir, at that time.

Q. Will you tell any reason under heaven why you preferred that Mr. Coe, in addition to you, should know about the purchase by Colwell, rather than someone in the Brooklyn office? A. Yes. I believe he was not very much of a talker.

Q. And are all the other employees in your office talkers? A. No, sir. They were younger —

By the President:

Q. When you say he was not much of a talker, you mean to say he would keep the transaction to himself? A. That is it exactly.

By Mr. Brackett:

Q. When was Mr. Coe first told that Mr. Colwell was the man who gave the order for the purchase of the account of 500? A. I didn't hear you.

Q. When did Mr. Coe first know that Colwell was the man who opened the account 500? A. You will have to ask Mr. Coe. I don't know.

Q. Did he at the time the account was opened, to your knowledge? A. You will have to ask Mr. Coe. I cannot answer.

Q. You don't know? A. I don't know.

Q. Did Mr. Coe know about the fact that Colwell was the proprietor of the account 500 before the day that you sent him from Yonkers to Brooklyn to make delivery? A. I cannot answer.

Q. You don't know? A. No, sir.

The President.— Does it appear in the evidence that the account bore the name of William Sulzer as well as the figure 500?

Mr. Brackett.— No; that is the other one. This is Fuller & Gray. That does not bear the name William Sulzer. The other was Harris & Fuller, that you have in mind.

Q. How did the account come to be designated 500? A. At the request of Mr. Colwell.

By the President:

Q. Did he pick out the number and say "Call it 500?" Or did he say — A. No, I —

Q. That is the point. A. I think I gave it the number.

By Mr. Brackett:

Q. You selected the number? A. Yes, sir.

Q. But how did you come to take the number instead of a name? A. At the request of Mr. Colwell.

Q. What did he say? A. He did not want his transactions with the firm known, and we gave the account a number for that reason.

Q. Did he tell you any reason why he did not want his transactions with the firm known? A. The reason is very plain, because of his former connection with Harris & Fuller.

Q. How long prior to this time had he been connected with Harris & Fuller? A. I cannot answer that; I don't know.

Q. Some years, had it not? A. Several years.

Q. Five years or more? A. I don't know how long.

Q. Had he been connected with the firm of Harris & Fuller from the time that you knew him? A. He had had desk room there.

Q. He had been connected with the firm? A. No.

Q. That was three years back? A. Yes.

Q. What was said when the relation between you and him — he as your private secretary ceased? A. Well, I did not — thought there was not enough for him to do and what he did was not satisfactory.

Q. That was the reason that the relation stopped? You stopped it? A. Yes.

Q. Have you now stated every reason why delivery to be made in Brooklyn was not made in the office of the firm, rather than at the Nassau Bank? A. Every reason that I know.

Q. And every reason why Mr. Coe went down to make the delivery instead of some employee or member of the firm in Brooklyn making it? A. Yes, sir.

Q. Do you know how far the Nassau Bank is from the office of the firm, or was in October? The office of the firm in Temple Bar? A. Yes, sir.

Q. About how far? A. A block. Around the corner.

Q. Did you make any contribution to the Sulzer campaign? A. I did.

Q. How much? A. I can't remember whether it was $50 or $100.

Q. Given to whom? A. William Sulzer.

Q. When? A. Why, I mailed him a check.

Q. Where, to where did you mail it? A. I will have to correct that. I remember differently. I gave the check to Mr. Colwell.

Q. The check was made payable how? A. William Sulzer.

Q. Where was Colwell at the time? A. In the Yonkers office.

Q. And about when was it? A. Just previous to election.

Q. Between the 25th of October and the 5th of November? A. I believe so.

Q. Why did you give it to Mr. Colwell? A. He asked for a contribution.

Q. What did he say when he asked you?

Mr. Hinman.— I object to it on the ground it is incompetent, irrelevant, immaterial and hearsay.

The President.— Objection sustained.

Mr. Brackett.— Wouldn't it be competent if the defendant adopted it by accepting the $50?

The President.— But he might repudiate it and keep the money.

Q. Did your check come back indorsed by William Sulzer?

Mr. Hinman.— That is objected to, as to how it was indorsed, unless the check can be produced.

Q. Did your check come back as a canceled voucher?

By the President:

Q. Was your check paid through the bank and did it come back to you? A. Why, yes, it was.

By Mr. Brackett:

Q. Delivery having been made of those 100 shares of stock, delivery of $8,800 that was deposited where? Those proceeds, they were deposited in the Nassau Bank? A. (No response.)

Q. Was this check of $60 gotten after the 500 account had been opened? A. I don't know. I cannot remember.

Q. Sutton was an employe of your office, wasn't he? A. Yes, sir.

Q. In which office did he enter service? A. Brooklyn.

Q. Did you have any conversation with him as to the christening of this account? A. None whatsoever.

Q. You swear to that positively? A. Positively.

Q. The account having been opened, and this transaction having occurred by which the 100 shares were purchased and paid for in installments, and finally delivered on the payment of the final installment, came there a time when there was another transaction? A. Yes, sir.

Q. When? A. Bought 100 Big Four on November 4th.

Q. Upon whose order was that purchased? A. Mr. Colwell's.

Q. Was there at that time anything in the account in the way of deposit or margins? A. No, sir.

Q. Where was the conversation when Colwell gave you the order? A. He might have —

Q. I want your recollection? A. I don't know.

Q. Well, the Yonkers office? A. He might have telephoned it. I cannot remember.

Q. What was said about it? A. Quoted the stock and gave me an order at a price.

Q. What did he say? A. I don't remember the detail of the conversation.

Q. As near as you can remember? A. Simply asked for a quotation on Big Four and, when I furnished him with a quotation, he gave me an order to buy 100 at a certain price.

Q. Was there anything on deposit? A. There was nothing.

Q. Was there any other conversation at that time? A. Yes, sir; there was.

By the President:

Q. Did he say whether you were to carry the stock for him, or he would take it up, or anything of that kind? A. I wanted to know about the money, and he said it would be paid for when ready to deliver.

The President.— Very well.

By Mr. Brackett:

Q. What else was said? A. When?

Q. At that time?

The President.— Call his attention to what you want.

By Mr. Brackett:

Q. Did he tell you at that time it was for William Sulzer? A. He said the account was for William Sulzer.

Q. Now, was that purchase made on the 4th of November, for the same account 500 that the previous purchase had been?

The President.— That is a matter of conclusion, of course.

Mr. Brackett.— Well, it entered right into the same account.

The President.— You can argue from that that it was.

Mr. Hinman.— If I may inquire, if the stenographer will read the second last question and answer — my attention was diverted for the moment.

(The stenographer thereupon read the question referred to as follows: "Q. Now, was that purchase made on the 4th of November for the same account 500 that the previous purchase had been?").

The President.— That was excluded.

Q. Was there any other item in this account during the time that it remained on your book? A. There is a bond sale.

Q. What, of what? A. St. Louis Southwestern 4's.

Q. When? A. November 25th.

Q. Where was the — was the bond delivered to you to sell? A. The bond was delivered to me.

Q. By whom? A. Mr. Colwell.

Q. Did he say for whom it was? A. He said it was for a woman client.

Q. Did he give you the name? A. I think he mentioned the name at the time, yes, sir.

Q. Whom did he say? A. I can't remember.

Q. Was it sold? A. It was sold.

Q. Why was it put in the account 500? A. Mr. Colwell's business is put in that account.

Q. How was it paid for? After it had been sold, how did the firm pay for it? A. The check was drawn to my order and I gave Mr. Colwell my check.

Q. Why that way? A. The same reason, that the account was opened under this number, and as I have explained before.

The President.— That doesn't tell anything. Do you mean because he wanted it kept secret?

The Witness.— He did not want to be identified with the account.

The President.— That is it.

Q. How would there be any identification by giving the check of Fuller & Gray that would not be an identification by giving the check of John Boyd Gray?

The President.— Well, doesn't that appear, it would be on his check. That would appear, but not on the firm's books or checks.

Mr. Brackett.— That is true, but as identifying Colwell, as dealing with this firm it would be just as potential, it seems to me.

The President.— The books of the firm would not be.

Mr. Brackett.— They carefully did put it right into the books of the firm, the bond account.

The President.— No, there was no name on that at all.

Mr. Hinman.— There was no name on it, your Honor is correct; there was no name; it was known as 500.

Mr. Brackett.— You may ask him.

Cross-examination by Mr. Hinman:

Q. Mr. Gray, where have you been during the past two weeks? A. Attending to my business.

Q. Whereabouts? A. At different offices.

Q. Well, by different offices, do you mean these offices that you have named here this morning? A. Yes, sir.

Q. Have you been at your places of business, or one or more of them, each business day during the last two weeks? A. I have.

Q. Where do you live? A. Haddon Hall, Riverside Drive and 137th street.

Q. Have you been at your home during the past two weeks, during portions of each day? A. No, sir, not at that address.

Q. Not at that address? A. My home has been closed for the summer.

Q. Oh, yes. Now, you say your main office at the present time is in the city of New York? A. Yes.

Q. In 1912, October, where was your office? A. Brooklyn.

Q. You have stated, in answer to Senator Brackett's question, that one of the members of your firm, Mr. Fuller, is a member of the Stock Exchange. Was he a member in 1912? A. Yes, sir.

Q. In October, 1912, where did you do your clearing? A. Our stocks were cleared by Harris & Fuller.

Q. And is Arthur Fuller a brother of the Melville Fuller who is a member of the firm of Harris & Fuller? A. Yes, sir.

Q. What do you mean by clearing your stocks through Harris & Fuller? A. Well, they cleared them for us and carried them for us.

Q. So that, if you made a purchase of stock for a customer, you would obtain the shares or certificates of stock through the firm of Harris & Fuller? A. Yes, sir.

Q. And that was true, was it not, in October, 1912? A. Yes, sir.

Q. During October, 1912, do you know what the relations between Mr. Colwell and your partner, Arthur Fuller, were? A. What their —

Q. (Interrupting) October, 1912? A. They were not friendly. Do you mean that?

Q. Yes, sir. A. Yes, sir.

Q. Do you mean by that they were not friendly, the relations between them, the two men, at that time? A. No, sir, they were not.

Q. So far as buying and selling stocks was concerned, Mr. Colwell, and the firm of Fuller & Gray, was the first transaction this one of October 21, 1912, which appears on this transcript? A. That is my belief.

Q. At the time when that account was opened, did Mr. Colwell say anything to you as to anyone being interested in that account other than himself? A. No, sir.

Q. So that account, I take it, was opened — by your firm for Mr. Colwell, but at his request, under a number? A. Yes, sir.

Q. Mr. Colwell had formerly been, had he not, a member of the firm of Harris & Fuller of New York? A. Yes, sir.

Q. Did he state, or did you know it to be a fact, that he did not desire the clerks in your office, Brooklyn office, or any other office — A. Yes.

Q. (Continuing) General clerks, to know that he was having dealings with your firm? A. I did.

Q. And was that the reason why this account was opened so that his name should not appear thereon? A. It was.

Q. How many bank accounts was your firm keeping in October, 1912? How many bank accounts did it have? A. Four.

Q. What is your recollection as to whether or not the $2,500 paid in on this account, October 22, 1912, to your firm, was in one payment, that is, the item of $1,500 and the item of $1,000? A. I didn't catch the question.

Q. On October 22, $2,500 was paid by Mr. Colwell to your firm, was it not? A. Yes, sir.

Q. Was that payment paid in one sum when made, and did you then divide it so as to send a part of the currency to your Brooklyn office, and deposit a part of it in your Yonkers bank? A. I don't know.

Q. You have no recollection? A. No, sir.

Q. But so far as you now know that payment may have been made, that sum of $2,500 may have been made in one payment, and your — and you may have divided it so as to send part of each to two banks? A. It might have been in one payment, but I think it is unlikely.

Q. Now, on the 31st of October, 1912, the delivery of these 200 shares of Big Four stock was made, was it not? A. Yes, sir.

Q. What is your recollection as to where you were when you received word that Mr. Colwell was ready to have delivery of that stock made? A. Yonkers.

Q. That is, you were in your Yonkers office? A. I believe I have testified to that before.

Q. And your recollection is that the communication came to you from Mr. Colwell over the telephone? A. Yes, sir.

Q. What is your recollection as to whether it was your suggestion, or Mr. Colwell's suggestion that Mr. Coe had anything to do with that delivery? A. That was my — Mr. Colwell made no suggestion as to who should deliver the stock.

Q. What is your recollection now as to whether or not it was your suggestion or Mr. Colwell's as to the place where the stock should be delivered? A. I think I suggested the place.

Q. What was the name of the bank in which Fuller & Gray carried its account in Brooklyn at that time? A. A trust company and a bank; the Home Trust Company and the Nassau National Bank.

The President.— We will suspend now. Crier, adjourn court.

Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 p. m.

AFTERNOON SESSION

Pursuant to adjournment, Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

JOHN BOYD GRAY resumed the stand.

Cross-examination continued by Mr. Hinman:

Q. Where did you instruct Mr. Coe to go and make this delivery of the 200 shares of Big Four stock in October, 1912? A. Yonkers office.

Q. If you will get the question; where did you instruct Mr. Coe to make delivery of this 200 shares of stock? A. Nassau National Bank.

Q. Where was Mr. Coe when you gave him those directions? A. Yonkers office.

Q. There with you? A. I believe so.

Q. Have you any present recollection about the delivery of the 100 shares on November 6th of Big Four stock, and what instructions or directions, if any, you gave in reference to that? A. I believe I gave the same instructions.

Q. And to whom did you give those instructions? A. Mr. Coe.

Q. Have you any personal knowledge regarding that 100 shares of stock or whom it was for, aside from Mr. Colwell's statement to you which you have testified concerning? A. I have not.

Q. Where were you when this bond to which you have referred and for which you gave your check, was delivered to you? A. I don't remember.

Q. Have you any means now of fixing the name of the woman or giving us the name of the woman who was reported to you as the owner of this bond? A. I cannot fix the name.

Q. You have stated that you gave a check for $50 to Mr. Colwell in connection with Mr. Sulzer. Have you that check with you? A. I have not.

Q. Have you any recollection now, present recollection, as to that check having been returned to you as a canceled voucher, and the indorsement thereon? A. I don't know anything about the indorsements.

Q. Was this bond that is referred to in this Exhibit 72, which is a transcript of account No. 500, a registered bond? A. It was not.

Q. Where did you obtain the 100 shares that were delivered to Mr. Colwell on November 6, 1912, or where were they obtained? A. The same place as the other 200.

Q. Have you any recollection now as to whose name those shares of stock stood in when you received them from Harris & Fuller and when they were delivered? A. I have not.

Q. Have you any data that will give the number of the certificate of shares of that stock? A. Our receipt book will show that.

Q. Have you the receipt book with you? A. I believe so.

Q. Will you look at the receipt book and give us the number of that certificate?

Mr. Kresel.— May I call the counsel's attention to the fact that the receipts given by Mr. Coe —

Mr. Hinman.— I know that.

Mr. Kresel.— That the receipts given by Mr. Coe are already in evidence, and they give the numbers.

Mr. Hinman.— One of the receipts gave it but I thought the other one did not.

Mr. Kresel.— No, they both give it.

Mr. Hinman.— I was in error about that.

The President.— Just give the number or show the senator the receipt and he will see it.

Mr. Hinman.— I knew that the number was on one but I thought on the other it was not.

(Mr. Kresel passes paper to Mr. Hinman.)

Mr. Hinman.— Pardon me just a moment. (Examines paper.)

Q. Let me inquire whether you have any personal knowledge as to whether that 100 shares of stock delivered on the 6th day of November, 1912, whether it was in one or more certificates, that

is of your own personal knowledge? A. My own personal — I can't answer.

Mr. Hinman.— Nothing further.

By Mr. Brackett:

Q. Where were you when Colwell suggested that you give $50 to the campaign fund?

Mr. Hinman.— That is objected to, the form of the question is objected to, on the ground that it is not competent and calls for a conclusion.

The President.— Sustained.

Q. Give a subscription of $50 then? A. Yonkers office.

Q. Did he give any reason why you should give such a subscription? A. I think he did.

Q. What was it?

Mr. Hinman.— Objected to on the ground it is incompetent and hearsay.

The President.— Objection overruled.

The Witness.— It might mean some business.

Q. Is that all you remember of it? A. That is all.

Q. Did he say that inasmuch as the candidate was doing some business there you ought to give a subscription?

Mr. Herrick.— Wait a minute. That is objected to on the ground that it is leading, suggesting the answer.

The President.— That is —

Mr. Brackett.— I exhausted him first.

The President.— Did he say anything on that subject?

The Witness.— No.

Q. Had you ever given a subscription for a political purpose before? A. Yes.

Q. To a State candidate? A. I believe so.

Q. How many times? A. Oh, on several occasions.

Q. To persons who had been doing business with you? A. No, not necessarily.

Q. Irrespective of that? A. Yes.

Mr. Brackett.— That is all.

By Senator Griffin:

Q. Mr. Gray, in return for the desk room in your office did Colwell render you or your firm any services? A. He did not.

Q. When Colwell went away did he remove his desk or its contents from your office? A. He did not.

Q. Are they there still? A. The desk is the property of the firm and the papers in it I forwarded to his residence.

Q. Where? A. 790 North Broadway, Yonkers.

Q. When did you do that? A. Recently.

Q. How recently? A. Oh, within two or three weeks.

Q. That is as near as you can come to it? A. Yes.

Q. Did you get any acknowledgment from Colwell that he had received those papers and documents? A. I do not know what became of the receipt. It was sent by parcel —

The President.— No. He asks, Did you get any acknowledgment?

The Witness.— I did not get any.

Q. Do you know whether he received them or not? A. I do not.

Q. When did Colwell's employment by you as secretary begin and end, as near as you can recollect? A. Previous to the 1st of October, 1912. About six or eight months he was in my employ.

Q. Then he was not employed by you as private secretary after October 1, 1912? A. That is my recollection.

Q. And at the time that he opened this account 500 with your firm he was not employed by you as secretary? A. That is my recollection.

Q. But he still had desk room in your office? A. Yes, he did.

Q. Is Mr. Colwell a man of means? A. I did not understand so, no.

Q. When he opened this account 500, did he disclose to you the name of his principal? A. He did not.

Q. You did not believe at that time that he was opening that account for his own benefit?

Mr. Hinman.— Objected to on the ground that it is incompetent.

The President.— Why, you can ask him —

Mr. Hinman.— With pardon to the Court.

The President.— Because he may follow that up by asking what he said. Answer the question. Did you believe that?

The Witness.— Did I believe?

The President.— That he was opening it himself.

The Witness.— No, I did not.

The President.— Now you can ask him whether he told anything.

Q. Did he inform you? A. He did not.

Q. Did he inform you at any time for whom the account was opened? A. I testified to that effect.

The President.— What did you testify? Repeat it, witness.

The Witness.— I testified at the time the third 100 shares of Big Four, the order was given, that there was no money deposited and that he told me that the account was for William Sulzer.

By Senator Griffin:

Q. You are what is called the office man of your firm, are you not? A. I am.

Q. Did you have charge of all the three offices of your firm? A. Charge of the entire business outside the floor.

Q. That is, you superintended the opening of books and the conduct of the books? A. In a general way.

Q. Did your firm have many accounts designated by numbers, instead of by the name of investors? A. Several.

Q. How many? A. Several; I could not say how many.

Q. Can't you state approximately how many? A. Oh, there might have been half a dozen.

Q. Did you keep any index or cross reference book by which the identity of those numbered accounts could be disclosed? A. We did not.

Q. How would you know the identity of the investors? A. I knew them personally and in some cases my cashier knew them.

By Senator Sage:

Q. Mr. Gray, I understand you to testify that when these first 200 shares were delivered, you do not know in whose name the certificates were made? A. I did not know what?

Q. In whose names the certificates were made? A. No, I did not.

Q. You have not any recollection of whether they were made in anybody's name, or whether they were merely in the name of your firm? A. That is a detail of the business that would not make any difference whose name it was in, unless it was a stock paying a dividend.

Q. Well, isn't it a fact that when you sell stocks and they are entirely paid for and delivered, that it was the custom that those stocks would stand in the name of the party to whom they are delivered? A. If it is a nondividend paying stock, and a customer asked to have it transferred to his name, we do it; otherwise usually we will deliver a street certificate just as we receive it.

Q. That is your custom when the amount is entirely paid and the stock is delivered? A. Yes, sir, that would be the general custom; sometimes we might transfer it.

By Senator Healy:

Q. First, Mr. Gray, is one of the members of your concern a member of the New York Stock Exchange? A. Yes, sir.

Q. Are you familiar with the rules of the New York Stock Exchange? A. Fairly so.

Q. Can you advise the Court as to any rule that exists regarding the division of commissions or the hiring of people to sell bonds or stocks? A. We are not allowed to divide commissions.

Q. I did not get that? A. We are not allowed to divide commissions.

Q. Then, if Mr. Colwell was in your employ and you knowingly divided commissions with him, or he divided with you, on any transactions, or that you paid him money in any form for soliciting business for you, would that be against your interests as a member of the Stock Exchange? A. He was not — I have testified he was not in our employ, and didn't receive any salary.

Q. That is not my question. I am asking you if that is not the fact? A. That he was not in our employ?

Q. That is not my question.

The President.— Just repeat that. Did you ask him whether he did divide commissions, or agree to divide, is that the question?

Senator Healy.— My question is this: Had the concern represented by Mr. Gray employed Mr. Colwell or divided commissions of any character with Mr. Colwell, if that would not be against the best interests of his concern?

The President.—Yes.

The Witness.— It certainly would be against the best interests of the concern.

By Senator Brown:

Q. Have you avoided service of process for the purpose of avoiding an appearance here? A. I have not.

Q. Have you been requested to not appear here if you could avoid it? A. I have not.

Q. Have you had any communication from Governor Sulzer, or any other person, about not appearing? A. I have not.

By Senator Pollock:

Q. When did you first learn that your appearance in this Court was desired? A. Oh, I heard of it indirectly several days ago.

Q. Through whom? A. Why, through several sources, I guess.

Q. Did you receive any communication from the managers of impeachment, or their counsel? A. I did not.

Q. From what sources did you receive this information? A. Why, I couldn't say definitely; from several sources.

Q. Well, mention one. A. Why, I had a telephone from employees of our different offices, that they wanted me.

Q. When you say "they," whom do you mean? A. The impeachment managers, or whoever is in charge of this trial.

Q. When did you receive this information? A. Several days ago.

Q. Last week? A. It must — yes, last week.

Q. And upon receiving that information, what did you do? A. Attended to my regular business.

Q. Did you receive any information from anyone else than an employee of Fuller & Gray? A. Yes.

Q. Who was it? A. It is my belief — let's see — Judge Bell.

Q. When did you receive the communication from him? A. Yesterday.

Q. At what time? A. I think it was about eleven o'clock.

Q. In the morning? A. Yes.

Q. Who else? A. I can't remember anybody else.

Mr. Kresel.— I call Colonel Barthman.

HENRY C. BARTHMAN, a witness called on behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Barthman, are you colonel of the 47th Regiment of Infantry? A. Yes, sir.

Q. Of the Militia of the State of New York? A. Yes, sir.

Q. And other than that what is your business? A. Jeweler.

Q. On the 10th of October, 1912, did you know Governor Sulzer, who was then a candidate for Governor? A. Yes, sir.

Q. Did you on that day write him a letter? A. My business did, my concern did.

Q. Your firm did? A. Of which I am a partner.

Q. Are you a member of the firm? A. Yes, sir.

Q. And what is the name of the firm? A. William Barthman.

Q. And who are the other members of the firm? A. My father, brother and myself.

Mr. Kresel.— I suppose, gentlemen, you haven't got the original?

Mr. Herrick.— No.

Q. Is that a copy of the letter which was written to candidate Sulzer (counsel passes paper to witness)? A. (After examining) Yes, sir.

Mr. Kresel.— May I read it?

The President.—Yes, if there is no objection.

Mr. Kresel.—(Reading):

"October 10, 1912

"Hon. William Sulzer, 115 Broadway, City

"My Dear Congressman.— My sons join me in sending you this small contribution towards the expenses of your personal campaign, at the same time extending to you our earnest wishes that you will be the next Governor of our State, as this office is certainly in need of a man of your caliber.

"Yours very truly."

Q. Was a check inclosed with that letter? A. Yes, sir.

Q. Now, I show you this check, and ask you whether that is the check that went with it (counsel passes paper to witness). A. (After examining) Yes, sir.

Mr. Kresel.— Mark that letter.

(The letter offered in evidence was received and marked Exhibit M-125.)

Mr. Kresel.— I offer the check in evidence.

(The check offered was received and marked Exhibit M-126.)

Mr. Herrick.— Just let me see that, will you, Mr. Kresel, a moment?

(Counsel passes Exhibit 126 to Mr. Herrick.)

Mr. Kresel.— The check has the imprint "William Barthman, 174 Broadway." It is No. 14327.

"*New York, October 10, 1912*

"THE LIBERTY NATIONAL BANK.

"Pay to the order of William Sulzer, fifty dollars.

"(Signed) WILLIAM BARTHMAN."

Indorsed: William Sulzer, L. A. Sarecky, and deposited in the Mutual Alliance Trust Company.

Q. Did you receive a copy of that —

Mr. Herrick.—(Interrupting) One moment. Will you concede that that is in the statement filed?

The President.—What is that?

Mr. Herrick.— I asked if it would be conceded that that is in the statement filed, included in the statement.

Mr. Kresel.— It is news to me if it was. I haven't seen it.

Mr. Herrick.— It is in the statement.

Mr. Kresel.— If it is, of course it will be conceded.

Mr. Kresel.— I find it in the statement under date of October 10th.

Q. Did you receive an acknowledgment of that contribution? A. Yes, sir.

Q. I show you this letter. Is that the acknowledgment?

Mr. Herrick.— Wait. This is entirely harmless, but how is it material? This is not something that he did not account for. This is something that he did.

Mr. Kresel.— But I want to get the letter in evidence because that is important.

The President.— If that is the only materiality there may be some statement in the letter.

Mr. Stanchfield.— The letter that was transmitted to the Governor states that this was a contribution to his personal campaign.

Q. Is that the letter? A. Yes, sir.

Mr. Kresel.— I offer it in evidence.

(Letter offered in evidence is received and marked Exhibit M-127.)

Mr. Kresel.— This letter is written on the stationery of the Committee on Foreign Affairs and reads as follows:

"*New York, October 14, 1913*

"*Col. William Barthman, 174 Broadway, New York City:*

"My Dear Colonel.— Many thanks for your kind letter of congratulation. I certainly appreciate all that you say and all that you have done. You are a good friend of mine and can help me very much during the campaign. You know just what to do and how to do it and a word to the wise is sufficient. With best wishes, believe me,

"Sincerely your friend,

"William Sulzer."

Mr. Herrick.— No cross-examination.

Mr. Stanchfield.— The managers rest, if the Presiding Judge please.

Managers rest.

The President.— Counsel for the defense.

Mr. Herrick.— May it please the Court: We were informed last night by one of the counsel for the managers that they would probably conclude their case today, occupying they thought about an hour. That took us somewhat by surprise as we supposed it would last until tomorrow.

There are some motions that we desire to make in this case. There is a motion to be prepared, consultations to be had, where

the respondent is entitled to the benefit of all his counsel. Mr. Marshall will not be here tomorrow. He has gone now to observe a religious holiday that is very sacred to him. A witness who will be one of the earlier witnesses in the case is also of the same faith and he observes two days.

My associate, upon whom will devolve the labor of opening this case, is very nearly an exhausted man. We do not want to delay these proceedings unnecessarily. We are just as anxious to get through as any member of this Court can possibly be, but we think in justice to the respondent, and in justice to some of the counsel at least, that we ought to be granted a liberal adjournment. If you take Friday, you would have but a portion of the day then. There are some questions that I understand some of the members of this Court desire to investigate before they decide upon them, and it seems to me that the interests of all parties require that we should have a recess until at least Monday. We cannot go on tomorrow with all our counsel present. If we attempt to do it I am afraid another one will absolutely break down.

The President.— Gentlemen, the Presiding Judge is not disposed to dispose of this motion because it involves the question of convenience not only to the counsel but to the Court, which he prefers the other members of the Court should settle for themselves. He hopes that someone will move —

Senator Brown.— I move that the Court take a recess so that the members of the Court may have an opportunity to confer with one another. It is suggested I move we go into executive session and I make that motion.

Mr. Herrick.— There is one thing more, may I be permitted to say?

The President.— Yes.

Mr. Herrick.— I realize this is a very tedious performance to all the members of the Court, but to those who have been practising lawyers, they must recognize the fact that while it is tedious to them it is very laborious and exhausting to counsel in the case and we are entitled, I think, to some consideration.

The President.— The motion is that of Senator Brown, that the Court be cleared for consultation.

Motion put and carried.

The Court having been cleared for consultation, it was decided to adjourn until 2 o'clock tomorrow.

The public session was thereupon resumed.

The President.— The Court has decided to adjourn until tomorrow at 2 o'clock. It thinks that at that time all the preliminary motions should be made and disposed of.

Mr. Herrick.— Can your Honor at this time give us any intimation as to whether we will be compelled to go on tomorrow after the preliminary motions that you speak of are disposed of? It is a matter of the gravest importance to us. This has placed us in an exceedingly embarrassing position for the defense.

The President.—We will deal with that when the occasion arises tomorrow.

Mr. Herrick.— I did not know but what I might get some intimation as to what we might expect.

The President.— If there is nothing further to be done, crier, adjourn until tomorrow at 2 o'clock.

Whereupon at 3.27 p. m. the Court adjourned to meet again on Thursday, October 2, 1913, at 2 p. m.

THURSDAY, OCTOBER 2, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

The President.— Mr. Kresel.

Mr. Kresel.— May it please the Court: May I occupy a minute or two to make a statement to the Court with reference to the blotter entry in the Harris & Fuller books? On behalf of the board of managers we desire to make the following statement with reference to an entry under date of December 30, 1912, appearing in the blotter of Messrs. Harris & Fuller in connection with the account of the respondent, William Sulzer.

Since Mr. Fuller testified, counsel for the managers and experts employed by them have had submitted to them various books and papers of the firm of Harris & Fuller. A careful examination has been made of the same and of the entry in question and of corresponding entries referring to the same item and made in other books of Harris & Fuller.

From such examination the managers are convinced that the entry in the blotter was made in the regular course of business of the firm of Harris & Fuller on the 30th day of December, 1912, notwithstanding the difference in handwriting appearing in said entry and the position of the entry at the bottom of the page.

The erasures appearing on the page in the blotter containing said entry have been satisfactorily explained as erasures of totals written in lead pencil in the regular course of bookkeeping before the entry in the question was made on such page.

The board of managers are glad to make this explanation publicly in order to remove any misconception that may have been created concerning the correctness of the entry by the request of

counsel made to the Court, that the blotter in question be submitted for examination by experts.

Mr. Fox.— May it please your Honor and may it please the Court: We beg to submit some motions, first, to strike out certain testimony. The first testimony to which I address the attention of the Court, appears on page 949, very near the bottom of the page. Counsel for the managers was reading from the testimony given by Mr. Sarecky before the Frawley committee. We objected to some of it, and then certain suggestions were made so we abated our objections, and now, in view of the way the testimony is left, I move to strike out, first, specifically, the question and answer:

> "Q. Did you have any talk with Governor Sulzer about that? A. I asked him for the place."

While, of course, may it please your Honor, that is only equivalent to the stenographer saying that "I heard Mr. Sarecky say that he asked the Governor for the place," and is, of course, hearsay.

Mr. Stanchfield.— When he —

The President.— We better dispose of these as we go along.

Mr. Fox.— I think so.

The President— Otherwise, all of us may forget.

Mr. Fox.— Yes.

Now, in that connection, not only is that hearsay, but the managers have left the case in regard to the allegations touching Mr. Sarecky unsupported by any evidence that connects the Governor with him at all. I mean any of the allegations in any article of impeachment.

Perhaps before I put the motion, as this matter may involve other rulings, it would be well for me to read to the Court for the moment what the — I think these articles begin at page 46; and the first one which touches Sarecky appears on page 50 of the printed record.

Article 3. And that is that the respondent in the months of

July and August, 1913, fraudulently induced one Louis A. Sarecky, omitting the other names for the present, to withhold true testimony from said committee, which testimony it was the duty of the said several persons to give. That is article 3.

Article 4, page 51, the fourteenth line from the top and the next, is an allegation that the respondent practiced deceit and fraud and used threats and menaces with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, repeating their names, and including Louis A. Sarecky, with the intent to prevent said persons named and all other persons severally, they or many of them having in their possession certain books and other things, which might or would be evidence in the proceedings before said committee, and to prevent such persons named severally from producing or disclosing the same. That is a summary.

The only evidence that is produced here in regard to Mr. Sarecky is his own declaration before the Frawley committee. Certainly it does not need argument to show that because a stenographer or anyone else heard Mr. Sarecky say that he, Sarecky, had asked for an appointment, is hearsay. The only evidence in the case that touches the respondent at all is the fact that the State Hospital Commission, as it lawfully might, and acting, as we must presume in the absence of evidence, I take it, from proper motives, made an application to another commission or board of the State to take a certain office out of the one class in regard to civil service and put it in another. The application first was to suspend, as I understand it, the rules. I am speaking from recollection, to save time, in the case of L. A. Sarecky. The action finally taken was not a personal matter at all, but related to the office. That is all the evidence that I recall. When I say all the evidence, I mean to include all the evidence that was taken on the subject that in any way connects the respondent with any act on the part of this commission or Louis A. Sarecky. We are not trying a civil cause. Every authority which has been cited to your Honors has held the principle that the rules which apply in criminal actions apply here, but you cannot convict this respondent or proceed to the question of voting upon his guilt or innocence upon mere surmise or suspicion or guess.

We are entitled not only in all fairness, I submit, but under the rules of law, to have hearsay evidence excluded. Nay, particularly is that so, it seems to me, in a court more than one-third of whose members I am told are laymen from the standpoint of the law.

Now I call your attention to another bit of evidence on page 982.

The President.— Is that connected with this?

Mr. Fox.— Well, it is connected with it.

The President.— I would rather dispose of each separately.

Mr. Fox.— Well, perhaps we had better. Without taking up any further time I submit that on well-settled rules of evidence and procedure we are entitled to have that evidence stricken out, indeed, all the evidence of Sarecky, because of the failure of the managers to proceed to the point which the law requires them to reach on that subject.

The President.— Now, Mr. Stanchfield, the only point I wish to hear you on is the admissibility of that question. I do not think it is right that the Court should pass on the probative force of any evidence that is competent. That is part of the final submission of the case. But how is that competent? That is the only point I wish to hear.

Mr. Stanchfield.— Just a moment, if the Presiding Judge please.

The objection primarily of the board of managers is to the effect that the motion to strike out that testimony comes too late; that counsel for the respondent have been guilty of laches in calling the attention of the Court to that question.

In the second place, when we were introducing the evidence of Mr. Sarecky, Judge Herrick was in charge of the case in behalf of respondent's counsel, and this record upon page 949, so far as the questions and answers of Mr. Sarecky are concerned, was introduced without any objection whatever. The whole of the

latter half of page 949 and the upper half of page 950. Now, on page 951 Judge Werner of this Court asked this question:

"May I ask a question, in the interest of saving time, perhaps? I would like to ask if Mr. Sarecky is to be produced as a witness? This question may very properly arise when he is on the stand.

"Mr. Hinman.— If I may be permitted to answer the question, he is under subpoena by the board of managers and has been for several days.

"Mr. Stanchfield.—You must not take it from that that the managers intend to call him and make him their witness."

What the board of managers were desirous of proving with reference to Mr. Sarecky is contained on the face of pages 949 and 950, and when Judge Werner made that inquiry of counsel for the board of managers we at that moment had upon the record just the testimony that we desired with reference to Mr. Sarecky.

I submit it is late, after the board of managers have rested, and Mr. Sarecky, so far as I know, may have departed the jurisdiction of the Court, for them upon their side of this issue to raise the question that an answer upon the record is hearsay.

There is another proposition. It is not the only testimony in the case, as Mr. Fox states, that connects the respondent with Mr. Sarecky.

The President.— I told you I was not going to pass on that question. No testimony will be stricken out on that ground unless I am overruled by the body of the Court. The effect of any competent evidence, its sufficiency under the articles charged, must be left to the determination of the Court.

Mr. Stanchfield.— I call your specific attention to the testimony on the top of page 949:

"Q. Was this question"— that is addressed to me —"was this question put to Mr. Sarecky: 'Where do you live?' A. It was."

"The President.—Any objection to this introductory matter?

"Mr. Herrick.— No."

I submit, on the face of this record, that we ought not to be subjected to the annoyance, inconvenience and trouble at this day of hunting up testimony to corroborate that statement.

Mr. Fox.—What was that? I beg your pardon?

Mr. Stanchfield.— I say we ought not to be subjected at this late day, to looking up testimony to supply that evidence.

Mr. Fox.— May it please your Honor, your Honor will remember when we objected from time to time, there were repeated promises to connect, and on page 949 Judge Herrick objected to this testimony, not upon the ground that it was typewritten, but as incompetent and immaterial, and said, "I thought it was incompetent, and I said it was incompetent and immaterial, and there ought to be some foundation laid and some connection," and so on.

So, your Honor knows we have been endeavoring to submit to your rulings without taking any time.

Mr. Stanchfield.— The difficulty is that counsel, Judge Herrick, representing the respondent, at the time was in charge of this examination, and he made the further observation:

"The Court having overruled our objection, he need not spend any time, but can read right along."

Mr. Brackett.— That was 949.

The President.— This is hearsay and, of course, both counsel have been very fair. They have waived on both sides a great many technicalities that they might have insisted upon, and therefore, while of course this motion is addressed entirely to the discretion of the Court, I think the discretion ought to be — as the evidence itself is hearsay, it ought to be excluded; but that depends on one thing: If Sarecky comes here so that he can give the managers an opportunity to ask him questions on cross-examination —

Mr. Herrick.— They can have every opportunity.

Mr. Stanchfield— It does not rest upon us, after counsel of the experience of counsel on the other side, have allowed this evidence

to go in without criticism, that we are obliged to place Mr. Sarecky upon the stand and then they raise the question that we vouch for his truthfulness.

Mr. Fox.— No.

The President.— If you produce him as a witness on the stand, then it will go out; otherwise, not.

Mr. Herrick.— There was no proposition on our part that they should produce him.

Mr. Fox.— We understand. It goes out upon the proposition that he is produced.

The President.— If he is produced as a witness.

Mr. Fox.— Otherwise, your Honor is going to allow it to stand.

The President.— Yes.

Mr. Fox.— I understand.

Mr. Brackett.— The exact ruling should be placed on the record.

The President.— The ruling will be that, if they put Mr. Sarecky on the stand, as their witness, so as to allow you people to cross-examine him, not obliging you to make him your witness, it shall go out. Otherwise, it shall stand.

Mr. Stanchfield.— That is entirely satisfactory.

Mr. Fox.— Now I make the same motion, may it please the Court, in regard to testimony given by the witness Gray on page 982 of the record, which is of the same kind. The witness Gray was on the stand, and your Honor will remember that we had been objecting to certain matters upon the ground that they seemed to us hearsay, and as it related to the acts of the witness your Honor said, so far as it qualified his acts, that you were inclined

to think that it might go in, but here is a question which it seems to us falls under the present ruling. On page 982, just above the words "Mr. Hinman":

"Q. Did he say anything further in that conversation indicating the precise place he was going, or whether he was going or whether he was going to stay," and then there was an objection, and the witness answered "yes."

"The President.— I do not understand the objection, Senator.

"Mr. Hinman.— The witness has already stated he was going to Albany.

"The President.— He can test his recollection and see if the witness cannot recollect any further statement on the subject.

"Q. Where did he say he was going in Albany? A. To see William Sulzer."

Now it does seem to me, without any argument, the cases are precisely similar. This is perhaps more objectionable and I put the same motion for the same reason.

The President.— I do not think that falls within the ruling here. This was really the only materiality of this evidence — that is to say, the only materiality of this evidence at all was to show that they could not produce him. That is the only thing.

Mr. Fox.— Exactly.

The President.— And now they show the last he was seen in New York he said that he was going away to see the respondent.

Mr. Fox.— Is that not pretty severe hearsay, your Honor?

The President.— In one sense, but what does he say? It proves nothing; it only tends to prove that they cannot get him.

Mr. Fox.—It proves nothing perhaps to your Honor's trained legal mind, but what it might prove to others it is beyond my capacity to foretell, and I think that inasmuch as the usual way

of proving that you cannot subpoena a witness is to give some evidence that you tried, of which the managers' case both in regard to Sarecky and Colwell, as I remember, is absolutely barren, that we ought not to have this evidence which is purely hearsay.

The President.— I think I will let it stand. It proves nothing except on that.

Mr. Fox.— Now, in regard to the other matters, I am in one way embarrassed, and in another way I am relieved of embarrassment by the Court's statement, if I may be permitted to say so, before I have had an opportunity to make any argument on the subject, to which I am very willing to submit, that no motions can properly be determined, at any rate in regard to the probative force of the testimony, until some later time. Would it be considered to your Honor proper that we should at any rate submit motions directed to the adequacy of the proof to sustain the allegations in the third, fourth, fifth and eighth articles?

The President.—Yes.

Mr. Fox.— Otherwise, we might seem to the Court to accede, and of course we do not, that there is any evidence sufficient to warrant an adverse verdict under this article.

The President.— Yes; the Court does not wish to appear to rule on your motions in advance, but the judgment of the Court on another question practically disposes of some of the objections of the general character of which you have spoken. That is to say, that what is proved here in this case, and if it is proved, is that there is no ground to impeach this respondent; that has got to go to the final determination of the Court, and I think that statement clearly controls the disposition of the present motion.

Mr. Fox.— Without intending to argue, or even to appear to argue, because I have no wish to do that, at least unnecessarily, that the reason why it seemed to us that perhaps there was substantial difference and which led us at any rate to desire to make the motions which I had in mind — the only question that is reserved is a grave constitutional question. We all appreciate that. I may be permitted, although it is somewhat superfluous

but perhaps not unbecoming to do so, to say that the disposition which was made of the case was one which was in accord with our own personal wishes. This is a matter which cannot be decided and need not be decided, until the end of the case.

In an ordinary criminal indictment, on the smallest, most unimportant charge, when the prosecution rests, the question arises whether, assuming the indictment to be good, there is evidence from which the jury may legitimately find a verdict, and it seems to us that being so, that perhaps your Honor would think that in the interest of shortening the case for the defense, inasmuch as we make no criticism of the form of these articles, but think that they are not only not proved but actually disproved by the evidence put in, that we should know, in order not to be compelled to put in evidence against something which does not exist; it puts considerable responsibility upon us, and we are not inclined to try to avoid that, but it seemed to me that, if sometime before the time when we go on, whenever that may be, we should have an itimation from the Court that, for instance in the case of Mr. Fuller, whom it is alleged in the articles that the respondent induced not to testify; Mr. Fuller is the only witness produced; his credibility of course must be assumed, and he disposed of the charge. Now, ought we to be compelled to put in some evidence further upon that subject? That was the kind of argument that I wish to address to you, but I do not want to press it; of course, you understand that. I only want you to understand what our position is.

The President.— That I explained to the other members of the Court when we were requested to dispose of the motion to dismiss these articles on the ground they did not constitute impeachable offenses.

I stated that the condition of an impeachment trial was peculiar. Of course, in an ordinary criminal trial you have a jury and the judge, or court, if it is composed of more than one. The jury disposes of the fact, and the judge disposes of the law, but here, in an impeachment trial, the facts and the law are almost inextricably blended, unless of course in an extravagant case that is only possible to imagine, that the thing was absurd either one way or the other, either the charge or the objections,

and, therefore, it seems to me we have got to adopt here just the same course we did before, and since rendering that, I see I am fortified in the position I then assumed by the remarks of a learned and great judge on the trial of Judge Barnard. The question was sought to be raised there, on motion, whether on certain articles he could be compelled to answer questions, whether he could be impeached for offenses committed in a previous term. Judge Church said that question should be left to the trial.

He said at that time it may be raised by objection to the evidence, but he appears to have changed his opinion and allowed the evidence to come in, and the whole cause was finally submitted; and therefore it is that unless some gentlemen wish to take a vote of the Court, I shall hold that motions involving the probative force of competent evidence must be left to the final submission of the case.

Mr. Fox.— I have nothing, of course, to say except to suggest that within the limitations suggested by the Court, either that the charge in regard to the evidence was absurd, or that there was no evidence —

The President.— Or the objections to it are absurd.

Mr. Fox.— I see. I think I can show the Court, not that I wish to argue about the probative force of testimony, but at least I shall ask the opportunity, of course not pressing it now, to explain to the Court that there was absolutely no evidence in regard to the matter to which I addressed the attention and some other matters. Of course that is different, but I take it from what your Honor says, you prefer we shall not do that. Can we put upon the record that counsel to the respondent desires to make motions to establish the conclusion that neither one of articles numbered 3, 4, 5, 7 and 8 is supported by any testimony, or testimony worthy of consideration in Court, and that on intimation of the Court those motions are reserved and may be made later with the same force and effect as if made now?

The President.— Yes.

Mr. Fox.— That states your Honor's position entirely?

The President.— Correct.

Mr. Fox.— Then I am relieved for the present.

Mr. Herrick.— It is, of course, unnecessary for me to state that we are surprised at the ruling, not intending to criticise it. We had supposed that the discussion of our motion to dismiss these several articles mentioned by Mr. Fox would take some considerable time this afternoon. I say we are surprised. We are not in condition to go on, and I renew my motion to ask for a postponement of this case until Monday. I told you yesterday that one of my associates had nearly broken down. He is still worse now. It is impossible for us to proceed. By adjourning to Monday you lose only four hours tomorrow, and I believe that we can profitably employ it in such a way as to shorten the trial of this case, and more than make up the time that we ask you to grant us. It would be useless to go on tomorrow with one or two witnesses. The most important one we want to lead off with we cannot procure today. He is away, and I most earnestly press and ask in justice to the respondent, in justice to counsel in this case, that we be granted a short delay.

The President.— Judge Herrick, I speak now not only for myself, but for all my associates in the Court, and what was said in what may be called the private conference of the members, there is no disposition to be unduly insistent on the defense proceeding; but it is the wish of the Court, and they think it should be done, to get all these preliminary matters out of the way, so we can get right to the orderly trial of the cause. Does this dispose of all matters, motions to be made?

Mr. Herrick.— I know of none other, sir. We expect of course, if Mr. Hinman has not recovered by that time, some other counsel will have to open the case, or we will have to waive it.

The President.— Was Mr. Hinman to open it?

Mr. Herrick.— Mr. Hinman was to open the case. He cannot do it now.

The President.— I am inclined to think, under those circumstances —

Mr. Herrick.— You have seen him here, and have seen his condition, the condition he was in on the last day or so.

The President.— I am inclined to think, under these circumstances, there is merit in the application. Judge Collin, what have you to say?

Judge Collin.— Mr. Presiding Judge, I move that the motion made by respondent's counsel be granted, and that an adjournment be taken until Monday next, at 2 o'clock p. m.

Mr. Herrick.— We will endeavor to proceed just as rapidly as possible.

The President.— I have no doubt of that.

All those in favor, please say aye; opposed, no.

The application will be granted. Have you got witnesses in attendance?

Mr. Herrick.— None in attendance. There are some under subpoena.

Mr. Stanchfield.— We have.

The President.— Crier, give notices to the witnesses of the adjournment until Monday, at 2 o'clock, without further notice.

The Crier.— All witnesses are excused until next Monday afternoon, at 2 o'clock.

The President.— Adjourn court until Monday.

Whereupon, at 2.40 o'clock p. m., the Court adjourned to meet again on Monday, October 6, 1913, at 2 o'clock p. m.

MONDAY, OCTOBER 6, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Stanchfield.— If the Presiding Judge please: Before counsel for the respondent enter upon the presentation of their case, we desire in behalf of the board of managers, to ask permission to reopen the case for the taking of some further testimony, and the basis for that request is predicated upon the fact that the availability and information in regard to that testimony has reached us since the Court took its adjournment upon Thursday last, and its presentation is owing in no way to any delay upon the part of the board of managers. This testimony, if the Presiding Judge please, is of great moment and consequence to the board of managers, otherwise this application would not be made, and it will be, I might say, very brief.

Mr. Herrick.— May we ask the names of the witnesses?

Mr. Stanchfield.— Yes.

Mr. Herrick.— Who are they?

Mr. Stanchfield.— Mr. Allan A. Ryan.

Mr. Herrick.— And Mr. Meany?

Mr. Stanchfield.— Mr. I. V. McGlone.

Mr. Herrick.— And Mr. Meany?

Mr. Stanchfield.— Yes, and Mr. James.

Mr. Herrick.— Mr. Meany was under subpoena last week in attendance here, wasn't he?

Mr. Stanchfield.— I don't know.

Mr. Herrick.— You say he was not under subpoena by the board of managers?

Mr. Stanchfield.— I say I do not know. I will ascertain the fact. I had nothing to do with it.

Mr. Herrick.— Mr. Ryan?

Mr. Stanchfield.— Not to my knowledge.

Mr. Herrick.— Our information is that Mr. Meany has been under subpoena for some considerable length of time, and in town with Mr. Ryan, whether under subpoena or not I do not know, but here in town, and that both of those gentlemen have been interviewed as to their testimony.

The President.— I think it should be admitted. If you want further time, of course —

Mr. Herrick.— One moment, please. You will hear us before you decide, I trust?

The President.— Yes.

Mr. Herrick.— In addition to that, these are matters that are not set forth in the articles of impeachment.

The President.— That I cannot tell until the question is put to the witness.

Mr. Herrick.— I will venture to say that my learned friend will not state that they are matters that are set out in the articles of impeachment.

Mr. Stanchfield.— Judge Herrick, I am perfectly willing to debate that question when it arises. I do not care to discuss an academic question.

Mr. Herrick.— It is not an academic question.

Mr. Stanchfield.— As I see it, it is.

Mr. Herrick.— Counsel knows whether the matters are in the articles of impeachment or not, and if they are not, we contend

they are not admissible. After they have had the witnesses under subpoena, after they have interviewed the witnesses, after they have closed their case, and we are about to begin our case, it seems to me it is grossly unfair to come in at this time and ask your Honor to reopen this whole subject.

The President.— You have not even opened your case. I think it should be allowed, and if you require further time, of course you shall have it.

Mr. Herrick.— We do not require further time.

Mr. Stanchfield.— Mr. Ryan, will you take the stand?

ALLAN A. RYAN, a witness called on behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Ryan, where do you reside? A. Suffern.

Q. Your occupation is what? A. (No response).

The President.— Answer, witness.

Q. What line of business, Mr. Ryan, do you follow? A. A great many.

The President.— What was the answer?

Q. In general, I am asking you as a preliminary just what you would call your occupation? A. I am a member of the New York Stock Exchange.

Q. Are you, among other businesses, a banker? A. No, sir.

Q. Broker? A. No, sir.

Q. Do you have a business office in New York City? A. 66 Liberty street.

Q. Are you in business for yourself, or as a member of a firm? A. For myself.

Q. Are you the son of Thomas F. Ryan? A. I am.

Q. How old are you? A. Thirty-three.

Q. Now, are you acquainted with the respondent, Governor Sulzer? A. Yes, sir.

Q. How far back does your acquaintance go with him? A. I can't recall when I met him.

The President.— Approximately, about how long?

The Witness.— The first time —

Q. About how long have you known him? A. (No answer).

Mr. Stanchfield.— I withdraw that question.

Q. Did you know him prior to his becoming a candidate upon the Democratic ticket for Governor of New York? A. I knew him by sight and I think that I probably was introduced to him.

Q. Before he was — A. (Interrupting.) Before he was a candidate.

Q. You had met him personally before he became a candidate? A. I believe so, but I am not positive.

Q. Well, I think the undisputed testimony in the case will show that he was nominated for Governor on the 2d of October, 1912?

Mr. Hinman.— The morning of the 3d.

Mr. Stanchfield.— I accept the suggestion. On the morning of the 3d of October, 1912.

Q. Now, with reference to that date, had you met him prior to that time? A. I believe so.

Q. So that you had a personal acquaintance with him before that time? A. I had been introduced to him before that time.

Q. Now, with reference to his becoming the candidate of the Democratic party for Governor on the morning of the 3d of October, 1912, when did you next see him? A. About December 12th.

Q. December 12th? A. Yes, sir; about the 11th or 12th of December.

Q. Did you see him before election at all? A. Not to speak with.

Q. Did you have any personal communication with him at all before election? A. Only by telephone.

Q. Can you fix in point of time when you had a conversation with him by telephone? A. (No answer.)

Q. Approximately? A. About the middle of October.

Q. Now, what was said between you and Governor Sulzer in that conversation by telephone?

Mr. Herrick.— One moment, we object to this. I assume, and I think that counsel for the purpose of disposing of the question, should state frankly, the purpose of this is to show some additional contribution.

Mr. Stanchfield.— I expect to show that, Judge Herrick, yes.

Mr. Herrick.— Then we object to it.

The President.— I think the contribution —

Mr. Herrick.—Will you hear me a moment before you decide?

The President.—Yes.

Mr. Herrick.— Last week your Honor in restating the ruling that you had made stated that you had been reinforced in the correctness of the conclusions at which you had arrived by examining somewhat the rulings in the Barnard case, and the opinion of the chief judge, whom you spoke of very justly in high terms as a great judge.

I wish also in this connection, as bearing upon this question, to call your attention to another ruling that he made. Barnard trial, volume 2, pages 1294–96, where it was attempted to introduce evidence in relation to declarations and statements made by Judge Barnard in relation to his judicial action. The evidence that was given was stricken out as incompetent and does not appear in the case, but the chief judge, in striking it out, said:

> "I do not think that the testimony is competent. The conversation is not alleged in any article as a charge against Judge Barnard, and I do not think it bears upon any of the charges legitimately made against him. It relates to a transaction entirely outside of anything that is charged in the article."

Then, after some discussion among counsel:

> "So far as I am concerned, my opinion is unchanged. This evidence is incompetent. The testimony drawn from Judge Birdseye who had given some other testimony was in

the nature of general admissions relating to the motive, or bearing upon the motives, of Judge Barnard's judicial action. Now, I don't think it is competent to show a communication of the respondent as to a particular transaction, judicial or otherwise, which transaction is not alleged or set up, in these articles as a charge against him. I do not think it is competent for the court to infer, through a transaction not charged against him in these articles, a wrong as to the charges which are made. I will, however, submit the question to the court because they may differ with me upon that subject. The question is whether this evidence shall be received, and the clerk will call the roll."

The ruling of the Chief Judge was sustained by a vote of 21 to 10.

Further, probably the greatest impeachment trial that was ever held was that of Warren Hastings, prosecuted and defended by men of greatest ability; learned judges compose a part of that Court, as they do of this Court. The same question came up there. I have four separate and distinct rulings. I will call your attention to one only, for the sake of brevity. On the second day of June, the Lords resolved that it was not competent for the managers on the part of the Commons to give any evidence in the seventh article of impeachment, to prove that the letter of the 5th of May, 1771, was false in any other particular than that wherein it is expressly charged to be false. Now, in these articles of impeachment, it is expressly charged to be false because he did not make the returns of certain specified contributions. Now, we say that under this rule this evidence is incompetent.

The President.— I think the evidence is competent within the rule heretofore made by the Court. Of course, if it throws no light on the other articles charged, on the offenses charged in the articles, it is incompetent, and for that reason the Court has already excluded all evidence offered by the managers to show that any bargain was made as to the signing or vetoing of bills, or attempted to be made between the respondent here and certain of the members of the Legislature, except those charged under the indictment, because one would have no bearing on the other,

but as to this part of the articles, it is already said under a decision of the Court of Appeals, that where the scienter is not clear you are at liberty to show similar acts to characterize whether this was done unintentionally or whether it was done intentionally, and was part of a scheme, and so it seems to me to come right within the previous ruling of the Court; and I do not think the ruling of that very eminent judge is adverse to the ruling of the President of this Court, subject to the approval of the other members, as now made.

By Mr. Stanchfield:

Q. Mr. Ryan, I was addressing your attention to a telephonic conversation you stated that you had with Governor Sulzer in October; the Court holds you may answer that; will you give us that conversation, please? A. I cannot recollect exactly what the conversation was.

Mr. Herrick.—A further objection; I would like to know whom this conversation was with?

The President.— I understood him to say with the respondent here.

Mr. Herrick.— I did not understand he said so, up to this time.

Q. With whom did I understand you to say you had this conversation by telephone? A. With Mr. William Sulzer.

The President.— I understood him to say that.

Q. Will you give us, if you cannot give the exact language, give us the substance of that conversation? A. It was to the effect that he wished —

Mr. Herrick.— One moment. We object to what the effect was.

The President.— That is only a form of words, the same as he believes, he thinks, he guesses; it means all the same thing.

The Witness.— If the Court would permit, I would like to give, describe the situation as it was, as it came about.

The President.— No. I think you better answer the question. State the substance, if you can. First, did you speak to him, or did he speak to you over the telephone, first?

Mr. Herrick.— Your Honor is asking him some questions. Would you ask him how he knew it was Sulzer's voice?

The President.— You may ask him.

By Mr. Herrick:

Q. How do you know it was Sulzer's voice? A. Mr. Sulzer endeavored several times to get into communication —

Mr. Herrick.— I object to that, he "had endeavored."

The President.— That will be sustained.

Mr. Marshall.— I ask to have it stricken out.

Mr. Stanchfield.— The inquiry, Mr. Ryan, that is now put is how you knew it was Mr. Sulzer's voice, and the Court holds that you must answer that inquiry first. A. My telephone operator informed me of that fact.

Mr. Herrick.— I object to that, and move to strike it out. Also his previous answer, would your Honor rule?

The President.— Yes.

By Mr. Stanchfield:

Q. Did you yourself have a telephone conversation with William Sulzer?

Mr. Herrick.— That is objected to on the same ground. We don't know it was his voice yet.

The President.— Overruled.

By Mr. Stanchfield:

Q. You will answer, Mr. Ryan. A. I did.

Mr. Herrick.— He has not answered your Honor's question, as to whether he knew it was his voice.

The President.— I am going to let you cross-examine on it.

By Mr. Herrick:

Q. How did you know it was William Sulzer's voice? Had you ever conversed with him over the telephone before? A. He told me himself.

Q. Over the telephone? A. Over the telephone.

Q. Did you recognize his voice over the telephone? A. I could not say that I recognized his voice.

Q. Are you sure it was not a conversation with Mr. Lamar, David Lamar? A. (No response.)

Q. How is that? A. (No response.)

Q. Can you answer? A. Mr. Sulzer said it was —

Q. Just answer the question? A. I don't know.

Q. You don't know whose voice it was, do you?

By the President:

Q. Did you know his voice at the time? A. No.

Q. Did you ever speak to him — you said you spoke to him subsequently in person, that is, in the presence of each other, was that so in December? A. Yes, sir.

Q. Was there anything said by either of you about your previous conversation over the telephone? Or what you say was your previous conversation? A. No, sir.

By Mr. Stanchfield:

Q. Now, Mr. Ryan — if the Presiding Judge please, Mr. Ryan —

Mr. Herrick.— He has not answered my question.

The President.— Your objection is sustained, so far, unless he proceeds further.

By Mr. Stanchfield:

Q. How did you first learn that Governor Sulzer desired to speak to you by telephone in October?

Mr. Herrick.— That is objected to. It appears already it was hearsay; somebody else told him.

Mr. Stanchfield.— I have a right, if your Honor please —

The President.— I will give you the opportunity to see if you can connect the conversation. Do not state the conversation — and if he does not it will go out.

By Mr. Stanchfield:

Q. Before you spoke over the telephone at all, how was your attention brought to the fact that William Sulzer desired to speak to you? A. Mr. McGlone on the 'phone.

Q. Who is Mr. McGlone? A. He is my father's private secretary.

Q. And has been your father's private secretary for how long? A. Ten or twelve years at least.

Q. In the conversation that you had with Mr. McGlone, did you learn that William Sulzer desired to speak to you over the telephone?

Mr. Herrick.— That is objected to.

A. Yes, sir.

Mr. Herrick.— I object. It is hearsay. We don't know how McGlone knew.

The President.— Objection sustained.

Mr. Stanchfield.— I will follow that up.

The President.— You have got that, first he heard on the subject was what Mr. McGlone, if that is the name, told him.

Mr. Stanchfield.— Will the Presiding Judge take my statement, as a lawyer, for the proposition that, if this story is permitted to be told, without consuming a great deal of time, it will be made perfectly competent, absolutely competent.

Mr. Marshall.— That is no way to prove it.

The President.— You ought to make it competent first.

Mr. Stanchfield.— Very well. I will follow this with one more question on that subject.

Q. Mr. Ryan, in the telephonic communication that occurred,

were you able to identify or recognize the voice of Governor Sulzer?

Mr. Herrick.— He has answered that already, and said he didn't know his voice.

The President.— Well, answer it.

Mr. Stanchfield.— He can answer it once more.

A. The fact that he requested me to deliver a message for him to my father.

Mr. Herrick.— That is objected to, and I ask to have it stricken out.

By Mr. Stanchfield:

Q. Is that the only way in which you recognized —

The President.— Granted.

By Mr. Stanchfield:

Q. Was there any other way in that conversation by which you could state whether or not it was the voice of Governor Sulzer?

Mr. Herrick.— That is objected to. He assumed it one way, and this is another.

The President.— Overruled. Answer.

The Witness.— As I recollect, he wished to see —

The President.— No.

By Mr. Stanchfield:

Q. The question is addressed entirely to whether or no there was any other way than that you have related, in which you recognized his voice as that of Governor Sulzer? A. If it is a question of voice, I could not recognize it.

Q. Very well. When did you see him, or have any conversation with him again?

Mr. Marshall.— The word "again"—

Mr. Herrick.— This is objected to.

Mr. Stanchfield.— Strike out the word "again."

The President.—Yes.

By Mr. Stanchfield:

Q. When did you have a talk with the respondent, Governor Sulzer?

The President.— Face to face.

A. December 11th or 12th.

Q. Of what year? A. 1912.

Q. What was that conversation, as nearly as you can remember? A. It was a personal matter. It had nothing to do with any of these proceedings.

Q. Of any kind? A. No, sir.

Q. When did you see him again? A. The Thursday before, the Wednesday or Thursday before this Court convened.

Q. That is, you mean in the month of September just gone by? A. Yes, sir.

Q. Your best recollection would be a day or two before the convening of this Court of Impeachment? A. No, sir. As I remember, this Court convened on Wednesday, the 18th.

Q. The 18th of September, Thursday. A. It was the week before.

Q. It was the week before? A. Yes, sir.

Q. Did you see him in person the week before? A. Yes, sir.

Q. Where? A. 115 Broadway, I believe was the number.

Q. Do you recollect what time of day it was that you saw him? A. About 12 — about 11.30.

Q. Was he alone? A. Yes, sir.

Q. Give me the conversation you had with him at that time.

Mr. Herrick.— Objected to as incompetent and immaterial.

By the President:

Q. Was it on the subject of campaign gifts? A. No, sir.

Q. Or contributions of any kind?

Mr. Stanchfield.— Well —

The President.— You ought to confine it to the subject, Mr. Stanchfield.

Mr. Stanchfield.— I never have talked with this witness, if the Presiding Judge please, and I am endeavoring to elicit this evidence in a way without leading him, that would make it competent.

The President.— Put your question.

By Mr. Stanchfield:

Q. This conversation you say took place about 12 o'clock in the forenoon or at noon? A. Shortly after 11 o'clock.

Q. Was it in his office? A. It was a certain room in 115 Broadway that he requested me to go to.

Q. Do you recollect where that room was? A. It was towards the west end of the corridor on the north side of the building.

Q. Do you recollect what floor it was on or whose office it was in? A. I believe it was in the office of an attorney by the name of Frankenstein.

Q. Frankenstein; when you went to this office did you see anyone there except Governor Sulzer? A. He introduced me to a Governor Spriggs.

Q. Spriggs? A. Spriggs.

Q. Now, after this introduction where did you go with Governor Sulzer? A. I was going into this room when he introduced me. This gentleman was leaving the room.

Q. And did the interview that you had with Governor Sulzer take place immediately after Governor Spriggs left or passed out? A. Yes, sir.

Q. Was the door closed? A. Yes, sir.

Q. You say that this meeting took place in a room where he requested you to see him? A. Yes, sir.

Q. How did he make that request? A. By telephone.

Q. Did you notice his voice at that time? A. Yes, sir.

Q. Now did you follow up his request to come and see him at that room? A. Yes, sir.

Q. Was the voice that called you at that time the same voice

that made the original appointment with you in the middle of October before? A. Yes, sir.

Q. I will take you back, Mr. Ryan, to this conversation of October 12th, and I now ask you to have your mind upon that? A. Yes, sir.

Q. I now ask you to give me the substance of that conversation.

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— Objection overruled.

Q. You may answer; give me the substance now of that conversation. A. I can now recollect one or two sentences, exact sentences of the conversation.

Q. Give those. A. He said in words these words "Tell your father I am the same old Bill."

Q. That is one of the sentences? A. Yes, sir.

Q. What were the other sentences that you recall in words? A. That is the only sentence I can recall in exact words.

Q. That is, you mean of which you can recall the exact words? A. Exactly.

Q. Give me the substance of the balance of the conversation? A. That he wished to see me and I told him he would have to see Mr. McGlone.

Q. Is that all? A. That is the substance of the conversation.

Q. Will you give me the initials of Mr. McGlone? A. I. V. McGlone.

Q. Now, was there anything said in that conversation, if you have not exhausted your recollection, as to the subject upon which he wished to see your father? A. I don't think he said he wanted to see my father; my father was abroad.

Q. Yes. When you told him to see Mr. McGlone, or that he would have to see Mr. McGlone, did he say anything to you as to the subject upon which he wished to see Mr. McGlone?

By the President:

Q. He said first he wished to see him, as I understood, and then he told him he would have to see Mr. McGlone, was that correct? A. That is as I recollect it.

Q. Well now, did he tell you what he wanted to see you about? A. Not that I can —

Q. Did he make any allusion to the subject? A. To what subject?

Q. To the subject he wanted to speak to you. Didn't he tell you anything about that? A. Not that I can recollect.

By Mr. Stanchfield:

Q. Well now, did he tell you in that conversation, after you said he would have to see Mr. McGlone, did he state then anything about the subject upon which he wished to speak either to you or to Mr. McGlone if he saw him? A. Not that I remember.

Q. Now, you didn't see him again, as I understand you, to talk over anything with reference to these contributions, or the subject of this impeachment, until the following, this last September, is that right? A. No, sir.

Mr. Marshall.—Wait a minute. We object to that and ask to have that answer stricken out because the witness has not said anything about contributions so far as I recollect.

Mr. Stanchfield.— It may be stricken out in that respect.

Mr. Marshall.— It is putting words in the witness' mouth.

Mr. Stanchfield.— I do not intend, Mr. Marshall, to do that. Any part of the question that you want to go out may go out. I suppose you refer to the general language upon the subject of the Court of Impeachment.

Mr. Marshall.— No, the question of contributions.

By Mr. Stanchfield:

Q. Did you have any conversation with Mr. Sulzer upon any subject in any way referring directly or indirectly to these contributions until this last September?

Mr. Herrick.—Wait a minute. He said that he had no conversation about any contribution and this assumes that he did.

The President.—You saw him next, witness, two or three weeks ago, a week before this Court convened?

The Witness.— I did.

Q. Well, the only reason I am putting you those inquiries is that there is an intervening meeting which had no reference in any way— A. (Interrupting) None whatever.

Q. (Continuing) And did not refer to anything that is involved in this controversy. Now, how soon afterward did you — after this conversation with Mr. Sulzer in the month of October, did you see Mr. McGlone? A. I saw him constantly, he was in my — in the room adjoining mine.

Q. Did you have — I don't ask you what it was — any conversation with Mr. McGlone, in a general way, as to him having seen Governor Sulzer? A. I did.

Q. About when was that, as a matter of time, just to fix the dates? A. Directly after the telephonic communication.

Q. Now, is Mr. McGlone here? A. Yes, sir.

Mr. Stanchfield.— If your Honor will permit me to have this witness step aside for a moment.

The President.— Yes.

Mr. Marshall.—Are you through with him?

Mr. Stanchfield.— No, I am not through with him. Simply because of certain objections that are made here as to this evidence. Mr. McGlone, will you please take the stand?

The President.— Swear the witness.

IGNATIUS V. MCGLONE, a witness called in behalf of the managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. McGlone, where do you live? A. New York, 960 Park avenue, Manhattan.

Q. What is your vocation? A. Secretary to Mr. Thomas F. Ryan.

Q. How long have you been secretary for Mr. Thomas F. Ryan? A. Twelve years.

Q. Now, are you acquainted with Allan Ryan, his son, the last witness? A. Yes, sir.

Q. Where is your office with reference to the private office of Mr. Allan Ryan? A. Adjoining room, 66 Liberty street, the adjoining room.

Q. In adjoining rooms? A. Yes, sir.

Q. I wish you would keep your voice up, Mr. McGlone; these gentlemen all want to hear you; it is difficult for them to hear. Do you recall in the month of October, 1912, having a talk with Governor Sulzer? A. Yes, sir.

Q. When did you first meet Governor Sulzer? A. I met Governor — he was Congressman then, about ten years ago.

Q. You have known him for ten years? A. Yes, sir.

Q. Have you met him from time to time? A. Only incidentally since that time.

Q. Well, you say only incidentally; my inquiry is, Have you met him from time to time? A. Yes.

Q. Now, how did you have your first conversation with him in the fall of 1912, in October? A. In October, 1912, after Governor Sulzer was nominated, after I reached their office, we were then, Mr. Stanchfield, at 32 Liberty street, not then at 66 Liberty street.

Q. Yes. A. We changed our office since that time. When I reached my office, I had been told that I had been wanted —

Mr. Herrick.— Wait a moment. We object to what he has been told.

The President.— Now, you were told something. Then what did you do.

The Witness.— I spoke to Mr. Allan Ryan about it.

The President.— Then after you spoke to him — that was the last witness — after you spoke to him what then did you do? A. I didn't do anything. He afterwards came to me —

Q. (Interrupting) Now, wait a minute. Who did? A. Mr. Allan Ryan.

Q. Yes, and you had a talk with him? A. I had a talk with him after I got this message.

Q. Well now, did you that day have any telephonic talk with Governor Sulzer? A. I did not.

Q. You did not. When did you see Governor Sulzer? A. After I had talked with Mr. Ryan.

Q. On what day? A. I can't recall; it was sometime after the campaign — during the campaign — after his nomination, sometime, I should say between the 11th and 22d of October.

Q. Now, did you see Governor Sulzer — between the 11th and 22d of October was his answer? A. I should say between that time, yes, sir.

Q. Did you see Governor Sulzer on the day that you had this talk with Allan Ryan to which — A. (Interrupting) I did.

Q. (Continuing) To which you are referring? A. Yes.

Q. What time of day did you see him? A. It was after 1 o'clock.

Q. Tell us the conversation that you had with him at that time.

Mr. Herrick.— That is objected to.

The President.— Objection overruled.

A. I went to see him at 115 Broadway; he spoke about his campaign. I said some things to him. I said I did not think there was any question about his election. That he was sure to be elected, and he said no, he wanted to make a personal campaign. I said that inasmuch as he was nominated by the organization, the organization ought to give him the money, and he said no, that he needed certain money.

By the President:

Q. He said what? A. That he needed some money.

By Mr. Stanchfield:

Q. Just finish that conversation. He said to me he needed some money. I told him I could not give it to him without consulting with somebody else. He said he was going out on a campaign tour. I said I would see him when he came back, but in the meantime I would have to talk with somebody else before I gave him anything. I spoke to somebody else about it, and we

agreed to give him a certain sum of money, which I gave him. That is all I know about it.

Q. Before you get down to this conversation with somebody else, had you finished the talk you had with Governor Sulzer in his office? A. Practically, yes.

Q. Had there anything been said between you at that interview with regard to the amount that he wanted from you or from Mr. Ryan, for his campaign?

Mr. Herrick.— One moment; that is objected to.

The President. — I think he may answer. Overruled.

A. Yes, sir.

Q. What did he say on that subject? A. That he wanted $7,500, or as much more as he could get.

Q. He wanted $7,500 or as much more as he could get? A. Yes, sir.

Q. Did you have any conversation at that time as to where Mr. Thomas F. Ryan was? A. Not a thing mentioned.

Q. As to his whereabouts? A. No, sir, except that he was abroad.

Q. That subject was mentioned then that he was out of the country? A. Oh, yes, certainly.

Q. Have you now told all of that conversation that you recall? A. There may be some details that I do not recall just at the present time.

Q. Have you given us the substance of it? A. The substance of it, yes, sir.

Q. With what man did you desire to speak? A. Allan A. Ryan.

Q. After you left Governor Sulzer, did you see Allan Ryan? A. I saw him the same afternoon, as I recall.

Q. Did you have a conversation with him? A. Yes, sir.

Q. In regard to making a contribution to Governor Sulzer's campaign? A. Yes, sir.

Mr. Hinman.—We object to the form of the question of counsel because it assumes facts not proved, and no foundation has been laid for the form in which the questions are put. They are incompetent in form.

The President.— How is it material, counsel? See what he did, have you got to the point —

Mr. Stanchfield.— I will accept the suggestion as made.

Mr. Hinman.— Then I move to strike out the answer that has been given.

The President.—Yes.

Q. When did you see Governor Sulzer again? A. The next day.

Q. Where? A. At his office, 115 Broadway.

Q. Was there anyone present at the time of your interview with him? A. Nobody.

Q. Was there present anybody the day before, when you had your interview with him? A. No, sir.

Q. What was your talk with him upon this second occasion? A. Simply went in to see him, and I handed him some money.

Q. How much? A. $10,000.

Q. In what denomination? A. $1,000 bills.

Q. Tell us the conversation? A. There was no conversation to speak of. I simply went in to see him. It was about two o'clock in the afternoon I think. I handed him the money. He counted it and put it in his pocket and thanked me, and said if he was elected Governor, and for any reason I should ever happen to be in Albany, he would be glad to see me, and asked me to remember him to Mr. Allan Ryan. That was the end of the conversation, and I went out.

Q. Did you have any further talk with him later? A. I sent him a telegram of congratulations election night.

Q. You did not see him personally? A. Oh, no.

Q. Did you ever see him personally to have any conversation after his election? A. I did, in Albany, after he was inaugurated.

Q. Did you have any conversation with him at that time in regard to that contribution? A. Not one word.

Q. Running back for a moment, Mr. McGlone, to the first talk you had in Governor Sulzer's office, when you said you would have to go and see another man, was there anything said by him to you as to whether or not he had been endeavoring to get in touch with you, or to reach you or Mr. Ryan? A. Oh, yes, he said he

had been trying to get me on the telephone, but could not get me.

Q. Did he say how often he had tried? A. He said three or four times.

Q. These conversations that he had with you by phone took place this same day? A. No, some were today, and some tomorrow; or some yesterday and some today. There were two different days.

Q. Then they ran over a period of two days? A. Yes, sir.

Q. Did he have this conversation with you in which he stated that he had been trying to get you three or four times upon the phone on the same day of your interview with him? A. No.

By the President:

Q. Do you understand the question? The question is not when he tried to get you on the phone, but when did he tell you he tried to get you? A. The day I saw him.

By Mr. Stanchfield:

Q. The day you saw him? A. Yes, sir.

Q. How was it, Mr. McGlone, that you happened to take over there in cash ten $1,000 bills?

Mr. Herrick.— That is objected to as incompetent and immaterial as to how he came to do it.

The President.— Was there anything said on that subject by you to the respondent?

Q. What was said between you and Governor Sulzer as to how this contribution should be made? A. Nothing.

Q. Did you discuss in any way the way in which it should be made? A. Not the slightest, not in any way.

Q. Neither with Mr. Sulzer nor with Mr. Ryan? A. No, neither one.

Q. Have you told everything that was said, Mr. McGlone? A. Everything that I recall.

Q. Between you and Governor Sulzer as to what this money was to be for? A. Except I always understood —

Mr. Herrick.— No, that is objected to.

Q. No, not what you understood. What did Governor Sulzer say to you, and what did you say to him, when he was asking for this contribution, as to the purpose for which he wanted it?

Mr. Herrick.— That is objected to; he said he has gone over it and told everything.

By the President:

Q. Did he say anything further as to what he wanted, than you have told? A. For his personal campaign.

By Mr. Stanchfield:

Q. For his personal campaign? A. Yes, sir

Mr. Stanchfield.— You may cross-examine.

Mr. Herrick.— No questions.

Mr. Stanchfield.— One more question there, Mr. McGlone.

Q. Have you told me all of the conversation that you had with him upon the subject of wanting this money for his personal campaign?

Mr. Herrick.— One moment.

Mr. Stanchfield.— I submit that question is perfectly proper.

By the President:

Q. Did he say anything further, witness? A. Nothing that I recall now.

By Mr. Stanchfield:

Q. Was there anything said by him to you at that time with reference to his needing more money for his personal campaign? A. Nothing except that he had no money for his personal campaign, and he wanted this money for his personal campaign. Oh, he did say this, that he was going up to Westchester and adjoining counties to make a campaign and wanted money for it.

Q. Is that all that you can now recall? A. That is all that I recall.

Mr. Stanchfield.— That is all. I will recall Mr. Ryan.

ALLAN A. RYAN recalled.

By Mr. Stanchfield:

Q. Mr. Ryan, I call your attention to a conversation which you say you had with Governor Sulzer the week before the convening of this Court of Impeachment. Where was that conversation? A. 115 Broadway.

Q. At the time when the conversation was had between you and Governor Sulzer, was there anyone else present? A. When I had the conversation?

Q. Yes. A. Nobody present.

Q. Will you tell us what that conversation was, as nearly as you can recall it, either the language or the substance? A. He made certain requests of me.

Q. What were those requests?

Mr. Herrick.— What did he say?

By the President:

Q. What did he say? A. He asked me to go to Washington to see Senator Root for him.

By Mr. Stanchfield:

Q. Yes. Go right along and tell us the whole of the conversation you had with him, as well as you recall it.

Mr. Herrick.— How is that material or competent?

The President.— It is not, unless it relates to a subject of these contributions.

By Mr. Stanchfield:

Q. Go ahead and tell us the whole of the conversation.

Mr. Herrick.— He said he asked him to go to Washington to see Senator Root for him. How is that competent?

The President.— I don't see how it is. Objection sustained.

By the President:

Q. Did he say anything to you on the subject of the contribution you had made or any contributions?

Mr. Stanchfield.— That is not my inquiry, if the Presiding Judge please.

By Mr. Stanchfield:

Q. Did you have any talk with him at that time in substance with reference to his approaching trial? A. Yes, sir.

Q. I want to know what that talk was?

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— I don't see that it is material unless there is some admission in it regarding the facts that are in issue here.

Mr. Stanchfield.— I understand it is highly material, if the Presiding Judge please.

The President.— I don't know. If you call his attention to it you may get that, but limit it.

By Mr. Stanchfield:

Q. What did he say upon that subject?

Mr. Herrick.— I object. What article of the impeachment is this addressed to?

Mr. Stanchfield.— Do you desire me to state what I expect to prove by him?

Mr. Herrick.— I ask you to state what article of the impeachment this testimony is directed to.

Mr. Stanchfield.— It is admissible, Judge Herrick, under every one.

The President.— You are gaining nothing by your questioning each other.

Mr. Stanchfield.— Not the slightest.

The President.— I sustain your objection. You have got to call him down right to the point.

By Mr. Stanchfield:

Q. What, if anything, Mr. Ryan, did he say to you, or ask you to do in regard to this trial?

Mr. Herrick.— That is objected to as incompetent and immaterial.

Mr. Stanchfield.— I submit that is a perfectly proper inquiry.

The President.— I will sustain the objection for the present. I may change the ruling.

By Mr. Stanchfield:

Q. Was there anything said in the course of that conversation between you in regard to your being a witness?

Mr. Marshall.— Objected to.

Mr. Herrick.— That is objected to.

The President.— Objection overruled.

Mr. Marshall.— That is not in any article. There is no allegation in any of the articles with reference to that subject.

The President.— This gets down to the question of this contribution again.

Mr. Marshall.— I assume it is for an entirely different theory, because the witness said nothing was said on the subject of contributions in that conversation.

The President.— The one in December?

Mr. Marshall.— I understood him to say a minute ago that there was nothing said in that conversation about the contribution. There is no allegation in regard to anything which relates to any other conversation in any of the articles.

Mr. Stanchfield.— Whether that be true or no, this testimony is certainly competent that I am asking.

The President.— On what ground? Tell the Court and it may be with you.

Mr. Stanchfield.— To show the effort of the respondent to influence evidence in this case.

The President.— If it is to influence evidence, but Senator Root knew nothing about that.

Mr. Stanchfield.— That is all right. We are way beyond that. The present inquiry with this witness is whether in that conversation between the witness and Governor Sulzer anything was said upon the subject of the witness testifying.

Mr. Marshall.— As to that, there is nothing in the articles with regard to the influencing of this witness.

The President.— That will admit it. No, but that is competent.

Mr. Stanchfield.— It would not have to be in the articles.

Mr. Marshall.— My contention is that if this is sought to be made a substantive ground of proceeding, it ought to be in the articles.

The President.— There are a good many things that are admissible in evidence. For instance, if a man is on trial for attempting to commit suicide, flight may be shown; it only comes in as evidence of that character.

Mr. Marshall.— The question is whether it would be original evidence, competent as original evidence.

The President.— I think it will be admitted, Mr. Marshall. Limit it to what you stated now.

Mr. Stanchfield.— You may answer now.

The Witness.— What is the question?

The President.— State it.

By Mr. Stanchfield:

Q. Was the subject of your being a witness, or giving evidence upon this trial, discussed at that time? A. He told me if I was subpoenaed before the committee not to pay any attention to the subpoena, because they had no right to hold this trial.

Q. That was the Frawley committee?

Mr. Herrick.— I ask to have it stricken out.

Q. Did you mean by that the board of managers? A. I mean by that when I asked him whether they subpoenaed me to bring me into the situation at all, what I should do.

Q. What was his reply? A. He said that they did not have any right to subpoena anybody.

Mr. Herrick.— We ask to have that stricken out, if the Court please, as incompetent and immaterial.

The President.— Motion granted.

By Mr. Stanchfield:

Q. Was there anything further said upon that subject? A. Upon the subject of this trial?

Q. Yes. A. Yes, sir.

Q. What was it? A. He wanted the — he said that he wanted the trial to be declared illegal; that they had no right to hold the trial; that an extraordinary session had no right to impeach him.

Q. Yes. A. He asked me to go to Washington —

Mr. Hinman.— If the Court please, that is objected to. It has already been excluded.

The President.— Yes.

By Mr. Stanchfield:

Q. When you say he asked you to go to Washington, you are coming back to the original proposition with reference to seeing Senator Root or was it something else? A. You asked me to tell you what he spoke to me about regarding this trial.

Q. Yes. A. I was trying to tell you.

Q. Yes. Have you exhausted your recollection upon that subject? A. It is very clear in my mind what he said to me.

Q. Just finish it, complete it.

Mr. Hinman.— We again object to the testimony regarding the request or suggestion made by the respondent to the witness in reference to his going to Washington. The witness has been asked the question, indicating the purpose of the visit, and the Court has excluded the evidence.

The President.— Objection sustained.

By the President:

Q. Now, Mr. Witness, did he say anything to you on the subject of your testimony or what you were going to testify, or about? A. No, sir.

Q. Did he say anything about this $10,000 that the previous witness has testified to? A. No, sir; nothing more than I asked the question, which I answered here, I asked the question: "Suppose I am subpoenaed in this situation?" and he told me that they had no right to subpoena me.

Q. Yes. A. I gave that testimony.

Mr. Stanchfield.— You testified to that.

Mr. Herrick.— We ask to have it stricken out again, if the Court please.

The President.— Granted.

Mr. Stanchfield.— Under the ruling, I am going to put what might otherwise seem to be a leading question, if the Presiding Judge please.

By Mr. Stanchfield:

Q. Didn't you have some talk at that time, or later, with Governor Sulzer upon the subject of trying to procure someone to influence the action of this Court?

Mr. Herrick.— That is objected to. That is incompetent, irrelevant and immaterial.

The President.— I think not.

Mr. Stanchfield.— I submit it is perfectly competent.

Mr. Herrick.— To any inquiry here?

The President.— I think not. I don't believe that is competent.

By Mr. Stanchfield.— It would be, if the Presiding Judge please, just as competent as it would be for me to show by the witness an effort upon the part of the respondent to influence, or shade, or distort in any way the testimony of a witness. It goes to the very gravamen of the charge against him, for a man to attempt to influence in any way the action of a court that has jurisdiction over his person or the subject matter of an inquiry, is susceptible to just the same line and sort of proof as it would be to show interference with a witness.

The President.— I appreciate that certain testimony to that effect might be competent, but the trouble is you get so much in that has to go out the minute it is in.

Mr. Stanchfield.— I ask the specific inquiry —

Mr. Marshall.— (Interrupting.) May I ask the question with regard to that: Your Honor, can that be competent under any article of impeachment which we are here to try?

The President.— No, it is not on that ground, it is not as a substantive offense; it would be entirely and merely as corroborative evidence. Of course, it is not —

Mr. Stanchfield.— (Interrupting.) It is offered in line with the same testimony with reference to his desire to affect the testimony of witnesses.

The President.— Now, if you call his attention specifically to that and ask him —

By Mr. Stanchfield:

Q. Now, Mr. Ryan, did you have a talk with Governor Sulzer at the time and place of which you are now speaking, on the subject of endeavoring to influence the action of this Court? A. Yes.

Mr. Herrick.— Now, that is objected to as incompetent and immaterial.

The President.— Objection overruled.

Mr. Stanchfield.— He says he did. Now, I ask him what did he say?

Q. Now, what was that talk?

Mr. Herrick.— Same objection.

The President.— Same ruling.

The Witness.— He asked me to go to Washington to see Senator Root and request him to see Mr. William Barnes.

Q. Go right along. A. Get him to endeavor to have the Republican members of this body vote that this Court had no right to try him and impeach him.

Mr. Herrick.— Now, I move to strike out that testimony. It is not within the line of your Honor's ruling. It is incompetent and immaterial, and particularly in advance —

The President.— I will hold it for a minute.

Mr. Herrick.— Particularly in advance of any defense on our part.

The President.— I think it will go out.

Mr. Stanchfield.— Your Honor will permit me to get the whole of the conversation before you finally rule?

The President.— If you get so much in, and then it will have to go out again. What more do you want?

Mr. Stanchfield.— From the standpoint of the board of managers, it bears very materially upon the intent of the respondent.

The President.— I don't think so.

Mr. Herrick.— The intent to do what? Commit any of these things charged in the impeachment articles?

The President.— I think the ruling will be sustained.

Mr. Herrick.— The testimony is stricken out then?

The President.— Yes. Anything else of this witness?

Mr. Stanchfield.— That is all, if your Honor please.

The President.— Cross-examination?

Mr. Fox.— Will your Honor pardon us one moment? We are hesitating whether we ought not to ask that some expression of disapproval on the part of the Court be made.

By Mr. Stanchfield:

Q. Have you had any other conversation with the respondent, Governor Sulzer, than this one of which you are now speaking, of last September? A. Another that afternoon.

Q. That is, of the same day? A. Yes, sir.

Q. Where did that take place? A. In the same place.

Q. His office? A. Yes, sir.

Q. Were you alone upon that occasion? A. Yes, sir.

Q. Now, did you have any talk with him at that time relating in any way to the subject matter of this trial? A. Yes, sir.

Q. What was that conversation?

Mr. Herrick.— That is objected to.

The President.— It is sustained.

Mr. Herrick.— It seems to me, after you have so plainly indicated your idea of the proper line of testimony, the counsel persisting to try to get in these conversations which you declared to be incompetent and immaterial, that something should be done to correct it.

Mr. Stanchfield.— This is another conversation, if your Honor please.

Mr. Herrick.— Yes, on the same subject.

Q. Did you have any conversation with him at that time in regard to the contribution that had been made? A. No, sir.

Mr. Stanchfield.— That is all.

Mr. Herrick.— That is all.

Senator Brown.— Mr. President.

The President.— Senator Brown.

Senator Brown.— It is difficult to hear and I do not know whether I understood the language and the ruling of the Court in relation to the last question that was stricken out. I would like to have it read.

The President.— Yes, stenographer, read that.

(The stenographer thereupon read as follows: "Now, what was that talk? Mr. Herrick: Same objection. The President: Same ruling. The witness: He asked me to go to Washington to see Senator Root and request him to see Mr. William Barnes. Q. Go right along. A. Get him to endeavor to have the Republican members of this body vote that this Court had no right to try him and impeach him. Mr. Herrick: Now, I move to strike out that testimony; it is not within the line of your Honor's ruling; it is incompetent and immaterial, particularly in advance — The President: I will hold it for a minute. Mr. Herrick: Particularly in advance of any defense on our part? The President: I think it will go out.")

The President.— That was stricken out.

Senator Brown.— With all due deference to the ruling of the President, in view of this matter having come up, I desire to move that it be allowed to stand on the record. I think opportunity should be had to sift such an inquiry to the bottom. This is a public trial; while I believe in adhering to the rules of evidence, so far as they protect the respondent, I think that it is due to the people of the State and due to the Court that after such a matter has been brought out in a court, that there should be no flinching on the part of the court in relation to the inquiry. I therefore move that the ruling of the chair be not sustained.

The President.— Call the roll. On this, the question is, Shall the ruling of the President be sustained or not? Those who vote yes,

exclude the testimony. Those who vote no, overrule or admit the testimony.

Senator Blauvelt.— Will you state the question upon which we are voting, the precise point?

The President.— The question is whether the evidence that the respondent asked him to go to Senator Root and have Senator Root see Mr. Barnes, to get the Republican senators to vote, shall go out.

Senator Blauvelt.— I understand that. The question is on the vote, what does the negative stand for, and what does the affirmative stand for?

The President.— If you vote yes, that excludes the testimony; if you vote no, it stays in.

Ayes.— Judge Bartlett, Senator Carswell, Judges Chase, Cuddeback, Cullen, Senators Duhamel, Foley, Godfrey, Healy, Herrick, Judges Hiscock, Hogan, Senators McKnight, Malone, Judge Miller, Senators Murtaugh, O'Keefe, Ormond, Patten, Peckham, Pollock, Ramsperger, Sanner, Seeley, Simpson, Sullivan, Thomas, Wagner, Walters, Wende, Wheeler, Whitney — 32.

Noes.— Senators Argetsinger, Blauvelt, Boylan, Brown, Bussey, Carroll, Coats, Emerson, Frawley, Heacock, Heffernan, Palmer, Sage, Stivers, Thompson, Velte, Judge Werner, Senator Wilson — 18.

The President.— The ruling of the Presiding Judge is sustained and it will remain out.

Mr. Stanchfield.— Mr. Meany.

EDWARD P. MEANY, a witness called on behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Meany, where do you reside? A. Convent, New Jersey.

Q. What is your occupation? A. Attorney and counselor at law.

Q. Where is your law office? A. 55 Liberty street, New York City.

Q. Are you acquainted with the respondent, William Sulzer? A. I am.

Q. How long have you known him? A. I recall him fully twenty years; fully twenty years.

Q. Have you kept up an acquaintance with him over that period of time? A. I have.

Q. You recall, do you not, his nomination for Governor in the fall of 1912? A. I do.

Q. With reference to his nomination, did you have an interview with him shortly after? A. Within a week or ten days after his nomination, Mr. Sulzer called upon me at my office, 55 Liberty street, New York.

Q. And did you there have a conversation with him? A. I did.

Q. On what subject? A. Mr. Sulzer informed me during that conversation that he needed financial assistance, and asked me if I would loan him some money.

Q. Asked you if you would loan him some money? A. Loan him some money, yes, sir.

Q. Yes, go ahead. A. I told him that I would. I asked him what amount he required. He said, "Let me have what you can afford to let me have." I said, "I will loan you $10,000; if you will call tomorrow or next day, I will give it to you."

Q. Is that the substance of the conversation? A. That is practically the substance of the conversation.

Q. When did you see him next? A. I saw him, I think, at the executive mansion in Albany on Lincoln's birthday last, the 12th of —

Q. I mean, when did you see him with reference to this $10,000 loan? A. A day or two afterwards.

Q. At your office? A. At my office.

Q. How did you give him that money? A. I gave it to him in cash.

By the President:

Q. By that, do you mean in bills? A. Bills, yes, sir, currency.

By Mr. Stanchfield:

Q. Bills of what denomination? A. Either $500 or $1,000 bills.

Q. Did you take any note from him? A. I did not.

Q. Did you take any written acknowledgment of any sort or description? A. I did not.

Q. To the effect that it was a loan? A. I did not.

Q. He was then a candidate for Governor? A. He was.

Q. And this was right in the midst of his campaign for that office? A. It was at the beginning of his campaign for that office.

Q. Do you keep books of account? A. I do.

Q. Did you enter up this item in any of your books? A. I did not.

Q. In other words, you made no entry of this loan in any book that you kept? A. I did not.

Q. You took no written acknowledgment of any sort or description in reference to it? A. I did not.

Q. Did you take at the time anything in the way of collateral? A. I did not.

Q. Have you had any correspondence with Governor Sulzer since? A. Yes, sir.

Q. Will you produce it, please? A. (Witness hands letter to counsel).

Mr. Marshall.— May we look at that letter?

Mr. Stanchfield.— Yes, I am about to offer it.

Mr. Marshall.— (After examining letter). We object to this letter as entirely incompetent, immaterial and irrelevant. We cannot understand any theory on which that letter can possibly be competent.

Mr. Stanchfield.— The letter speaks for itself; it does not require much argument, I suppose.

Mr. Marshall.— It does not at all. It has no bearing on any issue here.

The President.— (After examining letter). I do not see that it has any relevancy. I am not the only member of the Court. I

sometimes forget and think it is like a jury. I suppose it ought to be read, though I cannot see that it has any effect.

Mr. Marshall.— That is the very thing that they want, to read a lot of incompetent matter and then have it stricken out later. That is just as they have been trying this case on statements and assertions and innuendoes and insinuations.

The President.— If any member of the Court would like to look at it, he may. If they ask for it they must have it. I am not the sole judge.

Mr. Herrick.— If every member of the Court wants to look at it, we have no objection.

Senator Wagner.— To bring the question before us, I move the decision of the Court be sustained.

The President.—All in favor of the motion, say aye; all opposed, no.

The motion is carried.

Mr. Stanchfield.— That is all of the witness, if your Honor please.

The President.— Now, they are finished. Of course you will now go on—does that end the case for the prosecution?

Mr. Stanchfield.— Yes, sir.

Senator Pollock.— If that last witness is still in the court room I would like to ask him one question.

EDWARD P. MEANY recalled.

By Senator Pollock:

Q. Mr. Meany, was that your own money that you loaned Governor Sulzer? A. Absolutely, sir.

Q. Why did you give him cash instead of a check? A. Because he preferred to have it in cash, and I preferred to give it to him in cash.

Q. Was there any reason that you can give us why you preferred to give it to him in cash? A. Most assuredly. I did not care to

have it generally known that I had loaned my friend, Mr. Sulzer, money at that time, for fear it would be misunderstood and misconstrued.

Q. Can you tell us from what source this money came, $10,000? A. Yes, sir.

Q. Will you please do so? A. A check drawn on the Bankers Trust Company of New York by Mr. William S. James, one of my associates, in my office.

Q. On his own account? A. Mr. James cashed a check payable to his order.

Q. Mr. James' personal account? A. No, sir, it was a check upon my account, payable to the order of Mr. William S. James.

Q. Signed by you? A. Signed by me.

By Senator Simpson:

Q. What, if anything, was said upon the subject of the duration of this loan, Mr. Meany? A. He said that he would pay it as soon as he could, and he hoped to do it in a very short time.

Q. Did you ever request this loan to be paid back to you? A. I have not.

Q. What, if anything, was said as to the rate of interest to be paid on this loan? A. There was nothing said as to the rate of interest.

By Senator Thompson:

Q. Will you please explain what you meant in answer to a question by Senator Pollock, that it might be misconstrued or misunderstood; what did you mean by that? A. I mean that in loaning money to a friend, I do not desire it to be generally known that I have loaned money to a friend.

Q. What did you mean by that misconstruction; who would misconstrue it; what did you mean by that? A. I did not care particularly for my bank to know that I was loaning money to a friend.

Q. Are you in the habit of loaning money? A. Oh, yes, sir, quite often.

Q. What is your business? A. I am an attorney and counselor at law.

Q. And where do you generally practice? A. In New York City.

Q. Do you have any practice in Albany? A. None whatever.

Q. What is that? A. None in Albany, no, sir.

Q. Did you ever loan the Governor any money before or since? A. I think I have before, sir.

Q. Did he pay you back? A. Yes, sir.

The President.— That is all.

Mr. Hinman.— If the Court please: The object and purpose of impeachment proceedings is to enable the people to rid themselves of public officials corrupt in office.

In the conduct of public affairs only men of high character and integrity should be elected, but neither the Constitution nor the statutes make the right to hold office dependent upon these qualifications or characteristics. In this State the law imposes certain limitations upon the right to hold and continue in office. Such limitations are age, citizenship, residence, the taking of the constitutional oath of office and honesty and faithfulness in the discharge of official duties. There are no others.

The people have retained and hold unto themselves the absolute and unlimited right to select and elect to any office any person who possesses the legal qualifications. The man so selected has the absolute right to hold such office for his full term, provided he administers the duties of his office honestly, capably and faithfully.

The morals or private life of the officeholder — provided they do not affect the performance of his official duties — do not disqualify him from holding office and cannot be made the ground for his removal. Were the rule otherwise, the people would have been deprived of the services of some of our greatest men and statesmen.

In the darkness of the early morning of August 13, 1913, the Assembly, by a bare majority and by nearly a party vote, voted to impeach the Governor of this State for acts alleged to have been committed by him.

These alleged acts may be divided into two general classes or kinds, namely, those committed while in office and in connection

with the performance of official duties, and those committed before he came into office and while acting as a private citizen.

Those acts are set forth and are contained in eight articles of impeachment which are now before this Court. The evidence to sustain those charges on behalf of the managers is now completed and the managers' case in full is before this Court.

Before outlining the evidence to be submitted on the part of the respondent, we desire to call the attention of the Court to the nature of the charges and briefly to the evidence which has been submitted in support thereof.

The eighth article may be called the "Stock Exchange article." It charges that the bills designed to make the stock brokerage business more honest were favored by the respondent in order — I now quote:

> "To affect the current prices of securities listed and selling on the New York Stock Exchange, in some of which securities he was at the time interested and in which he was speculating, carrying, buying and selling, upon a margin or otherwise, by first urging, recommending and pressing for passage legislation affecting the business of the New York Stock Exchange and the prices of securities dealt in on said Exchange, which legislation he caused to be introduced in the Legislature, and then, by withdrawing, or attempting to withdraw from the consideration of the Legislature such legislation which was then pending therein — all the time concealing his identity in said transactions, by subterfuge."

The article charges this to be a criminal offence, to wit, a violation of section 775 of the Penal Law.

The material parts of section 775 of the Penal Law are as follows:

> "Any person who while holding a public office, corruptly uses or promises to use, directly or indirectly, any official authority or influence in the way of conferring upon any person or in order to secure or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary upon consideration that the

vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration . . . is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both."

The mere reading of this section makes it clear that its provisions are limited to the corrupt use of official authority or influence in the way of conferring office, public employment, nomination, confirmation, promotion or increase or decrease of salary in favor of any person seeking or holding public office.

There is nothing alleged in this "Stock Exchange" article which charges and nothing in the evidence which tends to show, that the respondent gave or promised to give or to use any authority or influence or consideration for any vote for or in behalf of the legislation therein mentioned, or that he ever talked or communicated with any legislator in reference thereto, or that he ever made any promise to any one in connection therewith, or ever withdrew or attempted to withdraw from the consideration of the Legislature any of such legislation. The evidence shows that the respondent stopped his transactions in the stock market before he became Governor and not a single purchase or sale after January 1, 1913, has been proved.

There is no evidence which shows or tends to show that such legislation affected or tended to affect or could affect the prices of stocks. If the Court may be permitted to speculate upon the effect of such legislation the conclusion to be drawn by the Court would necessarily be that such proposed legislation, if it had any effect whatever upon the prices of stocks, would be to lower such prices. There is no evidence tending to show that the respondent's investments were such that falling prices would benefit him. Hence, the conclusion is irresistible that the legislation proposed by the respondent in connection with this subject, if it had or could have had any effect on the market, was against his own financial interest.

Let me ask this question: Could a legislator be expelled for voting on a full crew bill because he owned stock in a railroad at

the time, or voting on a labor bill because he owned a factory, or on a race track bill because he owned a horse or on a liquor bill because he owned a hotel or saloon? Do you say that such a question is ridiculous? It is not one which is more ridiculous than is this article 8 as the proof now stands.

This article 8 is absolutely unsupported by even a scintilla of proof. As at present advised, we shall not dignify it by submitting any evidence in relation thereto.

The seventh article is the "big stick" article. It charges the respondent with using the "big stick" on Assemblyman Prime and Assemblyman Sweet, for the purpose of getting their votes for his direct primary bill. It is based on the same section of the Penal Law as is the "Stock Exchange" article. The charge is that the respondent —

> "*promised or threatened* Hon. S. G. Prime, Jr., a member of Assembly from the county of Essex, . . . and Hon. Thaddeus C. Sweet, a member of Assembly from the county of Oswego."

The "promise" which it is alleged was made by the respondent to Assemblyman Prime was —

> "that if said Prime would vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would sign a bill that had already passed the Legislature and was pending before him, reappropriating the sum of about $800,000 for the construction of roads in said county of Essex and counties adjoining thereto."

The "threat" alleged to have been made by the respondent to Assemblyman Sweet was —

> "that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested, and as Governor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain moneys for the construction of a bridge in said county of Oswego."

The only evidence in the case in support of the alleged "prom-

ise" to Assemblyman Prime is the two bills which were passed by the Legislature and signed by the respondent as Governor, reappropriating for highway purposes in the counties of Essex and Warren certain unexpended balances of moneys theretofore appropriated for the same purpose; you will remember these two bills were offered in evidence; the direct primary bill introduced by Assemblyman Eisner at the regular session, and at the extraordinary session which convened June 16, 1913; the messages of the respondent as Governor in support of such direct primary bills; and the evidence given on the stand by Assemblyman Prime.

Assemblyman Prime testified, in substance, that in a conversation which he and other citizens from the counties affected by the legislation had with the respondent while the bill was pending before the Governor, Mr. Cameron said to the respondent, "Governor, we are down here on the highway measures affecting the counties of Essex and Warren. We are very anxious to get your signature to these bills" — or something of that nature; that the Governor turned to Senator Emerson and said, "Senator, you voted against my direct primaries bill;" that Senator Emerson then replied, "Yes, Governor, but I have a copy of your bill in my pocket;" that the respondent then said, "You had better read the bill;" that Senator Emerson then said, "I am going to read it, read it thoroughly, so that I can understand it;" to which the respondent replied, "Go back home and read the bill . . . and come back on Friday or Saturday and tell me how you feel as to the measure;" and that the Governor also said, "Well, I will see you on Friday," and as they turned to come out of the executive chamber the Governor made a statement, a remark to the effect that "You for me, I for you," and they went out. (See page 819.)

This evidence of Assemblyman Prime shows clearly that no such promise as is alleged in this article was made by the respondent, and that no bargain or arrangement of any kind in connection with that legislation was made or attempted to be made.

The Court probably noted that while the managers' counsel had the report of Hon. John N. Carlisle, State Superintendent of Highways, reporting in favor of these so-called Prime bills

marked for identification, the report was not offered or put in evidence.

No one who knows John N. Carlisle and his reputation for integrity and honesty will believe that that report was obtained from him as the result of any corrupt bargaining or manipulation.

No one who knows Senator Emerson, a member of this Court, or Assemblyman Prime, will believe that they, or either of them, entered into, or that the respondent who knows them would for a moment suggest to either one of them that they make and enter into a corrupt bargain or deal with him.

The only evidence in the case in support of the alleged "threat" to Assemblyman Sweet in connection with the Minetto bridge bill is the fact that the bill was passed by the Legislature; that it was before the Governor for signature; that it was desired by Assemblyman Sweet and by at least some of the people in his district; and the evidence of Assemblyman Sweet himself which is found on pages 808–9, in substance, to the following effect:

That he went to see the respondent in reference to the Minetto bridge bill; that when he spoke to him about that bill the respondent said, "Assemblyman, how did you vote on my primary bill?" that he replied, "I voted against it;" that the respondent then inquired, "How are you going to vote in the extraordinary session?" to which the Assemblyman replied "According to the sentiment and in the interest of my district;" and that the respondent then laid his hand on the Assemblyman's arm, stroking it, and said, "See Taylor, Assemblyman, and smooth him the right way . . . and bring your bill to me, but remember, Assemblyman, I take good care of my friends."

The evidence on behalf of the managers relating to this bill of Assemblyman Sweet and to the alleged "threat" is so weak and insignificant as to amount to nothing. It lacks not only any express threat, but also anything sufficient to authorize or justify any inference that there was any threat of any kind intended, even by implication.

Surely it will not be urged before this Court by anyone that any of the things alleged to have been done or said in connection with these Prime bills and this Sweet bill is covered by or violates the provisions of section 775 of the Penal Law.

As has already been pointed out, the provisions of the section relate solely to the corrupt use of the official authority or influence of a public officer in the way of conferring upon any person or securing for any person public office or increase or decrease of salary in order to obtain support for any person or measure.

If the facts alleged in this "big stick" article and the facts proved in connection therewith constitute an impeachable offense I venture the assertion that every Governor who has held office in this State, and every President of the United States for the past fifty years, has been subject to impeachment.

We submit and insist that article 7, like article 8, stands absolutely unproved and unsupported by any proof, and that the respondent is not called upon to give any evidence whatever in relation thereto.

Articles 3, 4 and 5 may be called the "bribery" and "criminal suppression of evidence" articles. They charge criminal offenses. The charge of bribery is that the respondent

> "fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell and one Melville B. Fuller each to withhold true testimony from said committee (Frawley committee) which testimony it was the duty of said several persons named to give to said committee when called before it and which under said inducement of said William Sulzer they, and each of them, refused to do,"

in violation of the provisions of section 2440 of the Penal Law.

The charge of criminal suppression of evidence by the respondent is that he

> "practiced deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller . . . and to prevent such persons, they severally being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do,"

in violation of section 814 of the Penal Law of the State, and that the respondent

> " wilfully prevented and dissuaded a certain witness, to wit, Frederick L. Colwell, who had been duly summoned or subpoenaed to attend as a witness before said committee hereinbefore named for the 8th day of August, 1913, from attending pursuant to said summons or subpoena,"

in violation of section 2441 of the Penal Law.

Section 814 of the Penal Law provides that:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein, any book, paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor."

Section 2440 of the Penal Law provides that:

> " A person who gives or offers or promises to give to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony."

Section 2441 of the Penal Law provides that:

> "A person who wilfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the summons or subpoena, is guilty of a misdemeanor."

We shall not argue the question, but it is open to serious doubt, whether the Frawley committee had any jurisdiction or authority to issue subpoenas to compel the attendance of or the giving of evidence by any witness, or whether any person would

be guilty of any crime in dissuading or procuring or advising any witness not to appear or not to give evidence before that committee.

The only evidence which has been submitted on behalf of the managers in support of the "bribery" and "criminal suppression of evidence" articles is the stenographer's minutes of certain questions put to and answers made by the witness Sarecky when he appeared before the so-called Frawley committee, the testimony of Melville B. Fuller, the witness who, it is alleged, was bribed not to appear before the committee and not to give evidence before it; and the testimony of John Boyd Gray as to a conversation which he had with Frederick L. Colwell in August, 1913, just before Mr. Colwell left the city of New York.

As to the witness Louis A. Sarecky, the evidence shows that he appeared before the Frawley committee. It shows that when called as a witness before that committee, he said:

> "Now gentlemen, I want to make a statement on record before I testify further. If you are delving into the Governor's campaign expenses, I am willing to tell everything, on condition that I be represented by counsel because if the story is to be told, I want both sides told."

The evidence shows that thereupon the chairman of that committee interrupted Mr. Sarecky and stated: "Mr. Sarecky, if Mr. Richards asks you any question that you feel you won't answer, you have a right to refuse;" and that the witness then stated "I feel that the committee has absolutely no authority at all to conduct the investigation."

There is nothing in the record to show that the respondent ever talked with or ever sent any message to or communicated directly or indirectly with the witness Louis A. Sarecky on the subject of his appearing or refusing to appear, or of his giving or refusing to give testimony before the Frawley committee, or, for that matter, on any subject whatever.

Sarecky was, with the approval of the respondent, appointed on July 18, 1913, to the office of lay member of the board of deportation of alien insane. But this appointment was made by the State Hospital Commission, and with the approval of the

State Civil Service Commission. There is nothing to show or which warrants an inference that the appointment had any connection with the giving or withholding of evidence by Sarecky, or that the respondent and Sarecky ever had any conversation directly or indirectly in reference thereto.

The papers have been full of statements alleged to emanate from the board of managers, or rather from the chairman of the board of managers, to the effect that Louis A. Sarecky had fled the jurisdiction of, and was endeavoring to avoid appearing before, this Court. The fact is, and will be proved, and such fact was well known to the board of managers, that Mr. Sarecky has been at his place of business and his rooms in Albany continuously during the progress of the trial, or at his office in New York City, or registered under his own name at the Iroquois Hotel in the city of Buffalo, and that his whereabouts were well known to all persons connected with the prosecution, and that he was subpoenaed on behalf of the board of managers and has been in this Court for several days ready to be called as a witness on behalf of the board of managers.

As to the witness Melville B. Fuller, it appears that he suggested to the respondent rather than that the respondent suggested to him, that he and his firm felt that they owed it to all their customers not to voluntarily disclose their business affairs except by consent of such customers, unless ordered so to do by the Court; that instead of the respondent bribing or attempting to bribe, threatening or attempting to threaten, or inducing or attempting to induce, Mr. Fuller not to appear and testify, the respondent simply suggested that if he, Mr. Fuller, desired to test the question of the power of the committee to compel the attendance of witnesses and the disclosure of their business affairs, he, the respondent, would furnish an attorney, which offer was refused.

The evidence establishes that thereafter Mr. Fuller appeared before the Frawley committee and that it was then and there stated to the committee by Judge Olcott on behalf of Mr. Fuller:

> "I want to say a word on the subject of his refusal to answer questions the other day, and the fact that he now presents himself ready to answer all questions which are asked of him. His refusal the other day was based upon the

custom, which is to them a law and a moral right of brokers, never to reveal any of their books so far as their customers' accounts are concerned. Since that we have had a conference with Governor Sulzer and his representatives, and the Governor agrees that, without further contest, without any contest on his part, that Mr. Fuller's lips should be unsealed. Now, having that waiver from the customer, Mr. Fuller feels at liberty to answer your questions."

The evidence establishes that thereupon Mr. Fuller presented to the committee all the books, papers and documents of the firm of Harris & Fuller, of which he was a member, for their inspection and use, and that he fully and frankly answered every question put to him by the attorney for that committee. Also, that thereafter he again appeared before this board of managers, producing all such books, papers and documents, and submitted himself to examination, answering fully and truly all questions put to him and furnishing all information asked for, and that for days his books, papers and documents have been in Albany subject to the inspection and use of the counsel to the board of managers; his courtesy being rewarded by insinuations that the prosecution's own witness was not honest in his business affairs.

As to the witness Frederick L. Colwell, there is no evidence of any kind which shows that he was ever subpoenaed or requested to appear before the Frawley committee or that his presence there was desired or that he refused to appear or that he did not so appear and give evidence. Neither is there any evidence that the respondent had anything to do, directly or indirectly, with Colwell in that regard.

Considerable interest was excited during the prosecution's presentation of its side of this case, both in Court and through the newspapers, by insinuations that the attendance of John Boyd Gray as a witness could not be obtained by the board of managers, but the Court must have observed that no attempt was made to produce any proof on the part of the board of managers of any attempt whatever having been made by them to compel the attendance of John Boyd Gray. It was shown that he has been at his place of business in New York City daily during the

progress of the trial. He appeared here, apparently voluntarily, and went upon the stand.

To summarize: We assert that there is no evidence in the case supporting or tending to support, even by inference or by speculation, any allegation contained in any of the articles numbered 3, 4 and 5.

When these articles of impeachment were first presented, counsel for the respondent with their knowledge of the facts believed, and now they are convinced, that there were no facts or fact upon which those three articles could be founded or supported. We believed then and now we know, that the "big stick" article, the "Stock Exchange" article, the "bribery" article, and the "criminal suppression of evidence" article, being articles 3, 4, 5, 7 and 8, were written into these articles of impeachment by some lawyer who knew his business and who knew enough to know that under all precedents and under the law the jurisdiction of this Court could only be obtained and maintained on articles of impeachment charging mal and corrupt conduct in office by this respondent, and who knew enough to know that the articles of impeachment, unless supported by and floated into this Court upon a raft constructed with one or more planks charging misconduct in office, could not live.

This proceeding is a great proceeding; great not because it involves the reputation and the future of the respondent and all that he can hold dear, but because of the greatness of the office involved and because of the public interest therein. Such a proceeding, from its inception to its end, and every step therein, ought to be conducted upon the highest plane.

Methods that might be adopted and that might be justified in an ordinary "horse" lawsuit ought not to be adopted or tolerated in a proceeding of this character.

Although there is an entire lack of evidence in support of any one of these five articles of impeachment, and although there is not in the case anything from which even an inference can be drawn in support of the allegations therein contained, it is equally true that this case from the beginning up to the present time has been filled with insinuations and innuendoes which were not only unjustified and misleading but which, of necessity,

tended to befog the case and to divert the attention not only of the Court but of the public as well from the real issues involved.

Take for instance: In the examination of Melville B. Fuller in connection with the entries in the books of the firm of Harris & Fuller, where it was broadly hinted that the books of the firm of Harris & Fuller were crooked; that there has been concert of action between the respondent and the members of that firm, to make the transaction appear upon the books different from what it really was, in order to aid the respondent in this case.

You will remember how the book was paraded through the Court, and exhibited to all the members of the Court. But not until two days later, a sufficient length of time to allow the unjust and unjustifiable insinuation to have accomplished its purpose, was the concession made in open court that there was no foundation in fact for the insinuation.

We had another similar exhibition in connection with the testimony of John Boyd Gray. Judge Bell was examined for some half hour, not in reference to any fact in issue in this case, but in reference to the whereabouts of his client, Mr. Gray. There was nothing in his testimony which indicated that Mr. Gray was concealing himself, or avoiding the service of a subpoena. In fact, the contrary appeared. Mr. Gray voluntarily appeared the next day as a witness for the prosecution. He testified that he had been at his various places of business in New York during the entire progress of the trial.

The calling and examination of Judge Bell was a play to create the impression in the minds of the public that Mr. Gray was avoiding the service of subpoena, at the instigation of the defense, because his evidence would be injurious to the defense.

The same innuendo was made regarding Louis A. Sarecky, that his attendance as a witness was very greatly desired by the prosecution, and that he could not be found. As a matter of fact, Mr. Sarecky has been about his business in the open during every day of the trial. He was subpoenaed on behalf of the prosecution, and has been in Court awaiting their call every day for several days. He was not only not called as a witness by the prosecution, but they never intended to call him. This fact

appears from the statement made by counsel for the prosecution, which will be found on page 952, and which was as follows:

> "Mr. Stanchfield.— You must not take it from that (referring to a statement by counsel for respondent that the prosecution had had Sarecky under subpoena for several days) that the board of managers intend to call him and make him their witness."

Speaking for myself alone, frankness compels me to say that I was greatly disappointed in the action of the Court in reserving or postponing its decision on the motion made on behalf of the respondent to dismiss articles 3, 4, 5, 7 and 8. However, this Court, in its wisdom, has seen fit to decree otherwise. To that decision, we, of course, are compelled to submit.

Believing as we do, and as at present advised, we shall submit but little, if any, evidence in relation to any one of these five articles. As we view it, it is not a question of the "probative" force or value of the evidence, but a case where there is an utter lack of evidence supporting the charges, or from which any inference against the respondent can legitimately be drawn. We will leave those articles, with the evidence or the lack of evidence relating thereto, for the Court to pass upon at such time as to it seems advisable.

Unlike the alleged acts set forth in the other articles, every act alleged in the articles of impeachment numbered 1, 2 and 6, to have been committed by the respondent, is stated to have been committed by him prior to January 1, 1913. None of them is claimed to have been committed while the respondent was in office, but, on the contrary, while the respondent was a private citizen, although at a time when he was a candidate for office.

These articles, 1, 2 and 6, and the allegations therein contained, relate to moneys alleged to have been received by respondent while a candidate for the office of Governor, and to the statement which, as such candidate, he made and filed in the office of the Secretary of State on or about the 13th day of November, 1912.

Article 6 is the "larceny" article. It charges the respondent with "stealing" moneys donated to him by friends during his

campaign. It alleges a violation of the provisions of sections 1290 and 1294 of the Penal Law. Criminal intent is the basis of this charge, not only by the form in which the alleged crime is set forth, but by the statute as well.

The allegation is that various persons "contributed" money and checks to the respondent, as "bailee, agent or trustee." It is certain, however, that if respondent received such moneys, or any of them, as bailee, as agent or as trustee, he became bailee, agent or trustee for himself alone, and for no other person. There was not, and is not under the evidence, any person in existence who has the right to, or who can, hale the respondent into court, either in a civil or criminal case, and compel him to account for his agency or trusteeship. The moneys were not only contributed but they were given to William Sulzer, the title thereto vested in him, and he became the owner thereof.

In the case of Wadd v. Hazelton, 137 N. Y. 215, the question presented was whether there was an absolute gift or a declaration of trust. Peckham, J., writing for the court, at page 219, used this language:

> "While it is true that no particular form of words is necessary to create a trust of this nature, and while it may be created by parole or in writing, and may be implied from the acts or words of the person creating it, yet it is also true that there must be evidence of such acts done or words used on the part of the creator of the alleged trust, that the intention to create it arises as a necessary inference therefrom, and is unequivocal; the implication arising from the evidence must be that the person holds the property as trustee for another."

There is nothing in the evidence in this case which shows that any of these donations were trust gifts. The most that can be claimed on the part of the prosecution is that some of the donors indicated at the time the donation was made, and in connection therewith, that the donation was for campaign expenses or campaign purposes. There is nothing, however, in any of the language contained in any of the communications written by the

donors at the time the donation was made, or in the conversations which the donors had with the respondent at the time when they delivered their donations to him, which created a trust.

In volume 20 of the Cyclopædia of Law, at page 1213, under the title "Conditional Gifts," is the following statement of principle:

> "Where a party makes a gift upon certain conditions, and the donee violates the conditions, or refuses to perform them, the donor may revoke the gift upon such violation or refusal on the part of the donee."

Even if it were to be held that any of these donations or contributions were "conditional gifts," and that they were made upon the "condition" that they could be used only for "campaign expenses," that does not aid the prosecution. If that were the situation, no one in the world except the donor has any cause or ground for complaint. The only right or remedy which the donor would have under such a construction of the terms of the gift would be to revoke the gift, demand the return of the donation or contribution, and, in the event of the refusal of the donee to return such donation or contribution, to bring a civil action to recover the same.

There is not, and cannot possibly be, any element of a criminal offense involved in such a transaction.

Notwithstanding all the ability and all the industry of all the counsel of the Frawley committee, of the board of managers and of the prosecution in this case, they have been unable to find, or at least to produce before this Court, a single person who has made any complaint or raised any question regarding the use to which the respondent put any of such moneys or checks.

Suppose that one of you, walking up Broadway, in the city of Albany, is met by a human derelict, and he tells you that he has not had his breakfast and wants a quarter for breakfast, to get something to eat, and you give him the quarter, and he spends it in some saloon. Does he thereby become a thief?

Even if this Court were to ignore all the precedents of hundreds of years, as well as the law of the State, and were to hold that a public official can be impeached for acts committed while a private citizen, and while not acting in an official position, it

cannot be that it will permit itself to be made a court for the determination of what constitutes good ethics, good form, or good taste.

The case now on trial is unique and novel in one respect. It is not claimed or even hinted in the articles of impeachment that the respondent or his friends corruptly or improperly used any money or thing whatever in aid of his election. It is not alleged or claimed that any corruption of the electors of the State was attempted, or that any bribery was practiced.

On the contrary, it is alleged that moneys which were contributed to the respondent, and which he might have used to aid him in securing the high office for which he was a candidate, were not so used, but were used by him for other purposes which in themselves were proper both in law and in good morals. In other words, that the use to which he put the money tended to prevent his being elected to this high office.

If the claim here were that the respondent used money corruptly or improperly in aid of his election, and that such corrupt or improper use of funds had aided the respondent in obtaining the office, then it might be urged with some reason that the respondent ought not to be permitted to hold an office which he had obtained in such a way. Then it might be argued with some pretense of earnestness that the principle established in the Guden case could be applied. Then there might be some foundation for or justification of the claim that the respondent had come into his office through a vestibule of corruption, and so ought not in good morals to be permitted to continue to hold such office.

We know of no case where impeachment proceedings have ever been instituted to impeach a public officer for bribery, or the corrupt use of money in aid of his election.

Of course, there are cases where legislative bodies have expelled their members because of the corrupt use of moneys in connection with their election; but in those bodies the law provides that they are the sole judges of the qualification of their members. It is here sought to impeach the respondent, not because he corruptly used money in aid of his election, but because he did not use to obtain the office some of the moneys which he had received during the period of his candidacy.

To urge the impeachment of a public official because he did not

use money in aid of his election is so unreasonable as to be almost ludicrous. We venture the assertion that were it not for political exigencies, such a thing would never have been conceived or even dreamed of.

Article 2 is the "perjury" article. The facts set forth in it do not constitute perjury or a criminal offense as a matter of law.

Section 1620 of the Penal Law defines perjury as follows:

> "A person who swears or affirms that . . . any . . . affidavit . . . by him subscribed is true . . . or who wilfully and knowingly testifies, declares, deposes or certifies falsely, in any material matter, or states in his . . . affidavit . . . any material matter to be true which he knows to be false, is guilty of perjury."

The proof in this case will show that at the time when the respondent made the affidavit referred to in article 2, he acted in good faith.

The section of the Penal Law defining perjury makes the crime dependent upon the "materiality" of the matter sworn to.

The affidavit made by the respondent, and upon the making of which this article of perjury is based, and must abide, is as follows, and I read the affidavit so that the Court may have it in mind:

"STATE OF NEW YORK }
CITY AND COUNTY OF NEW YORK } *ss.*

William Sulzer, being duly sworn, says that he is the person who signed the foregoing statement, that said statement is in all respects true, and that the same is a full and detailed statement of all moneys received, contributed or expended by him directly or indirectly, by himself or through any other person, in aid of his election.

(Signed) WM. SULZER.

Sworn to before me this 13th day of
November, 1912.

(Signed) Alfred J. Wolff,
Commissioner of Deeds,
No. 72, New York City."

In order for the Court to hold that in the making of this affidavit the respondent committed the crime of perjury, it must be made to appear not only by a preponderance of the evidence but beyond a reasonable doubt that the respondent did not act innocently and in good faith, but that he acted, as the article charges, wilfully and corruptly, knowing the affidavit to be false, and, further, that the statements contained in the affidavit to the effect that it constituted a statement of all moneys received by the respondent directly or indirectly was a material matter and required by law to be included therein.

An examination of the statute relating to the making and filing by political committees and candidates for public office of statements of election expenses, demonstrates that the matter of legislation in this State has not been reduced to a science. Such statutes are almost hopelessly muddled. I see my good friend Senator Brackett smiling, which I think indicates that I was at one time a member of the Senate with him, and therefore charges me with a part of this. I doubt that anyone, unless it be this Court, can say with any degree of certainty just what the various statutes relating to this subject mean. The matter is dealt with not only in the Penal Law but in the election law as well. In both places the same subject, relating to the same persons, is attempted to be dealt with. Section 776 of the Penal Law relates to the filing by candidates for public office of a "statement of expenses." That is the heading of the section. It provides, and now I quote:

> "Every candidate who is voted for at any public election held within this State shall, within ten days after such election, file, as hereinafter provided, an itemized statement showing in detail all the moneys contributed or expended by him directly or indirectly, by himself or through any other person, in aid of his election. . . . There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true and that the same is a full and detailed statement of all moneys so contributed or expended by him directly or indirectly, by himself or through any other person in aid of his election."

And then provides that "any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor."

It is to be noted and to be constantly kept in mind that this section of the law, which deals solely with the matter of the filing by a candidate for public office of a statement of his expenses, does not require, even by implication, that such statement shall contain any thing or matter with reference to moneys contributed to the candidate. It deals only with moneys contributed or expended "by" the candidate.

It will also be noted and constantly kept in mind that it is not alone the successful candidate who is required to make such statement and such affidavit.

It has been proved by the testimony of the witness Adams, an employee in the office of the Secretary of State, that the form of the statement and affidavit to be made by candidates for public office was prepared, and that such forms are furnished by the Secretary of State.

Turning now to the statement and affidavit made by the respondent, and which is in evidence here, and which, as I recall, has not been exhibited to the members of the Court so that they have examined it — you will find that the Secretary of State has caused to be printed, and there is printed upon such form — I am speaking now of the form that was verified by this respondent, and which is here in question — there is printed upon such form and as a part thereof, this section 776 of the Penal Law in full, and that there is nothing on such blank forms which refers or directs the attention of the candidate or person making the statement and affidavit to any other statute or provision of law anywhere requiring anything else to be contained in or made a part of such statement.

Let me say here that is the form that is sent out and has been sent out to all candidates for office throughout the State, that is the form upon which each member of this Court since 1906, in any event, and I think long before that, has made a statement, if he has used one of the Secretary of State's blanks.

Section 546 of the election law deals with this same subject,

but in a blind and involved manner. The material parts of that section are as follows:

> " The treasurer of every political committee which, or any officer, member or agent of which, in connection with any election receives, expends or disburses any money or its equivalent, . . . shall within twenty days after such election, file a statement setting forth all the receipts, expenditures, disbursements and liabilities of the committee. . . . In each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, . . . " etc.,

and then at the end of the section appear these words:

> " The statement to be filed by a candidate or other person not a treasurer shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him."

It will be noted and at all times kept in mind that the statement of campaign expenses or payments required to be made by this section 546 of the election law is not required to be sworn to or verified. In that one respect the law is perfectly clear and explicit. There is no uncertainty or ambiguity in the law in regard to that.

One fact stands out which cannot be gainsaid or controverted, and that is that under the law this respondent was not required to verify or swear to any statement of moneys contributed to or received by him in aid of his election. The most that can be claimed in that regard is that he was required by this section 546 of the election law to file an unverified statement of such moneys.

If the true construction of the provisions of section 546 of the election law be that a candidate for public office is required to file an unverified statement of the moneys contributed to or received by him in aid of his election, within twenty days after the election, it must be held that no penalty attaches for a failure to comply with that provision.

Every one knows, and the Legislature in enacting the provisions of the corrupt practices law must have taken into consideration the fact that any candidate for office may have paid to him, or may receive moneys which cannot strictly be termed campaign moneys or moneys to be used for campaign purposes. The law expressly permits certain moneys to be used and paid in aid of election for which no accounting need be made. Probably that is why the Legislature did not impose any liability on a candidate who failed to make and file any statement of moneys paid to him in aid of election.

Section 550 of the election law provides that if any person or committee fails to file the statement or account "as above required," or files a statement which does not conform to the foregoing requirements in respect to its truth, sufficiency in detail or otherwise, the filing of such statement or account may be compelled by order in proceedings for contempt, and the procedure is provided by law for compelling compliance with such an order.

Under this condition of the law, we submit that the Court must hold that the respondent was not required by any statute to verify any statement of the moneys contributed to or received by him in aid of his election or otherwise, and that the statement in the affidavit made by him on November 13, 1912, to the effect that the statement to which such affidavit was attached was a true statement of all moneys received by him, directly or indirectly, in aid of his election, was, therefore, immaterial, even if he had known that such statement was included in such affidavit, and even though he had not acted innocently and in good faith.

Our position, therefore, is, and to the end will be, that under the law and the facts this "perjury" article must be dismissed.

If this Court is to hold that every candidate elected to public office can be impeached because of his failure to comply with the requirements of these statutes or because his statement is not accurate and true, then, what man is there in office today who is not liable to impeachment?

Does not this very thing demonstrate how wise and just are the precedents and the law that limits impeachable offenses to mal and corrupt conduct in office?

If to these offenses you are to add offenses committed in the imaginary "vestibule" to office, where shall the vestibule be erected, how wide shall it be built, and how far back into the distant past shall it be made to extend? A distinguished citizen of this country has been in the vestibule to office on at least three occasions, the highest office in the land. He has had his hand upon the door knob of office, stood there in that vestibule, that imaginary vestibule, three different times. Suppose that on any one of those occasions he had been guilty of some offense or of some corruption in the vestibule, can he be or, if he were a candidate again, and succeeded in opening and entering the door, could he be impeached for offenses committed in the vestibule of office years and years before? There is yet to be made the law that impeachment lies for mal and corrupt conduct in an imaginary vestibule to office.

One of my associates has suggested that this vestibule of office proposition is carpenter-made law.

Article 1 is the "false statement" article. It charges the wilful and intentional making of a false statement by the respondent concerning his campaign expenses, in that he intentionally omitted therefrom moneys contributed to and received by him during his campaign. It does not charge any crime or any criminal offense.

While no particular statute is referred to in this article by chapter, title or section, a reference is made to a statute as set forth in the article and the statute set forth is the language of section 546 of the election law. A comparison of the phrasing of the first paragraph of article 1 with the phrasing of section 546 of the election law will show that the language of that section has been used almost verbatim in the article, consequently that section must be the statute referred to in that article in the use of the language, "statute above set forth," which is in the article, and the Court must necessarily so hold. When we come to compare and examine this article 1 with section 546 of the election law, you will see that that is a correct statement.

Article 1 is the only article which does not purport to charge a criminal offense. It charges that the campaign statement which

the respondent made and filed was not true, that is, that the respondent intentionally lied, and that, having lied, he has shown himself to be unfitted to hold office and should be removed.

The answer to this article, and the reason why it does not allege an impeachable offense, was well and convincingly stated by Senator Brackett. At page 292 he said:

> "This is no trial for disgusting manners, nor for lack of dignity, nor for immeasurable boastings — all of these may be offensive to the last degree, but they are not in the charges here, nor likely impeachable. The defendant is charged with crimes."

In order to enable the Court to understand fully the circumstances surrounding and attending the making by the respondent of his statement of campaign expenses on November 13, 1912, we expect to show the following facts:

On October 3, 1912, the respondent was nominated by the Democratic state convention at Syracuse for the office of Governor, and was elected to that office on November 5th by the largest plurality ever given a candidate for public office in the State.

The respondent is a plain, affable man, easy to approach, and a man who, until the year 1913, never made enemies.

He has never had any business education or experience. Practically all of his time since in the eighties has been taken up with his duties as a legislator, either in the Assembly of the State or in the House of Representatives. While a lawyer by profession, about the only evidence of that fact, as one witness stated it, is that he had a law office. He never kept books of account or records of his transactions. He is exceedingly careless and unmethodical. Details are something to which he is almost a stranger. During the campaign several clerks, stenographers and assistants were employed in and about the respondent's office at 115 Broadway, New York City, among them being his secretary, Louis A. Sarecky, Roy K. Weller, Charles Horowitz, Matt Horgan, who later became the secretary to the Frawley investigating committee, Mr. Hanify and Mr. Delaney, who is now Commissioner of the Department of Efficiency and Economy.

As you all know, it is customary in these days, particularly in the city of New York, for a candidate for any important office to have a personal campaign committee. Soon after the close of the convention at Syracuse, it was talked over by some of the respondent's intimate friends who were connected with or were frequenters of the respondent's offices, that a campaign committee should be organized to look after the respondent's personal campaign and matters connected therewith. Colonel Alexander Bacon was first suggested for the chairmanship of that committee, but because he would have to be away much of the time campaign speaking, it was finally decided that Ex-governor Spriggs should act in that capacity and Mr. Sarecky was made the secretary and treasurer thereof. The organization of the committee was very informal.

During the campaign the respondent was away a considerable portion of the time. On the 17th and 18th of October he was on a speaking trip through the Hudson valley as far north as Troy. From October 20th to 30th he made a speaking tour of the State. Between the 30th of October and election day, November 5th, he made a tour of Long Island. In the meantime he delivered many speeches in and about the city of New York.

While he was at his office during the campaign, the office was crowded with callers and practically all of his time was taken up with conferences and interviews. His mail during that period was enormous. It was an utter impossibility for him to give any time or attention to the details of his campaign or of his office. Of necessity that work was performed by others, and particularly by Mr. Sarecky, who had been in his employ for many years. Mr. Sarecky was thoroughly reliable and a man in whom the respondent placed implicit confidence, as he had a right to do.

It is generally well known that the salary of Governor in this State is not enough to support the office properly. During his work in Congress the respondent had endeared himself to many well-to-do people of the city of New York, as well as to many other people who had come to know and to love him. These friends and well-wishers of the respondent desired to do something for him. Their feeling was personal to him and was not a matter of party concern or party principle. It has been shown in this case

that Republicans were included among those friends, and that the respondent was the only Democrat they supported.

During the campaign the respondent received donations, gifts and loans from many of those friends and acquaintances, some of them being small and some of them large. Some of these were in cash and some by check. The respondent, knowing the sentiment and feeling of the donors toward him, believed, and had a right to believe, that such gifts were intended for himself personally, to be used by him in aid of his election if needed, and if not so needed, in any other way that would assist him.

The respondent received these gifts, making no effort to keep them separate from his own moneys or to apply them to any definite or specific purpose. Some of these donations were made to him in person, some by messenger, some through the mail, some were delivered at his residence, some at the office and some directly to Mr. Sarecky. You will remember that this already appears, the manner in which that was done.

Some of these gifts were deposited by the respondent in his bank account and in the Farmers Loan & Trust Company, where they have ever since remained, and where they still are. It was there that the Elkus and Morgenthau checks were deposited. Some of these gifts were turned over by the respondent to Mr. Sarecky, and some of them were turned over to the respondent's wife.

Some of these gifts were made to respondent by friends who were in the brewing business. The insinuation has been made that these were not included in the statement made by the respondent because of a desire on his part to conceal the fact that brewers were contributing moneys to him. The evidence shows that the donation of the brewer W. J. Elias not only went into the Sarecky bank account in the Mutual Alliance Trust Company, but that it is reported in the statement made by the respondent.

Furthermore, the deposit slips, produced by the prosecution, of deposits made by Mr. Sarecky in his account in that trust company show that some of the other checks received from brewers were likewise so deposited, the names of the brewers appearing upon the deposit slips.

Some of the checks so received by the respondent were finally used in payment of the purchase price of certain stocks bought of

the firm of Boyer, Griswold & Company. It is claimed here that the stock was purchased of Boyer, Griswold & Company secretly, and that the purchase of such stock and the payment therefor was handled in a secret way in order that it might not be known that the respondent had any connection therewith. This claim is made in the face of the fact that the checks used in payment to Boyer, Griswold & Company for that stock were, with one or two exceptions, checks made to the order and endorsed in the name of the respondent, and one of them was the personal check of the respondent.

Had there been any wrongful intent or purpose in connection with these transactions, or any desire to conceal the same, it is certain that such checks would never have found their way into any brokerage house, and gone through the banks of the city of New York with their endorsements thereon.

Besides the donations which have been testified to by the prosecution's witnesses, there were others. In addition to that, and during the same period, we expect to show that the respondent borrowed considerable sums of money and that he had received other moneys from other friends before his nomination which were not given to him for any purpose connected with his campaign.

After the election was over, Mr. Sarecky learned for the first time that it was necessary for a political committee to make a report of the moneys used by the committee during the campaign, and also learned for the first time that upon the organization of a political committee the law required a notice of the election of the officers of the committee to be filed with the Secretary of State. No such notice having been filed, the question arose as to how the report could be made. Thereupon Mr. Sarecky informed the respondent that the committee could not make a report because of its failure to file such notice, and the respondent suggested that he make it. The statement was thereupon made out by Mr. Sarecky, with the assistance of Mr. Horgan.

Some of the data which Mr. Sarecky had been keeping during the campaign, of moneys received and disbursed, had disappeared so he was obliged to make up the statement in part from the recollection of himself and Mr. Horgan. Having made up the state-

ment, he took it to the respondent in his private office for signature. The respondent inquired "Is it all right?" to which Mr. Sarecky answered, in substance, "It is as nearly accurate as I can make it." Whereupon the respondent, without any examination of the document, and in reliance upon the assurance thus given him by Mr. Sarecky, signed his name thereto.

Thereupon, Mr. Sarecky went to the office of House, Grossman & Voorhaus at the other end of the hall and requested Mr. Wolff to take the respondent's affidavit. Mr. Wolff accompanied Mr. Sarecky to the respondent's private office for the purpose of taking his affidavit. Mr. Wolff has testified that when he entered the anteroom of the suite of offices occupied by the respondent, the respondent's private office was at the right, in which direction he went. The proof will show that the private office was at the left.

Mr. Wolff has testified that as he entered the respondent's private office he turned to the left, and that the respondent was at his desk at the left of the door through which Wolff entered. In this he is again in error because the respondent's desk was at the right of the door as one enters the private room.

Wolff has testified that the respondent was sitting at a desk on the left hand side of the room, with its back against the wall. In this he is also in error, the fact being that the respondent's desk stood against the right hand wall, with one end against the wall, so that the back of the desk was toward a person entering the room.

Mr. Wolff has testified that in taking the affidavit of the respondent he not only asked if the affidavit subscribed by respondent was true, but that he then read to the respondent certain clauses of the affidavit, particularly the clause to the effect that the statement contained an itemized "statement of all moneys received" by the respondent. In this regard he testified untruly because nothing of the kind occurred. Everyone familiar with the manner in which affidavits are taken, and who heard Mr. Wolff's testimony, must have known that his testimony in that regard was untrue.

Wolff testified that at the desk of the respondent and in the respondent's private room he subscribed his name to the affidavit. In this he was wrong. He and Mr. Sarecky only went inside the

respondent's private room where Wolff inquired of the respondent if that was his signature to the statement, and, receiving a reply in the affirmative, congratulated the respondent on his election to office, stepped back into the anteroom and subscribed this affidavit at Mr. Sarecky's desk. Mr. Sarecky then enclosed the statement in an envelope and mailed it to the Secretary of State.

This Court, in accordance with the provisions of the statute, has specified and adopted the questions upon which it is finally to pass in this case. These questions, in substance, are:

1. Is the respondent guilty?
2. If guilty, should the respondent be removed from office?
3. If guilty and removed from office, should the respondent be disqualified from ever again holding public office?

While we have no doubt concerning the correctness of our contention that under all precedents and under the law, the respondent cannot properly or legally be impeached for acts done while a private citizen and outside of his office as Governor, we have no right, of course, to anticipate what the action of this Court is to be on that proposition.

If this Court were finally to decide against the respondent on the question whether acts done as a private citizen and before entering office are impeachable offenses and were to find the respondent guilty by a two-thirds vote on any one of the articles, it would then pass to the second question, which is, "Shall the respondent be removed from office?"

In considering and determining that question, what factors or elements are to be considered? Our position on that question is that the welfare and best interests of the State and of its people must be the main consideration; that what the respondent was or was not, and what he did or did not do before he became Governor, is of minor importance. The great question would then be, what has he done and what has he failed to do, what has he tried to do and what has he tried not to do, as Governor? Did he as a private citizen before he became Governor do anything for which he should be removed from office?

If his administration on the whole has been in the interest of the people of the State; if what he has done and has been at-

tempting to do as Governor has been in accordance with the solemn promise which he made when he took his official oath of office; if what he has done and attempted to do is to rid the governmental departments of the State of graft and grafters (if graft and grafters exist); if the public welfare will be promoted by a continuance of the investigations which he had instituted and which were in progress before his impeachment and which have been suspended during and because of his impeachment, and which will, in all probability, not be resumed if he be found guilty and be removed — then surely he ought not to be impeached and ought not to be removed from office because of any acts done by him before January 1, 1913, whether they be acts of omission or of commission.

Saul and his friends were engaged for years in the work of persecuting and killing off Christians. On one of his trips to Damascus he saw the light. From that day on he divorced himself from his former friends and faithfully discharged the duties of discipleship. From that day on his former friends became his enemies and his persecutors, but they did not attempt to impeach him or his epistles because of what he had done while acting with them and while one of them. When, in the nineteen centuries, has voice been raised to condemn Paul or his epistles for his acts as Saul?

In determining the questions before it, this Court must necessarily take into consideration the question of the public good. In case it finds the respondent guilty, it must determine whether he ought to be removed. That involves the motives which led to this impeachment, that is, as to whether or not the proceeding and the result sought to be obtained are in the true interest of the public.

The question must be, and is, Was the respondent impeached because of "mal and corrupt conduct in office," for crimes and misdemeanors, or was he impeached because of what he refused to do since he took office?

Was the proceeding instituted because of a desire to accomplish a public good or was it for the purpose of getting rid of a public official who was performing his duty? Was the respondent impeached because, as they say, of "mal and corrupt conduct

in office," or because of honest conduct in office? Was he impeached, as they say, for "stealing" the moneys which his friends gave him, or was it because he was preventing grafters from stealing the moneys of the taxpayers? Was he impeached because, as they say, he made a false oath, or was it because he refused to violate his official oath of office?

These are some of the questions which the public are expecting this Court to answer and which this Court, under the questions to be voted upon, will have to answer. Upon their answer, we believe, depend quite largely the future welfare and interests of the State.

In all that we have done and in all that we shall do in this case, we have endeavored and will endeavor to assist the Court to the best of our ability in arriving at a just and right conclusion of this matter.

We are living in strange days. There has never been a time within my recollection when there was such a spirit of unrest and uneasiness on the part of the people generally. The time is surely coming — indeed, it may be near at hand — when we as a people must demonstrate whether our form of government with an almost unlimited elective franchise can endure. We cannot escape the feeling that what is done here and now may have a tremendous influence on the determination of that question.

We consider it of the utmost importance that what is done here and now should not only be well and rightly done, but that it should be done in such a manner as to convince the people of the State that it has been so done.

I thank the Court.

Mr. Herrick.— May it please the Court: Our first witnesses to be examined were to be examined by Senator Hinman, who is more conversant with the testimony he expects to elicit than any other counsel, and I ask an adjournment until tomorrow morning so he may be prepared for it.

The President.— Is there no other witness you want to call? Of course we want to be as lenient with each side as possible, but we do not want to lose time.

Mr. Hinman.— We do not want to lose time.

The President.— Is there any other witness you can put on the stand?

Mr. Hinman.— I do not think of any now.

The President.— You see it often takes a good deal of time to put in even formal proof.

Mr. Herrick.— We have no formal proof to put in that would occupy any time at all. The examination of the first witness we will put on will necessarily be a lengthy one both on direct and I apprehend on cross-examination. Mr. Hinman has now been talking something over an hour and a half and he is pretty well exhausted, and I am not prepared to examine this witness myself.

The President.— Well, gentlemen, I am disposed to let you take the time so far as I am concerned. At 10 o'clock tomorrow we must go on and we will expect a whole day's work to be done.

Mr. Herrick.— We will make up the hour.

The President.— Very good, unless some gentleman thinks the Presiding Judge is too lenient, why, well —

Mr. Herrick.—We have not found you overlenient so far.

The President.— Give notices to the witnesses.

Whereupon, at 5.10 o'clock p. m., the Court adjourned to meet again on Tuesday, October 7, 1913, at 10 o'clock a. m.

TUESDAY, OCTOBER 7, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Stanchfield.— We were requested, if the Presiding Judge please, to produce Mr. Ryan here this morning in order that some further questions may be addressed to him.

Mr. Marshall.—We have not determined as to what we will do as to that. We do not care for him at this moment.

The President.— Mr. Marshall, I cannot hear you.

Mr. Marshall.— We are not at this time desirous of calling Mr. Ryan.

Mr. Stanchfield.— I said we, speaking for the board of managers, were notified last night to produce Mr. Ryan here in order that some further questions might be addressed to him; whether it is from the body of the Court or counsel upon the other side, I am not definitely advised.

Mr. Marshall.— I thought you referred to me.

Mr. Stanchfield.— Mr. Ryan, take the stand.

The President.— Nobody apparently asks for him. Mr. Ryan, you remain in Court for the present. Did any of the senators request that this witness be put on the stand again?

Senator Brown.— Mr. President, we cannot hear what is going on.

The President.— Did any of the senators request that Mr. Ryan be put on the stand again? Counsel for the managers stated that they were requested to produce that witness in Court again this morning, and they appear to be unable to state from what source the request proceeded. The counsel for the respondent repudiate the request as coming from them.

Mr. Marshall.— No, that is not exactly correct. I state we had requested them to have him here so that we could cross-examine him further if we desired, but we are not at this time prepared to cross-examine or to have him put upon the witness stand.

Mr. Stanchfield.— It was Mr. Marshall himself, Mr. Kresel advises me, who made the request.

Senator Brown.— I would like to inquire if it is the purpose to have Mr. Ryan take the stand now.

Mr. Marshall.— We are not certain as to that at the present time. We are conferring on that subject.

Senator Brown.— Then I move that the Court go into executive session for the purpose of reconsidering the ruling yesterday, in relation to the admissibility of certain testimony given by the witness Ryan.

The President.— It seems to the Presiding Judge that, if the question is to come up again for discussion, it better be in private session.

All those in favor of going into private session, say aye; opposed, no.

Carried.

Whereupon, the Court of Impeachment went into executive session.

At the end of the executive session, the President made the following statement:

The vote of the Court yesterday sustaining the ruling of the Presiding Judge — striking out from the record the evidence of witness Ryan that the respondent had asked him to go to Senator Root to have him see Mr. Barnes to see the Republican senators — holding that the Court had no jurisdiction, and excluding the evidence, is reconsidered, and it is directed that that evidence remain in the record.

The President.— Gentlemen, the Court, after further consideration, has decided that the evidence given by the witness Ryan, as to what the respondent said to him about going to see Senator

Root, shall remain in the record, instead of being stricken therefrom. Therefore, the witness Ryan will immediately resume the stand, so as to see if any further questions are to be put to him.

ALLAN A. RYAN recalled.

Examined by Mr. Stanchfield:

Q. Mr. Ryan, was there anything more said in the conversation that you had with the respondent, Governor Sulzer, at the interview in which you were requested to communicate with Senator Root, than what you have already testified to? A. Yes, sir.

Q. Will you give it, please? A. I suggested to Mr. Sulzer that now that certain charges had been made against him, that I did not see how he could afford to put himself in a position that he would put himself in, if he did not answer those charges.

Mr. Herrick.— That we ask to have stricken out, if the Court please, as incompetent and immaterial.

The President.— Objection overruled. Ask him what he said further.

Q. What further, Mr. Ryan? A. He said that his reason was that he did not want to drag his wife into the situation and put her on the stand.

Q. Was there anything further said? A. I told him that I would not go to Washington, but that I would try to ascertain the Republican sentiment on that question, as to whether the Court had a right to impeach him.

Q. That conversation took place at this interview of which you are speaking, in the forenoon? A. Yes, sir.

Q. Is that all the conversation? A. No, sir.

Q. Tell me what else was said? A. He said that if they voted that the trial was not legal he could then come and make a statement, come out with a statement and explain the situation satisfactorily. Those are not exactly his words, but that is the gist of the conversation. This conversation took place over a period of about an hour.

Q. You are giving, to the best of your ability, are you, the language when you can recall it, and when you cannot recall it, the substance? A. Yes, sir.

Q. Was there any more of the conversation than what you have related? A. I do not understand the question.

Q. Was there anything more of the conversation than you have told us? A. Nothing more than I said that I would try to ascertain the sentiment of the Republican members of the Court.

Q. Have you now, Mr. Ryan, related, to the best of your ability, all of the conversation you had with Governor Sulzer upon that occasion? A. Yes, sir.

Q. Did you, in conformity with that conversation, make any effort to ascertain the Republican sentiment or position upon that question?

Mr. Herrick.— That is objected to as incompetent.

Mr. Stanchfield.—I am not now, if the Presiding Judge please, going into details. I am asking whether he made any effort.

The President.—We will submit that question to the Court. Those that are in favor of admitting it, please say yes; those opposed, no.

Senator Herrick.— May we have the question repeated?

Mr. Stanchfield.— I asked him if he made any effort, after that conversation, to ascertain the Republican sentiment upon that question. I am not asking for the conversation.

The President.—All in favor of admitting it, please say yes. All opposed, no.

It will be admitted.

Mr. Herrick.— May the witness be instructed to answer yes or no?

The President.— Yes. Just say whether you did or did not. Whether you did anything? A. Yes.

By Mr. Stanchfield:

Q. Came there a time when you saw Governor Sulzer later? A. Yes.

Q. When, and I direct your attention now to this conversation

that you have already given us, when with reference to that conversation did you see him again? A. Three o'clock that afternoon.

Q. Now, did you see him at the same place? A. Yes.

Q. Did you have another conversation with him at that time? A. Yes.

Q. Did you at that time have any talk with him upon the subject of what, if anything, you had done to ascertain the Republican sentiment upon that question? A. Yes.

Q. Did you have with you at that time any notes or memoranda or paper of any kind relevant to that subject? A. Yes.

Q. Did you read the contents of that paper to Governor Sulzer? A. I either read it or he read it.

Q. Did he take in his possession the paper that you had? A. Yes, sir.

Q. Did he read it? A. He took it with him.

Q. Have you a copy of it? A. Yes, sir.

Q. With you? A. Yes, sir.

Q. Produce it please. (Witness produces paper, but hesitates about handing it to counsel).

The President.— I think I shall have to follow the ruling of the majority of the Court.

Mr. Stanchfield.— I have not offered it yet. I asked him to produce it first.

The President.— He must produce it.

Senator McClelland.— We do not hear the Presiding Judge as to the suggestion on the evidence.

The President.— He asks him to produce it. The witness hesitated to produce it. I said that in accordance with the opinion of the majority of the Court I thought I ought to direct him to produce it and give it to counsel. Give it to counsel.

(Witness hands paper to Mr. Kresel.)

(Mr. Stanchfield and Mr. Kresel read the paper together.)

Mr. Stanchfield.— Do you want to look at it? (handing paper to Mr. Herrick who examines it with Mr. Marshall).

Mr. Herrick.—We have no objection.

Q. At the time, Mr. Ryan, when you handed this paper which you have produced in response to my request to Governor Sulzer, was there any conversation between the Governor and you as to the source from which this paper came? A. I supposed he inferred where it was supposed to have —

Q. No, I cannot ask you that. A. I do not know how to answer.

Q. Your suppositions are not evidence. What I ask you is, was there any talk between you when you handed him this paper as to where it had come from, or who was the author of the sentiments upon it?

Mr. Marshall.—Answer yes or no.

A. I believe there was.

Q. What was said on that subject? Do you follow my inquiry? What was said on the subject as to who prepared or wrote or was responsible for the contents of this paper? A. I did not tell him who wrote it.

Q. Had there been any talk between you as to whom you were to get in touch with to ascertain Republican sentiment? A. I called up, from his room, a friend of mine.

Q. In his presence? A. In his presence, and asked him, this friend, to meet me at my office. I did not say what it was about, why I wanted to see him. I do not think he knew whom I called up.

Q. You did then make an appointment in Governor Sulzer's office to see a friend of yours? A. Exactly.

Q. You did go and see that friend? A. He came to my office.

Q. He came to your office? A. Yes, sir.

Q. And did that friend hand you later or at the time this paper? A. I asked him to dictate exactly what he had to report to me, and he dictated that in my presence. That is not the original paper.

Q. Now, when you saw Governor Sulzer in the afternoon and handed him this paper, what, if anything, did you say to him as to

where the paper came from or where you got the information appearing upon it?

Mr. Herrick.— He says he did not tell him. He has answered that.

Mr. Stanchfield.— I know.

By the President:

Q. Did you say anything? A. Nothing further that I can recollect than that I had obtained this information and I believed it to be correct.

Mr. Stanchfield.— Now, I will read this in evidence.

"The best I can get is as follows:

"First.— That only elected members of the Court of Appeals will sit in the High Court of Impeachment. The appointed members will be excluded.

"Second.— That the judges will maintain the legal fact that the Assembly can come together, at any place, at any time, and at its own option, or at any given call, even that of a citizen, if it wishes to, and a proper quorum being present, may present articles of impeachment against any official of the State for whom it has that authority.

"Third.— That no process exists in the law that is operative against the High Court of Impeachment or any way hereof, in other words, no restraining order will be in anyway regarded.

"Fourth.— The Republican organization, as such, will do nothing. It will give no advice or order. It will leave every member to act upon his own judgment. The chairman says distinctly that he will not permit anybody, high or low, to speak to him on the subject."

By Mr. Stanchfield:

Q. Now, Mr. Ryan, I have called your attention to that portion of your talk with Governor Sulzer in the afternoon, that deals with the exhibit I have just offered in evidence. Did you have further talk with him that afternoon? A. Yes, sir.

Q. Will you relate what further conversation you had with him?

Senator Wagner.— I suggest that the question be amended to any other talk with reference to this proceeding.

The President.— Yes, you will follow the suggestion.

Mr. Stanchfield.— I will follow the suggestion.

Q. Mr. Ryan, did you have any further talk, in your conversation of the afternoon, with Governor Sulzer, in reference to these proceedings, or this Court of Impeachment? A. Yes, sir.

Q. Tell us what it was. A. I suggested to him the advisability of resigning and then making a statement.

Q. What else was said — and I wish you would follow my question — What else was said upon the subject in any way affecting these proceedings, or this Court of Impeachment, in that conversation? A. He asked me to do certain things.

Q. What did he ask you to do? A. He asked me to see Mr. DeLancey Nicoll.

Q. What did he ask you to see Mr. DeLancey Nicoll for? A. To see if he could not carry out the same idea that he expressed to me in the morning.

Q. Well, in what way — that is, did he say in what way? A. He said that Mr. Nicoll could see certain parties.

Q. And do what? A. And possibly persuade them to do what he wished to accomplish by having me see Mr. Root, and having him see Mr. Barnes. That covers the conversation.

Q. In this conversation —

The President.— He doesn't mean that exactly. You say —

The Witness.— Would accomplish the same end.

The President.— You said to see Mr. Barnes. You didn't mean that?

The Witness.— No, to accomplish the same end. Your Honor, this conversation took nearly two hours.

The President.— What you meant was that Mr. Nicoll was to see the senator.

The Witness.— No, sir.

Mr. Stanchfield.— I will get at that in just a moment.

The President.— Ask him about that.

Mr. Stanchfield.— I will.

Q. In that conversation, did he name any particular party or parties that he wished you to request Mr. Nicoll to see? A. Yes, sir.

Q. Whom did he name? A. Mr. Murphy.

Q. And which Mr. Murphy? A. Mr. Charles Murphy.

Q. What did he say to you, if anything, in that conversation that he wanted you to ask Mr. Nicoll to say to Mr. Murphy? A. It was on the same lines he wanted to accomplish.

Q. I don't want conclusions. I want you to tell me what the language was as nearly as you can give it, and where you cannot give the language, Mr. Ryan, give the substance of the conversation? A. He wanted this procedure stopped.

Q. Yes, and what else? A. He wanted the Court to vote that the Assembly did not have the right to impeach him or try him.

Q. What else did he ask Mr. Nicoll to say to Mr. Murphy? A. He asked me to get Mr. Nicoll to do these things.

Q. Yes, but I want the whole of the talk that you had with him as to what you were to get Mr. Nicoll to do and say to Mr. Murphy.

The Witness.— I have answered that, your Honor.

The President.— Well, is there anything more?

Q. Just a moment, Mr. Ryan. I am asking you to tell us. Will you follow me please? I am asking you to tell us what Governor Sulzer asked you to say to Mr. Nicoll. No conclusions. Just what did Governor Sulzer ask you to say to Mr. DeLancey Nicoll? A. He wanted me to have Mr. Nicoll persuade Mr. Murphy to endeavor to call off his inquiry by getting his following to vote that the Court had no right, the Assembly had no right, to vote his impeachment.

Q. There was more than that said, was there not? A. (No response.)

Q. There was more than that said in the conversation, was there not?

The President.—If you recall anything, say so; and, if you cannot recall any, say so.

A. He said Mr. Nicoll could be the go-between.

Q. Yes. Won't you go right along and finish that conversation? A. That he was willing to do whatever was right.

Q. That is, that who was willing to do whatever was right? A. Mr. Sulzer.

Q. What further was said in that conversation upon the subject of what was doing right? A. I don't recall anything further.

Q. Do you recall anything that was said beside what you have already testified to? (No response.)

Q. In other words, at this moment are you able to recollect anything more that he told you to say to Mr. DeLancey Nicoll? A. No, sir.

Q. Was there anything said in that talk as to what you were to say to Mr. DeLancey Nicoll, by Governor Sulzer, as to whether or no he had any certain number of votes in the Legislature on that question?

The President.—You mean the Legislature, the Assembly or the Court?

Mr. Stanchfield.—I mean the Court. Any certain number of members of the Court, on that subject? A. Yes, sir.

Q. Now, if I have refreshed your recollection as to that, tell me what he said on that subject? A. He said he had ten Democratic votes.

Q. When he said he had, do you mean that Governor Sulzer said he had ten Democratic votes? A. Yes, sir.

Q. Now, did he tell you in that talk upon what proposition he had those votes? A. No, sir.

Q. What did he tell you, if anything, to say to Mr. Nicoll that would be done if Mr. Murphy would get the Democratic members to vote on this question as he wanted? A. I answered that question.

Q. Well, what was it, in substance? Just again, please, if you have already? A. That he would do whatever was right.

Q. Did he specify in any particular what he would do as being right, as you call it? A. No, sir.

Q. Is there anything more to that conversation that you now recall? A. Regarding Mr. Nicoll?

Q. Yes. A. No, sir.

Q. Did you, as a matter of fact, Mr. Ryan, see Mr. DeLancey Nicoll? A. No, sir.

Q. Did you have any communication with him upon the subject? A. No, sir.

Q. As a matter of fact, did you see Senator Root? A. No, sir.

Q. Did you have any communication with him upon the subject? A. No, sir.

Q. Now, it is a fact, is it not, common knowledge, that Senator Root had been a long time your father's counsel? A. Yes, sir.

Q. And Mr. DeLancey Nicoll had also been one of your father's counsel, had he not? A. Yes, sir.

Q. Now, in this last conversation to which I have been calling your attention, in which you were requested to see Mr. Nicoll, what reply, if any, did you make to Governor Sulzer? A. I told him I would see what I could do, and I went out in the country and forgot it.

Mr. Stanchfield.— You may cross-examine.

Mr. Herrick.— Have you got through entirely?

Mr. Stanchfield.— Yes.

Mr. Herrick.— That is all.

Mr. Stanchfield.— That is all, Mr. Ryan.

The President.— Any further inquiry on the part of any member of the Court? (No response.)

The President.— That is all, witness. Now, gentlemen for the respondent.

Mr. Herrick.— Mr. Beardsley.

SAMUEL A. BEARDSLEY, a witness called on behalf of the respondent, having been duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Herrick:

Q. Mr. Beardsley, you are an attorney and counselor at law? A. Yes, sir.

Q. Residing in Utica? A. Yes, sir.

Q. And having an office in the city of New York? A. Yes.

Q. Do you know Governor Sulzer? A. Yes, sir.

Q. How long have you known him? A. 25 years.

Q. Do you recall his nomination for the office of Governor? A. Yes, sir.

Q. Did you see him thereafter, and have a conversation with him in relation to a contribution?

Mr. Stanchfield.— That calls, I suppose, for an answer, yes or no.

Mr. Herrick.— Yes.

A. I do not recall whether I saw him or not.

Q. Did you have a conversation with him in relation to a contribution? A. I did.

Q. When? A. If the Court please, just at this point I desire to raise the question of privilege. Whatever I did I did as attorney for a client, and if I am to testify I prefer to do it by order of the Court than otherwise.

Mr. Herrick.— I do not suppose that tendering a contribution to a candidate is law business; no question of privilege can arise upon that.

The President.— Out of it a great deal of law has sprung now, so that I am not prepared to say that. He may have asked him his advice.

Mr. Stanchfield.— This inquiry is simply addressed to a question of time. This whole discussion is irrelevant, as to when it took place.

The President.— I do not see any harm in answering it. You may answer it but do not say what it was.

The Witness.— I had a conversation, as near as I can put it, about the 22d or 23d of October. It was over the telephone. I was in New York. Governor Sulzer was in Albany.

Q. Was that conversation in relation to a contribution? A. It was.

Q. Was there an offer of a contribution made at that time?

Mr. Stanchfield.— Wait a moment. We object to that testimony.

The President.— On what grounds?

Mr. Stanchfield.— Upon various grounds, if the Presiding Judge please.

First, upon the ground that the declarations of respondent to the counsel, when it is alleged a contribution was being had or offered, and whether accepted or refused, is incompetent. It is hearsay and there is no foundation laid for its introduction.

The President.— Let me ask. Is this one of the contributions named in the articles or which has been the subject of proof on the part of the managers?

Mr. Stanchfield.— Emphatically no.

The President.— Then really it refers to the other side —

Mr. Herrick.— This respondent has been depicted before this Court as going around with his hat in his hand almost, begging contributions for his personal benefit, showing more activity in gathering in contributions than in gathering in votes. We propose to show this man rejected contributions of large amounts, refused to accept them. Now certainly that has some bearing upon the charge that is made here that he was soliciting contributions from people for his own personal benefit.

The President.— My impression is that it is not competent. We will have a ruling of the Court, because I suppose there are other cases.

Mr. Herrick.— I wish it distinctly understood just what we propose to show.

The President.—Yes.

Mr. Herrick.—We propose to show that Mr. Beardsley offered a contribution of $25,000 and he refused to take it.

The President.— I do not exclude that on the ground of the relation of counsel and client because anyway that is the client's privilege and not the privilege of counsel. If client is willing to waive the privilege, and I suppose you are acting for the client and he waives it, I doubt whether it is material here in another instance with which he is not charged, but I will ask a vote of the Court on it.

Mr. Herrick.— In response to a suggestion of the Court, you say showing other instances which are not charged. You will recall that you have allowed the prosecution to prove other instances of contributions that were given that were not set out in the articles.

The President.— But that was on one point. The question then was material and the question was whether these contributions which have not been acknowledged were omitted by mistake or not, but I do not see this evidence bears on that.

This is a matter of considerable importance and I will take a vote of the Court on that.

Judge Collin.— Mr. Presiding Judge, I move that the objection to the question asked be sustained.

The President.—All in favor say aye; opposed, no.

Call the roll, Mr. Clerk.

Senator Wagner.— The question is, Shall the Chair be sustained?

The President.— Well, to get to the practical result, yes, excludes the testimony; no, admits it.

Judge Chase.— I think there is some question about the vote

up to this time, and I think it should be restated and start the roll over again.

The President.— Now, so that you will get the exact point: The counsel for the respondent has asked the witness about an offer of a contribution, and he states that he wants to prove by that, a contribution for a large sum, I think $25,000, was offered to the respondent, and he declined to take it. The Presiding Judge was of opinion that that was not competent as testimony, and now the question is: Shall the ruling of the Presiding Judge be sustained or not? If you vote yes, you exclude that testimony; if you vote no, you hold it in.

Mr. Brackett.— If your Honor will put the question, Shall the decision of the Chair stand as the decision of the Court? I think they will get it.

The President.— "Yes" keeps that testimony out, and "no" holds it in.

Senator Argetsinger.—Aye.

Judge Bartlett.— Mr. President, I feel a great deal of doubt as to whether this testimony is admissible, but I desire to give the respondent the benefit of that doubt; therefore, I vote no.

Senator Blauvelt.—Aye.

Senator Boylan.—Aye.

Senator Brown.—Aye.

Senator Bussey.—Aye.

Senator Carswell.—Aye.

Judge Chase.— No.

Senator Coats.—Aye.

Judge Collin.—Aye.

Judge Cuddeback.— No.

Judge Cullen.—Aye.

Senator Duhamel.— No

Senator Emerson.— No.

Senator Foley.— Aye.

Senator Frawley.— Aye.

Senator Godfrey.— No.

Senator Griffin.— Mr. President, I feel about the same as Judge Bartlett on that question; I would like to give the respondent the benefit of the doubt, and I vote no.

Senator Heacock.— Aye.

Senator Healy.— Aye.

Senator Heffernan.— Aye.

Senator Herrick.— No.

Senator Hewitt.— Aye.

Judge Hiscock.— Aye.

Judge Hogan.— Aye.

Senator McClelland.— Aye.

Senator McKnight.— No.

Senator Malone.— Aye.

Judge Miller.— No.

Senator Murtaugh.— No.

Senator O'Keefe.— No.

Senator Ormrod.—Aye.

Senator Palmer.— No.

Senator Patten.— No.

Senator Peckham.— No.

Senator Pollock.— Aye.

Senator Sanner.—Aye.

Senator Seeley.— No.

Senator Simpson.— Aye.

Senator Stivers.— No.

Senator Sullivan.— Aye.

Senator Thomas.— No.

Senator Thompson.— No.

Senator Torborg.— Aye.

Senator Velte.— Aye.

Senator Wagner.— Aye.

Senator Walters.— No.

Senator Wende.— No.

Judge Werner.— No.

Senator Wheeler.— No.

Senator White.— No.

Senator Whitney.— Aye.

Senator Wilson.— No.

The Clerk.—Ayes, twenty-eight; noes, twenty-five.

Mr. Herrick.— Of course, we have other evidence of the same kind, other witnesses, and, under this ruling, we cannot offer it.

That is all, Mr. Beardsley. We do not wish to be disrespectful to the Court; at the same time, unless the Court intimates to the contrary, we will offer other witnesses of this —

Senator Healy.— I cannot hear a word of what counsel says.

Mr. Herrick.— I say we do not wish to be disrespectful to the Court, or be considered in contempt of its ruling, and unless there is a suggestion from the Presiding Judge to the contrary, we will put other witnesses upon the stand and proffer the same kind of proof. If you think it is useless, we submit.

The President.— If you wish to put them on, you can, and have a ruling on them. I don't see that it is of any practical benefit, under the ruling of the Court.

Mr. Herrick.— Very well.

The President.— Still, you may put your witnesses on the stand.

Mr. Herrick.— No. Under the suggestion that you make, there is no practical benefit; we do not want to appear to be disrespectful.

The President.— We do not want to consider it disrespectful at all.

Mr. Herrick.— We do not want to do anything the Presiding Justice considers impractical.

The President.— We do not consider anything disrespectful in the way of offering testimony.

Mr. Marshall.—Herbert H. Lehman.

HERBERT H. LEHMAN, a witness called on behalf of the respondent, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Marshall:

Q. Mr. Lehman, where do you reside? A. 32 West 86th street in the city of New York.

Q. What is your business? A. I am a banker.

Q. What is the name of your firm? A. Lehman Brothers.

Q. Were you a member of that firm in 1912? A. I was.

Q. Were you acquainted with Governor Sulzer in 1912? A. I was.

Q. When did you first meet him personally? A. In July, 1912.

Q. Had you previous to that time had any correspondence with him, or any communication with him? A. Just previous to meeting him, yes.

Q. Will you state the circumstances under which you met him?

Mr. Stanchfield.—I object to that.

The President.—This is introductory. I think he may answer, but keep the witness to what is strictly introductory.

Mr. Marshall.—I will.

A. I wrote Governor Sulzer, Congressman Sulzer at that time, a letter.

Q. Have you that letter here? A. I have a copy of the letter.

Q. Will you produce that letter? A. (Witness produces letter-press copy book and shows copy of letter to Mr. Marshall.)

Mr. Marshall.—Do you want to look at it?

Mr. Stanchfield.— Where is the original? It was written to you.

Mr. Marshall.—We have not the original. This is the copy if you want to see it. Do you want us to explain the loss of it and all that sort of thing? We have heretofore told you we did not have the original.

Mr. Marshall.— I offer that letter in evidence.

Mr. Stanchfield.— That is objected to on the ground it is irrelevant and immaterial.

The President.— You will have to read it so the Court may pass upon it, so I don't see why you should not read it in the first instance.

Mr. Stanchfield.— May I ask counsel on the other side whether Governor Sulzer does not keep a file of the letters he receives?

Mr. Marshall.—We have not the original of this letter.

Mr. Stanchfield.— You have not answered my question.

Mr. Marshall.— I can only answer by saying we have not the original of this.

The President.— Do you raise the objection that the loss of the original is not proved?

Mr. Stanchfield.— No, sir.

The President.— So it is relevant. Read it, because the Court may differ with me upon that.

Judge Bartlett.— What is the ruling, please? I did not understand.

The President.— It will have to be read in the first instance to you, as well as the Presiding Judge, as you are to rule on it as well as he.

I am frank to say I do not see any materiality.

Mr. Marshall.— It is for the purpose of indicating the way in which they came back and this letter was discussed in a subsequent interview.

The President.— I do not see that it does any particular harm anyway.

Mr. Marshall.— Shall I read it, your Honor?

The President.— Yes.

Mr. Brackett.— Read it for the benefit of the Court.

Mr. Marshall.— I will read it so they will hear every word I say.

"*June 24, 1912*

"*Hon. William Sulzer, No. 115 Broadway, City:*

"My Dear Mr. Sulzer.— May I take the liberty of offering my aid in your possible effort to obtain the gubernatorial nomination this autumn? It seems to both by your record and your personality that you are the logical Democratic candidate, and it would give me great pleasure to do what little I can to help you in securing the nomination.

"It appears to me that while you, personally, are of course widely known throughout the State, the actual work which you have accomplished in Congress during the past many years is not as yet thoroughly appreciated. While I have followed your career closely, I frankly confess that I did not realize until very recently the large number of important movements with which you have been connected and which you have brought to successful issues. Would it not be

possible and wise, before the next State convention, to bring before the voters your full record of accomplishments?

"I fear that I have neither the time nor the experience to do very much practical work, but I should be very glad, if you would permit it, to help defray the expenses of such a campaign of publicity.

"Very sincerely yours,

"HERBERT H. LEHMAN."

The President.— Irrelevant or not, now it cannot do any harm. It cannot affect any evidence.

Mr. Marshall.— This is introductory, your Honor.

Q. Did you after having written that letter have an interview with Congressman Sulzer? A. Shortly thereafter.

Q. Will you state the substance of that interview?

Mr. Stanchfield.— I object to that upon the ground that from no angle can it be material testimony, if the Presiding Judge please.

Mr. Marshall.— My contention is — I don't wish to waste any of the time of this Court, but we offer it as indicating the fact that we think it material that before Mr. Sulzer was nominated Mr. Lehman gave Mr. Sulzer a certain sum of money which Mr. Sulzer received and which went into his account and which will explain some of the matters as to which the managers have gone into proof.

The President.— If you confine it to his declarations they are not competent but the fact you want to show he got it and put it in the account, just ask that fact, did he contribute it?

Mr. Marshall.— I will ask that fact.

Q. Did you prior —

Mr. Stanchfield.— Let me make an inquiry. You desire, if I understand you, to show that the witness gave to Mr. Sulzer before his nomination a contribution for campaign publicity?

Mr. Marshall.— Not for campaign publicity.

Mr. Stanchfield.— That is what he says in the letter.

Mr. Marshall.— You are objecting to —

The President.— One moment, gentlemen.

Mr. Marshall.— My answer to counsel's suggestion is, I was going into the conversation which followed this letter. That has been objected to. It has been suggested we go right to the point when the money was paid. I wish now, therefore, to show just what took place at that time and what was said, that it had nothing to do with any campaign expenses because it was paid before even a nomination and before the convention. But the money was received by Congressman Sulzer and went into his account, an account of $5,000, money which he had on hand in the fall of 1912, which has been the subject of discussion by your friends and the subject of proof by them heretofore, and animadversions, as it has been suggested.

The President.— I do not say it is competent. Now, nobody is better aware than you that a man's declarations are evidence against him, but not in his favor.

Mr. Marshall.— I am not trying to prove any declarations.

The President.— The Court will let you prove he contributed or gave him money and that he had it in his schedule.

Mr. Marshall.— I want to show what was said at the time, when it was and the amount that was given.

The President.— I think not, Mr. Marshall.

Mr. Stanchfield.— If the Presiding Judge will listen to me for a moment: This offer of evidence is to show a contribution by the witness to Governor Sulzer before he was ever nominated for Governor and the money he received from the witness he put in his private bank account. It is not in any statement at all.

The President.— I thought you said he did account for that.

Mr. Marshall.— No, your Honor, I haven't said so.

The President.— I misunderstood you then.

Mr. Marshall.— No, I haven't said anything about that, I say this —

The President.— It was my fault, not yours.

Mr. Marshall.— These managers have shown a certain amount of money was received and was in the account of Congressman Sulzer in the fall of 1912; that he made certain payments for stock or that certain payments were made for stock which it is claimed were stocks which were acquired by him; that there were certain payments made to the firm of Harris & Fuller. They have shown certain amounts, traced certain amounts into the possession, as they claim, of the respondent. We wish to show what moneys he had, where they came from, so far as we may be permitted to do that, and among other things which we wish to show were received by him was this sum of $5,000, which was not a campaign contribution, but which went into his account, and which, therefore, bears legitimately upon the issue which the managers have sought to inject into this case.

Mr. Stanchfield.— In answer to that, if the Presiding Judge please, every contribution that has been proved by the managers in this case has been a contribution made to Governor Sulzer after his nomination, and while he was a candidate for Governor. We have proved both contributions which he reported and contributions which he did not report. Now, this testimony is in no way an answer to that. It is simply to show that before he was nominated the witness Lehman gave to him a contribution for some purpose. Now, to cut this short, counsel may ask the witness how much money he gave Governor Sulzer, and it may go in the record if he wants it.

Mr. Marshall.— I do not permit you to rule on the propriety of my question. I ask the Court to rule.

The President.— Cease. I think this is competent; I did not understand it; for instance, you have shown for the prosecution that large sums of money were taken and given in these two or three stock accounts, I do not remember how many there were. I do not see why this is incompetent. It is the same as to show he got from his father who died $30,000, and was given to him in an

estate; that is all. It tends to show that this money may have been his own, and not the result of contributions. But now what the conversation is, or anything like that, you omit. You can show that he gave him money, or account for his possession of money.

Mr. Marshall.— I have got to show what was said at the time.

Mr. Parker.— Presiding Judge, just for a moment.

The President.— Yes.

Mr. Parker.— It seems to me the evidence which he offers cannot be of any assistance whatever to the Court, because it is of moneys given him two months at least before we offered any proof of deposits or payments by him for stock or otherwise with cash. There is a payment, for instance, of one check of his for $900, when the shares of the value of $11,875 were taken over, one check; there were $7,724 of cash put into that account; there were eight checks of other people put in that account. Now, that is our proof on that particular account. How does it help? How does it clear it to show that three months before that time $5,000 of cash was put in his pocket? It only tends to confuse, and does not clear up.

The President.— I think it does. You have proved here — I do not always remember names exactly, but I think you called it the Gray 500 account, if I am correct — that was brought by the man Colwell, I think, that he brought thousands of dollars in cash —

Mr. Parker.— Yes, but your Honor, not only thousands, but every dollar of that account was in cash; but how does it help to show where that money came from, to show that three months before that he got from somebody $5,000 in cash, because it was cash, not checks, with which they paid for that?

The President.— I think it is competent. It will be for the Court to say where this money came from. You may ask him. Omit the conversation, and get right to the point.

Mr. Marshall.— I have got to give the conversation to show what the relations were, and what the conditions were.

The President.— It does not make any difference what the relations were, if this man gave him the $5,000 in money, you have it.

By Mr. Marshall:

Q. Did you give any money to Congressman Sulzer in the fall of 1912, in the month of September? A. I gave him $5,000.

Q. When was it? A. On September 25th.

Q. Have you the voucher? A. I have not.

Q. What was said by you when you gave him that money? A. I gave it to him for his personal uses, without any conditions.

Cross-examination by Mr. Stanchfield:

Q. Now, Mr. Lehman, what do you say your occupation is? A. A banker.

Q. What is the name of your firm? A. Lehman Brothers.

Q. When did you meet Governor Sulzer first? A. The early part of July, or the latter part of June, 1912.

Q. What was the date of the letter that you have introduced in evidence here that you wrote him? A. The book has been taken away. I think it was June 25th, if my recollection is correct.

Q. June 24th, wasn't it? A. I do not remember.

Q. At that time you had never met Governor Sulzer? A. No, I had never met him.

Q. How did you happen to address him as "Dear Mr. Sulzer?" A. I do not think that is a very unusual form.

Q. To a perfect stranger? A. No, he was not; I had known of him.

Q. Had you known him? A. I had never met him.

Q. And to address a communication to a perfect stranger as "Dear Mr. Sulzer"—

The President.— I think you have gone far enough.

Q. —you think is not out of the ordinary? A. I do not.

Q. When you first met him, did you have a talk with him on the subject of the letter you had written him? A. I did.

Q. Do you recollect the phraseology of the last sentence of that letter? A. I do.

Q. What did you say to him about this letter? A. I told him that I thought that a campaign of publicity would be of value to him; and that I would be glad to help defray some of the expenses of such a campaign.

Q. And isn't that what you gave him the $5,000 for? A. No.

Q. You say what? A. No.

Q. You say it is not? A. No.

Q. You gave him that money in September? A. Yes.

Q. On the 25th, you say? A. Yes.

Q. You knew he was then a candidate for Governor? A. The convention had not been held.

Q. You knew he was a candidate for the nomination? A. I knew he was a candidate for the nomination for Governor.

Q. That time when you gave him this $5,000 was within a week of the convening of the convention at Syracuse? A. Thereabouts.

Q. When you gave him this $5,000, what form was it in? A. In cash.

Q. And when you say in cash, do you mean in bills? A. Bills.

Q. Had you had any talk, other than the one that you have indicated, just after the sending of that letter, with Governor Sulzer? A. Several.

Q. In other words, before you gave him the $5,000, you had had several talks with him? A. Yes.

Q. Who suggested first that this $5,000 contribution of yours should be in currency or cash? A. I don't know that there was any suggestion made.

Q. That is a large amount of money, isn't it? A. Yes, sir.

Q. What was the denomination of the bills you gave him? A. I do not recollect; probably either $500 or $1,000 bills.

Q. Had you told him before you gave it to him, that you were going to make this contribution? A. I did.

Q. So that he was expecting it? A. Yes, sir.

Q. Hadn't anything been said between you as to the form that the money payments should be in, or that contribution? A. Not that I recollect.

Q. Are you prepared to say there was nothing said? A. I have no recollection of any conversation regarding it.

Q. That is not my question. Are you prepared to say that there was nothing said as to the form that the money that you were to give him should be in?

The President.— That calls for an answer, are you positive?

A. I am not prepared to say.

Q. In other words, you are not positive? A. I am not positive.

The President.— Mr. Stanchfield, how long will this take, it is about the time of adjournment.

Mr. Stanchfield.— It will take me quite some few moments.

The President.— Then we will take a recess now, the time having come.

Whereupon at 12.27 p. m. the Court adjourned until 2 o'clock, p. m.

AFTERNOON SESSION

Pursuant to adjournment, Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

The President.— Let the witness take the stand.

HERBERT H. LEHMAN resumed the stand.

Cross-examination continued by Mr. Stanchfield:

Q. Mr. Lehman, I understood you to say this morning that you had had several conversations with Governor Sulzer between the date of the letter and the day of the payment of the $5,000? A. I did.

Q. Where did you have those conversations? A. Some at his office, some at my own.

Q. Have you seen him since election? A. Yes.

Q. Often? A. Several times.

Q. How many times have you been in Albany since his election as Governor? A. I should say four or five times.

Q. Did you come on those occasions to see him specially? A. No, sir.

Q. Did you see him on those occasions? A. Sometimes.

Q. How many times did you see him out of the four or five that you say you were here? A. I think I saw him on nearly every occasion; not on all.

Q. Have you seen his counsel? A. Yes.

Q. Talked with them? A. Not about the case.

Q. Talked with them? A. I don't know all his counsel, so I don't know them by name.

Q. Mr. Marshall, have you seen him? A. I have.

Q. You have known him for a good many years? A. I have.

Q. Now, in June, 1912, on the 24th, did you know anything about the law in regard to the publicity of campaign contributions before a nomination? A. I did not.

Q. Do you know anything about it now? A. Nothing very definite.

Q. Well, you know more now than you did in June, 1912? A. Yes.

Q. Where did you get the information you now possess that you didn't have them? A. I looked up the law.

Q. For yourself? A. For myself.

Q. Did you read it? A. I did.

Q. Did you form an opinion about it? A. I did.

Q. Did you come to the conclusion that a contribution for campaign purposes before a nomination had to be a public record, as well as one after?

Mr. Marshall.— I object to that as improper and incompetent.

The President.— Objection sustained.

Mr. Stanchfield.— Well, will your Honor hear me upon that?

The President.— Yes.

Mr. Stanchfield.— The purpose is to show when this letter was written, in June, 1912, the letter upon its face conveys the offer of the witness to contribute for campaign purposes. Now he says that at the time when the money was paid over, on September 25, 1912, that there was a conversation which would tend to ignore the fact it was for that purpose.

The President.— My recollection was that on the respondent's examination the Court excluded all the conversation. Whatever has come out has come out on your side.

Mr. Stanchfield.— That is my understanding of the situation. This evidence is to show that the witness informed himself at some period of time with reference to what the law was upon the subject of the publicity of those contributions.

The President.— I do not think it is material. He hasn't testified. The Court, on your objection, excluded carefully all conversations between the witness and respondent.

Mr. Stanchfield.— This is the record, if the Presiding Judge please, on our examination. (Reading.)

"Cross-examination. Q. What did you say to him about this letter."

This is the testimony which I had in mind, to which I invite your attention. It is found on page 1121, and at or near the close of direct examination by Mr. Marshall (reading):

> "Q. Did you give any money to Congressman Sulzer in the fall of 1912 in the month of September? A. I gave him $5,000.
>
> "Q. When was it? A. On September 25th.
>
> "Q. Have you the voucher? A. I have not.
>
> "Q. What was said by you when you gave him the money? A. I gave it to him for his personal uses without any conditions."

The President.— Is that in answer to your question?

Mr. Stanchfield.— Yes, sir. It was in answer to Mr. Marshall's inquiries.

The President.— I do not see why you should press your objection now.

Mr. Marshall.— That was the answer given to the question as to what took place in September, and on the objection of counsel I was prevented from going into any conversation which pre-

ceded September 25, 1912. I was not allowed to go into any conversation with regard to the transaction of September 25th, except to state what took place at the very time of the delivery of that money. Counsel is trying to go into the very things I was prevented and precluded from investigating.

Mr. Stanchfield.— Mr. Marshall asked the question, "What was said?"

The President.— I was in error in my recollection. He said it was for his personal expenses?

Mr. Stanchfield.— Yes.

The President.— If that was brought out on the line of direct examination, they have a right to cross-examine. My recollection was at fault in that. You may ask the question.

Mr. Stanchfield.—Will you read the question, Mr. Stenographer?

(The stenographer thereupon repeated the question as follows:

"Q. Did you come to the conclusion that a contribution for campaign purposes before a nomination had to be a public record as well as when after?")

Mr. Marshall.— The question is what the conclusion of this witness is, and it is incompetent.

The President.— He can follow it by another question, which shows that has not affected his testimony.

Mr. Stanchfield.— Of course.

Mr. Marshall.— He is not a lawyer and cannot give an opinion as to the meaning of this law, which is puzzling to lawyers.

The President.— Only as it affects this witness' mind; that is competent.

By Mr. Stanchfield:

Q. Mr. Lehman, you told me you did read the law on the subject for yourself? A. Yes, sir.

Q. You read it, did you not, to arrive at a conclusion as to whether or no a campaign contribution before a nomination ought to be made a matter of public record? A. No, I did not.

Q. What did you read it for? A. Because I was treasurer of the direct primary campaign committee, and one of the counsel for the managers implied that I should have filed a statement of the expenses and receipts of that committee, and on that account I read the law.

Q. That is what caused you to read it? A. Entirely.

Q. When you wrote that letter in June, you stated there in terms that you were willing to contribute for a publicity campaign, did you not? A. I think I said I was willing to help defray the expenses of a publicity campaign.

Q. I will take it that way. You meant what you said in the letter at that time? A. I did, sir.

Q. Did you change your mind as to what you wanted to contribute the money for between then and September 25th? A. No.

Q. So that on the 25th of September, when you handed over this $5,000 in currency, you had not changed your mind as to your willingness to contribute for a campaign of publicity? A. I had not changed my mind about helping to defray the expenses of publicity.

Q. Now, when you gave him then the $5,000 in bills, did you not mean by it to aid him in effecting a publicity of his campaign for Governor? A. Not by any means.

Q. What did you mean by it? A. I gave him $5,000 unconditionally. I knew that he was a man of straitened circumstances; I did not care what he did with his money, whether he paid his rent, or bought himself clothes, or paid for his office or any other expenses which he might incur.

The President.— That is far enough.

By Mr. Stanchfield:

Q. That is all argument. You did not tell him any one of those things? A. I told him nothing.

The President.— You have gone far enough with this examination.

Mr. Stanchfield.— I haven't any desire to trespass on your Honor's ruling. I don't know whether you mean by having gone far enough, that that is enough on cross-examination.

The President.— You have enough. You can present your arguments on both sides. It is a question of fact.

By Mr. Stanchfield:

Q. Did you contribute any moneys to pay for the postage and mailing of documents of Governor Sulzer? A. At what period?

Q. No matter what period. Any period. A. Governor Sulzer?

Q. Candidate Sulzer? A. I paid for — I bought and paid for the distribution of a number of copies of his speeches.

Q. That is, Sulzer's volume entitled "Short Speeches?" A. Yes, sir.

Q. Did you keep any memorandum of the amount you paid for the distribution of those? A. I have no definite memorandum.

Q. What? A. I can tell you what I paid for the books.

Q. I will get at that in a moment. I asked you if you kept any memorandum? A. No memorandum.

Q. You kept no books at all on the subject? A. I have no definite memoranda of it.

Q. You have told us about the postage. Did you pay for the books as well? A. I paid for the books as well.

Q. Do you recollect in amount what you paid, both for the books and for their distribution? A. I should think I paid about $6,000.

Q. $6,000. That was both for the books and for the distribution of the books? A. That is my recollection.

Q. Do you recollect, Mr. Lehman, whether that $6,000 you so paid was paid in one sum to one person? Or was it distributed among several persons? A. It was paid to two people, at various times.

Q. Do you recall whom? A. Yes. The Trow Directory people, to whom I paid for postage and distribution charges.

Q. How much? A. Five cents a copy on about 50,000 copies.

By the President:

Q. That is approximately $2,500. A. Approximately $2,500.

By Mr. Stanchfield:

Q. You stated that you paid one amount to the — what was the name of the company? A. I think it is the Trow Directory Company, New York.

Q. How much did you pay that concern? A. Approximately $2,500.

The President.—Five cents each for 50,000.

Q. You paid that concern simply for distribution, didn't you? A. Distribution and postage.

Q. Distribution and postage? A. Yes, sir.

Q. You didn't pay them anything for the publication or printing of the book? A. No, sir.

Q. Isn't the correct name of that concern the Trow's Addressing Company? A. I couldn't answer on that point. I thought it was the Trow Directory Company.

Q. You don't recollect? A. I don't recollect exactly.

Q. (Continuing) Any accurate name? A. No.

Q. How much did you pay, and to whom, for the publication of those books? A. I paid 7½ cents a copy for, I believe, 50,000 copies, to the Ogilvie Publishing Company.

Q. The Ogilvie Publishing Company? A. The Ogilvie Publishing Company.

Q. Did you pay out any other amounts than those to which I have called your attention during the campaign of Governor Sulzer now for the election in 1912? A. No, sir.

Mr. Marshall.— What is the question?

The question was repeated by the stenographer.

Mr. Marshall.— I object to that as improper, as assuming that that was during the campaign of Governor Sulzer. The witness has not made any such statement.

The President.— No.

By the President:

Q. About what time of the year, if you can fix it by events? Was it after his nomination or before?

Mr. Stanchfield.— I will get at that.

The President.— Get at it as directly as possible. You may lead him, if you wish.

By Mr. Stanchfield:

Q. Did you not cause those volumes of short speeches to be distributed to the electorate of the State before the election of Mr. Sulzer as Governor? A. I did.

Q. And you incurred the expense to the Trow's Addressing Company, or whatever it was, before his election? A. I did.

Q. So that all these obligations with reference to which you have testified were contracted before his election? A. Yes, sir.

By the President:

Q. Now, was it after his nomination? A. These particular items which I have testified to were after his nomination.

Q. And before his election? A. And before his election.

The President.— Is that all?

Mr. Stanchfield.— Just a minute. That is all.

Redirect examination by Mr. Marshall:

Q. You paid for those books directly to the Ogilvie Publishing Company? A. Yes, sir.

Q. You paid for the distribution of those books directly to the Trow Addressing Company or whatever the name of the company may be? A. Yes, sir.

Q. Were those books sent out among the electorate of this State only or were they also distributed throughout the country? A. I cannot answer that question.

Q. Did I understand you to say that some of these books were distributed before nomination? A. Not of this 50,000.

Q. Not of those 50,000? A. No, sir.

Q. You say that you were here after Governor Sulzer became Governor of the State? A. Yes.

Q. What was the occasion of your coming to Albany on this occasion that you have referred to? A. I came, I believe, twice to attend meetings of the State Reformatory for Misdemeanants, and I came either once or twice to attend a meeting of the Commission to revise the Banking Laws of the State of New York, and I came once on personal business.

Q. And you were interested in the campaign for direct primaries, were you not? A. I was very much interested.

Q. And was the treasurer of that campaign committee? A. Yes. I should have added that I came here at least once to attend a meeting of the executive committee of the direct primaries.

Q. And you were very much interested as a citizen in that movement for the direct primary? A. I was.

Mr. Marshall.— That is all.

By Mr. Stanchfield:

Q. To whom did you turn over the distribution of these books?

The President.— Is it worth while going into that?

Mr. Stanchfield.— I want to know to whom they were turned over.

The President.— I thought he said to the Trow —

Mr. Stanchfield.— No; before we get into the Trow Company.

The Witness.— No, I left the distribution itself to the Trow Directory Company.

Q. Did you have any conversation with Congressman Sulzer at that time on the subject? A. Simply to tell him that I was going to send these books out.

Q. Look at your letter book there; you also communicated with him on the subject of getting out these books for him, didn't you? A. Yes, sir.

Q. Under date of July 12th? A. July 10th.

Q. 1912? A. Yes, sir.

Q. And you called his attention there in a letter to the fact that you would start 5,000 of these books, did you not?

The President.— Fifty thousand.

Mr. Stanchfield.— No, not there; 5,000 as a starter.

By the President:

Q. This was before the nomination? A. Yes, sir.

By Mr. Stanchfield:

Q. That is, you would send out 5,000 of these books as a starter? A. Yes, sir.

Q. And from that time, July 10th, you kept sending out these books, as you testified, until the amount aggregated something like 50,000? A. No, from July 10th it aggregated some more than 50,000. I sent 50,000 personally after the nomination.

Q. How many did you send out before the nomination? A. Seven thousand five hundred.

Mr. Stanchfield.— That is all.

By Senator Griffin:

Q. On June 24th, you wrote a letter to Governor Sulzer, then Congressman Sulzer, and that letter was read here this morning. Did you receive any reply from him to that letter? A. I did.

Q. In writing? A. Yes.

Q. Have you got it? A. I have not.

Q. Have you preserved it? A. I do not know whether I have or not.

Q. You keep a letter file, do you not? A. I do, yes, if a letter is of importance.

Q. Have you looked in your letter file to locate that letter? A. I have not, no.

Q. Will you do so? A. I will. I have not got the letter file here of course. My recollection is that it was a formal letter of acknowledgment.

Senator Griffin.— Mr. President, I think we ought to have that letter.

The President.— Will you send it up? Will you take it, gentlemen, if the witness sends it to the clerk without compelling his attendance again?

Mr. Marshall.— We are perfectly satisfied.

Mr. Kresel.— Certainly.

The President.— Very good, witness, then send it up to the clerk of the Court; he is also the clerk of the Senate.

By Senator Thompson:

Q. I understood you to say that you gave on the 25th of September, to William Sulzer, $5,000? A. Yes, sir.

Q. Do you mean that in addition to the $6,000 you spent for the publication of the Short Speeches? A. Yes, sir. I spent that $6,000 for the publication of the speeches myself; I paid all the bills, audited the bills and paid for them.

Q. But you gave up $11,000 in all? A. I gave $6,000 during the campaign. The $5,000 was before his nomination.

Q. What do you mean by during the campaign? A. After his nomination.

Q. You gave $5,000 before the nomination? A. I did, sir.

Q. You say you are the treasurer of the direct primary committee? A. Yes, sir.

Q. When was that organized? A. That was organized approximately May 15, 1913.

Q. It had not been heard of before that? A. Not this particular committee.

Q. How much did you receive as treasurer of that committee? A. I testified to that before the Frawley committee. I don't recall without the records.

Q. I was not on the Frawley committee. A. I beg pardon?

The President.— He states he does not recollect. If you saw the testimony, would you know?

The Witness.— Oh, yes. I think Mr. Richards had a resume of the receipts and expenditures.

The President.— Can't you agree on what it was?

The Witness.— I can give it approximately.

Mr. Kresel.— He can give it approximately, he says.

The President.— Just give it approximately.

Mr. Richards.—About $17,000.

The Witness.—About $17,000.

The President.—You have said in answer to Senator Thompson that you gave $6,000 besides during the campaign. Is that the $6,000 you spent to Trow and the Ogilvie Company, or in addition to that?

The Witness.— Oh, no, I gave nothing in addition to that.

The President.— That is the $6,000. Very good. That is all.

By Senator Foley:

Q. Did you pay the Trow Company by check or by cash? A. My recollection is that I paid in both ways. I am quite certain, however, that the larger portion of it was paid by check.

Q. Did you pay the Ogilvie Company by check or cash? A. I believe I paid them by check.

Q. How much did the 7,500 volumes which were distributed before nomination, cost you, including distribution and printing? A. I should say roughly $1,000 to $1,200.

Q. That is not included in the $5,000 contribution? A. It had nothing to do with the $5,000 contribution.

Q. So that you total your contributions up to election in excess of $12,000?

Mr. Marshall.— I do not desire to object to the question.

The President.— That is a mere matter of addition, isn't it?

Senator Foley.— I wanted to find out if that was included.

Mr. Marshall.— I object to the suggestion that it was a contribution. The witness explained how it was paid.

The President.— What you gave altogether during that campaign, call it what you may, was first $1,000 for distributing speeches before the nomination, $5,000 in cash, and after the nomination about $6,000 for printing of these speeches and their distribution?

The Witness.— Yes.

The President.— Does that include every sum you spent in aid of Governor Sulzer for every purpose?

The Witness.— Yes, sir.

The President.— Everything?

The Witness.— Yes, sir.

Senator Foley.— Mr. Lehman, was that all your money, or contributed from any other source? A. That was all my own money.

The President.— That is all.

(Witness excused).

Mr. Hinman.— I call Mr. Josephthal.

LOUIS M. JOSEPHTHAL, a witness called on behalf of the respondent, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Mr. Josephthal, where do you reside? A. 26 East 73d street, New York City.

Q. How long have you lived there, that is, in the city of New York? A. Forty-five years.

Q. What is your occupation? A. Banker and broker.

Q. With what firm are you connected? A. I am the senior member of the firm of Josephthal, Lochheim & Company.

Q. What is the business of that firm?

The President.— He said that, didn't he, banker and broker?

Q. Do you know the respondent, William Sulzer? A. I do.

Q. How long have you known him? A. Four days after he was elected Governor of the State of New York.

Q. Have you had and do you have any official connection with his administration? A. Only in the capacity of naval aide on the military staff.

Q. When did you receive that appointment? A. Four days after he was elected Governor.

Q. Were you at Gettysburg during the past year? A. Yes, sir.

Q. At what time? A. The entire period that the military staff was there.

Q. In what capacity were you there? A. As naval aide on the military staff.

Q. Did you see the respondent and his wife at that time? A. Yes.

Q. Did you have a talk with them, or either of them, at that time? A. Yes, sir.

Q. State with whom you had the talk and what it was?

Mr. Stanchfield.— I object to that as hearsay, incompetent and no foundation laid for its introduction.

The President.— I do not see —

Mr. Stanchfield.— The declarations of the respondent or his wife at that time are utterly incompetent in this proceeding.

The President.— You have two questions together. You had better divide them.

Mr. Hinman.— Yes.

Q. When was that talk? Give the date of it. A. The second day they arrived in camp.

The President.— That was early in July, wasn't it?

The Witness.— The first week in July.

Q. Did you have any talk with the respondent's wife at that time? A. Yes, sir.

Q. State what that was.

Mr. Stanchfield.— I object to that on the ground —

The President.— How is it competent?

Mr. Hinman.— If your Honor please, I think it is competent to get at just what the situation was between this witness, whose name, you will observe, appears on the account of Harris & Fuller, with that transaction, that is where it begins, before Mrs. Sulzer and the relation that she bore to it, and that the respondent had with it.

The President.— I do not think it may come in at this stage. It may later, if you show what he did.

Mr. Hinman.— It is preliminary, leading up to what he did, and why he did it. You will remember the transaction as offered in evidence here, a communication from the respondent to the firm of Harris & Fuller, signed by the respondent for Mrs. Sulzer and this is the witness who took up the stock from the firm of Harris & Fuller at the time when that letter was delivered to Harris & Fuller, and it is preliminary and leads up to that and shows what that transaction was.

Mr. Stanchfield.— I invoke, if the Presiding Judge please, any ordinary rules concerning the admission of evidence; and the sole answer to this argument of Mr. Hinman's is that the best testimony is the testimony of Mrs. Sulzer, and her declarations to Josephthal under no circumstances are competent.

The President.— Her declarations would be incompetent unless accompanied by an act.

Mr. Hinman.— Exactly.

The President.— What is beyond that? Is it followed by an act?

Mr. Hinman.— The action of this witness in connection with that entire transaction was based upon that.

The President.— No.

Mr. Stanchfield.— That we submit still is incompetent and hearsay.

The President.— I think he may ask — you had better ask him first whether he went to, what was the name of this firm?

Mr. Stanchfield.— Harris & Fuller.

By the President:

Q. Did you go to Harris & Fuller? A. Yes, sir.

Q. And did you take up the stocks there and give that money, what was it, $20,000?

Mr. Stanchfield.— $26,000.

A. Yes, sir.

The President.— There is no use, unless that is disputed, going over that. Now, you can ask him who told him to go there and how he came.

By Mr. Hinman:

Q. State, Mr. Josephthal, how you came to go to Harris & Fuller in this year and take up that stock? A. Mrs. Sulzer —

Mr. Stanchfield.— Pardon me, I do not understand that your Honor holds the conversation is admissible.

The President.— The conversation so far as he gave him instructions or asked him to do it.

Mr. Hinman.— That is all we propose to show, and just what we propose to show.

Mr. Herrick.— Go on, "Mrs. Sulzer"— A. Mrs. Sulzer informed me that she owned certain stocks on which her husband had borrowed money, and I interrupted her and stated that I would rather discuss this matter with her husband. Thereupon that same evening William Sulzer requested me to take up the account —

Mr. Stanchfield.—Wait a minute. I haven't asked you anything about him yet.

The Witness.— I am leading up to that, because I stated I did not care to discuss business with Mrs. Sulzer.

The President.— One moment. Ask your next question.

By Mr. Hinman:

Q. Did you thereupon or about that same day have a talk with the respondent with reference to the same matter, with William Sulzer? A. Shortly after that —

Mr. Stanchfield.— That calls for an answer, yes or no.

The Witness.—Yes, sir.

Q. State that conversation.

Mr. Stanchfield.— I object again to that testimony on the ground that the declarations of this respondent are hearsay, incompetent, improper and inadmissible in this proceeding.

The President.— Objection overruled so far as it relates to what instructions he gave him.

Senator Duhamel.—We have heard a great many charges from the prosecution here; there has been a great deal said about Mrs. Sulzer, and I am one who would like the facts in these cases, and would like to ask for a liberal ruling.

The President.— The Presiding Judge is trying to give a fairly liberal ruling, of course, to this respondent as to any other man charged with a serious offense, but he must adhere somewhat to what he believes to be the rules of law, you having adopted rules for your procedure, you having adopted the rules of evidence —

Senator Duhamel.— But, Mr. President, these charges have been made, testimony has been introduced; it seems only fair to have these charges heard.

Mr. Stanchfield.— My argument here addressed to the Court was that the best answer to the charges was by the testimony of Mrs. Sulzer and the Governor and not through the intermediary evidence of Commander Josephthal.

The President.—You may proceed.

By Mr. Hinman:

Q. State the conversation with Governor Sulzer. A. William Sulzer requested me to take up an account with Harris & Fuller.

He said the stocks were owned by his wife and he had borrowed money on them. I then asked him the nature of the securities. He informed me there were 500 shares of Big Four common and 200 shares of Smelters common. I asked him how much he owed on the account. He stated between $26,000 and $27,000. I figured out —

Mr. Stanchfield.— No. Just the talk, Colonel, he is asking for.

The Witness.—And I want to continue my talk. I figured an equity of $7,000 in the account; that was $10 a share on 700 shares of stock.

Mr. Stanchfield.—Are you relating conversation or what you figured out in your own mind?

The Witness.—And then I answered William Sulzer that I would take up the account.

By Mr. Hinman:

Q. What did you do thereafter in reference to taking up that account, if anything?

Mr. Stanchfield.— I object again to that, upon the same ground.

The President.— What was this?

Mr. Hinman.— I asked him what he did thereafter with reference to taking up the account.

The President.— Objection overruled. Answer it. A. William Sulzer informed me that he would telephone to Harris & Fuller Monday morning, and he gave me a card giving me power to take up the securities. When I arrived there Monday morning they refused to deliver the securities; they requested a letter from William Sulzer authorizing them to deliver the securities to me. Tuesday morning I received the letter; I ascertained the exact amount of the indebtedness; I sent a check to Harris & Fuller, and at noon, July 15th, I received the securities.

By Mr. Hinman:

Q. Did you deliver to Harris & Fuller this communication which you had received, on the Tuesday morning, directing them

to turn the securities over to you? A. Yes, sir. I sent a certified check with that letter.

Q. Was that check a check of your firm? A. It was my check. It was the firm check signed by me, but my money.

Q. Have you from that time on retained and had possession of the shares of stock which you took up? A. Yes, sir.

Q. Was the money with which you took up that loan for the firm of Harris & Fuller the money of your firm?

The President.— How is that material? It came out of his bank. Unless somebody suggests to the contrary, we will suppose it was his.

By Mr. Stanchfield:

Q. Has any part of that money been repaid to you? A. Not one cent.

The President.— Is there any cross-examination?

By Senator Sage:

I wish to ask whether, when those certificates of stock were delivered to you, they were transferred to your name? A. The 200 Smelters were, but the 500 Big Four were not.

Q. In whose name were they? A. The securities are in Albany, and I could answer that if it is very important.

By the President:

Q. What do you mean, that you cannot remember now? A. I cannot. No, sir, I do not remember.

Q. You know they were not in your name? A. They were not in my name; no, sir.

Q. Did they get the 200 Smelters transferred to you? A. I had the 200 Smelters transferred to me.

Q. That is what I imagined. He asked you when they were given to you.

By Senator Sage:

Q. When they were given to you? A. I believe they were in the name of Harris & Fuller. I cannot answer that.

Cross-examination by Mr. Stanchfield:

Q. Is your title colonel? A. Commander.

Q. Commander, are you a member of the Stock Exchange? A. Yes, sir.

Q. Do you recall during the winter of 1913, that various bills were introduced in the Legislature affecting, from the Exchange standpoint, injuriously the Stock Exchange? A. Yes, sir.

Q. There were bills of various kinds there; one to incorporate the Stock Exchange, another to double the taxation upon transfers of stock, and quite a number of bills affecting the Stock Exchange? A. Yes, sir.

Q. Did the Stock Exchange take any action with reference to the appointment of a committee to oppose the passage of the legislation embraced in those bills? A. Yes, sir.

Mr. Hinman.— That is objected to, upon the ground it is incompetent, improper and not a subject of cross-examination.

The President.— It is not a subject of his on direct. If you want to recall him — I think you may answer.

By Mr. Stanchfield:

Q. What was your answer? A. Yes, sir.

Q. Were you a member of that committee? A. I was not.

Q. Did that committee appear before the Governor with reference to those measures?

Mr. Hinman.— That is objected to.

By the President:

Q. Well, do you know? Were you part of it, or were you there? A. I was not a member of any of those committees.

Q. Were you with them when they met? A. I happened to be up here at one time on naval militia matters.

Q. Did you note or observe their appearance then? A. I couldn't help seeing the men, while I was lunching at the Ten Eyck Hotel.

Q. Before what, committee or Governor? A. I didn't see the committee or Governor because I only saw them at the Ten Eyck Hotel.

Mr. Stanchfield.— Shall I go on?

The President.— Yes.

By Mr. Stanchfield:

Q. Were you there upon any other occasion? A. I have been there on various occasions, attending to naval militia matters, and at one time I attended the first meeting of the direct primaries.

Q. Were you at any time before the Governor with reference to any of these Stock Exchange measures? A. No, sir.

Q. Either in a personal capacity or representing in any way the interests of the Stock Exchange? A. The Governor—

Q. No, no. Just answer my question, please. A. I am going to answer it in a fair way. At one time the Governor asked my opinion about the $4 tax, and I gave it to him.

Q. Was your opinion in favor of a tax or against it?

Mr. Hinman.— I object to it.

A. It was against the tax.

By Mr. Stanchfield:

Q. Are you in any way related to, or connected with, the Guggenheims? A. Yes, sir.

Q. What?

Mr. Hinman.— That is objected to on the ground that it is immaterial and irrelevant.

The President.— How is it material? How are you going to connect it?

Mr. Stanchfield.— If the Presiding Judge expects me in advance to outline, of course, the course of a cross-examination, you might as well declare the cross-examination off.

The President.— No; I do not think so, Mr. Stanchfield.

Mr. Stanchfield.— Do you sustain the objection? I asked the question whether he is related to the Guggenheims.

The President.— The objection will be sustained at the present time.

By Mr. Stanchfield:

Q. Are the Guggenheims largely interested in the control of the Smelters stock that you took up?

Mr. Hinman.— Objected to on the ground it is incompetent, irrelevant and immaterial.

The President.— Now, you are getting at it. He may answer.

By Mr. Stanchfield:

Q. Those 200 Smelters that you had, those 200 shares of the ordinary or common stock of the American Smelting and Refining Company, was it not? A. Yes, sir.

Q. And that concern is a so-called Guggenheim concern, is it not? A. Yes, sir.

Q. They exploited it —

The President.— Well, you have enough. Do you want the details of it, Mr. Stanchfield?

Mr. Stanchfield.— I haven't any idea, if your Honor please, to trespass on the rules of cross-examination.

The President.— Very good. That is all, witness. Call your next.

Senator Walters.— May we have produced in Court the certificates of Big Four stock?

The President.— Yes.

By the President:

Q. Did you get it transferred to yourself after you got it?

Senator Walters.— No, if the Court please, the witness says they are in Albany.

The President.— What is that?

Senator Walters.— The witness says the certificates are in Albany.

The President.— Yes.

Senator Walters.— I would like to have the certificates produced in Court, both of the Big Four and the Smelters.

By the President:

Q. Can you do that? A. Yes, sir.

Q. Have you them with you? A. I have them with me.

(Whereupon the witness produced some papers.)

The President.— Senator, what do you want to know? The name?

Senator Walters.— I desire to know in whose name the stock is issued, and the date of the issue.

The President.— The senator wishes to know the name and date of the certificates.

The Witness.— They are in the name of Louis R. Schenck.

By Senator Walters:

Q. Which ones? A. 500 shares are in the name of Louis R. Schenck.

Q. And indorsed in blank? A. And indorsed by Harris & Fuller, the 500 shares.

By the President:

Q. Are they not indorsed "Louis R. Schenck" too? A. They are indorsed "Louis A. Schenck" and the signature guaranteed by Harris & Fuller.

Q. You mean the transfer power of attorney, the transfer on the back? A. Yes, sir.

By Senator Walters:

Q. What is the date of the power? A. April 1, 1913.

By the President:

Q. What is the date of the face of the certificates? A. Well, I will read the dates; March 1, 1913, 100 shares; another 100 shares March 1st; another 100, March 1st; all March, 1913.

By Mr. Brackett:

Q. All March 1, 1913? A. Yes, sir.

By Senator Walters:

Q. Is the Big Four a dividend paying company? A. It is not.

Q. May I ask the witness whether the Smelters was in the name of Schenck? A. As I stated before, the Smelters is in the name of my firm; I had them transferred.

Q. The original certificates? A. That I cannot answer at the present time, but I could give the Court the information from my office.

Q. Wasn't there a certificate of 100 shares of Southern Pacific? A. No, sir.

Q. You did not take that up? A. No, sir.

By Senator Thompson:

Q. Mr. Witness, would you remember if any of this stock was in the name of Mrs. Sulzer when you went to get it? A. Yes, sir.

Q. Was any of it in her name? A. No.

By Senator Emerson:

Q. I would like to know if this witness contributed anything to Mr. Sulzer's campaign? A. Not one cent.

Mr. Hinman.— May it not be conceded that the record shows that Mr. Schenck was a member of the firm of Harris & Fuller?

Mr. Kresel.— It does not.

Mr. Hinman.— He was connected with that concern, I think the evidence is; isn't that a fact?

Mr. Kresel.— I do not recall that.

By Mr. Stanchfield:

Q. Who is the regular counsel for your firm? A. We have no regular counsel.

Q. Do you know Mr. Frankenstein? A. Yes, sir.

Q. Is he your counsel now? A. He has done work for us at various times.

Q. When did he begin? A. I believe he began in December.

Q. This last December? A. Yes, sir.

Q. December, 1912? A. Yes, sir.

Q. Did he become counsel under a written contract or retainer? A. I believe that he gets a certain retainer; I am not absolutely certain.

Q. Was the arrangement between your firm and Frankenstein in writing? A. That I cannot answer.

Q. Now, with reference to your appointment on the staff, when was that appointment made? A. That originally was made many months —

Mr. Hinman.— If the Court please, I object to the form of the question.

Q. When, in December, 1912, did you employ Frankenstein? A. I believe it was the latter part of the month.

Q. The latter part of December, 1912? A. Yes, sir.

Q. When were you appointed on the staff of Governor Sulzer? A. I was appointed four days after the Governor was elected.

Senator Griffin.— Mr. President, may I ask the witness whether he means four days after Governor Sulzer was elected in November, 1912, or after Governor Sulzer was inducted into office on January 1, 1913?

By the President:

Q. You mean to refer to his election, or to the time he commenced or took office on January 1st? A. The Governor informed me four days after the election that I was to be appointed on his military staff as his naval aide.

Q. Four days after; that was before he became Governor? A. That was the first time I met the Governor.

Senator Griffin.— But that was to take effect after the Governor-elect became the Governor of the State? A. Naturally.

Q. And what was the date of your commission? A. You do not receive a commission as aide to the Governor.

Q. Did you receive any official notice? A. Yes, sir.

Q. Of your appointment as aide? A. Yes, sir.

By the President:

Q. Were you holding a commission in the National Guard already? A. Yes, I was aide to Governor Dix, and I received a notification through the Adjutant General's department that I was to be naval aide of Governor Sulzer.

The President.— I think we have got it now. That is all, witness.

Mr. Hinman.— Louis A. Sarecky.

LOUIS A. SARECKY, a witness called on behalf of the respondent, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Mr. Sarecky, where do you live? A. 316 Monroe street, Brooklyn.

Q. How long have you lived there? A. I think about three months, maybe a little longer; I don't know just when we moved there.

Q. Are you married? A. Yes, sir.

Q. When were you married? A. December —

The President.— How is that material?

Mr. Hinman.— Not very.

Q. What is your age? A. I am going to be 28 this coming January.

Q. Were you subpoenaed here in the trial of this case before this Court as a witness on behalf of the prosecution? A. Yes, sir.

Q. When were you so subpoenaed? A. I think about ten days ago, may be a little less, I don't know the exact date.

Q. Did you attend the sessions of this Court in response to and in accordance with that subpoena? A. I did.

Q. What is your occupation? A. At the present time I am lay member of the board of deportation for the State Hospital Commission.

Q. Whom did you succeed on that board? A. Dr. George B. Campbell.

Q. What salary was Mr. Campbell getting? A. I think $5,000 a year.

By Mr. Stanchfield:

Q. Do you know anything about it? A. Yes, I do.

Q. Is it of your knowledge that you say $5,000? A. Of my knowledge.

By Mr. Hinman:

Q. During 1912, what was your occupation? A. Well, I acted as secretary to then Congressman Sulzer.

Q. William Sulzer? A. William Sulzer.

Q. How long had you acted in that capacity for William Sulzer? A. I have been connected with Mr. Sulzer for a period of ten and a half or eleven years, and some time during that period I became his secretary.

Q. Where was the place of your employment during that period? A. In New York City.

Q. What was the nature of your duties as secretary to William Sulzer, and where did you perform such duties? A. They were the duties of an ordinary secretary: I looked after the mail, attended to his personal affairs, interviewed visitors.

The President.— A little louder. What were the ordinary duties of a secretary?

The Witness.— I am going to tell you. I opened all his correspondence when he was not at the office, and even when he was at the office. I interviewed various people and attended to what business interests he had, such as I could attend to. All this work

was done at 115 Broadway, in New York City; that is the office of Mr. Sulzer.

Q. Has William Sulzer's office been at 115 Broadway during this entire period of ten and one-half or eleven years? A. No, sir.

Q. What you mean then, I take it, is that since his office was at 115 Broadway your duties have been performed at that office? A. Yes, sir, at that office.

Q. And prior to that were performed at the office formerly occupied by him? A. Yes, sir.

Q. Did you perform any of your duties at Washington or were they confined to the city of New York, his office there? A. My duties were confined to the city of New York.

Q. Where did William Sulzer live in 1912? A. 175 Second avenue.

Q. Describe the suite of offices that were occupied by William Sulzer during the months of October and November, 1912. A They were on the ninth floor of 115 Broadway, on the north side of the building. The suite constituted rooms 911, 12 and 14. Nine hundred and thirteen was omitted in numbering the offices. As soon as one entered the office of Mr. Sulzer he came into an anteroom. To the left was Mr. Sulzer's private office, and to the right was what he called the company room and directly in front of the anteroom was Mr. Frankenstein's office.

Q. By the front you mean between the anteroom and the street side? A. Between the anteroom and the street side.

Q. So that in passing from the hall to that room which you say was Mr. Frankenstein's room you would pass directly through the anteroom? A. Yes, sir.

Q. Who occupied this room at the right which you say was called the company room? A. That room was occupied by Governor Spriggs.

Q. And called the company room? A. Called the company room.

Q. This room which you say was the private room of William Sulzer, out of what room or through what room was that private room entered? A. Through the anteroom; through the entrance room, so to speak.

Q. In which way did the door swing that opened between the anteroom and William Sulzer's private room? A. It swung into the anteroom.

Q. As you entered William Sulzer's private office from the anteroom, on which hand was his desk located? A. On the right-hand side.

Q. Was that the situation during all the time that he has occupied that suite of rooms? A. Yes, sir.

Q. What kind of a desk did William Sulzer have in that room, if any? A. He had a mahogany roll-top desk.

Q. Where was that located in that room? A. It was located to the right of the door as you enter.

Q. And in what condition with reference to the end or the back being against the wall? A. There was one end of it to the wall and the back faces the door.

Q. So that a man sitting at that desk would be with his back in what direction? A. With his back toward the window and his face toward the door.

Q. With the body of the desk between him and the door? A. Yes, sir.

Q. And you say the end of the desk was against the right-hand wall as you entered his private room? A. The right-hand wall as one entered his private room.

Q. Do you remember when William Sulzer was nominated for Governor at Syracuse? A. On the morning of October 3d, I think.

Q. 1912? A. 1912.

Q. Were you at Syracuse? A. No, sir.

Q. Where were you? A. I was at 115 Broadway. Not the morning he was nominated.

Q. Were you the day after that there? A. Yes; I was that morning too, because he was nominated at two or three o'clock in the morning, but I was in New York.

The President.— He means were you down there. You didn't go to Syracuse?

The Witness.— No, sir.

Q. During the campaign where were you and what were you engaged in? A. I was at the office continuously. I was at the office every day and was engaged in looking after what correspondence came into the office; interviewing visitors; receiving money; paying bills; answering telephone calls and doing whatever work there was to be done.

Q. What other people were employed there in that office during the campaign? A. We had Mr. R. K. Weller, Mr. Frank S. Cisna and Charles Horowitz.

Mr. Stanchfield.— Charles who? What was the name?

The Witness.— Horowitz.

Mr. Hinman.— H-o-r-o-w-i-t-z.

The Witness.— Then I hired two assistants later on. I do not remember their names.

Q. Was there any other persons there assisting in the work during the campaign? A. Yes, sir. There was Tom Leary, a brother-in-law of Mr. Delaney, and Matt Horgan helped out extensively.

Q. Who was Matt Horgan? A. At present first deputy commissioner of Efficiency and Economy.

Q. Is he the same one who later became secretary to the so-called Frawley investigating committee? A. Yes, sir.

Q. When you say you were at work at the office during the campaign, do you mean William Sulzer's office at 115 Broadway? A. Yes, sir.

Q. During what hours did you work there on the average through the campaign? A. Between 9 in the morning and 2 in the morning.

Q. During the campaign you say you were engaged in opening and answering letters and looking after the mail. What do you say as to the quantity of mail received there at that office during the period between the time when William Sulzer was nominated for Governor and the date of his election? A. I think it averaged about 250 or 300 communications a day.

Q. Were those in the form of letters and telegrams? A. Yes, sir.

Q. During that campaign was William Sulzer there at his office continuously? A. No, sir.

Q. Where do you know of his being during that period besides at his office? A. He was away on two or three campaign trips.

Q. What campaign trips was he away on during that period? A. He was away on a short trip of, I think, two days about the middle of October.

Q. Where did he go? A. He went up one side of the Hudson as far as Albany or Troy and came down on the other side.

Q. What other trip or trips did he make during the campaign? A. He took what we call the long trip. I think it was a ten day trip and in that trip he went through the State as far up as Ogdensburg and I think Malone, I am not sure, and came down by way of Buffalo along the central part and then came down the Hudson.

Q. Where were you during those two trips? A. At the office.

Q. Did he make any other campaign trip? A. He made one campaign trip through Long Island.

Q. In addition to these three trips you have mentioned do you know whether or not he was during that campaign delivering speeches in different parts of New York City? A. Yes, sir.

Q. During this campaign what would you say as to the number of callers or visitors there at his office, 115 Broadway? A. The office was crowded all day with visitors. There were not chairs enough for them to sit down. I think we had on an average not less than 100 or 200 callers a day.

Q. While William Sulzer was at his office during the campaign, what was he engaged in doing? A. He was in his private office interviewing and seeing people; some would call to see him and sometimes he would talk over the telephone; look at some correspondence and prepare speeches, I think.

Q. Who looked after the mail during that period? A. I looked after it most of the time, in fact, all the time I looked at it.

Q. Who opened the mail? A. I, with the assistance of the three gentlemen I named before.

Q. Name them now, the three who helped you open the mail? A. There was Mr. Weller, Mr. Cisna and Mr. Horowitz, and when Mr. Horgan was at the office, he, too, helped.

Q. Who dictated most of the replies to communications received during the campaign? A. There was very little dictating. I got up a form which would answer the purpose and I sorted out the letters, gave each one a batch of them and he knew the form to use.

Q. There was introduced into evidence here, some letters that went out from that office during the campaign which in effect read as follows: "I thank you very much for all that you have done and all you say and you can help me very much," or words to that effect. Who got up that form of letter? A. I got the letter up, but that was not the form though.

Q. Well, was it something to that effect? A. Something to that effect.

Q. Did you during that period or were there received during that period some letters and communications enclosing checks and money? A. Yes, sir.

Q. The letters which have been introduced in evidence show that none of them mentioned any amount and did not speak of campaign contributions. Was any direction of any kind given to you by anyone with reference to leaving such a statement out in the letter?

Mr. Stanchfield.— I object to that as not predicated upon the testimony and because it calls for a conclusion and is incompetent.

The President.— Read the question.

(The stenographer read the question as follows:

> "The letters which have been introduced in evidence show that none of them mentioned any amount and did not speak of campaign contributions. Was any direction of any kind given to you by anyone with reference to leaving such a statement out in the letter?")

The President.— Objection overruled. You may answer.

Mr. Hinman.— I can state it in better form. It is a little involved.

Q. Did anyone say anything to you at any time during the campaign with reference to making any statement in any letter with reference to donations or moneys received? A. No, sir.

Q. Why was this general form of letter which you say you sent out gotten up in the shape in which it was? A. In using that form I tried to concoct it so that it would cover almost everything that might come up during the course of our business. We would send the same letter to people who were doing things and people who were sending money and that form covered everything. We would send the same letter to a person who was attending meetings or getting up meetings.

Q. These moneys and checks as they were received, what was done with them? A. I deposited them to my account.

Q. Where was your account? A. In the Mutual Alliance Trust Company.

Q. Was that an account which you had opened in that bank before William Sulzer was nominated for Governor? A. Oh, yes.

Q. Where had you had your account during the years before? A. The Carnegie Trust Company.

Q. What had happened to the Carnegie Trust Company in the meantime? A. Went through bankruptcy, I think. It closed.

Q. In any event it closed? A. It closed.

Q. After the nomination was made at Syracuse did the question come up there in the office of the formation of a campaign committee on behalf of William Sulzer? A. It did.

Q. Who was selected as chairman of that committee?

Mr. Stanchfield.— I object to that unless the respondent was present.

The President.— I think I will let it in. Do you know of your own knowledge? You may answer.

The Witness.— What is the question?

Q. Who was selected as chairman of that committee? A. Colonel Bacon was first nominated but he declined on the ground that he would be pretty busy in the national campaign and finally Governor Spriggs was chosen as chairman.

Q. Who was Governor Spriggs?

The President.— Ask him where this committee met.

Q. Where did the committee meet? A. The meeting was held at the office of Governor Sulzer, 115 Broadway, consisting of a number of the Governor's friends.

The President.— Were you a witness of this proceeding?

The Witness.— Yes, I was a member of that committee.

Q. Was William Sulzer at any time present? A. I don't know whether he was present during the business of the meeting. He may have come in but I don't remember.

Q. Who was Ex-governor Spriggs? A. He is Mr. Sulzer's business associate.

Q. Where was his office? A. In the same suite of offices.

Q. Which room did he occupy?

The President.— He has already said that it was in front of the anteroom, which was Mr. Frankenstein's office. Is that what you said?

The Witness.— Yes, sir.

By Mr. Hinman:

Q. Who was elected as secretary and treasurer of that committee? A. I was.

Q. Were there also, in addition to the moneys and checks which were received during the campaign in the mail, other moneys and checks delivered there to you at the office? A. Yes, sir.

Q. Do you know a man by the name of Pinckney? A. I do.

Q. The one who was sworn here as a witness? A. Yes, sir.

Q. Were you present on an occasion in October of 1912 when he was there at the office and wrote his check? A. I was.

Mr. Hinman.— Change that question. My associate says it was on or about November 1st.

Q. Were you present when he wrote the check? A. I was.

Q. And when he delivered it? A. Yes, sir.

Q. Did you hear the conversation which occurred then between him and William Sulzer? A. Yes, sir.

Q. All of it? A. Every word of it.

Q. There at that time did William Sulzer say to Mr. Pinckney, in words or in substance, that Mr. William Sulzer did not propose to account for that money? A. No, sir; he didn't say anything of the kind.

Q. To whose order was the check made? A. It was made out to my order.

Q. When was it delivered to you, if at all? A. In the presence of Mr. Pinckney. He gave it to the Governor, to Mr. Sulzer, and Mr. Sulzer handed it to me.

Q. What did you do with it? A. I deposited it to my bank account.

Q. In this Mutual Alliance Bank? A. In the Mutual Alliance Bank.

Q. In making your deposits in that bank during this campaign, were deposit slips made which accompanied the deposits made? A. What was your question?

Q. Were deposit slips made out to accompany the deposits? A. Oh, surely.

Q. Who made out those deposit slips? A. I made out some of them, and some of them were made out by the people who were assisting me in my work.

Q. Name them as far as you can? A. Mr. Weller, Mr. Cisna and Mr. Horowitz.

Q. Did Mr. Horgan have anything to do with the making out of any of those deposit slips? A. Yes, sir. He assisted me in that work, but I don't know whether he personally wrote out any of the deposit slips.

Q. On the deposit slips, do you recall whether or not the names of the donators, that is of the persons who had given checks, appeared on the deposit slips? A. We never put them on, not on the deposit slips.

Q. Do you know whether they were put on at the bank or not? A. I have seen photographs of those deposit slips, and have since learned that they were put on.

Q. After the election was over, what, if anything, came up in relation to the making and filing of a campaign statement, or statement of campaign moneys used and expended?

Mr. Stanchfield.— Once more I object, unless that is confined to periods when the respondent was present.

The President.— Yes; it must be.

Mr. Hinman.— If your Honor please, we propose to show, that is, we want to show, if we may be permitted, that then, for the first time, this witness discovered or learned that a committee, a campaign committee, was required by law to make and file with the Secretary of State, a certificate showing, within I think three days or five days, after the officers of a committee were elected, a certificate showing the names of the committee, and that he then learned that that had not been done, and he then was in a quandary as to how the statement should be made out, and what they should do.

The President.— Well, you may show it.

Mr. Stanchfield.— Show it in the absence of the defendant or respondent?

The President.— Yes.

Mr. Hinman.— What came up, Mr. Sarecky —

The President.— If it turns out differently, I will strike it out.

By Mr. Hinman:

Q. What came out in connection with the making of a statement of campaign expenses? A. We received, I think from Tammany Hall —

The President.— Louder.

A. We received, either from Tammany Hall, or from the Secretary of State, a blank form on which a statement was to be made out, to be filed with the Secretary of State, of receipts and expenditures of campaign funds.

By Mr. Hinman:

Q. When you say we received it, what do you mean by "we." A. I mean it was received at the office.

Q. Who opened it? A. I don't know. I may have opened the

envelope, or one of my assistants. And then at that time the question came up as to whether the committee had the right to file a statement, inasmuch as it had neglected, or someone had neglected on behalf of the committee, to file with the Secretary of State a notice to the effect that such a committee had been formed, and that I had been selected as treasurer. So some one suggested that I take the matter up with Mr. Sulzer. I went into his room, and told him of the quandary we were in, and he said, "Well, make up the statement anyway; it does not matter very much who signs it, as long as we comply with the spirit of the law." So I went outside and then worked on the statement for about a day and a half, brought it in to Mr. Sulzer, and he signed it. I took it in to a notary, and he said —

Mr. Stanchfield.— Never mind what the notary said.

The Witness.— The notary acknowledged it, and I mailed it to Mr. Lazansky, the Secretary of State.

Q. I show you managers' Exhibit 3, and ask you if that is the statement which you prepared? A. Yes, sir.

Q. Who did the typewriting on the sheet that is attached to this blank form? A. I did.

Q. And is that the blank form that you had received there through the mail? A. I think it is, yes, sir.

Q. In what room were you when you prepared that? A. In the anteroom.

Q. Who, if anyone, assisted you while you were preparing it, or in the preparation of it? A. I think Mr. Horgan was the one who helped me get it up. He brought an adding machine and came from his office, 285 Broadway, and he and I worked on it, and finally got it up.

Q. Did William Sulzer have anything whatever to do in the work of preparing that statement? A. No, sir.

Q. You say that after it was prepared you took it to William Sulzer? A. Yes, sir.

Q. Where was he when you took it to him? A. In his private office.

Q. In what way was the blank or this statement when you took it in to him at his office? A. It was in its completed form.

Q. In what way was it folded, when you took it in to him A. I took it in this way (indicating), and showed him where he was to sign.

Q. You mean by that that the first sheet had been thrown over back? A. Yes, sir.

Q. So it exposed the last page where the places had been printed for signature? A. Yes, sir.

Q. Where was he when you took it into his office? A. He was at his desk.

Q. What doing? A. I think he was going through some correspondence.

Q. What did you do with it when you went in his room that day? A. I said, "Here, Congressman, here is the statement which I got up; here is the statement, Congressman." I think those were the exact words I used, "This is the statement," and I had the first page folded over this way — I had the first page folded over back, and showed him where he was to sign, and he turned it back and said, "Is this all right?" I said, "This is as accurate as I could get it," and he signed it.

Q. Where did he sign it? A. In those two places where you see his signature.

Q. As it lay on the desk? A. As it lay on the desk.

Q. Did he read any part of this statement, or examine it? A. He could not have read it very carefully, because he did not hold it over a minute or two at the most, just long enough for him to sign his name.

Q. So far as you saw, he did not examine or read any part of the printed or typewritten matter on it? A. No, sir.

Q. After he signed his name, what did you do with the blank? A. I took it into the office of House, Grossman & Vorhause, and there asked for Mr. Stupell, who was a notary, and generally does our work; Mr. Stupell was out, and someone asked me whether a commissioner of deeds would do, and I said I thought he would, so I went into the office of Mr. House, and in his office was Mr. Wolff. I told him this was the Governor's signature, he knew it, but he said he was going back with me to shake hands with the Governor, to congratulate him and ask him whether he signed it, and he and I went back into the Governor's private

room, and I opened the door, and said, "Here is the notary," and Mr. Wolff said, "I want to congratulate you, Governor," and shook hands, and he said, "You signed that, didn't you," and the Congressman said, "Yes." Then Mr. Wolff came out with me into my room, the anteroom, and wrote his name at my desk. He did not write his name at the Governor's desk. It was all covered up and littered up with papers, letters and books.

Q. Now, when you went from the Governor's private office, after he had signed this Exhibit 3, managers' Exhibit 3, did you take the statement with you into the office where you obtained the services of this commissioner of deeds? A. I did.

Q. And had it with you when you went in there? A. I had it with me, when I went in there.

Q. While Mr. Wolff was there with William Sulzer, with this statement, managers' Exhibit 3, did he, Mr. Wolff, read any part of that affidavit or statement to Mr. Sulzer? A. No, sir.

Q. Did anyone read any part of that to William Sulzer? A. No, sir.

Q. Was this statement at that time handed to William Sulzer, or did he have it in his hand or on his desk? A. What time are you referring to?

Q. When Wolff was in there with it? A. No, Wolff held it in his hand.

Q. Did you at any time, or so far as you know, did anyone at any time have any talk with William Sulzer regarding what was in the statement, or what was not in it? A. Not to my knowledge.

Q. Or as to what should be put in it, or what should be left out of it? A. No, sir.

Q. After William Sulzer had signed his name to that Exhibit 3 that day, as you have described, did he have it in his hands again? A. No, sir.

Q. How soon after it was signed by Mr. Wolff there in the anteroom and at your desk, was it that it was mailed by you? A. It was mailed that afternoon.

Q. The same afternoon that it was signed? A. Or the same morning, I do not remember whether it was the morning or the afternoon; it was mailed that same day.

Q. In this statement that is filed here, this Exhibit 3, I find the

name of Mr. Elias; do you know who this Mr. Elias was and is? A. I think he is a brewer.

Q. Connected with what brewery? A. I don't know; Elias Brewing Company, I think.

Q. Was anything said to you by William Sulzer, or intimated by him at any time that donations or gifts received by brewers should not appear in connection with this campaign, or that their names should be kept secret? A. I never discussed with Mr. Sulzer the making up of this statement at all, that is as to what should go in or what should not go in.

I show you managers' Exhibit 29, which is a letter dated October 22, 1912, and which the Court will remember as the letter that has the words "en route" on it, the letter of October 22d, "en route," a letter addressed to the Mutual Alliance Bank.

The President.—The letter on which they are to take his endorsement on checks?

Mr. Hinman.—Yes.

Q. Who wrote that letter? A. I did.

Q. Where? A. At the office.

Q. Where was William Sulzer on October 22d, when you wrote the letter? A. He was on his long campaign trip then.

Q. Who signed the letter? A. I did.

Q. What was done with it after you signed it? A. I took it down to the Mutual Alliance Trust Company.

Q. Had you been endorsing William Sulzer's name on checks prior to that time? A. Oh, yes.

Q. And did you continue to endorse William Sulzer's name on checks thereafter? A. I did.

Q. In endorsing William Sulzer's name, did you sometimes write it, and did you sometimes affix it with a rubber stamp? A. I did.

Q. Was there a rubber stamp kept there at the office having a facsimile of William Sulzer's signature thereon? A. We had half a dozen stamps of his facsimile signature.

Senator Griffin.— Can we look at that letter, Mr. President?

The President.— Yes. Will you gentlemen give Senator Grif-

fin that letter. Is that the letter that purported to be signed William Sulzer, and authorizing the bank to take the witness's endorsement of his name?

Mr. Hinman.—Yes, sir.

(The letter was thereupon handed to the members of the Court for personal inspection.)

Senator Emerson.— Did the witness swear that he signed that letter?

The President.— He did say so, as I understood it. But before you repeat your question, wait until the other members look at the letter, so that their attention may not be distracted.

Now, Senator Emerson, if you will put the question.

Senator Emerson.— I would like to ask the witness if he signed that letter.

The Witness.— I did.

Senator Duhamel.— I would like to ask the witness if it was customary for him to sign Mr. Sulzer's signature when a member of Congress? A. Not as an official act but I signed his name to correspondence.

Senator Duhamel.— Franks?

The Witness.— Franks.

Senator Emerson.— Mr. President, may I be permitted to ask him if he will write that once more on a sheet of paper?

The President.— Yes.

Mr. Hinman.— Come down at a desk where you can write it.

(The witness sat at the lawyer's table and signed a paper making four signatures, two in ink and two in lead pencil.)

Mr. Hinman.— Does the Court now want it passed around?

The President.— Yes. Let the stenographer mark it.

Mr. Hinman.— We ask to have marked the signatures which the witness has just made upon a sheet of paper of the name of William Sulzer.

The President.— Yes. Now it will be handed around.

(The document was received and marked Exhibit R-1.)

Mr. Herrick.— The letter and the signatures both?

The President.— Yes, both together. They may be wanted for comparison, I suppose.

Senator Herrick.— Mr. President, I should like to ask the witness a question.

The President.— Well, Senator, will you please defer your question until after the letter and the signature he has made now is handed to the members of the Court.

Senator Herrick.— Certainly.

Senator Emerson.— I would like to ask a question, if I may be permitted.

The President.— Hadn't you better defer the question until the end of the inspection?

Senator Emerson.— The letter must come back then.

The President.— What is it?

Senator Emerson.— On the original letter I understand the witness swears he was at 115 Broadway all during October, at the date of this letter, October 22d. I notice in the original letter it says it was sent en route. What is the object in putting "en route" on if it was sent in the city?

The Witness.— Well, the papers were full of the Governor's campaign trip throughout the State at the time, and I knew the bank officials were familiar with that.

The President.— Let us finish the inspection.

Mr. Herrick.— Won't you let him complete his answer?

The President.— I think we will reserve the senator's question until the conclusion of the inspection.

Mr. Herrick.— It is half answered.

The President.— Even then. Then he shall give the rest of the answer. You must proceed orderly.

Senator Emerson.— One more question, Mr. President.

The President.— The Presiding Judge will have to ask the senator to refrain from interrupting.

Senator Emerson.— I was going to ask for a signature that is not disputed by Mr. Sulzer, if I may be permitted to see that, a signature of Mr. Sulzer's that is not disputed.

The President.— That we will get afterward, senator, if you will wait until this is done.

Senator Carswell.— I rise partly by reason of the last interruption. I think it will expedite matters if the members of the Court refrain from interrogating witnesses until both counsel are through with him.

The President.— Yes, Senator Carswell.

Senator Carswell.— Mr. President, there is a rule, rule 4 of the Court, which expressly provides that interrogating a witness by members of the Court shall not take place until after counsel on both sides have examined and I arise to a point of order in that respect.

The President.— I thank you for calling my attention to it, Senator Carswell. Read the question you say you partially answered and finish the answer if you wish to do so now.

Mr. Hinman.— Does your Honor refer to the one of Senator Emerson or the one I was asking?

The President.— I did. If you wish to let it go as it is, go on with your examination.

Mr. Hinman.— If you will read the question asked by Senator Emerson and which had been partially answered by the witness, please.

The President.— What are you going to do?

Mr. Hinman.— I am going to ask the stenographer to read Senator Emerson's question and the portion of the answer which had been given.

(The stenographer thereupon read the question as follows: "Senator Emerson: I notice an original letter that says 'en route.' What is the object of that 'en route' on that? A. Well, the papers were full of the Governor's campaign trip through the State at the time and I knew the bank officials were familiar with that.")

The President.— That appears to answer it.

The Witness.— And in order to make it appear as if coming from Mr. Sulzer personally I added that "en route" at the head of the letter.

Q. How long had you been in the habit of signing or accustomed to sign William Sulzer's name to letters? A. About eight or nine years maybe.

Q. And prior to this 22d of October, 1912, had you been endorsing his name with pen on some of the checks which had been received? A. Yes, sir.

Q. And had you also been endorsing his name on checks received there by placing a rubber stamp thereon?

The President.— He said that already.

Mr. Hinman.— I thought so, but my associate thought it had not been covered. I thought it had. Your recollection agrees with mine on that.

Q. Did you have a power of attorney from William Sulzer at any time? A. Yes, I had a power of attorney from him which was given to me in 1906.

Q. What was the cause of Governor Sulzer giving you a power of attorney at that time? A. He was going up to Siberia —

Mr. Stanchfield.— I object.

The President.— I do not see its materiality.

Q. Was it a general power of attorney? A. Yes.

Mr. Stanchfield.— Where is it? Let us see it.

Mr. Hinman.— I was going to ask it if you permit me.

Q. Have you looked up and endeavored to find that power of attorney? A. Yes.

Q. Has that power of attorney ever been revoked? A. No, sir.

Q. Was that a general power of attorney? A. Yes, sir —

Mr. Brackett.— One moment. That is incompetent.

The President.— He has to state what the substance of it is and literally what its contents were.

Mr. Brackett.— Whatever its contents were it certainly was not a sufficient power of attorney to give another power of attorney in his name.

The President.— That can be argued to members of the Court. I will let you state it. He said it was a general power.

Mr. Hinman.— Yes.

The President.— That may be. Proceed.

Q. In making this report, this statement Exhibit 3, does that include all the moneys which have been received by you during the campaign and deposited in the bank? A. No, sir.

Q. Did you know at the time when you made it up that it didn't contain a statement of all the moneys that you had deposited in the bank? A. I did.

Q. What moneys, if any, did you leave out and why? What moneys received did you leave out and why?

Mr. Stanchfield.— I object to that as irrelevant and incompetent.

The President.— Read the question.

(The stenographer thereupon read the question as follows: "What moneys, if any, did you leave out and why? What moneys received did you leave out and why?")

Mr. Stanchfield.— What he did doesn't make any difference. Sarecky isn't yet on trial.

Mr. Hinman.— Nor soon.

The President.— One moment, gentlemen. Now stop these remarks. Now read the question, stenographer.

(The stenographer thereupon read the question as follows: "Q. "What moneys, if any, did you leave out and why? What moneys received did you leave out and why?")

Mr. Stanchfield.— He is not on trial.

The President.— I do not see its materiality.

Mr. Hinman.— He made up the statement and more moneys were received than appear here, received by him and put in the bank.

The President.— Well, afterwards, if they attempt to impeach him, then it can be competent but not at this stage.

Mr. Herrick.— It is not a question of impeaching him. It is not a question of establishing his credibility as a witness. But it is a question of showing what was done with the moneys deposited in the Mutual Alliance Trust Company to his account with those campaign moneys and why he didn't include them in this statement.

The President.— Why is that material? What does it show?

Mr. Herrick.— If the Court will hold it is of no consequence, counsel for respondent are perfectly content.

The President.— If afterwards he is impeached he can give the reason for leaving it out.

Mr. Herrick.— It appears that that is the fact. If you say that is of no consequence —

The President.— We will let you have it. You can answer why you left out the other money.

The Witness.— Because I did not have any record before me at the time I made up the statement to cover those other items.

By Mr. Hinman:

Q. Had some of the moneys which you had deposited during the campaign in the Mutual Alliance Trust Company been used for purposes other than campaign purposes? A. Yes, sir.

Mr. Stanchfield.— I object to that as leading, and incompetent and improper.

The President.— Read the question.

(The question was read by the stenographer as follows: "Had some of the moneys which you had deposited during the campaign in the Mutual Alliance Trust Company been used for purposes other than campaign purposes?")

The President.— Objection is overruled. Let him answer.

A. Yes, sir. They had been used for purposes other than for campaign purposes.

By Mr. Hinman:

Q. For what purposes had those moneys been used?

Mr. Stanchfield.— The same objection, again.

The President.— Objection overruled.

A. I used part of that money in settling a suit out west that had been brought against Mr. Sulzer during the campaign.

Q. Where was William Sulzer when you did that? A. I cannot recollect just where he was.

Q. Did you confer with him, or counsel with him before you did that? A. I did not.

Q. You did that then, I take it, without his knowledge? A. Without his knowledge.

Q. What other purposes had moneys deposited by you in this bank account been used for, moneys which do not appear in this campaign statement? A. I cannot recollect now just for what purposes I did use it, but I know I used some for purposes which were not for campaign purposes. I think I also paid for postage on a number of books that went out of this state; that is, to the best of my recollection.

Mr. Hinman.— Nothing further.

Cross-examination by Mr. Stanchfield:

Q. Mr. Sarecky, there is one matter that I would like to clear up before I take up in detail your cross-examination, and that

has to do with the Exhibit 29, marked "en route, October 22, 1912." You have your attention, have you not, upon that letter? A. I have.

Q. With whom, at the Mutual Alliance Trust Company office, did you have any conversation in regard to endorsing Governor Sulzer's name upon checks you presented there payable to his order? A. I don't think that I personally had any conversation with anybody in that bank regarding that matter. One of the clerks —

Q. Now, just a moment, that answers the question. A. Yes, sir.

Q. Do you mean that no employee or person connected with the Mutual Alliance Trust Company, talked with you upon that subject? A. To the best of my recollection, no, nobody spoke to me about that subject.

Q. Who is the president of that concern? A. I know him by sight, but I do not remember his name.

By the President:

Q. Was he on the witness stand; do you remember seeing him on the witness stand? A. No, sir, I was not here then.

By Mr. Stanchfield:

Q. Would you recognize his name if it were given you? A. Yes, I would.

Q. Is his name Floyd? A. I think it is.

Q. Webb Floyd? A. Webb Floyd.

Q. Did he not speak to you upon the subject of your depositing in the Trust Company checks payable to the Governor's order? A. No, sir, he did not.

Q. And you tell us then that no one connected with the Trust Company ever spoke to you about the endorsement upon checks you were depositing there, payable to his order? A. No, sir, nobody ever spoke to me about it.

Q. Well, you emphasize "me." Did they speak to someone else, who, in turn, spoke to you? A. They did.

Q. Who was it that spoke to you? A. One of the boys who was helping me in my work.

Q. Which boy? A. I do not remember whether it was Mr. Cisna, Mr. Weller or Mr. Horowitz, because all of them had made deposits.

Q. Well, was it one of the three? A. It was one of the three.

Q. Had you been in the habit of sending one or the other of these three, Weller, Cisna or Horowitz, with the checks to the Mutual Alliance Company, to deposit them? A. Yes, sir.

Q. And did one of them call your attention to the fact that the Trust Company wanted some authority for you to endorse the Governor's name? A. Yes, sir.

Q. About when did you receive that information with reference to this letter, dated October 22, 1912? A. It may have been about two weeks, I think, after I had been depositing there money —

By the President:

Q. No, that is not the question; the question is with reference to the date of the letter. A. Oh, about two days before I gave them this letter, I think.

By Mr. Stanchfield:

Q. That would be on or about October 20th? A. Yes, sir.

Q. Now, at that time, you had been for years endorsing the Governor's name to papers of one sort or another, hadn't you? A. Yes, sir.

Q. You never had signed his name "William Sulzer, per Louis A. Sarecky," had you? A. I do not think I did.

Q. You never had signed his name "By Louis A. Sarecky?" A. No, sir, I do not think I did.

Q. When you did sign it, you did sign it "Wm. Sulzer," didn't you? A. I did.

Q. And you have tried for years to imitate the handwriting of the Governor, had you not? A. I did.

Q. You have signed that name time and time and time again just as closely as you could imitate his original signature? A. Yes, sir.

Q. That was your purpose in signing it, was it not? A. Yes, sir.

Q. So that whoever received a communication signed in that way would believe that it was signed by him, in person? A. Yes, sir.

Q. Now, when you received word from the Mutual Alliance Trust Company that they wanted some authority from Congressman Sulzer, at that time, for you to indorse his name, did you communicate with Governor Sulzer? A. No, sir, I did not.

Q. Did you let him know in any way that the Mutual Alliance Trust Company wanted that authority? A. I did not.

Q. So that when you sent over this exhibit, marked October 22, 1912, to the Mutual Alliance Trust Company, by whom did you send it? A. I went there myself with it.

Q. When you got there with this exhibit, October 22, 1912, whom did you see? A. I think I saw the paying teller.

Q. Do you recollect his name? A. No, sir.

Q. Did you hand him this paper? A. I did.

Q. Did you hand him this paper, Exhibit 29? A. To the best of my recollection I did.

Q. You had put on that letter the words "en route?" A. I did.

Q. The typewriting on the face of this paper is your typewriting? A. The typewriting is my typewriting, yes, sir.

Q. The signature "Wm. Sulzer," is your signature? A. I signed that.

Q. Designed to convey to them the impression that it was the signature of William Sulzer? A. Yes, sir.

Q. You intended they should believe it was the signature of Governor Sulzer? A. Yes, sir.

Q. You put on the face of this paper the words "en route," so that if they noticed in the newspapers that he was out of the city, they would see by this letter that it came from him, wherever he might be? A. Yes, sir.

Q. And you did all that, knowing from this bank that they wanted from the Governor authority in you to indorse these checks? A. Yes, sir.

Q. In other words, you presented to that bank a deliberate forgery, didn't you? A. Well —

Q. Answer that question.

Mr. Herrick.— Wait a minute.

Mr. Stanchfield.— No, I submit, I am entitled to an answer. What is the ruling, is the objection sustained?

The President.— Objection sustained. You can get the facts. You can ask the question as to the facts.

Q. I mean, you personally.

By the President:

Q. Did you not give it to this teller with the intention of deceiving him, so that he would think that was the personal letter of the respondent here, authorizing you to do the act? A. That was my intention, when I gave it to him.

By Mr. Stanchfield:

Q. Mr. Sarecky, were you in Court yesterday when Senator Hinman made the opening presentation of the respondent's case here? A. I was.

Q. You have heard every word of it? Not every word of it. Some of it I did not hear on account of the rattle in the streets.

Q. You heard the great bulk of it then? A. Yes, I did.

Q. Have you been in pretty constant touch with him, or with Mr. Clark, or some of the lawyers in preparing this case, to furnish him material upon which to make the opening? A. He asked me to write my statement of the story and all out and I wrote it out and handed it to him.

Q. Precisely. Did you notice that he stated yesterday that among the assistants in Mr. Sulzer's office during this campaign was a Mr. Hanify? A. Yes, sir.

Q. You have not named Mr. Hanify? A. It slipped my mind for the moment.

Q. Will you answer my question? You have not named Mr. Hanify? A. No, I did not.

Q. Mr. Hanify was there during that campaign, wasn't he? A. He was. Part of the time.

Q. And you became, during that campaign, acquainted with Mr. Hanify? A. Yes, sir.

Q. Naturally. A. Yes.

Q. Had you known him before that? A. I knew him before the Governor was nominated.

Q. How long had you known him? A. About a month I think. Maybe a little less.

Q. A month or more before the Governor was nominated? A. Yes, sir.

Q. That is Mr. J. B. Hanify, isn't it? A. John H. B. Hanify.

Q. John H. B. Hanify? A. Yes, sir.

Q. He is the same Mr. Hanify who, about the 10th of July last, became connected with the State Hospital Commission? A. Yes, sir.

Q. In what official relation? A. He was made secretary to the State Hospital Commission.

Q. You tell us you are 27 years of age, is that right? A. I am going to be 28 this January.

Q. In your 28th year? A. Yes, sir.

Q. Where were you born? A. In Odessa.

Q. New York? A. No, sir. Russia.

Q. Russia? A. Yes, sir.

Q. And about how old were you when you came to this country, if you are able to say? A. I think about two or three years.

Q. Was your father living? A. Yes, sir.

Q. And your mother? A. Yes, sir.

Q. Are they still living? A. No, sir, my father has been dead about 10 or 11 years, may be a little more, I don't remember just how long.

Q. Have you ever been naturalized as a citizen? A. No, I was not naturalized —

Q. Just answer my question. A. No, sir.

Q. Have you ever voted? A. No, sir.

Q. At no time? A. No, sir.

Q. At no election? A. No, sir.

Q. When you came to this country you say you were about two years of age? A. About that.

Q. Did you go to school? A. Yes, sir.

Q. Where? A. Public School 75.

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

Q. How long did you continue going to school? A. Until I graduated.

Q. When was that? A. I think in 1898.

Q. How old were you? A. Well, I was then about 14, I think.

Q. Between 13 and 14? A. Around there.

Q. Around 13 or 14 was your age? A. Yes, sir.

Q. Did you graduate from the school? A. Yes, sir.

Q. Did you go to any other school after that? A. DeWitt Clinton High School.

Q. In the city of New York? A. In the city of New York.

Q. Day or night? A. Day.

Q. How long did you continue to attend this high school? A. Four years.

Q. And you graduated when? A. 1902.

Q. At that time were you connected with Mr. Sulzer in any way? A. In December of 1902, I became connected with him.

Q. At his office? A. At his office.

Q. That was the same year that you graduated from this school? A. The same year that I graduated from high school.

Q. At that high school did you study stenography? A. I did.

Q. Did you become at that high school sufficiently expert in stenography to act as a stenographer? A. Yes, sir.

Q. When you first entered the respondent's office, in what capacity did you go there? A. As a stenographer and general office assistant.

Q. Where was his office then located? A. At 45 Broadway, New York.

Q. Have you completed your answers? A. New York, 45 Broadway.

Q. Had he any other stenographers in his office at the time? A. I think there was one other fellow there at the time. I can't remember now whether he was in the employ of the Governor or Mr. Frankenstein.

Q. At that time, when you entered his office, you were how old? A. I was around 16 or 17 years of age. That is a question of mathematics, about 17 years I think.

Q. Somewhere, I am not very particular about that, somewhere around 16 or 17 years of age? A. Yes, sir.

Q. In this De Witt Clinton High School, what other studies had you followed? A. Well, I took up languages.

Q. What languages? A. French, English, and I think part of the course was in German but I don't remember now.

Q. What books in French did you read in that school? A. I had Chardenelles French Book, if I remember correctly. That is a long time ago, Chardenelles French.

Q. Have you studied French since? A. I have been reading it. I have not studied it.

Q. You have been reading it? A. Yes, sir.

Q. What have you read in French? A. A French newspaper.

Q. You have occasionally taken up a French newspaper and read it? A. Yes, sir.

Q. And also French books? A. Yes, sir.

Q. What French books? A. L'Abbe.

Q. Who is the author of it? A. Halevy.

Q. He is the author of what? A. L'Abbe de Constant.

Q. You have read that in the original? A. Yes, sir.

Q. Have you read anything else in French? A. I have read poetry.

Q. What poetry? A. I don't remember the name.

Q. Can you tell the names of a single French poet whose poems you ever read? A. I will recite you the poems; I don't remember who wrote them.

Q. But you cannot tell the author? A. No, sir.

Q. Can you speak French? A. I do.

Q. Have you read German as well? A. I have.

Q. What books in German have you read? A. I cannot think of any for the moment.

Q. Does that cover then, your connection with French and with German fairly from your standpoint? A. Oh, I speak German very often, almost daily, and French whenever I have occasion to speak it.

Q. When you say that you speak German, what dialect, what do you mean by saying you speak German? A. I mean German in the fullest sense of the word, not Yiddish; German.

Q. I understand it. German. Do you likewise speak Yiddish? A. I do.

Q. Have you studied any other language? A. I have, but I am not thoroughly familiar with it. I have studied Spanish.

Q. Have you read anything in Spanish? A. No, sir.

Q. Can you speak Spanish? A. I can understand it, but I cannot speak it very fluently.

Q. Have you told us now your experiences in these different languages, and all of them? A. What do you mean by experiences?

Q. The extent to which you have studied them, to which you have read them, or in which you speak them? A. I speak German, Yiddish and English daily. Most of the dialects there are in the Yiddish language, I have occasion to use. French I use very seldom, because I don't come in contact with many French people. I have home in my library several French books. Occasionally I read them. I have a French dictionary and I often — not often, once in awhile, I refer to that, and I speak German, as I said, almost daily.

Q. Yes. Have you stated now the extent of your acquirements in French and German, the different dialects and Spanish? A. I will omit Spanish, because, as I say, I don't speak Spanish.

Q. We will leave Spanish out? A. Yes.

Q. You have stated just what you have done to acquire familiarity with and knowledge of those languages, have you? A. Yes.

Q. Have you ever attended any school in particular, other than the high school of which you have spoken, to study these things? A. No, sir.

Q. Have you ever studied law? A. Yes, sir.

Q. Where? A. At the New York University.

Q. How long were you engaged in the study of law? A. I studied it for two years.

Q. Covering what period? A. I think 1904 and 1905, or may be — I think it was 1904 and 1905.

Q. Have you ever applied for admission to the bar? A. No, sir.

Q. In 1902. We will begin there. You say you went in Governor Sulzer's office? A. Yes.

Q. As stenographer? A. Yes, sir.

Q. How long did you continue as a stenographer? A. Well,

I was a stenographer up to the time he went up to Albany as Governor.

Q. What other functions, if any, did you perform, aside from that of a stenographer? A. When he was in Washington, I used to open all the correspondence, answer it, or forward any letters to him there. I would see visitors and do ordinary office work as it came up.

Q. Were there any other clerks in the office besides you to look after his matters? A. No, sir.

Q. In other words, you had them in your undivided care? A. Yes, sir.

Q. What salary, in the years 1911 and 1912, were you being paid? A. I was being paid $1,500 and $1,600 a year.

Q. Just what do you mean by that? A. One year I was receiving $1,500, and the other I think $1,600.

Q. You mean in 1911 your salary was $1,500? A. Yes, sir.

Q. Is that what you mean by that remark? A. Yes, sir.

Q. And in 1912 it was increased to $1,600? A. Yes, sir.

Q. How were you paid?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

Mr. Stanchfield.— It will get to be very material.

Q. How are you paid?

Mr. Hinman.— Objected to on the ground it is —

The President.— Let him answer.

The Witness.— I was paid by check and by cash.

Q. And when you were paid by check, by whose check do you mean? A. Sometimes I would get Mr. Sulzer's check, and at other times I would receive checks from other people.

Q. For your salary? A. Yes, sir.

Q. When you say sometimes you would receive checks from other people for your salary, did you refer to Mr. Cisna? A. Yes, sir.

Q. And do you refer to Mr. Mackoff? A. Yes, sir.

Q. Mr. Cisna was a clerk, wasn't he, of the Committee on Foreign Affairs in Congress?

Mr. Hinman.— That is objected to on the ground it is immaterial and irrelevant.

The President.— One moment.

Mr. Stanchfield.— It is not immaterial. It will get to be very material.

The President.— Counselor, do not comment. If you want to make a statement, address the Court.

Mr. Stanchfield.— Pardon me. I was addressing simply the briefest sort of argument.

The President.— Read the question. You see the Presiding Judge doesn't hear what you said.

(The stenographer read the question as follows: "Mr. Cisna was the clerk, wasn't he, of the Committee on Foreign Affairs, in Congress?")

The President.— What is the object of it?

Mr. Stanchfield.— The witness has stated that a part of his salary was paid by this man Cisna. I have a right to get at where his salary came from, who paid it.

The President.— I think not. Sustained.

Q. You say that the salary was paid in part cash and in part checks? A. No, I say sometimes it was cash and sometimes it was by check.

Q. Put it that way. Sometimes check and sometimes cash? A. Sometimes both.

Q. Sometimes both. Did you also get your salary at times in checks from a man by the name of Mackoff?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Sustained.

Q. When you got your salary in cash, who paid it to you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— You may say that. Answer that.

The Witness.— Sometimes the Governor, Mr. Sulzer, would pay me; sometimes Mr. Mackoff and sometimes Mr. Cisna.

Q. Some one of the three paid you this salary? A. Yes, sir.

Q. Did Cisna regularly pay you from about March, 1911, until December, 1912, $83.33 a month?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— How is it relevant, Mr. Stanchfield?

Mr. Stanchfield.— I want to show where he got his salary from.

The President.— How does that affect this?

Mr. Stanchfield.— Because it affects the credibility of the witness.

The President.— I do not think so.

Mr. Stanchfield.— My contention is this, that during the period from March, 1911, to December, 1912, Mr. Cisna, the clerk of the Foreign Affairs Committee at Washington, Mr. Mackoff, the assistant clerk of the Foreign Affairs Committee at Washington, the salary of Cisna of being $2,500 by law, and the salary of Mr. Mackoff being $1,800 by law, regularly paid in New York for services which this witness rendered the respondent, $83.33 a month, from Cisna, and $50 a month from Mackoff.

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— I do not see how that is competent. It does not affect this witness' credibility, and as far as it may have an effect on the respondent, you can ask him when he is on the stand. This is a collateral matter, of which you can only inquire of him.

Mr. Stanchfield.— The contention we make is that the testimony affects the credibility of this witness.

The President.— I am frank to say I cannot see that it does.

Q. Was your salary paid monthly?

Mr. Hinman.— Objected to on the ground it is incompetent, irrelevant and immaterial.

The President.— Objection sustained.

Q. Was your salary continued at the rate of $1,600 a year until the end of the year 1912? A. No, it was until about the end of February.

Q. 1912? A. 1913.

Q. No, my inquiry is down to and including December, 1912, did your salary continue at the rate of $1,600 a year? A. Yes, sir.

Q. Now, on January 1st, the respondent became Governor? A. Yes.

Q. Did you come to Albany with him? A. No, sir.

Q. You remained in New York? A. Yes, sir.

Q. Was there any change made in your salary at that time?

Mr. Hinman.— Objected to on the ground that it is incompetent, irrelevant and immaterial.

The President.— This comes to another thing; this relates to the respondent here, it will be admitted.

Q. Was there any change made in your salary at that time? A. I do not think in the amount I received but in the method of my receiving it, or as to the sources from whom I received it.

Q. Well, as to source, after January 1, 1913, you received it directly from the Governor, didn't you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— He may show his relations. He is testifying on the respondent's behalf; I think it is competent.

A. To the best of my recollection I received it from Governor Spriggs.

Q. How long did you receive your salary from Governor Spriggs? A. I received checks from him occasionally ever since I have known Governor Spriggs.

Q. No, my inquiry is after January 1, 1913, how long did you receive your salary from Governor Spriggs? A. Up to about March 1st.

Q. March 1, 1913? A. Yes, sir.

Q. Now, did a change take place on March 1st? A. It did.

Q. What was it? A. I was appointed special clerk, I think is the title of the place, in the Adjutant General's office.

Q. At Albany? A. Yes, sir.

Q. And did that change in your position require you to move to Albany? A. Well, I don't know; I never performed any duties as special clerk. I resigned on March 15th.

Q. 1913? A. 1913.

Q. You resigned this place in the Adjutant General's office? A. I think I did on March 15th.

Q. Then what happened? A. Then I was appointed confidential stenographer to the Governor.

Q. Did that bring you to Albany to reside? A. Did what?

Q. Did that bring you to Albany to reside? A. Well, it did, yes, sir. The nature of the work I was to perform would necessarily bring me in Albany, or I suppose any other place the Governor would send me to.

By the President:

Q. He asked if you changed your residence? A. Not then.

By Mr. Stanchfield:

Q. What I want to know is, when you became the confidential stenographer of the Governor, whether you removed your residence to Albany? A. Not immediately.

Q. Did it still continue in Brooklyn? A. Yes, sir.

Q. Did you come to Albany about the middle of March to perform the duties of that office? A. No, sir.

Q. When did you report here for work? A. I think the latter part of March or probably the first part of April.

Q. Of the current year? A. Yes, of the same year.

Q. Well, at that time did you take up your residence here? A. I did.

Q. Now, from that time, you put it about the 1st of April, have you made Albany your home? A. My real home has always been in Brooklyn, but I lived up here; I had two homes.

Q. Have you lived in Albany since that time? A. Every day I was here I was here.

Q. Had you any particular home or residence here? A. No, I stopped at —

Q. When you were in Albany where did you make your living headquarters? A. At No. 9 South Hawk street.

By the President:

Q. Did you move up your belongings? A. No, sir.

Q. You came up here from time to time? A. I came up here alone.

Q. You say you are married? A. Yes.

Q. Have you children? A. No, sir.

Q. Did your wife come up or did she remain in the house at Brooklyn? A. She remained at home.

By Mr. Stanchfield:

Q. What was your salary fixed at? A. $2,500.

Q. In this place as stenographer? A. $2,500 a year.

Q. When did you change again your employment? A. I think July 18th.

Q. What? A. July 18, 1913.

Q. Between the 1st of April, 1913, and July 18, 1913, were you at the executive chamber every day? A. No, sir.

Q. How much time were you there? A. Whenever I was in Albany here at the executive chamber for the whole working day.

Q. How much were you in Albany? A. I had been assigned to work with Mr. Hennessy.

Q. How much were you in Albany? A. I cannot remember the exact time.

Q. Haven't you any notion at all about how much time? A. Let me just think for a moment.

By the President:

Q. One day a week or two days a week or a day every other week or what? A. I will think for a moment and I will probably tell you the exact period. I think I was in Albany all the time up to about May 15th, with the exception of Sunday.

By Mr. Stanchfield:

Q. Then what occurred? A. Then I went out on road work with Mr. Hennessy; I was assigned to work with Mr. Hennessy, and I went out examining roads as stenographer to the engineers who were making the investigations.

Q. That was about the middle of May? A. About the middle of May.

Q. And did you continue at that sort of work until about the 18th of July? A. Oh, a little less than that, not quite as long as that; about the 5th or 6th of July; the 4th of July was the last day that I was out on the road.

Q. During that period of time from the middle of May until the 5th or 6th of July when you were out upon the road were you still attached to the Governor as his private stenographer? A. Yes, sir.

Q. Was there any change made in your compensation at that time? A. No, sir.

Q. It remained the same? A. Yes, sir.

Q. Now, you fix a date along about the 5th or 6th of July when you stopped this so-called road work? A. Yes, sir.

Q. Into what employment did you then go? A. I went back into the executive chamber.

Q. In the same position? A. Yes, sir.

Q. Now, how long did you remain in the executive chamber engaged in this kind of work? A. Until I was appointed on July 18th as lay deputy in the bureau of deportation.

Q. Did you see the Governor every day during that period? A. I think I did.

Q. You were doing stenographic work for him, weren't you? A. I was doing stenographic work for Mr. Platt or whoever wanted it.

Q. Whoever wanted it in the executive chamber? A. Yes.

Q. Now, at the time, the 3d, the 4th or 5th of July, it was becoming bruited around in the newspapers, was it not, that the Frawley committee was making an investigation into the Governor's campaign accounts?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— I think he may use that to call his attention to the fact. Overruled.

A. I do not recollect whether it was or not.

Q. Are you sure of that? A. I am. I cannot say whether it was during that period that it was bruited about, as you say.

Q. When did you first see it? A. It was forcibly called to my attention —

Q. No, no, I am not talking about forcibly; we will get at the forcibly later. When did you first have it called to your attention? A. When I was served to appear before the Frawley committee, I think it was first called to my attention then.

Q. Do you mean to say under your oath that you had not heard that talked about and read of it in the newspapers before you were served with a subpoena? A. I cannot say I did not hear it talked about; you say when it was called to my attention.

Q. When did you first hear it talked about? A. I think when the Frawley committee started holding hearings.

Q. That was about the 2d of July, wasn't it? A. I don't remember the exact date.

The President.— You can fix that by another witness if he does not know.

Mr. Stanchfield.— I will get at it from him.

Q. Wasn't it just before the 4th of July? A. What was before the 4th of July?

Q. That the Frawley committee commenced its hearing? A. I cannot recollect whether it was or not.

Q. Do you know where you were the 5th of July? A. If you tell me on what day the 5th fell I could perhaps tell you much better.

Q. Saturday. A. The 5th of July I was in New York; if I remember correctly I was in New York.

Q. Were you in the Governor's office at 115 Broadway? A. No, I was home.

Q. Are you sure you were not in the offices? A. I may have been there for a few moments, but the most of the time I spent at home.

Q. I did not ask you how much of the time you were there. A. I may have been there.

Q. Didn't you see Governor Spriggs there? A. I don't remember whether I did or not.

Q. I am speaking now of the day after the 4th. A. Yes, I do not remember whether I saw him that day or not.

Q. What were you doing at the office that day? A. Well, nothing particularly so far as I can remember.

Q. Were you packing up any papers? A. No, sir, I do not think I was.

Q. Didn't you take with you from that office a package of papers? A. On the 5th of July?

Q. Yes. A. Not to my recollection.

Q. That is as strong as you want to put it? A. Just as strong as I want to put it.

Q. Did you come to Albany the next day? A. I don't remember; I may have come to Albany the next day.

Q. And didn't you go direct to the executive mansion; that would be the 6th of July? A. Well, I may have done that.

Q. Didn't you have a package of papers with you? A. I don't recollect whether it was on that particular day or some other day.

Q. You do have in mind that you did make up a package of papers in the Governor's office some time in July, didn't you? A. Yes, sir.

Q. And that you took them yourself to the executive mansion in Albany and delivered them to him? A. I do.

Q. Did you make up that package of papers yourself? A. Yes, sir, I did.

Q. What were they? A. As near as I can remember, it was some old stock book of some company he asked me to bring up, and also a stock ledger.

Q. Yes. A. Then there was some old letters, I think some old letters were in it, too, and some lists which he wanted.

Q. Lists of what? A. He had a regular mailing list to whom he sent out literature.

Q. Yes. A. And I brought that up.

Q. Is that all? A. To the best of my recollection, that is all.

Q. And you delivered those to him some time in July? A. I think it was some time in July.

Q. Now, Mr. Sarecky, didn't the Governor preserve regularly, and all the time, the letters that he received during his campaign for Governor? A. He had them bound, I think—

Q. First, we will get at the preservation of them. Didn't he keep them? A. We kept them for him.

Q. You kept them for him? A. Yes, sir.

Q. Letters and telegrams? A. Letters and telegrams.

Q. Those were letters from people who were sending him words of congratulations? A. Yes, sir.

Q. They were also letters from people, that contained contributions of money? A. Yes, sir.

Q. All of those letters were bound up in books, were they not? A. Yes, sir.

Q. How many volumes did they make? A. I think about twelve or fifteen. Maybe a little more or less. I can't remember the exact number.

Q. Those books were taken to the executive mansion, weren't they? A. I don't know anything about that.

Q. What did you do with them when you had them bound up? A. They were bound up, if I remember correctly, in Washington, and they were sent direct from Washington to the executive mansion. That is to the best of my recollection.

Q. When last did you see those volumes in the executive mansion? A. I think about a week ago.

Q. I am perfectly right in saying that in those volumes would be all letters that contained financial contributions, am I not? A. No, sir. I don't think they contain all letters. That is, I would not state under oath, because two or three, maybe four, have been lost.

Q. Did they contain then, substantially — A. Substantially.

Q. (Continuing) All of the letters containing financial contributions to his campaign for Governor? A. Substantially, I think they contained almost all of them.

Q. Have you been, during the preparation of this case, instructed by anyone to prepare from those books a list of contributions that were made to the Governor for campaign contributions in the campaign of 1912? A. No, sir.

Q. Has anyone made such a list, to your knowledge? A. Not to my knowledge.

Q. Hasn't your attention been directed to an examination of those books within the past week or ten days, or two weeks? A. I saw them scattered on the floor in the executive mansion, in one of the rooms of the executive mansion. That is the only attention that has been called. That is the only —

Q. Were you requested, in any way, to go through them or examine them to ascertain the extent or the number of contributors to his campaign fund in the fall of 1912? A. No, sir; I was not requested.

Q. As is suggested to me, irrespective of whether it was suggested to you, or you were requested to do it, did you in fact, do it? A. No, sir, I did not.

Q. Could one, from those books, prepare today a list of the names of the contributors to his campaign in the fall of 1912, and their amounts? A. Well, I don't know what those books contain. I haven't examined them.

Q. They did contain, you stated to me, with possibly exceptions of three or four that might have been mislaid, all the letters of contribution to him?

Mr. Hinman.— Let me make an objection to this on the ground that, according to the witness' statement, those books were bound in Washington, and as to what was in them, as appears from his evidence, he could not know; therefore, they are incompetent.

The President.— Let it go in. He says they contain substantially all the letters.

Mr. Stanchfield.— The senator evidently misunderstood the witness. The witness says they were sent to the executive mansion in Albany and he saw them within a week.

Mr. Hinman.— But he never examined them.

The President.— If they were intact, they would contain necessarily nearly all.

Mr. Hinman.— No.

The President.— I don't know as it is necessary to get the witness' opinion on that.

Mr. Stanchfield.— I am not so keen about his opinion as I am about the fact of showing the existence of those letters in the respondent's custody.

The President.— I think he has told you all. He told you that those contained substantially all, with a few exceptions that might have been lost, substantially all, and he says he saw the books up there in the executive mansion within some short period, I think he said within a week, I don't remember.

Mr. Stanchfield.— Within a week.

Mr. Hinman.— I think we have misunderstood the witness. The letters were, of course, received during the campaign in New York, and they were sent to Washington and bound. I don't suppose this witness knows, because he has not examined them, I take it from the testimony.

The President.— No, I think we will let the thing stand as it is now, and you can argue from it.

By Mr. Stanchfield:

Q. During this period of time between the fall of 1912, and the 18th of July, 1913, had you seen Mr. Hanify from time to time, the secretary of the Hospital Commission? A. What was the period covered, Mr. Stanchfield?

Q. From the fall of 1912 to the 18th of July, 1913? A. I saw him occasionally, yes, sir.

Q. Of what single language, Mr. Sarecky — you seem to have read considerably, you are familiar with poetry, you have dabbled in French, a little with Spanish, some German, of what language would you say you are a master?

Mr. Hinman.— I object to that question on the ground it is incompetent and improper in form, and is an insult to the witness.

Mr. Stanchfield.— I will change the language.

Q. Of what language would you say you are a master?

Mr. Hinman.— I object to that on the ground it is improper in form.

The Court.— Overruled.

Q. Of what language would you say you are a master? A. I never claimed to be a master of any language.

Q. You admit you are not, don't you, frankly and candidly? A. It depends upon what you mean by a master.

Q. A master ordinarily would convey to you the idea that you knew all about a subject, would it not? A. Yes, I think I am thoroughly familiar with English.

Q. Did you talk with Mr. Hanify about your being the master of five different languages? A. I never used the word "master" in my talk with Mr. Hanify.

Q. Well, did you talk with him about your being conversant or familiar with five different languages? A. I don't think I specified any number. I think I mentioned to Mr. Hanify that I understand English, French, German, Yiddish and two or three jargons of Yiddish.

By the President:

Q. Well, can you talk and carry on a conversation? A. Yes, sir.

By Mr. Stanchfield:

Q. You mentioned that to Mr. Hanify, did you? A. I did.

Q. When did you have a conversation with Mr. Hanify on that

subject? A. Why, I think it was some time, a short time before he was made secretary to the State Hospital Commission.

Q. That was the 10th day of July, 1913? A. Must have been some short time before then.

Q. That was after the Frawley committee had commenced its sittings? A. Yes; I should think it would be in that period.

Q. And it was after you had taken that package, whatever it was, to the executive mansion? A. As I say, I don't remember just when I took the package to the mansion.

Q. Well, it was somewhere, according to your statement, around the 6th of July? A. Yes, sir.

Mr. Hinman.— That is objected to on the ground it assumes something not proved. He simply testified it was some time in July, and has said nothing about it being somewhere around the 6th.

The President.— Objection overruled.

Q. At that time, when you saw Mr. Hanify, around the fore part or middle of July, you put it, do you? A. I think it was about — I cannot place it, but it was the fore part of July.

Q. The forepart of July? A. Yes, sir.

Q. At that time, had you ever had any practical experience with the handling or care of the insane? A. No, sir.

Q. At that time did you know how many State hospitals there were in the State? A. I think I did.

Q. At that time, I am now talking about? A. Yes, at that time.

Q. Did you know where they were located? A. I knew where the most important ones were.

Q. Did you tell Mr. Hanify, when you had this talk with him, that you were an applicant for this place in the bureau of deportation of alien insane? A. Yes, sir.

Mr. Hinman.— Objected to on the ground it is incompetent and improper, and not a proper subject for cross-examination.

The President.— It will be admitted.

Q. You told him you were a candidate for that place? A. Yes, sir.

Q. Did you tell him that you were skilled and well equipped, and possessed peculiar qualifications as a member of that body? A. I think the only qualification —

Q. Did you tell him that?

The President.— I think he may answer.

A. I think the only qualifications I told him that I possessed was my knowledge of the various languages and ordinary office experience.

Q. Well, your office experience had been confined so far as you tell us to that of a stenographer, hadn't it? A. No, I didn't say that, that was part.

Q. And the handling of the mail? A. The handling of the correspondence; seeing people.

Q. Yes. You told Mr. Hanify that? A. I did.

Q. This Dr. Campbell whom you say you succeeded in response to an inquiry from Senator Hinman, had been connected with that department for a great many years, hadn't he? A. I don't know just how many years he had been connected with it.

Q. He had for a good many? A. I think so.

Q. And he was a physician? A. He was.

Q. You were the first layman who ever made application for that place? A. No, sir.

Q. Had any layman ever filled it before you? A. I don't think any layman had ever filled it before I did.

Q. Then I will change my question. You were the first layman that filled the position? A. To the best of my knowledge, I am.

Q. So far at any rate as your knowledge goes? A. Yes.

Mr. Stanchfield.— Will the counsel for the respondent, and we make the request, produce for our inspection or introduction in evidence as we may elect, the letters from people giving contributions to the Governor which the witness has indicated were at the executive mansion?

Mr. Herrick.—As at present advised, we will not.

Q. Mr. Sarecky, had you ever at this time when you had this

talk with Mr. Hanify, been in an insane asylum? A. I think I was.

Q. Where? A. In the Kings County Insane Asylum.

Q. Where is that located? A. I don't remember just what street, but it is in Brooklyn.

Q. Have you been there more than once? A. No, just once.

The President.— You mean, of course, as a visitor?

The Witness.— As a visitor.

Q. You never in your life have been inside of a State hospital except upon this one occasion? A. Yes, sir.

Q. And the location of the institution you cannot recall nor the time when you were in it? A. Well, it was about five, may be six years ago, I cannot place it, I just went up there as a visitor.

Q. Had you taken any pains — you seem to have studied a good many things — to familiarize yourself with the nomenclature of insanity?

Mr. Hinman.— I object to that on the ground it is improper in form and casts a reflection on the witness and is an insult to the witness and assumes a fact not proved.

The President.— Make your question strictly interrogatory.

Q. Had you made any study at all of the nomenclature of insanity?

Mr. Hinman.— Objected to on the ground it is improper, irrelevant, immaterial, not a proper subject of cross-examination; and on the further ground this appointment has been made by a commission of the State of New York duly constituted and created by law, and the presumption and assumption must be that it did its duty.

The President.— I think it is admissible.

Q. The Court directs you to answer. A. What is the question?

(The question was read by the stenographer as follows: "Q. Had you made any study at all of the nomenclature of insanity?")

Mr. Hinman.— I assume the members of this Court know exactly what counsel means. I am frank to say I don't. If counsel is willing to put it in language that a man from the woods can understand —

The President.— I think it is competent. It seems to me you might shorten this up. Do you know anything about insanity at all?

The Witness.— No, not very much.

The President.—That will save dividing it up.

Mr. Stanchfield.— If we possess the power to go at questions in the direct way that you do without objection we could facilitate this in many ways.

The President.— Possibly I have an advantage.

Mr. Stanchfield.— I think you have.

The President.—You might shorten the examination by getting right to the point.

Mr. Stanchfield.— I think you have saved a good deal of time.

The President.— The Court will not rule out a leading question if it is not improper, especially when it is addressed to an adverse witness.

Q. Were you in this appointment given any particular station on this board of deportation? A. What do you mean by any particular station?

Q. What was your official title? What were you described as? What were you known as? A. I was originally appointed lay deputy.

Q. Lay deputy? A. Yes, sir.

Q. Did you have anything to do with the publication of this handbook of the State Hospital Commission? A. No, sir, I didn't.

Q. Did you ever see it? A. Yes, sir, I have seen it.

Q. I call your attention to page 22 of the handbook of the State Hospital Commission for the year 1913. At the bottom of the

page under the head of "Bureau of Deportation," are you the Sarecky who is at the head of the board there?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Read that.

Q. Are you the Sarecky who appears at the head of the board or bureau of deportation? A. I think that is intended for me.
Q. That is what I want to find out. A. Will you read that?

Mr. Hinman.— Objected to on the ground it is incompetent and improper.

The President.— Let me see what it is.

Mr. Hinman.— Objected to as immaterial and irrelevant.

The President.— (After examining book) Objection sustained. If you want to show that he was put at the head of the two positions, I think that might be put as a direct question.

Mr. Stanchfield.— Very well.

Q. Were you at the head of the two regular physicians in that bureau?

Mr. Hinman.— If the Court please, I object on the ground it appears that this witness had nothing whatever to do with getting out this publication by the State Hospital Commission.

The President.— He is not asking about that book. He is asking if he is the superior of two physicians put under him in that department. Answer, witness.

The Witness.— Temporarily I was.

The President.—That is the point. Suspend.

The Crier.—All witnesses are hereby excused until tomorrow at 10 o'clock.

Whereupon, at 5.03 p. m., the Court adjourned to meet again on Wednesday, October 8, 1913, at 10 a. m.

WEDNESDAY, OCTOBER 8, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

LOUIS A. SARECKY resumed the stand.

Cross-examination continued by Mr. Stanchfield:

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

Q. Will you tell me where your residence in Brooklyn has been since you were 21? A. In two places, at 549 Putnam avenue and—

Q. (Interrupting.) Well now, just a moment. When with reference to when you were 21 years of age or became of voting age, did you reside and live at 521 Putnam avenue, Brooklyn? A. 549.

Q. 549? A. Well, all within a period of the last two years.

Q. That is, during the last two years? A. Well, I wouldn't say — about two years — no, no, it wasn't that; it couldn't have been that.

Q. You fix it. I want to know definitely just how long you have lived at 549 Putnam avenue, Brooklyn? A. I have lived there since December, 1912.

Q. Very well. Now, where did you live before that? A. 445 Grand street, New York City.

Q. And how long did you reside at 445 Grand street, New York City? A. I think about four years.

Q. And that was the four years antedating your residence in Brooklyn? A. Yes, sir.

Q. Where did you live before that? A. 190 Henry street, New York City.

Q. And how long did you live at that address? A. I don't know just how many years, but about seven or eight maybe.

Q. Well, you lived there long enough to carry you back of the time when you became of voting age? A. Yes, sir.

Q. And have you ever lived at any other residences than the three which you give us? A. Oh, yes.

Q. Well, where, I mean, since you were 21? A. No, no.

Q. I am not interested before. A. Well, you said —

Q. Simply at those three places since you have been 21? A. Since I have been 21.

Q. What was the one besides Grand street and Putnam avenue? A. 190 Henry street.

Q. That is in New York? A. New York.

Q. You remember, Mr. Sarecky, yesterday, that I asked you whether or no you did not meet or have a conversation with Mr. Webb Floyd, the president of the Mutual Alliance Trust Company, do you not? A. I do. I remember the question.

Q. On the subject of your obtaining for him some authority from Governor Sulzer to permit you to indorse his name upon checks? A. Yes, sir.

Q. And you denied positively that you ever saw Mr. Floyd? A. I did not deny that I ever saw him.

Q. Listen to me. A. Go ahead.

Q. You denied positively that you had any talk with him on this subject, didn't you? A. I did.

Q. Did you have any talk at all — I repeat the inquiry, and I want your attention to it very carefully — did you have any talk at all in the fall of 1912, with Mr. Webb Floyd upon the subject of obtaining from Governor Sulzer authorization for you to indorse his name upon checks? A. To my best recollection, I did not.

Q. Well, now, yesterday I asked you this question, referring to Mr. Webb Floyd, "Did he not speak to you upon the subject of your depositing in the Trust Company checks payable to the Governor's order," and did you not answer, "No, sir, he did not"? A. I did.

Q. Was that true? A. It was.

Mr. Stanchfield.— Mr. Floyd, will you stand up for a moment.

Q. Do you know the gentleman whom I call to your attention? A. He is familiar to me. I have seen him at the bank.

Q. Who is he? A. I think he is the president, Mr. Floyd.

Q. That is Mr. Webb Floyd, isn't it? A. I think so.

Q. You are pretty certain of it as you look at him, aren't you? A. Yes, sir; I am pretty certain.

Q. Didn't he have a conversation with you in the fall of 1912, and on or about the 10th or 12th of October, 1912, in which he asked you in substance to procure for him or the bank some authority to endorse Mr. Sulzer's name upon the back of checks made payable to the order of Mr. Sulzer? A. No, sir.

Q. Wait a minute — that you were depositing in that institution? A. No, sir; he did not.

Q. In that conversation, assuming one to take place, did you ask Mr. Floyd whether or no a power of attorney from Mr. Sulzer would suffice?

Mr. Hinman.— That is objected to as incompetent.

The President.— Sustained, but you can ask him this, if you omit the first part of the question, didn't he, in a conversation, tell that witness so and so?

Mr. Stanchfield.— I will meet your Honor's suggestion.

Q. Did you not say to Mr. Floyd at or about the time to which I am calling your attention that you had a power of attorney from Governor Sulzer and asked him whether or no that would suffice? A. I did not.

Q. Neither in language nor in substance? A. No, sir.

Q. And if I understand you, you repeat again positively you never had any talk upon that subject?

Mr. Hinman.— Objected to on the ground it is repetition and incompetent.

The President.— He may answer. You are positive?

The Witness.— I am pretty positive.

Q. Now you are using an adverb or adjective to qualify your answer. Did you put in the word "pretty" by design?

Mr. Hinman.— Objected to on the ground it is incompetent.

Mr. Stanchfield.— Well, this is cross-examination.

The President.— If you will omit the statement of what the witness has done, and put an interrogation point to everything you say to witness.

Q. Did you mean by the insertion of the word "pretty" in your answer to qualify it or limit it? A. No, I used it just in the ordinary course of language and I repeat I am positive that I do not remember having any conversation with Mr. Floyd in the Mutual Alliance Trust Company's office or any other place relative to my procuring authorization from Sulzer with regard to my depositing checks drawn to his order upon which a rubber stamp endorsement was placed or any other endorsement.

Q. Now you say you are not positive or don't remember?

Mr. Hinman.— Objected to on the ground it assumes facts not proved or incompetent.

The President.— He may ask the witness.

Q. Are you using that, that you are not positive that you don't remember such a conversation to limit —

Mr. Herrick.— One moment, if it please the Court.

The President.— Let him finish the question.

Mr. Herrick.— I spoke because he had finished. He had stopped.

Mr. Stanchfield.— I stopped out of courtesy to you.

Mr. Herrick.— Oh no, I did not get up until you stopped.

The President.— One moment. Proceed with the question, counsel.

Q. I ask you whether or not you used the phrase in regard to remembering it to limiting your positive answer heretofore made that you had no such talk?

Mr. Herrick.— One moment. That is objected to as involved and assuming something in his last answer that does not appear.

The President.— I think that is, in substance, what his last answer was.

Mr. Herrick.— No.

The President.— That is my recollection of it.

Mr. Herrick.— I ask to have it read then.

The President.— Have it read.

(The stenographer read as follows: "I ask you whether or not you used the phrase in regard to remembering it to limit your positive answer heretofore made that you had no such talk?")

Mr. Stanchfield.— Read the preceding answer.

(The stenographer read the answer as follows: "No, I used it just in the ordinary course of language and I repeat I am positive that I do not remember having any conversation with Mr. Floyd in the Mutual Alliance Trust Company's office or any other place relative to my procuring authorization from Mr. Sulzer with regard to my depositing checks drawn to his order upon which a rubber stamp endorsement was placed or any other endorsement.")

The President.— Now read this question.

Mr. Stanchfield.— I will reform the question.

The President.— Very well.

Q. Did you use the language, "I am positive I do not remember any such conversation" with a view to qualifying or limiting your direct answer that you had no such conversation? A. No, I did not.

Mr. Stanchfield.— That is all on that subject.

Q. You told us yesterday, Mr. Sarecky, that you became attached to or connected with the bureau of deportation of the alien insane about the 18th of July, 1913? A. About that time.

Q. Where was the office of that bureau located? A. 1 Madison avenue, New York City.

Q. When did you first go there? A. Shortly after the 18th. I don't remember the exact date.

Q. Do you keep any personal or private memorandum of your goings and comings, or whereabouts? A. No, sir.

Q. Are you able to fix with any distinctness when you did go there? A. No, sir, nothing closer than a few days after the 18th.

Q. How long did you remain connected with that establishment or at that place? A. I don't understand the question.

Q. How long did you report to that place for duty? A. Until I was subpoenaed by the Frawley committee to come up to Albany.

Q. That was the 23d day of July? A. I think the 26th day of July.

Q. Well, you had been interrogated under oath about that proposition before, hadn't you? A. I don't remember; I may have been.

Q. And the date that you now fix is July 26th? A. That is when I was served, if I remember correctly.

Q. Did you come to Albany in response to the subpoena? A. I did.

Q. Now, from that day until this, have you ever reported at 1 Madison avenue for the performance of service in connection with the deportation bureau? A. No, sir.

Q. What is your salary? A. $4,000 a year.

Q. And that is the salary paid to you as lay deputy of the bureau of deportation of the alien insane? A. Yes, sir.

Q. Have you been drawing that salary right along ever since? A. Yes, sir.

Q. Now, I called your attention for a moment yesterday, to an expedition, on or about the 5th day of July, to the office of Mr. Sulzer, at 115 Broadway, do you remember? A. I do.

Mr. Hinman.— If the Court please, I object to that on the ground that it is incompetent and improper in form, the use of the word "expedition."

The President.— Oh, well, I don't see that there is any —

Mr. Stanchfield.—(Interrupting) Well, a trip or a visit to the office. I will put it in any language, Senator, that you prefer.

Mr. Hinman.— The plain fact is that he was at the office, and you proved what was done.

The President.— Gentlemen, do not let us quarrel about mere names.

Q. Now, did you go to New York upon that occasion in an automobile? A. I don't remember whether I did or not. I have gone to New York in an automobile on several occasions.

Q. Well, now, I am addressing your attention now to the day immediately succeeding the 4th of July, and ask you if you are not able, with that thought in your mind, to say whether you went to New York in one of the highway automobiles of the State? A. Yes, sir; now that you call it to my attention, I remember the incident distinctly.

Q. And you remember quite distinctly taking your wife and another gentleman and his wife in that automobile down to Coney Island on the Fourth, don't you? A. I don't remember that.

Q. Where did you dine on the night of the Fourth? A. I think we dined in Long Island, if I remember correctly.

Q. Didn't you dine at the Shelburne Hotel? A. I may have dined there; I dined there on several occasions; but I think on the Fourth we were out examining the road, and we stopped off —

Q. (Interrupting) Pardon me — had you completed your answer?

Mr. Herrick.— You stopped off.

The Witness.— I said —

Q. (Interrupting) Will you say under oath —

Mr. Hinman.— (Interrupting) I request that the witness be permitted to complete his answer.

The President.— The witness is sworn. Now ask him the real point of your inquiry, to state it beyond mistake.

By Mr. Stanchfield:

Q. Are you positive beyond mistake that you did not take the highway automobile of which I am speaking on the 4th of July with your wife and another friend and his wife, and go to the Shelburne Hotel at or near Coney Island for your dinner?

Mr. Hinman.— Objected to on the ground that it is immaterial and irrelevant.

A. I cannot remember positively; I may have done that.

Q. Very well. You said yesterday that at the office when you were collecting up this package that you describe and which you later took to the executive mansion, that Governor Spriggs was with you. Who else was at the office? A. Let me see — there may have been the rest of the office force there at the time.

Q. What was the office force last July? A. It consisted of a young lady and Mr. Horowitz.

Q. Do you recollect whether or no they were there or either of them on that date? A. I cannot recollect.

Q. You are unable to say? A. I am unable to say.

Q. Now, you tell us that you were subpoenaed upon the 26th of July to attend before the Frawley committee? A. Yes, sir.

Mr. Hinman.— If the Court please, I do not want to keep making these objections. The witness has testified that to the best of his recollection it was July 26th. The question assumes that he has testified that it was on the 26th. The counsel's question always assumes facts not proved, and confusions, and innuendoes—

The President.— If that is the witness' recollection the counsel has a right to assume that. Of course it is not positive. The witness has said that.

Q. I did not mean, Mr. Sarecky, by that question to charge you with a positive statement as to the date. Will you now inform me whether or no it is your best recollection that you were subpoenaed to attend before the Frawley committee on the 26th of July? A. That is my best recollection.

By the President:

Q. Do you mean you were subpoenaed on that day or you attended on that day? A. I was subpoenaed on that day.

By Mr. Stanchfield:

Q. Where were the sessions of the Frawley committee at that time being held? A. In Albany.

Q. In Albany where? A. Room 250, I think. No, it was in the Senate chamber or the Assembly chamber of the Capitol.

Q. Now, are you acquainted with a man by the name of Bearman? A. I am.

Q. What is his first name? A. I don't remember his first name. I know his initial is A.

Q. He is a relative of yours, isn't he? A. No, sir.

Q. By marriage? A. No, sir.

Q. Nor by blood? A. No, sir.

Q. Do you know a man by the name of Steinhold? A. I do.

Q. What is his first name? A. Samuel.

Q. Is he a relative of yours? A. Yes, sir.

Q. What is he? A. What do you mean, what is he?

Q. What relation? A. A brother-in-law.

Q. Are you acquainted with a man by the name of Benjamin Hall? A. No, sir, I am not acquainted — well, I might — I don't think I know him, no, sir.

By the President:

Q. Do you know of him? A. I know of him, but I do not know him personally.

By Mr. Stanchfield:

Q. Were either Bearman or Steinhold connected with the hospital department, State Hospital Commission, during your connection with it? A. Yes, sir.

Q. When did they take position in it?

Mr. Hinman.— Objected to on the ground it is immaterial.

Mr. Stanchfield.— That question is immaterial. It will be followed by something else.

Q. When did they take position in it?

Mr. Hinman.— Same objection.

The President.— I do not see how it is material. Objection sustained.

Q. Did you request the appointment of either of them? A. I did.

Q. Of both of them? A. I did.

Q. Are they connected with the Commission now? A. No, sir.

Q. When did they resign?

Mr. Hinman.— Objected to on the ground it is immaterial.

The President.— Objection sustained.

Q. Well, it is a fact, isn't it, that neither of them are now connected with the State Hospital Commission?

The President.— He said that.

Mr. Stanchfield.—Very well.

The President.— Didn't the witness say that?

The Witness.—Yes, sir.

Mr. Stanchfield.—What I was interested in, if the Presiding Judge please, more than the fact, is the date, but if you hold I am not entitled —

The President.— He said that; but you can have the date.

By the President:

Q. Do you remember the date they ceased? A. I think if I remember correctly their services ceased the end of September.

By Mr. Stanchfield:

Q. About the 30th, wasn't it? A. About the 30th.

Q. Did you come to the city of Albany in response to that subpoena immediately? A. No, sir, I did not.

Q. When did you reach Albany in connection with the service of the subpoena? A. I cannot remember; it may have been a day or two or probably one day before I was to appear.

Q. You were served upon the 26th; according to your recollection when did it call for your appearance? A. I think on the 30th.

Q. Between the 26th and the 30th did you see Governor Sulzer? A. I did.

Q. Where did you see him? A. I saw him in the executive chamber.

Q. Did you see him as well at the executive mansion? A. I don't remember whether I did or not.

Q. You know Mrs. Sulzer? A. Oh, yes.

Q. You were at their home in New York before they came to Albany to live? A. Yes, sir.

Q. And you have often been, have you not, at the executive mansion since he became Governor? A. Yes, sir.

Q. You are unable to say, if I understand you, then, whether between the 26th and the 30th you were at the executive mansion? A. I am unable to state under oath whether I was or was not.

Q. You had asked Governor Sulzer to give you a better place than that of his private stenographer, hadn't you? A. I had.

Q. Was that office that you had at that time, antedating July 18th, a specially created office for you?

Mr. Hinman.— Objected to on the ground that the statute is the best evidence.

Q. Whose place did you take? A. Don't think I took anybody's place.

Q. You call yourself technically what? A. Lay deputy.

Q. No, before you became lay deputy, while you were attached to the Governor? A. Oh, confidential stenographer.

Q. Confidential stenographer. Now, do you know, I will ask as a matter of knowledge, whether that office or that position was created for you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

Mr. Stanchfield.— It is a question calling for his knowledge.

The Witness.— Shall I answer?

The President.— Objection sustained.

Q. When did you first ask Governor Sulzer for a better position than what you were filling, when did you first ask him? A. I think it was the latter part of June.

Q. The latter part of June, 1913? A. Yes, sir.

Q. Did you ask him at that time or any other time — A. No. I want to amend my answer. I think it was the first part of June.

Q. Have you got anything to refresh your recollection? A. I remember now it was shortly after Decoration Day.

Q. Have you got anything better than that to refresh your recollection? A. No, nothing better than that it was shortly after Decoration Day.

Q. Why did you shift from the latter part to the first part of June?

Mr. Hinman.— One moment.

The Witness.— Because I remembered more correctly.

Mr. Hinman.— The question used the word "shift." The witness testified his recollection was refreshed.

The President.— Avoid that. Why did you change?

Mr. Stanchfield.— If your Honor please, according to every lexicographer with which I am familiar, I thought the words "shift" and "change" were synonymous terms. I am perfectly willing to adopt the senator's phraseology. If he will come over and arrange my questions for me, I will put them in his language.

The President.— Why did you change?

The Witness.— Because I happened to remember I asked him shortly after Decoration Day.

Q. That is the only reason you can give for changing from the latter to the first part of June? A. That is the only reason.

Q. You read, I suppose, the New York papers, as well as French papers? A. I do.

Q. Read the New York dailies? A. Occasionally, not as a regular rule.

Q. And didn't you read on the 25th of June that the power of the Frawley committee had been extended so as to enable them to inquire into the expenditure of campaign funds? A. I don't remember whether I read it, but I heard of it.

Q. You heard of it anyhow? A. Yes, I heard of it.

Q. And that occurred the latter part of June? A. Yes, sir.

Q. Of course that did not have anything to do with your changing the time from the latter part of June to the fore part? A. Absolutely nothing.

Q. When you had this first talk with Governor Sulzer about the place, did you ask him to make you pardon clerk? A. No, sir, I did not.

Q. Were you ambitious to be pardon clerk? A. Yes, I should have liked to be appointed to that place.

Q. Why? A. It would bring me in close touch with the Governor, and I would be in the office close to him and work there, and it would be legal work, and I would have enjoyed it.

Q. Any other reason? A. The only reason.

Q. You have heard there was money in that place, haven't you?

Mr. Hinman.— Objected to on the ground it is incompetent and improper.

Mr. Stanchfield.— I say it is perfectly proper cross-examination.

The President.— Objection sustained.

Q. You say one reason you wanted the place was because it embodied legal work, and you were fond of it? A. I was.

Q. You never were fond enough of legal work to try and pass the bar examination? A. I never considered myself capable enough to pass the bar examination.

Q. Precisely. You didn't think you were competent to pass it?

The President.— He said that.

Mr. Stanchfield.— That is true.

Q. You also gave as a reason that you thought or felt that the place of pardon clerk would put you in proximity to the Governor? A. Yes, sir.

Q. As confidential stenographer, weren't you in quite as close proximity as you would have been as pardon clerk? A. But I didn't know I was going to be appointed confidential stenographer.

Q. You were already occupying it, or had been for months,

hadn't you? A. I had never uttered a wish to become pardon clerk after I had been appointed confidential stenographer.

Q. It was before that? A. It was before that. I had received no appointment at all from the Governor.

Q. To whom did you utter the wish to become pardon clerk?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Objection sustained.

Q. Can you fix the date for me when you had this conversation with Governor Sulzer about this? A. You mean about a place other than confidential stenographer?

Q. Yes. A. I cannot fix it any closer than shortly after Decoration Day.

Q. You cannot give me the day of the week nor the date? A. No.

Q. What did you say to him at that time? A. I told him that I was running into debt on $2,500 a year; I had two homes to keep up, one in Brooklyn and one here; I was not permitted traveling expenses, and if I went home for over Sunday it would be at my own expense, and I couldn't afford to hold the place at $2,500 a year; I was earning fully that much in New York City, and then — do you want me to tell you what he said?

Q. Well, I want you to go on with the conversation. A. Well, he said perhaps he will do a little better by me a little later on; that he was — that he had lots of trouble on his hand just then. I said I knew that, and that was one of the reasons I had not talked to him before; I didn't want to inflict my troubles on him. Then he said he would look around and see if there is any particular place he could get for me, and I told him that Mr. Hennessy had suggested to me a place in the bureau of deportation in New York City, and I asked the Governor whether he would consent to my being appointed to the place, or whether he would recommend me for appointment, and he said that he would take that up with me a little later. That was all the conversation we had.

Q. On that subject? A. On that subject.

Q. Then it was Mr. Hanify who had suggested to you this place? A. No, sir.

Mr. Hinman.— Mr. Hennessy.

Q. Hennessy? A. Mr. Hennessy.

Q. Pardon me. I understood you to say Hanify. Mr. Hennessy? A. Yes, sir.

Q. What position does Mr. Hennessy occupy?

Mr. Hinman.— (Interrupting) That is objected to on the ground that it is irrelevant and immaterial and improper.

Q. (Continuing) In the Sulzer administration?

The President.— Let him answer. Objection overruled.

The Witness.— At that time?

Q. Yes. A. I don't know — yes, I think he had been appointed confidential agent in the Highway Department.

Q. And was filling that place at that time? A. Yes, sir.

Q. Now, did you have any further talk with the Governor about that place? A. I don't think that I had another talk with the Governor about that place until the day I was appointed.

Q. Now, in your original conversation was there any allusion made by you as to the salary that that place carried? A. No, sir.

Q. Was there any discussion between you with reference to what the law imposed upon you in connection with the duties of that office? A. No, sir.

Q. Have you ever yourself read to find out what the duties were —

Mr. Hinman.— Objected to on the ground that it is —

Q. (Continuing) Of deputy of the deportation department?

Mr. Hinman.— Objected to on the ground that it is incompetent, immaterial and irrelevant.

The President.— Objection sustained. How is that material?

Mr. Stanchfield.— I will state how it is material. The statute of the State prescribes in terms that an incumbent of that office

shall devote his entire time and attention to the duties of that office, and I purpose to follow it up by asking the witness —

The President.— You can ask him then, you have got the statute, whether he did devote his entire time to it.

Mr. Stanchfield.— That is what I was endeavoring to do.

The President.— Well, you have got the statute and it shows for itself. We have got, of course, to take notice of the statutes of the State.

Q. I will ask you, Mr. Sarecky, whether or no you read section 19 of the insanity law applicable to the deportation of the insane?

Mr. Hinman.— Objected to on the ground that it is immaterial and irrelevant.

The President.— Objection overruled, Mr. Hinman.

The Witness.— I think I read it.

Q. I will read from it this language. A. Yes, sir.

Q. (Reading) "Medical examiners and deputies shall devote their entire time to the performance of the duties hereby imposed upon them." Do you recollect reading that phraseology? A. I do.

Q. Now, in your conversation with the Governor did you discuss the fact that that would take all your time? A. I don't think that that subject came up.

Q. And that, in substance, you would be unable to do anything else? A. That subject didn't come up.

Q. Well, now, since the time when you were subpoenaed you have been devoting the great bulk of your time to stenographic work, haven't you? A. I don't think so.

Q. Well, a considerable portion of it? A. No, sir.

Q. Haven't you been away doing stenographic work since you were subpoenaed the 26th of July, with Mr. Hennessy in the Highway Department? A. Not for a great length of time, as you said; for a day, I think, at the most.

Q. You went to Buffalo in an automobile since this trial commenced, didn't you? A. I did not.

Q. Did you go to Buffalo with Mr. Hennessy? A. I did.

Q. Did you go there to perform stenographic work for him? A. I did.

Q. Well, what, if anything, have you been doing since the 26th of July? A. I have been waiting in Albany for the Assembly or the Legislature to take some action.

Q. Did your waiting for them to take action interfere in any way with your reporting down to your duties in New York? A. I was specifically told by Senator Frawley that I was to remain in this town.

Q. All the time? A. All the time.

Q. So you have been staying here all the time? A. Pretty near all the time.

Mr. Hinman.— If you will refer to your record you will see that that is in the record.

Q. Now, where, outside of going to Buffalo, have you gone with Mr. Hennessy? A. I think I went up with him for over Sunday to Luzerne.

Q. Anywhere else? A. I don't remember just now.

Q. And with that exception you have remained in Albany? A. To the best of my recollections.

Q. You, week-ends, have gone home, haven't you? A. Over Sunday?

Q. Yes. A. Not always.

Q. Well, when you were inclined? A. When I was inclined I went home over Sundays.

Q. Now, did you talk over with Governor Sulzer the question as to whether you were or would be competent or whether in any way it would be possible for you to pass a civil service examination for this place — A. (Interrupting.) No, sir.

Q. (Continuing.) In the bureau of deportation? A. No, sir.

Q. You knew you couldn't pass it? A. I don't know whether a civil service — that place wasn't under civil service.

Q. Don't you know that there was a long correspondence between the Hospital Commission and the Civil Service Board to exempt you? A. I think —

Mr. Hinman.— Just a moment. That is objected to on the ground it is incompetent, irrelevant, immaterial and improper.

The President.— Objection overruled.

Q. To exempt you? A. I don't know; I think there was.

Q. Don't you know that an effort was made to induce the Civil Service Board to suspend the rule requiring you to be examined?

Mr. Hinman.— That is objected to.

The President.— The objection to that is sustained unless he took part in it.

Q. I say you do know that an effort was made to exempt you from examination?

Mr. Hinman.— If the Court please, it is objected to on the ground that it assumes facts not proved.

Q. The correspondence on the subject?

Mr. Hinman.— The correspondence speaks for itself, if your Honor please.

The President.— You have got the correspondence in evidence.

Q. That is right, isn't it? A. What is right?

Q. You knew there was correspondence upon that subject?

Mr. Hinman.— Just a moment. If the Court please, that is objected to upon the ground that the objection was sustained.

The President.— No, he has already answered that he knew there was a correspondence.

Q. And you as a matter of fact never did take any examination? A. No examination was ever necessary for the place.

Q. You never took any examination? A. No, sir.

The President.— Just answer the question, witness. Did you take any?

The Witness.— No, sir.

Q. Now, did you have any further talk with the Governor after you were subpoenaed? You have related one that you had before? A. No, I had no talk with him after I had been subpoenaed and before I appeared before the Frawley committee except the one time that I stated.

Q. Didn't you tell him that you had been subpoenaed? A. I told him that —

Q. Did you tell him that you had been subpoenaed? A. No, I do not think I told him.

By the President:

Q. Had you been subpoenaed? A. I had been subpoenaed.

Q. Did you have a conversation with him after you were subpoenaed? A. I did.

By Mr. Stanchfield:

Q. Do you recollect testifying before the Frawley committee? A. I do.

Q. Weren't you asked before that committee, whether or no you saw the Governor after you were subpoenaed, and told him of the fact? A. I think I was, I don't remember.

Q. You told him that you had seen him, and you told him that you had been subpoenaed, didn't you? A. I don't remember what I said; if you have the record there, I could refresh my memory.

Q. Irrespective of records, your memory is pretty good, isn't it? A. On some subjects.

Q. What? A. On some subjects.

Q. Yes. Isn't it reasonably good on the subject as to whether you told Governor Sulzer that you had been subpoenaed before the Frawley committee? A. No, I cannot say under oath whether I told him that I had been, or someone else told him.

Q. Is your memory bad on that particular subject, and good on others?

Mr. Hinman.— I object to the question on the ground it is improper in form.

By the President:

Q. What is your best recollection, witness? A. My best recollection, your Honor, is that I may have told him.

By Mr. Stanchfield:

Q. I will ask you whether you were not asked this question before the Frawley committee, and I read from page 36 with

reference to the Governor: "Q. You came up on official business, and then incidentally you went in and spoke to him? A. I did." Did you swear to that? A. I did.

Q. "Q. Did you tell him about this subpoena? A. Yes." Did you swear to that? A. I did.

By the President:

Q. Witness, with your recollection being refreshed by the reading of that testimony, did you or did you not tell him? A. I did.

Q. You did talk to him about the subpoena? A. I did talk to him about the subpoena.

Q. Or he talked to you? A. Yes, sir.

By Mr. Stanchfield:

Q. Now, tell us what was said? A. Mr. Hennessy and I went into his office — I am going to lead up to the conversation —

Q. I am not asking you anything about Mr. Hennessy. I am asking you what was said between you and the Governor upon the subject of your having been subpoenaed before the Frawley committee.

The President.— If Hennessy took part in that conversation, it seems to me it will be necessary to so state, otherwise it would be unintelligible.

By the President:

Q. Was Hennessy there? A. Yes, sir, he was in the room, the three of us talked over the matter.

Q. Did he take part in the talk? A. He did.

By Mr. Stanchfield:

Q. Go ahead. A. I went into the executive chamber, and then went into the Governor's private room.

Q. The Hennessy of whom you speak was the same Hennessy who had suggested your appointment to the bureau of deportation? A. Yes, sir.

Q. Now, go ahead. A. And I do not remember the exact language that was used on the occasion, but in substance it was to the effect that I was asked whether I was nervous or whether

I was afraid of appearing before the committee, and I said no, and that was about all that was talked about at that time, I think.

Q. Who asked you whether you were nervous about appearing before the Frawley committee? A. The Governor did.

Q. Why should he — why should he be solicitous about your nervous condition?

Mr. Hinman.— That is objected to as —

The President.— Sustained. Tell what occurred.

Mr. Stanchfield.— That is what my question calls for.

The President.— Solicitous requires his judgment.

Mr. Stanchfield.— No, the inquiry was what the Governor said — the question was right.

Q. Did the Governor in the conversation with you say anything as to why he was nervous — why you should be nervous about going before the Frawley committee? A. No.

Q. Nothing was said then upon the subject? A. He simply asked me smilingly —

Q. Other than what you have said? A. I don't remember what I have said since.

Q. Did you ask the Governor why he should have any solicitude upon that subject?

Mr. Hinman.— Objected to on the ground it is incompetent and improper in form.

Objection sustained.

Q. Did you, Mr. Sarecky, make any response whatever to that suggestion emanating from the Governor? A. I think I smiled and said no.

Q. And nothing more? A. To the best of my recollection.

Q. Is that all of the conversation? A. To the best of my recollection, that is all. I think it was about time to appear before the committee, and we went out.

Q. That enables you then, to fix the day of this conversation? A. I said it was the morning, I think, that I appeared before the Frawley committee.

Q. That would be the 30th of July? A. About that.

Q. You told us what you say was all the conversation you had with the Governor at that time. Are you acquainted with Mr. Louis Marshall? A. I am.

Q. Was his name mentioned in that conversation? A. I don't remember whether it was mentioned on that occasion or on some other occasion.

Q. Had you already seen Mr. Louis Marshall? A. No, sir, I had not.

Q. I mean now, at the time of the conversation with the Governor, had you seen Mr. Louis Marshall? A. I had seen him before, yes.

Q. To talk with him about your having been subpoenaed? A. No, sir.

Q. You mean by having seen him before, you knew him? A. Yes, knew him by sight.

Q. Knew him by sight, only, is that right? A. Yes.

Q. He is the same Mr. Louis Marshall who has appeared here during this trial, as counsel for the Governor? A. Yes, sir.

Q. How did you come to see Louis Marshall that same day?

Mr. Hinman.— That is objected to on the ground that there is no evidence here that he saw him on that same day.

Objection sustained.

Q. Did you see Mr. Marshall on that day? A. I did not.

Q. When did you first see him?

The President.— You mean about this matter?

Q. Yes, to talk with him? A. That was after I had appeared before the Frawley committee.

Q. Where did you see him? A. I saw him, I think, at Saranac Lake.

Q. At whose suggestion did you see him? A. I do not remember who suggested that to me.

Q. Did you go to Saranac Lake? A. Yes.

Q. Did you go there to see him? A. I did.

Q. Did you go there to consult with him professionally? A. I went there to discuss with him the Frawley committee.

Q. And whether you could be compelled to appear and testify?

Mr. Hinman.— That is objected to.

The President.— Sustained. That is confidential between him and his counsel; he is not obliged to say.

Q. You say you saw Mr. Marshall at Saranac Lake? A. Yes, sir.

Q. Don't you know the Governor telegraphed him as to whether or no he would see you there? A. I don't know anything about that.

Q. Will you tell me now who suggested to you that you go there? A. I don't recollect who it was that suggested it to me.

Q. How did you know he was at Saranac Lake? A. I was told he was there.

Q. By whom? A. I don't remember whether it was the Governor or Mr. Hennessy.

The President.— Was it at this conversation?

The Witness.— No, it was not at this conversation at all.

Q. It was one or the other? A. It was one or the other.

Q. That told you to go to Saranac Lake and see Mr. Marshall? A. Yes, sir.

Q. On the 30th of July, that was the same day you had this talk with the Governor and Mr. Hennessy? A. I think it was, yes, sir.

Q. Wasn't that the very day on which you refused to answer?

Mr. Hinman.— Objected to on the ground it is incompetent, improper and assumes facts not proved.

Mr. Stanchfield.— That is a perfectly proper inquiry.

The President.— One moment. Was that the day — I think it is.

Mr. Stanchfield.— I am right.

The President.—You are right. It is in evidence, his refusal to answer.

Mr. Hinman.— If your Honor please, the refusal to answer, you will remember the statement that was made, that he would

refuse to answer concerning certain things unless represented by counsel so both sides of the story could be told and the chairman told him —

The President.—Yes.

Mr. Stanchfield.— The point is this —

The President.— One moment. I think it is in evidence what was said and that he said he would refuse unless he produced —

Q. You did refuse to answer on the 30th? A. Yes.
Q. And you testified you refused on the advice of counsel, didn't you? A. Yes, sir.
Q. And the counsel was Louis Marshall?

The President.— Objection sustained. Well, there is not any objection.

Mr. Hinman.— Well, we object to it. It is the same line of examination.

Mr. Stanchfield.— Will the Presiding Judge tell me just where I am in error there?

The President.— It is this. If a man goes to a lawyer he is not bound to tell what the subject of the conversation was.

Mr. Stanchfield.— I don't think you got my inquiry. I asked him whether he refused to answer before the Frawley committee upon the advice of counsel.

The President.— That is just what I say. That requires what advice his counsel gave him. He is not bound to tell that. It is a sacred confidence.

Mr. Stanchfield.— The question is whether he testified to that.

The President.— I do not think I will let you put that in. I will sustain the objection.

Q. I will read from page 36 the question before the Frawley committee, and I want your attention, Mr. Sarecky:

> "Q. Did Mr. Hennessy advise you not to answer the subpoena?" And did you answer "He concurred in the opinion rendered by Mr. Marshall." Did you swear to that?

Mr. Hinman.— That is objected to.

The President.— He may ask that as far as a part of that is absolutely necessary and strike out the allusion to Marshall. It is very difficult to separate that.

Judge Werner.— Mr. President, it seems to me there may be some confusion about the form of this question. The inquiry as I understand it is not whether Mr. Marshall told this witness a certain thing but whether he stated in his examination before the Frawley committee that he refused to answer under the advice of counsel. It seems to me that what he stated is entirely competent. I submit that with entire deference.

The President.— The Presiding Judge regrets to disagree with Judge Werner on that subject. What he said about Mr. Marshall is not relevant here. Whether he testified to that on a previous occasion or not would only be good for the purpose of calling his attention to it now so he might answer the question whether he did or not. In other words you get back to the same thing, as to what Mr. Marshall's advice was.

Mr. Stanchfield.— Will the Presiding Judge hear me for a second?

The President.— Yes.

Mr. Stanchfield.— In the situation between the witness and Mr. Marshall the witness was the client of Mr. Marshall. The client of Mr. Marshall upon the stand under oath has already testified that Mr. Marshall advised him not to answer certain questions before the Frawley committee. Therefore the client has waived the right to invoke the privilege.

The President.— He has only waived it in my judgment for the occasion. He does not waive it absolutely when it comes up again. He waives it for that occasion.

Mr. Stanchfield.— My contention would be that once waived it is waived for all time and in all places and under all circumstances.

The President.— I think not, Mr. Stanchfield. Did you say Hennessy concurred in the opinion that you could not be compelled to testify?

The Witness.— I did.

By Mr. Stanchfield:

Q. Doesn't that answer refresh your recollection that you had seen Mr. Marshall necessarily before you were on the stand?

Mr. Hinman.— Objected to on the ground it is incompetent and improper.

The President.— Objection sustained.

Q. Will you still say positively that you did not see Mr. Marshall before you went upon the stand at the investigation of the Frawley committee?

Mr. Hinman.— That is objected to on the ground it is incompetent and improper and assumes facts not proven.

The President.— That may fix a date. That does not say what his advice was or anything of the kind.

Q. Will you say now that you had not seen Mr. Marshall before you were sworn as a witness on the 30th of July before the Frawley committee? A. Not with reference to this matter, no.

Q. Had you seen him before that day to talk with him upon any subject?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Objection overruled. It is not disclosing.

The Witness.— I may have seen him. He was interested in —

Q. Never mind. Had you seen him to talk with him? A. I don't remember whether I had or not.

Q. Had you seen him, in other words, during the month of July or June, 1913, to talk with him? A. I don't think I had during that month.

Q. Were you asked before the Frawley committee this question — I read from page 36 — and did you make this answer: "Q. Was Mr. Marshall the attorney who advised you?" and did you answer "He was the attorney that advised me"?

Mr. Hinman.— Objected to on the ground it is incompetent, improper and immaterial.

The President.— Objection overruled.

The Witness.— I did testify to that.

Q. Was that statement true? A. It was.
Q. When had you seen Mr. Marshall? A. I had —

Mr. Hinman.— That is objected to on the ground that it is incompetent and immaterial.

The President.— Overruled.
Mr. Hinman.— And going over what has already been gone over twice.

The President.— Overruled. As I understand, the witness has said he could not state whether it was before or after. This tends to fix whether it was or not.

Mr. Stanchfield.— He has stated unqualifiedly that he did not see Mr. Marshall until he saw him at Saranac Lake until after this date.

The President.— Now refresh your recollection with that testimony. Had you seen Mr. Marshall before?

The Witness.— I had not.

Q. Then the testimony you gave here was inaccurate? A. No, sir, it was not.
Q. Well, will you reconcile them? A. I will. Mr. Marshall had rendered an opinion on the subject and it was his advice I was following.
Q. The question was this: "Was Mr. Marshall the attorney who advised you?" Your answer "He was the attorney that advised me." A. Yes, sir.

The President.— Counselor, now you can go into the whole subject. The witness tells what his advice was. If you want you can go into the whole subject.

Q. Did you see Mr. Marshall? A. I did not.

Q. And when you made this answer before the Frawley committee that he was the counsel who advised you, did you mean that you were acting upon an opinion of his that you had read not intended for you? A. I do not think the opinion was rendered for anyone in particular. It was rendered to cover the situation. I was governed by that. That was what I intended to convey when I said I followed his advice.

Q. You said "He was the attorney who advised me." A. He was the attorney who had rendered that opinion.

Q. That is not what you said.

The President.— You must put interrogations to the witness.

Q. Your answer was, "he was the attorney that advised me," was it not? A. Well they were illy chosen words. That is all I can say. I meant to convey that I followed his advice.

Q. Wait a minute. I will take that answer, "They were illy chosen words." When did you see or first see Mr. Marshall's opinion? A. I don't think I ever saw his opinion.

Q. Do you know to whom he rendered an opinion? A. I think it was to the Governor.

Q. Who conveyed to you directly or indirectly the substance of that opinion if you never saw it? A. Mr. Hennessy did.

Q. And was that in the conversation that you had on the 30th in the presence of the Governor? A. No, no, I had seen Mr. Hennessy before I saw the Governor.

Q. Where? A. In Albany.

Q. And he was the one who gave you this information? A. He was.

Q. Were you asked this question, and I read from the top of page 35, "Who advised you to refuse to answer" and did you answer "my counsel"? A. I think I did answer that.

Q. Were you asked this question, "Who is your counsel" and did you answer "Mr. Louis Marshall"? A. I did.

Q. Were you asked this question, "Who recommended the counsel to you?" and did you answer "Nobody did"? A. I did say that.

Q. "You chose him yourself, did you" and did you answer "I did, yes, sir"? A. I did.

Q. And were you asked this question, "You chose him yourself, you say that absolutely nobody suggested any counsel to you? A. Well, his name was suggested to me as being a good counsel." Did you say that? A. I did.

Q. Now, in the light of that testimony do you still adhere to your answer that you had not seen and personally talked to Mr. Marshall before you went upon the witness stand upon that occasion? A. I do say that.

Mr. Stanchfield.— That is all on that subject.

Q. Was your attention in any way directed to the correspondence that took place between the State Hospital Commission and the Board of Civil Service? A. I don't think it was.

Q. While it is on my mind, or my attention is called to it, I want to go back with you for a moment to the witness Mr. Webb Floyd, who was here, the president of the Mutual Alliance Trust Company, and I will ask you these specific questions, to which I call your serious consideration: Did you call upon Mr. Floyd late in July and ask him whether or no the Mutual Alliance Trust Company or any of its employees or officers had been subpoenaed to attend before the Frawley committee? A. I had called on him.

Q. Did you call on him and ask him that question? A. I did, I answered.

Q. And did you ask him not to obey that subpoena? A. I think I did ask him that.

Q. At whose instance did you go to the president of this New York Trust Company?

Mr. Hinman.— That is objected to on the ground it is incompetent and improper.

The President.— Objection sustained. He has not testified it was at any one's instance, and the question assumes that.

Q. Did you call on the president of the Trust Company and ask him not to obey the subpoena to attend before the Frawley committee, on your own volition?

Mr. Hinman.— Objected to on the ground it is incompetent, not a proper subject of cross-examination, and they are making him their own witness and reopening the case.

The President.— Objection overruled. Did you do that of your own volition or did someone suggest it?

The Witness.— Someone suggested it to me.

Q. Who suggested it to you?

The President.— How is that material unless it was the respondent?

Mr. Stanchfield.— It may have been.

The President.— Then you ought to ask.

Q. Mr. Sarecky, will you tell me whether or no Mr. Sulzer suggested to you to go to see Mr. Floyd of the Mutual Alliance Trust Company? A. No, sir, he didn't.

Q. Was it Hennessy?

Mr. Hinman.— That is objected to on the ground it is incompetent, irrelevant, improper and immaterial.

The President.— Objection sustained.

Q. Was there any talk or conversation in the presence of Governor Sulzer upon the subject of the Mutual Alliance Trust Company having been subpoenaed before the Frawley committee?

Mr. Hinman.— If the Court please, that is objected to on the ground it is incompetent, irrelevant and immaterial.

The President.— Overruled.

A. No, sir, not to my knowledge.

Q. Now, running back to the correspondence between the State Hospital Commission and the Civil Service Commission, I repeat my inquiry, did you see that correspondence?

Mr. Hinman.— That is objected to on the same grounds, if your Honor please.

The President.— Objection overruled.

A. No, sir, I did not.

Q. Did you ever go and talk with Mr. Hanify about it? A. I don't think I ever discussed that correspondence with Mr. Hanify.

Q. Did you ever discuss with Mr. Hanify the question as to whether or no you could withstand a civil service examination for that position?

Mr. Hinman.— Objected to on the ground —

A. (Interrupting.) No, sir.

Q. Did you know, when you were talking to the Governor about this place, what salary it returned? A. No, sir, I hadn't any positive knowledge at the time.

By the President:

Q. Well, you believed it was greater? A. Oh, yes, I thought it was $3,500 at the time.

Q. What? A. I really thought it only was $3,500 at the time.

Q. Greater than the one you were getting? A. Yes, sir.

By Mr. Stanchfield.

Q. Greater in fact by $1,500?

Mr. Hinman.— If the Court please, that is objected to on the ground that it calls for a conclusion.

The President.— Doesn't it show for itself that the difference between $2,500 and $4,000 is $1,500?

Mr. Stanchfield.—As a matter of mathematics, yes.

Q. Mr. Sarecky, Governor Sulzer has been in public office ever since you have been connected with his office, hasn't he? A. Yes, sir.

Q. You stated yesterday that you went there in 1902? A. Yes, sir.

Q. And from that time down until he became Governor he was a member of Congress? A. Yes, sir.

Q. Had he been filing, during any of that period of time, statements of his election receipts and expenditures? A. I think he has.

Q. Had you ever had anything to do before 1912 with the making up of such statements? A. I may have done the typewriting on it, but I never got them up myself.

Q. That may be your dull recollection? A. Yes.

Q. But that he had made such statements before, you do recollect? A. Yes.

Q. You wrote yesterday, and seemed to be willing to write, for the information of some members —

The President.— Don't comment; use the interrogation point.

Mr. Stanchfield.— I am getting ready to ask him; it was not an inquiry; I just want to find a pad.

Q. You wrote yesterday, at the request of a member of the Court, Governor Sulzer's name "Wm.?" A. "Wm."

Q. "Wm. Sulzer." Now, I would like to ask you whether you ever attempted to sign his name, writing out the William "W-i-l-l-i-a-m?" A. Not to my recollection; I don't think I ever did.

Q. Well, a request has been made. I will ask you — if you have any objection you need not do it — whether you would be willing to write three or four signatures, both "Wm." and "W-i-l-l-i-a-m."

Mr. Hinman.—We object to it — we haven't any objection to his writing "Wm. Sulzer."

Mr. Stanchfield.— I said to the witness, if he was disinclined to do it, he need not do it.

Mr. Hinman.— The witness hasn't said one way or the other. My objection is addressed to the Court.

The President.—What is the objection?

Mr. Hinman.— I object to the witness being asked to write the name "William" in full.

The President.— Objection overruled.

Mr. Hinman.— Have you got a pen and ink?

Mr. Herrick.— Have you got a stub pen?

Mr. Stanchfield.— I have a stub.

The Witness.— That isn't quite the pen I generally use.

Mr. Stanchfield.— They want "William."

Mr. Hinman.— Whom does the gentleman refer to when he says "they want?"

Mr. Stanchfield.— I say some inquiry came up here; I don't know who it was.

Mr. Herrick.— Mr. Stanchfield, hadn't that better be marked for identification?

Mr. Stanchfield.— Yes.

(Paper with names written on it marked Exhibit M-129 for identification.)

Q. I was asking your attention for a moment at the time when you were interrupted to write these signatures, to your connection with or familiarity with, if any, the making of these campaign statements; you recall? A. Yes.

Q. Now, in the fall of 1912, during the gubernatorial campaign, you told Senator Hinman yesterday, in substance, that there was some sort of a committee appointed to look after matters of finance? A. Yes, sir.

Mr. Hinman.— Just a moment. That is objected to on the ground it assumes facts not proved. There is nothing in there that the committee was appointed to look after the matter of finance.

The President.— Well, why is it worth while?

Q. What do you call that committee?

The President.— I think he said it was to receive contributions.

Mr. Hinman.— He said it was a campaign committee.

The President.— Yes.

Q. What do you call that committee? A. A campaign committee.

Q. Did it keep any books? A. No, sir, the only records were what I kept.

Q. Where are those? A. I threw them away.

Q. You say the only records were some that you personally kept? A. Yes, sir.

Q. Who composed that committee? A. The committee was composed of a number of the Governor's personal friends.

Q. Name them. A. I do not remember all of them. I will name as many as I can remember. There was Col. Bacon, Governor Spriggs, Samuel Bell Thomas, Mr. Hanify, Major Farro, Mr. Frankenstein was on it, and I think Dr. Serowitz, and Dr. Glicksman, but I do not remember accurately.

Q. When did they have their first meeting? A. An informal meeting was held a few days after the Governor was nominated.

Q. Who was at that meeting? A. I think Mr. Frankenstein and Col. Bacon, and may be Major Farro, and myself.

Q. And yourself? A. Yes, sir.

Q. That is, you recall three with some definiteness, and are uncertain as to Major Farro? A. Yes, I am uncertain as to Major Farro.

Q. Were minutes of that meeting taken down by you? A. No, sir.

Q. Was there any president elected? A. No, sir.

Q. Or chairman? A. Not at that meeting.

Q. No officers at all? A. No, sir.

Q. When was there a subsequent meeting; you say that one took place the second day or so after his nomination? A. Yes, sir.

Q. When was the next meeting? A. The week after that.

Q. Who was present at that meeting? A. The gentlemen I mentioned in the first answer.

Q. Were they all there? A. I am pretty sure they were.

Q. Have you got any minutes of that meeting? A. No, sir: no minutes were kept.

Q. Was a Dr. Broder a member of that committee? A. He may have been, I don't know.

Q. In other words, there is not in existence any minutes of any meeting at all? A. No, sir.

Q. What there were you destroyed?

Mr. Hinman.— Just a moment. That is objected to as incompetent and improper. It assumes facts not proved. The witness has already testified no minutes were kept.

The President.— He said there were no minutes kept except such as he kept.

Q. Didn't you say, Mr. Witness, that you did —

The President.— Wait.

Mr. Hinman.— The witness has testified that as to minutes of the meetings no minutes were kept; he said he kept some record as to moneys received —

Mr. Stanchfield.— He did not say anything of the kind.

The President.— Do not interrupt him. My recollection is he said there was nothing kept except such as he kept. We will have the record read.

(The stenographer thereupon read the following questions and answers:

"Q. Were minutes of that meeting taken down by you? A. No, sir. . . .

"Q. Have you got any minutes of that meeting? A. No, sir; no minutes were kept.

"Q. In other words, there is not in existence any minutes of that meeting at all? A. No, sir.")

The President.— I evidently was mistaken.

By Mr. Stanchfield:

Q. That you threw those away, that was your language? A. Yes, sir; memoranda that I had.

Mr. Hinman.— If I may be permitted, in order that there may be no misapprehension, I would like to call your Honor's attention to the fact, as I recall it, that he said that no minutes were kept of the meeting.

Q. You said you took down some memoranda? A. Not of the meetings.

Q. Memoranda of what? A. Of receipts and disbursements.

Q. By that committee or by you? A. By me, as treasurer for that committee.

Q. Where is there any record that you were ever elected treasurer of any committee? A. I don't know, except that I was selected as treasurer of the committee, at a meeting that was held.

Q. Where is there any record of it? A. I do not believe there was ever any record.

Q. Who nominated you for treasurer? A. The only nomination that was made was for chairman, and then I was sort of unanimously selected as secretary and treasurer.

Q. Who nominated you for secretary and treasurer? A. Some member present at that meeting; I do not remember just who it was.

Q. Was Governor Spriggs there? A. No, he was not there at that meeting.

Q. He was not there until a few days before election, was he? A. He was not there until about a week or ten days before election, I think, may be two weeks, I don't remember just when.

Q. He had been most of the campaign in Guatemala, hadn't he? A. Yes.

Q. Did you keep yourself, during that campaign, a memoranda of receipts that you had? A. I kept a memorandum of all money that came in that I received, and all that was disbursed.

Q. When you say memoranda, you had a book, didn't you? A. I did.

Q. In which you put down, if I follow you correctly, items that you received from day to day, and items that you expended from day to day, is that right?

Mr. Hinman.— That is objected to on the ground that it assumes facts not proved.

Mr. Stanchfield.— I am asking him whether I am right.

The President.— Objection overruled.

A. I had a little memorandum book.

Q. In which you kept, as I am indicating, what you received, and what you paid out? A. I started to keep it in that book, yes.

By the President:

Q. Did you continue to keep it? A. No, sir, I did not.

By Mr. Stanchfield:

Q. You said originally that you did keep such a book? A. I say so still; that I started a book, a memorandum book, in which I entered on one side receipts, and on the other side disbursements.

Q. And did you enter on one side the name of people contributing? A. I did.

Q. And on the corresponding page the names of people to whom you paid out? A. Yes.

Q. Where is that book? A. I threw it away.

Q. What did you throw it away for? A. I had no further use for it.

Q. Is that the best answer you can give me? A. It is the truthful answer, that I had absolutely no use for it just before I came up to Albany, or probably the first part of January.

Q. Where did you throw it? A. In the waste basket.

Q. How big a book was it? A. It was a little memorandum book that would fit an ordinary pocket.

Q. Describe it in size? A. It was about 6 inches by 4 inches, had a yellow cover.

Q. And how many leaves in it? A. About 30, I guess, or 35, maybe 40; I don't know just how many leaves.

Q. On what date did you start to keep that book? A. A few days after the Governor was nominated.

Q. Now, did you talk with him about keeping it? A. No, sir.

Q. How long did you continue to keep it? A. I kept it I think for about two or three days, maybe a little longer.

Q. You say you did not throw it away until just before you came to Albany? A. By keeping it, I thought you meant entering up items in the book.

Q. You did not throw it away until just before you came to Albany? A. No, until maybe the first part of January, maybe the latter part of December. I cannot tell just when I threw it away.

Q. You kept in that book receipts, if I understand your testimony, and disbursements for how long? A. About two or three days at the utmost, I think.

Q. Now, after that, do you say that you kept no written memoranda of either receipts or expenditures? A. No, sir, I do not say that.

Q. Well, did you? A. I did.

Q. In what? A. I continued to keep the memoranda as I had originally begun, on a sort of daily memorandum sheet; then finally, I got that little book, and I started entering from my daily memoranda into that book; the work began to accumulate so fast I could not find time to transfer the accounts, and I fell behind considerably, and so I did not bother entering from those sheets into the book.

Q. But you did keep the sheets? A. I did.

Q. Did you keep those sheets up until the end of the campaign? A. Yes, sir.

Q. Every day? A. Every day.

Q. On those sheets, did you put down receipts and expenditures? A. I did.

Q. Where are those sheets? A. I threw them away with the book.

Q. So that you have thrown away, as you say, every written evidence of moneys that you received, and moneys that you paid out in connection with this campaign? A. To the best of my recollection, I think I did.

Q. The only remaining evidence then, as to the contributions to the Governor during this campaign, is contained in the bound volumes of which you spoke yesterday, over at the executive mansion? A. Well, I cannot say as to that.

Q. The only evidence of which you know, at any rate? A. The only evidence of which I know.

Q. Now, in connection with the keeping of these receipts and expenditures, you necessarily had a check book, didn't you? A. I did.

Q. Did you have an account at any financial institution other than the Mutual Alliance Trust Company? A. No, sir.

Q. Did you have any over in New Jersey? A. No, sir.

Q. You had no account anywhere, except in that one institution? A. That is the only institution I had an account.

Q. Did you have a check book on the Mutual Alliance Company? A. Yes, sir.

Q. A check book that you obtained for use during the campaign? A. Yes, sir.

Q. How large a check book was that? A. It was a large desk check book.

Q. How many check blanks upon the page? A. I think three.

Q. And stubs there, from which you tore the checks as you used them? A. Yes, sir.

Q. Where is that check book? A. I threw that away, too.

Q. Did you ever go over to the Mutual Alliance Trust Company to get the checks or vouchers that you used? A. I think either I went, or sent someone the latter part of October.

Q. Well, in any event, you got them, whether you sent or whether you went? A. Yes, sir, I got them.

Q. What did you do with those checks? A. I threw them away, too.

Q. Now, what reason will you give us now for the destruction of all of the evidence, both by entries in regard to checks and the check books connected with this campaign? A. The simple reason that I had absolutely no further use for them. I was cleaning up my desk preparatory to coming up to Albany, and one of the boys in the office was to use that desk and so I cleaned it out of all superfluous stuff that was in there that we had no further use for.

Q. Well, Mr. Sarecky, while you are not a lawyer, you have read, I assume, either in the law books or else in the newspapers, the various laws controlling the reception and distribution of campaign contributions, haven't you? A. I am generally familiar with it.

Q. You are generally familiar with it? A. Generally.

Q. And you knew that the receipt of money and the disbursement of money during the past three or four or five years has been very carefully guarded by law?

Mr. Hinman.— That is objected to, if the Court please, as incompetent and improper. The form of the question I object to as improper and calling for a conclusion.

Mr. Stanchfield.— Do you object to carefully guarded by law?

The President.— Well, you knew that there were legal regulations on that subject?

The Witness.— I had a general idea on the subject.

The President.— Generally?

The Witness.— Generally.

Q. You knew generally that these statutes very carefully guarded that matter? A. No, I said I knew generally about the entire subject.

The President.— That there were statutory regulations on the subject?

The Witness.— Yes, sir.

Q. Now, when you made up this statement with reference to which you have testified, you had those memoranda before you? A. Yes, sir, I had.

Q. You had your check book? A. No, I don't think I had my check book.

Q. Had you then destroyed it? A. No, sir.

Q. Now, when you say you threw it away, do you mean that you took a big check book such as you have described, three checks to the page, and chucked it into an ordinary office waste basket? A. I certainly did; I broke it in half and threw it away.

Q. Oh, you broke it in half? A. Yes.

Q. Now, if you thought these checks were of no consequence to you and you threw them away, why did you take the trouble to send to the Trust Company to get them? A. To help me make up my statement.

Q. Did you use them for that purpose? A. Such as I could use, surely.

Q. Now, did you yourself make up these deposit slips by which you put money in the Mutual Alliance Trust Company?

The President.— Haven't you been over that?

Mr. Stanchfield.— Not at all, I haven't touched it.

The President.— Very good then.

The Witness.— What was the question, Mr. Stanchfield?

Q. I asked you whether or no you made up the deposit slips for the Mutual Alliance Trust Company during the campaign, or any of them? A. I made up some of them.

Q. Did you direct the making up of all of them? A. Well, I don't know as I remember them; I was always there when they were made up.

Q. You were the one who received the Governor's mail? A. Yes, sir.

Q. Wasn't it your custom, during that campaign, to open the Governor's mail? A. With the assistance of those in the office; we all opened the mail.

Q. And didn't you take out from such letters as contained them, checks and pin them to the letter? A. Either we did that or the checks were put aside. I don't remember just how the thing was done.

Q. And were taken out and placed upon the Governor's desk? A. No, sir, they were placed on my desk.

Q. On your desk in your office? A. Yes, sir.

Q. Didn't you show them to him? A. He wasn't there —

Q. (Interrupting.) When he was there? A. No, I don't think I even did that.

Q. Not even when he was there? A. Not even when he was there.

Q. Now, that was the disposition that you made of such checks as you deposited in the Mutual Alliance Trust Company? A. Yes, sir.

Q. Did you talk with Governor Sulzer from time to time or at any time with reference to contributions that you had received in that way? A. Occasionally he would hand me a check and then that was the subject of discussion.

Q. That particular check that he handed you? A. Yes, that particular check.

Q. But the checks that you deposited in the Mutual Alliance, did you talk those over with him? A. No, sir.

Q. Never? A. I don't think I did.

The President.— Didn't you ever tell him who, that some amount or friend, how much he had contributed, or that he had made a contribution?

The Witness.— No, sir, I did not.

Q. Now, can you specify any check that he received and handed you that you talked over with him? A. I remember that Pinkney, that was discussed.

Q. That is the $200 check? A. That is the $200 check.

Q. And can you name another one? (No answer.)

Q. Can you name another one? A. I can't name any right off, unless my recollection is —

Q. (Interrupting) You have named all that you can recall at the moment? A. At the moment.

Q. That is, Mr. Pinkney? A. Yes, sir.

Q. And that, you say, the Governor handed you? A. Yes, sir.

Q. And that is the reason you recollect some conversation about it? A. I recollect that particular talk because Mr. Pinkney was here —

Q. (Interrupting) You needn't go at all over that again. We heard that once and we will take care of that later. A. Yes, sir.

Q. Did he ever hand you any other checks than the Pinkney check? A. He did.

Q. What? A. I can't recollect just what the checks —

Q. (Interrupting) Name one. A. I can't think of any for the moment.

Q. Did he ever hand you any cash? A. I think he did.

Q. How much? A. Well, it wasn't over $500; it may have been a little more.

Q. When? A. Sometime during the campaign. I can't specify any particular day.

Q. And whose contribution was that? A. I don't remember now the name.

Q. That is the only instance of cash that you can recall? A. That is the only one I can recall.

Q. Did he ever at any time or place, tell you of any other contributions than the Pinkney check of $200 and the item of $500 in cash? A. No, sir, he did not.

Q. So that you had no knowledge, no information from Governor Sulzer of any other receipts by him of money other than those two? A. There may have been one or two more, but not of large amounts.

Q. Well, I am very particular about this. If there were one or two more, you name them. A. I can't recollect just now who —

Q. (Interrupting.) You can't say that there was even another instance, can you? A. I think there was.

Q. Well, what was it? A. I can't recollect.

Q. Well, if you think there was another one, you must have some notion about it.

Mr. Hinman.— If the Court please —

The President.—Answer the question.

A. I can't recollect who it was that gave the check.

Mr. Hinman.— If the Court please, we object —

The Witness.— I can't recollect whose check it was.

Q. Haven't you in your mind any shadowy notion of the identity of the person? A. I have, and I am trying to think of it.

Q. When you say you think there was one other person, why can't you give me a notion of who you had in mind?

Mr. Hinman.— I object on the ground that it is incompetent, immaterial, improper and irrelevant, and it assumes facts not proved. The witness has testified that he thought there were one or two others.

The President.— He said he had some shadowy notions. He said he is trying to think about it. Just give him a chance.

By the President:

Q. Now, think and see if you can recall the person or occasion or occurrence. A. That is pretty hard to think.

Q. Think and see if you can recall. A. I can't place the name of the man whose check the Governor gave me.

Q. Do you recollect if there was such an occurrence? A. Yes, I am positive of that, but I can't recollect who it was.

By Mr. Stanchfield:

Q. Now, if you can't give me the name, give me the amount. A. It wasn't a large amount; it was $100 or $200, maybe $250.

The President.— That is all you can say of it?

The Witness.— That is about all I can say of it.

Q. So we may rest then with your testimony to the effect that Governor Sulzer never informed you in any way of any other one than the two occurrences, the Pinkney check and the $200 in cash and possibly this $100?

Mr. Hinman.— That is objected to on the ground that it is not a question, and the counsel may rest wherever he sees fit.

The President.— Change the form of the question.

Q. Then, to recapitulate your evidence, you have said that the Governor handed you —

Mr. Hinman.— If the Court please —

Mr. Stanchfield.— I insist that the —

The President.— I think that he may do that as a preliminary to it as long as he states what has been said.

Mr. Stanchfield.— It does not inquire —

The President.— You may proceed, Mr. Stanchfield.

Q. Is it a fact that Governor Sulzer handed you the Pinkney check for $200? A. He did.

Q. Is it the fact that he handed you a contribution in cash of $500? A. It may not have been a single contribution; it may have been from several people, but the amount I got was about $500.

Q. It is a fact then, that he gave you during the campaign about $500 in cash as a contribution that had been made? A. As near as I can recollect.

Q. And it is a fact that you have in mind another item of somewhere in the neighborhood of $100?

Mr. Hinman.— Now, if the Court please, that is objected to.

The President.— What was the amount?

The Witness.— I said I don't know just the amount; it may be a hundred, two hundred or two hundred and fifty.

Q. In the neighborhood of two hundred or two hundred and fifty? A. Yes, sir.

Q. That is all? A. That is as much as I can recollect just now.

By the President:

Q. Now, are you positive that there were no more than those three, the two as to which you have specifically testified and the one which you say you have a vague or shadowy recollection about? A. Well, I can't say under oath whether that was all or whether that was not all.

Q. Now, to the best of your memory is that all? A. To the best of my memory that was all.

By Mr. Stanchfield:

Q. Now, have you in mind any other amount, either in check or in cash? A. What do you mean?

Q. That he gave you? A. That he gave me?

Q. Yes. A. No, sir, I haven't got any.

Q. Now, you say that you prepared the statement that was signed by the Governor? A. Yes, I did.

Q. You did yourself the typewriting work of the list of contributors that are attached to it? A. I did.

Q. Just what do you say you said to the Governor at the time when he signed it? A. I presented the statement to him and showed him where he was to sign it, and said, "This is the statement, Governor." Then he said, "Is it all right?" And I answered, "This is as accurate as I can get it up," or words to that effect.

Q. Now, when you said that "is as accurate as I can get it up," you meant that it was as accurate as you could make it predicated

upon the information and the knowledge that you possessed as to the moneys he had received? A. Yes, sir.

Q. Did you keep a copy of the deposit slips in the Mutual Alliance? A. No, sir, I did not.

Q. Did you have, at the date when you made up this Exhibit 3, copies of the deposit slips in your possession? A. No, sir, I don't think I had.

Q. Did you have the slips themselves, the originals? A. The original deposit slips?

Q. Yes? A. No, sir.

Q. Do you know as a matter of fact that the names of the contributors upon this exhibit follow practically the order of the depositories upon the deposit slips? A. No, I don't know that.

Q. You are not acquainted with that fact? A. No, I am not acquainted with that fact.

Q. What memoranda did you have before you when you made up the statement? A. Those daily memorandum sheets.

Q. That you threw in the waste basket? A. Yes, sir.

Q. Anything else? A. (No answer.)

Q. Anything else? A. I am trying to think.

Q. Pardon me. A. I think I had my check book before me too.

Q. You needed your check book in order to prepare your statement — A. (Interrupting.) I am not sure whether I had it at that time; it may have been on the desk; I don't know whether I used it or not. I am trying to tell you what there was before me. That little book that I told you about before.

Q. Now, in making up a statement of expenditures you needed your check book, didn't you? A. No, sir, I had the receipted bills.

Q. That is what I am coming to. Did you have presented to you bills for payment? A. Yes, sir.

Q. Where are those bills? A. If I am not mistaken, I threw those away too.

Q. Did you, during the progress of the campaign, Mr. Sarecky, ever have any talk with the Governor on the subject of leaving out from this statement certain names? A. No, sir, I did not.

Q. Have you read in the newspapers, from year to year, in connection with the Governor, political discussion?

Mr. Hinman.— That is objected to on the ground it is incompetent, improper and immaterial.

The President.— It is introductory, you may ask it.

The Witness.— What was the question?

Q. Have you read from time to time in the newspapers, the press, political discussions, of the topics of the time? A. I have.

Q. You know from your reading, do you not, that there is quite a considerable temperance element in the State of New York?

Mr. Hinman.— Objected to on the ground it is incompetent, improper, immaterial, irrelevant and hearsay.

Mr. Stanchfield.— I think it is very competent.

The President.— You mean, did he not know?

Q. Did you not know during the Governor's campaign in the fall of 1912, that there was quite a considerable prohibition vote in the State of New York? A. I did not.

Mr. Hinman.— Objected to on the same grounds.

The President.— Objection overruled.

The Witness.— I did not.

Q. You say you did not? A. No, sir. The subject did not interest me.

Q. You are not at all interested in politics? A. Not very much.

Mr. Hinman.— If your Honor please, the question answered does not relate to politics. He is talking about prohibition.

Mr. Stanchfield.— That may interest others, if it does not you.

Mr. Hinman.—Very likely, not you or me very much.

Q. You made out in writing, so you told me, a daily account for a period in a book of receipts, and afterwards on slips? A. Yes, sir.

Q. You meant to keep those with accuracy? A. I tried to keep them as accurately as I could.

Q. I hand you Exhibit 3, being the statement of the Governor, involved in this controversy, which you say you prepared? A. Yes, sir.

Q. I call your attention to October 14th. What is that name? A. Thomas Willis.

Q. What is the next one? A. Nathan H. Levi.

Q. And the next one? A. Hugo Haupt.

Q. And the next one? A. Nelson Smith.

Q. And the next one? A. J. W. Armstrong.

Q. And the next one? A. A. F. Schaeffer.

Q. And the next one? A. James F. Hurley.

Q. The next one? A. George W. Nevile.

Q. Yes? A. David Gerber.

Q. Yes? A. William F. Carroll.

Q. Yes? A. Willis P. Dowd.

Q. Yes? A. Macgrane Coxe.

Q. Yes? A. Mr. Bauman.

Q. Now you may stop.

The President.— That is complete, that date?

Mr. Stanchfield.— That is all that date.

The President.— That is all that date?

The Witness.— There are various dates.

Mr. Stanchfield.— That completes all I want.

Mr. Hinman.— If your Honor please,—

Mr. Stanchfield.— You can take it on direct, if you want to.

Mr. Hinman.— The question is in this shape now. He has asked him to read those of October 14th, and on the record it will show those are all October 14th.

Mr. Stanchfield.— I said nothing of the kind. I asked him to read October 14th, such names as I desired.

The President.— I will let it go. Proceed.

Q. I hand you one of your deposit slips in the Mutual Alliance. A. Yes, sir.

Q. You notice that? A. Yes, sir; I do.

Q. Read all the names in the order, so that we can all hear, upon that deposit slip of checks you put in. A. I cannot make

out the first name on there in lead pencil. You see it. May be you can help me.

Mr. Kresel.— Peter Doelger.

The Witness.— Peter Doelger, $200 —

Q. Now, just a moment. Peter Doelger is one of the big brewers in New York, isn't he? A. I do not know whether he is or not. I think he is.

Q. Look on that statement you prepared, and find me Peter Doelger's name? A. I do not see it on here.

Q. How did the name of Peter Doelger, the brewer, happen to be omitted from your statement? A. I suppose it was accidental when I made up my —

Q. That answers it.

Mr. Herrick.— He hasn't completed his answer.

The President.— He has answered. It may be by reason of an accident. Such as it is he is entitled to give it.

The Witness.— When I made up my statement, I didn't have all the sheets before me. I thought I had all. Some of them were missing, and I could not account for every one of the items that went into my bank account.

Q. You are quite sure that is the correct explanation? A. That is the only explanation which accounts for my having omitted it.

Q. You must have had your slip, because all the rest of the names appear there, don't they? A. They are not all of the same date.

Q. You must have a sheet for all of them? A. They are not all of the same date.

Mr. Hinman.— I object to the form of the question.

The President.— If you put it in the interrogative we will stop these objections. Mustn't you have had those sheets before you?

Mr. Herrick.— No, the slip he inquires about.

Q. The sheets from which you made up the slip, didn't you have that before you? A. The slip was made up probably from

several sheets. The names I called off to you are different dates. They are not all of one date.

Q. Run down that list on your deposit slip and read the names.

The President.— Do you want him to read them aloud? Let him look over and find these. Won't that be sufficient?

Mr. Stanchfield.— He says that is not on his list, Peter Doelger.

The President.— Then you have got that one.

Mr. Stanchfield.— Well, I am going after some more now.

The Witness.— Do you want the rest of the names?

Q. I want you to read on the deposit slip.

The President.— I think you mean on the statement.

Mr. Stanchfield.— On the deposit slip.

The Witness.— Hugh Haupt, J. E. Gander & Company, Nelson Smith, John Armstrong, Morris Tekulsky.

Q. Wait a minute. Morris Tekulsky. Did you hear the testimony here that he was the president of the Liquor Dealers' Association?

Mr. Hinman.— Objected to on the ground it is incompetent, improper, and the evidence he gave is that he was not at that time and had not been for a long time president.

Mr. Stanchfield.— But had been?

Mr. Hinman.— Years before.

Mr. Stanchfield.— Never mind when.

The President.— Change your question. Wasn't it at that time that he had been?

Q. He had been? A. I was not present when he testified.

Q. You see his name on the deposit slip? A. I do.

Q. Turn to that statement and find me Mr. Morris Tekulsky's name? A. No, his name isn't on.

Q. Isn't there, is it? A. No, sir.

Q. Why isn't that name there? A. I do not know. It was not put on.

Q. And still you say that there never was any conference between you and the Governor upon the propriety of omitting those names? A. I do.

Mr. Stanchfield.— I assume the members of the Court have photographic copies of these deposit slips somewhere in their records.

Q. I call your attention to a deposit slip under date of October 24th. What is the name on the first depository that occurs upon that slip? A. S. Uhlmanm.

Q. What is the amount of his contribution? A. Three hundred dollars.

Q. He is a brewer, isn't he? A. I do not know what he is.

Q. Well, find his deposit on your statement. A. It is not on.

Q. Can you tell us why that one was omitted? A. For the same reason, I suppose, as those were.

Q. Well, every day when you made up a list of your deposits you had before you the sheets or the book in which you kept an entry of receipts, did you?

Mr. Hinman.— If the Court please, I do not think that the witness has testified yet that he made up all those deposit slips, and I therefore object to the question on the ground —

The President.— I do not think you mean that, do you?

Q. I understood you to say, Mr. Sarecky, that if you didn't make them all up in person, you supervised or were present when they were made up? A. I was in the room when they were made up.

Q. So that when the deposit was made up to be sent over to the trust company you had before you necessarily, did you not, either the sheets or the book in order to make it up, show it?

Mr. Hinman.— That is objected to on the ground that the witness —

Mr. Stanchfield.—Will you give me at least the courtesy of completing a question before you interpose a question?

The President.— One moment.

Q. When you made up the list for deposit in the trust company, did you not have before you either the book or the sheets, with reference to which you have testified?

Mr. Hinman.— Now, that is objected to upon the ground it assumes this witness made up the deposit slips.

The President.— No, he is asking a question.

Mr. Hinman.— It assumes this witness has testified he had those before him in making up the slips.

The President.— I think the whole of it is interrogatory. Objection overruled.

Q. Whoever made the deposits generally had the slips and checks, and deposit slip before them, in order to make it up? A. Yes.

Q. And you can give no other reason than the one you have already given for the omission of that item? A. That is the only reason.

Q. Of $300? A. That is the only reason.

Q. I call your attention to the deposit slip of October 30, 1912. Was that made out by you? A. Yes, sir, that is my writing.

Q. There is no mistake about that, that you made that? A. The only writing on here that is mine is my name on top and the figures.

Q. I mean you made out the deposit slips? A. Yes, sir, but I didn't put all the writing on here.

Q. The names of the depositories, that is, the names of the parties signing the checks, were put on at the trust company by one of its clerks? A. I assume so.

Q. But that particular slip you have in your hand you made out, other than that? A. I did.

By the President:

Q. The amounts that are put on there? A. Yes.

Q. And then it was added up, I suppose, at the end? A. Yes, sir.

Q. That you did to show what your deposit was? A. Yes, sir.

By Mr. Stanchfield:

Q. On that deposit slip appears, does there not, a contribution of $100 from Bird S. Coler? A. It does.

Q. Find that on your statement? A. I don't see it on here.

Q. You don't find it there? A. No, sir.

Q. Mr. Bird S. Coler had been, by some other people, once a candidate for Governor of New York, hadn't he? A. I think he was, yes, sir.

Q. You know enough about practical politics to recollect that? A. I recollect he was a candidate for Governor.

Q. How did you happen to leave his name off that list? A. Why —

Q. When you made out that deposit slip you knew of Mr. Coler. Why did you omit his name from the statement? A. His name might have appeared on one of those slips which I did not have before me when I made up this statement here, which I have in my hand, his name might not have appeared on one of the slips.

Q. Slips — sheets, do you mean? A. Sheets, I mean. I did not mean deposit slips. I meant on the daily sheet.

Q. You mean you didn't keep the sheet correctly? A. No, sir, I did not say that. I say some of those sheets were missing.

Q. How did it get onto the slip, if you didn't have the sheet? A. It did get on the sheet, but that sheet was missing.

Q. When you took over the books, you went over the check of Mr. Coler, didn't you? A. I did.

The President.— I think that is explained. He says that sheet may have been missing. Is that the only excuse you can give?

The Witness.— That is the only excuse I can give for omitting it from this statement.

Q. There are other names on your sheet that appeared upon these sheets, on the very same sheet, aren't there? A. That does not necessarily follow, that the names appearing on this deposit slip appeared on my sheet.

The President.— No, but he doesn't ask you that.

The Witness.— I don't know what he is asking me.

The President.— Just repeat the question.

(The stenographer read the question as follows:

"There are other names on your sheet that appeared upon these sheets, on the very same sheet, aren't there?")

The President.— Now answer.

The Witness.— There are names appearing on these deposit slips which appear in this statement, I think. I haven't examined them, but I think they do.

Q. Yes, no doubt about it? A. Yes.

Q. Also names on that slip that don't appear on your statement? A. Yes, sir.

Q. What I want to know is how could you make up that list and not have the names from this sheet from which you made it? A. I am trying to tell you.

Q. That is what I am trying to get. A. When checks were received from the office, I would make a memorandum on my daily sheet of the checks I received, and then deposit slips would be made out from those checks, and deposited.

The President.— You have made a mistake. The point is this: He wants to know why shouldn't all of them be there or none. That is the point.

The Witness.— It may have appeared on different sheets.

Mr. Hinman.— Did you get the answer of the witness?

The President.— Yes, he says they may have appeared on different sheets.

Senator Blauvelt.— I would like to call your attention to pages 510 and 511 of the printed record, which contain the exhibit now before the witness. On the printed record there appear to be no contributions made in the month of October. I think the printed record must be inaccurate. I am following those names and dates, and I would like to know whether the original statement of these

expenses contains the correct dates of these contributions, or whether they were in September, as shown on the printed record?

The President.— The explanation, counsel calls attention to the fact, is that this is all in September and not October. If there is a mistake, the mistake exists in the copy, and not in the printed record.

Mr. Kresel.— Exists in the original.

The President.— I mean exists in the original, and not in the record. He suggests it is probably a mistake, but not in the record. The fault is not with our record, but in the original statement.

Mr. Richards.— They are simply ditto marks carrying it from September to October. That is the way it appears.

The Witness.— That really should be October 2d, because I didn't jump from September 23d to September 22d.

Q. Now, Mr. Sarecky, on the statement that you hold in your hand under certain dates appear certain names of contributors? A. Yes, sir.

Q. Two, three or more in number? A. Yes, sir.

Q. On your deposit slips under the same dates appear names that do not appear on your statement, isn't that so? A. Yes, sir.

Q. That being true you must have had before you when you made up your deposit slip the list of all those names, didn't you?

Mr. Hinman.— That is objected to on the ground —

The President.— Make it interrogative in form.

Q. In other words, when you made up your statement on which you put the names of these contributors — A. Yes, sir.

Q. — of that date, you had before you all the checks? A. I did.

Q. Now, when you sent over to the bank a list of deposits those deposits were made up from the sheet upon which you had put down the contributors? A. No, sir.

Mr. Hinman.— That is objected to upon the ground the witness had already answered his deposit slips were made up from the

checks themselves and this assumes an entirely different state of facts.

By the President:

Q. As I understand, the names of the drawers of the checks that were deposited did not appear on the original slips when they left the office, but all the others were, but the names of the deposited checks were put on at the bank or trust company: is that correct? A. I did not quite catch the first part of your Honor's question.

Q. The deposit slips were filled out in the office as far as the dates and amounts of the several checks —

Mr. Hinman.— From the checks themselves.

The President.— Yes, and then the names of the particular persons whose checks they were, the drawers as we say in law, were put on by the bank?

The Witness.— By the bank officials.

The President.— That is what I understood him to say.

Mr. Hinman.— The witness has testified that is so, so far as he knows.

The President.— Of course so far as he knows. I think that was testified to by another witness heretofore here, either the president of the Trust Company or someone else.

By Mr. Stanchfield:

Q. Let me go back for a moment, Mr. Sarecky, to see if we can get this any clearer; on that statement does not appear the name of Peter Doelger? A. Yes, sir.

Q. The name of Peter Doelger does appear upon the deposit slip? A. Yes, sir.

Q. On October 19th? A. Yes, sir.

Q. And there are other names that appear upon that statement that appear upon the deposit slip? A. Yes, sir.

Q. Of October 19th? A. Yes, sir.

Q. Now, unless you had on your statement or the check before

you or from some source Doelger's contribution, how does it get on the deposit slip? A. If you will permit me I will explain. When we received checks at the office I made a memorandum on these sheets, as I call them. A deposit slip was made out from these checks too. We did not receive all the checks at the same time; some checks we would receive in the morning, some checks the following morning, or some checks too late for deposit, and then the deposit slip would be made up from that batch of checks, but one check might be on one day's sheet and another check appear on the following day's sheet.

Q. But they all appear on the deposit slip under the same day? A. Yes; when we received checks after banking hours I necessarily had to keep them until the following day, but the receipt would be marked on that day, on that day's sheet.

Mr. Stanchfield.— Very well.

Senator Brown.— I would like, Mr. President, to have the dates of the checks that did not appear.

The President.— I think we have got that in the record.

Senator Brown.— The dates of the checks that did not appear?

The President.— That is the omitted — what we will call the omitted checks?

Senator Brown.— Yes, sir.

The President.— Just give them to the senator. They are in the record before; when the examination is concluded the Court will direct the counsel to give them to you.

By Mr. Stanchfield:

Q. I call your attention to a deposit slip under date of November 4th, and ask you whether or no there appears on that deposit slip a deposit from Thomas E. Rush? A. Yes, sir.

Q. For how much? A. $500.

Q. Mr. Rush during the fall of 1912, was one of the Tammany district leaders, wasn't he? A. He was.

Q. Will you find me on your statement the contribution from Mr. Rush? A. (Witness examines statement.) It is not on here.

Q. It is not there? A. No, sir.

Q. Is there any explanation other than the one you have already made as to why it is not there? A. No, that is the only explanation.

Q. You received likewise during that campaign payable to your order a check, did you not, from Mr. Jacob H. Schiff, for $2,500? A. I did.

Q. From whom did you get the physical custody of that check? A. From a messenger from Mr. Schiff's office.

Q. Was it in an envelope? A. It was.

Q. And that check was payable to your order? A. It was.

Q. I hand you a deposit slip under the date of October 15th. A. Yes, sir.

Q. You have it before you? A. I have.

Q. That deposit slip shows, does it not, the deposit on that date of $2,500? A. It does.

Q. Was that the Schiff check? A. I think that is the check this refers to.

Q. You do not know of any other $2,500 contribution that you had? A. No, sir; I do not.

Q. Will you find me on your statement of campaign receipts the check of Mr. Schiff? A. It is not on here.

Q. Now, that deposit slip was made out by you? A. It was.

Q. And the figures upon it? A. Yes, sir.

Q. And the $2,500 was far and away the largest contribution that came into your possession during that campaign? A. Yes, sir.

Q. Now, you knew in a general way that Mr. Schiff would be classed in political circles as representing Wall street and the interests?

Mr. Hinman.— Objected to as incompetent, improper, immaterial and irrelevant.

The President.— I think he can answer; this all goes to the credibility of this statement. A. What is the question?

Mr. Stanchfield.— Will you repeat the question?

(The stenographer thereupon repeated the question as follows:

"Q. You knew in a general way that Mr. Schiff would be classed in political circles as representing Wall street and the interests?")

A. Well, I think he would be classed —

The President.— It is not what you think now; he wants to know at that time didn't you know that or regard it so —

The Witness.— No; I regarded him more as a philanthropist.

Q. Did you regard Mr. Morgan —

Mr. Hinman.— That is objected to on the ground that it is immaterial and irrelevant.

Q. Whether a philanthropist or a financier?

Mr. Hinman.— That is objected to as incompetent, irrelevant and immaterial.

The President.— Objection sustained.

Q. Mr. Sarecky, do you mean to say seriously, living in New York and coming up in New York, that you look upon Mr. Schiff as a philanthropist and not as a financier? A. I look upon him as both.

Q. Very well. You knew of his firm of Kuhn, Loeb & Company? A. I knew of them.

Q. And as a matter of political or financial history, you knew for years they have been connected with about every big undertaking in this country, didn't you? A. I did.

Q. Will you tell us why from that statement you omitted the largest contribution that you had, $2,500? A. I cannot think of a single reason why I omitted it.

Q. Did you have any conversation at all with Governor Sulzer upon the subject of the inclusion or omission of that deposit from the statement? A. I testified before —

Q. Just answer the question.

The President.— Yes. Answer.

A. No, sir, I did not.

Q. Did you receive the Schiff check at Mr. Schiff's office or at your office? A. At my office, if I remember correctly.

Q. Did you go over to Mr. Schiff's office with Mr. Sulzer? A. I did not.

Q. At any time? A. No, sir, I did not.

Q. Had you prepared another statement of the financial receipts and disbursements beside the one that has been ordered in evidence? A. No; I drew up a rough draft from which I copied this one.

Q. In your rough draft as you call it, did you not include the Schiff contribution of $2,500? A. I did not.

Q. Did you have in your rough draft a contribution from J. Jacobs, of Montreal, Canada, of $500? A. I did; I think I did.

Q. In your rough draft? A. In my rough draft.

Q. Where is that rough draft? A. That was destroyed when I drew up the final draft.

Q. Now, the Jacobs check is the very last one upon your list, isn't it? A. I think it is.

Q. For $500? A. Yes, sir.

Q. Under date of November 4th? A. It is.

Q. When did you prepare the rough draft from which you say that was made or completed? A. It was prepared at the time I drew up the final draft.

Q. The rough one? A. Yes.

Q. Now, in that rough one you still think, your recollection is you had omitted the Schiff contribution? A. Yes, sir.

Q. Do you recollect the total in the rough draft that you made of receipts? A. I think it corresponded to this total, because I copied this from the rough draft.

Q. Wasn't it $7,400 instead of $5,400? A. I do not think it was.

Q. In your rough draft? A. I do not think it was.

Q. Did you talk over in the office the preparation of either the rough draft or this completed statement, with anyone? A. With Mr. Horgan, he assisted me in drawing it up.

Q. Didn't you talk over with Mr. Horgan the inclusion in the first statement you were preparing of the Schiff contribution, because of its size? A. I do not think we discussed that subject at all.

Q. It being so large? A. No, I do not think that was discussed.

Q. Now, at the time when you prepared this final statement, wasn't there any discussion between you and Horgan, or anybody else, as to why the largest item you had received in the campaign should be omitted? A. No, sir, there was no discussion about it.

Q. And you can give us no reason at all for its omission? A. I cannot.

Q. I hand you Exhibits 97 and 98, and ask you in whose handwriting, if you know, they are, barring the printed name of the Governor? A. In Mr. Sulzer's.

Q. No doubt about that, is there? A. No, sir.

By the President:

Q. Whose name do you say, Mr. or Mrs.? A. Mr.

Mr. Stanchfield.— The Governor's name.

The Witness.— The Governor's name.

By Mr. Stanchfield:

Q. I hand you Exhibit 92, and ask you in whose handwriting the signature "William Sulzer" is? A. That is the Governor's signature.

Mr. Hinman.— Do you mean the endorsement or the signature?

Mr. Stanchfield.— I mean the "W-i-l-l-i-a-m Sulzer."

The Witness.— That is the Governor's own handwriting.

The President.— Will you read that so the other members of the Court will know what it is.

Mr. Stanchfield.— I am asking him as to the handwriting of the endorsement upon the back of Exhibit 92.

Judge Werner.— Whose check is that?

Mr. Stanchfield.— That is a check to the order of William Sulzer for $1,000 by Harris & Fuller.

Senator Griffin.— What is the date of that check?

Mr. Stanchfield.— September 26, 1910.

Q. And are the words "For deposit" on the back of that check likewise in the handwriting of the Governor? A. Yes, sir.

Q. I show you also a check, Exhibit 91, July 19, 1910, to the order of William Sulzer, for $500, signed by Harris & Fuller, and ask you whether the endorsement "For deposit, William Sulzer," is in the handwriting of the Governor? A. It is.

Q. I also hand you Exhibit No. 90, June 27, 1910, "Pay to the order of William Sulzer, $6,000, Harris & Fuller," endorsed "For deposit, William Sulzer," and ask you whether or no that endorsement is the handwriting of the Governor? A. It is.

Q. I call the witness' attention to Exhibit 10, and I ask you whether or no the endorsement "William Sulzer" is in the handwriting of the Governor? A. It is.

Mr. Stanchfield.— That is a check dated November 5, 1912 for $1,000 of Mr. Morganthau.

Q. And is the endorsement upon Exhibit 36 in the handwriting of the Governor? A. Yes, sir.

Mr. Stanchfield.— That is the Elkus check for $500.

Q. And is the endorsement upon Exhibit 24, dated October 5, 1912, in the handwriting of the Governor? A. I think it is, yes, sir.

Mr. Stanchfield.— That is the Strauss check for $1,000, F. V. Strauss Company.

Q. I hand you Exhibit 53 and ask you whether or no the endorsement is in the handwriting of the Governor? A. I think it is.

Mr. Stanchfield.— That is the Spalding check for $100.

Q. I hand you likewise Exhibit 71, and ask you whether or no the endorsement is in the handwriting of the Governor? A. It is.

Mr. Stanchfield.— And that is the O'Dwyer check for $100.

The President.— That is the judge of the city court?

Mr. Stanchfield.— Yes, sir.

Mr. Stanchfield.— Those are all the checks that ran into the Boyer, Griswold account.

Q. I hand you check of John Lynn for $500, and ask you whether or no that likewise is the signature of the Governor? A. It is.

Mr. Stanchfield.— That is John Lynn's check for $500, October 10, 1912.

Q. I hand you five different deposit slips on the Farmers Loan & Trust Company, dated October 10th, September 25th, September 12th, October 8th, December 28th, 1912, and ask you whether or no the handwriting upon them and the figures are in the handwriting of Governor Sulzer? A. Yes, sir.

The President.— Have they been offered in evidence?

Mr. Kresel.— They are in evidence.

Mr. Stanchfield.— Yes.

Mr. Herrick.— In one exhibit.

The President.— Give the numbers of the exhibits so as to keep the record straight.

Mr. Kresel.— They are Exhibits 15, 16, 20, 21 and 12. They were originally marked for identification, and subsequently in evidence, but the stenographer has omitted to strike out the words "For identification." They are in evidence.

Q. I hand you Exhibits 46, 45 and 69, and ask you whether or no the three exhibits are signed by the Governor. A. (After examining exhibits).— Yes, sir.

Q. Those three letters dated respectively November 7, November 8 and November 15, 1912, are, one to Charles A. Stadler (reading): "My dear Senator: Many thanks for your kind telegram of congratulation —

The President.— I think they are already read.

Mr. Stanchfield.— Yes.

The President.— They are three acknowledgments, are they?

Mr. Stanchfield.— Yes.

The President.— Tell them of what contributions.

Mr. Stanchfield.— Two of them to Senator Stadler and one to Mr. Luchow.

Q. Now, I hand you Exhibit M-99, being the order to Harris & Fuller to deliver securities to Commander Josephthal, and ask you whether or no that handwriting at the bottom of that is also that of the Governor (counsel passes paper to witness)? A. (After examining.) It is.

Q. Both the signature and the words "For Mrs. Sulzer"? A. Yes, sir.

Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 p. m.

AFTERNOON SESSION

Pursuant to adjournment, Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

LOUIS A. SARECKY resumed the stand.

Cross-examination by Mr. Stanchfield, continued:

Q. Mr. Sarecky, I address your attention to Exhibit 3 once more, and to a depositor, under date of October 10th, a contributor under date of October 10th. What is the name of the contributor under that date, upon that exhibit, or opposite that date? A. There are several contributors under that date.

Q. Is there a name there of Elias? A. Yes, sir.

Q. And how much was his contribution, according to your statement? A. One hundred dollars.

Q. Did you hear Mr. Hinman make a reference to Mr. Elias in his opening? A. I think I heard him mention his name.

Q. To the effect that there was no intention to conceal the names of brewers, because Mr. Elias' name appeared upon the statement and he was the president of the Elias Brewing Company?

Mr. Hinman.— I beg your pardon, Mr. Stanchfield, I did not refer to him as president, because I did not know.

Mr. Stanchfield.—Well, as representing the brewing interests.

The Witness.— I heard him make that statement.

Mr. Hinman.— I did not make that statement.

The Witness.— I heard him mention Mr. Elias' name.

By Mr. Stanchfield:

Q. What is the name as you have it upon your statement? A. M. J. Elias.

Q. M. J.? A. M. J. Elias.

Q. I hand you a check under date of October 10th, being Exhibit M-30, and ask you whether or no upon the back of the check is your indorsement? (Counsel passes Exhibit 30 to witness.) A. (After examining) Yes, sir.

Q. The rubber stamp of the Governor's signature and your name under it? A. Yes, sir.

Q. That check is made by whom? A. William J. Elias.

Q. You had no other check from Elias except that one, did you? A. I think that was the only one.

Q. Then that name on your statement is wrong, isn't it? A. Evidently.

Q. And it should have been William J. Elias instead of M. J. Elias? A. That is what it should have been.

Q. That is the only brewer's contribution upon the list of which you know? A. So far as I know. I will have to look at the list again. (Witness examines paper.)

Q. Well, if you think you can find any brewers on there I wish you would look at it? A. I am not very familiar with all the brewers in the city. (Witness examines paper) He is the only one I think on that list.

Q. How much money during that campaign did you receive and deposit as campaign moneys in the Mutual Alliance Trust Company? A. About $12,500.

Q. And you reported in this statement that you prepared disbursements to what extent? A. I think about $7,500.

Q. To speak with exactness $7,724.09, was it not? A. If it is on there that is what I reported.

Q. Well, I am reading from the statement. That left in that deposit that you had received for campaign purposes, roundly speaking, something like $5,000? A. Yes, sir.

Q. Now, you testified here yesterday in response to an inquiry from Senator Hinman to the effect that you disbursed some of that without the knowledge of the respondent to settle some western litigation? A. Yes, sir.

Q. Was that a pending litigation? A. No, sir.

Q. What was the amount of the claim? A. I don't remember just what the amount of the claim was; I think about $1,200 or $1,500.

Q. Who was the claimant? A. Fred Hastings and a brother of his, I think.

Q. Residing where? A. In Seattle, Washington.

Q. How did you become cognizant of any such claim? A. A telegram and letter I received from some lawyer in Seattle.

Q. Addressed to whom? A. To me, or it may have been addressed to the Governor, which I opened. I think it was addressed to me personally, I don't remember.

Q. No suit had been brought? A. No, sir.

Q. Have you preserved that? A. Now, just let me think for a moment — no, I don't think any suit had been brought.

Q. Have you preserved the telegram or letter that you received, either or both? A. No, sir, I have not. Now, that I stop to think of it, Mr. Stanchfield, a suit may have been brought and judgment gotten against Mr. Sulzer and they threatened to start suit in New York.

Q. A suit had been brought against him where? A. In the state of Washington.

Q. Have you got any correspondence at all on that subject? A. No, sir, I haven't.

Q. Have you ever heard from the Governor that suit had been instigated against him in the state of Washington? A. I knew about the matter.

Q. If you knew about it, don't you know whether or no suit had been started against him? A. I am telling you, so far as I can remember at present. This was almost a year ago. It is my best recollection that a suit had been started against the Governor, judgment had been procured against him in the state of Washington, and the litigants threatened to start suit against him in New York.

Q. How much now do you think that the amount was, if your attention to it is refreshing your recollection? A. About $1,500, may be a little more or less, I cannot say definitely.

Q. Do you recollect whether or no you paid it by check? A. I telegraphed the money out there.

Q. How did you get the money out of the Mutual Alliance Trust Company for that purpose? A. Why, I drew a check for the order of cash and presented it to the paying teller there and told him what I wanted him to do with it.

Q. Now, on that subject, I ask again, have you any correspondence at all? A. I don't think I have.

Q. Do you recollect what you did with it? A. No, sir, I don't. It may be on file in the office, or perhaps Mr. Sulzer may have it. I haven't got it.

Q. That is about $1,200 to $1,500, somewhere in that neighborhood? A. That was the amount of the claim.

Q. What else did you pay, but first let me ask you, how much did you pay on that claim, if you can state? A. I think about $800 or $900.

Q. That is, that you paid to settle this western matter? A. Yes, sir.

Q. $800 or $900. Now, what else did you pay? A. I paid, I think, for postage on books that were going out of this State that were being mailed throughout the United States.

Q. Did you pay postage, or did you use his frank? A. Oh, no, he paid postage on the books.

Q. How much did you pay on books that went outside the State of New York? A. Five cents on each book.

Q. How many books did you send out? A. I cannot tell.

Q. How many outside the State of New York? A. I cannot recollect just how many went outside of the State of New York.

Q. Can you form any estimate? A. Yes, sir. There might have been about 15,000, I think.

Q. That were sent outside of the State of New York? A. Yes, sir.

Q. How much will you say that you paid upon that matter? A. That would be $750.

Q. When you speak of books, do you mean this volume called "Sulzer's Short Speeches?" A. Yes, sir.

Mr. Stanchfield.— I will mark one of these for identification.

The Witness.— That was not the books that were mailed though.

Q. The book was a paper covered book? A. Yes, sir.

By the President:

Q. This is the book apart from the binding? A. Yes, sir. The postage on this book would be more than 5 cents.

Mr. Stanchfield.— I will mark one of these for identification.

(The book was marked Exhibit M-130 for identification.)

By Mr. Stanchfield:

Q. That is the volume that you refer to (handing a book to the witness)? A. Yes, sir.

Q. What else did you pay out of the Mutual Alliance Trust Company? We have $800 or $900 on the western claims, $750 for postage on the books outside the State of New York. Now, what else? A. I cannot recall. It is almost a year ago. I cannot remember without having anything before me, for what purpose the money was spent.

Q. In other words, you are utterly unable to tell us for what purpose you disbursed any other moneys out of that account? A. Yes, sir.

Q. In the preparation of the statement that you made for the use of the Governor's counsel in this case, did you not endeavor to refresh your recollection by every means in your power as to what

you did with the money in that Trust Company that was the money of Mr. Sulzer? A. I did.

Q. And you can make no other or clearer or more definite statement than that which you now make? A. Yes, sir.

Q. Did you deposit in the Mutual Alliance Trust Company all of the contributions that passed through your hands? A. Every one of them.

Q. Did you have any account in the name of anyone other than yourself during that period in which moneys were deposited? A. No, sir.

Q. Either in the Mutual Alliance Trust Company or in any other fiscal institution? A. No, sir. That was the only account I ever had.

By the President:

Q. Was that opened at the time of the campaign? Or did you have a bank account before? A. I had my own bank account there before, in that same bank.

Q. Were those both the same account? A. Yes, sir.

Q. Your money and the campaign money? A. Yes, sir.

The President.— Is that all?

Mr. Stanchfield.— I have three or four isolated things to which I wish to call his attention, and I will have done.

By Mr. Stanchfield:

Q. Was your attention in any way directed during the campaign to a contribution from Mr. Charles Kohler? A. I don't remember.

Q. A contribution in his behalf made by Mr. John H. Rogan, a lawyer of New York? Does that refresh your recollection? A. No, sir, it does not.

The President.— Give him the amount.

The Witness.— May I look at it?

By Mr. Stanchfield:

Q. $2,600. I show you a check, dated November 2, 1912,

payable to the order of John H. Rogan, for $2,600, and signed by Charles Kohler, endorsed "Payable to bearer, John H. Rogan," and ask you whether or no the subject matter of such a contribution came to your attention during the campaign?

(A paper was handed to the witness.)

A. I don't think it did. I think this is the first time I have seen this check.

Q. Did you see any correspondence passing between the Governor and Mr. Rogan with reference to Mr. Coler? A. I can't remember, so much correspondence passed at that time.

Q. I hand you a letter dated New York, November 2, 1912, being the date of the check to which I have called your attention, and ask you whether or no you recognize the signature to that letter (counsel passes ppapper to witness)? A. (After examining) I do.

Q. Whose handwriting is it in? A. It is in the handwriting of Mr. Sulzer.

Q. There is no doubt about that in your mind? A. No, sir.

Q. And you notice the word "Personal" upon the letter? A. I do.

Q. That is also in his handwriting? A. Yes, sir.

Mr. Stanchfield.— I offer it in evidence.

Mr. Hinman.— We object to it on the ground that it is incompetent and no part of the cross-examination, and not a proper subject of cross-examination.

(The letter is passed to the President.)

The President.— Oh, I think it will be admitted.

Mr. Hinman.— On the further ground that there is no connection shown between the letter and the check.

Mr. Stanchfield.— That is a matter of argument.

The President.— Has this contribution been the subject of testimony?

Mr. Stanchfield.— No, it has not, if your Honor please.

Mr. Hinman.— No.

Mr. Stanchfield.— It is entirely a new contribution.

The President.— Then I imagine you will have to wait until you connect it, if the objection is raised.

Mr. Stanchfield.— I think I have a right, with all due respect, to put the letter in evidence, and cross-examine the witness with reference to the contents of the letter to see whether or no —

The President.—(Interrupting.) If it is the defendant's letter you can put it in evidence.

Mr. Hinman.— If your Honor please, the vice of it lies in the fact that they haven't connected the check with the letter.

The President.— The letter, however, is evidence. I don't know that there is any connection. It may turn out that it will amount to nothing.

Mr. Hinman.— Until there is some connection, is the point we are attempting to make.

The President.— I think I will let you put it in.

Mr. Stanchfield (Reading):

"COMMITTEE ON FOREIGN AFFAIRS

"HOUSE OF REPRESENTATIVES

"WASHINGTON, D. C.

"115 Broadway, New York,
November 2, 1912

"(Personal).

"Charles Kohler, Esq., Piano Manufacturer, 11th avenue and 50th street, New York City:

"MY DEAR MR. KOHLER.— Many thanks for all you say and all you have done in my behalf. I appreciate it more than words can tell. With best wishes, and hoping to have the pleasure of meeting and greeting you before long, believe me, as ever,

"Sincerely your friend,

"WM. SULZER."

Mr. Kresel.— Have that marked, will you?

(The paper was marked Exhibit M-131.)

Q. You at that time, Mr. Sarecky, were the stenographer employed by the Governor at 115 Broadway? A. Not the only one.

Q. Well, you were one of them? A. One of them, yes, sir.

Q. Looking at that letter, are you able to state whether or not you wrote it? A. No, sir, I cannot tell.

Q. Can't you identify your own typewriting work? A. No, sir, not in those form letters.

Q. In looking at that exhibit and its contents, does it in any way refresh your recollection as to whether or no it was dictated to you or prepared by you? A. It does not.

Q. Well, the expression there, "I appreciate more than words can tell," is quite out of the ordinary run of letters of acknowledgment that have appeared in the case, isn't it?

Mr. Hinman.— Objected to on the ground that it is incompetent and calls for a conclusion. The letters show for themselves whether it is out of the ordinary run.

The President.— Well —

Mr. Stanchfield.— I will withdraw that.

Q. It is in different phraseology from the ordinary letters of acknowledgment?

Mr. Hinman.— Just a moment. That is objected to on the same grounds.

The President.— He can say it is different. Does that bring it to your recollection?

Mr. Hinman.— Is there any evidence that this witness knows what other letters are in evidence here?

Mr. Stanchfield.— Mr. Hinman asked him all about it.

The President.— He says he wrote the form.

Mr. Stanchfield.— The senator himself drew it out on his direct examination.

The President.— Yes. Now, looking at the particular phraseology of that letter, does that refresh your recollection?

The Witness.— It does not. I used that same expression probably — oh, ten thousand times since I have been with Mr. Sulzer.

Q. That is, the particular expression "I appreciate it more than words can tell?" A. Yes, sir.

Q. Ten thousand times? A. Fully that.

Q. Was that your expression, if you used it ten thousand times, or was it the Governor's expression? A. I suppose he started it and I continued in it.

Q. You kept it up.

Mr. Hinman.— May I inquire, if your Honor please, whether counsel for the prosecution propose to produce any evidence here connecting that check with that letter, or whether they propose to leave it in the position it now stands?

Mr. Stanchfield.—When you put Governor Sulzer on the stand, I propose to ask him all about that check.

Mr. Hinman.— Let me inquire whether they intend to prove any connection between the letter and the check?

The President.— You have expressed yourselves to each other. You may go on with the examination.

Mr. Hinman.— Let me express myself to the Court, if I may. I move to strike out this evidence on the ground that the mere fact that Mr. Kohler drew his check to a different man than William Sulzer on the second day of November, is no evidence that there was any connection between that check and this letter, and is therefore incompetent.

The President.— I am not prepared to say it is. At a later stage if there is no connection, it may go out. He has got one witness on the stand now. Anything else?

Q. Will you repeat for our information, so that we may have it fresh before the Court, the language of the letters of acknowledgment or the form which you say you prepared during the campaign —

Mr. Stanchfield.— I thought you were going to object.

Mr. Hinman.— I am if I may be permitted.

The President.— He stated that.

Mr. Stanchfield.— The fact that he stated it on direct does not interfere.

The President.— No, I think you have got enough.

Mr. Stanchfield.— That is preliminary.

The President.— Then get to the point you want to ask him.

Mr. Stanchfield.— The difficulty is that in trying to get to the point I cannot make a point out of it without I can get from the witness what he says was the form he used.

The President.— I think you will be able to do it without that, Mr. Stanchfield. Put your question.

Q. You testified yesterday to Senator Hinman, giving him a form of acknowledgment which you say you framed? A. Yes, sir.

Q. I call your attention to Exhibits 38, 43, 127, 59, 44, 64 and 57, and ask you which of those forms of acknowledgment, if any, you prepared or used; and in glancing through them, note the signature to each, so you can say whether or no you did or did not sign each and every one of them. It is suggested when I ask you if you signed them, I mean signed "Wm. Sulzer" at the bottom of them? A. I signed every one of them; and, as for the form, as long as the letter bore in substance what I intended to convey, I never raised the point with any of the stenographers who did the work. Now, in typewriting — may I continue?

The President.— If the counsel doesn't object. Go on.

The Witness.— In typewriting, a train of thought may enter a man's mind, and they may switch off from the regular form, and rather than stop and erase, he will conclude a sentence to make it grammatical.

Q. Did you finish? A. I think so.

Q. How many of these letters did you write? A. I can't tell by looking at that.

Q. You signed them all? A. I signed them all.

Q. I call your attention to one in particular, under date of October 14th, being Exhibit 127, to Colonel Barthman:

> "My Dear Colonel.— Many thanks for your very kind letter of congratulations. I certainly appreciate all that you say and all that you have done. You are a good friend of mine and can help me very much during the campaign. You know just what to do and how to do it, and a word to the wise is sufficient."

Is that concluding sentence your language? A. It is language that has been used by Mr. Sulzer ever since I can remember.

Q. Then it was language that, if you used it, came from him? A. From my having been with him.

Q. Do you recollect the letter of Colonel Barthman to the Governor? A. I do not.

Q. I hand you Exhibit M-125, being the letter from Colonel Barthman to the Governor, and ask you whether you opened that letter and took out the check that was contained in it? (Paper handed to witness). A. It is impossible for me to answer that question either yes or no.

Q. Did you notice upon the face of that letter that he says it is a contribution to his personal campaign? A. I do.

Q. Wasn't it in response to that suggestion, of its being a contribution to his personal campaign, that there was added on to this letter "a word to the wise is sufficient."

Mr. Hinman.— That is objected to, if the Court please, upon the ground that the witness has already testified that he has no present recollection of the transaction.

The President.— He can probe him on that. Can you recollect?

A. I had absolutely no ulterior motive in putting anything in any letters he wrote.

By Mr. Stanchfield:

Q. No one asked you if you had any ulterior motives. A. I don't know the exact wording, but that was the impression that was conveyed to me.

Q. I asked you when you used this language, "you know just what to do and how to do it," and "a word to the wise is sufficient," that language was used because of the expression in the letter to the Governor "I hand you this small contribution toward the expenses of your personal campaign"? A. It was not inserted for that purpose.

Q. All seven of the exhibits to which I call your attention are in different form, different phraseology, are they not? A. In substance the same; in phraseology, different.

Q. Differing in phraseology? A. Yes, sir.

Q. And no single one of them, upon its face, acknowledges the gift or receipt of money?

Mr. Hinman.— Objected to, if your Honor please, upon the ground the letters themselves are the best evidence of what they acknowledge.

The President.— That is true; we can assume that.

Mr. Stanchfield.— No one of them acknowledges in words the receipt of money?

Mr. Hinman.— The same objection.

The President.— You can assume that and then ask him your question predicated upon that assumption.

Q. Well, on the assumption that none of those letters make a specific allusion to the receipt of money, why was it that you did not upon the face of the letter acknowledge a check for campaign purposes? A. I think I answered that question before. When I got up the form I tried to make it so broad as to cover every emergency. Now, a letter written to a man who is doing things or to a man who had sent money or a man who had been attending meetings or having them, why, that letter would answer the purpose.

Q. Is that all? A. That is all.

Q. That is the only reason that you have at the moment that you can recall? A. Yes, sir.

Q. For never having made a specific acknowledgment of the receipt of money? A. Yes, sir.

Q. I hand you a letter under date of October 21st, being Exhibit M-48, and note, please, I call your attention now simply to the signature (counsel passes paper to witness.) A. (Witness examines paper.)

Mr. Hinman.—Is that an exhibit in the case?

Mr. Stanchfield.— Yes.

The Witness.— Yes, I signed that.

Q. You signed that letter? A. Yes, sir.

Q. Now, I will read you this letter? (Reading): "New York, October 21, 1912. Ezekiel Fixman, Esq., 55 Liberty Street, New York City. My Dear Mr. Fixman: Your letter to Congressman Sulzer enclosing check for $100 as a contribution from Mr. Steuber was duly received by me during the Congressman's absence on a campaign trip up the State. I know Mr. Sulzer appreciates this very much indeed. I want to thank you also for your good wishes. Hope you will write Mr. Steuber to this effect." Now, that letter you composed in the absence of the Governor? A. I wrote that myself.

Q. In the absence of the Governor? A. Yes, sir.

Q. And upon its face and in terms you acknowledged the receipt of $100 as a contribution to his campaign? A. Yes, sir.

Q. Now, with that thought upon your mind, is it not the fact that it was the Governor who suggested to you that the ordinary letters of acknowledgment should make no reference to the subject of campaign contributions? A. No, sir, he did not.

Q. Well, why did you step aside from the beaten path of ten thousand instances and acknowledge the receipt of money in terms?

Mr. Hinman.— If your Honor please, that is objected to upon the ground that it is incompetent and improper and assumes facts not proved.

Mr. Stanchfield.— He said ten thousand times.

By the President:

Q. Why did you step aside from the usual course in your acknowledgments in these transactions? A. Because in this in-

stance I was acknowledging the receipt of a contribution not direct from the donor himself, but through some other person, and I thought perhaps he would want to use that letter in forwarding it to the person from whom he had received the money.

Q. Well, do you recollect the contributions — now, keep that thought in your mind — do you recollect the contributions that were made by Mr. Stadler? A. By Mr. who?

Q. Stadler, the brewer, Charles A. Stadler. A. I don't remember that right off hand.

Q. Do you recollect getting from him a request to send to different contributors to the campaign that he had secured an acknowledgment of the receipt of that contribution so as to protect Mr. Stadler and enable the contributors to know that he had turned over the money to Governor Sulzer for the campaign?

Mr. Hinman.— That is objected to upon the ground that it is incompetent and assumes facts not proved.

The President.— Is the letter in evidence?

Mr. Stanchfield.— Oh, yes.

Mr. Hinman.— If your Honor please, the letter does not contain all the insinuations and innuendoes that are contained in the question.

The President.— Let me see the letter for a moment to see if it is fairly the subject under discussion.

Mr. Hinman.— Now, if your Honor please, when we have the letter if we may have the question read so that we may see what is in the question.

The President.— Yes.

(Counsel passes letter to the President.)

Mr. Stanchfield.— The testimony is that — from the witness Stadler upon the stand — we will have to hunt up that record if it has escaped your Honor's recollection — that he asked Governor Sulzer to have letters of acknowledgment sent to the different people who had contributed through him to the campaign.

Mr. Hinman.— If I recall, if your Honor please, that is about

it. But the question is assuming that Stadler wrote a letter to this witness with a lot of requests and insinuations in it.

The President.— That is my recollection of the testimony, but I can't tell without the testimony. I think you may ask him.

Mr. Hinman.— The statement, if your Honor please —

Q. I hand you —

Mr. Hinman (interrupting).— May we get the question?

The President.— Read the question, stenographer.

(The stenographer thereupon read the question referred to as follows: "Do you recollect getting from him a request to send to different contributors to the campaign, that he had secured, an acknowledgment of the receipt of that contribution so as to protect Mr. Stadler and enable the contributors to know that he had turned their money over to Governor Sulzer for the campaign?")

The President.— That is certainly unobjectionable because it assumes nothing. It asks whether he recalls such a thing.

The Witness.— No, I don't remember receiving any such request from Senator Stadler.

By Mr. Stanchfield:

Q. Well, did you have any talk with Governor Sulzer about the parties that Senator Stadler had persuaded to make contributions to his campaign? A. I did not.

Q. Did you sign Exhibits 58 and 57 (two papers were handed to the witness)? A. I did.

Q. They are addressed, 57, to George C. Hawley, Dobler Brewery, Albany, N. Y.; the other, to Mr. Hoffman, 55th street and Third avenue, New York. Does not each of those letters purport to be forms of acknowledgment that you wrote? A. I don't get the question.

Q. Don't they purport to be forms of acknowledgment? A. Yes, sir.

Q. Letters of acknowledgment? A. Yes, sir.

Q. There is not, upon their face, any allusion to the amount of the contribution that either of these people gave, is there?

Mr. Hinman.— That is objected to upon the ground the letters themselves are the best evidence of what their contents are.

The President.— Objection sustained. You can assume that, if you wish to ask him.

Q. Now, assuming, in the language of the Presiding Judge, that there is nothing upon the face of those two letters, to Hawley or to Hoffman, acknowledging a contribution, those two letters being in response to a request of a third party who had procured the contribution, why didn't you, upon the face of those letters, indicate it?

Mr. Hinman.— That is objected to upon the ground it is incompetent, and assumes facts not proved.

The President.— Objection overruled.

The Witness.— Will you please repeat the question?

Q. I asked you why you stated a few moments ago that the reason you specified the receipt of $100, was because it was received through a third person? A. A third person from abroad, I should have added that.

Q. I see. Does the fact that it came from abroad change your answer? A. No, sir.

Q. Very well, then we will hang on to New York.

Mr. Hinman.— I object to that on the ground it is improper.

The Court.— Yes, that will be stricken out. Put your question.

Mr. Stanchfield.— Is it stricken out that we will hang on to New York?

The President.— Yes, they object to it.

Mr. Hinman.— It may be conceded that counsel will hang on to New York.

Q. The two letters, assuming they do not specify a contribution, are to enable a third party to convince the givers that they had made contributions. Why didn't you, upon the face of those letters— A. I don't know.

Mr. Hinman.— I object to that as incompetent.

By the President:

Q. Why didn't you specify it? A. Probably when those letters were written the person who wrote them didn't know that it was, that the contribution had been received through some third parties.

By Mr. Stanchfield:

Q. You say you wrote them? A. I didn't say anything of the kind.

Mr. Hinman.— I object to that.

The Witness.— I signed them.

Mr. Hinman.— That assumes something the witness has not said.

Q. When you sign a letter, won't you acknowledge responsibility for its contents? A. I do.

Q. You signed both of these letters? A. Yes, sir.

Q. How do you know you didn't write them? A. I don't say I did, and I don't say I didn't. I may have written them. There were hundreds and thousands of letters being sent out.

Q. I think you testified yesterday that you settled this western claim without the knowledge of Governor Sulzer? A. I did.

Q. Did you ever advise him of the fact? A. I did.

Q. When? A. When he came back, or the first time I saw him.

Q. Can you tell about when that was? A. Well, I may not have done it the first time I saw him, but I told him the first time it had occurred to me, and probably a week after I had done it; maybe a little less.

Q. All of the deposits that went into the Mutual Alliance Trust Company were campaign contributions, were they not?

Mr. Hinman.— That is objected to upon the ground it is incompetent and calls for a conclusion.

The President.— Objection overruled.

Q. That is what you put in your authorization that you took over there, isn't it? A. I deposited moneys I had received there.

Q. For campaign purposes? A. Well, for whatever purposes I had received them.

Q. Didn't you put on the face of the authorization that you took over to the Mutual Alliance the words "Campaign Contributions"? A. Yes, sir.

Q. You took from those campaign contributions a sufficient amount of money to pay this western claim?

Q. And of the fact that you had made that use of that money you advised Governor Sulzer? A. I did.

Q. And that was, of course, before this statement, Exhibit 3, was made out? A. Yes, sir.

Q. What became of this power of attorney that you say you at some time had during your connection with Governor Sulzer?

The President.— Is it worth while to go into that, Mr. Stanchfield?

Mr. Stanchfield.— I simply want to find out what was done with it.

Q. Was it destroyed? A. Not that I know of. I don't think it was destroyed. I may have it among some papers. I have not had occasion to refer to it.

Q. How many years ago did you get it? A. I got it in 1906.

Q. Have you ever seen it from that day to this? A. I don't think I have.

Mr. Stanchfield.— That is all.

The President.— That is all.

Redirect examination by Mr. Hinman:

Q. State, if you will, when you made the entries upon the pencil tablet, or when you made the memorandum on your pad or sheets, of checks for money received during the campaign. A. When I received them.

Q. State whether or not you received a different — whether you used a different sheet for each day, or sheet or paper, or a different sheet for each entry. A. No. I go on as many entries

as I could on each sheet. Sometimes I would use two sheets, sometimes three, sometimes one.

Q. Has your attention ever been called to all the deposit slips, all deposits which you made in the Mutual Alliance Trust Company during the campaign? A. No, sir; I don't think it has.

Mr. Hinman.— If you will let me see all those deposit slips.

Mr. Kresel.— There they are. There are twenty-one of them.

The President.— Have you got his account current? Isn't that in evidence?

Mr. Kresel.— That is in evidence too.

The President.— That will show whether there are more than twenty-one.

Mr. Hinman.— There are just twenty-one, are there not?

Mr. Kresel.— I think there are. I have them all.

The President.— Give that to the senator and he can see whether there are twenty-one.

Mr. Hinman.— You say this has been in evidence?

Mr. Kresel.— It is in evidence, yes.

Mr. Hinman.— Where is the mark on it?

Mr. Kresel.— There.

Q. I show you managers' Exhibit 26½ and ask you what date that shows as the date of the first deposit? A. September 10th — no, August 3, 1912 — September 10th. These are deposits?

Q. On this side here are the deposits.

Mr. Kresel.— No, those are the deposits. September 10th is right.

The Witness.— September 10th.

Q. And at the top does it show that an account was already running there? A. Yes, sir.

Q. Now I show you these deposit slips.

Mr. Hinman.— They were all marked as one exhibit, were they?

Mr. Kresel.— One exhibit.

Mr. Hinman.— I don't know which one was marked.

Mr. Kresel.— On one of them, on the back. There it is, No. 27.

Mr. Hinman.—Well, we will assume it is managers' Exhibit 27.

Q. I show you one and ask you what date that is? A. September 10, 1912.

Q. Is that your money, your own money? A. Well, I should say it was, I think it was. I cannot just remember. I may have deposited it for some one. It may have been a check I put through for some one; I cannot recollect.

Q. In any event, did it have anything to do with any campaign? A. No, it didn't.

Q. I show you another one of these exhibits and ask you what date that is? A. September 30, 1912.

Q. That have anything to do with this campaign? A. No, sir.

The President.— How much is it?

The Witness.— Thirty-four dollars and seventy-five cents.

The President.— Thirty-four dollars and seventy-five cents?

The Witness.— Yes.

Mr. Brackett.— How much was the September 10th one?

The Witness.— Ninety-three dollars and sixty cents.

Q. I show you another one of these deposit slips of these twenty-one and ask you what date that is? A. September 27, 1912. That is for $80.

Q. I show you another deposit slip of these twenty-one and ask you what date that is? A. December 31, 1912, for $372.93.

Q. Taking these other deposit slips, giving the dates of them, the others of the twenty-one, and state in whose handwriting they are. You say that is your name at the top, Louis A. Sarecky, and the figures? A. That is in my handwriting.

The President.— In your handwriting?

The Witness.— Yes.

Q. Give the date of each first. A. October 1, 1912, and it is not a campaign contribution.

This is in my handwriting, October 5, 1912.

October 8, 1912, that is not my handwriting. I cannot place it.

October 11, 1912, I think that is in the handwriting of R. K. Weller.

Q. The same R. K. Weller who was employed there in the office during the time and whom you mentioned yesterday? A. Yes, sir.

October 19, 1912, I think that is Mr. Horowitz' handwriting.

Q. The same Charles Horowitz whom you named yesterday? A. Yes, sir.

Q. As being employed there in the office? A. Yes, sir.

October 24, 1912, my handwriting.

November 7, 1912, my handwriting.

November 12, 1912, handwriting of Mr. Cisner.

Q. And is that the same Cisner whom you mentioned yesterday as one of the employees there in the office? A. Yes, sir.

November 14, 1912, Horowitz.

November 20, 1912, I think that is my handwriting.

November 21, 1912, Mr. Horowitz.

October 26, 1912, Mr. Cisner.

October 21, 1912, my handwriting.

November 4, 1912, my handwriting.

October 15, 1912, my handwriting.

The next one is typewritten.

Mr. Kresel.— Give the date of it.

The Witness.— October 19, 1912.

Q. In whose handwriting do you think the figures are on the deposit slip of November 4, 1912? A. I cannot say under oath whose it is.

Q. How were these deposit slips made out and sent to the bank — did you take them to the bank always or were they sometimes sent by others? A. More often they were sent by others. They were taken there by others.

Q. These slips on which you kept a pencil memorandum of moneys received and paid out: you have stated on your cross-examination that when you came to make up this statement of November 13, 1912, that some of those slips were not there? A. I said that.

Q. And do you know what had become of them? A. No, sir, I may have mislaid them. They may have fallen down in the rush and bustle of the busy times we were having. They may have been unintentionally or accidentally mislaid; I don't know what became of them.

Q. Who assisted you in making up that statement? A. Mr. Horgan.

Q. Mr. Matthew Horgan? A. Yes, sir.

Q. Is he in Court today? A. Yes, sir.

Q. And have you seen him in Court during the various days when you have been present? A. Yes, sir.

Q. And was he there in the office during a portion of the time when these checks and moneys were being received by you? A. Oh, yes.

Q. Did he assist in opening letters and taking therefrom checks and moneys? A. He assisted in doing everything there was to be done.

Q. What assistance did he render you in making up this statement of November 13, 1912, if any? A. He brought down from his office an adding machine and helped me figure up and finally I put it in final shape.

Q. While you have been associated with Governor Sulzer, so far as you know, did he keep any books of account? A. So far as I know he didn't.

Q. What were his habits with reference to keeping his office well arranged and his matters in order? A. There was no method at all.

Q. This western lawsuit that you have spoken of. Do you know for what it was brought or what did you understand it was brought for? A. I think it was brought for services rendered to some company in which the Governor was interested.

The President.— How is it material? You don't want it. It is no harm but it does not help the record.

Mr. Brackett.— It is competent to show that it was not for services rendered in the campaign.

The President.— You can assume that. A man would not sue outside the State of New York for campaign expenses in New York State. I don't think we need it in evidence.

Q. Look at the statement marked Exhibit 3, November 13th, and tell me whether or no the Colonel Barthman check or the amount of the check appears there.

Mr. Kresel.— It is already in evidence.

The Witness.— Yes, sir, it is.

The President.— Really, Senator Hinman, you are falling into the same thing that you criticise in your adversary. The thing speaks for itself but as no objection has been raised by them you can go on.

Q. Take up the matter for a moment of the duties of the members of the bureau of deportation of alien insane. What were their duties?

Mr. Kresel.— We object to that. We have no objection to stating what his duties were, but not what others' duties were.

The President.— Yes. You have asked him if there were physicians underneath him. He may be able to show that for those places a physician would not be necessary, and it would be entirely proper in his position that a physician should not be employed. The Court cannot say. You may answer.

The Witness.— The duties during the time I was there, as near as I could learn, were to ascertain which of the patients in our State hospitals were citizens or not. If they were not citizens and had been in this country but three years they were deportable. Then it was up to us to make arrangements with the steamship company and to designate attendants to accompany them to the place where they should be sent.

Q. Did the members of that bureau have anything to do in the first instance with determining the sanity or insanity of the alien

insane who were subject to deportation? A. No, sir, they did not.

Q. Did their duties cover services related to persons who had already been declared insane, and who were inmates of State hospitals for the insane? A. That was the extent of their duties.

Mr. Hinman.— Nothing further.

The Witness.— May I amend an answer I made before?

The President.— Yes. If you have said anything and you want to correct your answer, you may do it.

The Witness.— In addition to the other duties, they had to interview the relatives of the patients, and ascertain whether they could afford to pay their passage, and whether the patient had relatives abroad to whom he could be sent.

The President.— Anything else?

The Witness.— That is all.

Mr. Hinman.— Nothing further.

Senator Griffin.— I would like to ask the witness a few questions.

The President.— Yes, you may.

By Senator Griffin:

Q. You stated this morning, in answer to Mr. Stanchfield, that you got the canceled checks from the Mutual Alliance Trust Company for the purpose of using them, and that you did use them in preparing your account of November 13th.

Mr. Hinman.— If the Court will permit me, the senator is in error in his assumption of what the witness testified to. He did not so testify, I am quite sure.

The President.—Well, ask him if he stated so, senator.

Q. My recollection is that the question of Mr. Stanchfield was to this effect: If these canceled vouchers were of so little importance, why did you take the trouble to go to the bank and

bring them back? A. They were given to me at the bank; I left my book to be balanced, to find out what money there was there.

Q. But in any event, you got your book from the bank? A. I did.

Q. And did you not state to Mr. Stanchfield on your cross-examination that you used these canceled vouchers for the purpose of preparing this statement of November 13th? A. Such as I could use, I did use.

Q. You did use them, however? A. Some of them.

Q. You had them before you? A. I did. I did not have a complete set before me, because the book was balanced, if I remember correctly, the latter part of October, and the statement was made up some time in November.

Q. Yes; but you had all of those canceled vouchers from the bank, which had been returned to you up to the date of the balancing of your book? A. Yes, sir.

Q. Now, you had not — A. (Interrupting.) All those that had been returned to the bank at that time.

Q. Returned from the bank? A. I mean returned to the bank.

By the President:

Q. All that were cashed at that time would be returned to you when your account was balanced? A. Yes, sir.

Q. That was charged against you in your books? A. Yes, sir.

Q. Now, the senator wants to know if you did not have all the checks that had come into the bank up to that time, before you, when you made this return? A. I had all that the bank had given me.

By Senator Griffin:

Q. Now, in addition to the canceled checks, you had the stubs in your check book, did you not? A. I did.

Q. And you also had the memorandum that you made from day to day of your receipts and disbursements? A. I did.

Q. As treasurer of this campaign committee? A. (No answer.)

The President.— Speak, witness.

The Witness.— Yes, sir.

Q. Now, there were three groups of memoranda that you had to refresh your recollection? A. Yes, sir.

Q. And to enable you to prepare an accurate statement? A. Yes, sir.

Q. Is that not so? A. That is so.

Q. And yet you stated on cross-examination yesterday, and you repeated today, that in answer to Governor Sulzer as to whether or not the statement was correct, that it was "as accurate as I could get it?" A. Yes, sir, I said that.

Q. Is that your language? A. That is the language.

The President.— Is that all?

Senator Griffin.— I would like to refer to the check of $2,500.

The President.— The Schiff check?

Mr. Hinman.— That has all been gone over.

By Senator Griffin:

Q. The Schiff check which you deposited on November 15, 1912? A. Yes, sir.

Q. You stated, I believe, that this check was delivered at your office? A. I did.

Q. To whom, and by whom? A. It was delivered to me personally by a messenger from Mr. Schiff's office.

Q. Did you show it to Governor Sulzer? A. I don't think I did. I deposited it.

Q. Did you tell him that you had received it? A. I did.

Q. Were you here yesterday — or were you here last week, when Mr. Stadler testified? A. No, sir, I was not.

Q. Have you been made acquainted with his testimony? A. No, sir, I have not.

Q. I call your attention to the record in this case, page 585, this question was asked of Mr. Stadler:

(Reading:)

"Q. I was not trying to get that letter. I was directing my inquiries to letters that you wrote to Mr. Sulzer about these various contributions. A. I wrote a letter — let me see — yes, I wrote a letter to Mr. Sulzer, I think, about the acknowledgment.

"Q. What about the acknowledgment? A. Acknowledging the amount of money that he received from the various parties from whom I had received the money.

"By the President:

"Q. As I understand your statement, you mean that you wrote to him that he should acknowledge to these various parties their contributions? A. Yes, your Honor."

By the President:

Q. Do you remember that Mr. Stadler wrote such a letter to Governor Sulzer, or whether such a letter was received in Governor Sulzer's office? A. I have no recollection of that.

Q. Do you recollect having acknowledged the contributions of these various contributors who were obtained through the instrumentality of Mr. Stadler? A. I don't remember acknowledging those letters, except as they were just now shown to me, and which that I said that I have no recollection of the entire transaction.

By Senator Velte:

Q. Mr. Sarecky, did you ever tell Governor Sulzer how much money you received? A. No, sir, I did not.

Q. You received you say about $12,500? A. About that.

Q. Did Governor Sulzer ever ask you how much you received? A. No, sir; I don't think he ever asked me, but when the campaign was over he asked me if there was any money left and I told him there was about $60. No, I said there was a little sum left, I don't remember the total. I found out and had my books balanced and he said whatever it is, to buy myself a suit of clothes with it.

Q. And all the money Governor Sulzer ever gave you was about five or six hundred dollars in actual — A. In actual cash.

Q. How much was the checks? A. As I have testified, there was the $200 Pinkney check, and there may have been one or two more checks, but not over $250.

Q. Did you call Governor Sulzer's attention to the amount of moneys shown to have been expended in the statement? A. No,

sir; I did not call his attention to anything in the statement. I presented it to him. I told him this was the statement and he asked me if this was all right. I said "it was as accurate as I could get it up," and he said "all right" and signed it.

Q. He took your word for it? A. Yes, sir.

By Senator Wagner:

Q. At the time you made up your statement you knew that you had received about $12,000 in campaign contributions, didn't you? A. I did.

Q. And in making out your statement you put in that you had received but $5,000 in campaign contributions? A. Yes, sir.

By Senator Duhamel:

Q. Had you prepared any campaign statements for Governor Sulzer before this time? A. I testified to that by saying that I may have done the clerical work; it may have been dictated to me and I typewrote it, but of my own knowledge I never got up a single campaign statement.

Q. In this statement which you prepared last fall, what section of the State law did you suppose you were complying with? A. I was complying with the printed portion on top of the statement.

Q. You were familiar with that section? A. Generally.

Q. Had anybody called your attention to the error you had committed in this matter of receipts? A. I didn't hear you.

Q. Had anybody called your attention to this matter of receipts which was not required by that section of the Penal Law? A. No one had called my attention to that.

Q. Had anybody called your attention to the corrupt practices act? A. No, sir.

Q. Nobody informed you that you had violated section 542 of the corrupt practices act? A. No, sir.

Q. The matter of personal expenses. Had anybody called your attention to section 546 of the corrupt practices act? A. I don't know what 546 is.

Q. As to statements of campaign receipts and payments. A. Not in detail. It was generally called to my attention that a statement had to be filed.

Q. Nor had anybody called your attention to section 350, which permits you to amend or correct? A. No, sir.

Q. Any statements? A. No, sir. My attention was never called to that.

By Senator Thompson:

Q. You have been with Governor Sulzer how many years? A. Since December, 1902.

Q. Do you remember when Governor Sulzer put on the statute books the corrupt practices act? A. No, sir; I do not.

The President.— That is all.

Mr. Brackett.— I think, if your Honor please, I ought to object to that question on the ground it does not state in accordance with the exhibit, when Governor Sulzer wrote and put it on the statute books.

The President.— What matter is it?

Mr. Brackett.—A part of the Court demand it.

The President.— That is all.

Mr. Hinman.— John N. Carlisle.

JOHN N. CARLISLE, a witness called in behalf of the respondent, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Mr. Hinman.— If your Honor please, there was marked for identification by the counsel for the prosecution a report made by Mr. Carlisle in connection with the so-called Prime bills. They have returned it and I haven't it here; I supposed it was here. I want to identify a duplicate of it by Mr. Carlisle.

Mr. Kresel.— Subject to correction, I think they can use a copy.

Mr. Hinman.— I ask, then, to have Mr. Carlisle's report, dated May 22, 1913, on those two bills, marked in evidence, with the understanding that if it differs, or if there is anything erroneous about it, it may be corrected.

(The document was marked Exhibit M-132.)

Mr. Hinman.— That is all, Mr. Carlisle.

Mr. Todd.— Just a moment, Mr. Carlisle.

Mr. Hinman.— There were not any questions asked him.

The President.— Not a single question was asked him.

Mr. Todd.— One moment. I would like to withdraw, then, the stipulation that we just made. We want the opportunity to ask him one question about one other report, that is all.

The President.— Is there any objection? To save him coming again? If it is only to identify one paper.

Mr. Hinman.— It is already in evidence and marked Exhibit M-132.

The President.— Do you want to identify another paper?

Mr. Todd.—Another report upon the same bill.

Mr. Hinman.— They can call him. This is a duplicate of what has already been marked for identification, and we had a right to suppose it was here.

The President.—All right. Mr. Witness, you will have to come again.

Mr. Hinman.— For the information of the Court I will read this report. It is short. Some of the members of the Court desire to have it read.

"*May 22, 1913*

Honorable William Sulzer
Governor of the State of New York
Albany, N. Y.

SIR.— In relation to Senate bill 2004 introduced by Senator Emerson, and providing for the reappropriation of certain unexpended balances for the improvement of new State routes in the counties of Essex and Warren, and Assembly bill 2373, introduced by Assemblyman Prime, designating additional State routes in the counties of Essex and Warren, which you have referred to me for an expression of opinion thereon, I would respectfully report as follows:

There is a great amount of opposition to these bills throughout the State generally upon the just ground that the

counties of Essex and Warren have now under construction the total mileage of State routes provided by section 120 of the highway law to be paid out of the first $50,000,000 and that it enables them to designate new State routes, and would be a violation of the provisions of the second referendum act.

The questions which arose under the first bond issue in relation to expedited routes were passed upon by the Legislature and by the Court of Appeals so that these questions are now closed matters. Due to the Legislature providing for the expedited routes, the counties of Essex and Warren were enabled to complete or put under contract their entire system and there is practically sufficient moneys on hand of the first $50,000,000 bond issued to pay for these routes.

The second referendum act providing for the second $50,000,000 provides arbitrarily that $20,000,000 of the amount raised should be apportioned among the counties, according to the provisions of the act, and that no State routes should hereafter be built except the particular State routes which were already designated in section 120 of the highway law.

As a result of the legislation and the framing of the second referendum act, the situation is now that there is a provision under the second referendum act providing the sum of $418,000 for State routes in the county of Warren. There are no State routes in Essex and Warren counties except those as designated by section 120, which are now under contract and if this money can be available in some way, it will have to revert and go into the sinking fund to pay the bond issue.

In order to fairly consider the questions involved the people of the counties of Essex and Warren contend that the entire problem should be settled upon the wording and meaning of the second referendum act, and that this act clearly provides that they were entitled to their share of the second fifty million dollars, and that they should not be foreclosed from the benefits of having their equitable proportion of this amount.

The situation is also presented that this question is entirely confined to the counties of Essex and Warren and while there are no other counties that are similarly situated, yet before the next session of the Legislature all the balances

in such counties that were available will have to be expended and no other county can ever come again before the Legislature and ask for similar legislation.

The question then at issue is whether or not these bills should be signed and the State be permitted to build in the counties of Essex and Warren State routes with such money as may be available, or whether it shall be permitted to revert to the sinking fund. While upon its face it would look as if these bills would result in transferring $782,000, as a matter of fact the amounts which will be transferred will not exceed $300,000 in Essex and $75,000 in Warren, and will only make available approximately $375,000 for use for the additional State routes, and the balance of the money will either have to be used in improving existing State routes or revert into the sinking fund.

If the signing of these bills would create a condition whereby in the future similar legislation could be enacted, I would be opposed to the signing of the bill, but in view of the fact that the counties of Essex and Warren are sparsely populated and that the proposed routes are practically through sections which will be used by summer traffic and by the people of the State generally, and that if the localities were called upon to build these roads, they probably would never be constructed, and they are greatly needed, I think the bill should be signed.

This matter was very carefully considered by the Legislature and was carried by a large majority in both houses showing that the sentiment of the members of the Legislature was favorable to the utilization of this money rather than allowing it to revert into the sinking fund.

My decision is also reached upon the further ground that not a dollar of this money appropriated for the counties of Essex and Warren of the second fifty million could possibly be used in any other county of the State and that the appropriation of the unexpended balances does not take from any other section of the State a single dollar.

Yours very truly,

J. N. CARLISLE,
Commissioner."

Mr. Hinman.— Hugh J. Reilly.

HUGH J. REILLY, a witness called in behalf of the respondent, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Mr. Reilly, where do you live? A. I live in the Prince George Hotel, in New York.

Q. Speak louder so that the farthest judge can hear you. A. I live in the Prince George Hotel, in New York, and in Acra, Greene county.

Q. What is your age? A. My age?

Q. Yes. A. 70, this winter.

Q. Do you know Governor Sulzer? A. Yes.

Q. Did you loan him any money in 1912? A. Yes, sir.

Q. How much?

Mr. Stanchfield.— I object to that as irrelevant and immaterial.

The President.— I think that comes within his right. If it is near enough to the time to show that this money that he gave was from other moneys — you may answer. A. Yes, sir.

Q. When did you make that loan?

Mr. Brackett.— You didn't get an answer to your question.

Q. When were those loans made? A. They were made at different times, from August to November.

Q. In what amounts? What was the total amount of the moneys so loaned by you to Governor Sulzer? A. $26,500.

Q. Has any part of that money so loaned by you to Governor Sulzer been repaid? A. No, sir.

Q. Are you able to fix the first date on which you made a loan to Governor Sulzer in August or September or October or November, 1912? A. The first date was on August 8th.

Q. How much was it?

Mr. Stanchfield.— August 8th?

Q. August 8th? A. Yes, sir.

Q. How much was it? A. That was $1,500.

Q. August 8th, $1,500. When was the next loan made by you to Governor Sulzer? A. September 5th.

Q. How much? A. $5,000.

Q. $5,000. When was the next? A. September 12th.

Q. How much? A. $5,000.

Q. When was the next? A. September 14th.

Q. How much was it? A. $3,000.

Q. When was the next? A. October 7th.

Q. How much was that? A. $10,000.

Q. When was the next loan made? A. November 8th.

Q. How much? A. $2,000.

Q. Were you subpoenaed as a witness before the Frawley investigating committee? A. Yes, sir.

Q. Did you testify before that committee? A. Yes, sir.

Q. Did you testify to these loans?

Mr. Stanchfield.— Wait a moment. I object to that.

The President.— I do not see how it is material or competent.

Mr. Hinman.— Nothing further.

The President.— Cross-examine.

Cross-examination by Mr. Stanchfield:

Q. Mr. Reilly, are you the same Mr. Hugh J. Reilly who was interested in the years 1906, 1907, 1908, 1909, 1910, 1911, or 1912, in what is known as the Cienfuegos contract in the island of Cuba? A. Yes, sir.

Q. That contract, generally speaking, was for the construction of a system of waterworks on the island of Cuba at the city of Cienfuegos, was it not? A. Yes, sir.

Q. Now, was there a gentleman by the name of Jose Antonio Freas, a sometime senator of Cuba, that was interested in that business contract with you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.—Well, that is —

Mr. Stanchfield.— That is preliminary. That can't hurt anybody.

The President.— I imagine so. You may answer, witness.

The Witness.— He was interested.

Q. I didn't ask you how. I don't want to spend the time. I just want to know if he was interested? A. He was a lawyer.

Q. Was he interested directly or indirectly in that business?

The President.— I think he may answer. Only as a lawyer, or did he have an interest?

The Witness.— He had an interest for being a lawyer.

Q. Very well. I am not concerned how he had it; he had an interest in it. Now, that contract at one time was revoked or rescinded by the Cuban authorities, was it not? A. Yes, sir.

Q. And you sought its reinstatement?

Mr. Hinman.— If the Court please, that is objected to on the ground that it is immaterial and irrelevant.

The President.— How is that material?

Mr. Stanchfield.— I will get at it in a moment.

The President.— Of course, you cannot show the Court anything that this witness has done —

Mr. Stanchfield.— I will get right at it as fast as I can.

The President.—You cannot have him discredit the defendant here —

Q. You sought, did you not, to have it reinstated? A. Yes, sir.

Mr. Hinman.— If the Court please, I make the same objection on the same ground.

The President.— Objection sustained.

Q. At the time you had that contract, and while it was rescinded, was Mr. Sulzer — Governor Sulzer — a member of Congress?

Mr. Hinman.— That question is objected to on the ground that it is incompetent and irrelevant.

The President.— Objection sustained.

Q. Did you go to Washington and enlist the services of Congressman Sulzer to aid you in the reinstatement of that contract?

Mr. Hinman.—I make the same objection on the same grounds.

The President.— Sustained.

Q. And at that time, did Governor Sulzer, then Congressman Sulzer, write letters for you to the President of the United States in regard to the restoration of that contract?

Mr. Hinman.— I make the same objection on the same ground.

The President.— Same ruling.

Q. Was there, in the summer of 1912, an instalment paid to you or the corporation in which you were interested, for the balance due upon the work of constructing those water works at the city of Cienfuegos, the sum of upwards of half a million dollars?

Mr. Hinman.— I make the same objection on the same ground.

The President.— Same ruling.

Q. Now, before August 8th, Mr. Reilly, 1912, you had made a loan to Governor Sulzer, hadn't you?

Mr. Hinman.— That is objected to on the ground that it is immaterial and irrelevant, if your Honor please.

The President.— I think he may ask him that.

Q. You had made before that date a loan to Governor Sulzer, hadn't you? A. (No answer.)

The President.— Answer, witness.

The Witness.— Yes, sir.

Q. At that time, you took from Governor Sulzer a note and collateral security, did you not? A. Yes, sir.

Q. When you made this loan on August 8th, of $1,500, on Sep-

tember 5th of $5,000, on September 12th of $5,000, on September 14th of $3,000, on October 7th of $10,000, and on November 8th of $2,000, did you take from Governor Sulzer any written evidence of that loan or of those loans? A. No, sir.

Q. Did you take any collateral security of any kind? A. No, sir.

Q. Was any time of payment with reference to any of those loans agreed upon? A. He was to pay in February.

Q. First calls for yes or no. I asked you was any time for the payment of them agreed upon between you? A. Yes, sir.

Q. At the time when each loan was made? A. No, sir.

Q. And when was there a time for the payment of that, if ever, agreed upon? A. When he got the $10,000.

Q. That was on October 7th? A. Yes, sir.

Q. With reference to the four preceding loans aggregating $14,500, at the time when you say they were made, no time whatever as to their payment was ever talked of, was there? A. Yes, sir, he was to pay it back as soon as he was able to; as quick as he could.

Q. Is that all? A. That was all, sir.

Q. That is all that was said upon the subject of that? A. Yes, sir.

Q. Was there anything said as to the rate of interest? A. No, sir.

Q. Now, when you made these loans, as you claim, they had been, on the 8th of August, the 5th of September, the 12th and 14th of September, the 7th of October, and the 8th of November, did you make them by check? A. No, sir.

Q. You made those loans, did you not, in bills, in currency? A. Cash.

Q. Well, I say in currency? A. Yes, sir.

Q. In currency? A. Yes, sir.

Q. In other words, you would send to your bank and get bills and let him have them? A. Yes, sir.

Q. Was anyone present at the time except you and the Governor? A. No, sir.

Mr. Stanchfield.— That is all, sir.

Mr. Hinman.— Nothing further.

Mr. Kresel.— One minute.

Q. The first loan to which I called your attention, when you say you did take a note and collateral, in that loan, in that instance, you gave him your check, didn't you? A. No, sir, I gave him cash; but that loan was two years before that.

Q. Wasn't it by check? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Have you looked up your books? A. Yes, sir.

Q. When? A. You mean the $1,500 loan?

Q. No, I am talking about a loan —

The President.— Just call his attention to it; he doesn't catch it.

Q. I am talking about a loan of $10,000 made in the month of June, 1911, when you took his note, and the collateral security.

The President.— That is the first loan of which you have spoken on the stand.

Q. I ask you whether, when you made that loan in 1911, in June, it was not by check? A. No, sir, it was cash I gave him, and he gave me stock —

Q. I don't care anything about what it was; it was collateral.

By the President:

Q. How did he pay you? A. Cash.

Q. By cash you mean bills? A. Yes, sir.

Mr. Stanchfield.— That is all.

Mr. Hinman.— Nothing further.

Mr. Hinman.— Is Mr. May, Secretary of State, or someone from his office, present? Do you want Mr. Reilly for anything further, Mr. Stanchfield?

Mr. Stanchfield.— No. Here is the representative from the Secretary of State's office.

Mr. Hinman.— Thank you. Take the stand. You have been sworn, have you not, Mr. Adams?

Mr. Adams.— Yes.

HENRY G. ADAMS recalled.

Examination by Mr. Hinman:

Q. Have you produced from the office of the Secretary of State, some documents you were subpoenaed to produce? A. I have.

Mr. Hinman.— I offer in evidence a paper produced here by the witness from the Secretary of State, being the original appointment of John A. Hennessy, as a special commissioner to examine and investigate the management and affairs of the State Commission of Highways, with power to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath, and to require the production of any books or papers deemed relevant or material.

Mr. Stanchfield.— What is all this about? Are you offering it in evidence?

Mr. Hinman.— Yes.

Mr. Stanchfield.— I object to it as incompetent and irrelevant.

The President.— I will let it in.

(The paper was marked Exhibit R-2.)

The President.— All this evidence is of such —

Mr. Stanchfield.— It is the appointment.

The President.— What I mean is whether the appointment is valid or not, but as to whether there was any power to appoint such a person, why, of course —

Mr. Hinman.— I call the Court's attention to the fact that respondent's Exhibit 2, which has just been marked, states that the appointment is made under chapter 30 of the Laws of 1909, as amended by chapter 646 of the Laws of 1911, and chapter 83 of the Laws of 1912. This paper shows it was filed in the

office of the Secretary of State on March 25, 1913, and it is dated March 25, 1913.

I also offer in evidence another document produced by the witness from the office of the Secretary of State, being an original document, or what purports to be an official document from the Governor, reciting the appointment of John A. Hennessy under the paper that has just been introduced in evidence, and enlarging his powers so as to enable him to investigate the management and affairs of any department, board, bureau or commission of the State of New York, and with power to subpoena witnesses and compel their attendance and their evidence.

Mr. Stanchfield.— The Presiding Judge understands, I assume, that Mr. Hennessy has not been even a witness here.

The President.— I don't know that it will amount to anything, but I will take it.

Mr. Hinman.— It is dated July 31, 1913, and was filed in the office of the Secretary of State on August 1, 1913.

(The paper was marked Exhibit R-3.)

Mr. Hinman.— That is all, Mr. Adams.

Mr. Kresel.— That is all. No cross-examination.

(Witness excused.)

Mr. Hinman.— John A. Hennessy.

JOHN A. HENNESSY, a witness called on behalf of the respondent, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Where do you reside? A. 590 St. Marks avenue, Brooklyn.

Q. Are you the John A. Hennessy named in the appointment made by the Governor in March, 1913, to investigate the Highway Department of the State? A. I am.

Q. Under that appointment, what did you do?

Mr. Brackett.— Objected to as wholly incompetent and immaterial.

The President.— I don't see that that is competent. How is that material?

Mr. Hinman.— This is the ground it is material upon, if your Honor please. Governor Sulzer, in March of this year, which was within three months after he entered upon the discharge of his duties as Governor, appointed John A. Hennessy, the witness, to investigate the affairs of the Department of Highways of the State of New York. We offer to show, and the purpose is to show by the witness, that under that appointment, and under the provisions of the statute authorizing such appointment, he made an investigation of the conditions in the Highway Department in the State, and of the manner in which the contracts for the construction of State roads had been let and had been performed. That he made such investigation, going back into the year 1912, at the time when the State Highway Commission consisted of three members, of whom Duncan W. Peck was one; that that investigation shows frauds and corruption in that department, and in the highway construction; that later, and in July, 1913, the powers of this witness were so enlarged as to enable him to investigate the department of Superintendent of Public Works of the State, of which Duncan W. Peck was the head, and that he made that investigation, and that investigation developed fraud and fraudulent practices in that department and that Hennessy's report of those investigations was published in the papers, the results of it, that he subpoenaed paymasters and superintendents, and division superintendents before him, to examine them. They refused, one of them, to appear and be examined. That an order was granted for the witness to appear or show cause why he should not be punished for contempt. That was a matter of public notoriety, public knowledge generally, and Duncan W. Peck, when he went upon the stand the other day, knew that an investigation of his department was being made, and frauds were being discovered therein, and that if this respondent remained in office, he must go.

I have stated what we desire to show. It is also offered under the second question that your Honors have promulgated to be voted upon here, and that is as to the public service of the respondent, what he was doing as Governor, and whether or not he was discharging his duties in investigating the different departments

of the State and endeavoring to put the departments of the State on an efficient and honest basis.

The President.— As I understand the rule of law, as to the witness Peck, you cannot show anything discrediting the witness, that is that he has committed a crime, except by his own mouth. Beyond that you cannot go. Undoubtedly you can show expressions of hostility. That is original evidence. That can be done, but to show this man has committed fraud, no.

Mr. Hinman.— That is not the proposition. The proposition is just this:

The President.— That I don't understand.

Mr. Hinman.— Yes, if I may be permitted. The evidence we claim will tend to show and will show that Duncan W. Peck had an interest in this proceeding here now, and had a motive for testifying in such a way as would eliminate this respondent from office and stop this investigation.

The President.— I don't see how you can go into that. That will involve an entirely collateral issue. It seems to me—of course, the Court has already announced it is disposed to rule very liberally on both sides as to testimony, but there does seem to be some limit, so the Court cannot go beyond that and wholly ignore the rule of the Court. If you can show expressions of hostility or personal hostility to the defendant here, that is original evidence, but anything that discredits the witness generally you are confined to getting out of his own mouth.

Mr. Hinman.— Just one other thought. Evidently I have not made myself quite clear, your Honor. We seek to show also by that same evidence, that the respondent has made a good Governor and has been discharging the duties of his office faithfully and well.

The President.— I don't think you can go into that.

Mr. Hinman.— I have covered it, then.

Mr. Kresel.— That is all.

Mr. Hinman.— That is all, Mr. Hennessy.

Mr. Brackett.— If the Court please, I am sure the purpose of the offer has already been subserved.

The President.— If you have got it —

Mr. Hinman.— I am still behind the other side in that respect.

The President.— If you feel that you are helpless to remedy it, why say anything?

Mr. Hinman.— Nothing further.

(Witness excused.)

The President.— If the members of this Court — because every member has the same power as the Presiding Judge — desire to question that ruling, they may do so. If they don't why it will stand.

Mr. Herrick.—The respondent rests.

Mr. Stanchfield.— We have two or three other witnesses to call, in rebuttal.

REBUTTAL

WEBB FLOYD, recalled in behalf of the managers in rebuttal.

Examination by Mr. Kresel:

Q. Mr. Floyd, you are the president of the Mutual Alliance Trust Company? A. Yes, sir.

Q. You know Mr. Sarecky? A. I do.

Q. The gentleman who was a witness here this morning? A. I do.

Q. Do you remember having had a conversation with Mr. Sarecky in the month of October, 1912? A. I do.

Q. And where was that conversation had? A. At our office, 35 Wall street.

Q. Was that conversation with reference to deposits?

Mr. Herrick.— Wait one moment. No leading questions.

Mr. Kresel.— Well, it being rebuttal —

The President.— I think he must call his attention, otherwise he might ask about a conversation that had no relation to this matter.

Mr. Herrick.— Did you notice the question?

The President.— I thought I did.

Mr. Herrick.— This is in rebuttal of Sarecky's testimony?

Mr. Kresel.— It is.

The President.— I think they ought to call attention preliminarily to it.

Mr. Kresel.— That is as I understand the matter.

The President.— You are right, counsel.

Q. Was that conversation with reference to obtaining some authority from Mr. Sulzer for Mr. Sarecky to indorse Sulzer's name on checks which he offered for deposit drawn to Mr. Sulzer?

Mr. Herrick.— One moment. I thought that was a collateral matter, and they are bound by the answers of the witness.

Mr. Kresel.— How is that a collateral matter?

The President.— Why, I am not clear on that. You may ask it.

Q. What do you say, Mr. Floyd, with reference to that? A. It was.

Q. Please state to the Court what that conversation was.

The President.— How is that material more than the fact? It seems to me this ought to be limited.

Mr. Kresel.— I want to bring out what he asked Sarecky to do, and what Sarecky did.

The President.— How is that material, beyond the fact? You have got that fact.

Mr. Kresel.— Sarecky testified he didn't have any such conversation at all.

The President.— And this witness says he did. Now, you have got it.

Mr. Kresel.— Let me just put this one question.

Q. After you had that conversation, did you receive the letter which is marked in evidence Exhibit 29, and which I now show you?

Mr. Herrick.— That is objected to.

The President.— I think he may show that, although I think it may appear to be already in evidence.

Mr. Kresel.— It is already in evidence.

Mr. Herrick.— It is not in evidence; it was after the conversation with this witness. The purpose, I suppose, of putting the question to Sarecky was for the purpose of discrediting him.

The President.— I do not think so.

Mr. Herrick.— Necessarily for that purpose and couldn't be for any other purpose. That being so, they are bound by his answer. It is a collateral matter and they had no business to go further than the witness himself.

The President.— I will sustain the objection. Rest on what you have got.

Mr. Kresel.—Very well. If your Honor please, that is sufficient. That is all, Mr. Floyd.

The President.— Haven't you testified to that before?

The Witness.— No, sir.

The President.— I thought the witness had testified to this before.

The Witness.— Not specifically to this.

Mr. Kresel.— Not specifically to this conversation.

Cross-examination by Mr. Herrick:

Q. Do you know Mr. Cisna? A. Mr. Cisna?

Q. Yes, Mr. Cisna? A. No, I don't know Mr. Cisna.

Q. Do you know more than one clerk that came from Mr. Sulzer's office to make deposits? A. I don't know.

Q. Can you tell the difference between Mr. Sarecky and any

other person that came from Sulzer's office? A. I know Mr. Sarecky.

Q. You don't know so as to make any comparison between him and any other person that came from Mr. Sulzer's office? A. I am perfectly familiar with Mr. Sarecky's appearance.

Q. How often have you seen him? A. A number of times.

Q. How often, I have asked you? A number may mean two. A. Why, six.

Q. Six. Is that all you recall? A. I would not swear to more.

Q. Going over a period of what time? A. A number of years.

Q. How many years? A. The times I recall are all within the last — since this account was last opened.

Q. That was when? A. In August, 1910.

Mr. Herrick.— That is all.

By Mr. Kresel:

Q. You have no doubt, have you, that you had that conversation?

The President.— I think you have got that.

Mr. Kresel.—Very well, that is all.

(Witness excused.)

Mr. Kresel.— Mr. Egbert.

GEORGE W. EGBERT, a witness called on behalf of the managers in rebuttal, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Egbert, are you a deputy in the office of the Superintendent of Banks of the State of New York? A. I am.

Q. And are you at present in charge of the business of the Carnegie Trust Company, which was closed down some time ago? A. Yes, sir.

Q. And have you been in charge of the affairs of that trust company since it was closed? A. I have.

Q. And is it the fact that it was closed some time in January, 1911? A. January, 1911.

Q. Have you in your possession and under your control the books of the Carnegie Trust Company? A. I have.

Q. Have you, at the request of the managers, made an examination of those books with reference to the account in the Carnegie Trust Company of William Sulzer?

Mr. Herrick.— That is objected to as incompetent, immaterial and not rebuttal.

The President.— How is it material?

Mr. Kresel.— If your Honor will recall, Mr. Melville Fuller testified that in a conversation which he had with the respondent, the respondent told him that the securities which the respondent had brought to Harris & Fuller were the securities of Mrs. Sulzer, and that Mrs. Sulzer had had a loan upon those securities at the Carnegie Trust Company, and that he, the respondent, had been compelled to give notes for that loan, and that that became irksome, and that thereupon he took the securities from the Carnegie Trust Company and took them down to Harris & Fuller. Now, we propose to show that Mrs. Sulzer never had any loan at the Carnegie Trust Company, either upon that collateral or any other collateral.

The President.— Why was that not part of your affirmative case? You had that statement.

Mr. Kresel.— It was brought out on cross, or rather redirect.

The President.— It was brought out by you, as I recollect, that he said he told him that he could not prove it by his books, but the Carnegie Trust Company books might show it.

Mr. Kresel.— Exactly. In addition to Fuller's testimony, if your Honor will recall the testimony of the respondent's witness, Mr. Josephthal, wherein again Mrs. Sulzer's name was brought in.

Mr. Hinman.— Not in connection with the Carnegie.

Mr. Kresel.— No. Your Honor will also recall the testimony of Mr. Fuller was given very late in our part of the case, and we really didn't have any opportunity to get this account.

The President.— We have opened the case once for you gentlemen. What was Josephthal's testimony?

Mr. Hinman.— He did not mention the Carnegie in any way, shape or manner; but did mention the loan at Harris & Fuller's which he took up.

The President.— You have got that. You have got the fact. You can argue to the members of the Court. If that will show Mrs. Sulzer's name, why it can be produced. You can argue that.

I think I will sustain the objection.

Mr. Kresel.— Very well, if the President sustains the objection.

The President.— Any new matter that was brought out by the defense you may rebut.

Mr. Kresel.— Mr. Miller.

JAMES C. MILLER, a witness called in behalf of the managers in rebuttal, having been first duly sworn, in accordance with the foregoing oath, takes the stand.

Mr. Kresel.— I want to call the attention and ask your Honor whether this may come under the same ruling. What I propose to show with this witness —

Mr. Herrick.— (Interrupting.) Wait a minute. We object to these propositions what they propose to show.

Mr. Kresel.— Well then, I will go on.

The President.— I think he may show what he proposes to do.

Mr. Kresel.— I desire to show by this witness the state of the account of Mrs. Sulzer in the Fifth Avenue Bank during the campaign of 1912.

Mr. Herrick.— That is objected to as incompetent and immaterial and not rebuttal at all.

The President.— How is this rebuttal?

Mr. Kresel.— I might state to your Honor that it is not and we cannot argue that it is rebuttal.

The President.— Well, then, I think we will stand on the same ruling.

Mr. Kresel.— Very well, that is all. We have nothing else. The managers rest.

The President.— Now, gentlemen, we are ready for the summing up or the closing argument, to speak accurately.

Senator Wagner.— May I suggest that the President get the views of counsel on both sides on the question of summing up and that then the Court go into private consultation to determine our procedure.

The President.— I think that is a very wise suggestion. That was the intention of the Court, that we find out what the counsel desired, and then we will go into consultation.

Mr. Richards.— Presiding Judge, on behalf of the managers, what we suggest is this: That two counsel on each side —

The President.— Gentlemen, one of your associates is discussing —

Mr. Richards.— If they are consulting I won't interrupt them.

Mr. Brackett.— While we are waiting may we pass around the photographs of some of the exhibits that have not yet been distributed?

The President.— Yes, you can utilize the time in that way.

Mr. Herrick.— I think, if it please the Court, that five hours for each side will be satisfactory. Then we will determine how that time shall be divided up on each side.

The President.— Is that satisfactory to both sides?

Mr. Richards.— That is satisfactory, yes, sir.

The President.— Well then, practically you want —

Mr. Herrick.— It would mean a day apiece practically.

The President.— Five and a half hours, yes, sir. Now, have you got anything to say about the order?

Mr. Richards.— Naturally I would say our own suggestion had been, we suggested to them that they should open and then one from our side, then a reply, and then a re-reply.

The President.— That is the natural way, if that is satisfactory.

Mr. Herrick.— You say a reply and re-reply. You mean an answer and a reply.

Mr. Richards.— Yes, an answer and a reply.

The President.— Instead of having you make the whole argument at one time, one counsel for the respondent will be heard —

Mr. Herrick.— And will be followed by the counsel for the managers, and then counsel for the respondent, the ordinary way of summing up a case.

The President.— Now, gentlemen, have you any further suggestions before the Court is cleared.

Judge Werner.— Mr. President, it seems to me that, in view of the very reasonable suggestions of counsel, it will hardly be necessary to go into private session. Everyone within my hearing here has expressed entire satisfaction with the arrangement which counsel have made.

The President.— Is there any dissent from Judge Werner's statement, gentlemen?

Senator Wagner.— May I ask the President when the summing up is to begin, if that has been determined?

The President.— It will begin tomorrow morning.

Mr. Herrick.— It will begin tomorrow morning. There is one thing that occurs to me. I expected Mr. Marshall to be here; he is preparing the summing up. It might be that he would want some extension of time, or if he could not finish summing up, he may want leave to have it printed. I ask to reserve that for him.

The President.— But you will be substantially ready to go on?

Mr. Herrick.— Oh, yes, we will be entirely ready to go on.

The President.— Gentlemen, is that satisfactory? Gentlemen of the Court, if there is no dissent the Court will assume that the suggestion of the counsel is satisfactory to all the members. Is the Presiding Judge correct in that?

(No response.)

The President.—We will adjourn now until tomorrow morning at 10 o'clock.

Thereupon at 4.10 o'clock p. m. an adjournment was taken until Thursday, October 9, 1913, at 10 o'clock a. m.

EXHIBIT R-2

STATE OF NEW YORK

Executive Chamber.

To All To Whom These Presents Shall Come, Greeting:

Know Ye, that pursuant to section 8 of the executive law, I have appointed, and by these presents do appoint

JOHN A. HENNESSY

of New York City, as a special commissioner to serve without compensation, to examine and investigate the management and affairs of the State Commission of Highways as constituted under chapter 30 of the Laws of 1909, as amended by chapter 646 of the Laws of 1911 and chapter 83 of the Laws of 1912, and the Department of Highways constituted under chapter 80 of the Laws of 1913, including the office of the former "State Superintendent of Highways" and of the "Commissioner of Highways."

The said John A. Hennessy is hereby empowered to subpoena and enforce the attendance of witnesses; to administer oaths and

examine witnesses under oath and to require the production of any books or papers deemed relevant or material.

And I hereby give and grant unto the said John A. Hennessy, all and singular the powers and authorities which may be given or granted unto a person appointed by me for such purpose under authority of the statute aforesaid.

In witness whereof, I have subscribed my name to these presents and caused the Privy Seal of the [SEAL] State to be affixed hereto at the Capitol in the city of Albany this twenty-fifth day of March in the year of our Lord one thousand nine hundred and thirteen.

(Signed) WM. SULZER.

By the Governor:

CHESTER C. PLATT,

Secretary to the Governor.

EXHIBIT R-3

STATE OF NEW YORK

Executive Chamber.

To All To Whom These Presents Shall Come, Greeting:

Know Ye, that pursuant to section 8 of the Executive Law, I have appointed and by these presents do appoint

JOHN A. HENNESSY

of the city of Albany, to examine and investigate the management and affairs of any department, board, bureau or commission of the State of New York; the said John A. Hennessy is hereby empowered to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath, and to require the production of any books or papers deemed relevant or material.

And I hereby give and grant unto said John A. Hennessy

all and regular the powers and authorities which may be given or granted unto a person appointed by me for such purpose under authority of the statute aforesaid.

In witness whereof, I have subscribed my name to these presents and caused the Privy Seal of the [SEAL] State to be affixed hereto at the Capitol in the city of Albany this thirty-first day of July in the year of our Lord one thousand nine hundred and thirteen.

(Signed) WM. SULZER.

By the Governor:

CHESTER C. PLATT,

Secretary to the Governor.

THURSDAY, OCTOBER 9, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Herrick.— Mr. Marshall will open, if the Presiding Judge please.

The President.— Before the address of counsel, there is one piece of evidence here that must be stricken out. That was the Kohler check. It was to have been connected with this defendant, and I do not remember that any such connection was subsequently made, if that was the one that was referred to.

Mr. Herrick.— I didn't know it was in evidence.

Mr. Stanchfield.— The check did not go in evidence, if the Presiding Judge please.

The President.— Then it is unnecessary to strike it out. Is the letter out, too?

Mr. Herrick.— The letter I supposed was not in.

The President.— That is disposed of then.

Mr. Herrick.— If it is in I move to strike it out.

The President.— If it is in, that and the check will be stricken out.

Mr. Marshall.— May it please the Court: We have now reached the stage in these momentous proceedings when it becomes necessary to review the allegations and the proofs which have been submitted to this tribunal, with a view to determining the guilt or the innocence of the respondent. The responsible duty of presenting the outline of the contentions on behalf of the Governor has been assigned to me. Though never shirking any responsibility that it may become my lot to assume, I nevertheless approach

the performance of the present duty, not with false modesty, but with extreme diffidence, and with a full realization of the disparity of my powers and the greatness of the task which has devolved upon me.

We are on the threshold of an event which will make a permanent impression upon the history of our beloved State, which will entail consequences far beyond our ken, which will determine whether or not the reign of law has ceased, and that of passion and prejudice has begun. While the duty which rests upon counsel cannot be too greatly emphasized, that which rests upon this Court is infinitely greater, for while it is given to counsel but to present arguments, it is for the Court to decide, to adjudge, to create a precedent which will inevitably and irrevocably declare the policy of this State with regard to the permanency of its institutions and the independence of those who make up the sum total of its official life.

The picture which is now unfolded before the vision of the civilized world is almost unique in the experience of mankind. The Governor of the greatest state in the Union, with a population of ten million of free men, who was elected less than one year ago by an unprecedented plurality, is upon trial, before a Court which is composed of the judges of the Court of Appeals and of the senators, on an impeachment which charges him with the commission of various acts, which, it is asserted, entitle the complainants to a judgment of forfeiture of that office, and which will place an everlasting stigma upon his name, and upon the honored office to which he was thus triumphantly chosen by the suffrages of his fellow citizens, amid loud acclaim.

Who is this respondent, who has thus been placed, as it were, in the prisoner's dock, against whom there is asked to be pronounced the everlasting doom of infamy and shame, who is sought to be driven out of the office to which he was exalted but a few short months ago, and to be forever deprived of the right to hold public office and to serve the State? It is William Sulzer, who has just passed his fiftieth birthday, which was celebrated by those who stood highest in the civic and political life of the State, with congratulations and rejoicing, an occasion when even some of those who are now serving as impeachment managers, indulged

in loud sounding praises of him, and were among the foremost to do him honor.

For more than twenty-five years he has been a prominent figure in the political activities of the State and of the nation. For five years he served in the Legislature of the State. During one year of that period, when barely thirty years of age, he was the speaker of the Assembly. For eighteen years he served in the national Congress, honored and respected, a power for good, chosen to serve on important committees, where all of his energies were directed to the betterment of human conditions and the improvement of the public service. It was given to him to serve in the last Congress as the chairman of the important Committee on Foreign Affairs, and it is a matter of public history that in that exalted station, he stood in the forefront of those who protected the sanctity and integrity of American citizenship, by bringing about the practically unanimous termination of the treaty between the United States and Russia, solely because of the unjust discrimination which was practised as against American citizens. It was due to his energetic initiative, that the Chinese Republic was recognized by our Government, and that the assertion of human rights in many a land was stimulated and encouraged. He was largely instrumental in keeping open the doors of opportunity to the immigrants from foreign shores. He introduced and brought about the passage of the law which added new dignity to labor by the creation of the Department of Labor, and its representation in the presidential cabinet. He was a pioneer in that new field of legislation which has for its purpose the conservation of our natural resources.

He was nominated for Governor in an open convention. During his campaign he visited every corner of the State, and met the constituency which elected him, face to face. Upon his election, he mapped out a broad policy of reform, intended to carry out the platform of his own political party, and the pronounced wishes of the electorate. He found the finances of the State in a scandalous condition. At his instance, a committee of investigators was appointed to examine into the various State departments, and to suggest improvements. As a result of this action, the Highway Department was entirely reorganized, the Department

of Efficiency and Economy was created, the State Architect, under whose administration abuses had arisen, was removed; the Health Department, the Labor Department, the Prison Department, were all subjected to a complete revision, and a movement was set on foot for the reorganization of the Banking Department as well. The eyes of the people were opened, as they had never been before, to abuses and evils which cried to heaven for correction and redress.

And now William Sulzer, who wrought all this, stands before you today, on trial for his very existence, charged with being a common criminal, and for what? Not because while an incumbent of office he has been guilty of official corruption; not because he has taken one dollar of the people's money, or has enriched himself at their expense, or has received a bribe, or has done aught to injure the public weal; not because he has been guilty of treason, of a violation of the Constitution, or of his oath of office; not because he has neglected the performance of his official duties, or has absented himself from the seat of government, or indicated, to the slightest degree, a lack of zeal for the public welfare. It is not charged that he was incompetent or ignorant, or incapable of performing the duties of his office, or that he has not been duly watchful of the interests which he has sworn to guard. It is not charged that he has entered into a conspiracy with those who would loot the public treasury, or who would batten on contracts improvidently or corruptly drawn without safeguards to forestall adequately the possibility of fraud and collusion. The achievements of his administration, as they have passed before the eyes of the people, absolve him from all suspicion of guilt in regard to any of the offenses contained in the usual category of official misconduct.

And yet the impeachment managers are now seeking to remove William Sulzer from the office which he has thus honorably filled, fifteen months before the expiration of the term for which he was elected. If Macaulay's celebrated New Zealander, or Montesquieu's famous Persian were now among us, he well might ask, why, in this land of boasted liberty and freedom, one deserving so well at the hands of his fellowmen should be subjected to this awful degradation, and why the State which he has served so well

should be involved in his ruin and disgrace. The only answer which could be vouchsafed to them is to be found in the articles of impeachment, which, as the record shows, were adopted at dawn of the fatal 13th day of August, 1913, by the Assembly of the State of New York, in less than thirty-six hours after the presentation of the reports of an investigating committee which the members of the Assembly could not possibly have read or considered when they voted the adoption of these articles.

The case against Governor Sulzer must stand or fall on these charges. Nothing can be added to them. It is beyond the power of the impeachment managers as it is of this Court to permit them to be amended or enlarged or altered. If they are insufficient in law or in fact then the respondent must be acquitted. It matters not what the individual impressions of any member of this Court may be with regard to him as a man or as a citizen; it matters not whether his actions as disclosed by the record before us were always characterized by good taste or good judgment, or whether they conformed to the highest standard of ethics or of etiquette — all that goes for naught.

The only proposition which this Court has a right to consider is the respondent's guilt or innocence of the charges set forth in the articles of impeachment which were served upon him — that and that only.

These charges are eight in number. Six of them practically cluster around a report filed by the respondent in the office of the Secretary of State shortly after the election of 1912. The remainder, the seventh and eighth, relate to other matters and are practically negligible as has been admirably shown in the opening address of Senator Hinman on behalf of the respondent. Because of this report the impeachment managers have made the State to reverberate with all the volume of vociferation that would have been directed against a Benedict Arnold or an Aaron Burr, against one guilty of "treasons, stratagems and spoils."

The entire Penal Law has been ransacked for epithets and characterizations. A veritable Newgate calendar has been evolved out of that single act. Article 1 makes it a violation of the corrupt practices act. The kaleidoscope is shaken, and article 2 converts it into a charge of perjury. Article 3 makes it

bribery; article 4, the suppression of evidence in violation of section 814 of the Penal Law; article 5, the preventing and dissuading a witness from attending under a subpoena, in violation of section 2441 of the Penal Law; article 6, larceny, in violation of sections 1290 and 1294 of the Penal Law. Certainly the ingenuity of trained prosecutors, provided with microscopical eyes that see bad in everything, and behold everywhere the microbe of crime, has been strained to the utmost.

When we further analyze this collocation of offenses, we cannot fail to be impressed by the fact, which has been elaborately presented to this Court at the opening of this trial, that the three fundamental charges, those which have been made the subject of the most minute investigation before this tribunal, and in the consideration of which weeks have now been occupied, relate to acts or transactions all of which occurred and were completed before the respondent entered upon the performance of his duties as Governor, and took his constitutional oath of office. The evidence has not in any way changed the propositions which were discussed at the very opening of this trial. The Court has wisely reserved the determination of the question as to whether those transactions, assuming them to have been established as pleaded and to constitute the offenses characterized in the articles, constitute ground for impeachment. That question must now be decided. Will impeachment lie in this State for acts which do not constitute "wilful and corrupt misconduct in office?" We assert the negative. The arguments which we have adduced in support of our contention constitute a part of the record. They have been ably and exhaustively elaborated by my associates, Judge Herrick, Judge Vann and Mr. Fox. I would not presume, therefore, to enlarge on the reasoning which they have advanced. Yet, in view of the length of time which has elapsed since they were heard on this subject, it may not be amiss to summarize the argument, in order that the mind of the Court may be refreshed.

It must be a fundamental principle in every system of jurisprudence, especially in so far as it relates to the administration of the criminal law, that the law whose infraction is sought to be enforced, must have existed before the pronouncement of judgment, and before the perpetration of the act of commission or of

omission which is sought to be punished. The lawmaking power must act before the judicial power may pronounce judgment. The legislative and the judicial power cannot coexist in the same entity under a free government. In the days of barbarism, and in those lands where despotism and autocracy prevail, the lawmaker and the judge are frequently one and the same person. Tyranny inevitably follows, human rights are disregarded, those in power hold those subject to their control in virtual slavery, and government is but the shadow of a name to mask the exercise of arbitrary power. Under such a system, law, reason, authority, mean nothing. Caprice, passion, prejudice, are the incentives to action. One who has fallen into disfavor may be haled before the judicial legislator or the legislative judge, on one charge or another, or upon no charge, and may be convicted by the operation of any motive which at the moment may seem sufficient to the legislative tribunal.

Under our system of government, the legislative and the judicial departments are separate and independent, and the Court can only condemn in accordance with preexisting law. Not only are the courts thus confined and limited in the exercise of their powers, but not even the Legislature can declare that to be a crime which was not so defined at the time of the commission of the act which is sought to be punished. Legislation which offends against this principle is called ex post facto, and has been deservedly condemned as in violation of the first principles of liberty and justice. A tribunal for the trial of impeachments, especially under the enlightened jurisprudence of New York, is a court, a judicial body. This Court derives its existence from the judiciary article of the Constitution. It is entirely stripped of legislative power, even though a majority of its membership consists of legislators. When they became members of this Court, they ceased to be legislators, and became judges, and the oath which they have been required to take in order to qualify them for membership in this Court is one which requires them, not to legislate, not to make law, but to hear, try and determine the impeachment upon which they are to pass judgment, according to the evidence.

This tribunal, therefore, being judicial in its nature, and in no sense of the word legislative, must necessarily move within a certain, defined area. It cannot act without restriction, without

limitation, according to its own sweet will — "uncribbed, uncabined, unconfined." To so declare, would place it within the power of the Assembly and of this Court to remove from office arbitrarily any and all public officers of this State — one because he is tall, another because he is short; A because he is a Republican, B because he is a Democrat, and C because he is a Progressive. D may be removed because he belongs to one church, and E because he is a member of another creed. One judge may be removed from office because he believes in a strict construction of the Constitution, another because he believes in a liberal interpretation. One man may be removed from office because he eats peas with a knife, and another because he uses a fork for that operation.

If unlimited power is once conceded — and our opponents assert the existence of such unlimited power — then government of the people would become a mere by-word and a hissing, because the will of the people as announced at the polls would be promptly set aside by the removal from office of those elected, for any reason, or no reason, whatsoever.

It could never have been contemplated by the people that such tremendous powers should be conferred upon any of the constitutional agencies which they created. The very suggestion of the existence of such a power bears within it the seeds of destruction. The people, by adopting a Constitution giving such power, would have placed a frozen viper in their bosoms.

It being, therefore, inconceivable that such unlimited power of impeachment exists, it is important to determine what limitation has been placed upon this tribunal with respect to the exercise of the power to convict upon an impeachment.

In many of the Constitutions of the various states of the Union, it is expressly provided that the power to impeach is to be exercised only for misconduct in office. I believe that that expression is to be found in twenty-four of the Constitutions, while in others there are added various other grounds. The Constitutions of New York of 1777 and 1821 specified as grounds for impeachment, originally, "mal and corrupt conduct in office," to which were subsequently added "high crimes and misdemeanors." In 1846 the Constitution was revised, and the language of the former

Constitution, in so far as it defined the grounds of impeachment, was eliminated. But certainly that could not, when one considers the political conditions of those days, have been intended as a bestowal of arbitrary power upon the Court of Impeachment or upon the Assembly. Those who framed the Constitution of 1846 were exceedingly jealous of arbitrary power. They abolished every vestige of it as it formerly existed. They took away from the Senate the power to sit as a Court of Errors in review of the decisions of the Supreme Court. The Council of Revision had passed out of existence, and the Convention of 1846 refused to re-create it. The centralization of governmental power was offensive.

Nothing could, therefore, have been farther removed from the minds of the framers of the Constitution of 1846 than the thought that the Court of Impeachment should be unrestricted in its exercise of power. When one but reflects that the Constitution of 1846 was intended to extend the power of the people in the selection of their officials, that it was that Constitution which made the judiciary of this State elective, instead of appointive, as it had previously been, is it possible to believe that the power to remove from office, arbitrarily, those who had been voted into office by the people, could have been considered with any degree of equanimity?

And yet, according to the contention of our opponents, if the people had, in 1847, voted into office thirty-two judges of the Supreme Court, at the very next session of the Legislature the Assembly might have impeached all of them on political grounds, and the Court of Impeachment could have sustained the charges, either on the grounds presented, or for any reason which it might have deemed sufficient; either that the judges were too young or too old, that they were college graduates, or that they had never attended a college. The very suggestion comes to one with a shock.

It is evident, however, from the legislative history of this State, which gave a practical interpretation to the Constitution, that it was always believed that it was within the power of the Legislature, by a law enacted before the fact, and not after the fact, to define the jurisdiction of the Court of Impeachment, and the grounds on which a public officer might be impeached. There

have been on the statute book, almost from the adoption of the Constitution of 1777, statutes regulating the Court of Impeachment and its proceedings, and defining the powers of the Court, following the language of the Constitution in respect to such definition, so long as that instrument undertook to define the powers of the Court. Immediately after the adoption of the Constitution of 1846, when the criminal law of this State was sought to be codified, it was proposed to change the statute law with regard to the subject of impeachment, by limiting the jurisdiction of the Court for the Trial of Impeachments to cases of wilful and corrupt misconduct in office. This code was not enacted until 1881, and ever since, during the past thirty-two years, section 12 of the Code of Criminal Procedure has defined the jurisdiction of this Court to be, " to try impeachments presented by the Assembly . . . for wilful and corrupt misconduct in office."

This statute was in force in 1894, when the last constitutional convention sat. The framers of the judiciary article contained in that Constitution, as well as the members of the Constitutional Commission of 1891, were familiar with this legislation, and when they reenacted, with one change only, the provision of the Constitution of 1846 which related to the Court for the Trial of Impeachments, they necessarily adopted that section, with the legislative interpretation which had been given to it. This, as has been argued here by Judge Parker with respect to another point, was in accordance with the well-recognized rule which has been applied over and over again in the interpretation of constitutional provisions, just as a similar principle has been frequently applied when a provision contained in the Constitution or a statute of another state is adopted by us. The language of such adopted provision is to be read in conjunction with the decisions and statutes which have interpreted it.

In his argument, Judge Herrick has presented another reason in support of this contention, in a narration of what occurred subsequent to the adoption of the Constitution of 1894 with respect to the amendment of the Code of Civil Procedure and of the Code of Criminal Procedure, so as to conform them to the new Constitution. Inasmuch as that argument is somewhat personal to myself, I will refrain from commenting upon it, further

than to say that, by reason of the decisions of the Court of Appeals to which Judge Herrick referred, the force of our contention is greatly accentuated.

There is, therefore, an overwhelming argument in favor of the practical interpretation that has been given to the Constitution, in respect to the definition of the jurisdiction of this honorable Court.

In People ex rel. Einsfeld v. Murray, 149 N. Y., such a practical interpretation was held to be of the most conclusive character, even with regard to a provision in the Constitution, which, in its terms, seemed to be explicitly prohibitive of the legislation which was nevertheless decided to be constitutional.

Not only has there been this legislative definition of the jurisdiction of this Court, but the limitation upon the right of impeachment as referring to official misconduct, has been in practice recognized. The Assembly of 1853 made a pronounced declaration to that effect. No public officer has ever been impeached in this State except for wilful and corrupt misconduct in office. I am not unmindful of the Guden case. That was not one of impeachment, and, as has been shown in the arguments heretofore presented on behalf of the respondent, that case, far from being an authority against us, strongly supports our position.

Moreover, the history of impeachment, not only in this country but also in England, unmistakably shows that, for more than three centuries, there has not been a case of impeachment which was not grounded on official misconduct.

At page 588 of Foster on the Constitution, the author says:

> "An examination of the English precedents will show that although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the State at large."

In a note he cites some 48 cases of impeachment, and every one of them is of the character indicated in the text.

The counsel for the impeachment managers, with commendable industry, collated in their brief every case of impeachment of

Federal and state officials which is to be found in the annals of this country. They are some 71 in number. In every single instance the impeachment was for misconduct in office. This is the first time, in 135 years of American constitutional history, when the attempt has been made to impeach any public officer for any cause other than misconduct in office.

Is the impeachment of William Sulzer to usher in a new era in this country? Is a new precedent to be established, in order that he may be removed from the office to which he was elected, without regard to official misconduct on his part? If that can be done in the present instance, then, as was well said by Judge Vann, whom all of us love and revere, this Court could convict the Governor of the State and remove him from office "because he stole cherries when a boy or spat on the sidewalk when a man."

The power to impeach was never intended to apply to any action or to any crimes other than those constituting official misconduct. The ordinary courts are provided with ample machinery to deal with crimes which are not acts of official misconduct, or which were committed by one not in office at the time of their perpetration. It could never have been contemplated that this Court, with its large membership and unwieldly structure, should be convened for the purpose of trying charges which do not constitute official misconduct. The expense of maintaining such a tribunal is enormous. The inconvenience to the members of the Court cannot easily be calculated. There is no necessity, nor is there any reason for converting this Court into one for the trial of ordinary crimes. The Supreme Court, the county courts, the courts of general sessions, are better adapted for their trial, and it must have been contemplated by the framers of the Constitution, that trials of such questions as those which pertain to nonofficial action should come in the usual course before the regular tribunals designed therefor.

Our opponents are necessarily driven to the proposition that section 12 of the Code of Criminal Procedure is unconstitutional, and this in spite of the fact that there is not to be found in the judiciary articles any language which prohibits the Legislature from the exercise of the power to define the jurisdiction of this Court. The absence of such a prohibition is fatal to the argu-

ment, for it is well settled that if there is no constitutional prohibition or limitation upon the exercise of the power, the power to legislate is plenary.

We therefore urge, with all the force we can command, that articles 1, 2 and 6, which confessedly do not relate to misconduct in office, should not be considered by this Court, because they lie beyond its jurisdiction.

The Court having, however, reserved the determination of its right to act upon these articles until the final vote is taken upon the articles as an entirety, it becomes necessary to discuss these, together with all the other articles, with a view to determining whether, on the assumption that the Court shall declare section 12 of the Code of Criminal Procedure unconstitutional, a case is made out against the respondent in law and in fact, upon any of the eight articles which he has been called upon to meet.

It will aid us in the consideration of this phase of the discussion to regard generally the nature of these proceedings and the rule of procedure applicable thereto. We begin with the proposition, that this is a criminal proceeding and is governed by the special doctrines applicable to criminal trials, as distinguished from the trials of civil actions. An unbroken line of precedents so declares. I doubt whether it has ever been suggested by any respectable authority that an impeachment proceeding is any other than a criminal proceeding. The articles of impeachment have been likened to an indictment. They cannot be amended except by the body which impeaches. The proceedings are highly penal. They involve a forfeiture.

Article 6, section 13, of the Constitution provides for the acquittal or conviction of the person proceeded against. These are terms peculiar to the criminal law. The judgment which is to be pronounced is not only judgment of removal from office, but also disqualification from holding or enjoying any office of honor, trust, or profit under the State. In the Bill of Rights, it is spoken of in juxtaposition with the obligation to answer "for a capital or otherwise infamous crime;" and in article 6, section 6, it is spoken of in its relation to the granting of reprieves, commutations and pardons after conviction, and is treated as an

offence in the phrase, "for all offences except treason and cases of impeachment."

So important is it in the present case to understand fully the nature of such a proceeding, and the rules specially applicable thereto, that I would consider myself as neglectful of my duty to the Court if I did not in some detail discuss the authorities bearing upon the subject.

This proceeding being one for impeachment, it is to be governed by the general rules applicable to other criminal prosecutions. Commonwealth v. Thompson, 13 B. Mon. (Ky.) 159; People ex rel. Miller v. Wuerster, 91 Hun 233; People v. Police Commissioners, 13 App. Div. 69, 70.

This proposition is admirably stated by Webster in his famous defence of Judge Prescott, where he said, volume 10, Writings and Speeches of Daniel Webster, Little, Brown & Company edition, page 245:

> "I take it to be clear that an impeachment is a prosecution for a violation of existing laws; and that the offence, in cases of impeachment, must be set forth substantially in the same manner as in indictments. I say substantially, for there may be in indictments certain technical requisitions, which are not necessary to be regarded in impeachments. . . . An impeachment, it is well known, is a judicial proceeding. It is a trial, and conviction in that trial is to be followed by forfeiture and punishment. Hence the authorities instruct us that the rules of proceedings are substantially the same as prevail in other criminal proceedings."

Citing: 2 Wooddeson 611; 4 Bl. Com. 259; 1 Chitty's Criminal Law 169; 1 Hetsell's P. C. 150.

At page 249 he continued:

> "I beg leave to ask, sir, of the learned managers, whether they will, as lawyers, express an opinion before this Court that this mode of accusation is sufficient? Do they find any precedent for it, or any principle to warrant it? If they mean to say, that proceedings in cases of impeachment are not subject to rule, that the general principles applicable to other criminal proceedings do not apply; that this is an intelligible,

though it may be an alarming course of argument. If, on the other hand, they admit that a prosecution by impeachment is to be governed by the general rules applicable to other criminal prosecutions; that the Constitution is to control it; and that it is a judicial proceeding; and if they recur, as they have already frequently done, to the law relative to indictments for doctrines and maxims applicable to this proceeding; I again ask them, and I hope in their reply they will not evade an answer, will they, as lawyers, before a tribunal constituted as this, say that, in their opinion, this mode of charging the respondent is constitutional and legal?"

In the argument of William Wirt on the impeachment trial of Judge Peck, that great lawyer said:

"The respondent has answered, denying the charge in both its aspects, of an unlawful act and a guilty intention. The burden is on the managers to make good the charge, both as to the illegality of the act, and the guilt of the intention. It is not enough for them to prove that the act was unlawful (though this I apprehend is far beyond their power), but they must go further and prove that this unlawful act was done with a guilty intention. Even if the judge were proven to have mistaken the law, that would not warrant a conviction, unless the guilt of intention be also established; for a mere mistake of the law is no crime or misdemeanor in a judge; it is the intention that is the essence of every crime. The maxim is (for the principle is so universally admitted that it has grown into a maxim) *actus non facit reum nisi mens sit rea.* . . . Now, if the respondent thought that he was acting lawfully, and so acted with the intention to discharge what he conceived to be his duty as a judge, he cannot be guilty of this charge; for he could not have taken this step with the intention wrongfully and unjustly to oppress and injure Mr. Lawless under color of law. . . . Now, sir, this proposition the honorable managers are bound to establish, in both its terms, by the evidence in the case. It will not be enough for them to excite a suspicion, to raise a doubt upon the subject — to leave the minds of the honorable Court

in equilibria; they must cast the balance distinctly, remove every reasonable doubt, and place the illegality of the act, and the guilt of the purpose, beyond question, before they can expect from his honorable Court a sentence of guilty." (Trial of Judge Peck.)

This doctrine was recognized by John C. Spencer, one of the great jurists of this State, who was one of the managers, for the House, on the trial of Judge Peck, for he said (Proceedings of Trial, p. 290):

"It is necessary to a right understanding of the impeachment, to ascertain and define what offences constitute judicial misdemeanors. A judicial misdemeanor consists, in my opinion, in doing an illegal act *colore officii* with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case with bad motives. To illustrate the last proposition, the eighth article of the Amendments of the Constitution forbids the requirement of excessive bail, the imposition of excessive fines, or the infliction of cruel and unusual punishments. If a judge should disregard these provisions, and from bad motives, violate them, his offence would consist, not in the want of power, but in the manner of his executing the authority entrusted to him, and for exceeding a just and lawful discretion."

On the trial of George G. Barnard (vol. 3, p. 2070), when the court had under consideration the article of impeachment in which it was charged that James Fiske, Jr., and Jay Gould, had presented the sum of $1,000 to a child of the respondent, and on another occasion had presented to him a number of costly chairs of the value of $500, and upwards, although the facts as charged were established by evidence, sufficient for the purpose of a civil action, a majority of the court of impeachment voted not guilty, including Chief Judge Church, and Judges Allen, Peckham, Folger, Andrews, and Rapallo; Chief Judge Church saying:

". . . And as to the chairs I think the evidence in the case — the conflicting evidence which has been produced here — is sufficient to create a doubt whether the chairs were not

in fact paid for. If I felt warranted in balancing the evidence, and in determining that question in a single action, I might come to the conclusion that the evidence of payment was not reliable; but we are here in a criminal case, where the respondent is entitled to the benefit of every reasonable doubt, both upon the facts and the law, and I cannot say that the evidence which has been produced is not sufficient to create some doubt as to whether the chairs were not paid for."

Judge Andrews said, page 2071:

". . . but I arose simply to say that I shall vote not guilty upon this article, upon the principle that this defendant is entitled to every reasonable doubt, and that that doubt as to his guilt, according to the charge, exists in my mind upon the evidence in the case."

Judge Allen said, page 2072:

"In respect to the chairs, while I concur with the Chief Judge that perhaps upon the trial of an issue in a civil action where it was necessary to determine the fact one way or the other I could bring my mind to a definite conclusion, yet there is probably in the conflict and uncertainty of the evidence enough of doubt upon the question whether the chairs were in fact a gift to require us to give to Judge Barnard the benefit of that doubt in the form of an acquittal."

In the proceedings for the removal of District Attorney Jerome, which resulted in a dismissal of the petition — and we had the pleasure of seeing him here in Court at the table of the counsel for the impeachment managers contemporaneously with the hearing of the testimony of the witness Allan A. Ryan — Governor Hughes said:

"A public officer is entitled to the same presumption in his favor as those which in accordance with the spirit of our authorities are raised in favor of any other person accused of wrongdoing. The fact that he is a public officer does not deprive him of the right to be considered innocent by fair-minded people until he is proved guilty, and to be free from the imputation of bad faith, or improper motive, until the evidence of it is clearly shown."

The passages from the opinion in the Barnard case, just referred, were quoted approvingly on the impeachment of Belknap, as Secretary of War, and the opinions then expressed by various senators were to the same effect.

See also State v. Buckley, 54 Ala. 599; State v. Robinson, 1 Ala. 482; s. c. 20 So. Rep. 30; Kilburn v. Law, 111 Cal. —; s. c. 43 Pac. Rep. 615.

In State v. Hastings, 55 N. W. 774 (37 Nebraska 96) impeachment proceedings were brought against George B. Hastings, attorney general, John C. Allen, secretary of state, and Augustus R. Humphrey, commissioner. Judge Post, in discussing the nature of the proceeding, said, at page 781:

> "Another question which is suggested in this connection is the character of this proceeding, viz.: whether it is to be regarded as a civil action or as a criminal prosecution for the purpose of the production and the quantum of proof to warrant a conviction. It may be safely asserted that the decided weight of authority in this country and in England, if indeed, there exists a diversity of opinion on the subject, is that impeachment in that respect must be classed as a criminal prosecution, in which the state is required to establish the essential elements of the charge beyond a reasonable doubt. Blackstone (4 Com. 259) thus defines the proceeding: 'But an impeachment before the Lords by the Commons of Great Britain in Parliament is a prosecution of the already known and established law, and has been frequently put in practice, being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand interests of the whole Kingdom.' In the impeachment of Belknap, Senator Wright used the following language: 'Because it does not satisfy me upon this point beyond a reasonable doubt, and because it is quite wanting in everything like directness and force. . . . I feel bound to vote 'Not guilty.'" Language of similar import was used by Senators Christiancy, Booth, Oglesby, and others. But we are fortunately not without judicial authority on the subject. In the impeachment of Barnard (1872) the judges of the Court

of Appeals of New York sat with the senators, and appear to have been consulted upon all doubtful questions. Chief Justice Church (page 2070), speaking upon the subject under consideration said: 'If I felt warranted in balancing the evidence, and in determining that question in a single action, I might come to the conclusion that the evidence of payment was not reliable; but we are here in a criminal case, where the respondent is entitled to the benefit of every reasonable doubt, both upon the facts and the law, and I cannot say that the evidence which has been produced is not sufficient to create some doubt.' Judge Andrews (p. 2071) said: 'I shall vote 'Not guilty' upon this article, upon the principle that this defendant is entitled to every reasonable doubt, and that that doubt as to his guilt, according to the charge, exists in my mind upon the evidence in the case.' Like views were expressed by other judges, but there was no dissent from the opinions above quoted: and in State v. Buckley, 54 Ala. 599, impeachment is defined as a criminal proceeding without the right of trial by jury. It is not alone in form but also in substance, a criminal prosecution. As said by Senator Sargent in Belknap's case (p. 87): 'A sentence of disqualification is a humiliating badge fixed to high crimes and misdemeanors in office.' While we have in this country no technical attainder working a corruption of blood, the sentence of disqualification to hold or enjoy any office of honor, profit, or trust which is provided by our Constitution in case of conviction by impeachment, is within the primary definition of the term. It is the extinction of civil rights and capacities, a mark of infamy by means of which the offender becomes attinctus or blackened. Ral. & Law Dic. Tit. 'Attainder'; 1 Bish. Crim. Law 966, 970, and notes. The allegation that the respondents acted wilfully and corruptly being without support, it follows that there is a failure of proof with respect to specification No. 3."

In State ex rel. Attorney General v. Buckley, 54 Ala. 599, an information was filed by the Attorney General against Charles W. Buckley, Judge of the Probate Court, praying his impeach-

ment and removal from office under the provisions of "An act to provide for the impeachment and removal from office of officers mentioned in section 2 and section — of article 7, of the Constitution of Alabama," approved March 7, 1876. Stone, J., page 617, said:

> "Impeachment, like most of our proceedings, civil and criminal, came to us from English jurisprudence. In England it was regarded and treated as the highest form of criminal prosecution. There, on conviction, the severest penalties of the law could be inflicted. See Parliamentary History of England, vol. 26, 1218, *et seq.;* 4 Black. Com., 259; 2 Hale Pleas of Cro. 150; Comyn's Dig. Title Parliament L.
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> "Under the Constitution of Alabama, article 7, section 4, penalties in cases of impeachment 'shall not extend beyond removal from office, and disqualification from holding office under the authority of this state, for the term for which he (the officer impeached) was elected or appointed.'"
>
> "The Constitution of the United States, article 1, section 3, subdivision 7, contains precisely the same limitations on the measure of punishment in impeachment as that found in our Constitution, save that the disqualification to hold office may, under it, be extended during the life of the offender.
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> "Mr. Story, in his Commentaries on the Constitution, section 688, after stating that in England 'articles of impeachment are a kind of bill of indictment, found by the commons, and tried by the lords,' adds: 'In the Constitution of the United States, the House of Representatives exercises the functions of the House of Commons, in regard to impeachment; and the Senate, for the functions of the House of Lords, in relation to the trial of the party accused. The principles of the common law, so far as the jurisdiction is to be exercised, are deemed of primary obligation and government. The object of prosecutions of this sort in both countries, is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the

imperfect organization and powers of those tribunals. These prosecutions are, therefore, conducted by the representatives of the nation, in their public capacity, in the face of the nation, and upon a responsibility which is at once felt and reverenced by the whole community. The notoriety of the proceedings, the solemn manner in which they are conducted, the deep extent to which they affect the reputations of the accused, the ignominy of a conviction which is to be known through all time, and the glory of an acquittal which ascertains and confirms innocence — these are all calculated to produce a vivid and lasting interest in the public mind, and to give to such prosecutions, when necessary, a vast importance, both as a check to crime and an incitement to virtue.

"The same author, in section 798, says: 'It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail.' See also, sections 759, 764, 781; 1 Bish. Cr. Law, sec. 915 (362); 9 Appleton's Amer. Cyclopaedia, 197; 4 Kent Com. (marg.) 289; Bouv. Law Dict. 'Impeachment.'

"The authorities above hold that removal from office and disqualification to hold office are criminal punishment. But the doctrine has been carried much farther.

"In Ex parte Garland, 4 Wal. 333, it was shown that Mr. Garland had, before the war, been licensed to practice law in the Federal courts. Having subsequently participated on the side of the Confederates in the war between the sections of the Union, the question was whether he should be allowed to practice his profession, without taking the oath prescribed by the act of Congress of January 24, 1865. That act declared that 'no person shall be admitted as an attorney and counselor to the bar of the Supreme Court, or to the bar of any circuit or district court of the United States,' etc., 'or be allowed to appear and be heard by virtue of any previous admission,' etc., 'unless he shall have first taken and subscribed the oath, . . . that he has never voluntarily borne

arms against the United States since he has been a citizen thereof; that he has voluntarily given no aid, countenance, counsel or encouragement to persons engaged in armed hostility thereto,' etc. It was ruled by the court that 'to take away the right to practice law, guaranteed to Mr. Garland by his license previously obtained, was punishment for past conduct; that it imposed a punishment for some of the acts specified, which were not punishable at the time they were committed, and to others of the acts it adds a new punishment to that before prescribed, and it is thus within the inhibition of the Constitution against the passage of an ex post facto law.' The only punishment which the act imposed, was a deprivation of the right to practice law in the United States courts.

"To the same effect as was the case above, and for the same reasons, are the cases of Cummings v. State of Missouri, 4 Wal. 277; Ex parte Wm. Law, 35 Geo. Rep. 303; Impeachment of Andrew Johnson; Rev. Code, sec. 3755; Ex parte Dorsey, 7 Por. 293. The case last cited was decided by this court near forty years ago, and has never been overturned. In his opinion, Mr. Justice Goldwaite says: 'I have omitted any argument to show that disqualification from office, or from the pursuits of a lawful avocation is a punishment; that it is so, is too evident to require any illustration; indeed, it may be questioned whether any ingenuity could devise any penalty which would operate more forcibly on society.' Mr. Justice Ormond concurred with him in the opinion that the statute they were construing, whose only penalty was disqualification to hold office, or to practice law, was 'highly penal.'

"We feel constrained to hold that impeachment, under our Constitution, is a criminal prosecution."

In Professor Theodore W. Dwight's article in 6 Am. Law Reg., page 257, in speaking of the nature of the proceeding of impeachment on page 261, he says:

"The effect of an impeachment, like that of an indictment, is simply that there is apparent reason to believe that there has been a criminal violation of the laws by the individ-

ual impeached. He may in proper cases be arrested and held in custody or required to give security. The law still presumes his innocence and can do no more than to take such steps as may be necessary to render his attendance at the trial certain. The trial must be conducted in accordance with the rules of evidence observed in the ordinary courts; the person impeached can only be convicted of a crime known to the law, the punishment follows that attached to the same crime by the ordinary courts. Forfeiture of rights can only occur after conviction. Impeachments, like indictments, are methods of procedure in criminal cases and nothing more."

In State ex rel. Attorney General v. Tally, 102 Ala. 25, 15 Southern 722, impeachment proceedings were brought to remove respondent from office for misdemeanors in office. McClellan, J., said, at page 35:

"Without discussing at present other objections to testimony which may be ruled upon in the course of this opinion, we will proceed to state and consider the evidence with reference to the guilt or innocence of the respondent of the charges brought against him by the information, premising that we recognize the rule of conviction beyond a reasonable doubt as applicable to this case, and that our minds must be convinced to that degree of the guilt of the respondent before we can adjudge him guilty as charged."

In State v. O'Driscoll, 3 Brev. (S. C.) 526, impeachment proceedings before the Senate, Brevard, J., said, at page 528:

"Besides, so far from considering the trial by impeachment as oppressive, it appears to me a great constitutional privilege, an honorable distinction in favor of distinguished citizens, invested with civil employments, and places of public trust and emolument, by the choice or appointment of the people or their public functionaries; and the rights of the accused on such trials are cautiously guarded and greatly favored. The House of Representatives have the sole power of impeaching, and the Senate the sole power of judging. A concurrence of two-thirds of the first branch of the Legisla-

> ture is necessary to an impeachment; and a like concurrence of the members present of the Senate is necessary to convict; and the Senate may be considered as a select grand jury, men of experience and tried wisdom, and of the first respectability in the state, acting under the solemn sanction of an oath or affirmation, as in the usual course of criminal proceedings of courts of justice."

Bearing in mind, then, the doctrine which has just been illustrated, and treating this case as a criminal proceeding, governed by all the rules which the humane policy underlying our criminal jurisprudence prescribes, we come to the analyses of the several articles in their general legal aspects, along broad lines, as distinguished from a minute examination into the evidence bearing on the several charges, which, if necessary, will become the subject of later discussion and consideration. For convenience of treatment, we shall take up articles 1, 2 and 6, those to which the impeachment managers have principally addressed themselves, and which, as is evident, have been considered by them the very backbone of the skeleton which they have sought to clothe with the flesh and blood of an avenging Nemesis.

Article 1 is confessedly an attempt to charge a violation of those sections of the election law known as the corrupt practices act. Briefly stated, it is charged that the respondent was required by the statute in force on November 12, 1912, to file in the office of the Secretary of State, within twenty days after his election, a statement setting forth all the receipts, expenditures, disbursements and liabilities made or incurred by him as a candidate for Governor at said general election, which statement, it is claimed, "the statute required to include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the person or committee to whom it was made and the date thereof, and all contributions made by him." It is then stated that he filed in the office of the Secretary of State what purported to be such a statement, which showed receipts from sixty-eight contributors aggregating

$5,460, and ten items of expenditure aggregating $7,724.09, the detailed items of which were fully set forth in said statement so filed as aforesaid.

It is then alleged that the statement thus made and filed "was false and was intended by him (the respondent) to be false and an evasion and violation of the statutes of the state, and the same was made and filed by him wilfully, knowingly and corruptly," it being false in the particulars that it did not contain the contributions that had been received by him and which should have been set forth in the statement, from various individuals named, and that in making and filing such false statement he did not act as required by law, but in express violation of the statutes of the State.

It is not alleged or pretended that this act constituted a felony, or a misdemeanor, or a crime of any kind whatsoever. It is not pretended that the account was not in all respects accurate, in so far as it related to the expenditures made by the respondent. Nor is it pretended that the report did fully state all contributions made by him. The sole allegation and the only contention that has been made, and which the respondent was called to meet, is, that the statement filed by him did not state all of the contributions received by him.

The first question, therefore, that arises under this article is, whether or not, under the statute, construed as a penal statute should be construed, the respondent was under any legal duty to make a full statement of the contributions received by him from others, as distinguished from contributions made by him and the moneys expended by him in connection with his election.

Although this subject has, to some extent, been discussed at an earlier stage of this trial, it is nevertheless believed to be of such pith and moment that it is proper to make a further and closer examination into the statutes relating to the reports required to be made by candidates for office.

Proceeding in chronological order, it is important first to consider what is now section 776 of the Penal Law, but what originally was section 41-w of the Penal Code, enacted by Laws of 1892, chapter 693, section 1, which, as will presently appear, was amended in one particular by chapter 439 of the Laws of 1910,

and reenacted so as to go into effect on September 1, 1910. That section, so far as material, reads as follows:

> "Every candidate who is voted for at any public election held within this State shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all moneys contributed or expended by him directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who receive such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire State, or any division or district thereof, greater than a county, shall file their statements in the office of the Secretary of State. . . . Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor."

As originally enacted, the last clause of this section ended with the phrase, "and shall also forfeit his office." This latter clause was stricken out by the amendment of 1910, to which reference has just been made, it having been held in Stryker v. Churchill, 39 Miscellaneous Reports 578, that such a forfeiture clause as applicable to an elected candidate is unconstitutional, in that it imposes an official test other than that prescribed by section 1 of article 13 of the Constitution, which declared that no other oath, declaration or test, save that therein set forth, shall be required as a qualification for any office of public trust.

This section referred to a statement by the candidate. It related to two subjects only, the moneys contributed by the candidate and the money expended by the candidate, directly or indirectly, whether by himself or through any other person. This idea is ex-

pressed three times in this comparatively short section. It had reference only to contributions and expenditures by the candidate, and not contributions made to him.

It would be impossible to construe it as having reference to contributions made to the candidate. That would be doing violence to the entire structure of the sentence. The idea which was then in the mind of the lawmakers was, to deal solely with the acts of a candidate, and not with the acts of anybody else. There had been serious complaint with regard to large contributions made by candidates to political parties, or otherwise, for the purpose of accomplishing their election. It was claimed that men of small means would be prevented from running for office, because of the necessity of making large contributions and spending large sums of money.

Throughout this section, therefore, the idea is expressed over and over again, that it is the candidate's contribution and the candidate's expenses as to which information is required. The statement makes it necessary to give the names of the various persons who received the moneys, the specific nature of each item, and the purpose for which it was expended or contributed. Nothing is said as to the names of persons from whom money is received. It is therefore evident that the framers of this legislation, having in mind merely a single contributor, the candidate, did not consider it necessary to add the futile statement requiring the giving of the name of the only contributor whom they had in mind, and, therefore, necessarily contented themselves with calling for the names of the persons who received the moneys which were contributed or expended.

This idea becomes even more clear when one reads section 779, which prohibits any person from soliciting money from a candidate for an elective office, and section 780, which declares that no candidate for a judicial office shall directly or indirectly make any contribution of money or other thing of value, nor shall any contribution be solicited of him. This indicates beyond the peradventure of a doubt that what the Legislature had in mind was simply the subject of contributions by candidates for office. It did not assume to deal with contributions made to them.

That this is the keynote of this entire legislation is further indicated by section 781, which limits the amount which may be expended by candidates. Thus, a candidate for Governor is restricted to the expenditure of the sum of $10,000. It is very evident that this could not have been intended to refer to expenditures made by any other person in connection with an election for Governor, because it would be utterly impossible to conduct an election for Governor if the sum total which might be expended for or on behalf of such a candidate were limited to $10,000. The expenses of conducting public meetings, of travel, and for other legitimate purposes, under the most favorable conditions, would largely exceed that sum.

Hence there is no room for doubt that section 776 could have had no other object than to refer to the contributions made by a candidate, and not to such contributions as might be made to him or for him, by third parties.

This act, being a penal act, must be governed by the general rules of construction applicable to such acts. Nothing is to be read into it, but it should be construed with strictness, especially since the requirements which it contains are purely the creation of statute; nothing is to be implied, the language is to be read in its natural sense, and words which will not be found in the statute are not to be supplied in order to create, by construction, a duty which is not specified in the legislative enactment, in order that a penalty may be visited upon him who fails to comply with the duty thus artificially superimposed upon the terms of the statute.

This would be the first time in the history of penal legislation when, by a liberal construction, that would be converted into a crime which, according to the plain reading of the statute, is not so intended to be made, and when, by the strict though not unreasonable construction, to which we are entitled, there could not by any possibility be spelled out an intention to create the duty or the crime resulting from a breach of such interpolated duty.

This brings us to a consideration of article 20 of the election law, relating to corrupt practices. As has been said in the course of the discussion, this statute is exceedingly inartificial,

blind and confusing. It found its way into our legislation by chapter 502 of the Laws of 1906. Sections 541, 542 and 546 were subsequently amended by chapter 596 of the Laws of 1907. Section 776 of the Penal Law, having been reenacted in 1910, it is evident that the latter act is still in force, and if there is any inconsistency between it and the corrupt practices article, it must be deemed to control.

The evident purpose of this article was, to require reports to be made, not only by a candidate, under section 776 of the Penal Law, but also by political committees, and with respect to the latter the requirements extended beyond those which a candidate was required to observe under section 776 of the Penal Law.

The corrupt practices act consists of twenty-one sections, numbered 540 to 560, both inclusive. By section 540 a political committee is defined. Section 541 relates to a statement of campaign payments not made through a political committee. That section reads as follows:

> "Any person, including a candidate, who to promote the success or defeat of a political party, or to aid or influence the election or defeat of a candidate or candidates for public office . . . shall give, pay, expend or contribute, any money or other valuable thing except to the chairman, treasurer or a member of a political committee, or to an agent duly authorized thereto in writing by such committee, or to a candidate or an agent of such candidate authorized by the candidate thereto in writing, or except for personal expenses as hereinafter provided, shall file the statement required by section five hundred and forty-six, and shall be subject to all the duties by this chapter required of a political committee or the treasurer thereof."

This merely refers to the duty of a person making a contribution, whether he be himself a candidate for office or not. It refers to a contribution by any person, including a candidate, and has reference to the duty of the person who makes the contribution, and not of the person to whom the contribution is made.

Section 546, to which reference is made in section 541, reads as follows:

> "The treasurer of every political committee which, or any officer, member or agent of which, in connection with any election receives, expends or disburses any money or its equivalent, shall, within twenty days after such election, file a statement setting forth all receipts, expenditures, disbursements and liabilities of the committee, and of every officer, member and other person in its behalf. In each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement, the name of the person or committee to whom it was made, and the date thereof; and unless such expenditure or disbursement shall have been made to another political committee, it shall state clearly the purposes of such expenditure or disbursement. . . . The statement to be filed by a candidate or other person not a treasurer, shall be in like form as that hereinbefore provided for, but in statements filed by a candidate, there shall also be included all contributions made by him."

The reference in section 546 to "the statement to be filed by a candidate or other person not a treasurer" harks back to section 541, which in turn refers to section 546. As has already been seen, section 541 relates to the duty of a person, "including a candidate," who contributes money to any person other than the chairman, treasurer or member of a political committee, or to an agent duly authorized thereto in writing by such committee, or to a candidate or agent of a candidate. Here, again, this refers to a statement of payments made by, and not of payments to, the person called upon to make the statement. Hence, when section 546 refers to a statement by the persons referred to in section 541, it is obvious that such statement can only be one which deals with the subject matter of section 541, namely, payments by, and not payments to, the individuals therein referred to.

In order to make it certain that, so far as a candidate is concerned, he is called upon to make only the statement specified in section 541, and in order to avoid the possibility of an interpretation that he is not called upon to make the statement required by

section 776 of the Penal Law, it is enacted that, "in statements filed by a candidate there shall also be included all contributions made by him." If the statement to be filed by a candidate referred to in section 541 had reference to anything other than the subject matter of section 541 of the election law, and that such statement would have to be in all things like the statement required from the treasurer of a political committee, what would have been the sense in expressly stipulating that the statement to be filed by a candidate shall include all contributions made by him?

Even this statement is subject to the further exception contained in section 541, that it need not contain a statement of the personal expenses set forth in section 542 of the election law, which provides that a candidate "may incur and pay in connection with such election, his own personal expenses for travel and for purposes properly incidental to traveling; for writing, printing and preparing for transmission any letter, circular or other publication not issued at regular intervals, whereby he may state his position or views upon public or other questions; for stationery and postage; for telegraph, telephone and other public messenger service; but all such expenditures shall be limited to those which are directly incurred and paid by him."

Then follows the provision: "A candidate shall in any event file a statement of any contributions made by him," which is again inserted out of abundance of caution, to avoid the implication that section 776 of the Penal Law is to be superseded.

It is evident that the statement to be filed by a candidate cannot be the equivalent of the statement of campaign receipts and payments required of the treasurer of a political committee. If it had been so intended, it would have been simplicity itself to have stated, that a candidate shall file just exactly such a statement as the treasurer of a political committee is called upon to make. The very fact that there is a differentiation in the terms and phraseology of the statute with respect to the statement to be filed by a candidate, shows that his statement is of an entirely different character from that which is to be made by the treasurer of a political committee, and that it can have reference only

to expenditures and contributions made by him, and not to any contributions made to him.

The fact that the statement filed by the candidate shall be in like form as that theretofore provided must necessarily mean that, so far as applicable, the statement shall be in like form. That phrase is to be read distributively; otherwise it would result in a meaningless jumble of words, which, to a great extent, would be left without force or meaning, a consequence to be avoided in the interpretation of any statute. Our interpretation, on the other hand, gives full effect to every word or phrase contained in this statute, and, in consequence, is the more acceptable interpretation.

Section 544 does not in any manner affect the proposition which we are now discussing, because it refers to a person acting as an officer, member, or under authority of a political committee, or under the authority of a candidate, who receives any money or its equivalent, or expends or incurs any liability to pay the same. It does not refer to the candidate himself, or to any duty owed by him.

The corrupt practices article, as has been seen, and as will be hereafter more fully discussed, does not require an oath to the statement filed under its provisions. It merely calls for a statement. It nowhere refers to the word "affidavit," or to a sworn statement or verified statement. Moreover, there is no provision in the statute which makes its provisions self-executing. The mere failure to file a statement, or the filing of a false statement, is not in and of itself made a crime. Noncompliance with the terms of the statute is merely made the basis of contempt proceedings, which may or may not result in the imposition of a penalty.

The statute creates a new duty, establishes a new remedy for the enforcement of such duty, and prescribes a particular method of procedure. It is a proposition which runs back to the beginnings of our law, that, under such circumstances, the statutory remedy is exclusive, and if it does not declare the violation of its provisions a crime, such violation is not indictable.

In Brown v. Buffalo, etc., R. R. Co., 22 N. Y. 191, Judge Welles said (p. 197):

"In Behan v. People, 17 N. Y. 516, Pratt, J., who delivered the opinion of the court, says: 'It is well settled, that where an act is prohibited by statute, which is not criminal at common law, and a penalty is imposed in the same statute, declaring such prohibition, the act is not indictable.' The same learned judge then remarks, that the rule is based on the assumption that the Legislature, having fixed the penalty at the same time of prohibiting the act, designed that there should be no other punishment."

In People v. Stevens, 13 Wend. 341, Sutherland, J., said:

"Where a statute creates a new offense, by making that unlawful which was lawful before, and prescribes a particular penalty and mode of proceeding, that penalty can alone be enforced."

In Rex v. Robinson, 2 Burr. 800, Lord Mansfield said:

"The rule is certain, that where a statute creates a new offense, by prohibiting and making unlawful anything which was lawful before, and appoints a special remedy against such new offense (not antecedently unlawful) by a particular sanction and particular method of proceeding, that particular method of proceeding must be pursued, and no other."

"The principle is a very ancient one, and has never been departed from; it is a most rational interpretation of the law-making power."

In Mairs v. Baltimore & Ohio R. R. Co., 175 N. Y. 409, Judge Haight, at page 413, said:

"Where the Legislature prohibits or requires the doing of an act and prescribes a punishment that shall be inflicted for a violation of its mandate, the punishment furnishes the exclusive remedy for the wrong, so far as the public is concerned."

"In the earlier decision in People v. Hislop, 77 N. Y. 331, the Court of Appeals decided that where a statute creates a new offense making that unlawful which was lawful

before, and prescribes a particular penalty therefor, that penalty alone can be enforced; the offense is not indictable (In re Barker, 56 Vt. 26)."

In Stafford v. Ingersoll, 3 Hill 38, Mr. Justice Bronson said:

"So, where a statute creates a right which did not exist before, and prescribes a remedy for a violation of it, that remedy must be pursued." (Almy v. Harris, 5 John. 175).

So, in Renwick v. Morris, 7 Hill 575, the Chancellor declared:

"Where a new offense is created, and a penalty is given for it, or a new right is given, and specific relief given for the violation of such right, the punishment or remedy is confined to that given by statute."

It is well-settled law, that where a statute imposes a new duty where none existed before, and gives a specific remedy for its violation, the presumption is that this remedy was meant to be exclusive, and the party complaining of the breach is confined to it. Cooley on Torts, 2d ed., 783; Atkinson v. Newcastle, L. R. 2 Exch. Div. 441; Almy v. Harris, 5 John. 174; Moore v. Gadson, 93 N. Y. 12; Grant v. Slater Mills, 14 R. I. 380.

Let us now, in the light of this principle, further examine the corrupt practices article, for the purpose of indicating the application to the present case of the rule laid down in the authorities which have been cited.

Section 550 provides that, if any person or persons or committee or committees fails to file a statement or account as required, or if a statement is filed which does not conform to the requirements of the statute in respect to its truth, sufficiency in detail, or otherwise, the Supreme Court or any justice thereof may compel such person or committee to file a sufficient statement, by an order in proceedings for contempt.

Section 551 provides that these proceedings may be instituted by the Attorney General, a district attorney or a candidate, or by any five qualified voters who voted at the election in question.

Section 552 requires the petitioner to file an undertaking for costs, and provides that upon the presentation of the petition

and the giving of the security, the court or justice may grant an order directing the person against whom it is issued to show cause why he should not file a statement of election expenses or amend the statement already filed, and furnish the court or justice with such other information as may be required.

Section 553 specifies the time within which the proceedings must be brought.

Section 554 indicates the summary nature of the proceedings; and further sections provide for a preference of such proceedings over other causes, appeals to be taken therein, subpoenas to be issued, personal privilege of witnesses, and the conduct of the hearing.

Section 560 then provides for the judgment to be rendered in such proceeding, and if the person or committee proceeded against has failed to file the required statement, or has filed a false or incomplete statement, "without wilful intent to defeat the provisions of this article," the judgment shall require the person proceeded against to file such statement or such amendment to the statement, as shall render the same true and complete, within ten days of the entry of the judgment, and to pay the costs of the proceeding. If such person or committee has failed to file the statement, or has filed a false or incomplete statement, "due to the wilful intent to defeat the provisions of this article," or if the person or persons proceeded against shall fail to file the required statement or amendment as directed by the judgment, within ten days after the entry thereof, such person or committee shall be liable to a fine not exceeding $1,000 or imprisonment for not more than one year, or both. If such person or committee has filed a statement complying with the provisions of the article, or if they are not required to file the statement as prescribed, the court or justice shall render judgment against the applicant or applicants and in favor of the person or committee proceeded against, for his or their costs and disbursements.

We have, therefore, a complete course of procedure, marked out with the fullest detail, which provides of necessity an exclusive remedy. No crime, whether felony or misdemeanor, is therefore created by it. Noncompliance with its terms can only be made the basis of the specific procedure contemplated by the statute, which

may or may not result in the imposition of punishment as for a contempt.

The constitutionality of the provision with regard to punishment, contained in this statute, is doubtful, for it deprives the person proceeded against of his right of trial by jury. But, without urging that point, it is enough for the purposes of this case to demonstrate, as we believe we have, that the allegation of crime cannot be predicated upon the failure, whether wilful or otherwise, to comply with the requirements of this statute.

The foundation, therefore, upon which the impeachment managers have built their charges against the respondent, rests upon sand. The offense charged does not conform to the allegation of the articles, that it constitutes either wilful and corrupt misconduct in office or a crime or misdemeanor, high or otherwise.

We will not at this stage of the argument discuss the question as to whether the omission of the contributions specified in the articles, was wilfully, knowingly and corruptly made. That will be done in due time, and under another head. But assuming, for the moment, that the allegations contained in the statement filed were false because of the omissions alleged, and that they were intentionally false, can it be seriously argued that the statement of a falsehood is ground for impeachment? If it is, then many a high official in this country has subjected himself to the pains and penalties of impeachment. Many a charge of falsehood has hurtled through the air. The Ananias Club has been largely recruited from the ranks of officialdom, and if a falsehood uttered by one who is elected to office, before he enters upon the performance of his duties, may be made the basis of impeachment, where will the line be drawn, and by whom? Though the Psalmist, when he said in his haste, that all men were liars, was somewhat inaccurate, or else mankind has greatly improved since the utterance of this striking passage, yet even in our day, if the telling of a lie, whether of the black or white variety, were once recognized as ground for impeachment, there would be many vacancies in office to be filled.

We now come to the second article, wherein it is charged that the respondent committed wilful and corrupt perjury, in that he attached to the statement filed by him an affidavit in which he

swore that the statement was in all respects true, and was a full and detailed statement of all moneys received or contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election; that this statement was false in that it did not contain the contributions that had been received by the respondent from Jacob H. Schiff and others. These acts are charged as constituting a violation of section 1620 of the Penal Law. That section reads as follows:

> "A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed, is true, in an action, or a special proceeding, or upon any hearing or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may be lawfully administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, wilfully and knowingly testifies, declares, deposes, or certifies falsely in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate, any material matter to be true which he knows to be false, is guilty of perjury."

We have already shown that while the statement required under section 776 of the Penal Law must be verified, that required under the corrupt practices article does not call for verification. It is satisfied by an unsworn statement. So far as the statement filed conforms to the requirements of section 776, in that it states the contributions or expenses made by or incurred by the respondent, there is no question as to its truthfulness. It is only in so far as it purports to state the contributions to the respondent that it is claimed to be false, in that it does not state all of the contributions which it is asserted were made to him for election purposes.

It would seem to follow from this statement, which is indisputable, that, in so far as the affidavit made by the respondent relates to contributions made to him, it was voluntary and extra-

judicial, not being an oath required by law, and hence does not come within the definition of perjury. One of the essential elements of that definition is, that the person proceeded against shall have sworn falsely on an occasion in which an oath is required by law, or is necessary. Our statute merely follows the common law in this regard. Thus, in 2 Bishop's Criminal Law, 5th edition, that great author, one of the greatest writers on the criminal law, speaking of the elements of the crime of perjury, says:

"Section 1017. The principle chiefly to be elucidated under this subtitle, is, that the oath must be required in some judicial proceeding or course of justice, and the statement must be taken substantially in the form directed by law, before an officer authorized to administer it."

"Section 1019. Where a party offers himself as a witness and is accepted, his oath may have weight in determining the issue; but here it was merely voluntary and impertinent: as if a party filing a declaration in the court of common pleas should think proper to make oath of its truth." Citing State v. Halle, 2 Hill, S. C. 290; Silver v. State, 17 Ohio 365.

"Section 1021. In the United States Court — a statute providing a punishment 'if any person, in any case, matter, hearing, or other proceeding, when an oath or affirmation shall be required to be taken or administered, under or by any law or laws of the United States, shall upon the taking of such oath or affirmation, knowingly or wilfully swear or affirm falsely'— McLean, J., held, that an oath not required by law or by order of the court, administered by the clerk of the court, is extra-judicial, and though false, lays no foundation for an indictment." United States v. Babcock, 4 McLean 113.

"Section 1027. We are thus led to the general proposition, that no extra-judicial oath will sustain an indictment for this offence. (Pegram v. Styron, 1 Bailey 395; Landen v. State, 5 Humph. 83; Wagoner v. Richmond, Wright 173; Rex v. Foster, Russ. & Ry. 459; Jackson v. Humphrey, 1

John. 498; United States v. Nickerson, 1 Sprague 232). Therefore, in South Carolina, swearing to an account to render it in and before an administrator, has been held to be extra-judicial, not subjecting the party who swears falsely to an indictment. A like doctrine has been held in Tennessee as applicable to a case in the court of chancery, wherein there was no right to administer the oath. So, 'a false oath,' says Hawkins, 'taken by one upon the making of a bargain, that the thing sold is his own, is not punishable as perjury.'"

In 22 Am. & Eng. Encyc. L., 2d ed. page 685, title "Perjury," it is said:

"The oath or affidavit must be one authorized or required by law. Perjury cannot be assigned on a voluntary or extra-judicial oath." United States v. Grottkau, 30 Fed. Rep. 672; United States v. Howard, 37 Fed. Rep. 666; People v. Travis, 4 Park. Cr. 213; People v. Titmas, 102 Mich. 318; Linn v. Commonwealth, 96 Pa. St. 285.

In 30 Cyc. L. & Pr., title "Perjury," page 1411, it is said:

"The taking of a mere voluntary oath that is nowhere authorized or required by law, is not perjury." Citing among other cases, State v. McCarthy, 41 Minn. 59.

In United States v. George, 228 U. S. 14, it was decided, in March last, that an indictment for perjury cannot be based on an affidavit not authorized or required by any law.

In People v. Martin, 175 N. Y. 319, which was cited here on a previous occasion, the only question involved was whether there could be a prosecution for perjury predicated on a false statement contained in an affidavit taken in the State of New York for use in Delaware, and it was incidentally stated that an oath that is "purely voluntary and extra-judicial" does not come within the perjury statute.

Not only is it necessary in order to constitute perjury, that the oath taken shall have been required by law, but it is also essential that the matter claimed to have been false shall have

been material. That is also an express requirement of the statute. Hence, one who testifies, even wilfully, knowingly and falsely, to a material fact, does not commit perjury. That was recently decided by the Court of Appeals in People v. Teal, 196 N. Y. 376, and in this respect our statute conforms strictly with the common law. Roscoe's Cr. L., 328; 2 Russell on Crimes, 481, 489; Dunkle v. Wilds, 11 N. Y. 482; Wood v. People, 59 N. Y. 120; People ex rel. Hegeman v. Corrigan, 195 N. Y. 1.

In People ex rel. Hegeman v. Corrigan, it was held that the question whether, in a prosecution for perjury, testimony which is charged to be false is material or not, was a question of law.

Inasmuch as the respondent, as a candidate for office, was not required to make any statement as to the moneys received by him, but was confined to a statement of the moneys contributed and expended by him, this affidavit, in so far as it referred to moneys received, was immaterial, and consequently cannot be made the basis of a charge of perjury.

Not only is it necessary that the oath taken is one required by law, and that the matter charged to be false was material, but the false statement must be wilfully, knowingly and corruptly false. It must be made with criminal intent. Mere untruthfulness is not sufficient. If there was mere mistake or carelessness, or misinformation, there can be no basis for the charge of perjury.

This subject has been recently so fully considered by the Court of Appeals in People ex rel. Hegeman v. Corrigan, 195 N. Y. 1, that this Court will be greatly aided in its present deliberations by a detailed reference to that case. It was there held that to constitute perjury, there must be criminal intent. Ordinarily, criminal intent is an intent to do, knowingly and wilfully, that which is condemned as wrong by the law and common morality of the country, and if such an intent exists it is neither justification nor excuse that the actor intended by its commission to accomplish some ultimate good.

To constitute perjury, it is not necessary to establish any other intent than that specified in the statute. It is not sufficient that the affiant testifies as to what is false, but the testimony must be given wilfully and knowingly, and the affiant must know that

the testimony is false if it be given in the honest belief that it is true, or by mistake or inadvertence, the case does not fall within the statute.

As Chief Judge Cullen says:

> "The perjury with which the relator is charged is the verification under oath of a report to the Insurance Department of the State, in which in answer to a question calling for the statement of the loans held by the company secured by a pledge of bonds, stock or other collateral, it is stated that there were none. For the purpose of determining whether the evidence was sufficient to justify the magistrate in issuing a warrant, it becomes necessary to consider the rules of law applicable to the case. Section 96 of the Penal Code prescribed 'A person who swears or affirms that he will truly testify, declare, depose or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true in an action, or a special proceeding, or upon any hearing or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, wilfully or knowingly testifies, declares, deposes or certifies falsely in any material matter, or states in his testimony, declaration, deposition, affidavit or certificate any material matter to be true which he knows to be false, is guilty of perjury.'"

Doubtless, to constitute perjury, there must be criminal intent, but intent must be distinguished from motive and from ultimate object. As was said by Judge Werner in People v. Molyneux, in 168 N. Y. 264, at page 297:

> "In the popular mind intent and motive are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result. See Burrill's Law Dictionary, volume 1. Motive is that which

incites or stimulates a person to do an act. Motive is never an essential element of a crime. A good motive does not prevent the act from being the crime. Clark's Criminal Law, section 14. There runs through the criminal law a distinction between offenses that are mala prohibita, in which no intent to do wrong is necessary to constitute the offense, and offenses that are mala in se, in which a criminal intent is a necessary ingredient of the crime."

"While there are to be found both in judicial decisions and in textbooks elaborate discussions of what is a criminal intent, no attempt has been made to accurately define the term. Very possibly the attempt to make a definition so comprehensive as to be applicable to all cases would be futile, and it has often been doubted whether the term intent is an accurate one. However this may be it is very apparent that the innocence or criminality of the intent in a particular act generally depends on the knowledge or belief of the actor at the time. An honest and reasonable belief in the existence of circumstances which, if true, would make the act for which the defendant is prosecuted innocent, would be a good defense. Thus, if a man killed another under such circumstances as gave proper and reasonable grounds for the belief that the person killed was about to take the life of the slayer, although the person killed was only playing a practical joke, no crime would be committed, but, if the facts and circumstances which the person believed to exist were not such as in law to justify his act, then there would be no defence to the act. In other words, it is the knowledge or belief of the actor at the time that stamps identically the same intent as either criminal or innocent, for the intent to take life, unless, under circumstances that the law regards as sufficient to justify the killing, is the criminal intent and the only criminal intent that can exist in case of murder, excepting where the killing is done in the commission of an independent felony. So, ordinarily, a criminal intent is an intent to do knowingly and wilfully that which is condemned as wrong by the law and common morality of the country, and if such an intent exists, it is neither justification nor excuse that the

actor intended to accomplish some ultimate good." 1 Bishop's Criminal Law, section 341.

"To constitute perjury under our law it is not necessary to establish any other intent than that specified in the statute, for by its terms its is not sufficient that the affiant testifies as to what is false, but the testimony must be given wilfully and knowingly, and the affiant must know that the testimony is false; if it be given in the honest belief that it is true or by mistake or inadvertence, the case does not fall within the statutes."

As to intent in perjury, Hawkins says, 1 Pleas of the Crown (Corw. ed.), page 439, section 2:

"It seemeth that no one ought to be found guilty without clear proof that the false oath alleged against him was taken with some degree of deliberation; for if, upon the whole circumstances of the case, it shall appear probable that it was owing rather to the weakness than perverseness of the party, or where it was occasioned by surprise, or inadvertency, of a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatsoever the most infamous and detestable."

Referring now to the evidence which bears upon this branch of the case, and which is the same evidence on which the impeachment managers rely to establish their charge under the first article, that the statement therein referred to was made and filed "wilfully, knowingly and corruptly," we have the facts, which have been most luminously explained by Louis A. Sarecky.

I will not take the time to analyze that testimony. I have read it as it appears in the record. The Court has heard it within the last few hours. Therefore it would merely mean a waste of time to review it and repeat it. If anything is clear it appears distinctly from the testimony of Sarecky, who testified like an honest man, without reservations of any kind, that the making of this affidavit in the manner in which it was made was due entirely to inadvertency and mistake and not to corrupt and wilful intent.

Not only do these facts indicate an absence of criminal intent, but the proof also shows that the various donors who are referred to in articles 1 and 2, so far as any evidence was given by them, did not make their gifts to the respondent specifically as campaign contributions, to be used solely to meet election expenses, but they made them for any purpose that the respondent might desire. This is well illustrated by the testimony of Jacob H. Schiff, Mr. Morgenthau, Dr. Cox and Mr. Dooling, and other witnesses.

It is not pretended that the respondent's expenditures for campaign purposes were more than $7,724.09. Hence, so far as all the purposes of the law were concerned, it was unimportant, at least under the circumstances as disclosed by the testimony it was considered unimportant, to state what gifts the respondent received, which he did not understand, and which the donors did not understand, were to be used for campaign purposes. In no event could any moneys be charged as having been received for campaign purposes, which the respondent did not understand he was required to use for that purpose. Certainly he was under no obligation to expend all the moneys which he received during the campaign, whether the money was needed or not.

The material question in this connection is, whether the respondent understood that he was called upon to account for moneys which he did not expect to use for campaign purposes, as having been received for that purpose. If he did not intend to use them for campaign purposes, if they were received by him with the understanding on his part that he was to use them for any purpose that he might see fit, he would not be guilty of wilful and corrupt swearing by omitting from his statement the moneys which he received and used for purposes other than to meet his election expenses. In fact the impeachment managers, by framing the sixth article on the charge of larceny, based on the alleged misappropriation of the very contributions mentioned in articles 1 and 2, admit that if any offense was committed it was not that of perjury.

We repeat that, in dealing with articles 1 and 2, the intent which is to be considered is not the intent of the donors, whatever that may have been, but the intent of the respondent with respect to the purpose for which the moneys were to be used by

him. The impeachment managers have been at great pains to show that he did not intend to use these moneys for election or campaign purposes. Hence the absence of the specific intent which must exist in order to constitute the crime of perjury has been incontrovertibly established by the impeachment managers themselves.

Those who have had any experience or opportunity for observation with respect to the statements made in connection with campaign contributions know that there prevails a great state of confusion in the minds of candidates for public office in regard to the statements which they are called upon to make and file. Political campaigns are conducted amid great excitement. Candidates for office are frequently men of little business experience, unaccustomed to keeping books or accounts with any degree of care or accuracy, liberal in their expenditures, and unfamiliar with the requirements of the statute, which are generally brought to their notice after the election is over, and under circumstances which make it exceedingly difficult to prepare a statement with entire accuracy. Those who have investigated the subject assert that but few candidates for office are able to comply, or actually comply, with the provisions of the corrupt practices article, not because of any intention to violate the law, but because of the difficulty of understanding it, and of in fact complying with it.

While every good citizen recognizes the wisdom of this legislation, and desires to observe it and to comply with its terms, it would be laying down a rule of exceeding harshness to declare that an attempt to commit perjury is predicable upon the failure to comply with the terms of the statute. In fact the very language of the corrupt practices act, which we have quoted, indicates that it was never intended by the Legislature that perjury should be predicated upon a false statement contained in a report filed, because it is declared that if the parties who were required to file the statement have filed "a false or incomplete statement," and such "false or incomplete statement was due to wilful intent to defeat the provisions of this article," the person proceeded against shall, in the contempt proceedings indicated, be liable to a fine not exceeding $1,000 or imprisonment for not more than one year, or both. This is inconsistent with the idea that the

crime of perjury can be predicated upon a wilful and intentional filing of a false statement under the corrupt practices article; in other words, its provisions are exclusive and create an exception to the law with regard to perjury, and the only remedy is under the statute, and perjury is not intended to be predicated upon any violation of the corrupt practices act. That is accentuated by the fact that a false statement with regard to contributions made by a candidate as required by section 776 of the Penal Law is not defined as a felony but merely as a misdemeanor.

It would seem, therefore, that there is not even the shadow of a justification for the charge of perjury against the respondent.

Growing out of the same facts as those which have just been considered, is article 6, which charges the respondent with the crime of grand larceny, in violation of sections 1290 and 1294 of the Penal Law. It is alleged that while a candidate for the office of Governor various persons contributed money and checks representing money to the respondent to aid his election to the office of Governor; that such money and checks were delivered to him "as bailee, agent or trustee, to be used in paying the expenses of the election and for no other purpose whatever;" and that the respondent "with the intent to appropriate the said money and checks representing money thus contributed and delivered to him as aforesaid for his own use, having the same in his possession, custody or control as bailee, agent or trustee as aforesaid, did not apply the same to the uses for which he has thus received them, but converted the same and appropriated them to his own use and used the same, or a large part thereof, in speculating in stocks through brokers operating on the New York Stock Exchange, and thereby stole such money and checks and was guilty of larceny." The money and checks thus claimed to have been stolen is the same money referred to in articles 1 and 2.

This article charges that it is drawn under section 1290 of the Penal Law, which reads as follows:

> "Sec. 1290. Larceny defined. A person, who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person:

"1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

"2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof,

"Steals such property, and is guilty of larceny.

"Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color or aid of fraudulent or false representation or pretense, or for any false token or writing, to part with his property or the possession thereof was illegal, immoral or unworthy."

It is not pretended that the acts referred to constitute common law larceny, or come within the meaning of subdivision 1 of the section just quoted. Such a charge would have defeated itself for it is alleged that the money was contributed and delivered to the respondent; that it lawfully came into his possession; and that whatever wrong he did, so far as it relates to the money or checks, was committed after he had lawfully acquired possession of the money and checks.

There can be no common law larceny without a trespass and a wrongful asportation. There can be no trespass where possession has been given to the person charged with the commission of the

crime by the original owner of the property claimed to have been stolen. As Bishop well says in 2 Bishop's Criminal Law, fifth edition, section 111:

> "There can be no trespass where there is a consent to the taking. Suppose the consent is obtained by fraud, when, as already explained, the owner means to part with his property absolutely, and not merely with the temporary possession of it, the result is the same; for by reason of the consent, there is still no trespass, therefore no larceny."

The impeachment managers are therefore driven to the position that the respondent having lawfully received possession, custody and control of the money and checks claimed to have been stolen, committed what is known at the common law as embezzlement, that crime being defined by subdivision 2 of section 1290 of the Penal Law.

In order to lay the basis for this contention, it is alleged that the money was received "as bailee, agent or trustee." It is not stated whose bailee, agent or trustee the respondent is claimed to have been. It is to be inferred that the pleader thought to indicate that he was the bailee, agent or trustee of the persons named in the article as donors of the money and checks claimed to have been stolen. So far as these persons are concerned, and the same is true of all other donors of checks and money to the respondent who have been called, each of them shows that when he gave the check or money in question he did so unreservedly, without any agreement, statement or understanding that the money or check given, or any part of it, was ever to be repaid. There was an absolute parting with the title to the money or check delivered. None of these witnesses claimed nor is it alleged that any of them ever demanded the return of his donation or any part of it. None of them has made complaint with respect to the manner in which his donation was used.

Mr. Schiff testified that "When I used the expression 'campaign funds,' it was a very general expression. I certainly had no objection whatsoever, and I think it was the general intent and purpose of the conversation, that Governor Sulzer could use this $2,500 for whatever he would please." At page 491 he testifies:

"If I searched my mind, I would say to you that Governor Sulzer could have had this $2,500 at any time and for any purpose, and if I had been very careful I would not probably have used the words 'campaign expenses' because I really meant he should have the free use of it.

"Q. Did you intend, Mr. Schiff, that he might use it for any purpose whatsoever? A. Yes, for any legitimate purpose."

On being recalled, he confirmed all that he had previously stated, indicating that it was his intention to part absolutely with the money given by him.

Mr. Morgenthau testified:

"Q. Mr. Morgenthau, how long have you known Governor Sulzer? A. Oh, for many, many years; possibly twenty.

"Q. You knew him well and intimately? A. Yes; I knew him well.

"Q. And your relations were of a friendly character? A. They were.

"Q. Was there anything said in the conversation that you have related as to the use to which he was to put the thousand dollars? A. There was nothing said.

"Q. Did you in any way intend to limit him as to the use that he was to make of the thousand dollars? A. I did not."

Judge Conlon, who represented a group of donors, testified that he had a conversation with Mr. Potter in the Manhattan Club:

"We were speaking generally about politics. They were quite warm at that time and I told him that I did not believe Sulzer had a cent, or words to that effect, and that I intended to give him a contribution and that I thought it would be graceful on the part of his friends to contribute something to help him out; Mr. Potter said he entirely agreed with me and that he would give his check.

"Q. Many other of these contributions you obtained were obtained at the Manhattan Club, were they not? A. They were all.

"Q. And did you talk to them? A. Yes.

"Q. About his impecunious condition? A. I talked with several in the club; it was a matter of common conversation.

"Q. I mean as to his financial condition? A. As to his financial condition.

"Q. And the necessity of doing something to help him out? A. Yes; I was anxious to get money; I believed he needed it.

"Q. In other words, he was to use this money that you brought him for his personal purposes, clothing, hat, anything that he might want to spend it for? A. I said yesterday that I put no restriction upon it."

Daniel M. Brady told the Governor, in substance, that he was to use the money for his personal purposes, anything he might want to spend it for.

Richard Croker, Jr., told Mr. Sulzer he would like to help him to the extent of giving him $2,000 towards covering his personal expenses. He said: "At last I said to him that I wished he would consider the giving of this money as a personal and confidential matter. I intended he should use it for any personal expenses in connection with the campaign or in connection with anything."

Doctor Cox testified: "I gave this check to Mr. Sulzer for his personal use."

John Delahanty said: "I told him that I brought something to help him or to help him out. I did not limit the use of it in any way nor did I attempt to direct him what he should do with it. I told him, in substance, that he was to use the money that I brought him for his personal purposes, anything that he might want to spend it for."

Mr. Garber enclosed a check with a letter in which he said: "I congratulate you upon your nomination. I herewith enclose check for $100."

Mr. Mandelbaum testified that he brought the Governor a check for $200, and said: "I did not tell him what it was for. I did not say anything to Sarecky except it was $200 George W. Neville requested me to hand to Mr. Sulzer."

John F. O'Brien sent a check in a letter in which he stated: "I enclose herewith my check for $50 as a contribution."

Frank M. Patterson testified that he gave the respondent a check for $500 and said: "I had told Sulzer prior to this time that I was very much interested in his campaign and that I would give him a personal contribution in addition to those which I gave the regular committees, as was my custom. I did not place any limit or restrictions upon the use of this money. This contribution I considered as a personal one and not as a political contribution. He could do what he pleased with it."

Cornelius C. Pinckney, whose testimony is contradicted and lacking probability, testified: "I asked Sulzer whether he was in need of any money, and he said that he had no objection to taking it; in fact, he would like to have contributions as long as the persons who gave it to him felt as though they could afford it," and then he adds that Mr. Sulzer immediately said: "This was not to be considered a contribution which was to be accounted for."

John S. Sorenson, representing the firm of Crossman & Sielcken, delivered to the respondent $2,500, and all he said was: "I have been sent by Mr. George W. Crossman to hand you this."

Mr. Dooling testified that he made his contribution as the result of a conversation with a friend of the respondent who spoke to him relative to his financial condition.

Mr. Bernard said he gave this money as a personal contribution to Mr. Sulzer. Mr. Gwathmey and others testified that their contributions were purely personal.

While some of the witnesses stated that their contributions were in connection with the campaign, and probably would not have been made to him but for the fact that the campaign was in progress, there is not even a suggestion on the part of any of these witnesses that the money was paid to the respondent in a fiduciary capacity or that the relation of principal and agent was created between them. It is not pretended but that the money was paid to the individual for whose benefit it was intended to be given. At the most, there was a hope, expectation or desire that the money was to be used in connection with the campaign. Nobody, however, wished the money to be wasted or expended uselessly, or

employed for illegal purposes, and none of the donors had the remotest idea that he was to receive back a dollar of the money which he gave. Nobody has ever had such an idea when making political contributions. If it should now be decided that there is a right to get back any of the money paid to a candidate during the course of a political campaign, I will find that I have unsuspected assets.

In the past twenty-five years millions of dollars have been given by friends and admirers of candidates for political office, and it is believed that in all that time no donor of money so given has ever received back, or expected that he would receive back, a single dollar. The money is given in a spirit of liberality, of amity, of expansiveness, due to the excitement of the hour, unreservedly, and with the purpose of parting with it forever.

There is, therefore, in this case no basis for a charge of embezzlement. That crime, as well as larceny, is a crime against property. It is an invasion upon the right of ownership. It is therefore a sine qua non that the property claimed to have been stolen belonged legally to a person other than the accused. An indictment in such a case must plead the title of the person whose property is claimed to have been embezzled, and the prosecution must prove that the legal title to the property embezzled was in the individual who is charged to have been its owner. Who can say in the present case that the title to the moneys given to the respondent remained in the donors for any purpose?

Could Mr. Schiff or Mr. Morgenthau be heard to assert that they continued to be the legal owners of this fund, or that their right of property to the moneys given by them to the respondent had been invaded within the meaning of the criminal law? They admitted that it was their intention to part absolutely with the title to the money which they gave. That is absolutely conclusive upon the principle which underlies the criminal law, relating to crimes against property, volenti non fit injuria.

The subject of intent in this connection is admirably discussed in 1 Wigmore on Evidence, section 581, and is sustained by a multitude of decisions covering cases of fraud, of usury and of assaults of various kinds. Seymour v. Wilson, 14 N. Y. 567; McKown v. Hunter, 30 N. Y. 624; Thurston v. Cornell, 38 N. Y.

281; Cortland County v. Herkimer County, 44 N. Y. 22; People v. Kerrains, 60 N. Y. 221; Filkins v. People, 69 N. Y. 106, 107, People v. Flack, 125 N. Y. 335; Davis v. Marvin, 160 N. Y. 267; People v. Moore, 37 Hun 94.

Even if it were conceded for the sake of the argument that some of these moneys were given on condition that they were to be used for campaign purposes and for no other purpose, and that they were to be repaid if not so used — a most violent and unnatural and artificial presumption — certainly the possession of these funds by the respondent was lawful. The most that the donors could claim, if any claim they should make, would be that the respondent had a defeasible title to the moneys which he received. In the absence of a demand that the money should be returned, his possession would continue to be lawful and the crime of embezzlement would not be established. There is not the shadow of a pretence that anybody ever made any demand upon the respondent for any part of this money, nor is there anything to indicate that if any demand had been made, the respondent would not have been ready and willing to repay the amount demanded. In fact, it has been shown that Mr. Schiff was unwilling to receive back the money which had been contributed by him, or any part of it.

It is a well-established rule, not only in the criminal law, but on the civil side of the courts, that where one acquires possession of property lawfully, to change the character of the possession to a tortious one, a demand and a refusal are necessary. I cite many cases upon that subject which are familiar to the members of the Court of Appeals and to the lawyers who constitute a part of this body. Addison on Torts, 312; Colebrook v. Wight, 24 Wendell 169; Mont v. Derick, 5 Hill 453; Hence v. Van Dyke, 6 Hill 613; Goodwin v. Wertheimer, 99 N. Y. 146.

In the recent case of MacDonnell v. Buffalo Loan, Trust & Safe Deposit Company, 193 N. Y. 101, Judge Werner said:

> "The rule that one who comes lawfully into the possession of property cannot be charged with the conversion thereof until after a demand and refusal is too well established to justify extended discussion." Citing Goodwin v. Wertheimer, supra; Converse v. Sickles, 146 N. Y. 200; Castle v. Corn

Exchange Bank, 148 N. Y. 122; Tompkins v. Fonda Glove L. Co., 188 N. Y. 261.

But we are not required to stop our investigation at this point because not only is it necessary for the prosecution to show an invasion of the property right of a third party by the respondent, but it is also essential that it be shown that the relation existing between the respondent and those whose money is claimed to have been stolen, was that of bailee, agent or trustee. That is not only the precise language of the statute under which this article purports to have been framed, but it has always been the law. In 15 Cyc. of Law and Practice, 492, it is said:

"One cannot commit embezzlement of money or other property lawfully his own, or in which he has a general interest."

Certainly the respondent had a general interest in this money. At page 494 it is said:

"In order to constitute embezzlement, the accused must occupy a designated fiduciary relation, and the money or property must belong to his principal or come to the possession of the accused by reason of such employment.

"The fraudulent conversion of money paid by mistake is not embezzlement." Commonwealth v. Hayes, 14 Gray 62; People v. Butts, 128 Mich. 208.

"Embezzlement cannot be charged with reference to funds acquired and spent before the party assumed the fiduciary capacity; nor where the relation of debtor and creditor subsists between the parties." Smith v. Glendenning, 194 Pa. 45.

"Possession must be by reason of some special trust imposed." Colip v. State, 153 Ind. 584.

"The trust relationship must exist at the time of the reception of the money by the agent or the money must have been under the care of the agent by virtue of that agency, in order to constitute the offense of embezzlement." Taylor v. State 29 Tex. 466, 501; citing Wharton's Criminal Law, 9th ed., sec. 1055, where it is stated: "The term 'bailee' when

used in embezzlement statutes, is not to be understood in its large, but in its limited sense, as including simply those bailees who are authorized to keep, to transfer or to deliver, and who receive the goods first *bona fide* and then fraudulently convert."

Let us now consider the record for the purpose of ascertaining whether the respondent received the moneys in question as the agent of anybody else. What were the terms of the agency? What were the limitations? Who was to determine what use was to be made of the money? Was the agency of Mr. Schiff a different agency from that of Mr. Elkus, or Mr. Morgenthau, or Mr. Dooling, or Mr. Ryan? Was the money of each of these donors to be kept separate? We are without light upon that subject. The alleged principals do not complain. They are absolutely satisfied. So far as the record indicates, every one of them came here under compulsion. None of them has voiced dissatisfaction with the action of the respondent. It is the strangest case of agency that has ever come under the observation of anyone who has the slightest familiarity with the legal concept which is so denominated.

We are in the same plight with regard to the idea of a bailment, as applicable to the present case. Which of the bailments described by Lord Holt in Coggs v. Bernard is this claimed to be? It has none of the elements of a depositum, a mandatum, a commodatum, a pignus or a locatio. The respondent was not called upon to deliver this fund to anybody, to receive it on deposit, it was not pledged to him, he was not acting as a common carrier, nor was he to perform any service in connection with it. There was no basis for even an action of tort based on any failure to return the money, or any part of it, or by reason of the use that the respondent actually made of it.

The impeachment managers are, therefore, compelled to fall back on the generalization that the respondent was a trustee, a fiduciary, and therefore, by reason of a breach of trust, has been guilty of larceny. This calls for an interpretation of the meaning of the term "trust." A trust is a right of property, real or

personal, held by one party for the benefit of another. Burnett v. Bookstaver, 10 Hun 484; Gifford v. Rising, 51 Hun 1.

It is the relation between two persons by virtue of which one of them, called the trustee, holds the property for the benefit of another, called the cestui que trust. Corby v. Corby, 85 Mo. 371, 378.

In its simplest elements, a trust is a confidence reposed in the trustee for the benefit of the cestui que trust with respect to property held by the former for the benefit of the latter. It implies two estates or interests, one equitable and one legal, and is said to exist where property is conferred upon and accepted by one person on terms of holding, using or disposing of it for the benefit of another. Corby v. Corby, 85 Mo. 371, 378; 30 Cyc. of Law & Practice, Title " Trust," p. 18.

As it has been elsewhere expressed, a trustee is a person who takes and holds the legal title to the trust property for the benefit of another. Dillenbeck v. Pennel, 121 Iowa 203; Glengarry Consolidated Mining Co. v. Boehmer, 28 Col. 1; Welles v. Larabee, 36 Fed. Rep. 266; Taylor v. Mayor, 110 U. S. 310, 335; Black's Law Dictionary and Bouvier's Law Dictionary.

Every statement which I have here made is abundantly supported by authority.

How completely the house of cards erected by the impeachment managers disappears before these definitions. The very idea that the respondent received or held these moneys for the benefit of any other person than himself savors of humor.

What was the nature of the benefit which the cestuis que trust, supposedly the creators of the trust, the donors, were to have? There is no pretense that even by mental reservation, they, or any of them, were to be the beneficiaries. Nor is there the slightest suggestion that any third party was to be the beneficiary. The donations were purely personal, they were not to be used or expended for the benefit of any third party. In other words, if the respondent was the trustee, he was likewise intended to be the beneficiary. If the trust was that the money should be used for campaign purposes, it was to be the respondent's campaign purposes, and not those of any other person, and the entire benefits of the alleged trust fund were to be those accruing to the respond-

ent. To dignify this relation by the term of trust is to add a new abuse to that oft misunderstood creation of the law.

But even if, by any stretch of the imagination, it were possible to deduce from the facts established the germ of a trust, it was withered at its very birth, for nothing is clearer than that the same person cannot be trustee and beneficiary. The equitable estate of the beneficiary is merged in the legal estate, and ceases when the legal title is absolutely vested in the trustee. Woodward v. James, 115 N. Y. 346; Greene v. Greene, 125 N. Y. 506; Woodbridge v. Bockes, 170 N. Y. 596; Weeks v. Frankel, 197 N. Y. 304.

In Greene v. Greene, 125 N. Y., Judge Gray said:

> "The trustee and beneficiary must be distinct personalities; for otherwise there can be no trust, and the merger of interests in the same person would effect a legal estate in him of the same duration as the beneficial interest designed. . . . that the legal and beneficial estates can exist and be maintained separately in the same person is an inconceivable proposition. It is quite as much of an impossibility legally considered, as it is physically."

And in Weeks v. Frankel, 197 N. Y., Judge Haight said:

> "A trust contemplates the holding of property by one for the benefit of another, and consequently the same person may not at the same time be sole trustee and sole beneficiary of the same interest."

But we are not obliged to rest our contention even at this point where demonstration has performed its office most effectually. For whatever the form of larceny charged against the respondent himself, the crime cannot be established unless it is shown that the accused acted with a criminal intent, that he took or withheld from the true owner of the moneys given to him, the possession thereof *animo furandi,* with the intention of stealing.

If this were not the most solemn proceeding conceivable, the charging of an intent to steal under these circumstances would attain the Himalayan heights of the ridiculous.

It will suffice for the purposes of this case to permit this honorable Court to draw a parallel between it and People ex rel. Perkins v. Moss, 187 N. Y. 410, with which Mr. Jerome was most familiar. The present case is infinitely stronger for the accused than was that which I have just cited, and because of the conclusion which the Court of Appeals, including the dissenting judges, reached in that case, I venture to quote at length from the opinions there delivered.

Judge Gray said (pp. 419, 420):

> "It is apparent that what constitutes the crime of taking the property of another for the use of the taker, or that of any other person than the legal owner, is the intention with which the act is committed. Under the statute, the crime of larceny no longer necessitates a trespass; but it does need, as an essential element that the 'intent to deprive or defraud' the owner of his property, or of its use, shall exist. The intent, by necessary implication, as from its place in the penal statute must be felonious; that is to say, an intent without an honest claim or right. It is not now essential, as it was under the Roman and early English law, that the intention of the taker shall be to reap any advantage from the taking, the statute makes the crime to consist in the intent to despoil the owner of his property. That is necessary to complete the offense, and if a man, under the honest impression that he has a right to the property, takes it, it is not larceny, if there be a colorable title. (See Code Crim. Pro., sec. 548; People v. Grim, 3 N. Y. Cr. Rep. 317; Bishop's Crim. Law, secs. 297, 851; Wharton's Crim. Law, secs. 883, 884.) The charge of stealing property is only established by establishing felonious intent. Without it there is no crime; for it would be a bare trespass. It is the criminal mind and purpose going with the act which distinguished the criminal trespass from a mere civil injury. (1 Hale's P. C. 509; McCourt v. People, 64 N. Y. 583.) Doubtless, if the particular act was specified in the penal statute, an honest belief that it was right, while it would purge the act from immorality, would not relieve it from indictability. . . . If we turn then, to a consideration of the fact upon which the magistrate ordered the relator

to be arrested, it is impossible, reasonably speaking, to find that criminal element which the statute makes a necessary one, the intent of the accused to steal. . . . Courts, however, may not sit to judge the conduct of a defendant by any moral code, or rules of ethics. Their sphere is to ascertain if the facts shown establish the crime charged against him. In the facts stated in these depositions, I find none upon which criminality can be predicated. The essential element of the 'intent to deprive and defraud' is nowhere to be found, and there is no just basis for the inference. There was no concealment about the transaction and knowledge of it was conveyed to the other trustees. That the relator may have made a mistake of law, which will not relieve him from liability in a civil action, may be true, and he expressly disclaimed in his letter any intention to dispute such a liability, but this was a case where the intent or good faith was in issue, and then knowledge of the law is immaterial. (Knowles v. City of N. Y., 176 N. Y. at p. 439; Goodspeed v. Ithaca St. Ry. Co., 184 Id. at 354.) The relator came to the aid of the president of the company, who, as such, had agreed to contribute moneys to the campaign fund, and advanced the moneys, temporarily. Having done so, for no other reason than for the supposed advantage of the company, his claim to be reimbursed from the treasury of the company is openly presented, and it is paid. But within the spirit, if not the letter, of section 548 of the Penal Code, that was not larceny. The section provides that 'Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even though such claim is untenable.' This section is an expression of the emphasis which the statute lays upon the intent with which the property of another is taken. It is a qualification of the provisions of section 528 of the Penal Code, defining what shall constitute the crime of larceny. It is of considerable significance, as illustrating the legislative understanding, that when in 1906 the Legislature dealt with the question, specifically, the offense was declared to be a misdemeanor, not a larceny."

His Honor Judge Hiscock said (pp. 425, 426):

"It is agreed upon all sides that the crime of larceny may not be committed unintentionally, unconsciously or by mistake, but that in order to accomplish it the perpetrator must have the intent referred to. It may be difficult at all times exactly and satisfactorily to define this intent, but the requirement for it, as applicable to this case, means that when the relator took part in the appropriation of the moneys in question, he must have had in some degree that same conscious, unlawful and wicked purpose to disregard and violate the property rights of another, which the ordinary burglar has when he breaks into a house at night with the preconceived design of stealing the property of its inmates. There is, as there ought to be in the absence of statutory enactment, a long distance between the act which is unauthorized and illegal, and which subjects the trespasser to civil liability, and the one which is legally wicked and criminal, and which subjects the offender to imprisonment. It is on this point of criminal intent that I think the district attorney has failed to furnish any evidence whatever on which the magistrate might act, although the burden affirmatively rested on him so to do. . . . If, in a suit upon a note the plaintiff relies for evidence upon the statement of the defendant that he gave the note, he must also accept the accompanying declaration that the note has been paid in full, and if this is all the evidence, the statement stands as a whole, and the proofs fail. . . ."

"In McCourt v. People, 64 N. Y. 583, the plaintiff in error stopped at a house and asked the daughter of the owner for a drink of cider, offering to pay for it. She refused to let him have it, and he thereupon opened the cellar door, and although forbidden to do so by her, went in and drew some cider. He was indicted for burglary and larceny, and it was held that the trial court committed error in refusing to direct his acquittal. It was said: 'Every taking by one person of the personal property of another, without his consent, is not larceny; and this, although it was taken without right or claim of right, and for the pur-

pose of appropriating it to the use of the taker. Superadded to this there must have been a felonious intent, for without it there was no crime. It would, in the absence of such an intent, be a bare trespass, which, however aggravated, would not be a crime. It is the criminal mind and purpose going with the act which distinguishes a criminal trespass from a mere civil injury.' And then, further, as applicable to the particular circumstances of that case, 'there was not only an absence of the usual indicia of a felonious taking, but all of the circumstances proved are consistent with the view that the transaction was a trespass merely. To find this transaction a larceny it is necessary to override the ordinary presumption of innocence, and to reject a construction of the prisoner's conduct, which accounts for all the circumstances proved without imputing crime, and to impute a criminal intention, in the absence of the earmarks which ordinarily attend and characterize it.'"

His Honor, Chief Judge Cullen, delivered the dissenting opinion, but notwithstanding, recognizes the principles which we are contending for, for he says (pp. 439, 442):

"But though there was an illegal misappropriation of the corporate funds by the relator, this does not necessarily prove that he was guilty of larceny. It may have been simply a trespass for which he is only civilly liable. I agree with Judge Gray that to constitute larceny there must be what is termed a felonious intent, but we do not make progress towards the determination of the question before us unless we ascertain what is a felonious intent. The question has given rise to much discussion in textbooks and in judicial opinions. Whether 'intent' is the proper term to employ may well be gathered. Though a man may commit many statutory offenses unwittingly, no one can become a thief or embezzler accidentally or by mistake. To constitute the offense there must be in the perpetrator the consciousness of the dishonesty of the act. This, however, as frequently turns on the knowledge or belief of the party as to his authority as on his intent regarding the disposition of the property. * * *

"It may be in the present case that the relator's character is so good, and his standing so high, that either on the examination or on the trial, it will seem clear that he could not have consciously and knowingly misappropriated the money of the company. It is also but fair to the memory of the president, who is now deceased, to say that it is entirely possible that his standing and character may appear to have been equally as good. The relator is entitled to the full benefit of the presumption arising from such character when presented at the proper place and before the proper tribunal. But, of course, nothing of that nature appears or can appear in the depositions on which the warrants were issued. However high the standing and character of the relator may be, it does not justify a departure in his case from the same orderly course of procedure in the administration of justice which would be followed in the case of the humblest citizen charged with an offense."

In other words, that that question was a question to be tried at the final hearing.

And Judge Werner, who also dissented, said (p. 445):

"If the question were whether the relator's guilt of the crime of larceny, as charged in the information, had been established according to the immemorial rule which obtains in criminal trials, and which imperatively demands proof of guilt beyond a reasonable doubt to justify a conviction, I should unhesitatingly vote in the negative, for the evidence which the magistrate had before him when he was called upon to issue the warrant concededly falls far short of that standard. But that is not the question before us. The only question we are called upon to consider, and indeed the only one we have the right now to decide, is whether the evidence before the magistrate invested him with jurisdiction to issue the warrant."

But now we have before us the question which is so well stated in the opinion of Judge Werner. What, on the evidence, what on the proofs, is the conclusion here to be reached in accordance

with this immemorial rule of requiring proof of guilt beyond a reasonable doubt, as to which in that case the learned judge said that at the final stage of the case he would be compelled unhesitatingly to vote against the existence of guilt?

Whatever may be said by way of personal reflection, vituperation or condemnation of the respondent in connection with the receipt of these moneys, to say that he intended to steal them, that to the remotest extent he harbored a criminal thought, is to do violence to one's credulity. Reason, experience, justice and fair play stand aghast at the very suggestion of such a possibility.

It is well known that some of the greatest men in American history, who devoted their lives to politics in the best sense of that much abused term, were proverbially impecunious, in a state of perennial financial distress, and dependent largely upon gifts, loans and contributions from their friends and acquaintenances, and those who believed in them.

Charles James Fox and Richard Brinsley Sheridan are famous examples in English history. Daniel Webster and President McKinley are but two of many examples that may be cited from American history. One might as well charge that the god-like Daniel was guilty of larceny because he scattered with spendthrift lavishness funds which his admirers, seeking to help him in his career, may have placed in his possession.

That Governor Sulzer had such admirers, men like Mr. Schiff, Mr. Morgenthau, Mr. Lehman, Dr. Cox, Judge Conlon, and others who have here testified, is established beyond a peradventure, and to intimate that the respondent, when he used the moneys which he received from any or all of these men, for his personal uses, did so with a criminal intent, is as cruel as it is ungenerous. Nothing but blind prejudice, uncontrolled passion and the most bitter hatred, can deduce criminal and larcenous intent from any of the acts charged against the Governor of the State of New York, a man who for twenty-five years was universally regarded as a faithful, useful and patriotic public servant.

We have now dealt with the charges which have been declared to be the very head and front of the respondent's offending. Upon analysis they vanish into thin air. They have no

basis in law or in fact. They are not even charges of misconduct in office. On a trial before a regular tribunal administering the criminal law, they would present no question to be passed on by a jury. This tribunal, however, is one which performs the double function of a trier of the law and a trier of the facts. In their determination William Sulzer, the Governor of the State of New York, is not so much on trial, as is the law itself. May it never be understood that in order to punish him, violence is to be done to the majesty of law and a stain imposed upon the pure garments of justice.

As collateral to the charges contained in articles 1, 2 and 6, are those set forth in articles 3, 4 and 5. The latter are founded on the former and are a mere outgrowth from them, a parasite, as it were. Yet, while it is believed that with the disposition of the primary charges, the secondary charges would be likewise disposed of, in view of the position taken by the impeachment managers with regard to these three charges, although they have been fully dealt with in the opening remarks of Senator Hinman, we will permit ourselves to advert to them further in order to demonstrate the weakness of the case of the prosecution and the unfair methods to which resort has been had in order to create an atmosphere of suspicion and prejudice about this case.

None of the acts charged in the articles now under discussion were official acts. None of them relate to any matter as to which the respondent was called upon to perform any official duty. They are all claimed to have been of a private and personal nature. They bear no relation to the performance of executive functions and I may therefore well urge that none of these acts comes within the letter or the spirit of section 12 of the Code of Criminal Procedure, which, as has been seen, defines the jurisdiction of this tribunal.

It certainly cannot be the law that the Governor may be impeached for violating any provision of the criminal law whether it be a misdemeanor, a felony or a violation of an ordinance. Otherwise he might be haled before this great tribunal on charges of impeachment alleging that he ran an automobile faster than 20 miles an hour. There must be some relation between the act charged and wilful and corrupt misconduct in office in the per-

formance of his executive functions. It is not sufficient that they are the wrongful, or even the criminal, acts of an individual who happens to hold a public office.

But we will not rest here, preferring to deal with the merits of these charges as we have regarded those which have already passed under review, considering each of them separately in the order in which they are stated.

Article 3 charges the respondent with "mal and corrupt conduct" in his office (not wilful and corrupt misconduct in office), and bribing witnesses in violation of section 2440 of the Penal Law. It is stated that a committee was appointed by concurrent resolution of the Legislature to investigate into, ascertain and report at an extraordinary session of the Legislature upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the requirements of law relative thereto; that while such committee was conducting its investigation the respondent in July and August, 1913, "fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell and one Melville B. Fuller, each to withhold true testimony from the said committee," and which under said inducements of the respondent they and each of them refused to do; that in performing these acts the respondent acted wrongfully, wilfully and corruptly and was guilty of a felony.

Section 2440, under which this article purports to have been drawn, reads as follows:

> "A person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony."

This article is very indefinite. It consists of the merest conclusions. It charges the respondent with bribing witnesses without

stating which of the persons named in the article was bribed, or how he was bribed.

It is further alleged that the respondent fraudulently induced them to withhold true testimony from the committee. It does not state what fraudulent means were used. It does not indicate what the testimony was that was withheld. It is a generalization and nothing more, and gives no notice of the true charge which the respondent is to meet with respect to the three individuals named in the article. The crime charged being a felony is subject to the same principles so far as intent is concerned which are applicable to the charges of perjury and larceny with which we have thus far dealt.

The article refers to bribing witnesses without stating how the witnesses were bribed. It then proceeds to say that he fraudulently induced Sarecky, Colwell and Fuller to withhold testimony. Under the statutory definition, the offense described in section 2440 of the Penal Law has to be committed by means of a bribe or an attempt by other means fraudulently to induce to withhold true testimony. These other means must exclude the idea of bribery. What they are is not stated.

But without dealing with this charge according to the strict rules of pleading which obtain in criminal proceedings, let us consider the evidence for the purpose of ascertaining whether there is any reasonable foundation for the charge with respect to either of the three individuals named.

One of the persons mentioned is Melville B. Fuller. Is there a scintilla of evidence to indicate that he was bribed or that any fraudulent means were adopted to induce him to withhold testimony from the Frawley committee? He appeared before this Court and testified fully, freely and frankly in a manner which carried conviction to everyone who heard him. He was a man who showed himself jealous of his honor and of his integrity and his reputation. He brought with him all books and papers. He attended before the impeachment managers, out of Court, when he was not bound to do so, and disclosed to them his private books. He showed himself to be a high-minded gentleman, anxious to do naught which savored of unfairness, discrimination or favoritism.

When he first appeared before the Frawley committee, acting on the belief which is shared by all stock brokers and bankers, that the business of their clients is privileged and that they are not bound to disclose it without the client's consent, he declined of his own accord to answer the questions. He came to Albany, stated the situation to the respondent, who incidentally informed him that he had been advised that the committee had no power to carry on its investigations. The respondent made no suggestion of anything which savored of an intimation that Mr. Fuller should refuse to testify, and later, Mr. Fuller in fact, with the affirmative consent of Governor Sulzer, testified before the Frawley committee fully and completely with regard to all the transactions between the respondent and Harris & Fuller.

At that time, it appears from the record, page 893, Judge Olcott, who was the personal counsel of Mr. Fuller, appeared with him before the Frawley committee and said — this has already been read to this Court, but nevertheless, in view of the nature of the charge which has been made, and which has not been withdrawn, which still is before this Court for determination, I feel that I should again call attention to what took place, as an indication of the manner in which these prosecutors are conducting this case —

> "I was not present at the hearing before. Before you proceed with his examination, through your own already expressed courtesy of the commission and that of Mr. Richards, I want to say a word on the subject of his refusal to answer questions the other day, and the fact that he now presents himself ready to answer all questions which are asked. His refusal the other day was based upon the custom, which is to them a law and a moral right of brokers, never to reveal any of their books so far as their customers' accounts are concerned. Since that, we have had a conference with Governor Sulzer and his representatives, and the Governor agrees that without further contest, without any contest on his part, that Mr. Fuller's lips should be unsealed. Now, having that waiver from the customer, Mr. Fuller feels at liberty to answer your questions. I thank you for the privilege of this statement of his position in the matter."

Thereupon Mr. Fuller presented to the Frawley committee every book, paper and document that it desired. Some of them were examined by the committee at that time, as fully as it wished. The witness answered fully and frankly all questions put to him, and furnished them with a transcript of the account of Governor Sulzer.

If it is possible to spell from this testimony any bribery or attempted bribery, or any other fraudulent means to induce the witness to withhold testimony, then, like Alice in Wonderland, we are groping amid the obfuscations of topsy-turvydom.

And yet for some mysterious reason this witness was subjected to the most extraordinary treatment. The book which he produced was passed from one member of this Court to another with all the theatrical concomitants of the melodrama except slow music. It was intimated that the books had been "doctored," fraudulently altered and forged. Mr. Fuller thereupon demanded the right and the privilege of protecting his reputation and his character against these insinuations and innuendoes and stated that he had concealed nothing and had nothing to conceal, that his books were absolutely correct, that no balances had been forced, that there had been nothing omitted or concealed to protect Governor Sulzer or anyone else and indicated his perfect willingness to bring his books into Court, and to produce every clerk in his office, to prove the correctness of his statement.

It was a pathetic scene of a man striving and struggling before this High Court to maintain his dignity and his honor in the eyes of the people of the State.

Two days later the impeachment managers were forced to absolve Mr. Fuller from the unworthy suspicions for which they were responsible. We may therefore discharge from further consideration any suggestion of wrongdoing with respect to the testimony of Mr. Fuller.

The President.—Have you ended with reference to that account?

Mr. Marshall.— Yes.

The President.— We will suspend now.

Mr. Todd.— May it please the Court, the managers have prepared an index a little more complete than the one which has been prepared for us. With the permission of the Presiding Judge, we will have them placed in the covers with the testimony this noon.

The President.— Show them to your opponents and see if they make any objection; if not, it will be done.

Mr. Todd.— Is there any objection to having that done?

Mr. Herrick.— No.

Thereupon, at 12.30 o'clock p. m. a recess was taken until 2 p. m.

AFTERNOON SESSION

Pursuant to adjournment, Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Marshall.— Continuing the discussion of article 3 of the impeachment articles, I now come to a consideration of the charge with regard to another of the persons named in the article, Frederick L. Colwell. There is absolutely no evidence in the record of any conversation, communication — oral or written — between the respondent and Colwell with respect to the giving or withholding of any testimony from the Frawley committee, or as to his testifying or not testifying before that committee. The only evidence in the record relating to Colwell is that he gave orders for the purchase of stock and paid for stock to the firm of Harris & Fuller and Boyer, Griswold & Company.

The witness John Boyd Gray testified that Colwell lived at Yonkers in a house rented from him; that he last saw him at 71 Broadway about the middle of August; that at that time Colwell said to him that he was going to Albany; that he did not say how long he was going to remain away; that he had called up his

house and asked to have his luggage brought to the Yonkers station; that he took a northbound train; and that he said he was going to see William Sulzer. There is absolutely no other testimony in the record with regard to Colwell, nothing even to show that he made any default in appearing before the committee, or that he had refused to yield obedience to any subpoena served upon him, or to answer any questions put to him. His statement to Gray that he was going to Albany to see William Sulzer is the merest hearsay and is not binding in any way on the respondent. To argue from this bare statement that the respondent bribed the witness or used any fraudulent means to induce the witness to withhold any testimony from the committee, is so far-fetched as not to merit being dignified by the term argument. It is a bald guess, a violent conjecture, and an ungrounded suspicion.

Inference and surmise are not permitted to take the part of proof, even in a civil proceeding. To hint at the possibility of employing them in a criminal proceeding is monstrous. The very fact that the prosecution is driven to such straits is the strongest evidence of the weakness of their position. Time was when prosecuting officers were considered as quasi-judicial, and when they felt it incumbent upon themselves to move for the dismissal of an indictment or of a prosecution where there was no legal evidence, or not sufficient evidence, to warrant the submission of the charge to the determination of the tribunal before which it was on trial.

We have fallen upon other days. Anything which may constitute the basis for a newspaper headline; an inflection of the voice, a lifting of the eyebrow, a shrug of the shoulder, a confidential whisper, seems to be a sufficient instrumentality for the destruction of a reputation and the ruin of an honorable career. This was the method pursued by Iago for the purpose of arousing the jealousy of the credulous Othello, which led the poet to exclaim, " Trifles light as air are to the jealous confirmation strong as proof of holy writ." It is the method pursued by the slanderer and the backbiter, and which, if indulged, will subject any member of the body politic, and especially every holder of public office, to unspeakable perils.

Rumor with her thousand tongues is ever ready for mischief and

he is indeed a fortunate man whom a kindly fate has spared from her withering blasts.

An entire absence of testimony is now sought to be made the equivalent of the most cogent proof, and where the law requires proof beyond a reasonable doubt, the absence of a single legitimate fact upon which reason can operate is to be made a substitute for that rule which the wisdom of the past has evolved as a safeguard of the liberty of the citizen.

In this connection it will also be useful to remember, as reflecting upon the methods of the prosecution, that it was pretended, when Mr. Bell, his counsel, was on the witness stand, that the witness, John Boyd Gray, could not be found. Questions were put to him to indicate that the whereabouts of Mr. Gray were shrouded in mystery. Mr. Bell showed that Mr. Gray was daily at his office transacting business, that he had seen him there and talked with him there, and when Mr. Gray voluntarily came and testified, it appeared that he had not even been subpoenaed — he had not been requested to appear. The mere suggestion of the desire that he should be present was sufficient to induce him to come unsubpoenaed. That there was no attempt on the part of anybody to keep him away was shown by the answers to the questions put to the witness by Senator Brown:

"Q. Have you avoided the service of process for the purpose of avoiding an appearance here? A. No.

"Q. Have you been requested not to appear here if you could avoid it? A. I have not.

"Q. Have you had any communication from Governor Sulzer or any other person about not appearing? A. I have not.

"By Senator Pollock:

"Q. When did you first learn that your appearance in this Court was desired? A. Oh, I heard of it indirectly several days ago.

"Q. Through whom? A. Why, through several sources, I guess.

"Q. Did you receive any communication from the impeachment managers or their counsel? A. I did not."

The third witness referred to in this article is Louis A. Sarecky. It was shown that he appeared before the Frawley committee, and from the proceedings of that committee the prosecution read some of the questions and answers given by the witness, which merely showed that the witness under the circumstances described stated that he would not testify unless he was permitted to have counsel present in order to bring out all the facts on both sides and not to give a colored statement. And even then he showed clearly that he did not refuse and did not intend to refuse to testify.

I will briefly read from the record on that point and invite your Honors to examine the entire testimony which was introduced from the proceedings of the Frawley committee with regard to this witness. This part of the testimony was not offered by the prosecution. It was left to the respondent to bring it out. Mr. Sarecky testified as follows:

> "A. Now, gentlemen, I want to make a statement on record before I testify further. If you are delving into the Governor's campaign expenses, I am willing to tell everything, on condition that I be represented by counsel, because if the story is to be told, I want both sides told."

Then the chairman interrupted him by saying:

> "Mr. Sarecky, if Mr. Richards asks you any question that you feel you don't want to answer, you have a right to refuse."

Then the witness replied:

> "I feel that the committee has absolutely no authority at all to conduct the investigation."
>
> "I refuse to answer that question and all other questions pertaining to the Governor's campaign fund, unless I am permitted to be represented here by counsel, who will bring out the whole story and not one side of it, and he will give me full opportunity to explain any items that may appear doubtful on the face of it."

That was his testimony, and that was the position which he assumed, which was not the position that he would refuse to answer. He merely asked that he should have counsel, that there should be an opportunity for counsel to be present, and he was told by the chairman of the committee that if he did not want to answer the questions he had the right to refuse to answer.

The testimony in regard to his refusal to testify before that committee, given by him on his examination before this Court, is fresh in the minds of its members, and because of the limited time given us for argument, I shall not stop to read it. I am obliged to hurry on.

But I suggest that there is nothing in that record which does not indicate that Sarecky was entirely willing to testify. There was no attempt made by anybody and no intention of anybody to interfere with his testifying, and the respondent here did in no manner interfere or try to interfere with him, or try to induce him not to testify.

There is absolutely nothing to indicate that Sarecky's refusal to testify was based on any instruction, advice or action of the respondent. In fact, the witness expressed his willingness and his desire to answer all questions. All that he asked was that he should have the privilege of being represented by counsel so that the entire story might be given without discoloration, and he might have an opportunity to explain everything. In fact, the chairman of the committee informed the witness that if the counsel to the committee asked him any question which he felt he did not wish to answer, he had a right to refuse.

Those who are familiar with the methods of investigating committees will recognize that they are generally characterized by a disposition to bring out half truths only, to suppress facts, to prevent the telling of the whole story. That is true of most committees. I do not mean to say that it is always done with a wrongful intention; but it is the natural tendency of such bodies to be one-sided.

At all events, the witness did not intend to be understood as refusing to answer questions. He merely sought protection against being put in a false position and being required to give

a garbled and incomplete statement of facts. But it is a far cry between a witness' refusal to testify under the conditions stated and the criminal agency of the respondent to induce him to withhold true testimony from the committee.

No effort was ever made to call Sarecky a second time, either before the committee or before the Assembly, but it is claimed, nevertheless, that Governor Sulzer bribed Sarecky into a refusal to testify by procuring his appointment as a lay deputy in the bureau of deportation of the alien insane.

If the respondent bribed this witness, this amounts to a charge not only that he was a briber, but that Sarecky was bribed. This is certainly a most serious charge. It is not to be dealt with lightly. Strong and incontrovertible testimony is the least that should be required at the hands of the impeachment managers for its establishment. How has this burden been sustained?

It was asserted by their counsel that Sarecky had been appointed to be a deportation agent in place of a physician, and that this appointment constituted a bribe. It was shown that Sarecky had previously been confidential stenographer to the Governor. He had resigned as such on June 18, 1913. He had been in the Governor's employ for many years. He had indicated intelligence and competency, and it was but natural that the Governor should not interpose any obstacles to his advancement.

On July 23, 1913, the State Hospital Commission communicated with the State Civil Service Commission, requesting the latter to suspend the rule requiring examination in the case of Louis A. Sarecky for appointment to the position of lay deputy in the bureau of deportation, at an annual salary of $4,000. The Hospital Commission, in its communication, said:

> "Mr. Sarecky is a person of high attainments and possesses qualifications which will make him a useful member of the force. He masters five modern languages and also knows the jargon of the different races and nationalities contributing to our hospital population."

On the following day this communication was acknowledged.

On July 30th the State Hospital Commission presented another communication to the State Civil Service Commission

with respect to the position of lay deputy in the bureau of deportation, asking that it be classified in the exempt class under the civil service rules. It was stated that competitive or non-competitive examination was not practicable for filling the position, because an immediate appointment was necessary, and because of the extraordinary need of assistance in the bureau; that there was no eligible list from which such lay deputy could be appointed; that the Commission desired to appoint Louis A. Sarecky, who was familiar with the work of the bureau and had become specially equipped as an investigator in some of the difficult fields to which he would be assigned to work on the Hospital Commission, that peculiar and unusual qualifications of an educational character were required for the position, and that Sarecky was a linguist who commanded five modern languages and knew the jargon of the different races or nationalities contributing to the hospital population.

On July 30th, the Commission, subject to the approval of the Governor, placed in the exempt class the position of lay deputy, bureau of deportation. The State Civil Service Commission reported this action, and the Governor approved the action of the Commission, and thereupon, on July 18, 1913, the State Hospital Commission appointed Sarecky as a lay deputy, at a salary of $4,000 a year.

The State Hospital Commission consists of public officers of high standing. The State Civil Service Commission likewise consists of three public officers of unimpeached character. Both of these commissions cooperated in the official action which was taken. It is not to be presumed that any of these high officials violated his oath of office or acted otherwise than in accordance with his best judgment and for the best interest of the State. The responsibility for any appointment that was to be made rested on the Board of Hospital Commissioners. The responsibility for the enforcement, according to its true spirit, of the civil service law rested on the Civil Service Commission. It is not pretended that Governor Sulzer communicated with any one of these officials or used his influence with them in any way or urged them to do aught which they did not consider to be consonant with their public duties. The appointment was theirs.

The determination as to the fitness of Sarecky rested upon them and yet in spite of the legal presumption in favor of the honesty and propriety of official action, these public officers are practically charged with having entered into a conspiracy to enable the respondent, through their agency, to bribe Sarecky, their appointee. This is piling suspicion on suspicion's head, vaulting conjecture that overleaps itself.

But the unfairness of our opponents does not stop here. They have pretended that a physician was removed for the purpose of making a place for Sarecky, and the duties which he was called upon to perform were those of an expert medical character. This is not true. Section 7 of chapter 121 of the Laws of 1912, which amends the insanity law, provides:

> "There shall be established by the commission (the Commission in Lunacy) a bureau of deportation for the examination of insane, idiotic, imbecile and epileptic immigrants and alien and nonresident insane, and to attend to the deportation or removal thereof, which shall consist of a medical examiner and such number of medical or lay deputies as may be necessary, to be appointed by the commission."

The duties of these deportation agents were to see to it that such aliens who were found to be insane and who were to be deported from this State, were safely returned to their friends or relatives in the countries whence they had come. This requires medical men, in the first instance, to determine the fact of insanity, and laymen, in the second instance, to attend to the physical act of deportation. That requires men who are able to converse with the insane aliens, to make investigations as to their place of origin, to communicate with their relatives and friends, so that the poor unfortunates might not be set adrift without regard to what might be their fate; it requires a knowledge of languages and the possession of tact as well as a pleasing address, coupled with the ability to make investigations of the character indicated — these are the important qualities required for such a lay deputy.

That Sarecky possessed them to a high degree is not only indicated by his testimony but by the manner in which he has testified before this Court. Never has there been a civil service examina-

tion so searching, so painstaking, so thorough as that to which the witness was subjected at the hands of that master of the art of cross-examination, Mr. Stanchfield, and I leave it to this Court to determine whether that young man did or did not pass a satisfactory examination as to qualification, as to ability, linguistic and otherwise. He indicated that he possessed the linguistic qualifications necessary, and that he thoroughly understood the nature of the duties which devolved on him, and possessed the sympathy that was essential to the furtherance of the welfare of the charges whom he was obliged to attend.

There never was a criticism more unjust than that which has been directed against this very worthy and conscientious young man, whose whole life has been disclosed to you, who has been subjected to an examination in which the examiner, astute though he is, was unable to indicate the slightest rift in his armor. The public service of the State has profited by his accession to its ranks. How many are there among our public officials today who are his equal in intelligence? That does not, however, seem to exempt him from the charge of criminality. Whoever stands between those who are egging on this prosecution and the accomplishment of their fell purpose must be stricken down and the chariot of the avenger is driven over his prostrate form. Their artistic sense demands the creation of an atmosphere, mephitic or otherwise, and they have not spared pains to create it in court and out of court, in the corridors and in the lobbies and on the streets.

The prosecution studiously filled the air with whispers, which presently became translated into flaring headlines, that Sarecky had fled from the jurisdiction of this Court in order that he might not be compelled to become a witness on this trial. While these publications appeared Sarecky was engaged in the proper performance of his duties, either at his official post in Albany, in Buffalo, or in New York, wherever his duties called him. There has not been a moment when his whereabouts were not thoroughly known to his superior officers. No attempt whatever was made to conceal his presence, and at the very time when, with theatric effect, it was intimated that he could not be found, he was practically within the precincts of this Court.

So much for the charges of bribery, and of the use of fraudulent

means for the suppression of testimony! If the rules which apply to criminal proceedings are to receive the force to which they are here entitled, the charges contained in this article have woefully and dismally failed.

The fourth article charges the respondent with the misdemeanor of suppressing evidence, and of a violation of section 814 of the Penal Law of the State, in that the respondent "practiced deceit and fraud, and used threats and menaces with intent to prevent said committee and the people of the State of New York from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons, severally, they or any of them having in their possession certain books, papers and other things which might or would be evidence in the proceedings before said (Frawley) committee, and to prevent such persons named and all other persons, they, severally, being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do.

Section 814 of the Penal Law reads as follows:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor."

Here, again, the articles deal in mere generalities. There is no statement as to what deceit or fraud is claimed to have been practiced, what threats or menaces were employed, what books or papers were to be eloigned, what facts were to be concealed. So far as Sarecky, Colwell and Fuller are concerned, all of the evi-

dence relating to them has already been fully considered. It is difficult to conceive of any deceit or fraud which the respondent practiced upon these persons, or upon any person, to prevent them from testifying. The evidence positively shows that he did nothing whatever except to express his entire willingness that Fuller should testify, without qualification or reserve.

The case is entirely barren of even the suggestion that threats or menaces of any kind were employed to compass the suppression of testimony, or for any other purpose. The record is blank so far as this point is concerned. It is practically impossible to argue a negative where there is no testimony. There is nothing to discuss. What the draftsman of these articles may have had in mind, it is impossible to imagine. The charge that the respondent practiced deceit and fraud, and used threats and menaces to prevent the three persons named, "and all other persons," from testifying, reduces the entire proposition to an absurdity. "All other persons" means everybody, the members of this Court, the entire public. What is this deceit and fraud? What are these threats and menaces, of so all-embracing a character?

The fifth article charges the respondent with a misdemeanor in violation of section 2441 of the Penal Law, it being alleged that the respondent wilfully prevented and dissuaded Frederick L. Colwell, who had been duly summoned or subpoenaed to attend as a witness before the Frawley committee, from attending pursuant to said summons or subpoena, and that in so doing he acted wrongfully, wilfully and corruptly.

Section 2441 of the Penal Law reads as follows:

> "A person who wilfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the summons or subpoena, is guilty of a misdemeanor."

Here, again, we are called upon to argue from a blank record. There is not a word of proof, either oral or documentary, direct or circumstantial, proximate or remote, which indicates that the respondent lifted a finger or uttered a syllable for the purpose of preventing or dissuading Colwell, the only person named in

this article, from attending as a witness before the Frawley committee. When this is said, there is nothing to add.

Although there is nothing in any of the articles which relates thereto, for want of a better occasion to discuss the matter, we may now address ourselves to the testimony of Duncan W. Peck, which has been discussed through the lobbies and the corridors, and has been much heralded as the most significant piece of testimony which the impeachment managers have produced. It is not made the subject of any charge. It is not referred to in any of the articles.

It is very unpleasant and disagreeable for me to discuss this testimony, because I have known Mr. Peck from boyhood, but, however unpleasant the task may be, I shall not shirk it.

Under the ruling made by the Court, that other contributions than those specifically mentioned might be proven, Peck testified that, at the Rensselaer Inn, in Troy, at the time of the holding of a political ratification meeting before election in 1912, he met the respondent and said, "Governor, I would like to give you this for your campaign," and he thereupon gave him a $500 bill. Whereupon he received thanks, and added: "I said there were no strings on it and he need not feel at all obligated to reappoint me," referring to the fact that he was at that time Superintendent of Public Works. The examining counsel then asked:

"Q. Since that have you had any conversation with the respondent, William Sulzer, in reference to that contribution? A. That was a confidential conversation."

The members of the Court will recollect that the witness thereupon turned to the President, and, in a tone of despair, said, "Must I give it?" Whereupon the President very naturally replied, "Yes, you must give it." The testimony then proceeds:

"Q. State the conversation, first stating when it was and where it was? A. I don't know when it was. It was somewhere after the 19th of July in the executive chamber."

. . . . . .

"Q. Now, state the conversation. A. I had received a communication from the so-called Frawley committee.

"Q. A letter? A. A letter.

"Q. Have you that letter? A. No, I have not.

"Q. Have you been able to find it? A. I have not.

"Q. What is the substance of that letter?

"The President.— The point is what passed between him and the respondent.

"Mr. Todd.— If your honor please, it has to do, as I understand, with what had passed between them.

"The President.— When that appears you can go back to it.

"Q. Did you show this letter to the respondent, William Sulzer? A. I did.

"The President.— Now you can go back to it.

"Q. Will you state the substance of that letter? A. Why, it was a request to state what donation, contribution I had made; and whether a check or otherwise, and I don't remember all of it, but that was the gist of it.

"Q. To produce and give that information to whom? A. To this committee.

"Q. The Frawley committee? A. Yes, sir.

"Q. Now state the rest of the conversation. A. I showed the letter to the Governor and asked him what I could do about it.

"Q. What did he say? A. He said: 'Do as I shall; deny it.'

"Q. What else was said if anything? A. Why, I said, 'I suppose I shall be under oath.' He said: 'That is nothing. Forget it.'

"Q. Was there anything else said? A. Nothing more."

On his cross-examination he stated that he had made no memorandum of his conversation with the Governor, that he was giving the exact language, word for word.

"Q. You cannot be mistaken as to a word? A. No.

"Q. Not in a word said by him or a word said by you? A. Not that conversation.

"Q. Not a word? A. No, sir."

Intrinsically this testimony does not bear the ring of truthfulness. I will not stop to comment on the fact that he addressed

the respondent as "Governor" long before election, but will proceed to that part of his testimony which relates to his alleged conversation in the executive chamber.

He tried to impress the Court with the idea that he was loath to testify, that the conversation was a confidential one. Although he must have known that he would have to testify, he went through the mockery of appealing to the Court to protect him against divulging a confidential conversation. But as soon as the direction was given that he should answer, he proceeded forthwith to tell his strange tale. Mr. Todd, the examining counsel, seemed to be entirely familiar with it. He knew all about the alleged letter. He knew where to begin and where to stop. He was entirely familiar with all of the twists and turns of this confidential conversation. What psychic phenomenon is responsible for the transmigration from the recesses of Peck's brain into those of Mr. Todd, of this secret, confidential conversation, which Peck was shocked to narrate, and which only passed the portals of his lips when his appeal to be relieved from the betrayal of this confidence had been rudely shattered?

If Peck had not attempted this by-play, his testimony would not have so much savored of a brazen counterfeit and of hypocrisy. As it is, however, that histrionic display deprives his entire story of lifelikeness. The hesitating manner suddenly disappears, and without prompting of any kind, he glibly proceeded with his narrative.

It is peculiar that, although the records of the Frawley committee were at the disposal of the impeachment managers, a copy of the letter which is claimed to have been written to the witness, and to have been shown to the respondent, was not produced. It is equally significant that this witness, who was so anxious to avoid the disclosure of a confidential communication, was so entirely sure of the exact language used in that conversation, that he is ready to swear that he repeated it word for word, that he was not mistaken as to a single word uttered either by Governor Sulzer or by him. Though men gifted with the most extraordinary memories are unable, after the lapse of two months, to repeat conversations word for word, this man has no hesitation in declaring his ability to do

what is practically impossible, as any member of this Court knows from his own experience.

It is also significant that this witness was not called before the Frawley committee, although it is pretended that he had been the recipient of a communication from it, and there is no explanation why he was not so called.

But contemporaneous public history affords a further reason why this testimony should be carefully analyzed, and not accepted at its face value. Peck had been appointed Superintendent of Public Works by Governor Dix. He was reappointed by Governor Sulzer. In 1912 he was ex-officio a member of the Highway Commission. He therefore had to do with the letting of highway contracts.

As Superintendent of Public Works his duties involved supervision of the canals, and of contracts made for work upon them. At about this very time Mr. Hennessy, the investigator of the public departments of the State, which included the Highway Department and the Canal Department, was unearthing irregularities of a very serious nature in both of these departments, had under examination various subordinates of Peck, and had in his possession proofs to establish his unfitness for the office which he was occupying, as well as his complicity in irregularities which were quite likely to receive ventilation before the public tribunals of the State.

Governor Sulzer was familiar with the line of inquiry which Mr. Hennessy had instituted. So was Peck. While, under the circumstances, it would have been the most unnatural thing in the world for Governor Sulzer to have made to Peck the suggestion to which the latter has testified, for Peck would have been the last man in the world into whose power he would have placed himself at that time, Peck had a strong motive for inventing such a conversation as that to which he has testified, because it would enable him to aid in the destruction of the man who had set in motion the investigation which threatened not only the office which he held, but his very liberty.

The testimony of Mr. Morgenthau when recalled, to the effect that the respondent called him upon the telephone on the evening of September 2, 1913, and asked him to be "easy" with

him, and suggested that his contribution was a personal matter, is scarcely worthy of a second thought. It was but natural in view of all the outcry that had gone forth against the Governor, and the representations that had been made concerning him, the false light in which he was sought to be placed, that he should appeal to Mr. Morgenthau not to join in the hue and cry of his enemies.

There is scarcely a man who would not, under like circumstances, make such an appeal. The suggestion that the contribution from Mr. Morgenthau was a personal one, was certainly not the suggestion of a falsehood, because Mr. Morgenthau, in so many words, testified that there was no limitation placed upon the use to which his gift was to be applied, and that he did not intend to limit him as to such use. So what is there in this conversation except to bring out the very fact that was testified to?

It is very evident that this testimony was injected into the case for the purpose of creating distrust of the Governor, of reflecting upon his honor, of casting a doubt upon his credibility; just as the testimony of the witness Allan Ryan was introduced for a like purpose — even though the testimony of neither of these witnesses possessed the slightest probative force with respect to the establishment of a single one of the articles of impeachment which have been filed against the respondent.

The impeachment managers, however, consider this a "good enough Morgan;" it is a sufficient foundation for all kinds of concoctions and theories, which pass from mouth to mouth, and grow in magnitude with every utterance; all in the hope that, however weak the evidence on the articles of impeachment may be, by some esoteric process a sentiment may be created which may accomplish, by indirect appeal, that which the evidence, upon which the impeachment is to be heard, tried and determined, does not warrant.

There remain to be considered articles 7 and 8. The first of these charges the respondent with a violation of section 775 of the Penal Law, in that he promised and threatened to use the authority and influence of his office as Governor for the purpose of affecting the vote or political action of Assemblyman Prime and Assemblyman Sweet. The section by which this charge is claimed to be governed, reads as follows:

"Sec. 775. Corrupt use of position or authority. Any person who:

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or,

2. Being a public officer or employee of the State or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employee, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer, or employee; or,

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or,

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom.

Is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both."

This section can be read and reread, and twisted and contorted to one's heart's content, without disclosing that it has even the most remote application to the matters alleged in this article. Each of its subdivisions refers to the taking of money by a public officer with respect to " conferring upon any person, or in order to secure or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase in salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate," etc. All of these provisions relate to the exercise of influence as affecting a nomination, public employment, confirmation, promotion, removal, increase or decrease of salary, of a public officer. The charges cannot be fitted to the statute, so that one can be applied to the other.

Mr. Prime testified that he had introduced in the Assembly two acts in relation to the building of highways in the counties of Essex and Warren, during the regular session, one reappropriating an unexpended balance of $750,000 for the construction of highways and the other authorizing the construction of two new State roads in these counties. Both bills passed the Senate and came before the Governor for signature. There was a question as to whether the bills were to be paid out of the $50,000,000 fund raised by the issue of bonds or out of the annual appropriation. In fact they were covered by the $50,000,000 appropriation. Mr. Prime, together with Senator Emerson and Mr. Cameron of the Attorney General's office, called upon the Governor and conversed with regard to these bills and asked the Governor to sign them. Incidentally the Governor, who was very much interested in the direct primary bill, discussed that bill with his visitors, and sought to enlist their interest in it. He casually remarked, " You for me, and I for you." The highway bills were not only passed by both houses of the Legislature, but their subject was at the Governor's request specially investigated by Mr. Carlisle, the Highway Commissioner, who approved them and upon his recommendation they were signed by the Governor on June 2, 1913, and are now chapters 785 and 786 of the Laws of 1913. The extraordinary session of the Legislature did not convene until later.

Is it intimated by our opponents that Senator Emerson and Assemblyman Prime considered themselves as being improperly approached by the Governor when he asked them to consider favorably the direct primary measure? Has the time come when the Governor may not discuss legislation of State interest with members of the Legislature, without subjecting him or them to unworthy suspicion. Is there any malign significance to be attached to the phrase "You for me, and I for you"? No promise of favorable action on the direct primary bill was given; none was exacted; it could not have been a threat that the Governor would veto the measures in which these legislators were interested. As matter of fact, without further parley and solely on the recommendation of a high official of the State, the bills became laws.

There is nothing in law or in morals which can condemn the Governor, or the gentlemen with whom he conferred, for indulging in this harmless conversation. Is there something so deterrent in the idea of a direct primary which makes it criminal for the Governor of the State, who is carrying out the behests of his party platform, to urge members of the Legislature to give to it their support? If this can be said to be an impeachable offense, then the executive officers of the Nation and of the states will find themselves in the midst of perpetual alarms, and the public service would inevitably suffer. We read from day to day the headlines in newspapers as to what is going on in regard to important state and federal legislation. Surely, if Governor Sulzer is to be convicted in this case for seeking to influence legislation, why, there are others who may find themselves in the same plight; and the most modern phase of executive activity will be found to be criminal instead of being, as generally supposed, exemplary conduct.

The testimony of Mr. Sweet is equally trivial. Here the Governor, acting in accordance with what he believed to be his duty, vetoes a bill which provided for an appropriation of the funds of the State for the construction of a bridge. In this conversation the Governor likewise referred to his direct primary bill, and asked the assemblyman how he expected to vote at the extraordinary session, to which he replied, "According to the sentiment and the interests of my district." The Governor then laid his hand on

the arm of the assemblyman, and said: "See Taylor and smooth him the right way." Taylor was the counsel to the Governor, who passed on bills which required executive action.

If this were not an impeachment proceeding such charges, instead of being seriously discussed, should evoke Homeric laughter. If this Court should consider them, assuming even for the sake of the argument that there is any permissible theory of interpretation which could make section 775 of the Penal Law applicable to this case, the communications between our future Governors and our members of the Legislature, would have to be "Yea, yea" and "Nay, nay." Anything more might mean impeachment.

The eighth article is, if possible, even more contemptible than that which has just been considered. It required a peculiar mind to frame it, and a morbid intellect to discover in the evidence adduced, a single circumstance which brings the case within section 775 of the Penal Law, under which it was framed, or the slightest relation of cause and effect between the ownership of shares of stock by the Governor and his advocacy of measures relating to the sale of securities on the New York Stock Exchange. I will not read that article. I refer you to the printed record.

In order to establish this charge there was introduced in evidence a message of the Governor urging the passage of legislation relating to the stock exchange. A number of bills were drafted under his supervision, and were introduced to carry out his recommendations. A number of them were passed by the joint action of the Senate and the Assembly. Chapter 236 of the Laws of 1913 was one of them. This amended the Penal Law in relation to bucket shops. Chapter 253 was another. It amended the Penal Law in relation to the manipulation of prices of securities and inspiring movements to deceive the public. Chapter 475 was another. That was an act to amend the Penal Law in relation to reporting or publishing fictitious transactions in securities. Chapter 500 related to transactions by brokers after insolvency in respect to the hypothecation of customers' securities.

The bills which were not passed related to various abuses which had been considered, not only by a commission appointed a number of years ago by Governor Hughes, but by a congressional

committee which had made an exhaustive study into Stock Exchange conditions.

If the Governor, in recommending this legislation, was guilty of wrongdoing, then the Legislature, in passing five of the bills which he recommended, was acting equally in hostility to the public interest, and so were the various public bodies which approved some or all of these bills.

But it is said that Governor Sulzer committed a wrong in recommending these bills, because he was the owner of shares of stock which were dealt in on the Stock Exchange. The shares of stock which it is claimed that he owned or had an interest in are those which are included in the Harris & Fuller, Boyer, Griswold & Co. and Fuller & Gray accounts. All of these represented actual, outright purchases. They were not margin transactions. They were in no sense speculative accounts. But even if they had been, what would it have mattered? Has it come to the pass when a Governor of this State has no right to be the owner of shares of stock which happen to be quoted on the Stock Exchange? Within the last twenty years we have had two Governors who were bankers and whose dealings in shares of stock presumptively were very extensive, Governor Flower and Governor Morton. Would it have been improper for them to have suggested legislation intended to regulate transactions in securities? The very formulation of a doubt is preposterous.

But, if possible, the absurdity of the contention of the impeachment managers reaches sublimity, when one considers that the only anticipated effect which regulation of the Stock Exchange and of speculation in stocks could have, would be to reduce the price of stocks. Inasmuch as Governor Sulzer is claimed to have been the holder of shares of stock which were bought and paid for, is it conceivable that he should have recommended this legislation for the purpose of reducing the value of his own investments?

I have not the patience to pursue this subject further. It is unworthy of this presence. It is an insult to the intelligence of this Court, as it is to the people of this State. Instead of recognizing this fact, the impeachment managers have not hesi-

tated to go into elaborate proof on this subject, to encumber the record with numerous exhibits, avowedly for the purpose of establishing this contemptible charge.

What is the inference to be derived from such procedure? Are the impeachment managers in earnest? Are they treating the Court with that degree of candor which one may expect in such a case as this? If they are, then it is a demonstration that, in their attempt to destroy the Governor, they have lost all sense of proportion, that they consider that everything is grist which comes to their mill, and that they evince a disposition to accomplish their ends by hook or by crook, by pandering to every prejudice, by casting forth a drag net in the hope that something may be found which will enable them to disable and disarm the Governor, whom they deliberately set out to make harmless when it was discovered that it was his purpose to be the Governor of the State, and to assert his independence in that high office.

I have now completed my analysis of each of the eight articles of impeachment. I have endeavored to deal with them, not as an advocate, but, so far as it was possible for me to do so, in the cold light of reason, in the hope that I might be able to assist this Court in arriving at a correct conclusion, both with regard to the controlling law and the evidence which bears upon the several issues which you are now called upon to determine.

I have not consciously made a statement which has not been fully borne out by the record, by public history, and by the authorities to which I have appealed for support, and now, at the completion of this discussion, I feel justified in asking for a judgment of "Not guilty" with regard to each of the eight articles.

From time to time during the progress of this trial we have heard expressions that this Court is not bound by any rule of pleading or allegation; that it can act irrespective of statute; that it is a law unto itself; that it is not bound by the articles of impeachment; that even if the respondent has not been guilty of misconduct in office, or of any crime, he may, nevertheless, be impeached on the ground of moral turpitude, or on general principles.

These expressions are the counsels of desperation, and would not be deserving of comment but for the fact that they may be symptoms of a state of mind which, if it ever enters the portals of the Temple of Justice, will portend unspeakable and immeasurable evils to the State.

Our civilization is one which is the outgrowth of law and orderly procedure. The law represents the crystalized experience of mankind. It proceeds from precedent to precedent. It is what the late James C. Carter called the "embodiment of custom;" or, as Lord Chancellor Haldane recently expressed it in more philosophic phrase, it is the "expression of Sittlichkeit." To disregard these legal principles, judicial precedents, and the results of established custom would mean the reversal of the hands of Time and the eventual loss of all the blessings which civilization has secured to mankind.

It is for this reason that personally I feel the weight of the responsibility that now rests upon me. As I have already said, we are not so much concerned in this case with William Sulzer, the man, or the Governor, as we are with the supremacy of the law, with the perpetuity of its principles, with the preservation of orderly government. Our individual predilections, our partisan feelings, the satisfaction of our momentary desires, are of little moment. They are but baubles, the toys of children of larger growth. But what is of the utmost concern to every patriotic citizen, to every lover of justice and of righteousness, to every man who has aspirations for a higher life and who seeks the elimination from the world of tyranny and despotism, is that the law shall not be weakened or undermined, whatever the immediate consequence of its strict application may be.

Let there not be substituted for the rule of conduct prescribed by the supreme power of the State, the rule of judgment which may seem best suited to the accomplishment of what for the moment we believe to be the thing we desire. The result so attained will crumble into ashes in our hands, and the day of reckoning will be bitter as the waters of Marah.

There is no rule of measurement more perilous than that of the Chancellor's foot. He who is the incumbent of that office today may not be tomorrow, and the reaper who follows him

who sows the noxious seeds, will be apt to sow another crop which will carry death and annihilation to the harmonious system of laws under which we have hitherto prospered and advanced.

There is no middle course; we must either steer our bark according to the accepted rules of navigation, or permit it to drift whither the wind listeth. Unless there be a pilot to guide the vessel, unless it proceeds according to the chart of experience, anarchy will be inevitable. It is for this reason that I conjure you not to be swerved from the path which the law has marked out for the guidance of your footsteps; that you do not lend ear to those who prate in glittering generalities; and that you do not follow the will-o'-the-wisps which lure one into the noisome bogs of anarchy.

Let the law be the Polar Star which now, as in the past, points out the path of safety. Upon your decision rests not the future of William Sulzer, but the happiness of future generations. Shall ours be a government of laws, or one of passion and caprice? It is my fervent prayer that the decision which is to be rendered here will not leave the outcome in doubt. Though life is sweet, may I not live to see the day when the law shall cease to be paramount in our daily lives and in our system of government!

Mr. Kresel.— May it please the Court, before Judge Parker follows with his argument, may I, at this time, introduce the letter written to Mr. Lehman, which your Honor will recall Mr. Lehman was to produce here?

Mr. Marshall.— Let us look at it, please.

Mr. Kresel.— He sent it by mail.

(Mr. Kresel passes letter to Mr. Marshall.)

Mr. Kresel.— Just mark that.

(The letter offered in evidence was received and marked Exhibit M-133.)

Mr. Kresel.— May I read it, sir?

The President.— Yes.

Mr. Kresel.— Counsel for the respondent make no question that the signature is the Governor's signature. The letter reads as follows (reading):

"*July 4, 1912*

Herbert H. Lehman, Esq., 16 William Street, New York:

My Dear Mr. Lehman.— Your very kind letter just received on my return to Washington from the Baltimore convention. I certainly appreciate all you say, and thank you.

I am receiving many letters similar to yours from all over the State, urging me to be a candidate for Governor, and of course, I am gratified to know my work is appreciated.

You can help me very materially, and you know exactly what to do and how to do it, what to say and how to say it, and a word to the wise is sufficient. Of course, this is confidential.

With best wishes, believe me, very sincerely your friend,

William Sulzer."

The President.— That was, of course, before the nomination?

Mr. Kresel.— That was before the nomination.

The President.— At the time of the presidential nomination?

Mr. Kresel.— Yes, sir.

The President.— Now, Judge Parker, if you please.

Mr. Parker.— Presiding Judge, and Associate Judges of the High Court of Impeachment:

Down to this moment, in no public print, or in the presence of your Honors, have I offered any criticism of the respondent. I held myself in reserve, as I deemed it my duty to do, until the story should all be told, until the facts and circumstances which had been marshaled by the managers, should be met, if possible, as I hoped they might be met. But the evidence is all in, the case closed, and there is no answer to any of the material facts which have been presented on the part of the managers. Not a word. If there is any question whatever that can be made as to

any fact, none has appeared to present it. And we come now to a consideration almost entirely of the evidence offered by the managers.

If it please your Honors, let me take you back just a little way in the history of this State, back of the year 1892. There had been growing in this State, among representatives of both of the great parties, an inclination to place in nomination for important office men with large bank accounts, to the end that they might contribute toward the expenses of the organizations and carrying through the weaker — financially speaking — candidates. As a result there grew up in this State, wisely, as we now know, a public sentiment which demanded that no longer should the check book measure the availability of a candidate.

And in the year 1892 there was placed upon the statute books of this State an act which commands all candidates for the greater public offices to make statements, showing the amount of money contributed and expended by them in the course of the campaign, and to whom they gave it, every item; and it requires the candidate to make affidavit that the statement so prepared by him is true.

Now, what was the purpose? It was not merly to check the nomination of men whose principal measure of ability was their pocketbooks. It was primarily to the end that there should be checked in this State the growth of vote buying.

After a little there came another discovery to the people of this State, and to the people of the nation. That was that organized capital in certain great centers of this country was exercising an undue influence in the selection of public officials, especially members of Congress and legislators.

Then there came an investigation in this State, an investigation by the committee of the Senate of the State of New York; or rather, I think it was a joint investigation, with Mr. Justice Hughes as the counsel. During that investigation it was disclosed that there were corporate contributions being made for the purpose of aiding organizations in the conduct of political affairs. And then the people of this State awoke, and in that very year, in the spring of the year in which this investigation took place, the Senate and Assembly of the State of New York

placed upon the statute book what is known as the corrupt practices act. The investigation of that subject, and legislation upon it, has spread, until, as your Honors know, there was a national investigation, nation wide, and the example which the great State of New York set her sister states and the nation was largely followed, for ours was the first corrupt practices act.

The importance of this act was that it undertook to provide a scheme of publicity to the end that there should be no contributions whatever for political purposes unless they should be made known to the public. There was an appreciation then, due to the investigations which had been made, that those who contributed, while they might not always have influence, are likely to have influence in proportion to their investments; and so the great scheme of this corrupt practices act, which was drafted by Mr. Justice Hughes, was to make it possible, so far as could be done by law, that there should be a contribution or expenditure for political purposes in this State save when it should become known to the people, to the end that they might discover whether or not undue and improper influence was being exercised.

In that year, 1906, this act was passed. It, as you remember, provides first, that the treasurer of a committee and every three persons cooperating or working together for a party or for a candidate and employing money in the doing of it, constitute a political committee under the statute, and the treasurer of it is bound to make a report and file a statement in the Secretary of State's office; and the candidate is also obliged to make a statement.

In that very section it provides that he too shall make a statement "like that as hereinbefore," that is, like that which the treasurer of the political committee is obliged to make, and then every person who contributes money to any campaign or for the benefit of candidates in a campaign, must also make a report unless his contribution is made to a political committee or is made to the candidate himself. So that in this way it was believed by the Legislature of this State and by him who was afterwards Governor Hughes, the draughtsman, that so long as men were honest and truthful it would be impossible that contribu-

tions should be made for use in political campaigns without that publicity which it was the object of the statute to secure; and so far as I know, it has been observed by those who have come to the proud position of the governorship of this Empire State down until last year.

On the 13th day of November of last year William Sulzer who had then received, as his counsel have said, the greatest plurality even given to a candidate for Governor in this State, in obedience to the statute filed a statement which acknowledges the receipt of $5,460 and says that he expended $7,724.29, so that apparently he had paid out of his own pocket something over $2,000 in the course of the campaign.

The first charge of the managers is that that statement is untrue. The charge is that it deliberately suppresses a great number of items; that it suppresses for instance, the item which has been frequently discussed in your hearing, the Jacob H. Schiff check of $2,500. Do you recall that testimony of Mr. Schiff? May I repeat it to you?

Mr. William Sulzer, of whom Mr. Schiff was a friend, shortly after his return from Syracuse entered the banking office of Mr. Schiff and expressed his appreciation of a note of congratulations which he had received from Mr. Schiff. Mr. Schiff is a man of affairs of discernment. He knew that it was an unusual thing for a candidate for Governor to call personally upon a banker to thank him for congratulations, and he promptly said: "Is there anything in particular that I can do for you?" The answer was ready: "Are you going to contribute toward my campaign fund?" "Yes," said Mr. Schiff, "I shall be glad to do so." "How much will you contribute?" Came the answer "$2,500." "Is that all you will contribute?" And when Mr. Schiff replied that it was all that he would contribute, he thanked him and requested him to make the check payable to Louis A. Sarecky.

We have shown contributions from Mr. Morgenthau, of $1,000, then treasurer of the National Committee of the Democratic party; from Abram I. Elkus, with his letter, expressing its purpose to be: "I know," said Mr. Elkus, "that congratulations are very pleasant and very nice, but that a campaign, to be successfully conducted, requires something more than words, and so I take

pleasure in enclosing my check for $500, to aid in the expenses of your campaign."

When we had presented to this Court evidence showing that checks had been received amounting to over $10,000, that cash had been paid in amounting to over $27,000 that altogether $37,400 had been paid into the hands of the candidate — $37,400 more than appeared in his statement, which was $5,460 — there was an attempt to meet that evidence. And how? Did the defence attempt to show that he had not received every one of those dollars which our proof tended to show? No attempt of that kind was made. What did they attempt to do? They put on the stand Sarecky. For what? For what purpose? First, to challenge the making of the affidavit.

The taking of this affidavit, as you will recall, had been proved by Mr. Wolff, whose testimony was clear, and strong, and vigorous and honest, as everyone of your Honors must believe, but the defence, not having been able to meet in any wise the allegations in the articles and the proofs which have been presented by the managers, undertook to attack the affidavit, just as, earlier in the procedure, when a demand was made that the candidate present to this Court his answer to the charges that were made, the objection was that the Assembly had not the power of impeachment at the extraordinary session. Technical pleas both.

When the proof was made of the due execution of the affidavit, then instead of attempting to meet the proofs which the managers had made, showing $37,400 more received that was called for here, they brought out Sarecky — Sarecky — to challenge the making of that affidavit. According to Sarecky, he took the affidavit, with the signature of William Sulzer upon it, and went into another room, occupied by some lawyers, where there was a notary public, with a view of having him take it, as you would judge, from the testimony, without seeing the candidate; but he says that Mr. Wolff was bound to see the candidate and congratulate him, and so Mr. Wolff came in and, according to Sarecky, Mr. Wolff said, "Well, is that your affidavit?" or words to that effect.

May it please this Court: I take it you will not give a second's consideration to this attempt to challenge the making of this affi-

davit. I take it that the testimony of a witness like Wolff, who stands before the Court unquestioned, uncriticised, whose manner of giving his testimony indicated a clear-headed, honest, painstaking notary public or commissioner of deeds, will not be over thrown by Sarecky, upon whom has been placed the burden of carrying the only attempt at defense which the respondent, through his counsel, has seen fit to make.

I listened to Mr. Marshall's eulogy of Sarecky, and I was amazed at the eloquence which Marshall could display in attempting to uphold so absolutely worthless a character as Sarecky demonstrated himself to be while on the witness stand.

Why, your Honors, did he not testify before you that when asked to furnish to the Mutual Alliance Trust Company authority for him to endorse the checks of William Sulzer that he prepared the letter, that he signed the name of William Sulzer to it with the intent to deceive the Trust Company, and that he also put at the head of the letter the words "en route," because, as he said, he knew the Trust Company officials read the papers and they might discover that William Sulzer was up the State at the moment that he was supposed to be signing this letter? But that is not all. Though that is quite enough, it seems to me, to discredit that witness absolutely with every member of this Court. I cannot conceive how the testimony of such a witness can for a moment receive any consideration whatever as against any other witness who stands unchallenged before the Court. And that is not all. There are a number of things about Sarecky's testimony that I should like to present to this Court, but I shall not take time to do it. But I wonder how my friend Marshall gets over the fact that it was demonstrated here that Sarecky testified before the Frawley committee that Mr. Marshall was his counsel and that he was acting by his advice, while here he testified that he had not seen him or consulted him, but that he had seen a copy of an opinion which he had rendered.

The other task placed upon the shoulders of Sarecky was to persuade this Court that William Sulzer honestly signed this statement, and that he had nothing to do with its preparation. Speaking of atmosphere — my friend Marshall loves to speak of it — there has been a great attempt, it seems to me, to create an

atmosphere about William Sulzer like a halo, revealing him absolutely blank so far as dollars and cents are concerned, but as this trial drew near a close it must have been borne in on your Honors that he is very thrifty indeed and has quite a knowledge of business affairs.

Sarecky testifies that he came in with this statement, showed it to the Governor, and that the Governor looked it over, and then said: "Is it all right?" Sarecky said, "It is just as near right as I can make it with the data I have," and then the Governor said: "All right," and signed it.

Well, your Honors, when William Sulzer glanced over these figures and these contributors he must have been very proud indeed of the talent of his pupil, for he took Sarecky from the high school, and all the education that he had in practical affairs he had acquired in William Sulzer's office, and necessarily under his direction, and we can well understand that he must indeed have chuckled at the wisdom of Sarecky when he glanced over this list, for he did not find in that list the checks of bankers like Jacob H. Schiff; there were not to be found in that list the checks of his brewery friends; not a single check could he discover there of a politician, whether leader of the organization, district leader or otherwise. Even Morgenthau, with his $1,000, did not appear. Not a single dollar was there representing any of the great interests in New York. Indeed, there was no check there larger than $500, just one of $500. And as he glanced over that list I say he must have thought, inasmuch as according to Sarecky he had not been consulted before about it, what a clever boy he is to keep out all these things; how glad I am that he did not insist upon putting in Ryan's contribution or Schiff's or General Meany's or Morgenthau's.

Well now, of what use, your Honors, is that testimony? Why was it presented to you? Suppose it was true so far as the boy was concerned that that was as good as he could do. You having heard him do not believe it was true, I am sure. But suppose it was. The man who read that list and examined it, knew it was not true. It does not help him for the boy to say he did the best he could. His master, William Sulzer, knew it was a lie. He knew that very early he had gone to his old friend Senator Stadler

and said to him, "You can help me in more ways than one," and that this old friend of his, Senator Stadler, had gone out about the State among his brewery friends to see if he could not help him in more ways than one, and Senator Stadler says he did. One of the first practical things that he did was to go over to Mr. Sulzer's office with Dersch with two checks of his brewery friends amounting to $350 which Sulzer received and when Sulzer received it he expressed the wish that hereafter instead of checks he should get cash — cash is what this evidence discloses it was his struggle to get.

Checks he took when he could not get cash, but when he took one, did he ever make an acknowledgment of the check in terms? No such letter will be found in this record. Cash he asked, and, so far as we know, the asking began with Senator Stadler. And in a few days Senator Stadler appeared again, with Dersch. This time three of his brewery friends had been heard from. The checks payable to Stadler were cashed, and thereafter he appeared in the house of him who was soon to be the Governor of this State, and presented to him $700 in bills.

That made $1,050 he had received from that source alone. Do you suppose, for a moment, that he didn't think of it or of any one of these friends, when this statement was handed to him? Do you suppose he could have forgotten the fact that he had gone to Schiff and had had the courage to ask him whether he was going to subscribe to his campaign fund, and that when he had said he was going to, that he told him to make the check payable to Louis A. Sarecky for the $2,500 which he had promised to give him?

Do you suppose that when he looked over this list he did not have in mind that along about the middle of October he had called up Allan Ryan and had said to him over the phone, "Tell your father I am the same old Bill?" What was implied in that statement? Was it not implied that his father would understand what "the same old Bill" meant? That he had at least been serviceable to him or friendly, on other occasions, and that he would be serviceable and friendly again; was not that the promise? Why the suggestion, "I am the same old Bill"? That suggestion, of course, was to give assurance further that, being

"the same old Bill," he would continue to be friendly and serviceable and kindly.

As I have said to your Honors, the amount which we have proved, without any contradiction whatever, by way of checks, which were not included in the statement which Mr. Sulzer filed, came to $10,700. I shall refer to that again a little later.

As to the cash contributions. By cash contributions we mean, not merely the instances where $2,000 in bills would be handed over, but $2,000 payable to cash, as in the case of the Richard Croker check.

The total cash paid over and not reported was $26,700, making in all $37,400.

Our charge is, first, that this violated article 1. I shall not stop to read the article. You remember that article 1 charges the respondent with having made a statement in the form required by statute, but from which he excluded items which we now show amount to $37,400, and made affidavit to its truth. But article 1 is not the perjury article. That is article 2.

We have proved, and we need not stop to comment on it further, that that article has been violated; that he has not complied with the law; that he has wilfully and knowingly failed to comply with the law. The circumstances shown in connection with it are such that we need not stop for its consideration at all. You are all men of experience and men of affairs, and you realize that it is demonstrated now by the evidence which we have presented here, without one iota of it being challenged by the production of testimony, that he violated the statutes of this State, when, under that article, he made a statement suppressing $27,400.

For that offence, your Honors — I shall not now discuss it, but shall treat it a little later, on the subject generally — we say the Governor should be convicted. He violated the law of this State — wilfully and intentionally violated the law — and when he did it he did it with full knowledge of the requirements of the statute; and it is an offence.

Section 560 of the election law provides that in case a judgment shall be rendered against one who fails to file a certificate as required by the election laws or files one which is false or incomplete, and such failure to file or such false or incomplete statement was due to a wilful intent to defeat the provisions of this article; or if the person or persons proceeded against shall fail to

file the required statement or amendment, as directed by a judgment of the court or justice within ten days after the entry of such judgment, the person or persons, or committee or committees proceeded against, shall be liable to a fine not exceeding $1,000, or imprisonment for not more than one year, or both.

Under the argument which I shall make a little later, we say that constitutes a misdemeanor under the statute.

Now, I bring your Honors' attention to article 2, which is the perjury article. That article was discussed very fully before this Court by Mr. Kresel. The argument which he made needs no repetition here. I wish to say a little something in addition to it. His argument is before you, and we all concur in its accuracy, but I make a further point.

Under the act of 1892, every candidate is required to file an itemized statement showing in detail all moneys contributed or expended by him, directly or indirectly, by himself or any other person, in aid of his election; such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth, in substance, that the statement thus made is, in all respects, true, and that it is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election.

In the year 1906 was passed the corrupt practices act, which contains a clause requiring a statement by the treasurer of every political committee which, in connection with any election, receives or expends any money or its equivalent, setting forth all the receipts, expenditures, disbursements and liabilities of the committee, and of every officer, member and other person in its behalf. In each case it shall include the amount received, the date of its receipt, the name of the person from whom received, the date and purpose of it. And then this clause, to which I specially direct your attention: "The statement to be filed by a candidate shall be in like form as that hereinbefore provided for." That is, shall be in like form as that provided for the treasurer of the political committee. But in statements filed by a candidate there shall also be included all contributions made by him.

That is, but one statement is required of the candidate, although the facts to be stated are prescribed by two statutes. The first of these requires the statement to show in detail all the moneys contributed or expended by him, directly or indirectly, and that it shall be verified by his affidavit.

The second, a law of 1906, having prescribed the statement of money, or its equivalent, to be made by the treasurer or political committee, shall include, among other things, the amount received, the name of the person from whom, and the date of the receipt, added that the statement to be filed by a candidate "shall be in like form as that hereinbefore provided; but in statements filed by a candidate there shall also be included all contributions made by him."

That is to say, the words "the statement to be filed by a candidate" in this law of 1906 refers to the statement prescribed by the then existing law of 1892, and requires that that statement shall, in addition to expenditures of the candidate, specify the amount received by him, from whom, and the date of the receipt. And this, of course, without change as to the affidavit; no change whatever was needed. Both amounts, the money received and the money expended, are to be included in one and the same statement, to be verified by one and the same affidavit.

But, your Honors, assuming that there is an opportunity for debate about it notwithstanding the effective arguments of Mr. Kresel, notwithstanding the statement which I have just made, which seems to me to be clear and to cover the ground fully, suppose your Honors should still have some question in your mind as to whether that is the construction which should be adopted, then I make this point, that, by section 209 of the same law, chapter 502 of the Laws of 1906, it is prescribed that "the Secretary of State shall provide blank forms suitable for the statements above required."

Your Honors, I make the argument now that the statement which the Secretary of State is, by this provision of the statute, authorized to make, becomes a part of the law, with the same force and effect as if it were incorporated into the statute itself. It was for that reason that we offered to show that immediately after this act of 1906 was passed, the Secretary of State did prepare such a statement, and that the statement thus prepared

has been in use ever since, and that it was from the Secretary of State, as Mr. Sarecky testifies, that he received this statement.

As to the validity of that provision of the statute that the Secretary of State shall provide forms suitable for a statement, the Constitution provides that the duties and powers of the several officers in this article mentioned shall be such as may be prescribed by law.

Section 206 of chapter 502 of the Laws of 1906, as amended by chapter 596 of the Laws of 1907, requires certain persons, including candidates, to file statements of money received and expended in connection with any election.

Then section 209, which I have already quoted, provides for the blanks. No case or decision is found in which this section was drawn in question.

"The duties and powers of the Secretary of State shall be such as may be prescribed by law," says the Constitution. "The Secretary of State shall provide blank forms suitable for the statement," says this statute. There is the constitutional authority, and the act of the Legislature under it.

The only limitation in the statute is that the form shall be suitable, as to which it is assumed nothing need be said.

The only conceivable pretense of objection to the statute itself is that it is an attempt to delegate legislative authority to the Secretary of State. The true distinction is between the delegation of power to make a law, which involves a discretion as to what the law shall be, and conferring authority or discretion as to its execution, to be exercised pursuant to the law. The first cannot be done. To the latter no valid objection can be made.

Here the Legislature itself has declared what the law shall be, to wit: "that a statement shall be filed" by certain persons of certain facts, every one of which is specified by the Legislature as "the receipts, expenditures, disbursements and liabilities, the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding $5, the name of the person or committee to whom made, and the date thereof, and the purpose of such expenditure or disbursement." Having done this, the Legislature, with the constitutional power to prescribe the duties of the Secretary of State, requires him to perform the mere ministerial

duty of providing blank forms suitable for such statements. That is not a legislative act any more than the binding of the session laws, or any one of hundreds, if not thousands of similar ministerial or administrative acts constantly required everywhere of such and other officers, and the validity of which has never been questioned. The Secretary has no discretion to change, add, or omit a single word or fact. The Legislature prescribes the kind or nature of the facts to be stated. This is as far as it could possibly go. The fact, that is the amount of money, and the names of persons, must of necessity be furnished by the candidate or other persons required to file the statement. Suppose the Legislature had stopped with the requirement that the candidate make and file the statement; would anybody claim that that was an attempt to delegate legislative power to him? Yet that would be as reasonable as a claim that the Legislature might not authorize the Secretary to provide blank forms for the statement.

Of course the provision that he shall do this is itself a law and the doing of the act is lawful, but it has no semblance of law making by the Secretary of State. His part in the transaction is not legislative even in the remotest sense but an act in obedience to legislation. The only discretion lodged with him is as to the mere mechanical form in which the prescribed blank shall be made. That such a thing should be regarded a legislative act is too absurd for discussion.

If the Legislature could not authorize such things to be done no law could be made or enforced. If such things were not permissible, what would become of the innumerable laws, permissible laws, which go much further than this, such as that the Court shall provide rules of procedure, municipal corporations' ordinances and so forth?

In Polinsky v. the People, 73 N. Y. 65, the validity of the following ordinance of the board of health of the city of New York was involved:

> "No milk which has been watered, adulterated, reduced or changed in any respect by the addition of water or other substance, or by the removal of cream, shall be brought into, kept, held or offered for sale at any place in the city of New York, nor shall any one keep, have or offer for sale any such milk."

The authority to pass sanitary ordinances was conferred on the board of health of the city of New York by chapter 335 of the Laws of 1873, which created the present board.

Held: "That the Legislature in the exercise of its constitutional authority may lawfully confer on boards of health the power to enact sanitary ordinances having the force of law within the districts over which their jurisdiction extends, is not an open question. This power has been repeatedly recognized and affirmed."

The rule was repeated in 175 N. Y. 444. In People ex rel. Cox. v. Special Sessions, 7 Hun 214, the relator was convicted and sentenced to the penitentiary for violation of provisions of the sanitary code promulgated by the board of health of the city of New York. The making of the code was authorized by section 82, article 2, chapter 336 of the Laws of 1873.

The objection to the code and therefore to the conviction was that the making of the code involved such an exercise of legislative power as has been exclusively confined to the Senate and Assembly. Daniels, J., said, after citing authorities:

> "The ordinance in this case could not be held invalid without practically undermining this entire system, which has existed for years entirely unchallenged. The power of the Legislature over this subject has not been denied by the Constitution, and the conclusion necessarily follows that it could, as it has, delegate to the board of health of the city of New York the power to make the ordinance in question."

It was merely the exercise of municipal authority by the intervention of this board instead of the common council, and no well-founded objection could be made to that as long as the ordinances to be enacted were to be confined to the subject — to its jurisdiction and control.

An act of Congress provided that oleomargarine should be packed in wooden boxes and marked, stamped and branded as the Commissioner of Internal Revenues, with the approval of the Secretary of the Treasury, shall prescribe. Held, the designation of the stamps, marks and brands is merely in the discharge of an administrative function, and falls within the numer-

ous instances of regulations needful to the operation of the machinery of particular laws, authority to make which has always been recognized as within the competency of the legislative power to confer. In re Kollock, 165 U. S. 526.

So, your Honors, it seems to me that I need not stop longer with the perjury article. It seems to me that the conclusion must be reached by this Court that the crime of perjury has been committed. The only question which has been raised, that of my distinguished friend, is that they were not required to make the statement under the statute. That is, he said, that the statute did not require the statement of contributions. Then, he undertook to quote it, and did not quote it accurately; but his proposition is that they were not required to state contributions. The argument which I have presented to your Honors, just now, as well as the argument which was made by Mr. Kresel on his opening, demonstrates, as we think, that every candidate is required under this statute, to make a statement under oath of the amounts contributed to him as well as the sum which he has expended out of his own pocket.

And my last contention is, of course, that if there was an opportunity for the debate which Mr. Marshall has suggested, and which was more fully met in the brief which was prepared by Mr. Kresel than I have attempted to meet it here — my argument being but supplementary — that it is fully put at rest by the requirement of the Legislature that the Secretary of State make the statement, which, under the authorities which I have presented to your Honors, gives to that statement the force of statute.

But even if this construction of the statute be not accepted, it is still true that the respondent swore and intended to swear to a false statement of his campaign receipts. That he was required to file such a statement of receipts by the election law, if not by the Penal Law, cannot be questioned. Because he combined the two statements in one and swore to the correctness of the whole, can we pick out one false item, and say that as to this he did not perjure himself, while as to the other false items, he might have perjured or did perjure himself?

I come now, if the Court please, to article 6. Article 6 has

been termed throughout this hearing as the larceny article. And after reciting in the article the facts, very much as they are recited in article 1 and article 2, it is charged:

> "That in so converting and appropriating said money and checks to his own use, the said William Sulzer did not act as required by law, but did act wrongfully and wilfully and corruptly, and was guilty of a violation of sections 1290 and 1294 of the Penal Law, and of grand larceny, and the same was done for the purpose of concealing, and said action and omission of said William Sulzer did conceal, the names of persons who had contributed funds in aid of his election and defeated the purposes of the provisions of the statute which required such publication that the people might know whether or not said Governor, after he had taken office, was attempting to reward persons who had so contributed in aid of his election, by bestowing official patronage or favors, upon them, and thereafter, having taken the oath as Governor of the State of New York and proceeded to perform the duties thereof, the said appropriation to his own use, and his larceny of the same, caused great scandal and reproach of the Governor of the State of New York."

In the argument which was presented to you by Mr. Kresel, and which I will not repeat, although I should be very glad to do so if the time would permit, it was demonstrated, as I think, that the articles charged, and the proof before your Honors now shows, that the crime of larceny was committed if not as to all the items going to make up the grand total of $37,400, at least as to very many of the items. There will be no question in the mind of anyone, I think, as to many of the items, and I shall later refer to them briefly.

But I wish to argue before your Honors that there was larceny as to all the items. While there can be little question but that the respondent had these campaign contributions in his possession and under his control as trustee for the contributors, even were this not so, he may still be guilty of larceny within the meaning of section 1290 of the Penal Law, for this section makes the obtaining of money by false pretence larceny. People v. Law-

rence, 137 N. Y. 517, 522, wherein the corresponding section of the Penal Code was construed.

The words of the statute expressly include the obtaining of money under false pretenses. Reduced to its most simple form the first part of the statute declares that a person is guilty of larceny if he obtains possession of the property of another " by color or aid of fraudulent or false representation or pretence," with the wrongful intent specified, that is, to deprive the owner of the property or to invest himself or another with it.

There can be no question but that the respondent obtained possession of these moneys with the intention of appropriating them to his own use, for he did appropriate them to his own use. Therefore, the only way in which the respondent can be acquitted of the charge of larceny is by finding that he did not obtain possession of the money contributions, to use the words of the statute, " by color or aid of fraudulent or false representation or pretence." To establish the fact that he obtained possession of the money in the manner denounced in the statute, it is only necessary to show that he obtained possession of the money for a special purpose by some device or false pretence, intending to appropriate it, and appropriating it to a different purpose. This is well-settled law.

In the oft cited case of People v. Lawrence, 137 N. Y., involving the construction of section 528 of the Penal Code, which was the same as section 1290 of the Penal Law, except that the last paragraph of this section 1290 was not contained in the earlier law, Earl, J., delivering the opinion of the court, said: " Larceny is defined in section 528 of the Penal Code so as to include not only that offence as constituted at common law and under the Revised Statutes, but also embezzlement, obtaining property by false pretences and the felonious breach of a trust. To constitute larceny it is not needful that the property stolen should have been taken from the possession of the owner by trespass. But if a person obtains possession of property from the owner for a special purpose by some device, trick, artifice, fraud or false pretence, intending at the time to appropriate it to his own use, and he subsequently does appropriate it to his own use, and not to the special purpose for which he received it, he is guilty of larceny; and so it has repeatedly been

held." Then follows the citation of these cases: Smith v. People, 53 N. Y.; Loomis v. People, 67 N. Y.; People v. Morse, 99 N. Y.

This language has frequently been referred to or quoted with approval in later cases, among which may be mentioned the following: People v. Sumner, 33 App. Div.; People v. Mills, 91 App. Div.

Now, if your Honor please, I wish to refer briefly before proceeding with another branch of the discussion under this article, to the campaign checks which were not reported:

The Schiff check I have already spoken of. About the check of William F. McCombs, there is no testimony. About the check of Mr. Brady it appears that that contribution was to candidate Sulzer. Pinkney said that his was a campaign contribution. There is no testimony about Stoiber's. The statement in the Gwathmey letter was "to be handed to the people who are conducting your personal campaign." Bird S. Coler said in a letter that his was a campaign contribution. There is no testimony whatever about the contribution of Thomas E. Rush. John F. O'Brien said that his was a campaign contribution. Tekulsky said personally to Governor Sulzer that his "was a contribution to your campaign fund." There was no testimony about the circumstances under which the check of E. C. Benedict was given. Peter Doelger's was for campaign purposes. Simon Uhlmann's was towards his campaign fund. You will remember that he went first to see Mr. Sulzer, told him that he wanted to contribute towards his campaign fund, and Sulzer said, "Make your check payable to Sarecky," and he sent a letter in which he enclosed the check, stating the purposes of the contribution.

William J. Elias said it was for campaign purposes. Harvey C. Garber sent his $100 with a letter of congratulation upon the nomination. The summing up of the testimony of Henry Morgenthau is to the effect that he did it to help him in his election; and as he was treasurer of the National Committee, it is very natural that he should have taken that position. Abram I. Elkus, as we have already noted, said in his letter that his was a contribution toward helping on his campaign.

There is no testimony as to Theodore Myers' check of $1,000 except that the check was given. About John Lynn's contribution of $500, there is no testimony except as to the giving of the

check. The statement was that the Spalding contribution was given to assist in his campaign. Edward F. O'Dwyer said that he left his check in an envelope at the Manhattan Club for candidate Sulzer. John W. Cox said that he gave his check to help him along to become Governor, and added "and for his personal benefit." Frank V. Strauss sent a check for $1,000 to candidate Sulzer with a letter of congratulation. John T. Dooling stated here to this Court that his check of $1,000 was for the purpose of helping him, and did not mention campaign.

Contributions of cash were as follows: Mark Potter's was to assist in his campaign. William Hoffman's was to assist in his campaign. August Luchow's was a contribution toward campaign. George C. Hawley's was a contribution toward campaign. Richard Croker, Jr., said his was for his personal expenses. I want to repeat a few sentences to you of his testimony. I read from page 743, under redirect examination by Mr. Stanchfield: (Reading.)

"Q. And that expense was as a candidate for Governor, was it not? A. No.

Q. For what? A. Probably occasioned by the fact that he was a candidate for Governor.

Q. Very well, I will take it that way, occasioned by the fact that he was a candidate for Governor, and when you say occasioned by the fact that he was a candidate for Governor you had in mind, with your political ancestry behind you, that running for office is an expensive luxury, didn't you? A. Yes.

Q. You knew, Mr. Croker, as a candidate for Governor, that he would be required to make campaign speeches all over the State during the campaign? A. Yes.

Q. And that he would be compelled to carry along with him stenographers and reporters, and men for one purpose and another on those expeditions? A. I knew he would have to do that; yes, sir.

Q. Now, when you went to see him you were his friend? A. Yes, sir.

Q. You had in mind that he would have to incur all these expenses? A. Yes.

Q. And you wanted to relieve him of the burden incident to those expenses? A. Not to those particular expenses.

Q. Well, any expenses in connection with the campaign? A. Any personal expenses in connection with the campaign, or in connection with anything.

Q. Any personal expenses in connection with the campaign, or anything. What do you mean when you use the word 'anything'? A. Well, I mean anything that would occasion expense.

Q. In connection with the campaign, or outside of it? A. (No response.)

Q. What expenses did you have in mind? A. I didn't have any particular expenses in mind.

Q. None at all? A. No, sir.

Q. You did have in mind the expenses incidental to the campaign? A. I thought that might be one source of expense.

Q. One source of expense? A. Exactly.

Q. When you went with this check for $2,000, he was then, you say, running for office? A. He was.

Q. Would you have taken that check to him then if he had not been a candidate for office? A. I don't think that is a fair question.

Q. You answer" —

The witness, after a considerable colloquy, answered,

"It is impossible for me to say at this time.

Q. Why is it impossible for you to say? A. Because I cannot imagine the conditions which might exist under which I might have given him a check under other circumstances."

I read it, that you may have it in mind, and the position taken by some of the other contributors in the further argument which I hope to make upon the subject.

Then came Lewis J. Conlon. He said, "to help him along in the necessary work of his campaign." George W. Neville, a cotton broker, "campaign expenses." Duncan W. Peck, "for his campaign."

If I may digress just for a moment, because I am not coming back to Peck, I was amazed at the argument of Mr. Marshall.

I certainly had no recollection of any testimony affecting Mr. Peck one way or the other in this record. Lest I might be mistaken about it, I turned to the record to see whether or not he or Mr. Hinman, who conducted that examination, had ventured to make any inquiry of him indicating that there was a suspicion even in the minds of the counsel for the respondent, that he was not a man of integrity, and you will find, if you will turn to that testimony, that the entire cross-examination covers less than a page and it is as respectful as that given to any witness. I have not the pleasure of his acquaintance. I do not know Mr. Peck, but I do know that so far as this record is concerned, he stands as clean as anyone appearing in Court.

Grossman and Seilcken, coffee importers, $2,500. No comment at all. The money was simply handed in. Frank M. Patterson, $500, " for his expenses as a candidate," is Patterson's testimony. Allan A. Ryan, $10,000, " for his personal campaign." You will remember as Allan A. Ryan testified, that Mr. Sulzer told him he was going out in Westchester county and around, and he needed the money immediately, and he says he gave it to him for his personal campaign.

Then we come to Mr. Meany. I want just a word about Mr. Meany, before I take up this subject. Mr. Meany did testify in the hearing of your Honors, that this $10,000 was a loan. We have added it, nevertheless, to all the other items, amounting to $27,400, as a contribution of some kind. Are we justified in classifying it with the contributions? Do you believe that General Meany ever made to anyone a loan of $10,000, making no entry, making no note or memoranda, receiving no acknowledgment, no collateral, nothing to leave behind him, no evidence upon which his executors and administrators could collect it? Do you believe, in the light of the testimony which you listened to, that, no matter what the language employed when he turned over that $10,000 in bills, he intended and expected that Sulzer would repay it?

With that comment on these items, I wish to present this for your consideration. It is my view, but with that you may differ, that when, for instance, a candidate applies for a campaign contribution, and so calls it, he characterizes it; and that it does not cease to be a campaign contribution, nor is the object of the con-

tribution changed, because later, someone, to save him from trouble or embarrassment, undertakes to help him by giving it some other name. It is the intention and the conversation at the time which fixes its status.

The respondent, William Sulzer, falsely and fraudulently represented to the contributors of money that the money was to be expended for campaign purposes. Now, you may say, that is too broad, but it is not. He did this, even though he did not in a single instance say that this was the purpose for which the money was to be expended. He did this, even though there was not the slightest implication from anything he said to any of the contributors, that the contributions would be used for this purpose.

Those who gave him or his representatives money at the time when he had been nominated for this office, and when the campaign for his election was in progress, naturally believed, and could only believe, unless they were otherwise informed, that the money was needed and would be expended to further his election. He knew this, and unless he informed the contributors that their contributions would in fact be employed to discharge his personal obligations, or to help him along the road to financial independence, he knew that the contributions were made with the expectation that they would be used to further his election to the office of Governor. If he did not inform the contributors of the use which he intended to make, and which he did make, of the money contributed, then he falsely and fraudulently pretended and represented to them that the funds were intended, and would be used, for campaign purposes. Silence in these circumstances was a false pretence, a fraudulent representation, because that silence produced, as he could not but know it would, and as he could not but have intended it should, a false impression upon the minds of the contributors.

There are quite early and very recent expressions of judicial opinion to this effect. I shall quote only a few out of a large number that might be quoted, beginning with the early case of Lee v. Jones, 17 C. B. (N. S.), wherein Crompton, J., said:

> "To constitute a fraudulent misrepresentation it need not be made in terms expressly stating the existence of some untrue fact; but if it be made by one party in such terms as

> would naturally lead the other party to suppose the existence of such state of facts, and if such statement be so made designedly and fraudulently, it is as much a fraudulent misrepresentation as if the statement of the untrue facts were made in express terms."

In Queen v. Cooper, 2 Queen's Bench Division, it was said that "it is not requisite that false pretense should be made in express words if the idea is conveyed."

The respondent knew that his nomination for Governor would convey the idea that money contributions to him or to his representatives were to be for campaign purposes, and he let it convey that idea.

In the late case of United States v. Sterling Salt Company, 200 Fed. Rep., it was said:

> "It is well settled law that a misrepresentation by reason of which injury results may consist of concealment of truth as well as of positive falsification."

Here we have the concealment of the truth that the money contributed would be used for the respondent's personal and private benefit, not the positive falsification that they would be used to help elect him Governor.

If you will have in mind again the instance of Mr. Schiff: Sulzer went to Mr. Schiff himself. Mr. Schiff did not offer him a campaign contribution. Mr. Schiff said, "Is there anything in particular that I can do for you?" "Yes," said Mr. Sulzer, "Are you going to contribute to my campaign fund?" Not, "Are you going to contribute to me"; not, "Are you going to put it in my pocket that I might invest it in Big Four stock"; but "Are you going to contribute to my campaign fund." And then when he said, "Yes, I shall be willing to do so," the inquiry was prompt, "How much will you contribute?" And the answer was $2,500, and then he replied, "Is that all you will contribute?"

There is no opportunity for debate that, so far as that case is concerned, he solicited campaign funds. And his friends were soliciting campaign funds, and they were soliciting them on the ground, as the testimony here disclosed, that he would be, as a

candidate, at personal expense, and that he was poor. It has been shown here, for instance, that Mr. Sulzer, while a letter was sent to him on the 15th day of July, 1912, by his brokers that he must send in a check for $8,000 in order to keep his margin good, paid no attention to that letter and that he paid nothing on account until November 18th, when he paid on account $10,000. So that in July he does not seem to have been well supplied with money.

The evidence in this case shows that there were purchased on account 500 with Boyer, Griswold & Company 200 shares of Big Four stock for $12,025; that toward it there was contributed his personal check for $900; that there was contributed in its payment $7,125 in bills, and that the checks of Theodore Myers, John Lynn, L. A. Spalding, E. G. O'Dwyer, Dr. John W. Cox, Frank V. Straus & Company and John T. Dooling made up the balance of the purchase price of $12,025.

It appears too that there was purchased from Fuller & Gray for him 300 shares of Big Four stock, 200 between October 22d and November 1st, for which $11,825 was paid and 100 shares on November 6th for which $5,512.50 was paid, and paid in bills; each one of these items was paid in bills; so that there was paid to Fuller & Gray for these 300 shares of stock in that brief period of about two weeks $17,337.50 in bills. On the 18th day of November he paid Harris & Fuller $10,000 in bills, and on the 16th day of December he paid that same firm $6,000 in bills. And then, in his own account in the Farmers Loan & Trust Company there was a balance to his credit on the 3d day of September of $1,112.58. He deposited $14,400 in that account in bills, and the account stood on the 1st day of November at $15,704 to his credit, and the account stood in precisely the same way on the 1st day of December, $15,704. There was paid into the Mutual Alliance Trust Company campaign checks and there went in and out of that account $14,066.88. So there was deposited or paid by him during this brief period in bills $7,125 for one lot of stock, $11,825 and $5,512 for other stocks, and there was paid on account of his indebtedness to Harris & Fuller, $16,000, and there was deposited in the Farmers Loan & Trust Company, $14,400; so that in all he deposited or paid out in bills in that period $54,862.

I submit, if your Honors please, that as to nearly all the items of contributions, under any construction which might be given the language employed, it is perfectly apparent that the solicitation, however made on behalf of the Governor, was for moneys to defray his campaign expenses and his personal expenses during the campaign; and that as it appears from the statement of nearly all the witnesses themselves so far as they have testified, that was their purpose when they made the contributions.

I have presented to you the argument, in which I have full faith, that it is necessarily implied even in the absence of any utterance on the subject, that when $500 or $100 is given to a candidate for office, by his friend or by a man who is not his friend but who is a partisan and interested in the cause, that the necessary implication is that it is for campaign purposes.

For certainly no man ever gives money to a candidate for office unless his purpose is to aid him in his campaign honestly and generously, or else because he desires to secure a lien upon him.

And, therefore, it is the duty of the Court to give to those transactions, as it seems to me, this reasonable and natural construction: that men who desire to have their party win, men who desire to help their friend, or who have been accustomed, perhaps, to assist by the giving of money, give it, not that the candidate may put it in his pocket, not with the idea that he may buy farms for his old age, not for the purpose of laying away against that later day when he cannot earn money, but that they do it for the purpose of helping him toward meeting that burden which nearly every candidate finds quite heavy when he is running for office.

That brings me to another question, if your Honors please. I want again to present to you the argument that, notwithstanding the fact that all three of the articles that I have so far considered are for acts done prior to the taking of office of the respondent, nevertheless it is the duty of this high Court to find a verdict of guilty as to each one of these three articles. I have listened, of course, from the beginning of this trial, as you have, most patiently and faithfully to the arguments that have been addressed to you that no matter what a man may do, no matter what offenses he may commit against the public, no matter what crimes he may have committed, the people of this State, under

their Constitution, are absolutely helpless, provided it is done the day before he takes the oath of office.

I am not here to argue, your Honors, that it is the duty of this Court to go any farther than is required in the disposition of this particular case, for that is always and properly the judicial method, of course, but my argument will be, your Honors, in the main that not only is precedent, my friends to the contrary notwithstanding, in favor of the Court's going back of the date when the oath of office was taken, but that, under our Constitution, it is required and it is plain that it must be so.

It seems to me that the very reason for eliminating the "mal and corrupt" clause from the Constitution, and the "high crimes and misdemeanors" clause, and simply providing that the Legislature may impeach, was not, as my friends would suggest, for the purpose of enabling an Assembly to impeach, and a High Court of Impeachment to oust from office, one for wearing a straw hat in December, but was to provide full protection to the people against officials unfit for any reason. My friend's argument to you is to the point that a High Court of Impeachment cannot be trusted in this State to reach these great cases which may occur in the future, as one has occurred now. It is forty years since there has convened in this Capitol a High Court of Impeachment. We have had Governors for a century and a quarter, and more. Never before has there been an attempt made to impeach a Governor. So drastic a remedy will never be resorted to but where there is ample ground for it. And certainly no one of you can say that grounds have not been presented here for impeachment. So that it is necessary, it seems to me, that the Court of Impeachment should have the power to reach those emergencies in the future, just as one has been reached now. And the necessity is fully met by the law.

The reason for not attempting to specify causes is to leave that subject to an Assembly, as a grand jury, and then to the High Court of Impeachment — the grandest court in the history of the State, made up of sixty members, men who are leaders in judicial and legislative life. And no such tribunal as that, and you know it right well, will ever convict a man, will ever adjudge a man guilty of offenses which deserve impeachment, and oust him from office unless there be most serious offenses demanding it.

This very case, as it seems to me, presents an illustration of the importance of having omitted causes. This cause could not have been conceived of in 1777, nor 1821, nor 1846. No one then could have dreamed that there ever would come a time when candidates would be so hedged about by statute that they would be required, under oath, to give statements of expenses and to make accountings. There was but slight expenditure in those days; but now we have reached a condition where we have such a system of laws, and all of them as a step to the election and induction into office, among others, of the Chief Executive of the Empire State.

It is objected that the accused is not impeachable for acts committed while he was a candidate, nor even after his election, and before he took office as Governor. This objection arises, I think, from a misapprehension as to the cause for and purpose of the proceeding.

The institution of impeachment of public officers was inherited or transplanted into this country from England, and into England from ancient Germany. It was described by Sir Matthew Hale as a presentment by the House of Commons, the most solemn, grand inquest of the whole kingdom, to the House of Lords, the most high and supreme court of criminal jurisdiction of the kingdom. It has been said, and truly so, that the purpose of impeachment, both in England and the United States, is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their extraordinary influence, or from the imperfect organization and powers of those tribunals.

Or, as was said by Edmund Burke in the prosecution of Warren Hastings: "It is by this process that magistracy which tries and controls all things is itself tried and controlled."

Other constitutions are satisfied to make good subjects. This is a security for good Governors. In this State by this tribunal it is that the statesmen are accused by statesmen and tried by statesmen, not upon the niceties of a narrow jurisprudence but upon the large and solid foundation of the State morality. It is here that those who by abuse of power have violated the spirit of law could never hope for protection from any of its forms. It is here that those who have refused to conduct themselves according to the provisions of law can never hope to escape through any

of its defects. Nor has this subject, proceeding or tribunal lost any of its transcendent solemnity, dignity or power in this country nor in this State, where two of the three great coordinate departments, the lawmaking and law-expounding branches of the State government, are combined in one and the greatest tribunal of the State; the greatest not alone because of the great number and dignity of its members, nor because of the solemnity of the subject, nor the potency of the offender of which it has jurisdiction, but because all these things characterize this body clothed with the last measure of judicial power, and from whose judgment there is and can be no appeal. That the Chief Executive of the State may be called to account at this bar there is no doubt, but objection is taken to the impeachable character of the acts here charged, and especially to those alleged to have been committed before he took office.

Whether these acts or any of them constitute ground or cause for impeachment is to be determined by recourse to the constitutional law of the State and to parliamentary and common law as crystalized thereunder.

The first Constitution of this State, approved April 20, 1777, provided for the institution of a Court for the Trial of Impeachments, and so far as stated here, that the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices should be vested in the representatives of the people in Assembly, and that no judgment of the court should extend further than removal from office and disqualification to hold any place of honor, trust or profit under the State, but that the party so convicted should nevertheless be liable and subject to indictment, trial, judgment and punishment according to the laws of the land.

Following the foregoing, and in 1787, the Constitution of the United States was adopted with the provision that the President, Vice President and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors, and the same provision as in the State Constitution in respect to judgment of impeachment and liability of the party to indictment.

The second State Constitution, that of 1821, broadened the grounds for impeachment, for it provided that the Assembly should have the power of impeaching all civil officers of the State for mal and corrupt conduct in office, and for high crimes and

misdemeanors, thus adding to the grounds of impeachment theretofore existing for mal and corrupt conduct in office the further power to impeach for high crimes and misdemeanors.

The third Constitution, approved in November, 1846, continuing the Court for the Trial of Impeachment, provided that the Assembly should have the power of impeachment (article 6, section 11) thus rejecting all limitations theretofore placed upon the power of impeachment by the Assembly. It failed to specify the officers who might be impeached or the time of the cause whether in office or otherwise. It contained the same provision as the other Constitutions in respect to the judgment of impeachment and the liability of the person impeached to indictment.

This Constitution also provided for a concurrent remedy for the similar removal of justices of the Supreme Court and judges of the Court of Appeals, the provision authorizing the remedy by concurrent resolution of both houses of the Legislature if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concurred. It also provided for the removal of inferior judicial officers by the Senate on the recommendation of the Governor, but no removal to be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity to be heard in his defense.

By section 7 of article 10 it was prescribed that provision shall be made by law for the removal for misconduct or malfeasance in office of all officers except judicial whose powers and duties were not local or legislative, and who should be elected at general elections, and also for supplying vacancies created by such removal. This provision, as well as that relating to the removal of justices, provides a concurrent remedy for the removal of officials but with no power to disqualify officials removed from holding office in the future.

Neither provision affects or was intended to affect the power of impeachment conferred by article 6, section 11. The fourth and present Constitution approved November 6, 1894, continued in force the power of the Assembly to impeach, and provides the method for the trial of impeachments and prescribes the same

judgment and liability to indictment in precisely the same language as the Constitution of 1846.

Upon these provisions of the Constitution and other rules of law cited in the course of this discussion, we submit in all candor that an officer may be impeached for acts committed prior to his term of office.

What is the objection of impeachment? In the first place, this proceeding is not and never was designed as a punishment for crime. It was not so in England, since a judgment of impeachment is not and never was any answer or bar to an indictment in the King's Bench; or as the Lord High Steward said to the accused in one case (7 How. St. Trials 1297): "You are not tried upon the indictment of treason found by a grand jury, though that too is in the case, you are prosecuted and pursued by a loud and dreadful complaint of the Commons and are to be tried on the impeachment made by the grand jury of the whole nation." Likewise, in this country where the person impeached is still liable by express provision of the Constitution, State and Federal, to indictment, and punishment according to law, that is, if a crime is involved in the case. This could not be so if impeachment were considered as punishment for crime, since no person shall be twice put in jeopardy for the same offence. Mr. Baird said on the trial of the impeachment of Blount of the United States Senate in 1799, and it has been repeated by almost every writer upon the subject since that time, "Impeachment is not so much designed to punish the offender as to secure the state; it touches neither his person nor his property, but simply divests him of his political capacity."

"The object," said the court in State v. Hill, 37 Neb., "is to remove a corrupt and unworthy officer." Much has been said in the past upon the kindred subject as to whether misconduct below the grade of an indictable offence may be the ground of impeachment, with the result that it is now almost universally settled that acts though not indictable may nevertheless be ground for impeachment. The phrase "high crimes and misdemeanors" descriptive of impeachable conduct in England and in our Federal Constitution, upon its face is contrary to the foregoing rule, but that phrase was adopted in this country from English parliamentary law where it has been construed in the light of parliamen-

tary usage and in a broader sense than at common law, or than the import of the words themselves. In this sense it has been held to include not only indictable wrongs but political offences, corruption, acts involving moral turpitude, arbitrary and oppressive conduct and even gross improprieties by judges and high officers of the state, and for which no indictment would lie either at common law or under any statute. (Citing Curtis' History of the Constitution, 260, Cooley on Constitutional Law, 159; Story on the Constitution, sec. 800; Foster on the Constitution, vol. 1, p. 854; Opinion of the Framers of the Constitution; Judge William Lawrence, 6 American Law Register, 647; Samuel J. Tilden's Public Writings, vol. 1, pp. 476, 478).

Many other authorities might be cited but the subject is not of any particular importance here where the acts charged constitute indictable offences. But if such were not the case the sentiment of the people as expressed in their several constitutions shows that they never intended to confine impeachment to indictable offences. First, because they never said so: nothing could have been more simple than a statement to the effect that a State officer might be impeached for any indictable offence, unless perhaps a provision that upon indictment and conviction he should forfeit his office. Second, instead of this, however, the cause was first "mal and corrupt conduct in office," then for "mal and corrupt conduct in office and for high crimes and misdemeanors," and finally the withdrawal of specifications of any cause.

But if the omission had not been made, where is a person to be found who will say that there is not infinitely more mal, which means evil, or corrupt conduct, which means perverted or dishonest conduct, in the world, the state or neighborhood than there are indictable offences? A person cannot be indicted for drunkenness, gross immorality or indecency, insanity, or any of hundreds of other matters of incompetency, mental and physical, to perform the duties of an office. But who would say that he could not be impeached for those things? But enough of this since the subject is not directly involved in the case. The principal question now being considered is not whether the cause must be indictable, but whether impeachment will lie for acts committed by a person during his candidacy and after his election, but before his term of office began.

This question, we claim, must be answered in the affirmative both upon authority and reason, as a matter of protection to the State; and so answered, the evidence presents several distinct and legal grounds for the removal of the Governor from office.

First, a word as to the constitutional provisions in relation to it.

The first Constitution provided, as we have seen, for the impeachment of all State officers for mal and corrupt conduct in their respective offices. The second for impeachment for mal and corrupt conduct in office and for high crimes and misdemeanors. The third, as well as the fourth or present Constitution, declared, as in the others, that the power of impeachment shall be vested in the Assembly.

But unlike the others, no ground or cause of impeachment whatever is now mentioned or has been since 1846 in this connection. Provision was made, however, for the relief of the State from the discredit and misconduct of public officers.

The Constitution of 1846 introduced, and the present Constitution includes, two new provisions giving concurrent remedies which were incorporated with slight changes into the present Constitution, and to the effect (1) that the judges of the Supreme Court and Court of Appeals may be removed by concurrent resolution of both houses of the Legislature; that other inferior and judicial officers may be removed by the Senate on recommendation of the Governor, if two-thirds of the members elected to the Senate concur, but forbidding the removal of any officer by virtue of this section except for cause, to be entered on the journal, and unless he should have been served with a statement of the cause alleged, and should have had an opportunity to be heard (article 6, section 11 of the present Constitution); and, (2) that provision should be made by law for the removal for misconduct or malfeasance in office of all officers except judicial, whose powers and duties are not local or legislative, and who shall have been elected at general elections, and also for supplying vacancies created by such removal (article 10, section 7).

The late Samuel J. Tilden held in a most profound and lucid discussion of the subject that an officer was impeachable under the Constitution and laws of the State of New York for acts committed before or entirely disconnected with his office.

That learned author, statesman and former Governor of this State, having referred to our adoption of impeachment from England and its modification in this country, quoted the provisions of the Constitutions of 1777, 1822 and 1846, already mentioned, the latter part of which then contained section 7 of article 10, as the foundation of his conclusion.

Upon this, in connection with parliamentary and common law of England, it said among other things, in effect:

> "1. That an officer may be removed from his office for a cause wholly disconnected with the duties of the office, as where he had been convicted of a crime."

Continuing, he said:

> "The conviction being a public event, involving personal discredit, is deemed to produce a personal disqualification of a moral failure for the discharge of high official duties. The fact of the commission of a crime is the real source of disqualification, to which fact the conviction adds certainty and notoriety. Surely, a physical disability to discharge the duties of an office is cause for removal by impeachment. The failure to resign in such a case is a moral delinquency. Naturally, insanity is a ground for removal. Can it be doubted that a moral disability is cause of removal, or that, to express it in technical language, it is an impeachable offence? But all this yields too much to the notion that a ground of removal must be an offence. Such is not, in accurate language, the case. Unfitness, inability to serve the public, creates not merely a cause but a necessity for removal."

Can it be possible, your Honors, that with the record which lies before you, any one of you could say that the Governor, who has not appeared at this trial, is fit longer to be the chief executive of this State? Is not the proof which has been spread upon this record, standing as it does wholly uncontradicted, so convincing that it is absolutely impossible to conceive that the time can ever come when he can ever regain the confidence of the people of this State?

The President.— We will suspend at this point.

Mr. Stanchfield.— May we have the tabulations distributed before we adjourn?

The President.— Yes.

The Court will now adjourn.

Whereupon, at 5.05 p. m., the Court adjourned until Friday, October 10, 1913, at 10 o'clock a. m.

FRIDAY, OCTOBER 10, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Parker.— Presiding Judge, Members of the High Court of Impeachment: Mr. Tilden, referring to the remarks of Chief Justice Shaw which were quoted by Senator Brackett in his discussion of impeachable offences, said:

> "The doubt which seemed to exist in the mind of that great jurist arose from the words of description of impeachable offences in the Constitution of the state of Massachusetts, which literally related only to acts done or omitted in office."

And then Mr. Tilden continued:

> "The Constitution and laws of the State of New York have left us free from any possibility of so narrow a construction as that which Chief Justice Shaw disputed in its application to the Constitution of Massachusetts. They recognize the principle that a personal crime may create a personal disqualification to exercise the functions of a public office, although the particular offence may be totally disconnected with that office. They do not limit the range of impeachable acts, omissions and faults which work such disqualification to any term of office, or to any time or place, but leave the whole judgment as to whether or not the disqualification is produced to the supreme and exclusive jurisdiction of the High Court of Impeachment, which is the ultimate agent of the sovereign people in their supervisory power over public office."

I want to read the last sentence again, but first let me call your attention to the fact that it states what an examinaion of impeachment cases shows to be the truth, that the causes of impeachment have been developed by the High Court of Impeachment in England and in this country, just precisely as the common law has been developed by the courts of England and this country. Just as the courts of this State apply the principles of the common law to new situations, so has the High Court of Impeachment, without let or hindrance on the part of the legislative branch of the Government, developed the law of impeachment, and so it will continue to be developed for all time to come, just precisely as the common law will be applied and developed for all time to come.

Now, with that statement, I beg your permission to read again this statement by Mr. Tilden:

> "They do not limit" — that is the Constitution, our Constitution does not limit —" the range of impeachable acts, omissions and faults which work such disqualication to any term of office, or to any time or place, but leave the whole judgment as to whether or not the disqualification is produced to the supreme and exclusive jurisdiction of the High Court of Impeachment, which is the ultimate agent of the sovereign people in their supervisory power over public officials."

And in this connection I desire to call your attention to a proposition which I believe to be absolutely sound, namely, that the Legislature has never had anything to do, either in England or in this country, with the determination of what constitutes causes of impeachment.

The causes of impeachment have been settled by the High Court of Impeachment, beginning in England and followed in this country. The causes, unless specified in the Constitution, have been determined by the High Court of Impeachment.

In Massachusetts, for instance, there is a limitation as to cause. The Constitution there requires that the impeachment shall be had only for offenses committed during the term of office; but there is no power conferred upon the Legislature to do anything with it.

In this State, the situation is different. Here it once was provided that there should be impeachment only for causes committed while in office, for "malconduct in office." And when, after a time, that provision was taken away and all limitation was taken away, it was then left to what body to determine what should constitute impeachable offenses? To the High Court of Impeachment.

You may search in vain through our Constitution and you will find nowhere any expression whatever that confers upon the Legislature the power to name causes, to specify causes, or to place any limitation whatever upon the Court of Impeachment. I am not overlooking for a moment section 7 of article 10 of the Constitution. That has nothing whatever to do with impeachable offenses. It provides a concurrent remedy for removal, but not for disqualification. It was probably not expected that it would ever be used as against a Chief Executive. But be that as it may, it is a concurrent remedy, the judgment limited to removal has no power whatever to disqualify, and it has no relation to impeachment. I repeat, therefore, that there cannot be found in this Constitution any limitation upon the power of the High Court of Impeachment to determine for what offenses a person may be removed from office and disqualified.

There was, of course, a reason for eliminating the provisions which were once in the Constitution, namely, that one might be impeached and removed from office and disqualified for malconduct in office and for high crimes and misdemeanors. It was stricken out, in my judgment, because it was realized that it was not possible for a Constitution to provide a rigid rule by which the right of people to get rid of an unfit officer may be interfered with, and so it was left, logically, rightly, to the greatest court in the history of the State, the High Court of Impeachment, to be made up of the representatives of the highest court in the State, and the representatives, fifty in number, of the highest legislative branch in the State. And the framers of the Constitution necessarily believed that they had committed the protection of the people to the strongest and wisest and best balanced tribunal that it would be possible to create.

Nor is this question without authority by this High Court of

Impeachment. The article of Mr. Tilden to which I called your attention was written just preceding the Barnard impeachment, and I wish to call your attention to that case because in my judgment it is a decision by a High Court of Impeachment which this tribunal should recognize, unless it is clearly of the opinion that it is unworthy of recognition and should be overthrown. It is a precedent which should have as much force and effect with this great Court as any other precedent of any other court should have with courts of like jurisdiction and power.

On the impeachment of George G. Barnard, a justice of the Supreme Court of this State, he was charged in 11 of the 38 articles with misconduct and acts committed during a previous term of the same office, in 1868. The accused interposed a special plea that the court ought not to take cognizance of these articles, because, as he said, his then "present term of office as a justice of the Supreme Court of the State of New York commenced on the first day of January, 1869, and the matters set forth in said articles and every one of them and every part of such matters occurred prior to such last mentioned date." Trial of Barnard, 147.

The late William A. Beach, of counsel for respondent, having said that respondent's plea raised the question whether he was liable to impeachment for acts which were committed prior to his then present tenure of office, argued at length the sufficiency of the plea. The substance of his contention was that respondent having been reelected came into possession of his new office, approved and certified by the people as capable and worthy to occupy that position, and that the Assembly therefore had no power to impeach him for these previous acts, nor the Senate to try the impeachment.

The court, including Chief Judge Church and Associate Judges Allen, Grover, Peckham, Folger, Rapallo and Andrews of the Court of Appeals, besides some 28 senators, overruled the plea by a majority of 23 to 9 at the end of a long trial and unanimously convicted the respondent on 9 of these 11 charges, the other two not having been proved.

In the Butler case, which is a Nebraska case, the Governor was impeached in 1871, and the respondent raised the question by

exception, as to whether he could be tried for offenses committed during his previous term as Governor, or for offenses committed by him as Land Commissioner, respondent having been ex-officio a member of a board composed of three commissioners. The court unanimously overruled the exceptions, holding that respondent should be held to answer for the acts alleged to have been committed, or omitted, prior to the commencement of his then present term of office.

And in the Hubbell case, on the impeachment of Levi Hubbell, judge of the second judicial circuit of the state of Wisconsin, in 1852, the question arose whether the court could consider offences charged to have been committed by the respondent during his previous term of office, either as a judge of the Circuit Court or the Supreme Court. After argument, this resolution was offered:

> "Resolved, that this court, on the trial of the impeachment now pending, have jurisdiction to inquire into offences charged to have been committed as well during a former term of office of Levi Hubbell, judge of the second judicial circuit of this state, as in the offences charged to have been committed during the present term of his said office."

The resolution was adopted by a vote of 19 to 5, but the respondent was later acquitted on the evidence.

The cause for impeachment may be condensed from the Constitution and foregoing authorities into three words: Unfitness for office. And the object of impeachment into four: Security for the State. Let us again summarize the provisions of the Constitution upon the cause: all State officers were impeachable, first, for mal and misconduct in their respective offices; and, second, for mal and corrupt conduct in office, and for high crimes and misdemeanors.

Then came the third Constitution, of 1846, with the provision that the Assembly shall have the power of impeachment, absolute and unlimited, without specification as to the officers, the cause, or time of the cause of impeachment, and with the two new provisions to which I have already referred for the removal of judicial officers and also the provision of section 7 of article 10.

In the first place, it is to be remembered that the Constitution of 1846 was in force and before Mr. Tilden when he declared: "That an officer can be impeached for misconduct wholly disconnected with the duties of his office; that unfitness, inability to serve the public, creates not merely a cause, but a necessity for removal."

Further, it is also to be remembered that Judge Barnard was impeached under the Constitution of 1846 for misconduct committed before the term of office of which he was impeached; and so with Butler, Governor of Nebraska, and Judge Hubbell, of Wisconsin. There Mr. Baird said, and truly so, "That the object of impeachment is to secure the state," and that "it is by this process that magistracy which tries and controls all things, is itself tried and controlled. Other constitutions may be satisfied to make good subjects, but ours is a security for good governors."

Aside from or in line with all this, it is perfectly apparent that public sentiment as reflected by these constant changes in the Constitution was never satisfied, and still is not, that the cause for impeachment should be limited or confined to any previously defined misconduct; that it was considered dangerous, if not impossible, to define the cause beforehand; that the cause by whatever name it might be called, should be unfitness in a person to hold office and this, too, regardless of the origin of unfitness, whether before or during his incumbency, or rather that the nature and the degree of sufficiency of the cause as well as the time of its occurrence should be left to the tribunals vested with the constitutional power to determine it; and the tribunal vested with the constitutional power to determine it is the High Court of Impeachment of the State of New York.

Abandonment of the words "in office" began with the provision for the impeachment of all State officers for mal and misconduct in office, and for high crimes and misdemeanors, without limitation. And the members of the great judicial branch of the State from top to bottom became liable to removal merely for cause, with no limitation whatever, either as to the nature or time of the cause. It does not seem possible to assign any reason for the removal of a judge of the Court of Appeals or a justice of the Supreme Court which would not apply with equal force to the impeachment of the Governor or Lieutenant Governor.

The Constitution states, it is true, that provision shall be made by law for the removal for misconduct or malfeasance in office of all officers except judicial, but the primary object of the provision was not to specify a cause, but to authorize a concurrent procedure for removal, and without power to disqualify the persons removed from holding office in the future, and probably was not intended to reach the chief executive officer of this State; and I would like to ask your Honors, each and any one of you, to answer for yourselves, is there any doubt in the minds of any one of you, that if any member of the Supreme Court of the State of New York were on trial, under impeachment charges, such as these, with proof such as is before you, would there be a single vote in this chamber against his removal and his disqualification? I say, upon your consciences, that there can be, as it seems to me, made by any one of you, but one answer to that question; you would vote to remove him, and to disqualify him.

Besides, who would be so shameless as to say if the Governor or the Lieutenant Governor should secure his election to office by fraud or bribery, that he should be permitted to hold it for the reason that he committed the crime or wrong before his term of office began, as a step, and from his standpoint a necessary step, in the acquisition of that office? If such were the case, then the paper and words which we call the Constitution, the foundation and palladium of State government, would be nothing but a pitfall and a snare in the coils of which the people might at any time be caught and bound hand and foot with no means whatever of relief or escape. Your Honors well know, and all of you, for it has been referred to before in this trial, that when the subject was up for discussion before the Court of Appeals in 156 New York, that court said, and as a part of its argument in reaching the conclusion that the court would not grant a mandamus against the Governor because it was without power to enforce it, that it had not the power to take the Governor and put him in jail for contempt, he being the chief executive officer of the State.

In reaching that conclusion, the court said, in the opinion written by Judge Haight: "There is no power of removal of a Governor except by impeachment."

Nor is election to an office a certificate or any guaranty of fitness to hold that office. Such is not the nature of the transaction between the candidate and the voter. There is always a tacit, if not an express, understanding — more often the latter — between them, that the candidate is honest, capable and fit to discharge the duties of the office. If he is not so, and is elected, then he has obtained the office by false pretences, fraud and deceit, and nobody should be bound by his election.

Of course, an election is no answer to charges of misconduct committed thereafter. It has been sometimes urged by writers that it was for misconduct which happened before. It has been common reading that where offenses were known and the subject of discussion and were passed upon by the people at the polls, that they had the right to condone the offenses; but it never has been suggested before this trial, so far as my reading goes and I have devoted considerable time to the subject, that the offenses which were committed afterward, after the people had voted, were at all within the rule or suggestion that an offense which the people have condoned ought not to be passed upon by a Court of Impeachment. But the people have never condoned these offenses. They were not known to the people. They were committed in the dark, during the campaign for the office, and some of the offenses, the filing of the statement and the taking of the oath, those two offenses covered by articles 1 and 2, were committed after the election had taken place.

There are other matters in that connection that I would like to discuss, but my time is flying, indeed has already passed, and I cannot encroach further upon those who are to come after me.

The purpose of the trial upon impeachment is to protect the honor of the commonwealth, the liberties of the people and the coffers of the State from the dangers of usurpation, stains and depredation of public officials found to be so unworthy of the people's trust and so unfit to hold the high office with which they have been honored that their official tenure is a public menace.

The purpose of the Constitution in its provisions for impeachment is not to castigate the wrongdoer but to insure to the people just and honest administration by furnishing a method for the removal of all officials found by its tribunal to be guilty of such

offenses as make them plainly the wrong instrument for the administration of good government. It is the people of a sovereign state, whose liberties, lives and happiness are in the hands of its public officials, who are entitled to the first consideration and the prime protection of this Court.

Therefore, the question to be considered is not, Is this defendant guilty and to be punished by deprivation of office? but, rather, Is he guilty and therefore a menace to the State while he holds in his contaminated hand the power conferred upon him by our Constitution and laws?

Whether there was ever a day when William Sulzer was fit for great public office we need not inquire. We may shut out his past with a shuddering hope that he may have been, and consider only his conduct so closely connected with, so immediately prior, and so necessary a condition precedent to his induction into office that it constitutes a part of his gubernatorial career.

With all defenses in, and swallowed whole, and with all the scapegoats cruelly overburdened with his responsibilities and the misdeeds from which he alone benefited, these facts yet stare William Sulzer in the face and defy refutation:

1. That the defendant collected personally many thousands of dollars for campaign purposes, and appropriated most of the total to his personal use.

2. That he committed perjury, in swearing to a false report of his collections and expenditures; the former being many times the amount acknowledged; that he swore to a sum as his total collection which was less than the amount of a single contribution paid to him personally in cash, in the same office in which he committed his perjury.

3. That he deliberately, with an intent which could by no possibility have been honest, sought to procure the contributions in such form, and to make acknowledgment thereof in such form, as should best elude detection. That even as he took pains to conceal the receipt of campaign contributions, so did he strive, by trick and device, to conceal his dishonest conversion of sums so collected.

4. That he sought, by the exercise of the power and prestige of his high office, to prevent the truth, and the full truth being told

by witnesses called to testify before the committee and this Court of Impeachment.

5. That he in effect suggested a barter of appropriations for legislative votes for a bill he sought to pass.

6. That he sought to coerce the action of members of this Court on this trial, through influence brought to bear on those he, in his narrow and mistaken view, deemed powerful to accomplish that coercion.

7. That he has been guilty of contempt of this high Court, of gross misconduct in office, of high crimes and misdemeanors, and of such unlawful, dishonest and dishonorable conduct just prior to his induction into office, and during the term of his office, as utterly unfits him to be a servant of this sovereign people, in this high office or in any other office or post whatever.

8. These acts constitute wilful and criminal violations of public duty and personal dishonor; they defy the majesty of a sovereign state, insult the intelligence of a free people, and outrage every sense of honor.

Before this bar, this defendant stands guilty of these offenses charged by the impeachment and proven by uncontrovertible evidence. Before the bar of the court of public opinion, this defendant stands condemned on the evidence here presented, and on the further damning testimony of his shifty defenses and of his futile efforts to dodge, by technicalities, the trial of the issues before this high Court, in which evasion public opinion, with a freedom not permitted to judicial opinion, finds direct evidence of guilt. That same public opinion takes cognizance of the fact that the defendant here is suffering from such a severe attack of moral nearsightedness that even when directed by a myriad scornful fingers, he cannot discern the dishonest, criminal, and dishonored nature of the acts proved.

Even justice must see through its severe eye something of the pathetic in this defendant's frantic efforts to cover the nakedness of his wrongdoing. Defiance, defense, justification, prevarication, denunciation of his accusers, attempts to suppress and falsify testimony and efforts to cast the blame elsewhere — each in turn has been stripped from his quaking flesh until he stands

now naked before this Court, without a rag of his attempted vindication clinging to his deformed and mutilated manhood.

Every disguise has been torn from his back, from the petticoat in which he trusted for safety to the armor of defiance in which he threatened to attack and expose a political leadership to which we have found him suing later for a merciful obliteration of his misdeeds, and offering the bribe of submission.

No act of his shows more perfectly the complete baseness of his character, unfitting him utterly for any public or private trust, than does his effort to coerce the members of this Court through channels his warped intellect mistakenly instructed him held the power of coercion.

Regardless of the origin of these charges, regardless of who may be the friends of this man, or who his enemies, regardless of any personal infliction of discomfort, this Court must, we feel certain, find on all the evidence that this defendant has been guilty of misconduct so gross as to necessitate his removal, for the honor, peace, prosperity and good government of this community.

With this Court, alone, rests the duty of delivering this State from the menace that like the sword of Damocles hangs above it so long as this man so conclusively demonstrated to be guilty of deliberate and heinous wrongdoing remains in the executive chair.

And to this Court we shall commit the decision of the case against William Sulzer, securely confident that the honor, safety and welfare of this, the Empire State, are assured of the protection contemplated by the Constitution in its creation of this high court.

Thank you for your patience.

Mr. Herrick.— Mr. President and gentlemen of the Court: As we had anticipated, the prosecution have been driven in this case, as you have seen from the address of the late Chief Judge of the Court of Appeals, to this position:

That this Court is bound by no law excepting its own feelings, its own determination; that it is not to determine but to make the law; that it is to usurp legislative functions. And you are to set

that precedent for all time to come, unless there is a radical change in our Constitution. Because it necessarily flows from his argument that a man can be impeached for not only any offence but for no offence. That if for any reason, political or otherwise, it is determined that a public official is no longer fit for office, because he believes or does not believe in the direct primaries, because he is a low tariff or a high protection man, he may be impeached; nay, more, if there is no limit, then even private citizens may be impeached, and great political leaders, against whom charges are continually made, as they are today in the public prints, may be impeached by the Assembly and brought before a court composed as this is, and forever disqualified as citizens and ruined in political leadership and power.

That is a boundless sea upon which he asks you to venture, with no rudder and no compass to steer and guide you.

In the learned brief prepared for the managers, and I suspect almost entirely by the learned gentleman who is to follow me, it was practically conceded that there was no power of impeachment for offences committed before entering upon office, because you will recall the very able effort that was made to demonstrate that the making of this statement of election expenses was official misconduct, that it was so intimately connected with a man's entering upon the discharge of his official duties that it could properly be regarded as being made — I think the word was used — in the "vestibule" to office.

I am amazed, astounded, at an argument coming from a man who so recently occupied the highest judicial position in this State, and who controverts every public writer, upon the question of impeachment, and who, in sustaining his position, cites not a case that was not for official misconduct in office. True, some were for acts done in a prior position, but still for official misconduct in public office, not committed as a private citizen. The Barnard and Butler cases were both cases of official misconduct, not misconduct as a private citizen. There has been something said which I might just as well repeat in this connection, by a gentleman who was not acting as an advocate, but who was in the discharge of a judicial duty, just as you are, upon the impeachment of Andrew Johnson, as to whether you can remove a man for unfitness for office.

Lyman J. Trumbull, one of the greatest jurists of his day, speaking on the question of the power of removal because of unfitness for office, said:

> "The question to be decided is not whether Andrew Johnson is a proper person to fill the presidential office, nor whether it is fit that he should remain in it, nor indeed whether he has violated the Constitution and laws in other respects than those alleged against him. As well might any other fifty-four persons take upon themselves by violence to rid the country of Andrew Johnson because they believe him a bad man, as to call upon fifty-four senators, in violation of their sworn duty, to convict and depose him for any other causes than those alleged in the articles of impeachment. As well might any citizen take the law into his own hands, and become its executioner, as to ask the senators to convict outside of the case made. To sanction such a principle would be destructive of all law and all liberty worth the name, since liberty, unregulated by law, is but another name for anarchy.
>
> "Unfit for President as the people may regard Andrew Johnson, and much as they might desire his removal, in a legal and constitutional way, all save the unprincipled and depraved would brand with infamy and contempt the name of any senator who should violate his sworn convictions of duty to accomplish such a result."

The learned counsel considers, because a man is shown to be unfit in some respects as a private citizen, that is reason for his removal, irrespective of what his conduct has been in public office. Let me read to you what Lord Macaulay says in his essay on the trial of Lord Clive:

> "Ordinary criminal justice knows nothing of setoff. The greatest desert cannot be pleaded in answer to a charge of the slightest transgression. If a man has sold beer on a Sunday morning, it is no defense that he saves the life of a fellow creature at the risk of his own. If he has harnessed a Newfoundland dog to his little child's carriage, it is no defense that he was wounded at Waterloo. But it is not in

this way that we ought to deal with men who, raised far above ordinary restraints and tried by far more than ordinary temptation, are entitled to a more than ordinary measure of indulgence. Such men should be judged by their contemporaries as they will be judged by posterity. Their bad actions ought not, indeed, to be called good, but their good and bad actions ought to be fairly weighed; and if, on the whole, the good preponderate, the sentence ought to be one not merely of acquittal, but of approbation. Not a single great ruler in history can be absolved by a judge who fixes his eye inexorably upon one or two unjustifiable acts. Bruce, the deliverer of Scotland, Maurice, the deliverer of Germany, William, the deliverer of Holland, his great descendant, the deliverer of England, Murray, the good regent, Cosmo, the father of his country, Henry IV of France, Peter the Great of Russia, how would the best of them pass such a scrutiny? History takes wider views, and the best tribunal for great political cases is the tribunal which anticipates the verdict of history.

"Reasonable and moderate men of all parties felt this in Clive's case. They could not pronounce him blameless; but they were not disposed to abandon him to that low-minded and rancorous pack who had run him down and were eager to worry him to death."

A man may be unfit in some respects. He may have committed indiscretions or worse in his private life, and yet we are to judge of him as a public official, by what he does in public office and in no other way.

I shall pay but very little further attention in my remarks to the law in regard to impeachable offences, but refer you to the briefs that have been heretofore submitted upon this subject, which seem to me uncontrovertibly to establish the law to be, not only now, but as it has been for generations, that no man can be impeached and removed from office except for official misconduct in office.

I owe a duty to the respondent, to this Court and to the State, and, in discharging that duty, I am somewhat embarrassed how to express some thoughts that have come to me without giving offence. Please believe me that, in what I am about to say, I in-

tend no criticism of any man's conduct, I impugn no man's motives, I intend to cast no reflection upon any man's integrity, but I feel that I must indulge in some reflections as to the composition of this tribunal.

In one of my arguments before you — I think the first one — I spoke of the difficulty of being intellectually honest, honest with one's self, and I think I illustrated that — if I did not, I will now — by the difficulties a lawyer has when a client comes to him for advice upon some given proposition. It is to the interest of that client to have honest, accurate advice. It is to the interest of the lawyer to give it; and yet, with the insensible proneness of the mind to help out the client, those decisions, those interpretations of the statute, that seem to be beneficial to the client make more of a lodgment and have a greater weight in the mind of the attorney than those adverse to his client. So, too, when a question of law is presented to a judge upon the bench, with some preconceived opinion in regard thereto — perhaps obtained years ago, when a lawyer, possibly even when a law student — when he comes to examine that case deliberately for the purpose of passing judgment, those decisions, those interpretations of the law and of statutes, which are in accord with his preconceived opinion, have more effect upon his mind than those that are against that preconceived opinion.

And that is what I mean by the difficulty of being intellectually honest. And hence it is that I feel a sense of embarrassment and difficulty in discussing the cause of this respondent before a tribunal, where so many of its members,— I say it with all respect — are not prejudiced, but predisposed against his case and against him; some by reason of opinions previously formed upon a partial investigation and consideration of the facts.

To such members of this tribunal I say that your bounden duty is to lay aside all previously formed opinions, formed without due consideration, formed without discussion, formed without hearing what was to be said in favor of the respondent, and decide this case as if you had heard it for the first time; and bearing in mind that you have taken your solemn oath to do impartial justice between this Assembly who have impeached the respondent, and the respondent himself.

Again, some of you are members of a powerful and imperious political organization, that has kept the respondent in public life for years, and has placed him where he now is, in more than one respect. Differences have arisen between that organization and this respondent. Many of its members believe him to be ungrateful and disloyal. Who is right and who is wrong I know not; whether the allegiance and loyalty demanded by that organization came in conflict with the allegiance and loyalty that he owed to the State I know not; whatever the causes of these differences with that organization may be, you are bound to disregard them. He is not on trial for disloyalty; he is not on trial for ingratitude; and you have taken a solemn oath to try him impartially upon the charges here brought against him and nothing else.

Then there is another class of judges, men with whom he has had personal controversies, toward whom he has used abusive and threatening language; some of you he said he would drive from public life. I have no justification for the language used. It was wrong, particularly when addressed by the Executive of the State to members of a coordinate branch of the government, but you are to cast aside all personal feelings, disregard all personal controversies, clear your minds of every prejudice, every passion, and every feeling, because he is on trial for none of these things; and you have sworn to pass judgment upon this case impartially.

Then there is another class of people who think as the late learned Chief Justice, that he is unfit for public office by mental equipment, personal habits, and political ideals; that by reason of all these things he is utterly unfitted to hold the high and dignified position of Governor of this great State.

But he is not on trial for unfitness for office. The people passed upon that. Hear what Lyman Trumbull, the one to whom I adverted a moment ago, said when he was giving his reasons for breaking away from the great party that had placed him in the Senate and made it possible for him to be a judge in that great trial, in giving his reasons for voting for the acquittal of Johnson:

> "To do impartial justice in all things appertaining to the present trial according to the Constitution and laws is the duty imposed on each senator by the position he holds and

the oath he has taken; and he who falters in the discharge of that duty, either from personal or party consideration, is unworthy his office and merits the scorn and contempt of all just men."

For none of these things that I have referred to, all well calculated to predispose you against this respondent, I say, is he on trial. The spirit of fair play that should characterize the conduct of every man in public life towards his political adversary, that requires him to play the game according to the rules, that requires a political leader, when he has made a mistake in putting a man into public office, to smile and bear the results of his error without wincing and not attempt to remove him from office by unlawful means to remedy the evil, but not to repeat the mistake again; and the sense of honor that should actuate all high minded men requires that you free your minds of all preconceived opinions and personal feeling, and determine whether you honestly believe he has been wilfully guilty of the offenses charged against him.

Nay, more — the solemn oath that you have taken before Him to whom you yourself must some time appear for judgment, requires you to cast out all prejudice, all ill feeling, all passion, and judge this man upon the law and upon the facts as applied to the law, and nothing else.

Again, there is little sense of embarrassment in what I am about to say. In my first address I stated that not only was the respondent on trial, but the Court itself was on trial in these proceedings. The Presiding Judge has stated more than once during the progress of this trial, that an impeachment trial is unlike any other, and the strict rules of evidence that are observed in ordinary civil and criminal cases have not been observed. And it seemed to us that in refusing our last motion to dismiss certain of the articles of impeachment, the rule that requires a prosecutor to establish the guilt of the person prosecuted, had been reversed and the burden placed upon us to establish the respondent's innocence.

What the Presiding Judge has said with reference to impeachment trials being different from all other trials is true in more than one respect. They are peculiarly cases where the decision must be in accord with public sentiment.

If the public sense of justice is offended by the composition of the court, or by the decisions it makes, a blow is given to the confidence of the people in the due administration of law, from which it takes a long time to recover.

Do not misunderstand me. I am not one of those who believe that our courts of justice, in administering the law, should depart one hair's breadth from what they believe to be the law. Still the courts, not only for their own preservation and protection, but for the public good, must not only decide right, but must do it in such a way that the people will believe it to be right.

Writers upon impeachment trials speak of them as being very largely political proceedings against men in public life, where political animosities and partisan feelings are aroused for and against the defendants. In a tribunal composed entirely of senators, as in the case of the trial of President Johnson, like tribunals existing in almost all the other states in this Union, the manner in which they make the decisions, and the decisions themselves, perhaps arouse very little feeling against the administration of justice, because they are regarded as political and not judicial decisions. But, in a tribunal like this, composed of the justices of the highest court of this State, for the administration of ordinary civil and criminal justice, and of senators together, a decision made by such a court, if not in accord with what the people believe to be a right decision, strikes a deadly blow at the confidence of the people in the administration of their laws.

It took many, many years for the Supreme Court of the United States to recover from the effect of the division upon party lines between the justices of the Supreme Court who served upon the Electoral Commission.

Now, without any disloyalty to William Sulzer, I may say that he is a mere incident in these proceedings; that my effort is very largely in behalf of the dignity and honor of the State, and the preservation, if it can be preserved, of the confidence of the people of this State in the administration of the law. I have passed beyond the time when political honor and preferment is for me, but I have a deep respect and affection for the State.

I have a great respect and affection for the highest tribunal of this State, and for the individual members, and I want to see nothing happen that will impair the confidence of the people in

that tribunal, and my desire is that, by no decision or by no manner of arriving at the decision, should any reflection be cast upon the administration of justice, or any new impetus given to the feeling which, we cannot disguise from ourselves, at present exists against the administration of justice; stirred up and enlarged upon by demagogues and political leaders of singular ability and disingenuousness. With these things in mind, it seems to me that this is peculiarly the time and peculiarly the case when the court should not go beyond what is written in the law. It is of the gravest importance that the independence of the three great departments of government should be preserved, the legislative, the judicial and the executive; and before the legislative and judicial departments should combine to overthrow the executive, the law therefor should be clear and plain.

The question of fact will always vary in different cases, but the law itself should be unchangeable, clear and definite; and no loose or liberal construction should be given to it to accomplish the overthrow of any department of the government or the occupant of any department.

In the very learned brief prepared by the counsel for the managers, a list of over seventy cases of impeachment is set out. Not one of them is for other than official misconduct. Some two or three are for past official misconduct, but still misconduct in office. Not a single one of these cases is an impeachment for acts committed when the person impeached was a private citizen; not one but where he was an occupant of some public office when the misconduct occurred. Judge Parker, in his argument, concedes that articles 1, 2 and 6 were acts performed out of office, while Governor Sulzer was a private citizen, before he entered upon the discharge of the duties of the office of Governor. Now, the public policy of this State is illustrated by section 7 of article 10 of the Constitution, requiring provision to be made for the removal of public officials for misconduct or malversation in office and by section 12 of the Code of Criminal Procedure providing that this Court shall have jurisdiction to try impeachments for wilful and corrupt misconduct in office. In 1854 the judiciary committee of the Assembly reported, and the Assembly ratified its report, that no one could be impeached except for misconduct in office.

In 1905 the judiciary committee of the Senate reported that

impeachments would lie only for misconduct in office, and the learned chairman of that committee supported it in a learned and very able opinion.

In the Guden case, under a power of removal, much broader than that of impeachment, the Governor in removing him found he was guilty of official misconduct in taking the oath of office, it being a false oath in entering office, and the Appellate Division upheld the decision, on the ground, among other things, that it was a corrupt agreement while entering into and before becoming a public official, to be performed thereafter, and in the Court of Appeals the only judge discussing the facts said, "There must be a charge of some official misconduct on the part of the officer," and that in that case he was shown not only to have made a corrupt agreement before entering his office but that he carried it out thereafter.

With this history of impeachments in this country, and the past public policy of the State, if this Court should go further than has ever before been gone in American history, should go further than has heretofore been written in the law, and convict the respondent for acts done while a private citizen, upon the extremely slender and tenuous theory, that in making a statement of election expenses, such statement had some connection with the public office which made it official misconduct — when the defeated candidates have to make a like statement — which statement is not and cannot be made a condition of entering into office, because the Constitution itself provides the only test for entering office; and thrust him out after he has entered into office because of this false statement which you could not require him to make as a condition for going in, it would violate the provisions of the Constitution and do that by indirection which the Constitution prohibits doing directly — I say that with this history of impeachments and the law hitherto related, such an extension of the power of impeachment to acts done before taking the office and before becoming a public official, will be regarded as reaching out for a victim, and it will be said that the Court did not determine but made the law to fit the case; and it will do more than anything ever done or that can be done in this State

to bring about the recall of judges and of judicial decisions, and it may cause a reconstruction of our whole judicial system.

This is not mere idle declamation for the purposes of this case, may it please the Court, but it is the result of careful investigations. Those people who think there is no feeling of unrest in regard to the courts, to the administration of the law, and to lawyers, are not honest with themselves or are not acquainted with the public condition of affairs. I was charged with investigating this subject nearly a year ago and the conditions that I found existing, the public feeling, I did not dare report in full for fear of increasing that public discontent. Do not blind yourselves. Stop and think of the enormous vote cast last year upon a platform attacking our courts and proclaiming belief in the recall and the recall of judicial decisions. So I say that it behooves us that this case shall be so decided, and in such a manner, that the people will believe and understand, and lawyers too, because many of them share in this feeling I speak of, that this Court has not gone beyond the law as it has been written for over 200 years in England and this country, and never hitherto been violated.

I am not going into any details or detailed analysis of the evidence in this case. That has been very largely done by my associate who opened this discussion and renders it very largely unnecessary.

Then, too, I bear in mind that this Court is composed of judges and lawyers, accustomed to analyzing evidence, many of them with greater ability to do so than I possess. It is composed also of those who are not lawyers but who are accustomed to consider public questions and listen to arguments, to analyze them and see what they mean and what they lead to, and I recognize that this is not an ordinary jury that pass upon the evidence as they hear it, and hear it discussed, but you have the volume of evidence before you in printed form, and I am pleased to notice that most of you have been taking careful notes as the trial has progressed, so you have it before you for your deliberation and investigation, and anything I might say, except in the most general terms, would hardly be worth saying to you or consuming my time.

But some discussion perhaps is needed. I shall not discuss

any further than I have done, the question of whether you can impeach for acts committed before entering into office. The learned former Chief Justice has gone the full length on that question, as I stated before, and leaves very little for us to say in relation to the practical abandonment of the contention of the counsel heretofore made, that this act of making a statement, this act of taking money contributed to him, was so connected with the office of Governor, something done upon the threshold of the office, as to be inseparable therefrom, and consequently, to constitute official misconduct. That contention I say has practically been abandoned, and the claim made that an official can be impeached for acts done before he enters into office; and in short, that the Assembly has no power to impeach, and this Court the power to try, for any cause or causes, and that there is no law limiting the powers of either.

What that contention, if sustained, may lead to, was well stated by Judge Trumbull, when deciding as a judge, and giving his reasons therefor:

> "Once set the example of impeaching a President for what, when the excitement of the hour should have subsided, will be regarded as insufficient causes, and no future President will be safe who happens to differ with a majority of the House, and two-thirds of the Senate, on any measure deemed by them to be important, particularly if of a political character, blinded by partisan zeal, with such an example before them, they will not scruple to remove out of the way any obstacle to the accomplishment of their purposes, and what then comes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity?"

Apply the same language to impeaching Governors in our State, where there is no law up to this time warranting his impeachment for acts done while a private citizen.

Now, I will come to a discussion of the several articles of impeachment. My associate in his brilliant and exhaustive argument reviewed all those articles and has left me but little to say, but I will briefly consider them. Taking up first those articles alleging offenses while he was in office, the third, fourth

and fifth articles may be considered together. They charge the respondent with preventing Sarecky, Colwell and Fuller from testifying before the Frawley committee. First, I will read the fourth article:

> "That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of suppressing evidence and of a violation of section 814 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed while such committee was conducting such investigation, and had full authority in the premises, he, the said William Sulzer, practiced deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance."

Now, what deceit, what fraud, what threats? Is there a particle of evidence in the case? Take them up and consider them.

Sarecky had been secretary to the Governor, had been in his employ for years but is now a deportation agent to the Hospital Commission. You will recall the disturbance that was made here in the beginning of the trial, Sarecky could not be found; they wanted Sarecky; he was being concealed, and you, who read the newspapers, unlike the jurors in ordinary cases, from day to day know that they said they were in hot pursuit of Sarecky, but could not find him, when it appears in the testimony that he was all the time staying in the city of Albany at the so-called Tub on State street, excepting when he was out with Hennessy, and then, seeing the charges that he could not be found, he published in the Buffalo papers his whereabouts and where he could be found, and walked into the very room here and was subpoenaed.

And then the clamor that was made about him in the opening, that here was an incompetent man taking the place of a doctor. And it did seem rather shocking that a layman should be put in position to discharge the duties that a medical officer ought to discharge, until it appeared that the very law under which he was appointed provided for the appointment of a lay deputy, and that instead of displacing a doctor, no lay deputy had ever been appointed until Sarecky was appointed. Then the recommendation that was given to the hospital commissioners — and you must bear in mind that there is a presumption that those hospital commissioners were doing their duty, the presumption that always pertains to the case of a public official or a public body, and there is nothing against it in this case to show that they were not — the recommendation because of his acquaintance with several languages made him peculiarly available and peculiarly fit to discharge the duties of that place, where there are so many alien insane whom they have to deport to their home countries.

Well, now, the cross-examination by that brilliant lawyer and astute cross-examiner, my friend Mr. Stanchfield, demonstrated the fact that he was peculiarly fitted for this place; that he was acquainted with these various languages; that he knew the duties of the office, which are comparatively simple, provided you understand the language of the people and of their families and their connections to whom you wish to return them.

Now, what was done? What is the evidence that this respondent did to prevent Sarecky from testifying? Not one particle. It is absolutely barren. Not a word, not a syllable, in the testimony that the respondent ever even intimated or suggested to him that he must not go before that committee to give testimony. This entire charge is built upon the slender theory that because he brought about the appointment of this man — although there is no evidence of it except that Sarecky applied to him for a position — who had been with him for some ten or twelve years, to an office that he was fit for, the respondent thereby bribed him, without any intimation, without any suggestion, not to go before the committee.

But he did go; he did go. And what did he tell them? Why, he told them that he would testify provided he could have counsel,

so that the whole story should come out. He had seen Mr. Marshall's opinion, or at least he had been told of it by Mr. Hennessy, that the committee had no power of investigation, that it had no authority to hale him before it. And yet, with that opinion, with the knowledge that this great lawyer had given this opinion, that the organization of that committee was illegal, and that they did not have the power to examine, still he went before them, offering to testify, provided they would permit him to have counsel so that every phase of the case could be laid before them.

It is a little hard to be compelled to feel that it is your duty to discuss these things, to fight windmills to maintain the innocence of your client, instead of rebutting evidence of the other side, saying that he is guilty. It is a little difficult, I say, and exasperating.

Then there was Colwell. The same disturbance was made over him. A demand was made of us to produce Colwell. A demand was made of us to let them know where he was. The demand was peremptorily made. We were to let them know the next morning. Now, we thought we wanted Colwell. We were on the lookout for him. We finally located him, and the public statement made by me in the court — and I repeat it again now — was to the effect that he was in a sanitarium; that he was informed that there was a warrant out for him in this State to arrest him for not appearing before that committee; and that he would come into this State, provided he was guaranteed that he would not be arrested or molested on that warrant.

I made the proposition to the other side. They were to let me know the next morning. Not a lisp of it from that day to this.

This case has been tried upon these proclamations in the newspapers creating a prejudice in the metropolitan mind, and almost necessarily creating some degree of mistrust at least in the minds of those members of the Court who are continually reading the papers, and accounts of newspaper correspondents, as to what has taken place at this trial.

But what was there about Colwell? Why, there is evidence in the case that he bought stock for William Sulzer, and that some time while the Frawley committee was in session — I have forgotten the day — some time when it was in session, I think, he had

been subpoenaed, is my recollection of the evidence, to appear before it. He told Mr. Gray — and the evidence seemed to us utterly incompetent and improper — he told Mr. Gray that he was going to Albany to see William Sulzer, and he has not appeared since.

Who of you would convict a man of petit larceny upon any inference to be drawn from that testimony? Not one syllable, not one word that he even saw Sulzer; or, if he did, that Governor Sulzer suggested that he should not go before the committee.

Then as to Fuller; I think the charge is that Fuller was bribed to keep away. How? When? Where? By whom? You saw him upon the stand. I will not describe him; he was sufficiently described by Mr. Marshall in a review of what took place then and there. He first refused, not at the suggestion — he denies that the Governor even made a suggestion that he should not appear before you, but if he did want to defend his position as a broker in not divulging the secrets of his client, if he himself wanted to make the fight upon that proposition, he would furnish him an attorney — I presume my learned friend, who had prepared an opinion upon that subject. He said he would employ his own; that he had his own attorney. He went before the committee, declining to divulge his dealings with his client. Then, upon a further day, after it was stated before the full committee that there had been a conference with Governor Sulzer and his legal adviser and he was told by Mr. Sulzer to disclose everything, as stated by Judge Olcott, the privilege of the client was entirely waived and he went on to give his testimony.

There are a couple of others not charged in the impeachment but they show you the atmosphere that was attempted to be created in this case.

You recollect the disturbance that was made here about Gray, from whom some of these stocks had been purchased, that Gray could not be found. There was a good deal of talk in the court room and witnesses were questioned about him. Finally, they got Judge Bell upon the stand to give some information of no importance.

That learned gentleman volunteered his assistance to both sides, you will recollect. He was counsel to Gray, and he said to his per-

sonal knowledge Gray had been at his office almost daily for the past two weeks. Asked if he would produce him he said he would telephone to him. I do not know whether he telephoned or not, and it is not in evidence, but the next day Gray appeared. It appears from his testimony that he had been in his regular place of business for two weeks when these learned gentlemen were prating that he could not be found, and that there was something presumably that he had to conceal in reference to these stock transactions.

And Peck! My friend described Peck yesterday. The description fitted him like a glove, except in one respect and I will try to fill it out. His testimony was for the purpose of showing that the Governor was trying to keep him from testifying. Nothing in the articles of impeachment to that effect. No! It was simply to bring discredit upon the respondent: to show that he was a liar, to show that he was secreting contributions.

Who is this Peck? I will briefly describe him. Appointed by Sulzer, supposed to be his faithful friend, supposed to be loyal to him, to whom did Peck first tell his story, to whom did he communicate this evidence, to whom did he divulge this secret communication between him and the man whose beneficiary he was? Who disclosed it to the board of managers or counsel for the other side?

In quite a long experience at the bar and upon the bench, defending people charged with crime, prosecuting people charged with crime; having people charged with crime tried before me, I have come to the conclusion, as Aaron Burr did, that the meanest criminal is the man who turns state's evidence.

Let us come to some more of these absurd articles. The seventh article I shall briefly describe. The members of the Court are tolerably familiar with these articles of impeachment. This article charges the respondent with using the power and influence of his office to coerce and bribe members of the Assembly and members of the Senate into voting for bills in which he was interested, in return for which they were to have his signature to bills making liberal appropriations for the benefit of their districts.

Spencer G. Prime, member of Assembly, and Thaddeus Sweet, another member of Assembly, are mentioned in this article. You

will recall that the attempt was made to coerce and bribe Mr. Prime and Senator Emerson.

Now, to attempt to coerce Senator Emerson seems to me to be pretty difficult. There is not a particle of evidence in this case that he was coerced and I have yet to see anything in the evidence to show that the Governor so mistook his man as to offer him a bribe. When he came in to see him about this good roads bill, he asked him if he had read his primary bill. The senator said he had it in his pocket. I do not know whether this offer of a bribe or coercion was merely to induce Senator Emerson to read that bill or whether he was expected to vote for it after he had read it.

And then he said to him, "I stand by my friends," or words to that effect; or was it, "You for me and I for you?" "You for me and I for you." To Sweet he said "Smooth over Taylor," "Go and see Taylor and smooth him down." Taylor is the Governor's legal adviser. He passes upon the question of the legality of bills, and advises the Governor as to whether they are legal or not, and he advised him to see him and smooth him down. Mr. Sweet attempted to smooth Taylor down, and found that that bill was in another department, to be passed upon, and it is Sweet to whom he said "I stand with my friends." Why, gentlemen, it is almost too ridiculous to talk about. We all know, as practical men, what is being done every day in legislative matters, not only in Albany, but in Washington, from time immemorial. Every man who is fit to be an executive, who is interested in procuring legislation for what he believes to be the interests of the people, uses more or less the influence of his office to induce members of legislative bodies to agree with him.

What has been done during the last few months in Washington? Yet would anyone say that President Wilson should be impeached because, forsooth, he is holding up political appointments in various states of the Union, until he sees what senators and members of Congress will do with his currency and tariff bills, to carry out the pledges of the party platform? Whoever thought of impeaching the wielder of the Big Stick for the influence that he used over members of Congress, when he brought the Senate of the United States to its knees, and humiliated the House of Representatives by the exercise of executive power and influence?

Go back in the history of this State and in the history of the United States for the last 50 years, and where is the executive that has not attempted — not by bribery but by gentle coercion, if you please — to bring about the enactment of those measures that he believed he was pledged to carry out and that he believed his party platform obligated him to carry into effect and enforce?

To say that there was bribery or coercion attempted in either of these cases, is the height of absurdity. I refuse to discuss it longer.

The next article concerning the Stock Exchange bills is equally absurd. I think the late learned Chief Justice did not discuss these. He was evidently ashamed, evidently ashamed to do it. The proposition is ridiculous that a man who was the owner of stocks, who had not sold them short, but was the owner of them absolutely, bought them for cash, not holding them upon margin, endeavored by these bills to affect the stocks in his hands.

The supposition, in the first place, that regulating the manner of doing business on the Stock Exchange would affect the value of the stocks traded in, is an absurdity. The only way that it could affect them would be by the increased difficulty with which these bills would surround transactions in stocks, increasing the expense of dealing in them, thereby causing a loss of value in such stocks. In other words, that the Governor was furthering the passage of bills which would decrease the value of the stocks owned by him. It is too simple to discuss. I am amazed at the managers, for they are astute, that they ever had the audacity to place them before the Court as an article of impeachment by which the Governor of this great State should be removed from office and disqualified. Why, to use the language of a late associate judge of the Court of Appeals, the evidence to support these charges that I have so far reviewed is of that kind as to be insufficient "to hang a yellow dog."

Next comes in the order that I have arranged for myself, the discussion of the first, second and sixth articles of impeachment, all relating to acts done before entering upon office, relating to moneys received by him and the statement made by him in relation thereto.

You will recall that he is alleged to have received large sums

of money for which he did not account, and made a false statement. He is charged in the second article, with committing perjury in swearing to that statement; and he is charged in the sixth article, with stealing these contributions.

Campaign contributions are of a twofold character. One, made to a party committee for the support of a cause, as well as candidates, for the purpose of getting a principle or principles adopted. The other kind of a campaign contribution is made for the benefit of the person who receives it. Undoubtedly, in the first instance, to be used for campaign purposes; but, having been given to him for his personal benefit in the campaign, if you please, it becomes his money. And whoever heard of the return of a campaign contribution, either from a political committee or from a candidate?

What shall he do with it, with the money that he has received, that is not necessary for the expenses of the campaign? Shall he ascertain and make a note of all his contributors, and distribute the balance pro rata among them? What is the practical thing to do? The Governor has illustrated it.

I am not a defender, gentlemen, of the ethics of keeping campaign contributions by a candidate; I am not a defender of the morality of that thing, or the good faith; I am not a defender of persons who will consent to receive campaign contributions in any large amount; but all those things are a matter of ethics, a matter of good taste, and possibly of good morals. But, if my contention is correct, you cannot impeach and remove a public official because his ethical standards do not comply with yours; you cannot impeach and remove a public official for a lack of good taste. You cannot impeach and remove from political office a man for immorality, notwithstanding the learned argument of my friend, Judge Parker. If a candidate is wealthy, these contributions are not ordinarily made to him; if he is a candidate who is supposed to be in poor or straitened circumstances, these contributions are made to help him out.

Public men in the past, as illustrated to you by Mr. Marshall, have not been above receiving assistance from wealthy friends. The Boston merchants kept Webster in public life. Jefferson re-

ceived gifts. Charles James Fox was kept in public life by gifts received. McKinley's debts were paid off that he might become a candidate for the presidency.

With these examples before him, is it any wonder that a man of the respondent's training, mode of thought, lack of business habits, financial necessities, thought there was no harm in using the money that had been given to him, not only for the purpose of the campaign, but also to aid and assist him in repairing his broken fortunes? Many of these contributions were evidently intended to relieve him from financial embarrassment, not only during the campaign, but during the time when he should come into the performance of the duties of this great office with its wholly inadequate salary. Using moneys so given to him for his own purposes and uses was not a betrayal of any cause or any principle, simply for the benefit of the person for whose good it had been contributed, given to him for his own personal benefit, if you will, given to him because he was a candidate, but if not needed as a candidate, then for his own personal benefit; none of the contributors ever expected that the money that they contributed or any part of it would be returned to them. They were absolute gifts to him, no matter for what purpose to be used. Most of the witnesses you will see say that they placed no limits upon its uses, and if the necessary lawful expenses of his campaign did not render it necessary to expend all the money given to him, certainly no fault can be found with him that instead of using such money to buy votes with, he used it to buy stocks, or for any other purpose that would be beneficial to him. The purpose for which the money was given, in the language of Justice Conlon, was to "buy a hat and a new suit of clothes."

Now, let us examine what these contributions were and what they amounted to.

I have a detailed statement here which I will not read. It has been prepared with care with reference to each page, and I wish it to be printed as part of my remarks for the convenience of the Court when they come to examine this case.

NAME	Page	Date	Check or cash	Amount	When, how and to whom delivered	Disposal	Exhibit and where printed	Remarks
Barthman, Wm. (reported)	1011	Oct. 10, 1912	Check	$50 00	Mailed to Sulzer Oct. 10, 1912	Sarecky's account	126 printed at 1011	Letter inclosing check stated "Contribution towards expenses of personal campaign." (1011)
Benedict, E. C	....	Oct. 10, 1912	Check	250 00	.....	Sarecky's account	31 printed at 654	No testimony given.
Brady, Daniel	677	Election night	Check	100 00	Delivered to Judge Conlon at Manhattan Club	Sarecky's account	Check destroyed	Conlon told Sulzer it was "a contribution to help him along in his campaign." (661) "To use this money for his personal purposes, clothing, hat, anything he might want to spend it for." (673) "Did not limit use of it in any way." (633)
Coler, Bird S	602	Oct. 24, 1912	Check	100 00	Mailed to Sulzer Oct. 24, 1912	Sarecky's account	37 printed at 657	Wrote letter in which he stated that Sulzer was sure of election and did not need much money. (603)
Conlon, Lewis J. (reported as $110)	627	.....	Cash	100 00	Eight or ten days after convention	Laid on breakfast table	.....	Did not limit use of it. (633)
Croker, Richard, Jr	737	Oct. 16, 1912	Check	2,000 00	Delivered to Sulzer at office October 16, 1912	Endorsed and cashed by F. S. Colwell	.....	For any personal expense in connection with the campaign or anything. (744)
Cox, John W	721	Oct. 7, 1912	Check	300 00	Delivered to Meyers	Deposited Oct. 16, 1912, by Boyer, Griswold & Co	67 printed at 725	Given for Sulzer's personal benefit. (730)
Delehanty, John W	631	Oct. 14, 1912	Check	110 00	Delivered at Sulzer home	Sarecky's account	54 printed at 632	Did not limit use of it. (633) Told him it was for his personal purposes. (673)
Doelger, Peter	576	Oct. 14, 1912	Check	250 00	Delivered to Sulzer at office October 13, 1912, by Dersch	Sarecky's account	34 printed at 655	Told Sulzer it was for campaign purposes. (592)
Dooling, John T	684	Oct. 15, 1912	Check	1,000 00	Delivered to Sulzer at Dooling's office October 15, 1912	Boyer, Griswold & Co.	61 printed at 685	"I understand you need help and I hope this will help you." (685)
Elias, William J. (reported)	576	Oct. 10, 1912	Check	100 00	Delivered to Sulzer at office October 10 or 11, 1912	Sarecky's account	30 printed at 653	"For campaign purposes." (592)
Elkus, Abram I	530	Oct. 4, 1912	Check	500 00	Mailed to Sulzer Oct. 4, 1912	Farmers' Loan & Trust Co	11 printed at 532	"To aid in expenses of your campaign." (531)
Garber, Harvey C	907	Oct. 3, 1912	Check	100 00	Mailed to Sulzer Oct. 3, 1912	Sarecky's account	101 printed at 908	Wrote "I congratulate you upon your nomination. I herewith enclose check for $100. I hope you will be elected." (908)

Gwathmey, J. T.	706	Nov. 1, 1912	Check	100 00	Mailed to Sulzer Nov. 1, 1912	Sarecky's account	38 printed at 657	"Hand to the people who are conducting your personal campaign as I wish the money to be devoted to that cause alone."
Gray, John Boyd (reported as $50)	975	Between Oct. 29th & Nov. 5, 1912	Check and cash	50 or 100 cash	Payable to Sulzer, delivered to Colwell			No testimony as to use.
Hawley, Geo. C.	577	Oct. 18, 1912	Check	250 00	Procured by Stadler, delivered to Sulzer			Told Sulzer that they were contributions I had requested from my friends towards his campaign. (584)
Hoffman, Philip & Wm.	579	Oct. 12, 1912	Check	250 00	Cashed by Stadler, given to Sulzer		42 printed at 580	Contribution that I had requested from friends towards his campaign. (584)
Luchow, August	578	Oct. 28, 1912	Check	200 00	Cashed by Stadler, given to Sulzer		41 printed at 579	Contribution that I had requested from friends towards his campaign. (584)
Lynn, John		Oct. 10, 1912	Check	500 00		Boyer, Griswold & Co.	56 printed at 634	No testimony.
McCombs, Wm		Oct. 5, 1912	Check	500 00		Sarecky's account	35 printed at 656	No testimony.
Meany, Edward	1060		Cash	10,000 00	Given to Sulzer 8 or 10 days after convention			Loaned Sulzer $10,000 in cash (1061). Had loaned him before and had been repaid. (1065)
Morgenthau, Henry	491	Oct. 5, 1912	Check	1,000 00	Given and payable to Sulzer	Farmers Loan and Trust Co.	10 printed at 520	Nothing said as to use to which he was to put the $1,000. "I did not intend to limit him as to the use he was to make of the $1,000." (493)
Meyers, Theodore W.		Oct. 10, 1912	Check	1,000 00		Boyer, Griswold & Co.	60 printed at 663	No testimony.
Neville, Geo. W	710	Nov. 1, 1912	Cash	200 00	Delivered to Sarecky Nov. 1, 1912			Told Sarecky it was $200 Neville requested Mandelbaum to hand Sulzer. (715)
O'Brien, John F	757	Nov. 2, 1912	Check	50 00	Mailed to Sulzer with letter	Sarecky's account	39 printed at 658	Letter said, "I enclose herewith my check for $50 as a contribution." (758)
O'Dwyer, Edward F	755	Oct. 19, 1912	Check	100 00	Left at Manhattan Club with porter in envelope without letter, payable to Sulzer	Boyer, Griswold & Co	71 printed at 756	Envelope contained nothing but check. Never talked to Sulzer about the contribution. (755)
Patterson, Frank M.	933	Oct. 10, 1912	Cash	500 00	Given to Sulzer in person at his office			"This contribution I considered as a personal one and not as a political contribution."

NAME	Page	Date	Check or cash	Amount	When, how and to whom delivered	Disposal	Exhibit and where printed	Remarks
Peck, Duncan W.....	718	Oct. 18, 1912	Cash.....	$500 00	To Sulzer at Rensselaer Inn, Troy.....	.....	.....	"I would like to give you this for your campaign." (719)
Pinkney, Cornelius S..	900	Nov. 1, 1912	Check.....	200 00	Delivered to Sulzer at office, payable to Sarecky.....	Sarecky's account....	100 printed at 901..	Asked Sulzer whether he was in need of any money. (900)
Potter, Mark W.....	630	Oct. 10, 1912	Check.....	200 00	Delivered to Sulzer by Conlon 8 or 10 days after convention, at Sulzer's house.....	Cash received by check	53 printed at 660..	"Did not limit the use of it in any way. Told Sulzer to use the money for his personal purposes, clothing, hat, anything he might want to expend it for." (673)
Rush, Thomas E.....	....	Oct. 31, 1912	Check.....	500 00	.....	Sarecky's account....	28 printed at 653..	No testimony.
Ryan, Allan.....	1030	Oct. 12, 1912	Cash.....	10,000 00	To Sulzer at Sulzer's office.....	.....	.....	Requested the money for his personal campaign. (1045)
Schiff, Jacob H.....	485	Oct. 14, 1912	Check.....	2,500 00	Payable to Sarecky.....	Sarecky's account....	9 printed at 519..	Sulzer asked me, "Are you going to contribute to my campaign and I said, 'Yes, I shall be willing to do so.'" (486) "I meant Sulzer might use it for any legitimate purpose."
Spalding, Lyman.....	631	Oct. 10, 1912	Check.....	100 00	Delivered to Sulzer by Conlon 8 or 10 days after convention.	Boyer, Griswold & Co.	55 printed at 633..	Did not limit the use of it in any way. Told Sulzer to use the money for his personal purposes, clothing, hat, anything he wanted to spend it for. (673)
Sorenson, John S. (Geo. W. Crossman).....	752	Oct. 9, 1912	Cash.....	2,500 00	Delivered to Sulzer at office Oct. 9, 1912.....	.....	.....	Told Sulzer, "I was sent by Mr. Geo. W. Crossman to hand you this." (754)
Stoiber, A. (Ezekiel Fixman).....	605	Oct. 19, 1912	Check.....	100 00	Mailed to Sulzer.....	Sarecky's account....	36 printed at 656..	Letter enclosed with check from Stoiber, Fixman stating he had been directed to enclose check with the enclosed letter, contents not shown. (606)
Strauss, Frank V.....	607	Oct. 5, 1912	Check.....	1,000 00	Payable to order of Wm. Sulzer.	Boyer, Griswold & Co.	51 printed at 609..	Only word was that Mr. Strauss had directed them to forward check for $1,000. (608)
Tekulsky Morris.....	548	Oct. 16, 1912	Check.....	50 00	Delivered at Tammany Hall to Sulzer Oct. 16, 1912.....	Sarecky's account....	32 printed at 654..	"Here is a little contribution to your campaign fund." (567)
Uhlmann, Simon.....	624	Oct. 18, 1912	Check.....	300 00	Mailed to Sarecky.....	Sarecky's account....	33 printed at 655..	"This is my voluntary contribution your campaign fund." (626)

I will briefly consider them. The statement that was handed around last night is inaccurate in many respects. It is not a true statement of the contributions received. It is not a true statement of the loans made to this man. It is not a true statement of the absolute gifts made to this man, and I desire to call your particular attention to it and have you examine it and see whether it is not a misrepresentation to mislead you and the public, as to what this man received, and from whom he received it. You will bear in mind the very great clamor that has been had about the vast amount of campaign contributions that he received.

When you come to examine the evidence here, as to actual campaign contributions — I am not speaking of the distinction to be drawn between campaign contributions and those given him without any limit, but they claim all to be campaign contributions — it is astonishing to note the difference there is between the proof they make and the claims and charges they make. I will go over them very briefly. My time is running on so rapidly that I do not know that I shall recapitulate this as I expected.

This is a summary:

CONTRIBUTIONS

Schiff (p. 485). Paid $2,500. Payable to the order of Sarecky. Went to Mutual Alliance Trust Company. No limit as to use (p. 489). Thinks if Sulzer came in at any time for $2,500, would give it to him (p. 614).

Memorandum on check, contribution towards Sulzer's campaign expenses. Placed on when given to Mr. Richards to identify check (p. 486).

No pretense that Sulzer used proceeds. Simply did not account for it. Question asked whether he would accept a refund (p. 623).

Morgenthau (p. 491). Check for $1,000. Sulzer told him he didn't want it because of doing so much for National Committee (p. 492). Nothing specified as to the use of the proceeds (p. 493).

Elkus (p. 530). $500. Unquesionably for campaign expenses. Proceeds went into the Farmers Loan and Trust Company.

Tekulsky (p. 548). Paid $50. Many years president of the Liquor Dealers Association. "Here is a little contribution to your campaign fund. Hope it will do you good." All said.

Stadler (p. 572, etc.). Obtained contributions from different persons: Peter Doelger, $50; William J. Elias, $100; Hawley, $250; Luchow, $200; Hoffman, $250. Got checks cashed, paid money to Sulzer. Sulzer requested it to be in cash. Total amount $1,400. Total contributions from friends towards his campaign (p. 584). Some checks taken by Dersch to Sulzer, who merely told him that Senator (Stadler) had given him those checks to bring down (p. 590). Again I said for campaign purposes (p. 592). Asked if I got any more checks to have them cashed (p. 593).

Bird S. Coler, $100. Check by mail (p. 603). Endorsed by Sarecky. Said to Sulzer sure of being elected. Not much use for money for campaign (p. 603). Endorsement of Sulzer a rubber stamp.

Stoiber, $100. Sent by Mr. Fixman for Stoiber. Received by Sarecky ((pp. 606-7).

Strauss, $1,000. Pursuant to cable from Paris. No statement what for. Related to Mrs. Sulzer by marriage (pp. 608-10).

Uhlmann, $200. Check payable to Sarecky (p. 625). Campaign fund. Deposited in Mutual Alliance Trust Company (p. 626).

Conlon. Took up contributions at Manhattan Club. Delehanty, $100; Lyman Spalding, $100 or $110. Gave $100 himself (pp. 630-32). Mark Potter, $200; Brady, $100 (pp. 661-73). Was to use money for his personal purposes, clothing, hat, anything he might need to spend it for (p. 673). Understood that Sulzer was poor. Did not limit him in any way. Theodore W. Meyers, $1,000; John Lynn, $500. Does not appear in any way for what purpose this money was given. No witness was produced in relation to either of these persons. Simply evidence of their checks. It is significant, however, that Mr. Lynn was in the court room as a witness and has not been sworn (p. 634). So neither of these amounts can be fairly considered as campaign contributions. It cannot be inferred that they were from the mere fact that they were payable to Mr.

Sulzer. Brady, $100 check handed to Judge Conlon at eleven o'clock election night (p. 976). It could hardly be considered a campaign contribution at that time.

Dooling, $1,000. Check. Simply stated he hoped it would help him (p. 685).

Gwathmey, $100. To be devoted to Sulzer's personal campaign (p. 707). Endorsed by Sarecky. Went into Mutual Alliance Trust Company (p. 709).

Neville. Number of merchants raised fund for different candidates; Sulzer's share was $200 (p. 711). Given to man named Mandelbaum. Intent was for campaign purposes (p. 713). Mandelbaum gave it to Sarecky. Didn't tell him what it was for (p. 715). Went into Sarecky's account in Mutual Alliance Trust Company.

Peck. Claims he gave $500 bill to Sulzer (p. 719).

Cox, $300. Sent to Theodore W. Meyers, Treasurer, raising funds for William Sulzer (p. 722). Never spoke to Sulzer about it. Was given to spend for his personal use (p. 730).

Croker, $2,000. Gave it as a personal and confidential matter. He supposed he would be under very heavy personal expenses. Supposed he was a poor man (p. 741).

Crossman (Sorenson), $2,500. Currency. $100. Bills (p. 753). Sorenson said he was sent by Crossman to hand you this. This was all that was said.

O'Dwyer, $100. Check left at Manhattan Club. No letter (p. 755).

O'Brien, $50, sent by mail (p. 757). Did not say what for. Regretted he could not make it more. Hoped two years later to be in a position to contribute again. Went into Mutual Alliance Trust Company (p. 758).

Pinkney, $200. Gave check in person. Order of Sarecky. Sulzer said personal matter between himself and myself. Considered it as a gift. Did not intend to make any record of it (pp. 900-1).

Garber, $100. Check mailed from Ohio. Nothing said about its purpose. Went into Sarecky's account (p. 907).

Patterson, $500. Gave personal contribution to him in addition to contributions he had made to committees. No limit placed upon it at all (p. 936).

Gray, $50. For campaign fund but no evidence of what was said to Sulzer (p. 1004).

In the check for $1,000 of Theodore W. Meyers there is not a particle of evidence of what it was for, what was told to Governor Sulzer when he received it, whether it was for campaign purposes, a gift or a payment for services rendered.

With the exception of the evidence that Dr. Cox gave that Theodore W. Meyers was acting as a sort of a treasurer to receive contributions and that he, Dr. Cox, sent him his check for $300 so that possibly we may assume that the check of Theodore W. Meyers represented collections that he had made. What those collections were, whether they embraced some of the smaller checks we have already set forth, it is impossible to tell.

Then there is a check of John Lynn for $500. What that was for does not appear. Mr. Lynn was present as a witness (p. 634), but was not called, presumably as his evidence would not have been satisfactory to the prosecution.

RECAPITULATION

Schiff	$2,500	Cox	$300
Morgenthau	1,000	Croker	2,000
Elkus	500	Crossman	2,500
Tekulsky	50	O'Dwyer	100
Stadler	1,400	O'Brien	50
Coler	100	Pinkney	200
Stoiber	100	Garber	100
Strauss	1,000	Patterson	500
Uhlmann	200	Gray	50
Conlon	100	Theo. W. Meyers, $1,000; after deducting Mr. Cox's $300 check	700
Delehanty	100		
Spalding	100		
Potter	200		
Brady	100	Ryan	10,000
Dooling	1,000		
Gwathmey	100	Total	$25,750
Neville	200		
Peck	500		

In this amount the Elias contribution of $100, Conlon's contribution of $110, and John B. Gray's contribution of $50 appear

to have been accounted for. See statement. The total amount proved by the people being $25,490.

Take Mr. Lynn's check. I am not at liberty to say to you what Mr. Lynn cabled about this when he first saw it in the papers when he was in Europe. $500. The assumption is campaign purposes. Mr. Lynn was here day after day. Those of you who know him saw him here. He was pointed out by Judge Conlon upon the stand. He was never placed upon the stand.

Take Theodore Meyers' check. No evidence what that was for, but I will assume it was for campaign purposes, but there is not a particle of evidence.

So we might go through with a number of others, but the aggregate is between $25,000 and $26,000, including the contribution of $10,000 by Mr. Ryan.

It has been assumed all along that the account in the Farmers Loan and Trust Company amounted to $22,000, $15,000 of which is charged up by Judge Parker toward campaign contributions. The $12,000 in Sarecky's account in the Mutual Alliance Trust Company makes either $27,000 or $34,000, just as you assume whether that bank account is $22,000 or $15,000. We will take the larger sum, $22,000, in the Farmers Loan and Trust Company, $12,000 in Sarecky's account, $34,000; $16,000 paid to Fuller & Harris, $50,000; $12,000 in Boyer & Griswold for stocks, $62,000; $11,000 in round numbers in Fuller & Gray, making $73,000, in all, was all money derived from these campaign contributors.

Now, what are the facts? The facts are undisputed, mark you; nothing to contradict at all. During this same period Lehman gave him $5,000 just before he was nominated for Governor, an absolute gift; he tells you it was not for campaign purposes, but because he was an admirer of the Governor-to-be. He knew he was needy, and he gave it to him out of good will and to help his necessities.

Then there is Reilly, $26,500. Undisputed, no suspicion cast upon it at all, not even an attempt upon cross-examination to shake the reliability of his testimony. This money was given to him from time to time during the months of October, the latter part of September, and in October, 1912, $31,000.

Then the loan of Meany, $10,000. Now, why was it that this

slur was attempted to be cast upon Meany, their own witness, undisputed, no doubt cast upon it that it was a loan to him? And he said that he had previously loaned money to him, and that those loans had been repaid.

So we have $41,000, the $10,000 given by Meany in $1,000 bills, and one of these payments you will recall to the stock brokers was of $10,000 in $1,000 bills. Can you say — if you can you can do better than I can— as to which money went to the buying of these stocks? To my mind it does not make any particular difference.

Of course there are some checks that went into the Boyer & Griswold account, the first stocks that he purchased. Some of the checks that were given were for campaign purposes, undoubtedly; others as personal gifts; oen a check of the Governor's own to the amount of $900; $7,125, I think in cash.

You have all these funds mixed; you cannot separate the campaign contributions from the loans and gifts. What went to purchase stocks, and what went to campaign expenses, no one can tell, not even the Governor himself, I will venture to say.

But it is not necessary to separate them. Now, what use was made of this money? I am not going to argue before you that this money, to a considerable amount, was not used for the purchase of stocks. There is no crime in that, unless he stole this money. Legally, he had a right to use it to buy stocks, not ethically, not in good taste. but as a matter of law. That proposition has been argued to you to some extent before, as to the legal phase of it, and I will not repeat it now as it appears in one of our briefs as published in the record here.

What use was made of those contributions? That brings me to the testimony of Mr. Ryan. A little bit of Mr. Ryan's evidence throws a flood of light upon this case, explains many things. We have not sought to bring the wife of the respondent into this case. It has been our effort to keep her out. It was first brought in, so far as the evidence appears, on the order that was given to Josephthal, signed by the defendant, for Mrs. Sulzer. Why? Because he had explained — she had told him of her trouble over this loan that was pressing her — when they were in camp at Gettysburg, I believe the first week in July, that her husband had

a large loan upon stocks that belonged to her, and he stopped her talking; he would not talk business with a woman. He saw the Governor, and the Governor told him of this loan upon stocks that belonged to his wife. So when he came to give the order for the stocks, after the story that he had told to Josephthal, there was nothing else for him to do but to sign it as the agent for his wife.

They have brought in the man having charge of the books of the defunct Carnegie Trust Company, to testify that the name of Mrs. Sulzer does not appear there as a borrower. No pretense was made that her name appeared there as a borrower; no claim that her name appeared with Harris & Fuller as a borrower; but the name of William Sulzer, borrowing money upon her stocks. And you will recall the checks from Harris & Fuller, that they gave to Sulzer from time to time, moneys upon the stocks that they held, all went to the Carnegie Trust Company, to take up the loan that was there. I am not going to dwell upon this a great deal.

I said that there was a little of Mr. Ryan's testimony that throws a flood of light upon this case, and some things that may seem to be mysterious to you about it. In speaking of the interview that he had with Governor Sulzer, he said: "I suggested to Mr. Sulzer that, now that certain charges have been made against him, that I did not see how he could afford to put himself in the position that he would put himself in if he did not answer those charges." It was brought out by the other side, not by us, that in reply Mr. Sulzer said that his reason was that he did not want to drag his wife into the situation, and put her upon the stand. This illuminates the whole situation.

Imagine yourself in his place. There are some things that a decent, manly man, cannot do to save himself; some things that a man of even low ethical standards cannot shield himself behind; some sacrifices of others that he cannot allow to be made, even at the risk of losing high position and being forever disqualified for political preferment and honors. Which would you do? Run the risk of losing the empty honor of being Governor — empty if held with dishonor — or lose the respect of every decent and honorable man in the whole United States, by saving yourself at the

expense of the honor and integrity of the one you are bound to love and protect? Imagine yourself, I say, in that position, with his experience, the political surroundings that he had been brought up in, the political ideals that he possessed, the political education that he had received, in a school where it is supposed that political influence can reach not only into the courts, but even into the sanctuaries of the church. Is it any wonder that, in desperation, he resorted to the methods best known to people brought up in such a political school; with such a political education, and endeavored to secure the influence of political leaders of both parties, to have the impeachment articles brought by the Assembly declared to be illegal for lack of jurisdiction, as he had been informed and advised by high legal authority they were?

Is it any wonder that he preferred to risk his high position, and all future political advances, rather than subject himself to the scorn of every honorable man, and should resort to these methods, which you and I, and all right thinking men, consider dishonorable and regard as an imputation upon our courts of justice, that it should even be thought for a moment they could be reached by political or other influence?

One thing, though, further, which Mr. Ryan's testimony develops, one further thought it brings to my mind, and that is the evil of our political system of leadership in this country, when great parties in a great State are largely subject to the control of a single man who has dominating influence that can be brought to bear, if he so wills it, either to control the actions of men in legislative bodies, and even in courts, or else ruin their whole political future. I congratulate the Republican members of this Court, whose influence it was thus indirectly sought to obtain, that the information that came back was that that great organization would not interfere one way or the other, that the accredited leader of that organization would not permit any man high or low even to speak to him about the case; in other words, that the members of this Court were not, the judges of the Court of Appeals were not, to be interfered with in any way, shape or manner, but permitted to act exactly in accordance with the views that their consciences compelled. Still, the information that came back, we do not know from whom, was not exactly correct. You recollect first that it was that none but the elected judges of the

Court of Appeals would be members of the Court; second, that it would be held that the Assembly could come together at any time, any place, anywhere, at the call of any one, private citizen, or anybody else, but so long as a majority of them were together they could prefer articles of impeachment; the position that was contended for by the managers. Perhaps these two first replies came from the managers, but this one that I refer to turned out also to be incorrect, because you have held that they cannot be convened at any man's whim, upon any man's call, but being in session, regularly called, that then they have the right to act.

I wish that Mr. Ryan had also made inquiry of the leaders of the other parties. It would have been extremely interesting to know what the response to that inquiry would be. I trust that it would have been equally frank. If any inquiry has been made I hope the same statement came back to those senators not of the Republican faith, that they are not to be interfered with, that no instructions are to be given to them, that the accredited leader of that party will not permit anyone, high or low, to speak to him in regard to this case, but leave those who are his followers to obey the dictates of their own consciences, untrammeled by even a suggestion or request which may involve their political future, if that suggestion or request is not obediently complied with.

But to return. Article 6 charges stealing, that he stole this money. Now, you heard the argument of Judge Parker in that respect. If it were not for my great respect for him and for the fact that he has been the presiding judge of our great Court of Appeals, I would characterize the whole argument on the subject of stealing these moneys as ridiculous.

If the respondent had been the treasurer of a political organization having the custody of funds for somebody else; if he had been the treasurer even of a little campaign committee to conduct the respondent's personal campaign, and he had kept the money; if he had been the treasurer of the state committtee, receiving money to carry on the campaign of a great party, not only for the benefit of the candidates, but to see that certain principles were formulated into laws, and he had taken the money for his own use, I would say it was stealing. But here was money that was given to this man for his own particular use and benefit, to be used as he saw fit. To say that he was the bailee for some-

body else is an absurdity. A man cannot be a bailee for himself. To say that he procured this money by false pretenses — he is not charged with that — but if he were, you heard the labored attempt to show that there was some false pretence about Sulzer in acquiring this money; that even his appearance, as described by Judge Conlon, would be a false pretense to defraud. What false pretenses did he make and what did he do with the money? He paid it to Harris & Fuller, this amount that is claimed he had stolen, $15,000. To the other brokers he gave $23,000, making in all thirty-nine thousand and some odd dollars. He received in loans $41,000.

Which did he appropriate, the contributions or the loans? What evidence have you that it was not this money he received in loans instead of the other that was paid to him for campaign purposes?

Now, we come to the statement that he made out — and this statement seems to be the crux of the whole situation, provided you hold, as has never been held before, that a man can be impeached for acts that he committed before he entered upon office. Judge Parker has argued to you that because this statement was made out by the Secretary of State, in pursuance of a law that stated he should furnish forms, that therefore this statement became a part of the law itself, and that a person could be indicted for falsely swearing to that statement thus made out, because it was a part of the statute law of the State. That I understand to be the gist of his argument in that respect. It was the same as though this statement had been written into the statute. I will not take much time to discuss that before you. But to the members of the Court who desire to take it, I refer you to but a single case. I am not much of a man to remember the title of cases, but it is 128 U. S. at page 14, where you will find that the Supreme Court of the United States held that a man must be indicted under the statute and not under a regulation formulated by an officer of a department pursuant to the statute.

The President.— We will suspend now.

Thereupon, at 12.25 o'clock p. m., a recess was taken until 2 p. m.

AFTERNOON SESSION

Pursuant to adjournment, Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Herrick.— Mr. President and Gentlemen of the Court: I presume that upon the matter which you have been discussing, perhaps counsel have nothing to say, but still it seems to me that this should be considered the same as ordinary, or, if you please, extraordinary cases, and there should not be a delay of two or three days to answer the arguments that we have made; that the answers to our argument should be made as ours have been to the other side, promptly and quickly after they have been delivered and not after deliberation of days, which gives a certain advantage to the people upon the other side, and I do not think that I am arrogating to myself any undue authority or presumption when I say that I believe that that would meet with the approval of the counsel upon the other side, that this session should be held until the arguments are entirely completed.

At the close of my discussion before adjournment, or about the close, I had referred you to a case in the United States Supreme Court, and I am told I referred to 128 U. S. It should be 228, page 14. It is upon the proposition that an indictment cannot be founded upon a regulation of a department, although the department may be authorized to make regulations; that would be legislation which neither Congress nor any legislative body can confer upon any administrative official or department. I have also 144 U. S. 677, 678; 165 U. S. 553; 106 U. S. 466, on the same proposition.

To resume the question of the statement and the law in relation to the statements to be filed, it is in a very singular condition, as was demonstrated to you by Mr. Marshall upon his argument, and I will very briefly refer to it in perhaps a little different aspect from that in which he presented it. Section 776 of the Penal Code requires a candidate within ten days after election to file a statement of contributions made by him or moneys expended by him. A failure to do so is made a misdemeanor. Conviction thereof would not forfeit the office, and

making it is not a condition of taking office. As originally enacted it provided that the failure to make it forfeited the office to which the candidate had been elected. But in deference to two decisions of the Supreme Court, both of them written by one of the counsel in the case, that statute was subsequently amended by striking out the clause rendering the failure to file a statement a forfeiture of office.

Under section 546 of the election law, commonly called the corrupt practices act, assuming that it does require him to make a statement of contributions — which I regard as more than doubtful — it is not required to be under oath. The statement is required to be made within twenty days. You will recall, the statement in the Penal Code is "to be filed within ten days." So the law apparently provides for two separate and distinct statements. Section 550 recognizes the fact that a candidate may make a mistake, and upon its discovery by any one, an application may be made to the Supreme Court requiring him to make a further statement; and upon his failure to do so, or upon his making a false statement, he then may be punished as for contempt of court.

Section 541 of the election law requires a candidate to file a statement of expenses, except the personal expenses provided for in section 542. Those are excepted from any statements he must make. Section 542 provides for various personal expenses of a candidate, including his traveling expenses, publication of literature, circulation of literature that is not circulated at regular intervals, and various other personal expenses for which he need not make any statement of expenses, recognizing the fact that there are some things that a candidate need not account for.

Section 542 provides for these expenses, and then it concludes with this:

> "A candidate shall in any event file a statement of any contributions made by him."

So, as Mr. Marshall suggested to you, there runs all through the statutes the idea that he shall make a statement of contributions made by him. Nowhere is there any requirement that he shall make a statement of contributions made to him.

This utterly excludes the idea that he is compelled to make a statement of contributions that are given to him. So that, under the provisions of the Penal Code, he could not be indicted for making a false statement because he did not include contributions made by him, and could not be indicted for perjury because he included in it matter that was surplusage.

Of course we do not contend, and never have contended, that an impeachment would not lie, excepting for an offense that is indictable. I am not arguing for that proposition, but here he is charged in the article with perjury. With perjury! Now, if in making this statement he made a statement that he was not required to make by law, that no law compelled him to make, if he included in it matter that was not material to the statute, not material to the statement he was required to make, in other words surplusage, then as to that, as has been demonstrated to you before, no indictment for perjury could be predicated thereon, and he was not guilty of perjury in a legal sense.

Under section 546 of the corrupt practices act he could not be indicted for making a false statement. There is no punishment provided for the first statement made. If that is incorrect, then the statute provides for a proceeding to be taken to compel the making of a further and corrected statement, and if he then makes a false statement he may be punished therefor by fine or imprisonment or both, as for a contempt of court. That is the only punishment provided for, and when, as has been before stated to you, a new crime, a new offense is created, and a punishment is provided therefor, that is exclusive of all others.

How was the statement made up? You have heard from Sarecky how that was made up. Sarecky, for ability, was a very remarkable witness. I wondered how my distinguished friend, Mr. Stanchfield, would have come out if he had been subjected to the same cross-examination that Sarecky was. I wonder what would have been the result; if he would have demonstrated the same fearlessness in answering every question put to him, no matter how it reflected on his personal conduct, and the frank way in which he stated those things which I know in the judgment of some gentlemen of this Court reflected on him.

To illustrate: The very frank way in which he admitted that he signed the name of Sulzer to this letter to the bank, authorizing him to sign the name of Sulzer, and headed it "En route." Now, that, at first blush, would seem to have been a discreditable act on his part, but was it? This man it appears has been for years acting as Governor Sulzer's confidential man. When he was in New York, representing him there; when he was in Washington, still taking charge of the New York end of the business, signing his letters, endorsing his checks, drawing his money for him. Almost the only man of ability that Sulzer had around him. The only one in whom he could confide, as subsequent events have shown. The only man worthy of his trust and confidence; the only man, almost, of all his beneficiaries who has been loyal and true to him. Not loyal and true to the extent of committing perjury, because it was not necessary. I do not say that he would not have done it if it was necessary, but we have nothing here to show that it was.

Judge Parker denounced Sarecky as worthless. I am sorry for the judge. I regret the misstatements he has made in this case as to what the evidence is, and I will call your attention to it in a moment. I regret that he is driven to such extremes. I regret that a former Chief Justice of the Court of Appeals is driven to misrepresent and misquote the testimony in this case. But, to return, where is there a particle of evidence to show that this man was a worthless man? Look at his history: A Russian Jew. I know there is a prejudice among some people against Jews, and Russian Jews; but let me tell you that we have no better and no more loyal class of people growing up in this country than those people who come from Russia, and are Russian Jews.

Read the book of Mary Antin, the story of the Russian Jews, and it will bring some of you gentlemen who have prejudices against that race to your feet; see the struggles they go through, the privations they endure for the purpose of getting an education in the language and institutions of this country; look at the thrift that they exhibit, the industry, the honesty and the integrity in every place where they are employed. Nothing against this man excepting that he was the employee of Sulzer, loyal and faithful

to him and coming over here at the age of two years, a Russian Jew from Odessa. See what his history has been. I will venture to say not a man in this court room has a greater command of the English language than that young man, and he is the master of two or three other languages, all acquired in the short space of time that he has been in this country, between the age of two years and the age of twenty-seven. And yet with this history behind him, the exhibition of loyalty and truth, unshaken in every instance, to be denounced as worthless and unworthy of belief, when the only thing to contradict him is the testimony of this bank official who sees hundreds and thousands of people coming in and out of his bank, and who is the only one to contradict him. And notice the fearless way in which, when he was paraded before Sarecky, looking at him calmly and quietly and deliberately said no, he was not the man who asked him to send in the letter of authorization. Do you think that when confronted with this bank president, knowing that he would come forward and contradict him if he denied that he was the man who asked for the letter of authorization, that if he (Sarecky) was corrupt, if he was dishonest, that he would not, with his quickness of wit, his ability, his shrewd judgment, have said, yes, he was the man, or that he may have been the man, or that he was not positive, because it was of no consequence whether the bank president or one of the employees of the bank told him what it was necessary to do? Instead, however, of making any such answer as would avoid any contradiction of his testimony by the bank president, in the consciousness of his own rectitude, and of his own belief in the truth of what he was saying, he denied that he was the man that told him it was necessary to procure a letter of authorization. It is the highest evidence of his integrity of purpose.

But let us go a little further, because sometimes there are things that do not appear in the sworn evidence in the case that are just as important as those that do. You recall that they asked for the signatures of this man, and on our examination, at their request, possibly the first day's cross-examination, I am not clear, he wrote out four signatures, two in ink, two in lead pencil. The next day he was called upon to make more signatures, wrote out the name of William Sulzer in full instead of Wm. Sulzer. Then he made

in the presence of us all here these different signatures. You gentlemen saw those men to whom those signatures were passed, who examined them critically. Who were they? Experts in handwriting; after a critical examination of the names upon the checks that were confessedly signed by William Sulzer, you saw them produced there right before you, and the signatures made by Sarecky here, those gentlemen departed from the court room and have not been seen here since.

Another thing: He told you the manner in which the business was carried on in this office; the method of making up this statement; the manner in which it was done. He told you that Horgan was there; that he was there during the campaign from time to time; that he assisted him in making up this campaign statement, and he pointed out to you Horgan, who had been sitting here day after day, the secretary of the Frawley committee, who knows all about this case, who knows whether Sarecky was telling the truth or not; why was he not placed upon the stand?

If this man is not telling the truth, why was not Horgan produced to contradict his testimony? If he was not telling the truth about his ability to sign William Sulzer's name — and he was permitted to do it year in and year out — why were not these experts in handwriting produced?

Because, I say, after the exhibition here at the counsel table we have a right to assume that those gentlemen were handwriting experts brought up for the very purpose of determining whether this man was a liar or not when he testified of his ability to sign William Sulzer's name.

Another thing, and I shall go over this hastily: You remember his testimony, the manner in which he made this statement. Well, this testimony first; we will speak of that, Wolff's testimony. That he went in there and he read over — did you notice what he was led to say, that he read over this affidavit, whether it was a correct statement of contributions received by him and receipts, whatever it reads in that affidavit, and asked him if he swore to that. Something that he conceded he had never done before. He says he never had taken an oath to a statement of campaign expenses. That ordinarily he went in and asked a man. "Do you swear to that?" And you New York lawyers, and

other lawyers for that matter, know that the commissioners of deeds do not read over the affidavit. They ask if he swears that statement which is made and subscribed by him, so help you God, is true. You knew that he was lying.

Sarecky tells a story about that, as to what was done. He went in there and asked him if it was true and if he swore to that, and Sulzer said he did.

Now, Sarecky says that he took that statement into him, two sheets, mind you, opened up so that the typewritten statement did not appear. He says that the Governor never read it; that the Governor never looked over it. He asked him if it was all right. And Sarecky replied, "It is as accurate as I could make it." Now, that is the testimony.

And yet, my learned friend who preceded me told you, without a particle of evidence to warrant him in stating it, directly in opposition to what was sworn to, that Sulzer read over the list of contributions and thought how clever this young man was not to bring into the list the contributions of brewers, liquor dealers and the men connected with the interests.

I am sorry, sorry for the learned judge, who either does not know about the testimony in this case, or who resorts to such unworthy misquoting of what actually took place, or was sworn to upon the trial in this case. It is natural that he should write out this statement; it is not an improbable story.

All of you, gentlemen, have been candidates for office. Not one here but who has been elected. Some of you undoubtedly have known William Sulzer for years. You have been his statements have been made out. Others of you have relied upon a statement of your campaign manager as to what you had expended. You relied upon them to make up your statement, or, if they did not make up the statement, you have relied upon them to give you the material from which to make up your statement.

A number of you gentlemen here, who are sitting in the Court, have been exceedingly careful of the manner in which your backers and supporters. You know the characteristics of the man. You know his careless methods and business habits. You know whether the story that Sarecky tells as to the manner in

which that statement was made out, and the perfunctory manner in which this man signed it, is probable or not. You know it better than I do, because you know the man better than I do. You assisted in placing him where he is, and where he has been in the years gone by. You know whether it is a probable or an improbable statement.

I shall spend no further time upon this, because whether a truthful — I make no question about whether it is correct or not, but the question is as to whether he wilfully, corruptly and knowingly made a false statement. That is the thing for you to determine. And what have you? What evidence have you of corruption? What evidence have you that he wilfully and corruptly made this statement, knowing it to be false? Not a particle! The only evidence — and you must decide upon the evidence — that you have before you as to the manner in which this statement was made up, is the evidence of Sarecky — Sarecky, who could have been contradicted if he was not telling the truth by the witness here, under the control of the managers, here present in Court, and you are bound as honest men, passing upon the evidence and nothing else, nothing upon your suspicion, nothing upon your doubt, nothing because you have an impression that this man is a bad man and unfit for office, and that therefore everybody connected with him is a crook and a scoundrel, without any evidence to support those suppositions — you must take the evidence as to the manner in which this statement was made out, as absolutely correct in truth.

I promised to finish within twenty or twenty-five minutes.

In reaching your verdict and determination as to whether the respondent has wilfully done wrong, you must take into consideration the nature and the history of the man and the nature of the offenses. As I just said, some members of this Court have known him for years; know his lack of business habits and business methods; of his carelessness in money matters; of his overweening ambition; know of his egotism; know of his proneness to consider those things which are the creatures of his imagination, as actual facts; but none of you, none of you in the past has ever regarded him as a dishonest man, a perjurer or a thief — and that is practically what these charges mean.

He has been in public life now for nearly twenty-five years; five years, as I recall it, in the Legislature of this State, one year serving as speaker; eighteen years in Congress, rising step by step, until by long service and presumed ability, becoming chairman of one of the most important committees in the House.

At the time he was in the Legislature, from common report — and these are things of which men situated as you are, can take public and judicial notice — money was flowing freely in the legislative halls for those who wanted it, but never the breath of suspicion was cast upon him in those days. In the days of the huckleberry grab and other bills of like character, when he was in the Legislature, no one accused him of being a party to any corrupt legislation or of receiving a penny for his influence, or for his vote.

Now, after over a quarter of a century of public service he is, for the first time, charged with being a dishonest man, charged with stealing money, charged with plundering his friends, charged with seeking contributions for one purpose, using them for another, and committing perjury to conceal the fact.

These things, it is said, bring shame and disgrace upon the State. They do! They do! The fact that a great party nominated, and the people of the State of New York elected, a man to be Governor of this great State, of the ethical standards of this respondent, must be conceded to be a shame and disgrace to the State of New York, but it is not for those things that you are to remove him from office.

Another thing that is a shame and disgrace to the State of New York. These things were unknown to the State of New York until the impeachment managers, for some purpose, God only knows what, brought them to light and brought shame and disgrace upon the State of New York.

I recollect — I am not very familiar in these days with the Scriptures — but I recollect there is some passage in the Scriptures where the mantle is cast over the naked body of a person to shield him from shame and disgrace.

When these things became known, those people who cherished the good name and fame of the State of New York should have withheld them for the honor and dignity of the State, instead of

bringing them forth for the purpose of removing from their path the man who seems to have been an obstacle in doing things that were a great deal worse than anything that is charged up to the Governor.

Gentlemen of the managers, these impeachment proceedings are a mistake, a great mistake from any point of view; and I believe that no one now realizes that more than those who were instrumental in bringing them. There is no point in removing him from office because of those things. The term is short. The people can eject him in a short time. The Legislature is adverse to him. He can do no harm excepting to investigate, excepting to expose wrongdoing, excepting to stop graft and corruption; he can do no harm to any honest, well-meaning people in the State of New York, because here is the Legislature in both branches hostile to him. Why then bring these impeachment proceedings, excepting to halt these investigations which Mr. Hennessy says were under way —

The President.— I do not think the evidence goes —

Mr. Herrick.— I said "under way." I am going no further because you stop us there.

The President.—Very good.

Mr. Herrick.— I had in mind the ruling of the Court. The bringing of these impeachment proceedings are lamentable because of the object lesson of what may occur to any man in public life who dares stand and oppose the wishes of those who may know something about his private life and history not known to the general public.

Now, in conclusion: in rendering your verdict, let it be such a one as will demonstrate to the people of the State that, regardless of any personal feeling toward the accused, or any preconceived opinions, or any political or personal differences with him, the respondent has had a fair and impartial trial; such a verdict as will sustain the proud reputation of the highest courts of this State for learning, impartiality and freedom from political or partisan bias; a verdict and decision that will serve as a precedent in years to come, and be a mark of honor to everyone who has participated in its rendition.

Sir, you are approaching the end of your public career.

During your time you have received great honors from the State, honors well merited and amply repaid by distinguished services from boyhood until nearly three score years and ten, upon the battlefield, in the councils of a great party, and in the highest tribunals of justice in this State. God forbid that in the closing days of an illustrious career you should aid in any way in placing an indelible stain upon the splendid history of a State you have loved and nobly served.

The President.— About how long, Senator Brackett, do you expect to take? Because the question when we will adjourn will come up. It is not with a desire of limiting you, but merely of getting an idea.

Mr. Brackett.— I should think about two hours.

The President.— Then you could not finish unless we sit beyond the hour.

Now, gentlemen, bring up the question of what we shall do.

Senator Thompson.— Mr. President, I move it is the sense of this Court that we suspend at half past three, under the rule.

The President.— Is the motion seconded?

Senator Wagner.— I haven't the ideas of the counsel on both sides as to whether they would be agreeable for adjournment or not. My impression is that we ought to have the summing up completed today.

Mr. Marshall.— That was our idea.

Senator Wagner.— And then be ready to proceed with the final determination on Monday. If, however, it is the sentiment of the judges and senators otherwise, I have no interest in the matter. I am willing to stay here or go.

Senator Argetsinger.— Mr. President, I desire to bring before the Court one matter of convenience, affecting members of the Court who reside in central and western New York. It is impossible for us to reach the court room before 2.30. If, therefore, at this time adjournment could be taken to 2.30 on Monday, instead of

2 o'clock, it would enable us to be present at the calling of the roll and to take part in the exercises at the beginning of the session.

Senator Wagner.— I am sensible of the fact that the majority of the Court will probably poll for an adjournment and vote it according to their desires, but if counsel are to finish their arguments today, personally I am willing to stay here and go into executive session and until our deliberations shall have been finished. I am opposed to any adjournment on account of any other reason than the rule of the Court.

Senator Thompson.— I concur exactly with what Senator Argetsinger has said. I am perfectly willing to sit here, if it is thought best to take this case up and decide it now, and to have an evening session and sit all night, if necessary. But if it is not supposed to be important enough to go to that inconvenience, then I say the question of inconvenience of us people who live a good way from here should be considered, and we should adjourn at half past three.

Judge Werner.— It seems to me that this should be considered from both points of view. There are many reasons why it would be desirable to finish this case without adjournment. While there are more points of contrast and comparison between this Court as it is composed and the ordinary jury, there are unfortunately some considerations which render it undesirable that the Court should separate and return to the several constituencies represented by it during the deliberations and after the evidence has all been put upon the record. But it is quite evident that we cannot finish tonight unless we have an evening session. And there the grave question arises whether we do not subject ourselves to the criticism of precipitating and railroading a case of this magnitude and importance to a conclusion, instead of giving it that calm and careful consideration which it deserves and demands.

I quite agree that there seems to be no other middle course between the two suggestions that have been made. We must either remain here and finish this case, no matter how long it may be, or we ought to adjourn at the usual hour until Monday, and then take up the case in the ordinary manner.

For one, I rather incline to the latter view. I think we should adjourn at the regular hour, and convene on Monday at whatever hour may be suggested, and then sit continuously until the case is finished.

Senator Brown.— I would like to know the views of counsel. In what experience I have had at the bar, counsel have usually objected to spreading the final argument, and it was with that in mind that I proposed that we go on today to the close of the final argument.

I would like to say one other thing. Without in any way magnifying the office which I happen to hold, the members of this Court are now performing a judicial function as high or higher than they have ever performed before. In a matter of such general interest to the whole State, that personal convenience is less than negligible in the consideration of the course that we should pursue. Whether I am comfortable over Sunday or not makes no difference. We must conduct this cause in the light of the previous experience in the conduct of litigation, in the best and most deliberate manner possible. And it was my idea that that most deliberate manner called for the completion of the final argument today, and the period of rest over Sunday for the further and private consideration and study of the great issues pending before this Court. And I hope that the Court will adopt that course from the highest considerations, with which personal convenience has nothing to do.

The President.— The motion of Senator Brown, as I understand it, is that we remain in session until the arguments of counsel are completed, and then adjourn until Monday at the usual hour.

All those in favor of the motion of Senator Brown, which is, that we now remain in session until the conclusion of the arguments of counsel and then adjourn until Monday at half past two o'clock, say aye; opposed, no.

The President.— Call the roll.

Ayes.— Senator Blauvelt, Boylan, Brown, Bussey, Carroll, Carswell, Judge Chase, Senator Coats, Judges Collin, Cudde-

back, Cullen, Senators Cullen, Duhamel, Emerson, Foley, Frawley, Godfrey, Heacock, Healy, Herrick, Hewitt, Judges Hiscock, Hogan, Senators McClelland, McKnight, Malone, Judge Miller, Senators Murtaugh, O'Keefe, Ormrod, Palmer, Patten, Peckham, Pollock, Ramsperger, Sage, Sanner, Seeley, Simpson, Stivers, Sullivan, Thomas, Torborg, Velte, Wagner, Walters, Wheeler, White, Whitney.— 49.

Noes.— Senator Argetsinger, Thompson, Judge Werner, Senator Wilson.— 4.

The President.— Senator Brackett.

Mr. Brackett.— With the permission of the Court: I think myself happy, members of the Court, that it is given to me to speak to you at this time. The time, the place, the cause, conspire to high thought and mighty endeavor. "The blood more stirs to rouse the lion than to start the hare." The pulse runs higher, the heart beats stronger, in defense of the honor of the Commonwealth, here fearfully assailed from within, than in a cause less sacred. He to whom is given the opportunity to aid in shielding the mother who bore him, the father who begot, or the state which has nurtured him, is thrice happy and blessed among men.

No one, even slightly acquainted with the history of this greatest of the states, and of the names that make that history a glorious one, can avoid a prideful satisfaction that, in the performance of duty, it is given to him to plead in behalf of her good name. It is with that pride and that satisfaction, that the managers of this impeachment come before you in this final stage of this historic trial, to press upon you that you cast from her service one who has forgotton her honor and has been faithless to the trust that she reposed in him.

In doing this, I beg you to believe that there is nothing akin to professional exultation in having been able to develop the facts requiring the conviction of the defendant, but, rather, only a feeling of the performance of a solemn duty to the people of the State.

At the time of the commencement of this proceeding a few weeks ago, it was something over forty-one years since the Assembly of the State, the representatives of all the people, more

truly than any other officer or body known to the law, in the performance of a great duty, exercised the functions laid upon it by the Constitution and the laws, in the impeachment of a high official of the State. In our freedom from high crime in public place, we had almost forgotten the machinery for its redress. In a revision of our organic law made during that period, the provisions for the impeachment of a public official were regarded as so little likely to require use, that they received scant attention at the hands of the learned men reviewing them, and left open for high discussion here questions that could have been speedily and definitely settled there.

Through the mists of the years that last State trial rises before us with singular distinctness. In the course of our proceedings here it has been looked to with profoundest respect for precedent and for argument. And as I have studied its record, I have prayed that it would be given to us here, each in his own place, members of the Court, counsel, the officials who have served us, to take high courage from the examples there set us, and to meet our duty here as they met theirs there.

And yet I do not remind you of this high occasion, nor of the exemplars who have gone before, to render you timid in the performance of your work. The intelligence that has been given to us is for use in the doing of great, as well as of small, duties. We must take the final steps in this proceeding in precisely the same spirit that we do our daily round of petty duties through the years. Unawed by responsibility, unafraid of the consequences of any result, unafraid of any result itself, except a wrong one, with appreciation of the great opportunity given us to do a lasting service for the right, laying aside any baser motives, let us here highly resolve to proceed, as it is given to us to see the light, and with manly hearts.

Not speaking now to the members of the Court accustomed daily to render judgment, to whom the ascertainment of right is a study and justice a habit, but only to those others unacquainted with judicial work, let me, as one familiar with every temptation that can come to you in the performance of such duty, address myself to you a moment.

From the beginning of the impeachment proceedings brought

against William Sulzer, nay, from the time that his crimes were first whispered around these halls, on behalf of the defendant there has been a persistent and studied attempt to terrorize the members of this Court and every person associated with the prosecution. Every art known to the demagogue has been attempted to accomplish it. The press, a few of its members venal, many of them thoughtless of the grave situation presented, have daily paraded much hopelessly bad law and have direfully threatened those who were so singular as to say that they doubted the wisdom of allowing a criminal to remain in the executive chair. Political extinction has been threatened to those bold enough to urge that it might be well to have an orderly investigation of the matters charged against this man. Counsel have been warned that their appearance for the people here would result in savage attacks upon them. We have witnessed the indecency — for I think it can be called nothing less — of public meetings called to overawe your judgment and to give you instructions how to decide this cause, before a single word of sworn testimony had been given to you. In season and out, it has been preached that justice would not be done here, when justice was the last thing desired by the preachers. No such campaign has ever been devised as the one that has thus attempted to influence and to terrify you from the performance of your duty.

Against all this I hold up to you the simple oath that you took at the beginning of this trial. Its solemn words are fresh with you, and I know that in their presence the least thoughtful will be sobered to the fullest sense of his duty, as I know too that this wave of clamor will never rise in its influence to the level of the soles of your feet.

I recall to your minds the words of one of the senators upon the trial of the President, when, standing the heroic figure that he was, in very travail of soul, he wrote:

> "To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not on trial before the people, but before the Senate. In the words of Lord Eldon, upon the trial of the Queen, 'I take no notice of what is passing out of doors because I am

supposed, constitutionally, not to be acquainted with it. . . . It is the duty of those on whom a judicial task is imposed to meet reproach and not court popularity.' The people have not heard the evidence as we have heard it. The responsibility is not on them but upon us. They have not taken an oath to 'do impartial justice according to the Constitution and the laws.' I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment, if I violate my own. And I should consider myself undeserving the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy a place among honorable men, if for any fear of public reprobation, and for the sake of securing popular favor, I should disregard the convictions of my judgment and my conscience. The consequences which may follow either from conviction or acquittal are not for me with my convictions to consider. The future is in the hands of Him who made and governs the universe, and the fear that He will not govern it wisely and well would not excuse me for a violation of His law."

Still another distinguished senator, in announcing his judgment in the same case, said this:

"My duties are clearly judicial, and I have no concern with, or responsibility for, the consequences, political or other, that may flow from my decision."

Brethren of the Senate, men many of whom I know of my own knowledge, and all of whom I believe to be of high mind and lofty ideals, men with many of whom through the years it has been my privilege to clasp hands in love and friendship, unless and until you shall reach the spirit of these great men who thus spoke, you do not come up to the mark of your high calling, but, having reached it, you are worthy to sit in judgment in this air of judicial calm that may not be found outside.

Whatever may be thought elsewhere, here you will place your "bark upon the highest promontory of the beach and wait for the

rising of the tide to make it float." And that every one of you will come up to this level in your deliberation and your judgment, I have never for a moment entertained a doubt.

"So nigh is grandeur to our dust,
So near is God to man,
When duty whispers low, 'thou must,'
The youth replies, 'I can.'"

So, to all those who have professed doubts as to whether justice would here dominate, who have sought to discredit in advance the patient fairness by which every right of the defendant has been here conserved throughout the days, to all "Right Reverends" and "Wrong Reverends," everywhere, who profess to find here not the solemn performance of a public duty laid on you by the law, but only an opportunity to scourge and strike a political enemy, I send greetings and, inviting them to learn from the great apostle moderation of speech, ask them to come and see how, under the strictest forms of law, divesting themselves of every unworthy motive and thought, the representatives of a free people come together and give judgment.

The charges against the defendant William Sulzer are eight in number. I shall not consider some of them at any length. Three of them may be treated together: the first charges the defendant with having made and filed a false statement of his election receipts and expenditures; the second with having made a false statement and having attached thereto a false affidavit; and the sixth with having made collections of campaign contributions which he failed to report in the statement and which he converted to his own use, whereby he was guilty of larceny.

The third article charges the defendant with having kept certain witnesses from attending before the Frawley committee; the fourth with having kept certain witnesses named, and all other persons, from going before the Frawley committee so that they could not and would not give testimony; the fifth with bribery, if I recall; the sixth is the one for larceny; the eighth is the matter of the stock speculations.

What answer has the defendant made to these charges? The answer which he has brought here, signed with his own hand, and

filed with this Court to stand on the records to the end of recorded time, is typical of the man and typical of his every effort and act that has been proved in the case.

He comes into this Court, having exhausted every dilatory motion and every point of law which the ingenuity of the most learned counsel in the State could discover to raise here, having exhausted all these in an effort to secure the dismissal of these charges without being called upon to meet the great, crucial fact as to whether or not he is guilty, and without being called upon to put in any evidence, he comes here and files his answer, files a false answer over his own name. What is that answer, in the light of the testimony that is here unanswered in the slightest degree, uncontradicted to the extent of a syllable — what is that answer? He comes, and, admitting the mere formal facts set out, that he was a candidate for Governor and is now Governor, and that he did file a statement, every one of which facts, of course, was susceptible of proof here within ten minutes from the time that the Court convened, thereupon solemnly, in the face of all the people of the State, files with this great Court an answer which is itself an infamous lie, saying that he denies each and every one of the other than these formal facts set up in article 1. If you will consider from now to the end of the chapter that it is typical of this defendant, wherever he thinks the proof cannot be found, to submit a denial, you will find the key to the answer of many a question that will be put to you in the consideration and final decision of this case.

These being the pleadings, what is the proof? And when I come to the question of proof, I confess to you that I am embarrassed beyond measure. Ordinarily it is given to counsel, where there has been evidence submitted on the trial of the case, to argue that this bit of evidence is true, and that not; to argue that this witness has sworn truthfully and that one not; to balance the probabilities in the case; to see where reason and experience point the line of truth between conflicting statements.

But here, what is there? If I commenced to argue before this Court as to the truth of the evidence submitted on behalf of these managers, I would be justly called by the Presiding Officer, who might say, Why do you argue to something as to which there

is no possible contradiction? And so it is like arguing with the east wind, or it is similar to wrestling with the ague. You cannot get ahead by anything that can be said, because the simple statement of the facts demonstrates that the evidence given on our behalf here is true, and that there is not a single word of contradiction with respect to any part of it.

In the statement that was filed by this defendant, made out on the 13th of November, and filed in the Secretary of State's office on the next day, he certified to the Secretary of State and to all the people of the State by whose grace and favor he had received a majority of the votes at a previous election, that he had received as contributions during his campaign the sum of only $5,460, the donors of which were named and were sixty-eight in number. He certified that the expenses which he had incurred during that campaign were $7,724.09, and thereby he meant to have the people of the State, and any one who would come and read, to believe that he had been elected by the contributions of but sixty-eight small contributors who, altogether, had given him during his campaign less than $100 apiece as an average. The thought that was in his little mind as he did this was, posing as he had posed during the years, as one who was still in the Congress a poor man, fighting the people's battle, that it would appear that the great common people were the ones who were his friends and the only ones who had contributed anything to his election; that they, people of most moderate means, had risen in their might and chosen him; that all the great interests that cluster around Broad and Wall streets, all the interests that might come here and want legislation, all those interested in politics, were opposed to him and that it was only the little men contributing, as I say, less than $100 apiece who had made William Sulzer the Governor of the State. It was only they who had contributed to the expenses of his election, as he certifies to the Secretary of State and the world. The working of his mind on these lines shows his inexpressible littleness.

What is the uncontradicted proof with respect to the contributions made to him? What answer does my friend or either of the learned counsel who have argued here, make? What answer is there? The uncontradicted proof stands here — you will find the

details of it in the sheets that have been passed around, and which, while one of the learned counsel says they are incorrect, have not had their incorrectness pointed out in the slightest degree — it stands that every entry made in this sheet is proved and proved beyond cavil and without contradiction by the evidence in the case, and reference is made in the paper itself to where that evidence will be found.

By that paper it is shown, and by the evidence therein referred to it is proved, that during the time of his campaign, although he had reported receipts of but $5,460, there had been paid to him in the way of contributions, checks that had been actually traced to him, and upon which there are marks which he could not avoid or escape, $12,700, or more than twice as much unreported as he had reported. It is demonstrated that there was of cash that has been traced to him, unreported in this statement which he thus filed, the sum of $24,700, or nearly five times as much as the amount which he admitted in his statement he received. And it has been demonstrated, the shameful fact has been demonstrated, that, although when nominated he had no money and was deeply in debt during the time of the campaign, he paid to brokers in Wall street securities $40,462, much of which was in the very checks which were handed to him for campaign purposes.

Ah, but, says the defendant, "these people were so enraptured with my previous personal history, they were so in love with the situation that made it possible for me to be Governor, that, knowing the necessities with which I was afflicted, they made a purse for my personal comfort and to relieve me from the slough of debt in which I had been wallowing for years."

I want to stand for the proposition, that he who is nominated a candidate for a public office, who receives contributions during that campaign, if nothing is said on the subject, receives them with the implied understanding and obligation that they are for the purposes of his campaign. There shall be no opportunity for hair-splitting as to my position on this point. The man who

so far refines that he can claim to himself or to another, let alone to this high Court, that, having been nominated for an office by a great party in the State, when contributions are made to him, whether by personal friends or by persons interested in the success of the party, he may out of his own grace, if I use the language of the catechism right, say, " This check is mine; this large check is mine; that little one is for the purposes of a personal campaign; this one I will not report; that one I must and will "— the man who thinks that he may do that is the first in all our history to do it, for no other human being from the time we have had popular elections until the present moment has ever had the hardihood to come and make any such claim.

What is the exact situation in which a candidate for place, who receives contributions, stands? He is not nominated for his own glory, however this defendant may have thought that he was. It was not for the glorification of William Sulzer that he was nominated as the candidate of the Democratic party for Governor on that morning of the 3d of October, 1912, at Syracuse. He was nominated as a representative of a party; he was nominated to be supported by the party, and when the contributions came in from that moment, any man who had any conception whatever, not simply of ethics, but of decency, knew and recognized, and must have known and recognized to the full, that they were contributions because the contributors desired the candidate of the party should be elected to the place for which he had been nominated and because the contributors had an interest in the success of that party.

But it is said " These were personal." " These were personal," and one or two had been marked " For his personal campaign," and it is claimed that that differentiates between two elements of the personal.

A contribution may be personal, in that it is to be for the candidate's personal campaign particularly, in that the contribution is made by some friend for the purpose of enabling some particular machinery to be put in motion, some particular committee to be appointed, some particular thing to be done for this particular candidate as distinguished from all the others that are

taken care of by friends in the same way — their friends. There the contribution is made for the personal campaign. And if it is thus regarded as made by friends, or shown to have been made by friends, if it is said that it was for the personal campaign, or if nothing is said with respect to it, and it is handed to the candidate, then there is every presumption, not only presumption, the fact demonstrates in such case, that the contribution is made to the individual for his personal campaign. But when he, calmly ignoring that fact, says that it is for his personal use, he ignores an essential basic fact which cannot properly be ignored, and he makes conversion of the money. And, when added to that, he indulges in the ridiculous proposition that the contributions that are made to him for his personal campaign may properly be put to the bucking of the stock market, he has drawn a picture of himself which needs very little else to paint in full and complete.

What is there about this element of personal contributions? It is not necessary to support these charges that it should be shown that every contribution given to him was for a campaign purpose, and not personal to his own use, that is, his private use. If we show a reasonable amount, if we have shown that there are enough of such contributions for campaign purposes, in number and in amount, that they could not have been overlooked by any possible doubt, that no honest man could have failed, when he came to put his name to the affidavit or his name to the certificate, to remember them, then we have shown that he has been guilty of not reporting contributions that he should have reported, and we have shown that he has been guilty of (1) a false certificate; (2) a false affidavit to the certificate; (3) a conversion of such contributions to his own use and, therefore, larceny under our statute.

If we show a half dozen or ten contributions thus made, of substantial amount, and which he failed to report, it is not of any consequence in the settlement of the question of his guilt or innocence that there may have been one or two as to which there was a doubt, as to whether they were personal contributions to buy him a hat and a suit of clothes.

What contributions are shown here now, as to which there is no possible doubt of their purpose?

In this list I leave out those where there is any doubt whatever. I do not mean to include any except those as to which no honest man can read the testimony and believe that they were anything else than campaign contributions, either for use in the general campaign, or in his personal campaign, but certainly for the campaign.

There was the check of Mr. Pinckney for $200.

There was the check of Mr. Gwathmey for $100 which he says in so many words, in a letter, was for his personal campaign.

There is the check of Mr. Coler for $100.

There is the check of Morris Tekulsky.

The check of Peter Doelger for $200.

The check of Abram I. Elkus, which he says expressly in his letter, with which it was enclosed, was to be used for campaign expenses, $500.

The check of Mr. Uhlman for $300.

The check of Mr. Spalding for $100.

And the cash from Thomas F. Ryan of $10,000.

Not one of these items which I have thus detailed to you can by any possible torturing of the evidence, be made to warrant the use of the funds for private purposes; not one of them. Take the contribution of Mr. Ryan. What does Secretary McGlone say? He says that the candidate asked for money, $7,500 or as much more as they would give him; that he was about to go up campaigning in Westchester county and needed the money for that purpose. McGlone carried to him the ten one thousand dollar bills and gave it to him, as he said, for his personal campaign. Do you think — and Mr. Presiding Judge, I hesitate to ask the question as an insult to your intelligence — do you think, can any rational man think for a single minute, that when, on the 13th day of November, 1912, William Sulzer affixed his signature to the statement that he had received during the campaign $5,460, only, that there was not running in his mind at the very instant that he did it, "And I have $10,000 of Thomas F. Ryan's money in my pocket this minute as clear gain" ?

What about the $2,500 from Mr. Schiff? Now, I am not at all going to pass over, nor slur, nor fail to meet the very merry contention of counsel on behalf of this defendant that Mr. Schiff's contribution was personal to him and that he had a right to use

it for anything he pleased. The internal evidence, aside from any oral evidence, demonstrates the utter falsity of that claim. Mr. Schiff himself said that it was for his personal campaign, and as evidence of precisely what was Mr. Schiff's intention, you have endorsed on the check, in his own handwriting, made afterward but at a time when the matter was under investigation and when he was telling the counsel for the committee the purpose for which it was given, in which he stated that it was for campaign purposes. Do you think that Jacob H. Schiff, the head of one of the great houses in New York, did not know in the month of July, 1913, when he made that endorsement on the face of this check, for what he had made his contribution to William Sulzer in the previous October?

But further, let us see about this claim that Mr. Schiff was so touched with William's infirmities that he was going to help him out to the extent of $2,500. What would be the object for a man, an honorable man like Jacob H. Schiff, if he were going to give William Sulzer a present of $2,500 for his personal use, not to give it to him openly, without concealment or shame? Would he not have given him a check when Mr. Sulzer came in and asked him how much he was going to help him for his campaign, Mr. Schiff having congratulated him? Do you think that Schiff, if he was going to give him $2,500 for his personal use, would not say, "I won't give anything to your campaign; I give you $2,500 for your own purposes."

But if he did not want, if Sulzer did not want, the $2,500 check floating around so that it would be seen that he had relations with Mr. Schiff — I can imagine that the representative of the great common people, whose apostle he had so long been in Congress, perhaps might feel a little delicacy on the subject of having Mr. Schiff's check for $2,500 with his endorsement — if this was for his personal private use, and they wanted to keep it secret, then Mr. Schiff would have handed him $2,500 in bills. Did he do that? This man having come in and said, "How much will you let me have?" Schiff having said, "$2,500," to which the defendant rejoined, "Can't you do no more?" — if Mr. Schiff had intended to give a personal contribution for his own benefit, if he meant to make a present to him for his own personal benefit, wouldn't he have handed him the bills?

What was done? "Mr. Schiff, make this payable to Louis A. Sarecky." Who is Sarecky? Sarecky is the man who had opened the account in the Mutual Alliance Trust Company, and for what? Personal gifts to William Sulzer. Sulzer had his account, where his personal matters went, in the Farmers Loan and Trust Company. What did Sarecky have this account there for? It was for the purpose of putting into it what? The contributions that were made to William Sulzer for the campaign, and nothing else. And thereupon, Mr. Schiff, having carefully written down the name, the check is made to Louis A. Sarecky, and taken over to Sarecky. And what did Sarecky do with it? Put it into this account where campaign contributions went. What on earth was it doing in the Sarecky account, where there was only, aside from Sarecky's little personal matters, campaign contributions from which the statement was finally made up? Have you any doubt on the subject?

Let us get away from the sham and the pretence that the Schiff check was anything else than a contribution made for campaign purposes. Do you think when he came to make his false certificate and to certify to the Secretary of State and to all the world that he, the apostle of the plain people, had been elected with contributions of only $5,460, that he did not know alongside, in his brain, of the fact of Mr. Ryan's $10,000 check, that there was the $2,500 check of Jacob H. Schiff, as to which he was fully the gainer? For a real friend of the common people, hating everything that looks like a trust, I must say that he absorbed a reasonable amount of trust money for one campaign, when he got $10,000 from Thomas F. Ryan, a gentleman popularly supposed to have some connection with a trust or two, and $2,500 from Jacob H. Schiff, who is surely not entirely removed from trust influences himself.

So the certificate was false. And so the affidavit that was made to it was false. And so he stole the money.

I am not now discussing the question of perjury. I am not going over the law, as my associate, skilled on the criminal side of the law, gave it to you here earlier in the trial. We stand here on every line and every word of the brief which he thus filed here, and I shall not go over it again.

The certificate was false. The affidavit which he made there was false. Whether or not he can escape prosecution for perjury on the claim that, because it was not required by the statute that he should swear to it at all, whether he can escape the penitentiary or the State's prison on that plea, is not here at all. When he put his name to the affidavit and swore to it before Abraham J. Wolff, he swore to a lie, and he knew that he was swearing to a lie; and whether or not he was guilty of legal perjury that would justly land him in the State's prison, he was guilty of the moral perjury, he was guilty of all the blackness of intention, of all the guilty heart that he would or could have had, had the oath been required by statute, as he believed it was.

But the first of January comes, and from that moment, says his counsel, he is a converted man. Ah, my brothers, there are some of us here to whom through the years the question of conversion has been very much before our eyes, and yet I cannot fail to remind you that the great Methodist church which stands today, as it has stood from the beginning, firm in the belief of the necessity of a conversion from sin, before conversion demands repentence. My brother from the 27th senatorial district, when you were standing behind the sacred desk, a minister of the gospel, never yet have you permitted to join the Church, a man whom you did not believe in your heart had repented of his sins.

Oh, but on the first of January, like Saul of Tarsus on his way to Damascus, there came a light. Where, before that moment, he was in gall of bitterness and bondage of sin, although prior to that time he had done nothing but serve the forces of evil, yet from the first day of January when the light came to him, William became a consecrated man and devoted himself thenceforth to the service of God and humanity in the People's House.

Oh Saul! Saul! Persecutor of the Saints, but, finally, the greatest of the Apostles, what foolishness has been attempted through the years because of that sudden conversion of yours on the way to Damascus! There is many a man who tries to liken himself to Paul when the only likeness is to that of Saul. And even there the likeness is not strong. Saul saw a light, but he respected it. He repented of his sins. Saul, having seen the light, announced that from that moment he renounced the Devil

and all his works. He did not thereafter go around trying to suborn perjury. When he got together the few Christians in the upper chamber, wherever he could get them, to preach the Word, after his conversion, he did not whisper to one of them that if he was sworn he hoped that he would be easy on him. Before he opened the meeting with prayer, he didn't call one of them aside and see if he could send word to tamper with the court that was going to try him. And he finally won a glorious martyrdom by sincerity, and not by posing; by honest work, not by many professions; by doing the word and not by being a rank hypocrite.

Can you imagine Paul telephoning to Gamaliel that he was "the same old Saul," and "can't you make it more than $7,500?"

"Tell your father I'm the same old Bill." Ah! What a flood of light streams from that single bit of evidence, that stands here undenied — true. "The same old Bill" who, through the years, had been rendering Ryan valuable service, while loudly professing to be the enemy of all trust magnates. "The same old Bill," who wanted to continue the relation at "the same old rate"— $7,500, and "as much more as I can get," per — yes, "the same old Bill" in every way.

These are the facts. The certificate was false. The affidavit was made with all the blackness of heart that could cause a man to be guilty of rank perjury. And then he took every dollar that was thus contributed to him, of which I have given you a list, and went to play Wall street, and bought Big Four stock.

Oh, well, our friends say, that is all true; that is all true, and it may not have been quite ethical; it was not quite ethical. Perhaps it was unmoral, a little unmoral, but still he has been elected by the people and you can do nothing.

Is the election law a joke? Is the statute, for the passage of which, and the perfection of which, high-minded men and women during the years have come here year after year for the purpose of getting it into some kind of shape where, if the use of money in elections could not be prevented, it could at least be exposed — is all this an idle thing? A law which never yet has taken any step backward, where every step that has been taken at all has been in the direction of making it stricter, of making it more

perfect, so that no one should be able to slip through its meshes — is this law now discovered to be a joke? Is it only a question of the lighter ethics whether it shall be obeyed or not?

I read you from Exhibit No. 130 for identification "Sulzer's Short Speeches":

> "In my opinion, this publicity campaign contribution bill is one of the most important matters before the House. It is a bill for honest elections to more effectually safeguard the elective franchise, and it affects the entire people of this country. It concerns the honor of the country. The honest people of the land want it passed. All parties should favor it. Recent investigations conclusively demonstrate how important to all the people of the country is the speedy enactment of this bill.
>
> "I have been for years a consistent advocate of this legislation. I have done all in my power to get a favorable report from the committee, and I shall do all I can to enact the bill into law. Many people believe that if a law were on the statute books similar to the provisions of this bill the Republicans would not have been successful in the election of 1896. The Republicans succeeded that year because they raised the largest corruption fund in all our history."

And then, with a grin, thinking how he was fooling the people, he telephoned Ryan "I'm the same old Bill; I would like $7,500, and as much more as you can make it."

"Pigmies are pigmies still, though perched on mountain peaks, while pyramids are pyramids in vales."

My friends have waxed earnest, to say nothing of eloquent, to the proposition that, in all the years while there has been every effort made to make this law so that it would require to be done just what was intended by it, the wisdom of the Legislature and the Executives who have concurred in the passage of this law has been so at fault that today it means nothing. If you hold this man guiltless of crime in this connection, at least, members of the Senate, have the decency to introduce a bill to repeal that portion of the election law known as the corrupt practices acts, and have it done quickly and thoroughly.

It is said by my most learned friend, and it is a labor of love to

him I know, to say it, that while this does stand in the election law, yet there is no penalty that makes it a crime, and, therefore, when this defendant signed this false statement and filed it and swore to it, he was not guilty of a crime.

In the 560th section of the election law, you will find the provision which succeeds the various steps of procedure prescribed by the statute, how there can be an investigation, and after the procedure is thus prescribed down to judgment, follows this language: "If such person or persons," and that comprehends a candidate, "or committee or committees, have failed to file a statement or have filed a false or incomplete statement, and such failure to file or such false or incomplete statement was due to a wilful intent to defeat the provisions of this article," and is there any doubt on that?— I omit some intervening verbiage not material — "the person or persons, or committee or committees proceeded against shall be liable to a fine not exceeding $1,000 or imprisonment for not more than one year or both."

In a previous section the failure to obey the law is continually spoken of as a violation of the section, a violation of law and the punishment there is prescribed. So that the section does provide a punishment for the person who either fails to file a statement or files a false statement, and if it provides the punishment, as it does, of imprisonment or fine, then it is a crime, because under the Code definition, that is a crime which is punished either by fine or imprisonment. It is not of the slightest consequence, in the reading of the section, to the punishment of the offender whether there was any preliminary proceeding before a judge or not. It is not the proceeding before the Supreme Court justice that makes the crime. The crime exists when he files the false statement.

So it stands. It stands unanswered. It stands unanswered either in law or in fact here that this man had received contributions to the amount stated; that he had filed a false statement with respect to them; that he had attached a false oath to it; that he had committed larceny of the funds, and it stands that in so doing he committed crimes that are punishable by fine or imprisonment.

I pass now to the fourth article, and as I remember, while I have not heard all of the arguments of the defendant here, it is an

article as to which our friends in their argument sang a very low song. I purpose to read with your permission, and perhaps to your tiring, a few lines from that article. It charges the defendant, William Sulzer, then the Governor — the formal parts are familiar to you — and while the Frawley committee was investigating: "While such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, practiced deceit and fraud and used threats and menaces with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit: Louis A. Sarecky, Frederick L. Colwell, Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons severally, they or many of them having," and so forth, from giving testimony before that committee.

The article then is broad enough to allow testimony of such attempt as constitutes an infraction of the section, and the testimony which I note hereafter came in under this article without objection, because it was known to be relevant and competent, and there was no objection that the article was insufficient to receive the testimony.

Now, the law on the subject making this a crime, is this, and it is contained in section 814 of the Penal Law:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book or paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness thereon, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor."

Let me now read the words of the section, leaving out words that do not bear directly on the contention here made:

> "Any person who maliciously practices any deceit or fraud . . . with intent to prevent any party to an action or proceeding . . . from procuring the attendance or testimony of any witness . . . is guilty of a misdemeanor."

There can be no question that the doings of the Frawley committee constituted a proceeding. It was not an action at law to recover from William Sulzer $30,000 which he had converted. It was a proceeding that would result in the wish on William's part that he had repaid it, but was not an action to recover. It was an investigation to discover crime, whether actual or potential, precisely as a coroner proceeds for the same purpose. It was a proceeding. The committee representing the Legislature was a party to the proceeding, as were the people of the State.

It will be noted in limine that under the section, no consummation is required to constitute the crime. All that is required is malicious deceit or fraud, with intent to prevent the attendance or testimony of any witness. The malicious feature takes care of itself. If the intent is shown the law stamps it as malicious, just as malicious injury to crops is shown when it is shown that the injury was intentional, and all that can be shown in that connection is intention. The word malicious only imports an evil intent, as is prescribed in the Penal Law, section 3, subdivision 3.

Whether the testimony was actually prevented is not of the slightest consequence. When the deceit is maliciously practiced, with the intent to prevent, the crime is complete.

We come now to the proof. Mr. Morgenthau had contributed $1,000 to the defendant on the 5th day of October, 1912. It was given to help the defendant in his election, in his canvass. If any of you have any question as to the exact correctness of my words, you may look at pages 492 and 420 of the record and you will find Mr. Morgenthau's language.

On the 2d or 3d of September of the present year, 1913, the defendant called up Mr. Morgenthau at Port Chester and asked the latter if he would come to Albany at once. Mr. Morgenthau declined, giving his reason, and thereupon the defendant said, "If you are going to testify, I hope you will be easy with me," and then added, as Mr. Morgenthau here testified, "He said something about that I should treat the affair between us as personal," and the witness added in his testimony here on the stand, "I said that I could not."

The damning character of the defendant's request is apparent at a glance. He wanted Mr. Morgenthau not to go before the

committee, or, if he did go, to perjure himself to save him, the defendant, from the results of his previous crime in not reporting the Morgenthau contribution made to him during the campaign, and thereby he brought himself precisely within the section of the Code and precisely within article 4, here presented by the Assembly.

The Frawley committee was in existence, as it still is, and was holding hearings. The defendant deliberately sought to prevent that committee from securing Mr. Morgenthau's testimony or at least from securing his true testimony and to get the latter, Mr. Morgenthau, to perjure himself in his, the defendant's interest. But the defendant's learned counsel urge that the transaction was personal, that Mr. Morgenthau's contribution was for personal use; that he asked Mr. Morgenthau to testify only to the truth in the request that he made on him to be easy on him and to treat it as personal.

Do criminals find it necessary to solicit witnesses to tell the truth? Is it not presumed that they will do so, particularly if they are men of high character, as Mr. Morgenthau is? What was there in the character of Mr. Morgenthau that led the defendant to believe that he would testify to anything other than the truth? And that it was necessary to call him up on the telephone to get him to be sure and tell the truth? Did he think that, unless thus solicited, the witness would swear to a lie? That is unthinkable. And, mark you, as denominating and stamping and sealing the entire transaction, mark what he said at the end of the conversation. What he wanted done was something that Mr. Morgenthau at once recognized as improper, and told him that he could not do it. It was not the truth he was seeking to have Mr. Morgenthau tell on the stand, because, if it had been the truth, Morgenthau would not have said he could not do it. It is the fact that he wanted Morgenthau to go down, with black perjury on his lips, and testify to save this criminal here on South Eagle street. And the only reason that Morgenthau said that he could not do it was because he at once, instantly, recognized that it was an untruth and a rank perjury that the defendant was soliciting him to commit.

The testimony of Peck, the Superintendent of Public Works.

is still more direct. Did your Honors notice that, in all of the outburst against Peck, by the learned counsel here yesterday and today, they never said a word against Mr. Morgenthau? They carefully looked over the field of witnesses that were convicting this defendant here, to see which ones they should attack as untrue. They did not dare to come and argue in the face of a single member of this Court, that Morgenthau had told an untruth here on the stand. Morgenthau, a man of the highest ideals, a man of large affairs in the city of New York, a man who had just received a certificate of probity and of the highest character in the appointment as Ambassador to the Empire of Turkey; they did not dare to say that he had committed perjury. But, ah! "Peck, Peck, we must attack Peck."

Many of you have known Peck longer than I have. I hold no brief here for the purpose of defending him or his character, further than as it is shown by the testimony that he gave in this chair. But I know that this man was appointed to high and most responsible office in this State by a previous Governor. And I know that he was continued in office by the present Governor from the first day of January down, when any moment he could have been removed simply upon ipse dixit of the Governor. I know that he stands, and the presumption is that he stands, in Syracuse, his home, beyond reproach in public or in private life. And to the learned counsel I want to say that the attack on Peck here was wholly unjustified. It was made on grounds outside of the record entirely. It was made on an assumption of which there was not a word of proof here; the assumption that something had been found wrong in Peck's department. And it only shows the malice that is in the heart of this defendant, that tears down any man, no matter whom, if he thinks that he may thereby better his own condition or save himself from his just condemnation.

The witness Peck had contributed $500 to the defendant for his campaign, handing it to the defendant personally, in bills, at Troy, in the month of October, 1912. He received a letter from the Frawley committee, asking him to state what contributions he had made, and, somewhere after July 19, 1913, he saw the defendant in the executive chamber. He showed to the defendant the letter he thus received from the Frawley committee, and asked

him what he, the witness, could do about it. And the defendant made what reply? It was not as these gentlemen of the press reported it — that is, they did not report it all. The report ran that he said to him, "Forget it." What the evidence shows that he actually said is, "Do as I am going to do, deny it." And when Peck, having some regard for his oath, said "I suppose I will be on oath," the defendant said "That is nothing; forget it."

On the 19th day of July, or soon thereafter, this defendant, the Governor of the State of New York, sitting in the chair that has been occupied by men of the highest character, and, praise God, that from the beginning has never been occupied by one suspected of personal dishonesty, until William Sulzer came to it, the chair that within the time of my own official life and recollection was occupied by Levi P. Morton, a man who would no more do a dishonorable act than he would put his right arm in the fire and let it wither; the chair in which next sat the brilliant Frank S. Black, than whom no more knightly soul ever came to that high office; the chair that from the beginning has been made sacred by great names of great men, men who would have scorned a dishonorable thing as they would have shunned a wound; sitting in this chair, the defendant was guilty of the loathsome crime of subornation of perjury. It was left to this year one thousand nine hundred and thirteen, this year of wrath, to have in the executive chamber a Governor who could so far forget not only decency and official honor, but who so forgot the limitations not only of the criminal but the moral law, as to ask this great officer of the State under him to go on the stand and commit rank perjury to save his miserable self from the punishment that he deserved.

Did Peck tell the truth? Why, there is the easiest way in the world to raise an issue; the easiest way in the world, for, if Peck did not tell the truth, some witness can come here and testify that he did not. In all the attack on Peck the learned counsel forgot to have the testimony contradicted. I recall one time in the trial of an action how tremendous energies were bent to the impeachment of a witness who had testified to a fact, but the learned counsel who impeached so devoted their energies to that single fact that they forgot entirely to contradict the witness whom they

impeached. If Peck did not tell the truth here, no one knows better than the learned counsel who sit at the table of this defendant how to meet it and how to beat it, and they know, too, that it is not by vociferous denunciation of the witness, who was entirely uncontradicted, that they can convince that he told a lie. If at any time — I take the liberty of saying — if at any time Mr. Sulzer, this defendant, sees fit to join issue as to any question of fact with Mr. Peck, on the witness stand, in any county of the State, Mr. Peck will submit it to the following grand jury to say which one has committed perjury, he or this defendant. If there were no corroboration whatever, there is not a member of this Court that would have the slightest justification for disbelieving Peck; but when you add to Peck's testimony the fact that he is corroborated in the strongest degree by Morgenthau, whom they do not dare to contradict or claim is untruthful, by Morgenthau to whom he made a similar dishonorable request, you have the testimony of Peck utterly uncontradicted and utterly irrefragible.

There still remains to be considered the testimony of Mr. Ryan on this same point.

It stands here without contradiction of any kind. The defendant asked him to see Senator Root and have the members of this Court solicited to vote in his interest, and to dismiss these proceedings.

Can the learned Presiding Officer of this Court imagine, with all the experience that he has, what would become of the law if it was to be administered by a direction from one political chief, or another? Did this eminent lawyer — I know he must be eminent, because Exhibit 130 for identification says so, although I must say that the remarks of Senator Hinman on the opening somewhat shook my faith as to the eminence — did this eminent lawyer think that that is the way justice is administered in this State, and did he think that there was any member of this Court, the youngest and least in experience even, who would listen, who would so far forget his honor that he would listen for an instant to a suggestion from a political leader as to what should be done in court here, after he had lifted up his hand in the presence of his fellow members of the Court, and sworn to well and truly try this defendant upon the evidence?

Did this man believe, for a single instant, that anything that Ryan, or anyone else, could do, would help him in the decision of the legal questions arising on this trial?

Failing in having Ryan see Senator Root, then he wanted him to see Mr. Murphy, so as to touch the other political side of the house for the same purpose; and then the cringing, miserable craven that he was, he said he "would do whatever was right if it could be done!" "Whatever was right, if it could be done!"

God in Heaven! Can anyone deliberately stand in this or any court and defend a man who is guilty of that? That is the black evidence convicting this defendant under article 4, as to which my friends have carefully refrained from making any argument whatever. The relevancy of this evidence of Peck and Ryan and Morgenthau, aside from the fact that Morgenthau and Peck were solicited not to go there, which makes it directly relevant — but the relevancy, aside from that, is most clearly set out by Judge Vann, in the case of Nowack against the Metropolitan, in 166 New York.

> "Evidence tending to show that a party to an action tried to bribe a witness to give false testimony in his favor, although collateral to the issues, is competent as an admission by acts and conduct that his case is weak and his evidence dishonest. It is somewhat like an attempt by a prisoner to escape before trial, or to prove a false alibi, or by a merchant to make way with his books of account, except that it goes farther than some of these instances, for in addition to reflecting on the case, it reflects upon the evidence upon that side of the controversy. Where it appears that on one side there has been forgery or fraud in some material parts of the evidence, and they are discovered to be the contrivance of a party to the proceeding, it affords a presumption against the whole evidence on that side of the question, and has the effect of gaining a more ready admission to the evidence of the other party. It is not conclusive even when believed by the jury, because a party may think he has a bad case, when in fact, he has a good one, but it tends to discredit his witnesses and to cast doubt upon his position."

So, we have it that, upon the testimony of these witnesses, article 4, which charges acts done by this defendant since he became Governor, which charges him with seeking to prevent the committee from getting evidence of certain witnesses named, and all other persons, that that article stands proved here, stands proved beyond question; and it removes from the consideration of the case all argument or doubt on this matter of impeachable offenses, or of offenses committed before the commencement of the term being impeachable.

Here was an act done while he was Governor. It was done at the very time that a legislative committee was seeking light for the purposes of legislation. The defendant deliberately sought to keep these men from going on the stand, from giving true testimony before the Frawley committee, and by so doing he is proved guilty of the crime set out in article 4.

And this is the Pharisee, who, pointing to the width of his Phylactery in proof of his own virtue, demanded that Stilwell resign — Stilwell, who if all the charges against him were true, and more, could still have sat at the feet of this man and learned crime, even as Saul sat at the feet of Gamaliel and became learned in all the wisdom of the ancient Jews.

No elaboration is here needed, no argument, no comment. The thing urged by the defendant stands out in all its detestable lines. He urged Morgenthau to commit perjury, he urged Peck to commit perjury. He declared his own intention to do so; and he urged Ryan to tamper with this Court, to the end that he might be acquitted, irrespective of his innocence or his guilt.

The honored President of this High Court has passed something like thirty-three years on the bench — almost a half century as lawyer and judge together. I wish that he might tell us whether in all his career he has ever seen a more plainly proved, bald, naked violation of law than this; a more shameful attempt to prevent a party from procuring the testimony of witnesses; a more wicked violation of the moral law relating to the subject. It proves conclusively the truth of article 4. It removes any question as to the act being during the official term. It leaves the defendant here stripped naked of any defense at all.

And over it all croaks hoarse that blackest raven of all the

crimes connected with the administration of justice — subornation of perjury and the declared intention of the defendant himself to commit perjury. It there anything further required to convict this defendant and remove him from his high place, and to disqualify him forever from association with law-abiding men?

What I have said with respect to article 4 is true, not so conclusively proved true, but still is proved true and fairly so by a fair preponderance of the evidence, as to article 3. That article charges the defendant with having sought to prevent Sarecky from going before the committee and testifying. And Sarecky did not testify. But, the defendant says, it is not proved that the defendant gave him, directly gave him, any advice not to appear before the committee. It is not proved? What is a deduction of fact on which we act every day in courts and ask juries to find? Here was this man Sulzer babbling to every man he saw the hopelessly bad law of my brother Marshall's opinion and advising him not to go before the committee. He had told Fuller he wanted him to have Marshall for his attorney. He told Ryan that they could not make him appear before the committee. He told the same thing to Peck. Is it likely that, having thus cackled from one to another, whoever came to him, advising him not to go before the committee, is it likely that he did not also tell the boy, who sat at his side and had during many years? If he did, then he is proved guilty under article 3.

Note the succession of events as to how he rewarded Sarecky for not testifying. On the 21st of July Secretary Platt notified the Civil Service Commission that Sarecky had resigned the position of confidential stenographer as of the 18th of July. On the 23d, Hanify wrote to the Hospital Commission requesting a suspension of civil service rules for Sarecky. On the 30th of July, Hanify wrote to the Civil Service Commission requesting exemption of Sarecky from examination, and that Commission passed a resolution complying with the request. On July 30th Sarecky first appeared before the Frawley committee. On July 31st Birdseye, secretary of the Civil Service Commission, wrote Sulzer, giving a copy of the resolution and asking his approval, and on the same day Sulzer approved it. On the 12th day of August, Hanify notified the Civil Service Commission of Sarecky's ap-

pointment. Sarecky had been the confidential stenographer to Sulzer from the 15th day of March to July 18th. From the 15th of May to July 4th, he was out on the road with Hennessy. Then he went back to work in the executive chamber, and he remained so occupied until his appointment as lay deputy in the bureau of deportation on July 18th.

About the time the committee began its hearings, the latter part of June, Sarecky packed up a bundle of papers, and some time in July, brought them from Sulzer's office at 115 Broadway to the executive mansion.

Hanify was appointed secretary to the State Hospital Commission on the 10th of July, and shortly before that, and after the Frawley committee had begun its hearings, Sarecky saw Hanify about the position of lay deputy. He had been asking Sulzer about a better position, and suggested the lay deputy job.

This was in the latter part of May, and he saw Sulzer after he had been subpoenaed before the Frawley committee, although he could not say whether he told Sulzer of the subpoena, until shown his testimony before the Frawley committee that he had told the Governor.

That is the succession of events and that succession demonstrates that this man attempted to keep Sarecky from before the committee, and then, Sarecky having failed to testify, that he gave him his reward in the shape of a $4,000 place.

It is fortunate for us that in the consideration of the whole case we are not met by serious questions of fact — that the judgment here rendered may never be attacked nor criticised as based on wrong conclusions as to facts.

It surely lightens the labor of both Court and counsel that a detailed analysis of the testimony in this long record, with a view of determining what is true and what is false, is unnecessary. Every fact claimed on behalf of the managers stands before you undisputed and uncontradicted. There is practically — nay, more, there is actually — no disputed fact in all the case. The defence has chosen to rest upon legal questions in the case with the single other claim that its chief witness has sworn himself a criminal.

Whatever of satisfaction may come to the learned counsel for the defence from the fact that Sarecky has testified that in the de-

fendant's service he committed forgery, shall be theirs to the full. Whatever of satisfaction comes from the fact that such known forgery has stood not only unrebuked by the defendant to the present moment, but rewarded by a place in the public service and a salary from the public treasury, shall be ours. And it stands as one of the despotic facts in the case, throwing a powerful sidelight upon the defendant's construction of public duty, that when this boy, after ten years of tutelage in his service, with calculated premeditation, with deliberate intention to deceive in his heart, signed in the defendant's name and uttered to the trust company the letter of authority dated "En route," by which he gave to himself the right to dispose of thousands of dollars given to the defendant for a specific purpose, and upon the faith of which the institution to which it was addressed dealt with him as one having authority, that when, to the defendant's knowledge, he had done this, he met and has ever since met with nothing but commendation and promotion at the defendant's hands, and is here put forth as the defendant's chief and practically sole witness, worthy of bearing the brunt of the defence by which he hopes to save himself from everlasting disgrace.

What is there in the testimony of this witness Sarecky favorable to the defendant, or unfavorable to the prosecution?

He swears that he made up this statement of expenses filed, but he swears too that the defendant never told him of any of the omitted contributions; of Crossman & Seilken's $2,500, of Morgenthau's $1,000, of Croker's $2,000, of Ryan's $10,000, and a score of others, more than $25,000 in all; not one of these was whispered to the witness by the defendant, who had received them all.

If this be so, and the defendant may not challenge it, then the defendant knew beyond cavil, knew beyond cavil, that the boy to whom he entrusted the making up of this statement, did not know, and could not know, of these thousands of dollars contributed to the defendant's campaign, because, aside from the givers, their secret was locked in his own breast alone.

Sarecky testified that he made up the statement as well as he could, but, too, that he destroyed every item of evidence in the defendant's office, daily memoranda, checks, check stubs, everything

tending to corroborate his story. He testified in every way possible to assist this defendant and to take upon his own body the wrongdoing shown here, but he said that the defendant signed and swore to the statement of expenses filed with the Secretary of State without so much as a glance at, or a word about, its contents, and in so swearing he covered himself with infamy as a garment.

Where are the twelve or fifteen books at Eagle street that would today enlighten this Court as to all but three or four of the contributions that were made to this man? We have shown you something like $12,700 checks and $27,000 of cash. Where are the books that would show the balance? If this is the green tree, what would be the dry? Why, members of the Court, do I need to ask you as men of experience that, if these managers have been able to wrest from unwilling witnesses who have given the testimony here the evidence to the extent that is named, the evidence of contributions, the evidence of law-breaking to the amount that has been shown here, what would be shown if the defendant would but come on the stand himself, or would send over the books that would show the sums that were received? He made himself rich by these contributions, except as he made himself poor by his antics in Wall street.

Where is Colwell? The learned counsel says that the defendant offered to produce him here if he should be assured he would not be punished under a warrant outstanding for his contempt of Assembly. The Assembly consists of 150 members sitting on the other side of this building. Is there any one here who would have the effrontery to stand up in Court, and say, "I stand bound that, if Colwell comes into the State, he shall not be arrested upon a warrant now outstanding for him?" Oh! it is so easy to be brave when there is no danger, and our friends are so willing to challenge the good faith of the prosecution in wanting Colwell, because they knew he was outside the State and we could not get him! Colwell, who knows all about the No. 500 account, telephoning to have his bag packed to meet the northbound train, saying he was going to Albany to see Sulzer; and from that date, so far as this State is concerned, he has vanished off the face of the earth. Do you need to be told that Colwell has been kept out

of this jurisdiction of the Court by the advice and connivance of this defendant?

Why was this persistent wish to have cash contributions instead of checks, except that money has no ear-marks? It stands — recurring again to Sarecky's testimony — that if all that this young man has testified to on the stand be true, he assumes responsibility for failure to account for $5,200. The unreported items that were deposited by him in the Mutual Alliance, the total deposits in there being something over $12,000, show that he fails to account for $5,200. And it leaves $32,500 unreported and unaccounted for by anybody connected with the case.

I appreciate, members of the Court, that there are many details of the evidence into which I could go and upon which I could comment, in corroboration of our presentation of the case and of the evidence that we have produced here, but time fails.

In the absence of any contradiction, I decline to go further into the testimony, or to make any analysis of it. The evidence stands as true. No one accustomed to weighing testimony, no one familiar with the trial of cases or the sifting of evidence, can doubt for a single minute, no member of this Court has a single excuse for having any doubt as to the truth of the evidence that has been put in here by the managers of this prosecution. And so, leaving any further analysis, leaving the various points that have been discussed by my associate, with a wealth of learning and an earnestness that I can neither have nor hope to have, the further consideration of the case is left to you, as men familiar with affairs, day by day, as men capable of making a correct decision of the case, and it is submitted without any possible doubt as to the result that must be reached.

Oh, members of the Court, an acquittal to this man upon this evidence would be a wretched gift indeed. Think of the position in which he would be placed by such a verdict. Dead forever among honorable men; cut off already by the unanswered evidence in this record from ever again striking hands in friendship with those who devote their lives to lofty purposes. And yet, an outcast among men, compelled for a brief time to represent the honor and dignity of the Empire State, to meet in official contact those, the latchet of whose shoes he is unworthy to loose, by whom henceforth

he is abhorred; charged by the Constitution to see that the laws which he himself has flagrantly violated are faithfully executed against others. Think of him, think of him — if your imagination can carry you to such lengths — solemnly considering an application for a pardon for one who had been convicted of a violation of the election law as to corrupt practices. Think of him as this fall issuing a proclamation asking the people to come together in thanksgiving for God's mercies to us. Think of him in all the multifarious situations requiring not only actual freedom from things criminal, but even from any suspicion thereof. Think of him " the same old Bill."

Knowing full well, appreciating to the utmost, the degradation and the disgrace that must come upon this unhappy man by your verdict of guilty, I still beg you not to think that you will mitigate his punishment by a judgment of acquittal of the charges here proved. It will not be your action that will render him infamous for all the future. That future is already his before you speak. If he take the wings of the morning and fly to the uttermost parts of the earth, the record of his disgrace is there before him, to meet and greet and abide with him. If he call upon the mountains and the rocks to fall upon and hide him, he will still know no respite from the disgrace that henceforth must walk by his side.

Do not believe that you can lessen his punishment, whatever your decision here. All that you can do is to pronounce, in form of law, in performance of your solemn duty, the judgment that will free the State from the contaminating touch of this man from this time forth.

It is to you alone that the people can look for relief. Much has been said on the part of the defendant that he derives his title to his great office by election by the people and that you may not rightly set aside the choice. Let me remind you that the same people who elected him Governor of the State have placed in your hands, not simply the authority but the mandate, if two-thirds of your number find him guilty of crime unfitting him for the exercise of the duties of his office, to remove him. And there rests no heavier duty upon this body than that of convicting, upon impeachment, any official proved guilty. Forced upon you by no act or wish of your own, the situation requires you to do justice and fear not.

The pen that writes the judgment of this Court will be mightier for the weal or for the woe of this State and for all the people thereof than any implement of war ever wielded by the arm of man — mightier to us awaiting its record — mightier to all the coming ages. If this last and best attempt at self-government, under which we have rested in security in all the century and a third of our national life, under which the State has been the leader of all the sisterhood that compose the Republic — if this shall fail at the point that we may not remove from high office men confessedly guilty of crime, then, indeed, are we of all men the most miserable. We can transmit our trust as guardians of the present, "as the heir of all the ages in the foremost files of time," to no successor save the coming generation. If that generation come to its inheritance blinded by the example of corrupt officials unpunished and unrebuked, we are near the fall, as we well deserve to be.

You alone can deliver us from the body of this death, oh, wretched men that we are; you alone can deliver us from the body of this death.

And so we leave this case with all its vast interests, the interests of all who love the State and are jealous for its honor and good fame, in your hands; leave it with all that it means to the people and to the future. Words fail me in the contemplation of all that your decision means. If it ever pleases the Father of us all to guide with His own hand those engaged in the performance of a great public duty, may that guidance be yours this day, and may the decision here rendered bear sure impress that it comes from a wisdom that giveth judgment far above the twilight judgments of this world.

The President.— Before we actually adjourn, I take the liberty of giving you a caution which to the lay mind may be appropriate. If this were a criminal case triable before a court and jury it would be the duty of the court, under the provisions of the Code of Criminal Procedure, to caution jurors not to discuss the case with any parties nor allow themselves to be approached.

Of course, this case is somewhat different. This is a court of which we are all equally members, but it seems to me that the spirit

of the law is equally obligatory on us as it would be in the case of a jury. We should not tolerate, any one of us, the approach by any person concerning the merits of the cause we are about to decide. We should not allow it to be spoken of in our presence. Keep whatever your minds may be, keep that to yourselves and your associates until we finally meet to determine this case. I hope we will comply with this caution. It is necessary to avoid scandal, to give confidence to the administration of justice, and, after a correct decision of the cause, the next necessary thing is that people should believe that it has been decided properly and without the intervention of extraneous influence.

Please adjourn Court until 2.30 Monday .

Whereupon, at 4.45 p. m., Court adjourned to Monday, October 13, 1913, at 2.30 p. m.

MONDAY, OCTOBER 13, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 3.02 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

Judge Miller.— An important question will arise preliminary to a consideration of the case on the merits, and that is whether the acts of the respondent as testified to by certain witnesses — the witnesses Morgenthau and Peck — are sufficiently charged in the articles of impeachment to justify this Court in considering them as separate and independent charges, or whether the testimony can be considered only as bearing upon the other acts charged.

Now, while that question was touched upon by counsel, personally I would like to hear further discussion from counsel upon it. I think that is a question upon which there may be difference of view and before we go into executive session I would like to suggest whether we ought not to call upon counsel for further argument upon that question.

Senator Wagner.— I move that the Court go into private consultation to consider that question.

The President.— On this question only?

Senator Wagner.— Only upon this question.

The President.—All those in favor of it say aye; opposed, no. The Court will be cleared.

(The Court having been cleared, the members went into private consultation, and on emerging therefrom the following proceedings were had:)

The President.— The Court desires counsel for the parties to argue further the question whether the acts and conversations testi-

fied to by Peck, Morgenthau and Ryan, or either of them, can be considered as being acts of misconduct for which the respondent can be convicted under article 4, or only as corroborative evidence of the other allegations stated in the charges; and whether this Court has the power to amend the articles, if they are insufficient to include those acts, so as to include them.

Gentlemen, the Court considers the question which it has asked you to argue of considerable importance, and therefore, so that your argument may be deliberate and on reflection, it will give you until tomorrow morning at 10 o'clock, at which time you will appear here, if you desire, either side, to comply with the request of the Court. And especially I wish to impress on the counsel and on all persons who are in attendance in this Court, that notification of this desire on the part of the Court does not indicate any view as to the merits of this case having been taken by the Court or any members. It is simply to get your views on this question, on which, with all respect to the great ability and earnestness with which this case was argued, we would like to have further instruction and information.

Mr. Brackett.— Will your Honor direct the stenographer to give us at once a precise copy of the verbiage so that we may know exactly the point which we are to argue?

The President.— The stenographer will write it out and give you each a copy.

Mr. Brackett.— On the question, if the Court please, as to the order of the argument. I presume that on that question we should have the opening and the closing.

Mr. Herrick.— We do not care which way.

The President.— You can settle that among yourselves.

Mr. Herrick.— It is a matter of indifference to us, although that throws the burden of establishing the proposition upon the defendant.

The President.— Oh, no; it puts the burden on them.

Mr. Herrick.— We do not care.

Mr. Brackett.— It is not going to any question of the burden.

The President.— You gentlemen ought to arrange it for yourselves, without calling upon the Court.

Senator Wagner.— Mr. President, last week the Legislature took a recess, an adjournment until 11 o'clock tomorrow, Tuesday, and would it not be wise to place our adjournment at such time as not to interrupt counsel? We might begin later.

The President.— What would you suggest it be, 12?

Senator Wagner.— Either start at 12 or have an intermission at 11 or 11.30, at which time the Senate will meet.

The President.— Will they take more than an hour?

Senator Wagner.— Not more than ten minutes, I take it.

The President.— Will 11.30 be all right?

Senator Wagner.— Yes.

The President.— It will be 11.30 then, instead of 10.

Whereupon, at 4.36 p. m., an adjournment was taken to Tuesday, October 14, 1913, at 11.30 a. m.

TUESDAY, OCTOBER 14, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 11.30 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

Senator Brown.— Before the Court enters upon its regular order of business, I would like to take occasion to correct a misstatement made in a morning paper about what transpired in the private session of the Court yesterday, and also call attention to it for the purpose of asking that the attendants of the Court take more pains either in keeping the reporters further away or letting them come near enough so that they can have an accurate idea of what takes place.

I find in the Knickerbocker Press this morning this statement: "It was learned that nearly all of the Court of Appeals judges, including Chief Judge Cullen, spoke during the session. Senator Elon R. Brown, Republican leader of the Senate, whose motion to permit the introduction of the Ryan testimony by the Senate over the opinion of Chief Judge Cullen and a majority of the Court of Appeals judges, was known to have talked for nearly half an hour. He spoke from the open space on the Senate floor near the Governor's counsel table, and never has he made such an impassioned address. He was seen shaking his hands in the air, pounding his fists together and shaking his head forcibly during the talk."

I care nothing about it, Mr. President, except as such reports tend, as far as I form a part of the Court, to cast some reflection upon the Court and the judicial manner in which it performs its duty, and I thought it well to deny it, not only in part but in all. It is false from beginning to end.

The President.— All the Presiding Judge can say is this, the senator is entirely right. The statement is entirely wrong. It is right to correct it; but I should go a little further. While the

press are entitled to publish full and accurate accounts of the proceedings if they can find out what they are, if they publish what are not accurate accounts, and when they try to publish secret proceedings, they always run the risk of falling into error; if they publish untrue accounts they are liable to be punished as for a contempt of court.

Mr. Stanchfield.— If the Presiding Judge please, and members of the Court: As we understand the present status of this case, it is that the Court desires from counsel a statement of the position of the board of managers with reference to the question as to whether the evidence and testimony of the witnesses Peck and Ryan and Morgenthau are admissible as affirmative substantive evidence under article 4 of the impeachment; or whether the testimony of those same witnesses is to be treated as material and relevant evidence upon a collateral issue under all the charges; and, lastly, as to whether or no this Court possesses the power of amendment of these charges.

I realize, at the outset, the fact that many of the men who compose this high tribunal are laymen, and therefore, unversed in legal phraseology; and, at the risk of being criticized for prolixity, I purpose, in so far as I may, to make so clear to every member of this Court just the position taken by the board of managers upon this trial that there will be no man who is courteous enough to lend me a listening ear who will be able to say he did not understand the argument that was presented.

At the outset, we take the position that this trial is not a criminal trial. I use that expression advisedly. I am not unaware of the fact that cases have been cited here by counsel upon the other side, the general holding of which is that impeachment is a criminal trial. But I purpose here, at this moment, to illustrate, if I am able — perhaps I might use a stronger word — to demonstrate, if I may, that this particular trial is not a criminal trial. It has some of the characteristics, if you will, some of the aspects of a criminal trial. It likewise has some of the peculiarities that go with civil trials. It is a proceeding, a trial if you will, that stands in a class by itself. It is neither exclusively criminal upon

the one side nor exclusively civil upon the other. It is not criminal for the reason, among other things, that, under section 13 of article 6 of the Constitution occurs this language:

> "Judgment in cases of impeachment, shall not extend further than the removal from office or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State, but the party impeached shall be liable to indictment and punishment according to law."

Therefore, we start with the expressed constitutional declaration that notwithstanding impeachment the party impeached is liable to criminal prosecution according to law.

I now call your attention to a provision in paragraph 6 of article 1 of the Constitution which embodies in clear, crisp, cogent English one of the principles that has come down to us almost from the dawn of civilization. That provision reads as follows:

> "No person shall be subject to be twice put in jeopardy for the same offense, nor shall he be compelled in any criminal case to be a witness against himself."

In other words, if the framers of the Constitution had ever contemplated that impeachment was a criminal trial, they would never have provided that notwithstanding impeachment, a man could still be called before a jury upon an indictment and required to answer. The constitutional phraseology is so clear that it needs no elucidation and no argument to drive that proposition home to every man who listens to me today.

There is the further distinction: This is not a criminal trial, because, forsooth, when the defendant was called upon to answer in this tribunal, he was given the right in his answer to set forth any defense and every defense that to his counsel might seem wise and proper. There is the further provision that the effect of a judgment of conviction is simply to oust the incumbent from the office that he holds. I do not purpose to go further along the line of demarcation between what constitutes a criminal and what a civil trial than I have already stated. It is of great consequence that this proposition, as the base of my argument, should be thoroughly understood, for the reason that my argument will climax

and culminate in a sort of motion asking this Court to conform these pleadings to the proof that is in the case. I do not mean now in that statement to argue here that this tribunal possesses the power to amend these charges in such way as it is necessary to contort or twist this tribunal into an impeaching body. That is not my argument. That is not my conviction. I realize and I concede with the utmost frankness that the Assembly, and the Assembly alone, is the impeaching power of the State. That by no means precludes this Court from amending the impeachment or the indictment, for they are synonymous terms, to conform to the proof, the underlying, ever present, basic exception being, that that amendment shall not work hurt or detriment or be unjust to this respondent.

And you will, I trust, indulge me in passing, the utterance of this remark: That if counsel for the board of managers felt that in asking you to conform the pleadings to the proof, we were subjecting ourselves, even from counsel for the respondent, to the slightest criticism of unfairness upon this trial, we would yield them any request they might see fit to make in that behalf. If they took the position they were surprised, what do you desire? If they take the position, in answer to this motion, that but for the fact that we had supposed these pleadings would remain in their present form we would have produced other testimony to meet and combat the evidence of Mr. Peck and Mr. Morgenthau and Mr. Ryan; we grant you gentlemen the privilege. So that it can never be laid at our door that we have sought, by making this request, to take the slightest advantage of this unfortunate and most distressful situation.

Now, this Court of Impeachment is a court of record.

Section 2 of the Code of Civil Procedure prescribes:

> "Each of the following courts of the State is a court of record:
>
> "First.— The Court for the Trial of Impeachments."

We have adopted as the rules that shall govern and control this tribunal this language — and I read it with exactness:

> "The introduction of evidence and the examination of witnesses and the conduct of the trial shall be governed by the rules now prevailing in the Supreme Court of this State."

And those rules in that phraseology have never — so far at least as information flows to me — obtained in any other trial for the impeachment of a public officer in the annals of this State.

Section 723 of the Code of Civil Procedure reads as follows:

> "The court may, upon the trial, in furtherance of justice, and on such terms as it deems just, amend a pleading by inserting an allegation material to the case, or where the amendment does not change substantially the claim or defense, by conforming the pleading to the facts proved."

We start the discussion with the proposition then that this Court, acting under the rules which you have formulated for your guidance and your control, has the indisputable power in furtherance of justice, to conform in this case, the pleading to the proof. The question arises and is germane here for discussion as to whether, in seeking to amend the pleading so as to conform it to the proof now in evidence, we are usurping the function of the impeaching power upon the one hand or doing injustice to this respondent upon the other.

My earnest contention is that this amendment, phrased in language that I shall submit later to your consideration, does not in any way impinge upon the respondent's rights, nor is it outside or de hors the section of the Code to which I have invited your attention.

You will permit me to step aside for a moment from the logical order of my argument long enough to observe that the testimony of Mr. Peck and the testimony of Mr. Morgenthau is upon this record without objection. It is upon this record practically without cross-examination. Therefore, counsel at the time had no notion, no thought, and they are seasoned, experienced men, but what the testimony of both Peck and Morgenthau was material, competent and relevant evidence in this case. That is of more than passing consequence, for the reason that the cases hold that where no objection is made at the trial that evidence is not within the pleadings, there is no necessity for a motion to have the pleadings amended to conform to the proof. I am ignoring the tenor of that decision, going beyond it, and behind it, and above it, to ask,

in order that these men may make any statement they please (my adversaries, I mean) or ask any relief that they please, so far as they claim that what we ask here may work without some possible injustice.

Article 4 is the article under which this argument proceeds. In its present form it is in substance that the respondent was guilty of suppressing evidence and of violation of section 814 of the Penal Law of said State. I shall not read all of this:

> "In that the said William Sulzer practiced deceit and fraud, and used threats and menaces with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons,"

with intent that their evidence, generally speaking, should not be obtained. I do not think it requires any argument before this tribunal, either lawyers or laymen, for you are makers of law, and triers of fact, to demonstrate that the words "and all other persons" in a pleading includes each and every person to whom the evidence may point, or who may be concerned in the introduction of testimony under that article. In other words, it is the usual, natural, so-called saving or omnibus clause that pleaders always insert in an indictment or a civil pleading for the purpose of reaching just such testimony as fell from the lips of Mr. Peck and Mr. Morgenthau.

Therefore, we are left with article 4 seeking to bring the respondent within the provisions of section 814. That brings us to a discussion of section 814 and the preceding section 813. Now, if this Court please, those sections 813 and 814 are substantially alike. I use that expression advisedly. They are, both sections, designed to reach out and punish a man who tries, in one way or another, to prevent the elicitation of the truth. I will read them in order that you may judge my statement by the phraseology of the sections. I will read them in their inverse order, section 814, and I am going to read, gentlemen, only such portions of those sections as are material to this discussion.

"A person who maliciously"— I will pause for a moment. Maliciously is an unusual word in a statute of that kind. It means intentionally, it means wilfully, it means unlawfully, it means deliberately; they are all synonymous expressions. There is nothing unique, peculiar, weird or strange about the word malicious. It means that a person does a thing intentionally, because he meant to do it, and no more. "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any person being cognizant of any fact material in a proceeding from producing or disclosing testimony, is guilty of a misdemeanor."

Perhaps I might well have observed that the title to section 814 is "Suppressing evidence." The title to section 813 is "Inducing another to commit perjury," which, as a lawyer, I state is a misuse of language and practically a misnomer.

Section 813: "A person who incites or attempts to procure another to give false testimony, to commit perjury, or to withhold true testimony is guilty of a misdemeanor."

In other words, there is simply a difference in phraseology. The one is "who practices deceit and fraud, or uses any threat, menace or violence." The other is "Who incites or attempts" to accomplish the same result. The draughtsman of the Code was reaching out for the same offence; he was simply using different words, different phrases to clothe and garb the same idea. There is no practical difference that lawyer or layman is able to draw between those two sections.

I have read to you the section of the Code of Civil Procedure with reference to amendments. There is substantially the same section in the criminal law. There is no practical difference. And I am reading this so that you may take either horn of the dilemma that you please. If you treat this as a criminal cause, I cite you to section 293 of the Code of Criminal Procedure. If you treat it as a civil cause, I cite you to section 723 of the Code of Civil Procedure. If you treat it — as I contend it is — a proceeding sui generis, in a case by itself, I cite you the both sections.

Section 293 of the Code of Criminal Procedure reads:

"Upon the trial of an indictment, when a variance between the allegation therein and the proof in respect to time or in the name or description of any place, person or thing shall appear, the court may, in its judgment, if the defendant cannot be prejudiced in his defence on the merits, direct the indictment to be amended according to the proof on such terms," and so forth, "as to the court may seem reasonable."

The thing sought to be reached in sections 813 and 814 was the unlawful influence exerted by inciting or attempting or by fraud or deceit or by menace or by violence, to keep somebody from furnishing evidence. So that in asking of this Court that it grant us general relief to conform the pleading to the proof, and in transforming this accusation from 814 so as to bring it within the scope of 813, we are simply asking you to grant the ordinary, casual, every day amendment granted and allowed as a matter of course in jurisdictions all over the State of New York, either civil or criminal in their character.

As a suggestion that we are not in this argument seeking in any way to elicit from this tribunal a holding or a ruling that will make for the hurt of this respondent, it might be well for you to know — at least the laymen that compose this distinguished body — that the testimony of Mr. Peck made this respondent guilty of a much more serious and heinous offense than purports to be laid at his door upon the face of this impeachment. When Mr. Peck testified, after having at the Rensselaer Inn handed this respondent a five hundred dollar bill as a contribution to aid in the expense incident to his campaign, that later there came a time when he (Peck) received from the Frawley committee a letter asking for information in regard to that contribution, and that he, in a moment of mental disturbance, went to the executive chamber and there had an interview with this respondent in which he showed him this letter and asked of him his advice in the premises and got back the reply: "Deny it as I shall," and followed that remark with the comment to the respondent, "Governor, I may be under oath," and received back the retort, "that is nothing, forget it."

I repeat, if that testimony is true — and who is here to say it is

not — this respondent was guilty of the attempt of subornation of perjury. And that offense is a felony and upon conviction he would be punishable by imprisonment for one half the time to which he would be subject for the commission and upon the conviction of the main offence of perjury.

If within this chamber there be one member of this Court who has the slightest question about the correctness of that statement, I would be very glad to take your time to read the sections that demonstrate that proposition.

One who in this State procures another to commit perjury is guilty of subornation of perjury. The suborned is the accomplice of the suborner. One who attempts to induce another to commit perjury is guilty of a felony and, I repeat, punishable to half the extent of the man convicted of perjury. And in that case the man who is approached and solicited is not the accomplice of the man who attempts to suborn him, because the man approached has not yielded to the blandishment, has not yielded to the promise of a bribe, has spurned it, therefore he does not come within the category of accomplices and upon his testimony, I repeat here, if there were a trial in a criminal court and the respondent was under indictment for an attempt to suborn Peck to commit perjury, it would be purely for twelve men to determine between the two who was telling the truth. There need be no other corroboration of Mr. Peck than his word, assuming twelve men believe his story as against the story of respondent.

And, as bearing upon the question, upon the collateral issue, but pregnant with significance, is the testimony of Mr. Morgenthau and the testimony of Mr. Allan Ryan. The purport of the amendment which we seek to make is this — if those gentlemen that are interested will turn to article 4. You can see wherein we purpose to change article 4 by making the pleading conform to the proof:

> "That the said William Sulzer then being the Governor of the State of New York, unmindful of the duties of his office and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of a violation of section 813 of the Penal Law of said State, in that, while a certain

committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain and report at an extraordinary session of the Legislature then in session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, wrongfully, wilfully and corruptly, attempted to incite and procure each of the following named persons, to wit, Louis A. Sarecky, Frederick L. Colwell, Melville V. Fuller, Duncan W. Peck and Henry Morgenthau to commit perjury, and to give false testimony before and to withhold true testimony from the said legislative committee, each of said persons being cognizant of facts material to said investigation being had by said committee, and some of them having in their possession certain books, papers and other information which would be material and competent evidence in the proceedings before said committee; that thereby said William Sulzer acted wrongfully, wilfully and corruptly and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York."

In asking you to grant that relief I reiterate again while its phrasing is fresh in your memory that it does not change the basic character of the offense, the offense charged is practically the same, an effort to tamper with the administration of justice, an effort in some way to control and color and distort the testimony of a witness; a confession upon its face of the weakness of his cause, and an admission upon its face that he is obligated to support the defense, if any he may have, by dishonest means and evidence. We require, so far as the board of managers are concerned, no other testimony than that which is now upon the record to support at least to our contentment and satisfaction the charge embodied in the amended article 4.

Once more we repeat, and I speak the sentiment of the managers of the Assembly of New York, and I trust of high minded, fair minded citizens everywhere, that if, with that change in view the respondent feels now that he wishes in person to make answer from the witness stand or if he feels now in the light of that change that there is other testimony he desires to produce aside from himself, for he has the right to go on or keep off the stand as he may please, if, I repeat, he desires to produce other testimony to meet that accusation, the door is open, and there will be no objection raised by the managers of this trial.

Senator Duhamel.— Mr. President, I would like to ask Mr. Stanchfield if, considering he has continually referred to the articles of impeachment as pleadings, whereas during the course of this trial they have been called indictments, he has any reference of where any court has ever amended an indictment?

Mr. Stanchfield.— Yes, I will make that perfectly clear, senator; first, these charges may be properly called within the history of impeachment trials either an indictment or an impeachment or a pleading. I am perfectly right from the technical standpoint in terming them a pleading, for the reason that the defendant when he was called upon to answer, had the right not simply to plead not guilty, but the right to spread upon the record a complete explanation of the charges, if he was so advised, and in all the trials that have been had the phraseology of lawyers in their argument has been usually that of pleadings.

Senator Duhamel.—As a matter of information I would like to know.

Mr. Stanchfield.— If in answering your inquiry my argument will not run the gauntlet of cross-examination, it is not worthy of hearing.

Senator Duhamel.— I would like to know the date that Mr. Peck appeared before the Frawley committee.

Mr. Stanchfield.— He never appeared, senator.

Whereupon, at 12.27 p. m., a recess was taken until 2 o'clock p. m.

AFTERNOON SESSION

Pursuant to adjournment, the Court convened at 2 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

Mr. Herrick.— Mr. President and Gentlemen of the Court: You listened for nearly an hour to an address splendidly delivered with great elocutionary effect, and with the grace that always characterizes the gentleman who addressed you; but you also listened to what seems to us an entire misstatement of the law in the case; to an address which in substance conceded that article 4 had not been sustained by the evidence in this case. He failed to answer the questions that were propounded to us by the Court last night, and while it was a concession that some of those questions could not be answered, still there may be a lingering doubt in the minds of the Court as to whether the evidence referred to is applicable to section 814 of the Code, and to article 4, and therefore I shall proceed to discuss them to some extent in accordance with the idea expressed by Mr. Justice Miller when he made the suggestion yesterday, that there was some question as to whether the evidence of Peck and Morgenthau should be applied to any of the articles, or rather to article 4 of this case, or whether, generally, upon all the articles charged. It seemed to us rather an extraordinary request to make.

We had considered article 4 very seriously, as we had all the other articles, and we had considered this evidence of Mr. Peck, Mr. Morgenthau and Mr. Ryan, and it seemed to us that it did not reach article 4 at all, had no bearing upon that, and could only be considered in the case, as we understood it to be introduced, as bearing upon the general features of the case, and the credibility, so to speak, of the respondent's defence.

The question put to us last night by the President was this:

> "The Court desires counsel for the parties to argue further the question whether the acts and conversations testified to by Peck, Morgenthau and Ryan, or either of them, can be considered as being acts of misconduct for which the respondent can be convicted under article 4, or

only as corroborative evidence of the other allegations stated in the charges; and whether this Court has the power to amend the articles, if they are insufficient to include those acts, so as to include them."

In premising what I have to say, let me say that this Court is the highest in the State, as has been stated before, and it is under corresponding obligations to observe the law and to establish no bad precedents; not to convict a man upon a charge not brought against him; not to permit a man to be charged with one offence and convicted of another. No lawyer, I venture to say, having the slightest regard for his reputation as a lawyer, would contend for a moment that upon an indictment, say for forgery, the defendant, if the evidence showed that he had obtained money by false pretences or by larceny, could be convicted of larceny instead of forgery.

This, notwithstanding the assertions of my learned friend upon the other side, is a criminal trial, and governed by the same rules as other criminal trials. It has so been held repeatedly; the respondent may be punished as a criminal would be punished, punished by the greatest punishment that can be inflicted short of death, disfranchisement as a citizen, disqualification from hereafter holding office — one of the inalienable rights of an American citizen.

Let me say again, you cannot indict or impeach a man in July, for crimes committed in the following September.

What does the fourth article charge? In general terms, that the respondent endeavored to prevent witnesses from giving testimony before the Frawley committee. That necessarily relates to acts done before the articles of impeachment were adopted, and cannot refer to transactions that took place thereafter. The articles of impeachment were found August 13th.

The conversation with Morgenthau took place on the 2d or 3d of September. With Ryan, the conversation took place the week before this Court convened.

Not a word was said to any of those gentlemen about their testimony, not a single word to instruct them how they should testify, to prevent their testifying, or prevent their going before the Fraw-

ley committee, or to prevent their testifying before this Court; not an atom of evidence. But these transactions, these conversations, taking place after the impeachment articles had been found and presented, entirely eliminate from this case the conversations with Morgenthau and Ryan, unless you grant the motion of our adversaries, which we will presently consider.

As to Peck's testimony. Let us read the fourth article. It alleges a violation of section 814 of the Penal Law. What is that?

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness herein, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto, from producing or disclosing the same, is guilty of a misdemeanor.

All those things are preceded by the words " maliciously practicing any deceit, fraud or using any threat, menace or violence with intent " to do all these things.

Where is there a particle of evidence that any deceit, any fraud, any menace, any threat of violence was used against Mr. Peck to prevent his testifying before the Frawley committee? Not a particle. There must be a practice of some one of these things. There must be some one of these things done by the respondent to bring him within the provisions of section 814 and within the provisions of article 4 of the impeachment, because article 4 of the impeachment follows the language of section 814 of the Penal Law.

As I read Peck's testimony — we find it at page 720 — there is not a word to prevent him from going before the committee; not a single word to prevent him from testifying; no threat made to him; no deceit practiced; no fraud; no violence. It is simply, in substance, " Deny it as I will." That is all.

Sulzer does not attempt to keep him away from the committee; uses no deceit; practices no fraud upon him; threatens no violence;

does not menace him with the loss of his position; simply says to him, "Deny it," and then when he says "Supposing I am placed on my oath before the committee," says, in substance, "forget it."

Now, that may be wrong. Assuming it all to be true, assuming that the Governor did wrong, if you please, still it does not bring it within gunshot of the language of section 814 of the Penal Law.

The nearest approach to it in the law is under section 813 reading as follows:

> "A person who without giving, offering or promising a bribe, incites or attempts to procure another to commit perjury or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor."

That is a separate and distinct offence, absolutely. It has no connection with section 814. It is asking a man to commit perjury. It is not asking him to keep away from the court or from the committee having the power to examine him. But it is a distinct invitation for him to commit perjury, to swear falsely. That is just as separate and distinct an offense as the offenses charged in the 7th and 8th articles, if you please, or the offenses charged in the 1st and 2d articles, all of which have to do with money received and a statement made. There is some connection between them, but they are separate and distinct offences. Just as much so as any two of the several articles of impeachment included here.

If this suggestion of this amendment came from the managers — of course I must assume that it did not — I should say that it was an afterthought. Seeing that they had failed in establishing their case and having some evidence in the case admitted for good and sufficient reasons, but which is susceptible of an interpretation and of a use for some other purpose than that disclosed in the articles of impeachment, they now seek to drag it in to bolster up an otherwise destroyed case. But coming, as it does, I must assume, that without sufficient consideration, and forgetting for the time being that where there is doubt, as expressed by the learned justice who first made this suggestion as to this testimony, forgetting, I say, for the moment that where there is a doubt it must be resolved in favor of the defendant, we have

been asked in here to consider and give our views to you as to the true bearing and meaning of this testimony.

The testimony of Peck, because practically that is the only testimony worth considering here, was admissible upon two theories. First, that it showed a contribution which the Governor had not reported in his statement, and second, that it gave coloring to the behavior of the defendant, that it showed a weakness in his proposed defence, the same as may be said of the testimony of Ryan, to the effect that the Governor sought him to have men of great political influence interfere with the action of this Court.

It was admitted upon the theory that is set forth in the Nowack case in 166 N. Y. (reading):

> "Evidence tending to show that a party to an action tried to bribe a witness to give false testimony in his favor, although collateral to the issues, is competent as an admission by acts and conduct that his case is weak and his evidence dishonest. It is somewhat like an attempt by a prisoner to escape before trial, or to prove a false alibi, or by a merchant to make way with his books of account, except that it goes further than some of these instances, for in addition to reflecting on the case, it reflects upon the evidence on that side of the controversy. 'Where it appears that on one side there has been forgery or fraud in some material parts of the evidence, and they are discovered to be the contrivance of a party to the proceeding, it affords a presumption against the whole of the evidence on that side of the question, and has the effect of gaining a more ready admission to the evidence of the other party.' (1 Phillips on Evidence, C. & H. Notes, 627.) It is not conclusive, even when believed by the jury, because a party may think he has a bad case when in fact he has a good one, but it tends to discredit his witnesses and to cast doubt upon his position. It is for the consideration of the jury, after ample opportunity for explanation and denial, under proper instructions to prevent them from giving undue attention to the collateral matter to the detriment of the main issue."

So that this evidence which they say was admitted without objection was admitted because we had no valid objection to it,

because it could be admitted for the very reason set forth in this opinion in the Nowack case, and not as matter tending to establish any substantive act in the case, not as tending to establish any of the articles of impeachment.

To consider this evidence for any other purpose is to import into the impeachment a new article of impeachment. It cannot be considered in regard to any acts set up in the articles; it cannot be considered in the aspect of a new article. It cannot be considered as substantive evidence, because it is not placed in any of the articles. This, we think, is sufficiently established in cases that have preceded this. One that I had occasion to refer to the other day, next in importance, if not of more importance in the history of impeachment cases than that of the trial of Andrew Johnson, that is, in the trial of Hastings.

First, the lords resolved:

> "That the managers for the Commons be not permitted to give evidence of the unfitness of Kelleran for the appointment of being renter of certain lands in the province of Bahar; the fact of such unfitness of the said Kelleran not being charged in the impeachment."

Then again, at a later day, the lords decided:

> "That it is not competent for the managers for the Commons to put the following question to the witnesses upon the seventh article charged, viz. — whether more oppression did actually exist under the new institution than under the old."

The third, the lords resolved:

> "That it is not competent for the managers on the part of the Commons to give any evidence in the seventh article of the impeachment to prove that the letter of the 5th of May, 1781, is false, in any other particular than that wherein it is expressly charged to be false."

I cite European Magazine and London Review for February, 1794, pages 150 and 151.

So upon the trial of Judge Barnard it was attempted to introduce evidence in relation to declarations and statements made by Judge Barnard in relation to his judicial action. The evidence that was given was stricken out as incompetent and does not appear in the case. The Chief Judge, in striking it out, said:

> "I don't think that the testimony is competent; the conversation is not alleged in any article as a charge against Judge Barnard, and I don't think it bears upon any charge legitimately made against him; it relates to a transaction entirely outside of anything that is charged in the article."

After some discussion between counsel, the Chief Judge then said:

> "So far as I am concerned, my opinion is unchanged. This evidence is incompetent. The testimony drawn from Judge Birdseye was in the nature of a general admission relating to the motive or bearing upon the motive of Judge Barnard's judicial action. Now, I do not think it is competent to show a confession of the respondent as to a particular transaction — judicial or otherwise — which transaction is not alleged or set up in these articles as a charge against him. I do not think it is competent for the court to infer, from a transaction not alleged against him in these articles, a wrong as to the charges which are made. I will, however, submit the question to the court, because they may differ with me upon that subject. The question is whether this evidence shall be received, and the clerk will call."

The ruling of the Court was sustained by a vote of ten to twenty-one. Barnard trial, vol. 2, pp. 1294–96.

I will not bother you any further concerning the evidence of these three people, as to whether it bears upon article 4, or has any tendency to support it or not, because the argument of my learned and astute friend practically concedes that it does not, when he asks to amend, but my associate will consider it more at large.

The Court, I say, has no power to amend. Impeachments are like indictments. My friend practically concedes this.

The court of last resort in this State has passed upon this power of amending indictments that my learned friend has referred to, and by the way, in passing, I might say this: He says that you have adopted rules by which you are to follow the rules of the Supreme Court. That is true. They are mere rules of procedure, however. They do not relate to matters of substance. The rules of practice of the Supreme Court of this State never interfere with any substantial right or any matter of substance, simply as to matters of practice. They would be unconstitutional if they did. So likewise, the power of amendment granted by the Code of Criminal Procedure permits amendments as to matter of detail; amendments to correct an iregular indictment; amendments to correct matters that are not of substance, but not to import or inject into the indictment or the case any new matter that is of substantial consequence in the case.

I call your attention to an extract bearing upon that, a case in 196 New York, People v. Geyer:

> "The indictment charged that the subject of his alleged larceny was 'one written instrument and evidence of debt, to wit, an order for the payment of money of the kind commonly called bank checks, for the payment of and of the value of five hundred dollars,' and that the larceny occurred November 15, 1902.
>
> "The evidence tended to establish that at about the date mentioned a check for $500 was sent to the appellant in a fiduciary capacity and that he endorsed and deposited it to his credit as he rightfully might, and that his wrongdoing consisted in thereafter withdrawing and misappropriating the proceeds of the check thus deposited. It was perceived and conceded by the district attorney on the trial that the charge of the indictment was not sustained by this evidence as above summarized, by charging 'larceny of five hundred dollars, good and lawful money of the United States and of the value of five hundred dollars.' This amendment was allowed in spite of the timely and proper objections of the appellant and its allowance is one of the errors to be considered. As I have indicated, I think its allowance was improper.

"The trial court permitted and the district attorney now seeks to justify this amendment under the provisions of section 294 of the Code of Criminal Procedure, which read as follows: 'Upon the trial of an indictment, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant cannot be thereby prejudiced in his defense on the merits, direct the indictment to be amended, according to the proof, on such terms . . . as the court may deem reasonable.

"I do not think that this section contemplates or authorizes any such amendment as was permitted in this case. The general object of the section is perfectly obvious. It is in line with other sections of the Code and was intended to prevent the escape of guilty persons and a miscarriage of justice by reason of inconsequential technicalities, and to this end it materially enlarged the powers of the trial court to prevent any such undesirable results by amendments of the nature specified.

"It not infrequently happens that an indictment sets forth many details which are proper in alleging and describing the crime, but which surround and in some degree characterize, rather than constitute the real substance and body of the offense charged and the allegation of which may be amended without changing the identity of the crime or of the subject of the crime and without impairment of the rights of the accused person. Such amendments are within the letter and spirit of the statute. But of course it could not have been and was not the purpose of the Legislature to attempt to authorize the trial court by amendment to change the substantial elements and nature of the crime charged and in effect substitute a new indictment in the place of the one found by the grand jury.

"Illustrations of the two classes of amendments which might be proposed readily occur to the mind. If the indictment charged the accused with stealing a horse and alleged that the latter was of one color or of one age, when as a

matter of fact it was of another, it is apparent that the court would be justified in allowing an amendment to cure this variation of evidence. The substance of the crime charged in either case would be the larceny of a horse; the latter's age or color would be an inconsequential detail. If, on the other hand, the indictment having charged the accused with stealing such a horse, the evidence should show that he had in fact stolen a wagon or some entirely different article of property than that specified in the indictment, it is quite clear that the court would not be justified in amending the indictment to fit the evidence. In such case the very substance of the crime would be involved in the variation and to permit the amendment would quite change the identity of the crime, although in either case it might continue to be grand larceny.

"The amendment under consideration in this case is of the latter character rather than of the former. The appellant was charged with stealing a check on a given date. He was convicted of misappropriating at a different date the proceeds of a check which he had a perfect right to receive and procure to be cashed. The property set forth in the indictment and that for the alleged larceny of which he has been convicted, were entirely distinct and distinguishable. The check mentioned in the indictment had a well-defined character and value of its own, and for the purposes of this discussion is not to be regarded at all as the same thing as bills or coin. The variation between indicting a man for stealing a horse and convicting him for stealing articles of household furniture would not be any more pronounced in principle than the variation between the indictment and proof in the present case. In fact the very authorities cited by the district attorney to sustain his position on this appeal make it perfectly clear that he is wrong, and that this amendment is not of the character authorized."

So, I say, charging a man with asking a witness to keep away from a hearing is an entirely different offense from that of advising him to commit perjury; different morally; different in every

aspect of the case and recognized by the law of the State as a separate and distinct offense, embodied as it is in a separate and distinct provision of the Penal Law.

In the case of People v. Schrank, 88 App. Div. 294, Schrank was indicted for a felony in abducting a child under the age of fourteen years, and thereafter feloniously, wrongfully and unlawfully deserting the child with intent wholly to abandon such child, against the form of the statute in such cases made and provided.

In moving the trial in that case, the defendant withdrew his plea of not guilty and demurred to the indictment on the ground that the facts stated did not constitute a crime. The court on motion of the district attorney overruled the demurrer and allowed the indictment to be amended by striking out the word " fourteen " therein and inserting in lieu thereof the word " six," so thereafter the indictment charged the abandonment of a child under the age of six years.

Here is what the court says:

> "At the time this indictment was found by the grand jury it was a crime to desert a child by those who had the care and custody of it only in the event that the child was under the age of six years. By chapter 376 of the Laws of 1903 that section was amended so as to make it a crime if the child deserted was under 14 years of age. But prior to September 1, 1903, when that amendment took place, it was no crime to desert a child under 14 unless it was also under 6 years of age."
>
> " So the question is presented here when the facts stated in the indictment do not constitute any crime, the trial court may amend it in inserting therein further and other facts which if proven would show that the defendant had committed a crime. I am of the opinion that such an amendment cannot be allowed. The indictment must be found by a grand jury and if the one which it presents does not state any acts of the defendant which constitutes a crime no conviction can be had thereon."

In People ex rel. Howey v. Warden, 207 N. Y. 354 (reading from page 359) a writ of habeas corpus had been sued out to

obtain the discharge of a prisoner held under a warrant of commitment. There was evidence in the case showing that he was guilty of some other crime than that set forth in the commitment and warrant:

"It is, however, urged that although the evidence before the magistrate did not warrant the commitment and confinement of the relator on the charge specified, it did tend to establish the commission by him in the county of Kings of the crime of conspiracy to commit rape, and that, therefore, it was the duty of the justice before whom this writ was made returnable to hold him to bail in accordance with the provisions of section 2035 of the Code of Civil Procedure. That section provides: 'If it appears that the prisoner has been legally committed for a criminal offense, or if he appears by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offense, although the commitment is irregular, the court or judge, before which or whom he is brought, must forthwith make a final order to discharge him upon his giving bail, if the case is bailable; or, if it is not bailable, to remand him.'

"This proposition precipitates the inquiry whether a warrant of commitment which specifies as the crime with which the accused is charged, and for which he is held to answer, an offense which is not supported by the evidence and wholly fails to specify an entirely different crime which the evidence does tend to establish, is simply 'irregular' and may be made the basis for holding the accused in habeas corpus proceedings on account of the latter offense. It seems to me that this cannot be the meaning of the section.

"The warrant of commitment is the whole authority for the confinement which is being inquired into in the habeas corpus proceedings. The statute requires that it shall specify the offense which the imprisoned party is charged with (Code Crim. Proc., secs. 213, 214) and the authorities determine that this requirement is so essential and fundamental that a warrant which fails to comply with it is wholly ineffective and void. (People ex rel. Allen v. Hogan, 170 N. Y. 46).

"This being so, it seems to follow that a judge sitting in

habeas corpus proceedings would have no authority to remand the accused for further confinement under this warrant of commitment, because the evidence disclosed to his mind the probable commission of a crime by the accused radically differing from the one named and with which he had never been charged, and as to which no examination had taken place, and on which he had never been committed by the magistrate who alone had authority to commit. Such a result would involve not the disregard of a mere irregularity in the warrant, but practically the commission of the accused to confinement by a new warrant made by the judge in a habeas corpus proceeding rather than by the committing magistrate."

Then, too, as bearing upon the fact that a man should not be convicted except upon the indictment found against him, no matter what crimes are shown to have been committed during the progress of the trial, I read from the same volume, the case of the People against Pettanza, 560. It was suggested by the Presiding Justice that we should not mention names here, so I have not mentioned the names of the judges writing opinions. After reciting the evidence as to crimes other than that charged in the indictment, the learned justice proceeds:

"But the atrocity of the crime charged does not justify a disregard of rules of law, firmly established in our jurisprudence for the protection of all alike. The defendant was not to be convicted of the crime of kidnapping the Longo boy with which he was charged, because his sister was intimate with the Sirisis, or had herself been concerned in another kidnapping case, or because he unlawfully had dynamite in his possession, an offense with which he was not charged, or because he was acquainted with a man of the same nationality, whose picture was in the 'Rogue's Gallery,' and who had sent Blackhand letters and committed other misdeeds. A defendant, charged with a criminal offense, must be prosecuted according to the forms of law and his guilt must be established, if at all, by legal evidence, no matter what his origin, his station in life, or his associations may have been, and no matter what other offense he may have committed."

So as to the analogy that is attempted to be drawn between this case and the case where indictments have been found. I think these few cases that I have cited to you are sufficient to establish the law to be that it could not be amended by setting up this new offense that is charged here; that is, a violation of the Penal Code, of a different section of the Penal Code than has been heretofore charged, and I also assert that this Court cannot amend it. You cannot add new articles, and this is in effect a new article of impeachment. Article 4 charges a violation of section 814 of the Penal Law. This proposed amendment charges us with violation of section 813 of the Criminal Law. That is a new article. It is a new offense, imported into the case. The only authority in this State under our Constitution to prepare articles of impeachment, to find articles of impeachment, is the Assembly, and you are here to try the articles that they find and no others.

In the case of Barnard, volume 1, page 192, where the discussion was up in regard to striking out an article, or if it was not to be stricken out, to amend it, Chief Justice Church said this:

> "I am inclined to think that the allegation to which objection is made ought not to have been in these articles, but it seems to me that this court has no power to strike out any portion of these articles or amend them in any manner. They come here from the Assembly; and if there are any allegations that are improper in any of the articles, and evidence is offered of those allegations, and that evidence is immaterial and incompetent, that is the place it seems to me to raise the question, and we have no power to alter or change these articles in any manner whatever. They are presented here for us to try. Of course, we can determine upon the sufficiency of the matter, but we cannot strike out or change them."

In the case of Dorn —

Mr. Stanchfield.— The motion was not to amend in the Barnard case.

Mr. Herrick.— The suggestion was made upon the argument.

Now, in the trial of Dorn, page 68. This was a motion to

strike out also, but hear what the judge says. And this bears upon the argument that impeachment is not a criminal proceeding. My investigation of all the cases of impeachment that have come under my observation, shows that they have all been treated as a criminal trial, as a criminal proceeding, to be governed by like rules as other criminal trials.

"Judge Mason.— Mr. President, there is nothing so entirely 'sui generis' in the proceedings of a court of impeachment, that is to say, so very different from the proceedings of any other criminal trial. Upon the ordinary proceedings in criminal trials, the grand jury of the county presents the indictment charging the accused with a criminal offense. There are certain well established rules in the law by which the indictment is to be framed, and which is to govern the court by which it is to be tried. The grand inquest of the county which presents the indictment (and which is drawn by the district attorney) must, in the framing of the indictment, conform to these general rules.

"The court which tries such indictment has no more power of amendment, no more right to strike out and put in than has this court of impeachment upon the trial of these articles. The court must take the indictment as it is presented to them by the grand jury and pass upon its sufficiency. The criminal courts, to be sure, have well established rules as guides in judging of the sufficiency thereof, and more so than has a court of impeachment.

"A motion to quash any one count in an indictment may always be entertained by the court having authority to try an indictment. It is, however, always discretionary with the court whether it do so or not. The question here raised by the honorable the managers of the House, is, that this court has not jurisdiction to entertain a motion to quash any of these articles. This court stands precisely in the same position, with reference to the trial of these articles of impeachment, as does any criminal court which tries an indictment.

"These articles are presented to us, and we must dispose of them in the form in which the honorable the Assembly sees fit to present them to us, without amendment or altera-

tion. But to say we have not the power or right to judge of them on a motion to quash any articles presented here, if it fails to state an impeachable offense, is to say what I do not believe."

And subsequently the article was quashed; but here is the precise statement that it is a criminal offense, a criminal trial, to be governed by the rules applicable to the trial of criminal cases, and that the case must be tried upon the articles of impeachment as presented by the Assembly, without alteration and without amendment.

Test the question by this: Suppose you find him not guilty upon all the other articles of impeachment presented here, and that you do find him guilty of violating section 813 of the Penal Law, then you will have found him guilty upon something that the Assembly never presented to you, upon evidence that we have a right to assume was never presented to them; you will have found him guilty upon an article prepared by yourselves; you will have impeached him, and tried him upon an impeachment article made by yourselves, and not by the Assembly.

I want to be brief in this matter. If there is a determination to convict this man here, do it without any violation of the law. It is related that one of the judges of the old Court of Appeals — not one of the present Court — said that " when me and Judge So-and-so make up our minds to beat a man, we can always find a way to do it." If there is determination in the majority of this Court —

The President.— Judge Herrick, I do not think that is very material to this argument.

Mr. Herrick.— I simply want to say this: That no precedent should be set here as to the law. As to the facts, they set no precedent as to the future, but your determination here upon a question of law is something that abides until it is changed by the Constitution itself.

There are articles here setting forth impeachable offenses, without evidence to sustain them, and for the benefit of the future, to prevent the establishment of any bad precedent, it would be better

far that he should be convicted on an article that legally charges an offense, although there is no evidence to sustain it, rather than that this Court should import into it something that had never been charged and something that only the Assembly has the right to place in it.

The President.— Now, Mr. Marshall.

Mr. Marshall.— May it please the Court: To my mind, the attitude taken by our opponents on this argument is virtually a plea of bankruptcy, so far as the fourth article of impeachment is concerned. It is practically an admission that that article is insufficient to warrant a verdict of guilty as against this defendant; and that is demonstrated by the fact that counsel come here, in cold blood, and present to us an entirely new article in lieu of article 4, which cannot be recognized as in any way based upon the same provision of law, or upon any of the same facts as those which are set forth in the original article. They have virtually taken a poodle dog and cut off his head and tail, his fore legs and his hind legs, and are seeking to substitute other tissue and to make of it a wolf.

They have cut out every allegation which brings the case under section 814 of the Penal Law, and have substituted new allegations to make a case under section 813. And, forsooth, they say there is no difference between sections 813 and 814, although the language of the two sections is entirely at variance and differs fundamentally.

It is a remarkable suggestion to say that the Legislature of this State sat down deliberately, with the aid of lawyers who framed the criminal law of a great commonwealth, and repeated in section 814 what had already been formulated in section 813. I had always supposed that it was a maxim of interpretation, a well-recognized principle of law, that the Legislature is not supposed to do a vain or useless thing, or to indulge in needless repetition, especially in respect to so important a statute as the Penal Law.

My friend comes here and disavows any intention to amend the articles of impeachment. He practically recognizes the fact that this Court has no power to formulate new articles of impeachment,

but then he proceeds and attempts to do that very thing, by substituting an entirely new article of impeachment upon the pretense that this is not a criminal proceeding, and, therefore, section 723 of the Code of Civil Procedure applies; or, even if it is a criminal proceeding, that section 293 of the Code of Criminal Procedure applies; or, if it is neither fish, flesh or good red herring, that both apply. Consequently the impeachment managers assert the right to change their case at the very moment of judgment, after all the evidence has been concluded, and to substitute for the issue which we have been called upon to meet, an entirely different one.

As to whether this is a criminal proceeding or not, I shall rest upon the argument which I have already made on that point. All that I desire is to call attention once more to the authorities which I have collated on that subject in my final argument. They go into detail — I was about to say to such an extent as to tire the Court, but, in view of the fact that so great a lawyer as my friend Mr. Stanchfield, at this late date, takes issue upon the proposition, I find that perhaps I have not done amiss in multiplying the citation of authorities.

I call especial attention to the language of Chief Judge Church at page 2070 of volume 3 of the Barnard trial, where he says: "But we are here in a criminal case," defining a case of impeachment as a criminal case. The question suggested for argument relates to the power of the Court to amend the articles of impeachment so as to include the acts testified to by Peck, Morgenthau and Ryan. We insist that no such power of amendment exists, and that an attempt to exercise it would be a violation not only of section 13 of article 6 of the New York Constitution and of section 1 of article 6 of that Constitution, but of the 14th amendment to the Constitution of the United States as well.

The right to impeach, to present and formulate articles of impeachment, is vested in the Assembly alone. This Court can only hear and determine charges presented by the Assembly. It cannot usurp any of the functions of that body. To do so would deprive the respondent of his liberty and property without due process of law. It would forfeit his office and its emoluments. It would forever take from him the right and privilege of hold-

ing office, a right vested in all male citizens of the State not convicted of crime.

For these reasons we at this time solemnly object and protest against any amendment of the articles, as violative of the New York State and of the Federal Constitution.

Article 6, section 13 of the Constitution declares:

> "The Assembly shall have the power of impeachment by the vote of a majority of all the members elected."

This tribunal is constituted only for the trial of an impeachment duly voted, and is without other jurisdiction. As stated in section 12 of the Code of Criminal Procedure:

> "The Court for the Trial of Impeachments has power to try impeachments, when presented by the Assembly."

By section 17 of that code it is provided:

> "Upon the delivery of an impeachment from the Assembly to the Senate, the president of the Senate must cause the Court to be summoned to meet at the Capitol in the city of Albany on a day not less than 30 nor more than 60 days from the day of the delivery of the articles of impeachment."

Section 18 continues:

> "At the time and place appointed and before the Court proceeds to act upon the impeachment, the clerk must administer 'the oath or affirmation' duly and impartially to try and determine the impeachment."

What impeachment is referred to? That voted by the Assembly and no other.

Section 118 of the Code of Criminal Procedure enacts that when an officer of the State is impeached by the Assembly the articles of impeachment must be delivered to the president of the Senate.

Section 119 then states:

> "The president of the Senate must thereupon cause a copy of the articles of impeachment with a notice to appear and answer the same at the time and place appointed for the

meeting of the Court, to be served on the defendant not less than twenty days before the day fixed for the meeting of the Court."

By section 120 it is declared that service must be upon the defendant personally, and if he cannot on diligent inquiry be found in the State the Court may order publication to be made of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

It is thus shown beyond cavil that the Assembly alone possesses the power to impeach and formulate articles of impeachment, and that this Court is confined to the articles of impeachment served on the respondent, and that it cannot convert its status and jurisdiction from that of judge to that of accuser, the two functions being separate and independent and inconsistent. It would be most extraordinary if, at the close of a long trial of articles of impeachment voted by the Assembly, the Court could amend the articles by adding a new charge depriving the respondent of the right to be heard and the time for preparation which under the law he is accorded with respect to the charges voted by the body which is the constitutional accusing body.

Authority is not wanting to sustain our contention that the power to amend is vested neither in this Court nor in the impeachment managers, but resides solely in the Assembly acting by a majority of all the members elected thereto.

This same question arose in Leese v. State, 37 Neb. The same case is reported in 20 Lawyers Reports Annotated, page 579. Although five weeks ago, at the beginning of this trial, I cited this case, in my opening argument, still in view of the time that has elapsed and the fact that my friends do not seem to have been impressed by the authority, I shall presume upon the patience of this Court once more to read that decision, since its reasoning seems conclusive as to the point which we now have under consideration.

That was a case of impeachment. Under the Constitution of the state of Nebraska the power of impeachment is vested in the two houses of the Legislature in joint convention, and the impeachment is then heard and tried before the judges of the Supreme Court of the state. In that case the Legislature of Nebraska adopted and presented to the Supreme Court articles

of impeachment against William Leese, ex-attorney general, charging him with misdemeanors in office during the period of his attorney generalship. Within the time fixed by the court the respondent answered the articles of impeachment exhibited and presented against him and to each and every specification. Subsequently the managers appointed by the Legislature to prosecute the charges asked leave to amend, in matter of substance, certain of the specifications in the articles of impeachment to which proposed amendments the respondent objected. At the hearing, the application to file amended specifications was denied. After citing the provision of the Constitution of the State to which I have referred, the Court proceeds to state the following reasons for its conclusions:

> "By the foregoing provision the exclusive power of impeachment is conferred upon the Legislature. Both houses of that body are required to meet in joint convention to act upon a resolution to impeach a state officer for any misdemeanor in office, and such a resolution can only be adopted or carried by the affirmative vote of at least a majority of all the members elected to the Legislature. The authority thus given carries with it the power of the Senate and House of Representatives, under like restrictions to adopt suitable articles and specifications in support of their impeachment, and likewise the authority to adopt and present additional or amended articles or specifications whenever it is deemed proper or expedient so to do. But such power can no more be delegated by the joint convention to a committee or managers of impeachment, appointed by it, than the Legislature can confer authority upon a committee composed of members of that body to enact a law, or to change, alter, or amend one which has been duly passed, and in neither case does the right exist.
>
> "Impeachment is in the nature of an indictment by a grand jury. The general power which courts have to permit the amendment of pleadings does not extend to either indictments or articles of impeachment. The uniform holding of the courts, except where a different rule is fixed by statute, is that when an indictment has been filed with the court, no amendment of the instrument in matter of sub-

stance, can be made by the court, or by the prosecuting attorney, against the consent of the accused, without the concurrence of the grand jury which returned the indictment." Citing a number of cases, including People v. Campbell, in the 4th of Parker's Criminal Reports at page 386, and the great case of Ex parte Bain, 121 U. S. 1; also decisions from Alabama, Mississippi, North Carolina and Wisconsin.

"We have no hesitancy in holding that the managers have no power or authority to change in any material matter the specifications contained in the articles of impeachment exhibited against the respondent. If they could do that, it necessarily follows that they could exhibit new articles of impeachment or specifications, preferring charges against the respondent, not included in the original accusations made against him, and which the sole impeaching body, the joint convention of the Legislature, might have rejected, had they been submitted to it for consideration. To hold that the managers of impeachment have the right to do that would be to disregard both the letter and spirit of the Constitution.

"In reaching the conclusion stated above, we have carefully considered and given due weight to the last paragraph of the articles of impeachment, which reserves to the Senate and House of Representatives of the State of Nebraska, in joint convention assembled, 'the liberty of exhibiting at any time hereafter any further articles or other accusations or impeachments against the said William Leese, late Attorney General of the state of Nebraska.' All that can be reasonably claimed for this provision is that the joint convention of the two houses of the Legislature reserved the right to adopt other and additional articles of impeachment against the respondent. But the Legislature has not preferred other or further accusations against him, nor does the clause above mentioned attempt to confer such authority upon the managers of impeachment. If it had done so, as we have already seen, it would be repugnant to the letter and spirit of the Constitution."

The case which I have just cited as well as many others which have been referred to in the course of the trial show that impeachment proceedings are in fact criminal proceedings. The same rules of procedure and of evidence apply to both. Articles of impeachment are the equivalent of an indictment, and while perhaps not so strictly construed, the essential characteristics are the same, and the fundamental principles governing them are identical. For that reason the authorities which bear on the right to amend indictments are equally applicable to the amendment of articles of impeachment. That was expressly decided in State v. Leese.

In fact the authorities on which the court proceeded were cases relating to the amendment of indictments.

I might here say a word with regard to the discovery which counsel has made that this cannot be a criminal proceeding because of the provision in section 6 of article 1 of the Constitution that one cannot be twice placed in jeopardy. Well, that is very true unless the Constitution makes an exception. But in this particular case the Constitution makes an exception because it does permit an indictment as well as an impeachment and resort to one of those remedies is not considered to preclude the pursuit of the other.

There is also the provision of the Constitution that a man shall not be compelled to be a witness against himself. That certainly is applicable to these proceedings as are all the other safeguards of the Constitution and the laws, including the rule that no argument shall be made commenting upon the failure of the defendant to testify in his own behalf. I have heretofore called attention to the fact that impeachment is used all through the Constitution in juxtaposition with the phrase "crime or crimes, or offenses," both with respect to indictment, as well as with respect to pardons, reprieves and commutations.

The case of Ex parte Bain was one where an indictment charged the offence of making a false report to the Comptroller of the Currency with the statement that it was with the intent to defraud the Comptroller of Currency. Upon the trial it was sought to amend the indictment by striking out the words which charged deceit of the Comptroller of the Currency. The motion was

granted, but the Supreme Court of the United States declared that such amendment deprived the proceedings of all validity. It deprived them of the character of due process of law, and it therefore discharged the prisoner upon a writ of habeas corpus, on the ground that the indictment could not be amended, even in that rather unimportant particular.

It was decided in this State in People v. Campbell in 4 Parker's Criminal Cases 386, that an indictment which charged one with stealing a dog could not be amended so as to describe the dog as a tame dog as distinguished from one ferae naturae, even though that amendment was with the consent of the defendant. A conviction upon the amended indictment was accordingly set aside. That decision has been approved and treated as a leading case in various states as it was in Ex parte Bain.

Although section 293 of the Code of Criminal Procedure was enacted as a statute of jeofails, it relates exclusively to matters of form and not to those of substance. It relates to the ordinary variances in description, or in names, where names and description are not of great moment, but it does not permit a change of allegation as to the essential nature or character of the crime, or the addition of allegations of another crime, or the substitution of a crime of a different nature for the crime alleged. It has already been read here, and is as follows:

> "Upon the trial of an indictment when a variance between the allegations therein and the proof in respect to time or in the name or description of any place, person or thing shall appear, the court may, in its judgment, if the defendant cannot be prejudiced in his defense on the merits, direct the indictment to be amended according to the proof on such terms as to postponement of the trial, to be had before the same or another jury, as the court may deem reasonable."

In speaking of similar legislation it is stated by various authorities which are found in the 22d volume of the Encyclopedia of Law and Procedure under the title "Indictment and Information," at page 434, that courts cannot permit the amendment of an indictment as to matters of substance, for as amended it would not be the finding of the grand jury.

The Court of Appeals, as has been shown in the argument of Judge Herrick, has recently had occasion to pass upon this very statute and the limitations upon the power of amendment so far as they have been conferred by the statute.

The case of People v. Geyer, in 196 N. Y., has been referred to. In that case the indictment, as it was framed, charged larceny under subdivision 1 of section 1290 of the Penal Law because it alleged the wrongful taking of a check. The amendment that was made changed the offense to one under subdivision 2 of section 1290 by alleging that it was the money which had been collected upon that check, and which had been deposited by the person who had collected it and who thereafter took it out of the account to the credit of which it had been deposited, thus creating the offense of embezzlement as defined in subdivision 2 of section 1290. Yet, although both crimes were defined in one and the same section, the court held that there could not be an amendment.

Now, our friends come here and say you can eliminate the crime which is charged in section 814 and which is described in the articles of impeachment in the very language of section 814, and substitute therefor a crime which is set forth in an entirely different section, section 813, in different language, and with different attending circumstances.

My associate omitted to call attention to the case of People v. Bromwich, reported in 200 New York 385, which is a most admirable illustration of the limitations which the Court of Appeals has recognized as existing as to section 293 of the Code of Criminal Precedure. For the court recognized that if section 293 undertook to extend the power of amendment to such an extent as to substitute the description of one offense for another, it would be in violation of the Constitution which requires the presentment by a grand jury as the condition precedent to a criminal prosecution. It would be absolutely in violation of our Constitution, as in the Bain case it was declared that such an attempt to amend would be in violation of the Federal Constitution.

Reading from the opinion in that case, which is quite brief and which very clearly indicates how the Court of Appeals

views this section, we find the following, and it is the decision of a unanimous court:

"The defendant was indicted and convicted for the crime of false registration in appearing before the inspectors of election for the fifteenth election district of the thirty-first assembly district in the county of New York as a voter in such district, he not being a qualified voter in such district, nor a citizen of the United States or of the State of New York, nor an inhabitant of such election district for the last thirty days preceding the date of election. On this indictment he was tried and convicted of the offense and the Appellate Division reversed the questions of law and found no error, without having examined the facts therein. The first error of which the defendant complains is that on the trial the prosecution was allowed over his objection and exception to amend the indictment by inserting the thirty-fifth assembly district in lieu of the thirty-first assembly district wherever the words appeared therein. The learned judge who wrote for the majority of the Appellate Division was of the opinion that the amendment was authorized under section 293 of the Code of Criminal Procedure. We entertain a different view. While the indictment contains but a single count, the defendant is alleged to have violated the law and been guilty of a crime for two different reasons. First, because he was neither a citizen of the United States nor of the State of New York. Second, because he was not an inhabitant of the election district thirty days previous to the date of election. Under the first allegation the defendant would be guilty of the crime no matter in what election district he registered, and had the indictment contained this single allegation the amendment would clearly have been justified under the provisions of the code quoted. The statement of the election district would not be any element of the crime, but a mere specification of the particular place in which the crime was committed. Not so, however, as to the second allegation of the indictment. There the crime charged is that the defendant registered at a particular election district

where he was not entitled to vote because he was not an inhabitant of that district. The particular district in which the registry was obtained was an essential element of the crime. The grand jury have not found that the defendant was not an inhabitant of the thirty-first district, which was necessary to constitute a crime under the amendment of the indictment. In other words, the amendment is not merely in the description of the defense, but in the identity of the offense. An amendment by the court is not permissible."

I also call attention to the case of People v. Poucher, in 30 Hun, at page 507.

If an amendment to an indictment such as I have just indicated, namely, merely changing the number of the election district, was under the circumstances narrated beyond the power of the court, how is it possible in this case to permit such an amendment as has been suggested?

Suppose we were now trying this case before a court and jury under an indictment framed as article 4 was originally drawn, and my friend should then come before the court and ask to amend that indictment in accordance with the allegations which he has read to your Honor this afternoon?

Is there anyone here who would for a moment suppose that any court would listen with equanimity or patience to such a suggestion? If he were occupying the position of counsel for the defendant in such circumstances, I can imagine the volume of eloquence which would be urged against the outrageous suggestion and the picture that he would paint of injury to the cause of justice if such an application as he now makes were granted, and he would be entirely right if he voiced his indignation.

These decisions are in accordance with the underlying principles of justice, without which it would be but a tinkling of brass.

One charged with malefaction must first be informed of the precise nature of the charge which he is to meet; he must be accorded opportunity for investigation and for preparation, and to determine upon the course of action which he is to pursue. Legal decisions would become "springes to catch wood-cock withal" if when one were cited in court to meet a charge of larceny he

could be compelled to go to judgment on a charge interpolated at the twelfth hour of subornation of perjury, conspiracy, embracery or whatsoever other ground man may devise. It would be but an introduction into our jurisprudence of the ancient fable of the wolf and the lamb.

That the present articles are insufficient to admit of action by this Court with respect to the matters referred to in the testimony of Morgenthau, Peck and Ryan scarcely requires argument.

Without repeating the propositions which were referred to in my main argument as to the nature and sufficiency of the fourth article, framed as it avowedly is, under section 814 of the Penal Law, which it seeks to follow in haec verba, there is nothing in the evidence which indicates that the respondent practiced any deceit or fraud, or used any threat, menace or violence as against Morgenthau, Peck or Ryan to prevent them from testifying or disclosing any material fact in any suit or proceeding.

Certainly the words "deceit and fraud" are to be used in the same relation as the words "threat, menace or violence." They are words ejusdem generis, and therefore clearly refer to the action affecting the person whose testimony is sought to be suppressed.

We will not now discuss the serious question as to whether this is an action or proceeding within the meaning of section 814, or whether the hearing before the Frawley committee was such an action or proceeding. The decision of the Court of Appeals in the Matter of Droege, 197 N. Y. 44, would seem to indicate that it is not. We take the broad ground that the testimony referred to does not establish an offense under section 814, even if it might be argued that it does come within section 813, but that would not enable the court to consider that testimony as establishing a substantive charge under that section, if, for no other reason than because the articles of impeachment in no manner refer to any violation by the respondent of section 813, and have not given him due notice such as constitutes due process of law, so far as a charge of violating section 813 is concerned.

If the facts testified to by these witnesses indicate the commission or the purpose to attempt to commit any illegal act, it is that set forth in section 813 of the Penal Law, or in section 580 of that statute, although it is scarcely necessary for us in connection

with this argument, to disclaim any such purpose or intent, or to debate the truth of the matters as to which testimony has been given.

It appears at a glance that these offenses are entirely different and distinct from those set forth in section 814 and described in the fourth article of impeachment. Incitement to perjury and the giving of false testimony is a totally different offense from practicing fraud, deceit and using threats, menaces, or violence against those whose evidence is sought to be suppressed in an action or proceeding.

This would be the first time in a case of impeachment, than which no judicial inquiry can be more solemn, and none should be more hedged about with protective safeguards, that so revolutionary a method of procedure as that proposed would be adopted. It would make what is popularly known as "railroading" an innocent pursuit. There would be no precedent for it in criminal proceedings under a government which protects even the meanest criminal and affords him the guaranty of due process of law. Not even an habitual criminal can be deprived of the right to be tried on a regularly formulated charge, and none other. Not even in a civil action where less stringent rules of procedure apply, would such a contention as that which is now made be tolerated.

Our friends claim that this case can be governed by section 723 of the Code of Civil Procedure, and that the Court can now conform the pleadings to the proof by changing the allegations upon which we were called to trial and substituting entirely different ones. To show that they have not read the authorities to advantage, I will now cite a number of decisions in civil actions which indicate that the rule is not as they claim it to be. In fact the rule is just the converse. It is that on a trial it is not permitted to change the character of the action under consideration or of the charge that is made against the defendant therein. A change in the nature of a cause of action or the theory upon which it proceeds is forbidden.

In Southwick v. First National Bank of Memphis, 84 N. Y. 429, Judge Earl said:

> "Pleadings and a distinct issue are essential in every system of jurisprudence, and there can be no orderly administration of justice without them. If a party can allege one

cause of action and then recover upon another his complaint will serve no useful purpose but rather to ensnare and mislead his adversary. Here the defendant was brought into court to answer a complaint that he had violated his promise to apply the proceeds of the draft, and he took issue upon the alleged promise and when he came to trial he was held liable not for any breach of promise but for the money paid by a Boston firm on the ground of a conversion of the draft or a mistake of facts which induced the payment of the money."

In Day v. Town of New Lots, 107 N. Y. 148, Chief Judge Ruger said:

"The rule that judgment should be rendered in conformity with the allegations and proofs of the parties, secundum allegata et probata, is fundamental in the administration of justice. (Citing Wright v. Delafield, 25 N. Y. 266.) Any substantial departure from this rule is sure to produce surprise, confusion and injustice."

In Romeyn v. Sickles, 108 N. Y. 650, the action was brought to recover on a quantum meruit for work, labor and services by the plaintiff as an architect in preparing plans for a proposed building. The answer set up a special contract under which it was claimed that the work was performed, which tended to show that the defendant and others were interested in forming a club which was to pay for the plans if the building was erected, otherwise the plaintiff was not to be paid. The plaintiff was awarded judgment by the referee on a theory not set forth in the complaint. The judgment was reversed by the Court of Appeals. Chief Judge Ruger, after quoting from the opinion wherein the referee remarked, "It is true that upon this view the plaintiff recovered upon a somewhat different cause of action from that stated in the complaint," followed by the suggestion "that the pleadings may be amended or deemed amended to conform to the proof," made the following comment: "This is to ignore the whole office of a pleading and compel parties to try their cases in the dark, informing them for the first time after the wrong is irremediable of the issue which they should have tried. The plead-

ings were not amended and they could not lawfully be amended in a material respect except at a time which would give the party against whom the amendment is allowed a right and opportunity to meet by proof the allegations made against him."

In Bourke v. Truesdell, 145 N. Y. 612, it was held that where fraud is alleged as the basis of an action it must be proved, a recovery may not be had on proof of a right of action on contract or of some other character, although facts are proved which in a proper form of action would justify the recovery. I cite a great many other cases to the same effect, including the great case of the People v. Denison, 84 N. Y. 272; De Graw v. Elmore, 50 N. Y. 1; Ross v. Mather, 51 N. Y. 108; Salisbury v. Howe, 87 N. Y. 128; Barnes v. Quigley, 59 N. Y. 265; Reed v. McConnell, 133 N. Y. 434; Doyle v. Carney, 190 N. Y. 386.

I call especial attention to People v. Bremer, 69 App. Div. 14; 173 N. Y. 599. There an action was brought to recover penalties, it being charged in the complaint that the defendant sold imitation butter. On the trial it was sought to amend the complaint by adding the allegation "as butter," so that the offense was changed from a sale of imitation butter to one which constituted a sale of imitation butter as butter, an entirely different act. It was held that such an amendment was not permissible.

I might cite a large number of other authorities, all of which are to the effect that even in a civil action, not, as in the present instance, a proceeding which involves forfeiture of office, which may impose a perpetual stigma upon the name of the defendant, a proceeding which involves a forfeiture of the dearest rights that man can have in a free republic, the courts will not permit an amendment which makes a substantial change in a cause of action at the trial.

The testimony of Morgenthau, Peck and Ryan was not received for the purpose of establishing a substantive ground of impeachment, but solely for evidentiary purpose, as bearing on articles 1, 2 and 6. Each of them testified to making payments to the respondent in October, 1912. Under the ruling of the court, that evidence was received, subject to objection, as bearing on the scienter of the respondent. The witnesses then gave the additional testimony which has been recited on the argument.

That was allowed on the doctrine of Nowack v. Metropolitan St. Ry. Co., 166 N. Y., as tending to cast doubt on the respondent's position, so far as it related to the charge contained in articles 1, 2 and 6, or any other article as to which evidence was given. The reasoning by which the admission of such testimony has been justified is that contained in the opinion by Judge Vann, which was quoted by Senator Brackett in his closing argument, and which has been read this afternoon by Judge Herrick.

It is merely that such testimony is competent as possibly indicating a consciousness of guilt or of wrongdoing, and in that sense may have a bearing upon the credibility of a party who uses the methods referred to, or may affect the general credit of his case.

It is merely evidentiary; it may or not be persuasive as to the credibility of the respondent or the effectiveness of his defense as to the issues which are on trial. It certainly cannot be the basis of an independent right of recovery in a civil action, or of conviction in a criminal proceeding. Thus, the fact of flight, or an attempt of a prisoner to escape before trial, is receivable is evidence merely as tending to establish the consciousness of guilt, surely not as the basis of a conviction. Thus, if one were charged with larceny — and such a case was instanced in the opinion of Judge Vann in the Nowack case as the classic illustration for the admissibility of such testimony — and evidence of flight were admitted, it would not warrant a conviction for any crime other than that of larceny, even though an attempt of the prisoner to escape was in itself an indictable offense.

And so if the charge were perjury, while evidence of the forgery of the prisoner's books might in a possible aspect of the case be admissible, it would not warrant a conviction for forgery, even though the charge of perjury could be maintained because the statutory essentials of the crime had not been proved.

So, in the present case, we contend that articles 1, 2 and 6 do not present proper grounds for impeachment, because they do not set forth "wilful and corrupt misconduct in office," because they do not refer to official acts, but at most to the acts of a candidate for office, completed nearly two months before the respondent's official term began. While under the reservation of this Court of the decision as to the sufficiency of these charges,

until it votes on the question of acquittal or conviction, the evidence now under consideration may have been admissible in its bearing on the charges contained in articles 1, 2 and 6, if these articles fall because of want of jurisdiction, the evidence given in their support falls with them, and cannot be made the basis of an independent charge; and this is equally true with respect to all the other articles. If there is no evidence to sustain them, all the evidence of impropriety or indiscretion, or of other offenses that may be presented, will not afford ground for conviction.

It is shown in 1 Wigmore on Evidence, section 278, that such evidence as that now under discussion is merely collateral and does not establish a substantive crime. It is evidentiary of an existing issue and not creative of a new one. It performs a probative function with respect to an actual charge presented by the pleadings. It does not give rise to independent action, outside and beyond the pleadings.

As illustrative of this idea that this was a collateral matter, let me call your attention to an important ruling made by the court. Your Honors will recollect that one of the last witnesses whom we called was John A. Hennessy. We tried to show by him various acts of Peck while he was Superintendent of Public Works and a member of the Board of Highway Commissioners, as indicating that he had a motive to testify as he did with respect to the respondent. When that evidence was offered it was ruled out, and, in sustaining his ruling, the President said, after the following explanation by Mr. Hinman of his purpose in offering the testimony:

> "The evidence we claim will tend to show and will show that Duncan W. Peck had an interest in this proceeding here now, and had a motive for testifying in such a way as would eliminate this respondent from office and stop this investigation.
>
> "The President.— I do not see how you can go into that. That will involve an entirely collateral issue. It seems to me — of course, the Court has already announced it is disposed to rule very liberally on both sides as to testimony, but there does seem to be some limit, so the Court cannot go

beyond that and wholly ignore the rule of the Court. If you can show expressions of hostility or personal hostility to the defendant here, that is original evidence, but anything that discredits the witness generally you are confined to getting out of his own mouth."

Therefore, this testimony, bearing upon the credibility and the motive of Peck, was ruled out as collateral, because we did not first cross-examine him upon those points. For that reason we were not allowed to go into affirmative proof upon that subject. According to our opponents' contention, however, they may convert into a substantive claim against us, the charge that we have been guilty of a crime under section 813, in attempting to incite the witness Peck to commit perjury. And yet the Court holds that we cannot go into proof to contradict this man, to show his motive, and to prove that his testimony was false, by circumstantial evidence, because it is collateral. Hence we find our lips sealed, we are precluded from defending ourselves, from going into evidence upon that subject; and our friends here, at the latter end of the day, after the twelfth hour, are privileged to come here, or at least seek to come here, for the purpose of converting this case into an entirely different one from what it has heretofore been considered by this Court, and of converting into a substantive cause for impeachment a matter as to which his Honor, the President, has held, this Court sustaining the ruling, that it is but a collateral matter. Certainly if this is a matter of substantive right, certainly if it is a substantive charge, then it would be most extraordinary if we were tied hand and foot and were precluded from going into proof with regard to it, although our friends now claim it to be of the utmost moment. Why, they have gone so far as to say that this is subornation of perjury, a felony which is punishable by one-half of the punishment which is to be accorded to one who has committed the full-fledged crime of perjury; and yet they assert at the same time that this is not changing the cause of action or the nature of the charge set forth in the fourth article.

Counsel's argument confounds his contention, refutes everything that he has said.

Even when properly admitted, such evidence as that of Peck is not conclusive with respect to the charges to which it is addressed. That is well shown by Judge Vann in the Nowack case. It is also well expressed in 4 Elliott on Evidence 2724, where, speaking for illustration with reference to evidence of flight, the author says:

> "Proof of flight does not of itself, apart from the motive, necessarily cause any presumption of guilt, but the motive may be inferred from circumstances, and flight to avoid arrest, etc., is a circumstance to be considered along with the reason which prompted it, together with the other evidence in the case, and may lead to the inference of guilt."

This is strongly sustained by authoritative decisions: Ryan v. People, 79 N. Y. 593; Hickory v. U. S., 160 U. S. 408; Alberty v. U. S., 162 U. S. 499.

In the present case it may also be useful in passing to comment on the fact that a different rule of evidence applies to the establishment of a charge of perjury or subornation of perjury, from that applicable to section 814 of the Penal Law, for as to the former crimes it has been decided in People v. Evans, 40 N. Y. 1, that they cannot be sustained by the evidence of a single uncorroborated witness.

On the general subject of proof of other offenses, even as bearing on scienter, it may be well for this tribunal to ponder the latest decision of the Court of Appeals on that subject — People v. Pettanza, 207 N. Y. 562 — which has been fully referred to in the argument of Judge Herrick. But without prolonging this argument, we contend that to convert testimony received for evidentiary purposes into a substantive charge, and to consider it ground for impeachment, either under the articles as framed by the Assembly or under an amendment permitted by this Court, would deprive the respondent of due process of law, and would utterly obliterate all the landmarks of the law, a possibility the mere contemplation of which makes one shudder. And I merely ask your Honors, in conclusion, to compare the charge as it is set forth in the fourth article of these impeachment articles, as found by the

Assembly and as presented at the bar of the Senate and as served upon the respondent, and as to which he was invited to go to trial, with this altered, changed, amended article 4 which states an entirely different cause for complaint. The mere putting them in juxtaposition in deadly parallel columns must forthwith settle the question now under discussion.

Mr. Stanchfield.— The reply which the board of managers will tender by me as their spokesman will necessarily be brief. It may be that we were guilty of a lack of perspicacity in not making a fuller and more complete argument with reference to the sufficiency of article 4 in the impeachment. Our attention, by the peculiar phraseology of the question as submitted last evening, ran rather toward the proposition involved in the suggestion as to whether or no this Court possessed the power to amend these articles in any particular.

We were not unmindful, nor unaware, of what has been said upon the subject of an amendment of these charges at page 562 and 563, by the Presiding Judge, and in order to make more lucid my argument as it continues, I purpose to read what he said at that time and place:

> "The President.— My opinion is that this evidence should be admitted. I agree perfectly with the contention of the counsel for the respondent that there can be no amendment made in an impeachment trial that would bring in a new and different offense because the sole power of impeachment is in the Assembly."

Near the bottom of page 563 the Presiding Judge continued:

> "This is not to be construed with the absolute strictness of an indictment in a criminal case. It does not matter particularly who was the owner of the property; and my notion is that articles of impeachment are not to be construed and judged in the same way that you would articles of indictment. They ought, of course, to conform to the requisites of substantial justice."

And it is upon that general principle and in harmony with the view there expressed by the Presiding Judge of this Court, that we have predicated our argument with reference to the right to make the amendment in form and substance, as was suggested during the progress of the discussion this morning.

There are numberless cases that hold, if any citation of authority is asked at our hands, that the number of a section is a matter of the utmost immateriality and inconsequence; it is not of the slightest concern from a judicial point of view if a pleader designate an indictment as having been found under one section when in fact it was found under some other section. In that regard the sole and only test is whether or not the acts alleged in the charge broadly stated constitute an offense against the law. If they do, it is a matter of inconsequence that the pleader has drafted the instrument under a section erroneously named or numbered. We do not, and I did not in the argument made this morning, intend in any way to concede or admit the insufficiency of article 4. The basis of my argument was that if it appeared to this Court that in any respect or aspect, or from any angle, article 4 was insufficient, there was lodged in this Court and existed in it the power by any amendment that did not change the nature or the character of the crime, by any amendment that was not substantive in its character, to so amend and so change it.

Let me call your attention to just what the circumstances are under article 4 with reference to the witness Peck in the form in which the article now stands.

It does state in terms that the suppression of testimony was to be brought about by fraud and deceit, likewise by threats, menaces and violence. What is a threat? One need not in words express a determination to do a certain thing to another in order that it shall import a threat or a menace. It may be conveyed in manner by atmosphere, by the attitude in which a remark is passed.

Let us locate for the passing moment in the executive chamber below, Peck, standing side by side with the respondent and going through the conversation that it is not necessary to repeat in your hearing.

The respondent was the Governor of the State. Mr. Peck was the Superintendent of Public Works. Under paragraph 3 of

article 5 of the Constitution of this State, this was the relation between this respondent and Peck in that remarkable conversation: "He," that is the Governor, "shall be charged with the execution of certain laws." "He," the Superintendent of Public Works, "may be suspended or removed from office by the Governor whenever in his judgment the public interests shall so require, but in case of the removal of said Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the causes for such removal, and shall report such removal and the causes therefor to the Legislature at its next session."

In other words, the respondent possessed at the time when this conversation took place the absolute, unquestioned, undisputed power to remove the superintendent, without the preferment of charges, without any opportunity to be heard in his defense.

Therefore, it is not a far cry to say, when you view that remarkable conversation in the terse way in which it was related by Mr. Peck, that he felt in every word that passed from the Governor to him there was a threat and there was a menace. Therefore, as is suggested here, when that conversation culminated, "Do as I do," it is not at all strange that Mr. Peck was disturbed.

Therefore, I repeat, there has been no argument made here, and we do not now admit or confess the insufficiency of article 4. You are the triers of fact, and I submit to you as a jury might here in an ordinary trial the argument that in that entire interview there are all the outward indicia of a desire on the part of this respondent to coerce, to intimidate, to control and to dominate the will and the word and the oath of the Superintendent of Public Works by any and every means at the power and the disposal of the respondent in this proceeding.

The President.— That is going beyond the question, and rather to the merits of the case. The question is not whether there is enough evidence to bring it in, but the question read is, if there is substantially in fact any lack of power, not the fact of lack of merit.

Mr. Stanchfield.— The argument I am making, if the Presiding Judge please, is that that language is susceptible of translation into either the word "threat" or the word "menace."

The President.— That is really not the point. Here the question is whether that can be considered as a substantive charge under article 4. It is not whether the evidence is sufficient to sustain it. You can argue, of course, the article is broad enough to include it.

Mr. Stanchfield.— If it be true, as I was contending before this tribunal this morning, that among others it ought to be construed to include the witness Peck —

The President.— That is the point.

Mr. Stanchfield.— It is broad enough to include the witness Peck, then I insist as to whether or no article 4 is sufficient I have a right to argue here whether or not the circumstances environing that interview and the conversation that passed constituted within the meaning of the law a threat or a menace.

The President.— I do not think so, Mr. Stanchfield. I think that goes beyond the inquiry.

Mr. Stanchfield.— I, of course, shall accept —

The President.— It seems there is a distinction between the two things. If you urge, and you may urge that under that article you can show that he was affected by some threat or deceit, that is one proposition. The other proposition is that the respondent sought to get Peck to commit perjury. You can argue, of course, that such a proposition would be also included. It is as to that that the inquiry is directed.

Mr. Stanchfield.— The last suggestion from the Presiding Judge is in harmony with the line of argument I was advancing, and I would supplement the suggestion with the statement that in the relations that existed between the two, the one the superior, the other the inferior, that the suggestion conveyed from the superior to the inferior that he commit wilful and deliberate perjury carried with it of necessity the meaning and significance to Peck's mind that there was sought to be put upon him the influence and power of removal as embodied in the respondent in this case.

You ought not for a moment to be influenced in your determination upon this question by any reference whatever to a statement by Chief Justice Church upon the trial of the Barnard case.

The question of the right to amend — I am stating this with absolute accuracy — the question of the right to amend was never before that court. The motion upon which the language to which your attention has been called was used was a motion made in behalf of Judge Barnard by Mr. Beach, to the effect that certain portions of an article be stricken out.

And in response to his argument in that behalf the language attributed to Judge Church was used, in other words, that they had no right to entertain such a motion, and as a necessary corollary they had no right to amend; in other words, our argument runs back to the proposition whether in the amendment we seek not in the nature of an argument, but in the nature of a motion to conform the pleading to the proof, embodies a substantive change in the nature and the character of the offense that is laid at the respondent's door. Judge Herrick in his argument here has not met that question; he has not answered the argument that we tender; he takes the position, and over and over again reads from section 813 and says that it relates to a person who attempts to procure another to commit perjury. Well, it does, but that is not all of it. Now, I am going to read again that section:

> "A person who incites or attempts to procure another to commit perjury or to give false testimony as a witness, or to withhold true testimony is guilty of a misdemeanor."

So, section 814:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence to prevent any person from disclosing facts material to a proceeding."

And I repeat again that it is a superrefined mind attuned to an intellectual nicety that can say that those sections relate to different offenses. They both have to do and to deal with the suppression of testimony, with the withholding of true evidence. With one it is the withholding of true testimony. With the

other it is to prevent a person from disclosing testimony. They are not independent offenses. They relate to the same kind of an offense.

And when we seek here in a pleading to conform the pleading to the proof that has been introduced, we ask nothing more in the language used in the 196 N. Y., than to amend in regard to inconsequential details.

The impression was conveyed here that the 196 New York was a controlling authority. The indictment was larceny. The facts disclosed embezzlement, and the amendment was to change facts into an allegation to meet the proof. In other words, it was an effort to indict a man for one crime, and try him and convict him for another. I make no such contention here, and even upon that bald amendment Judge Werner and Judge Haight dissented upon the express grounds that in section 293 the court had the power to grant that amendment. There were two, including a present sitting member of this Court, who dissented not on the case at large, but upon that express proposition that that Code gave the right of amendment. It is not necessary here to discuss the question as to when the testimony given by Mr. Morgenthau occurred. We are interested in this informal inconsequential amendment to reach the evidence of Mr. Peck. It is very true that the Morgenthau episode happened long after these charges were formulated, as Judge Herrick says. That does not alter the fact that the testimony that Mr. Morgenthau gives, like the testimony that Mr. Ryan gives, is corroborated evidence as to the testimony that Mr. Peck gives. In other words, I have not the slightest concern whether you leave in that amendment the name of Mr. Morgenthau. I am simply concerned about the insertion in the amendment as we propose it of the name of Mr. Peck because it came at a period of time that renders it relevant and material. It is upon its face an offense of so much gravity that in the interest of the administration of justice we have the right to appeal to the power of this Court to insert it if there be authority and reason for the proposition.

The substantive offense charged in article 4 is not the subornation of perjury so far as the witness Peck is concerned, but

it is in the technical language applicable to the statute under which it has been drafted the preventing of the disclosure of testimony by either of the four methods named, either by deceit or by fraud, either by threats or by menace; and Peck is included, as we translate and construe that language under the words "and all others."

We have endeavored here for the benefit not only of this trial, the board of managers and the respondent, to secure this amendment in the interest of the administration of justice. If it should be held by this Court as a court that the fourth article is insufficient upon its face, if it should be held by a majority of this Court that the amendment that we suggest changes the form and the character and the nature of the offense so that we are seeking to charge a new crime, so that it appears that we are endeavoring to have you act as the impeaching power of the State, if all those things are resolved against us upon this line of argument, then the board of managers suggest that the matter ought by this Court to be sent back to the Assembly for such other and further action as they may deem appropriate in the premises.

The President.— Gentlemen, the matter before the Court is resolved into two questions. Of course, the question whether under the articles of impeachment as they stand now, the conversation to which the witness Peck testifies can be considered as a substantive offense is one that will have to be determined when you finally determine the merits of the case, but there is also here an application to amend the articles and also a request here for the Court, to use the expression of the counsel, to send it back to the Assembly or give it notice. That will have to be determined now and before we proceed further in the case.

Senator Brown.— I arise, Mr. President, because there is a feeling on the part of the Court that before the matter is decided, there should be an opportunity for private consultation, and I so move.

Mr. Brackett.— Mr. President, just a moment, if Mr. Stanchfield may say a word before the motion is put.

Mr. Stanchfield.— I would like before that motion is put, if the Presiding Judge please, to call the attention of the Court to two sections of the Code of Criminal Procedure which are analogous to the situation that confronts us here. I read first section 400:

> "If it appear by the testimony that the facts proved constitute a crime of a higher nature than those charged in the indictment, the court may direct the jury to be discharged and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on or admitted to bail to answer any new indictment which may be found against him for the higher offense."

Section 401:

> "If an indictment for the higher crime be dismissed by the grand jury or be not found at or before the next term, the court must again proceed to try the defendant on the original indictment."

Mr. Marshall.— May I ask whether that means that counsel has moved to dismiss article 4 as it now stands?

Mr. Stanchfield.— Not today.

Mr. Marshall.— I wanted information on that point.

Mr. Stanchfield.— I trust you got it.

The President.—All those in favor of Senator Brown's motion that the Court proceed to private consultation, please say aye. Opposed, no.

Motion carried.

The President.— The Court will be cleared.

Judge Hiscock.— Presiding Judge, the question has been asked by the counsel while you were out, whether it was desirable that they should remain within close distance while we were engaged in these deliberations. Of course none of us felt like answering that question while you were away, although some of

us did believe that in view of the lateness of the hour we would probably not get further than the consultation.

The President.— We might make a disposition which you would want to hear at the time. I think it is always prudent for the counsel to be near the Court. At least that was my practice when I was at the bar and the jury were out.

Mr. Herrick.— I suppose there is no use staying beyond 5 o'clock.

The President.— It is entirely for you to determine.

Mr. Herrick.— There is no use of our staying beyond 5 o'clock, is there?

The President.— I suppose not; I should not think so.

The Court thereupon went into private consultation, and emerged therefrom at 5.20 p. m., to meet again Wednesday, October 15, 1913, at 10.30 a. m.

WEDNESDAY, OCTOBER 15, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10.30 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

The President.— Gentlemen, the Court is still in private consultation.

Mr. Brackett.— May I make a suggestion on an insignificant matter — on the matter of revising. I want to call it to the attention of the Court so in case it wants to take any action it will do so. A stenographic report of necessity is more or less incorrect in some grammatical and verbal details, and I merely want to call it to the attention of the Court so that if it wishes to take any action, that there shall be a committee or someone to look after the matter of revising. I know that we on our side, in not changing at all the substance of what is said, would like to revise for verbal errors, and I do not doubt but that counsel on the other side would wish to do the same thing.

Mr. Herrick.— We acquiesce in that and would like to have it.

The President.— I think that it would be preferable to have it done not only for counsel but for some of the members of the Court. Certainly I prefer to have the minutes revised of my remarks during the course of this trial, and I have not had time to examine into the record.

Mr. Herrick.— I hope you will.

The President.— Now, gentlemen, the Court is still in private consultation.

Mr. Brackett.— My associate asks if this compilation — he says that it has been submitted to the Court — that it should be made a part of the record. I think there is no —

The President.— Can't we have all that done when we get to the close of this trial?

Mr. Brackett.— Yes.

(The Court thereupon went into private consultation.)

At 12.45 p. m. the Court adjourned to reconvene for further private consultation at 2.15 p. m.

AFTERNOON SESSION

(The Court resumed the executive session at 2.15 p. m., and then continued the private consultation until 3 p. m., at which time an open session was had, with the following proceedings:)

The President.— Gentlemen, the Court announces that the application to amend the articles of impeachment has been denied, and the Court has decided that article 4 is broad enough to permit consideration of the Peck instance as the basis of a substantive charge.

Now, we will resume, I suppose.

Judge Werner.— I move we now resume our private consultation on the merits of the case.

The President.—All in favor of that will please say aye; opposed, no. Carried.

The Court went into private consultation at 3.05 p. m., continuing until 7 p. m., at which time an adjournment was taken until Thursday, October 16, 1913, at 10.15 a. m.

THURSDAY, OCTOBER 16, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10.15 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

The President.— Gentlemen, before the Court proceeds to private consultation, the Presiding Judge desires to make this announcement, to correct any misapprehension.

In the Barnard case, the vote was taken in private consultation. It is not the intention of the Court to take the vote in that manner in this case. The vote will be taken in public. What is going on now is simply a private consultation between the members of the Court to formulate their views which will determine their final action. It is simply the same as in every other Court which is composed of more than one person, where the question is of sufficient gravity to consult. This is practically a consultation of the Court that is now going on, the same as it would be if it were a case in the Court of Appeals.

The Court will now resume its private consultation and the floor will be cleared.

(At 10.25 a. m. the Court went into private consultation.)

(At 1.10 p. m. an adjournment was taken until 3 p. m.)

AFTERNOON SESSION.

Pursuant to adjournment, the Court convened at 3 o'clock p. m.

The roll call showing a quorum to be present, Court was duly opened.

The President.— The next proceeding in order is the final decision of the Court on the articles presented by the Assembly against the respondent. Under the rules each member is required to rise in his place and give his vote. Preceding that, however, the clerk reads the article of impeachment. The clerk will now proceed to read the first article.

The Clerk.—Article 1. That the said William Sulzer, now Governor of the State of New York, then being Governor-elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to file in the office of the Secretary of State within twenty days after his said election, a statement setting forth all the receipts, expenditures, disbursements and liabilities made, or incurred, by him as a candidate for Governor at said general election at which he was thus elected, which statement the statutes required to include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the person or committee to whom it was made and the date thereof, and all contributions made by him.

That, being thus required to file such statement, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under said statutes made and filed in the office of the Secretary of State what purported to be a statement made in conformity to the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit: That all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic party for the office of Governor of the State of New York, in connection with the general election held in the State of New York on the 5th day of November, 1912, were receipts from 68 contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred twenty-four and nine one-hundredths ($7,724.09) dollars, the detailed items of which were fully set forth in said statements so filed as aforesaid.

That said statement thus made and filed by said William Sulzer as aforesaid was false, and was intended by him to be false and an evasion and violation of the statutes of the State, and the same was made and filed by him wilfully, knowingly and corruptly, it being false in the following particulars among others, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2,500
Abram Elkus	500
William F. McCombs	500
Henry Morgenthau	1,000
Theodore W. Myers	1,000
John Lynn	500
Lyman A. Spalding	100
Edward F. O'Dwyer	100
John W. Cox	300
The Frank V. Strauss Co	1,000
John T. Dooling	1,000

That in making and filing such false statement, as aforesaid, the said William Sulzer did not act as required by law, but did act in express violation of the statutes, and wrongfully, wilfully and corruptly, and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement thus made and filed by him caused great scandal and reproach to the Governor of the State of New York.

The President.— Senator Argetsinger, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Argetsinger.— I hold that any candidate for the great office of Governor of the State of New York, as a candidate, is morally responsible to a certain number of the electorate thereof, and after he has been elected Governor, he is responsible to the entire electorate. I find that the acts of integrity and immorality are so closely allied in the case of Mr. Sulzer, before January 1, 1913, with those after January 1st, that I am unable to divorce the two.

I therefore vote guilty.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Bartlett.— On this article I vote not guilty, on the ground that the acts charged therein, although, in fact, committed by the respondent, do not constitute a valid cause for impeachment, under the Constitution and laws of this State. In accordance with the precedents in impeachment cases, I have prepared, in the form of an opinion, a short statement of the reasons for my vote.

These reasons are familiar to all the members of the Court, because they were made acquainted with them in the course of our consultation, and I do not propose to take up the time of the Court now in reading this opinion, but will ask leave to file it with the clerk, and that it be made a part of the record as explanatory of my vote.

I will only state briefly that my position is that, under the existing Constitution, the power to impeach does not apply to any acts of misconduct committed when the accused person was not in office. I agree that the statute, upon a violation of which this article is based, required the respondent to file a statement of his campaign expenses; but, as I read the election law of that statute, either by failing to file the required statement, or by filing a false statement, it does not constitute a crime. The requirement to file such a statement does not apply merely to officers elected, but to all candidates.

In the last election it applied to Mr. Straus, Mr. Hedges and Mr. William Sulzer. It seems to me it is going too far to say that this violation of this statute had any such application or relation to the office of Governor, any such application as will enable us to hold that his misconduct in this respect constituted misconduct in office.

(The following opinion was filed by Judge Bartlett:)

The responsibility which rests upon us is so solemn and the consequences of what we do here today are likely to be so influential and far-reaching that I deem it my duty, in accordance with the precedents in cases of impeachment, to state briefly the reasons which have led me to the conclusions which I have reached.

Upon article 1, I vote not guilty; on the ground that the acts charged therein, although in fact committed by the respondent, do not constitute a valid cause for impeachment under the Constitution and laws of this State.

Prior to 1846 it was perfectly clear that an officer could be impeached only for misconduct in office. The Constitution of 1777 authorized impeachment of civil officers of the State only "for mal and corrupt conduct in their respective offices." The Constitution of 1821 granted to the Assembly "the power of impeaching all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors." In the Constitution of 1846 the provision relative to the power of impeachment was changed and made more general, so as to read: "The Assembly shall have the power of impeachment by a vote of a majority of all the members elected." This provision was retained without alteration in the present Constitution, adopted in 1894.

The Revised Statutes of 1830 contained the following provision in exact accordance with the particular provision relating to impeachment in the Constitution of 1821: "The Assembly has the power of impeaching all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors." This law remained upon the statute book unchanged, notwithstanding the adoption of the Constitution of 1846, for many years thereafter; and it was followed in 1881 by the enactment of section 12 of the Code of Criminal Procedure, which reads as follows: "The Court for the Trial of Impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the State except justices of the peace, justices of justices' courts, police justices and their clerks, for wilful and corrupt misconduct in office."

The change in the Constitution effected in 1846 by granting to the Assembly the power of impeachment in general language without indicating what should constitute valid and sufficient cause for impeachment, renders it necessary to inquire what was the purpose of this alteration in the fundamental law. Was it tantamount to a declaration that in the matter of impeachments the common law of England (including that portion thereof ordinarily known as the Law of Parliament) should become and be the law of the State of New York? Or was it a recognition of the existing provision

of the Revised Statutes limiting impeachable acts to misconduct in office, leaving to the Legislature the power to add other causes of impeachment if it saw fit?

Personally, I am inclined to think that the latter view is the correct one. But even if the Constitution of 1846 operated as an adoption of the English common law of impeachment so far as that law applies to civil officers, it does not, in my judgment, suffice to render the respondent amenable to this Court for acts committed before he became an officer of the State and which had no relation to his office. The statute which the first article charges him with having violated is section 546 of the election law contained in what is known as the corrupt practices act. I agree that this section requires candidates to file statements of their campaign receipts; but as I construe the subsequent provisions of the election law, they do not make it a crime to disregard this requirement or file a false statement. We have, therefore, simply a noncriminal violation of a statutory provision, which provision is not restricted in its operation to officers-elect but applies equally to all candidates whether successful or unsuccessful. The obligation to file a truthful statement of campaign receipts was imposed by law upon Oscar S. Straus and Job E. Hedges just as much as upon William Sulzer. Indeed, it was imposed upon the hundreds of other persons who had been candidates for various offices throughout the State at the general election last year. I cannot perceive how a neglect to comply with the statute in this regard can be considered as official neglect in any respect whatever.

One of the highest authorities on American constitutional law, the late John Norton Pomeroy, in discussing the question of the lawful grounds of impeachment, has said: "As the punishment to be inflicted has reference solely to the offender's official position, so the acts for which that punishment was deemed appropriate must have reference directly or inferentially to the offender's official duties and functions." (Pomeroy's Constitutional Law, Bennett's ed. 601.)

There is no instance on record in this country where an officer has been removed from his office by impeachment for acts done when not in office. It is true that impeachment proceedings have been held to be maintainable for misconduct committed in a pre-

vious term of the same office or a similar office; but this is the limit which finds any justification in the precedents to which we have been referred.

The omission in the present Constitution of any statement of the acts of misconduct which should constitute cause of impeachment manifested an intent on the part of the framers of the Constitution to leave these causes to be ascertained by reference to some other legal authority outside that instrument. I cannot believe that it was intended to leave the definition of impeachable offences wholly to the arbitrary discretion of the Assembly or of the Court for the Trial of Impeachments — in other words that the Assembly possesses an unlimited power of impeachment for any cause it sees fit while the Court of Impeachment may likewise convict and remove for any such cause. We have to go back more than five hundred years in the history of English jurisprudence to find support for this view. In 1388 the House of Lords repudiated the authority of all law whatever concerning impeachments except what it called the Law of Parliament; a phrase for that which Parliament judging *ex post facto* might deem reasonable. "In other words," says Sir James Fitzjames Stephen, "their claim was to be at once accusers, judges and *ex post facto* legislators with regard to the exigency, real or supposed, of the particular case before them." The same high authority declares that this "great evil" was abolished by the statute, 1 Hen. iv, c. 14 which in substance required that impeachments should be tried and determined by the Law of the Realm, that is, the common law. (1 Stephen Hist. Criminal Law of England, 156.) It is inconceivable that the framers of the New York Constitutions of 1846 and 1894 intended to restore in this State a theory of impeachment which was thus abolished by statute in England five hundred years ago.

Rejecting this view as wholly untenable, it follows that the effect of the change in the language of the New York Constitution originally made in 1846 must have been, as I have already suggested, either to leave the power of defining causes of impeachment wholly to the Legislature or to restore in this State the common law of impeachment as it existed in England after the enactment of the statute 1 Hen. iv, c. 14. Whichever of these alternate views be adopted, either leads to the conclusion, in my

judgment, that there is no power to impeach for misconduct on the part of a civil officer committed prior to his entry upon the duties of his office.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Blauvelt.— Mr. President, I have no hesitancy in disagreeing with the conclusion reached by the learned justice who has just preceded me. I have as great respect as he for the traditions and historic precedents of the past, but in times of dire public need those precedents and those traditions must be brushed aside when the public good demands it, provided no inherent constitutional right is invaded. I feel that such an occasion now confronts us.

The respondent has concededly admitted not only a great moral wrong toward the people, but serious statutory offenses as well. Should he escape punishment because those acts intentionally and wrongfully done were committed only a few days before his induction into the highest office within the gift of the people of this State? I think he should not, unless some right which the Constitution of the State accords him is violated. I can find, sir, no constitutional provision which protects him. The Constitution is silent as to what shall constitute impeachable offenses.

In 1881 the Legislature sought to define and limit it to mal and corrupt conduct in office. The Constitution of 1894 disregarded the limitations of 1881 and in my opinion left it to the Assembly and to this Court whether or not offenses committed before a successful candidate took office should be ground for impeachment. Even though the limitations fixed by the Penal Law are included in the statute, I do not think they are controlling or binding upon us. The highest court of this State has repeatedly held that the Legislature cannot enlarge the provisions of the Constitution. That being so, how then can it abridge them?

Having in mind that the dignity of the State may be maintained as much by obedience to statute and moral laws as to the observance of traditions and precedents, I find the respondent morally unfit to occupy and fill the office of Governor and guilty, sir, of all the acts charged against him in article 1.

The President.— Senator Boylan, how say you is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Boylan.— Mr. President, as a lay member of this Court I have been unable to separate when the acts of a candidate should be dissolved from those of an elective officer. When a man is nominated and receives the designation as choice for a high office or for any office, I believe that the acts that he commits during the period of his candidacy are connected with the discharge of the office itself. We have during the past few years not only in this State but in the entire country, amended the corrupt practices act in order that the people not only of this State but of other states where the act is in operation, might know exactly who pays the bills, who finances the expenditures of a campaign.

The respondent took great credit to himself in stating the part that he had taken in the national halls of legislation toward perfecting this act. He also sent a message to the Legislature of this State requesting that it be strengthened. If a man commits misdemeanors while a candidate and if after he is elected he can plead that they were committed while he was a candidate and that he cannot be impeached, what redress have the people?

I believe that the respondent in making his statement was fully aware of the statement. I believe that not only from the position that he took in having it introduced and strengthened, but also as an attorney he knew in making the statement that he violated the law. I believe, Mr. President, that the respondent is guilty as charged under article 1 of the impeachment articles.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Brown.— I beg leave to read my opinion.

(Reading):

No one with a just appreciation of the solemn duty now resting on us can approach final judgment in this case without regret; regret for the events that have led to this trial, regret for the revelations of the trial itself, and regret that the duty could not have been performed by another.

Speaking for myself, I would that there was any justifiable ground to have withdrawn from the Court, as I was moved to do, because it had been my duty during the present administration to lead the opposition in the Senate and there have been at times sharp conflict. On more than one occasion I was indignant at the Governor's language and acts, but the Constitution imposes the duty upon the members of this Court without regard to previous bias. If bias were an excuse for withdrawal the Court might not be able to organize by a quorum. Offences for which the Court was summoned might be so public and flagrant that every member of the Court would be prejudiced in advance. This is illustrated in the impeachment of Andrew Johnson and in fact has been illustrated in greater or less degree in all famous impeachment trials.

The Court is organized rather upon the faith of the framers alike of English law and American Constitutions and upon the faith of the English speaking peoples that the highest legislative body in the State can be relied upon not to destroy the government which, for the time being, they hold in trust.

In this State there are added precautions against hasty or prejudiced action by requiring a two-thirds vote of the Court after its membership has been increased by judges of the Court of Appeals, but over and above these precautions the Court is organized upon the faith of our fathers that the highest representative body of the State would scorn to be guilty of a breach of trust that would be a blot on the fair name of the State.

The individual might fail, but so long as the State was worthy of preservation, at least one-third of its highest representative body would be obdurate to wrong. What man so petty, be he a member of this Court or not, that he can stand singly in this presence and after taking a solemn oath to do justice and hearing the evidence, vote out of revenge or prejudice or hate? Whom have the people chosen as judges and senators that their individual oaths, the solemn obligations that never leave the minds and hearts of the members, will not guide and control them in the performance of the highest public duty it might ever be the lot of any of us to perform? If there be wavering or doubt in the public mind as to the fairness of this Court or any of its members, the doubt can be resolved, not by weakly shirking the duties or by

consulting public opinion instead of the evidence, but rather by a faithful discharge of the judicial function, and free ourselves, if need be, by extreme effort, of all personal consideration. And I wish in this connection to acknowledge the great assistance afforded the members of this Court by the searching and masterly analysis of methods and environment by Judge Herrick.

The question at the threshold of the inquiry relates to the power of this Court to consider an impeachment for acts done before the respondent was in office. As I read the impeachment provisions of the several Constitutions of the State, I am persuaded that the framers of the Constitution of 1846, which contains the impeachment provision now in force, expressly removed the limitation contained in the earlier Constitutions, and that then, as now, the sole charge is whether or not the offense is an impeachable one. I should still be unwilling to consider as the ground of impeachment offenses remote in time, or which by fair intendment were passed upon by the electorate that chose the public official. But offenses committed in election to office, whether they be indictable crimes or offenses, or only offenses shocking to the moral sense of the community, are fairly within the terms of the Constitution and which may be in a sense considered as done in office. Every day a public official is in office he holds it by virtue of his election, and if in securing that election he secretly committed crimes or moral offenses, or both those crimes and offenses, he is guilty of official misconduct. Any other rule would imperil the State. A judgment of guilty would not be a precedent for impeachment on the crimes and offenses created in obtaining office. The argument to the contrary leads to an absurd conclusion, namely, the establishment of facts rendering the respondent unfit for office, but retaining him in office for fifteen months. Who can contemplate without the gravest anxiety the position of the Commonwealth during that period? What effect will his continuance in office have on the ideals of the community? Think you that the members of our universities, as they recall Sidney and Vane, Roger Williams and Lord Baltimore, and the students in our public schools, as they ponder on the characters of Washington and Lincoln, will be restrained from abhorring a government which is powerless to afford them relief against such a calamity? The

answer that the period is brief is fallacious. How many of the youth of the State during such a period can be forever divorced from the public service of a state that keeps at its head during so long a time during the most impressionable period of their lives a Governor both impeached and convicted at the bar of public opinion before this Court has had an opportunity to come to judgment, and who dare not, from the weakness of his cause, appear in his own defense?

Although in the 138th year of its existence as an independent commonwealth, this is the first impeachment or attempted impeachment of a Governor. There has never been an indictment of any public official in this State involving the slightest scandal, and yet we are told to beware of a precedent that will permit an abuse of the power of impeachment in the future, though it has never been abused in the State's history, and the Legislature possesses now, as it has long possessed, the absolute power, for any cause and for no cause, of removal on joint resolution of many of the highest officers of the State, including judges of the Court of Appeals. The fear of these imaginary evils should be transferred to the present calamity..

The proofs of the violations of the corrupt practices act and the Penal Code in the matter of reporting contributions are overwhelming. Sarecky's testimony, instead of answering, confirms this. The omission of brewers' contributions, of Schiff's and Ryan's contributions could not be accidental, and the attempt to shield the respondent by the incredible suggestion of his ignorance of Sarecky's acts, would not, in the respondent's absence from the witness stand, be considered in any issue in any court. The testimony of Morgenthau, Peck and Ryan, stands unchallenged, save by the written answer of the respondent, which contained this sentence:

> "And filing the same, this respondent believed it to be a true and accurate account of the moneys received and paid out for his election expenses."

After the testimony of Morgenthau, Peck, Ryan and Schiff had been received, the counsel for the respondent moved to strike out from its answer the words "received and." The motion was granted, but the record of the false denial remained.

This Court has been so intent upon discovering for the honor of the State a weakness in the case of the managers, that we have all overlooked the great offense overlooked by the Governor in failing to appear and answer for his own honor and the fair name of the State.

Chief Justice Shaw has said, in Commonwealth v. Webster, when pretty stringent proof of circumstances is produced, tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show if such was the truth, that the suspicious circumstances can be accounted for consistently with innocence, and he fails to offer such proof, the natural conclusion is that the proof if produced, instead of repudiating, would tend to sustain the charge.

Under this principle of law, what shall we say upon the facts of this case is the inevitable conclusion arising from the absence of the party from the stand, who is the Governor of the State, who has served for nine terms in the National Congress, was speaker of the Assembly, and is a lawyer by profession? Mr. President, I feel constrained to vote guilty.

The President.— Senator Bussey, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Bussey.— Mr. President, as a lay member of this Court, I feel that it would be unbecoming in me to occupy the time of the session. In the private sessions which we have been holding, I gave my reasons for voting as I did. I see no reason now to supplement the reasons which I gave at that time. I, therefore, vote guilty.

The President.— Senator Carroll, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Carroll.— Mr. President, the charges contained in article 1 being uncontradicted by the respondent, stand upon the record of this proceeding as proved, and must be construed in that light. The board of managers contend that the filing of the statement by the respondent, William Sulzer, on or about the

13th day of November, 1912, pursuant to law, was false, and was intended by said William Sulzer to be false, and that the same was made by him wilfully, knowingly and corruptly, and was false in that the said William Sulzer had intentionally omitted from the said statement certain names of persons who contributed to him while a candidate for Governor.

The respondent has failed to take the stand in his own behalf and contradict the proof of the charges alleged in article 1, and the only question to be determined at this time is whether or not the said charges contained in article 1 come within the meaning of an impeachable offense. I have listened attentively to the arguments advanced in private consultation by the learned members of this Court who are jurists, and I have come to the conclusion that no constitutional rights of the respondent have been invaded in this proceeding and that the charges contained in article 1 are impeachable offenses as defined by the law of the land. I therefore vote that the respondent has been proved guilty of the charges contained in article 1.

The President.—Senator Carswell, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Carswell.—Mr. President, a more elaborate statement of the grounds upon which I place my vote will no doubt be filed by some other member of the Court, and, failing in that, I expect to file a more elaborate statement of my own, but, for the present, I wish to explain my vote in this way:

I have arrived at the conclusion that the correct interpretation of the grant of the power of impeachment now in our Constitution, viewed in the light of its historical development, is one that does not limit impeachable offenses to those committed in office. And, for that reason, I am constrained to look upon the set of facts which have been conclusively established to my mind, under article 1, as being an impeachable offense for the reason that I believe that, on authority and on principle, impeachable offenses are, by their very nature, not susceptible of exact definition, and, without viewing those acts in the light of whether or not they constitute a crime, I am satisfied they constitute a moral offense which reaches the dignity of an impeachable offense.

I do this by applying something of a test in my own mind as to whether or not the acts are not too remote from the time of the present inquiry in point of time, and whether or not the acts in their very quality are such as to show moral obliquity. Applying these two tests, I have arrived at the conclusion that the respondent has committed an impeachable offense under article 1, and therefore I vote guilty.

The President.— Judge Chase, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Chase.— Mr. Presiding Judge, I am of the opinion that the respondent should not be found guilty under this article of impeachment because the acts proven against him occurred prior to the commencement of his term of office. I have no doubt that the respondent is guilty of the immoral acts charged in the first article of impeachment, but I am in great doubt whether in view of the construction placed upon the Constitution of 1846 by the Legislature in enacting the Code of Criminal Procedure in 1881, and thus at least defining the power to impeach under the Constitution, the people intended by their approval of the Constitution of 1894 to grant power to impeach other than for wilful and corrupt misconduct in office.

I am clear that it is unwise for this Court to establish by precedent that an officer can be impeached for an offense, moral or criminal, committed prior to the commencement of the term of office of the person proceeded against. In my opinion, if this Court of Impeachment asserts jurisdiction to try the respondent for offenses committed prior to the commencement of his term of office, it necessarily follows that an officer can be impeached and the Court can try such officer for any offense committed at any time which in the supreme power of the Court it declares impeachable. It is of essential importance that the extraordinary power of impeachment should be confined within clearly defined boundaries and not left for determination by the Court for the Trial of Impeachments at a time when each member of the Court may be unconsciously or otherwise affected by his desire to accomplish a result in a particular case under consideration. The right to impeach should not be extended beyond the clear authority ex-

pressed by the people in their organic law. If the people hereafter want to give to the Assembly power to impeach an officer of the State for any immoral or criminal act committed before his term of office has commenced, they can do it as they can in all cases when changes are desired in our organic law by amending its provisions in the manner therein provided.

I concur in the statement of fact and the conclusions of law expressed in the opinion in part read and which will be filed by Judge Bartlett, and in the opinion of Presiding Judge Cullen, which I understand is to be read by him when his vote is taken on the question now before us, except that I do not concur in any statement of either to the effect that the Legislature may under our Constitution from time to time either increase or diminish the power of the Assembly to impeach, or that one of the important purposes of the corrupt practices act is not to secure publicity of contributions to candidates to office. For the reasons I have thus briefly stated, I vote on this article not guilty.

The President.—Senator Coats, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Coats.—As I understand the object or objects of the corrupt practices act or acts of the State, two of the principal ones are to require a candidate for office to file a statement and inform the public as to the means and the methods employed by him in his candidacy and to disclose the sources from which he has received financial assistance so that they may determine, if they see fit, as to whether he enters into the office heart free and honor free to serve the public impartially. In other words, the object of the laws is to require a candidate to reveal certain facts.

The evidence as to article 1 is undisputed; from the last day Governor Sulzer was required to file his statements of receipts and expenditures he has been guilty of concealing facts which the law required him to disclose. That concealment has continued from that day, so I think the question as to whether we can impeach him for acts committed prior to his getting into office does not obtain here. The act of concealment has continued down to date, and during every day he has been in office he has been guilty

of concealing from the people of the State the facts which they are entitled to know.

I vote guilty.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Collin.— Mr. President, I say guilty.

Yesterday I stated to all the members of this Court the reasons why I now so state and vote. Those reasons are familiar to them. Therefore, I do not deem it useful or necessary that I should here restate them, either in whole or in part.

By your leave, Mr. President, under the rule of the Court, I will file the statement, in writing, of those reasons.

(Judge Collin filed the following opinion:)

I cannot concur in or adopt the conclusion declared in the opinions of Judge Bartlett and Judge Chase. I will not undertake, at this time, to state or analyze the evidence that has been adduced upon this trial. I find that it is clearly proven that the respondent, William Sulzer, as a candidate for election to the office that he holds, appropriated large sums of money for uses and purposes other than those for which they were contributed to him, that he wilfully made a false statement of the sums contributed to him as such candidate and violated the statute of the State, that he made a false oath to that statement and committed moral, if not legal perjury, and that he attempted to suppress testimony. I hold that he lacks personal honor, integrity and regard for the nature and obligations of his oath. Judicial notice may be taken of the facts, for they are matters of common experience and knowledge, that honest and high-minded men in the various departments and institutions of the State and throughout the State will not willingly and frankly associate and confer with him and participate with him fearlessly and with confidence in the affairs of the State. As its Governor he is a menace to its welfare and tranquillity. One of the purposes of the power of impeachment is that an officer so characterized may be removed from the office which he holds.

We are told that we should not execute that purpose in this case because the lack on the part of the respondent of moral and mental characteristics which are essential to the safe and patriotic administration of the affairs of the State has been proven by his acts done before he actually took the office of Governor. We are told that if the legislative Assembly may lawfully and validly impeach an officer for acts done before he entered into the office they may, and perhaps will, impeach for sinister, corrupt or political motives and for acts which have no relation to, or connection with, the office or the duties, obligations or responsibilities of the officer; and that this Court should acquit the respondent upon the accusations of the articles of impeachment which involve acts committed prior to January 1, 1913, and establish firmly the precedent that a sustainable impeachment cannot be based upon acts done by a person before he took the office from which his removal is sought.

In support of such conclusions much emphasis and weight are given to the alleged fact that throughout the whole catalog of impeachments not one has been found for acts committed before the taking of office, or while the accused was not in office. Assuming that this is true, what is its just weight in this case? It is literally true that no articles of impeachment have been presented to an impeachment court in England or in the United States, based upon acts committed before the taking of office, and been held by the court to be invalid or insufficient. There has been no decision or judgment of any impeachment court that an officer may not be impeached for acts done before he actually took his office. A very eminent and modern writer upon the law of impeachment (Professor Thomas of Arkansas University) said: "It must be shown that some cases occurred in which they were charged with high crimes and misdemeanors not committed in connection with their offices and that Parliament expressly refused to impeach them." The truth undoubtedly is that never before in England or the United States has a state of facts arisen similar or analogous to the facts here. Corrupt practices acts are new and strictly modern. Until a few decades ago the amount of money a candidate or his party received or spent, the sources from which it came, the purposes for which and the

intent with which it was contributed, were universally deemed of no concern, interest or importance to the State or the citizens. Obvious and dangerous evils springing from the nature of the contributions for campaign purposes, their amounts, purposes and manner of use caused the destruction of this tradition or indifference and a complete change in the attitude of the people, and the provisions of the election law and corrupt practices act relating to those matters are the result. The purposes of those provisions are, speaking generally, three: *First,* to prevent actual corruption in elections through the trafficking in votes and in similar ways; *second,* to limit the expenditures of candidates themselves in order, among other reasons, that there may not be too great an inequality of opportunity between the candidates having large and those having small means; and *third,* to secure full and complete publicity of all, actually all, the contributions from any source to any recipient for campaign purposes, in order, among other reasons, that all the influences over or upon the candidate elected while he is in office through obligations, gratitude, or profit and personal advantage, and whether or not the contributions in their duplication to the opposing candidates suggested or indicated sinister and malign motives and intent, should be exposed to and discernible by the public. To accomplish these ends it was obviously necessary that the defeated candidate should make the required statements. A contributor to two or more parties or the opposing candidates of two or more parties would remain undisclosed were the statements required of the successful candidate only. Of these three purposes, that which requires full and complete publicity of campaign contributions is probably the most protective of the public good and the most salutary. It tends to guard the candidate against placing himself under influences wholly indifferent to the welfare of the State and selfish or insidious, or to make idle and ineffectual throughout his official term those influences, by exposing them. It is throughout the term of office a shield and a check to official conduct. Its purpose was not to prevent the candidate from misappropriating the contributions. Such purpose did not enter into its origination. The purpose of it was to aid the officer throughout his official tenure in remaining free from, or

to strengthen him, through fear of accusation and exposure, against dishonest or unfair conduct in all the matters of administration and legislation. It attaches itself to and is connected with the officer rather than to the candidate or his election and in purpose and effect supplements the oath of office. It had no prototype, it sprang from modern conditions and was new and original in substance and form.

New social and political conditions and tendencies require the new application of old principles or the creation and application of new principles, thereby begetting new precedents. If the permanent and the real welfare of society demand new principles and precedents, which the people by their paramount and irrefragable Constitution of the State have not forbidden, it is the duty of the Legislature and the courts to fulfil that demand. If the welfare, prosperity, tranquillity and honor of the State demand the removal of the respondent from his office, the fact that a new precedent is established in doing it, should not make this Court dishonor that demand unless the precedent constitutes an evil and risk greater than that of which we relieve the State. What is the precedent to be by us established? It is, that the Impeachment Court may remove an officer whom it finds unfit to hold and fill the office, as proved by his acts done in the process of securing his office and which acts affect and are connected with his conduct when elected to the office. If the unfitness of the respondent had been proved by acts of the same nature and revealing the same lack of moral sense and character, done after he took his office, the necessity for and justice of his removal would be manifest. Wherein lies in this precedent any hazard or danger to the State? Wherein lies the danger of injustice to the accused? There has been revealed to me no true, reasonable or rational ground for concluding or fearing that any danger lurks in the precedent that the present unfitness of an officer may be proven by his acts connected with and relating to his office and affecting and influencing his official conduct, although they antedate the actual taking of the office. To hold that he is now unfit to hold the office and cannot be removed because the proof of his unfitness arose before he took office, is a lamentably inadequate and impotent conclusion.

And what of that conclusion as a precedent? Is it not dangerous that this Court should itself create a limitation upon itself, prohibiting it from protecting the State and punishing the guilty because a like or analogous state of facts has never before been presented to an impeachment court? Such a precedent does not promote or sanction justice, security or right. It makes form superior to substance and that which is incidental dominant over that which is vital.

A few words as to the argument that the proof of grounds for removal by acts done before the office is assumed would permit the legislative Assembly to impeach an officer for insignificant and foolish causes through sinister motives. If the time ever comes when the people of this State ever elect a legislative Assembly which will do that, the State will be past all succor and no precedent or lack of precedent will redeem it from its sluggish decrepitude. Extreme or well-nigh impossible illustrations do not point the way to wisdom. They in their application would make many principles upon which we live inactive. In deliberating and determining, it is wise and safe to consider that which may reasonably be apprehended or anticipated and not that which is unique, unreasonable and unprecedented. Acting upon this rule it is unthinkable that the people of this State will elect a legislative Assembly, two-thirds of the members of which would be so devoid of good sense, the instinct of self-preservation, patriotism and honesty, that they would impeach any officer for any such extreme and preposterous charges as have been mentioned in the arguments and briefs of the respondent's counsel. Moreover, the danger of unfounded and wicked impeachment through political or evil motives is not substantially or materially lessened or touched by the precedent or rule that the acts charged must have been done after taking office. The man after taking his office will still have political and religious views, the color of his hair will remain the same, he will continue to wear garments — in fine, any foolish or preposterous charge based upon acts which he did before he took the office, may be based upon the same acts or others done after he takes the office. The argument that the creation of the precedent that present unfitness for the office may not be proved by acts done before the taking of it, will destroy or diminish the

power of the Assembly to impeach for political or insidious purposes, for acts foolish, weightless and having no relation to the office, has no solid or real foundation. If a legislative Assembly ever exists which is so foolish, imbecile and despicable, it will find plenty of acts done after the office is assumed, fit for its purpose.

Under the Constitution it rests with this Court alone to say what are impeachable acts. The Constitution has given this Court that power in broad and unrestricted language. It has not expressly given the Legislature the right to restrict or condition that power. This Court must act according to the common law and parliamentary practice, but we are the sole judges as to the meaning of the Constitution and as to the impeachability of any accusation. If the Legislature has ever attempted to place any restriction upon the jurisdiction and power of this Court in such regard, we may hold that its enactment was void and as void and effectless for all purposes as though it had never been made. I believe that the Legislature never did and never intended to legislate in regard to the jurisdiction or power of this Court. It may be that in section 12 of the Code of Criminal Procedure (adopted in 1881), it adopted the interpretation or construction given to the provision of the Constitution of 1846, by the men who in 1849 or 1853 chose the language of that section. Assuming that the Legislature did adopt the views of those men as to the meaning of the Constitution, we must remember that we alone have the power to determine that meaning. Two facts guide me to the conclusion that if we hold that the acts done by the respondent before January 1, 1913, are competent to prove his present unfitness for the office he holds, we will act in perfect accord with the language, spirit and intent of the constitutional provision. The first fact is the elimination by the Constitutions of 1846 and 1894 of the limitations upon impeachable offenses in the Constitutions of 1777 and 1821. The power to impeach for mal and corrupt conduct in office as given in the Constitution of 1777 and for mal and corrupt conduct in office and for high crimes and misdemeanors as given in the Constitution of 1821 has become and is in the Constitutions of 1846 and 1894, the discretionary power to impeach.

The second fact is, that the Constitution of 1894 was adopted after this Court, the highest court in this State, had rendered judgment that Judge Barnard might be and was convicted for acts done before he assumed the office from which his removal was sought, the acts having been done during a previous term of that office. The reasoning and argument which supported and brought about that decision support the conclusion I have adopted. Indeed, if the mere fact of being "in office" at the time when the acts were committed is material, the respondent here was in the office of Representative in Congress until late in December, 1912. With the decision in the Barnard case existing and unaffected by no later judgment, the Constitution of 1894 used the language of the Constitution of 1846 under which Judge Barnard was impeached and tried. It is an established rule of law that where the language of a statute or a Constitution, which has been given a meaning by a judicial construction, has been used by a legislative or constitution-making body in the amendment or revision of the statute or Constitution, the meaning given to it by the judicial construction is that which that body intended it should have.

I vote guilty.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Cuddeback.— Mr. Presiding Officer, I, like Judge Collin, stated yesterday my views upon this question. I am not going to restate them now. I have prepared a brief resume of what I said, which I propose to file with the stenographer. The substance is about this:

I agree with the gentlemen who say that a man should not be impeached, a public officer should not be impeached for an act committed prior to the term of his office, unless the act is committed after the people have passed upon the qualifications of the candidate; that is, after the election, and unless the act committed affects the officer in the discharge of his official duty when his term does commence.

I say that the violation of the corrupt practices act proved beyond dispute, under the charge in the first article of impeach-

ment, does reach into and affect the officer after he takes his office in the discharge of his duty. The people have the right to know what influences are being brought to bear upon an officer after his election. They have the right to know who put him there, who will control him there, or who will at least exercise influence over him there, and to that end they have passed this statute, and I say the violation of that statute is not within the precedents which have laid down the rule that an officer shall not be impeached for anything done before his term begins; and, therefore, I vote guilty, and I give this to the stenographer.

(Judge Cuddeback filed the following opinion:)

Article 1 charges that the respondent, prior to his election, received large sums of money for his campaign expenses, which he failed to include in his statement filed with the Secretary of State after election, as required by section 546 of the election law. The facts regarding the contributions and the failure to report them are undisputed, but the offense, if any, was committed before the respondent assumed office, and the objection is made that the offense therefore does not afford sufficient ground for impeachment.

Section 13, article 6, of the Constitution confers upon the Assembly the power of impeachment without defining in any way the ground upon which an officer may be impeached. Turning from the Constitution to the statutes, we find that section 12 of the Code of Criminal Procedure prescribes wilful and corrupt misconduct in office as the ground of impeachment and prescribes nothing more. The question, therefore, arises whether the Code of Criminal Procedure limits the jurisdiction of this Court of Impeachment to acts done by the officer proceeded against during the continuance of his term. To my mind it does not. It was beyond the power of the Legislature thus to limit the Court, because if the Legislature can limit the jurisdiction in one respect, it can limit the jurisdiction in all respects. The Legislature can prescribe that only conviction of a felony shall be ground for impeachment, or on the other hand, that any peccadillo on the part of the officer will suffice. Nor do I think it makes any difference that the statute was in existence when the

Constitution was last amended. The constitutional convention did not go over the statutes and mention those contrary to its provisions.

But it does not follow as argued in behalf of the respondent that this Court of Impeachment is beyond or above the law and has no rules for its guidance if section 12 of the Code of Criminal Procedure is not binding upon it. The Court is bound by the precedents created in England whence we take the remedy by impeachment and created also in the different states of the Union and by the Federal Court of Impeachment. These precedents are binding unless this Court reaches the conclusion that the cases in which they arose were improperly decided. The situation is the same as that which existed in this State before the adoption of our criminal codes. Prior to that time the great body of the criminal law rested upon precedents, that is, decisions previously made and known as the common law.

The force of precedents in courts following the English system of jurisprudence is almost as great as the force of statutory law. It is upon the force of precedents that the counsel for the respondent base what is to me their strongest argument, namely, that an officer should not be impeached for acts done as a private citizen prior to the time of his assuming office for the reason that it has never been done before.

But it has seemed to me that this is an exceptional case for which there is no controlling precedent. The corrupt practices act touches matters connected with the election so closely that its violation by a successful candidate presents a case different from any that has arisen before. The candidate who disregards this act shows an unfitness for office not shown by the commission of any other crime. The case certainly is not within the reason given for refusing to impeach an officer on account of offenses committed before he took office. The electors have not condoned it, and the offense has some relation to the office.

The people have the right to know who have contributed to bring about the officer's election in order that they may know who will exercise control over him, or will influence him, in the discharge of his duties. To that end the law requires the candidate

to file a statement of the moneys received by him for campaign purposes.

This is a purpose sought beyond the general purpose which the lawmakers had in view when they required all candidates, successful or defeated, to make return of their campaign receipts and disbursements. The statement from the defeated candidates will show who is contributing money to elections. The statement from the successful candidate will show further to what influences men in office are subject.

Therefore it is that the case is exceptional and not within the principle of former decisions.

These, briefly stated, are my views on the question and they lead me to vote guilty.

The Clerk.— Judge Cullen, President.

The President.— I have prepared an opinion at some considerable length on the questions involved in this issue that we are now disposing of. It is not my purpose to read all of it, but some part of it I think it is proper I should read on this occasion. Other parts of it I shall merely abbreviate by stating the conclusions which I have reached.

(The following is the opinion in full filed by Judge Cullen, and from which he read:)

While the conduct of an impeachment trial should not be marred by the technical rules applicable to ordinary litigations, criminal or civil, still the principles of law which affect the substantial rights of the accused must be respected and, especially, the determination of the cause must be controlled by the law as it exists. Judge Story, in his work on the Constitution, says: "The doctrine, indeed, would be truly alarming, that the common law did not regulate, interpret and control the powers and duties of the court of impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state, originally composing the Union, would be entitled to the common law, as his birthright,

and at once his protector and guide; as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence." (Sec. 798.)

The most momentous impeachment trial in this country is that of President Johnson, tried before the Senate of the United States. The magnitude of the issues involved, the distinction and high station of the judges, the learning and professional standing of the advocates through whose industry were cited all the precedents on the subject of impeachment, and all the comments of the text writers, make the record of that trial a landmark to which all discussion in subsequent impeachments in this country have referred — not so much, however, as an authority, for there was much divergence of views among the members of the court, but as a source of instruction. Senator Sumner asserted the broadest power to remove by impeachment any officer deemed by the Senate unfit for his office. But this claim was based on the proposition that impeachment was a political, not a judicial proceeding — the senator contending that upon the hearing of an impeachment the Senate was not a court, and that there were no provisions in the federal Constitution justifying that view. The terms of our Constitution differ from those of the federal Constitution. It is expressly provided that "The Court for the Trial of Impeachments shall be composed" of the senators and the judges. Hence, with us there is no basis for the argument made by Senator Sumner, and there can be no question that in this State the trial of an impeachment is a judicial proceeding, the determination of which must accord with the law.

Bearing in mind this principle for our guidance, I shall now consider the articles which charge the respondent with offenses committed during the incumbency of his office. Article 3 charges the respondent with having fraudulently induced Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller to withhold true testimony from the committee appointed by a joint resolution of the Legislature to investigate expenditures made by candidates at the previous election, in violation of section 2440 of the Penal Law of the State, and with having thereby committed a felony. That section deals with attempts to bribe to commit perjury, which may consist in a witness either stating that which is false or failing to

state that which is true. It has nothing to do with efforts to prevent the attendance of witnesses. Such an offense is dealt with by section 814 of the Penal Law. There is no evidence whatever to sustain this charge.

The next article (4) does charge the respondent with an offense under section 814 of the Penal Law, alleging, in accordance with the requirement of the statute, that the respondent practiced deceit and fraud and used threats and menaces with the intent to prevent Sarecky, Colwell and Fuller "and all other persons" from producing their books and papers before the committee, and the said persons themselves being cognizant of the facts material to the inquiry, from producing or disclosing the same. The evidence is insufficient to support this charge. Colwell has fled the jurisdiction of the State. There is nothing to show that the respondent had any intercourse with him on the subject of giving testimony before the committee. Colwell's declaration on leaving the city that he was going to see Sulzer was competent evidence on the subject of his whereabouts, but it was not competent evidence to charge the respondent with any complicity with it. The only evidence against the respondent is the assertion of his belief that the Legislature was without power to create such a committee at an extraordinary session, when he, as Governor, had recommended to that body no such subject for its consideration. Passing the question whether such a statement could under any circumstances be deemed deceit or fraud (threat, menace or violence — certainly it was not), it should not be deemed such in this case. While I feel confident that the decision made by this Court in the progress of the trial, that the constitutional inhibition upon the action of the Legislature at extraordinary sessions applies only to general legislation, the proposition is not beyond debate. Several members of the Court dissented from the decision. Neither the holding nor the expression of such an opinion made in good faith can be considered a violation of law.

The so-called Peck incident, his conversation with the respondent, in which he testified that the latter said to him, to deny or forget the contribution from the witness to the Governor, is not charged in the impeachment articles as a substantive offense. That this Court is without power to amend the impeachment articles is

to me absolutely certain, for the Constitution vests the exclusive power to impeach in the Assembly and, hence, the respondent cannot be tried upon any charges except those the Assembly sees fit to present. The name of Peck is not mentioned in the article and a transaction with him can be deemed included in the article only under the designation of " other persons." The article is not addressed to such an occurrence. There is no evidence of any deceit or fraud, and to construe what passed between the respondent and Peck as a threat to remove the latter is to substitute suspicion for proof, vagaries of imagination for evidence. The evidence was properly admitted under the decision of the Court of Appeals in the Nowack case (166 N. Y. 433) as evidence to discredit the defence, not as a substantive charge. The point here urged may be criticised as technical, but if so I hope that technicality will always be respected to the extent of preventing the trial of a man for one offence and convicting him of another. Far better, the Assembly, if it deems wise, should present new articles of impeachment and the State be put to the expense of another trial rather than a precedent should be set for what seems a violation of the ordinary principles of justice. Forms are often necessary to observe to protect the substance that lies behind them. Where they are not observed in substantial matters, law degenerates into oppression. " Form is the sworn foe of caprice, she is Freedom's twin sister."

Article 5 charges the respondent " with having prevented and dissuaded Colwell from appearing as a witness before the committee," in violation of section 2441 of the Penal Law. As already said, there is no evidence whatever to sustain this charge.

Article 7 charges the respondent with using his authority and influence as Governor for the purpose of affecting the vote or political action of two members of Assembly, in violation of section 775 of the Penal Law. The facts, as they appeared on the trial, are that two members of the Assembly endeavored to obtain the approval of two acts which had been passed by the Legislature in which their respective constituents were believed to be greatly interested; that they appeared before the Governor and asked his approval; that on such occasions the Governor inquired of them how they had voted on a bill for a direct primary, the enactment

of which he had urged on the Legislature; stated that he stood by his friends, and in one case said, "you for me and I for you." There was a very strong intimation that the fate of these two bills (one was afterwards approved, the other failed of approval) might depend on the past or future action of the two members of the Assembly on the direct primary bill. Carrying this inference, however, to its furtherest limit, I can see no provision of section 775 with which it conflicts. But, as will be said hereafter, I do not regard it essential to constitute a valid cause of impeachment that the act charged, when committed by a person in office, should necessarily be either a common law or statutory crime. If the act complained of shocks our common sense of morality and decency, and is of sufficient gravity, it may be cause of impeachment. I have my own notion of whether such conduct on the part of an executive, as has been proved, is proper, but that is not the rule on which I must act. Every man must be judged by the common standard of his times. It is idle to deny that at the present time the domination of the executive over the legislative branch of the government has increased and is increasing; and it is also idle to deny that at times and to a certain extent, this domination is secured by the exercise of patronage, and the control of legislation by the exercise of the veto power. Of this domination of the executive, and its tendency to increase rather than to diminish, many thoughtful citizens complain as a violation of the spirit of our form of government by which its three branches are divided and are made coordinate. But if it be an evil, it must be corrected by popular action, not by judicial proceedings.

The eighth article charges the respondent with having used his position of Governor to affect the current prices on the stock exchange of securities of which he was the owner. That the respondent at the time did own stocks which were dealt in on the stock exchange, and that he recommended to the Legislature a series of statutes affecting the exchange, several of which were enacted, is clear. With whether the legislation was wise or unwise we are not concerned. Not one of those statutes could affect the value of the securities held by the respondent. Surely, an executive owning a farm or a house may recommend legislation for the further punishment of trespassers on realty, even if the legisla-

tion recommended be extravagant and foolish, without being subject to impeachment.

This leaves for consideration the first, second and sixth articles. It would be a matter of great satisfaction if I could deal with these as I have with the other articles, finding that the evidence did not establish wrongdoing on the part of the respondent, thus rendering it unnecessary to consider the law of the case. But I cannot. The facts and the law are inextricably blended. The vote is guilty or not guilty. One may find all the facts alleged in an article to be true, including even the intent of the respondent, and yet be constrained to vote not guilty if he believes that under the law the respondent cannot be impeached therefor. These three articles relate to the same subject matter, though to two separate branches. The sixth article charges the respondent, after his nomination for Governor by the Democratic party, with having received moneys from a number of persons whose names are specified, as contributions to aid in his election for said office, and thereafter failing to apply the same to the purposes for which he had received them, but converting them to his own use in stock speculations, and that he thereby committed the offence of larceny. I find the facts charged, as I have stated them, to be true. It is impossible on the evidence before us to doubt that the respondent took advantage of his nomination to obtain large sums of money to aid him in defraying his legitimate expenses in seeking election with the intention not to apply them to that purpose, but to retain them for his enrichment. It must be borne in mind that some of the largest sums were given only on the respondent's personal application and immediately applied to a purpose wholly foreign to that which induced the gift.

The first article charged that the statement made and filed in the Secretary of State's office, in compliance with section 546 of the election law, was false, and that it was made by him wilfully and knowing that it was false in that it did not contain a number of contributions specified in the article. I find the facts charged in this article to be true. The sum actually received by him was so grossly in excess of that which he stated he had received that the error could not have occurred through inadvertence or mistake. The evidence of Sarecky, if believed, would not relieve him. By

far the greater amount of the money contributed was received by him personally. He never informed Sarecky of its receipt and he knew therefore that it was impossible for Sarecky to make a true statement. It is needless to refer to the other facts. The conclusion is irresistible that the respondent purposely omitted from his statement these contributions in order to prevent the exposure of his diversion of the contributions from the purposes for which they were intended.

The second article charges the respondent with perjury in swearing that the statement filed by him was true when he knew it was false in the particulars set forth. I find that the facts alleged in this article are also true. While I am of the opinion that these acts, because committed before the respondent was a public officer, cannot be regarded as a ground of impeachment for the reasons hereafter stated, other members of the Court may entertain a different view, and it is therefore proper for me here to express my view of the legal character of those acts.

The appropriation by respondent of the campaign contributions to the use to which he put them cannot be larceny. The moneys were given him to defray the expenditures he might incur in the prosecution of his efforts for election. He was the beneficiary. The respondent could not have been a trustee, for one cannot be a trustee for his own benefit. The case is not at all analogous to that of money given to a committee for some charitable or political purpose. If a master gives his money to a clerk to defray his expenses on a trip in the service of the master, a fraudulent conversion of that money would constitute larceny, but if the money were given to a clerk for a trip for recreation or the recovery of health, there is authority to the effect that legally he may use it for any purpose (Jarman on Wills, p. 397; 2 Williams on Executors, p. 1397). Mr. Williams says, if money is given to a legatee to enable him "to take holy orders . . . the legatees will be entitled to receive the capital money immediately, regardless of the particular modes directed for the enjoyment or application." Mr. Jarman goes further and says that if a legacy be given solely for the benefit of the donee, he may claim the money without agreeing to apply it to the specific purpose, even in spite of an express declaration of the testator that he shall not be permitted to receive

the money. If the contributions are to be construed as conditional gifts, there would remain only a right of reversion in the donor for failure to comply with the condition, a right which in law is a mere possibility, and the title of the donee, unless the donor elected to claim a foreiture, would be perfect.

Nor can it be successfully contended that the respondent was guilty of larceny in obtaining money under false pretenses. There is no proof that the respondent made any pretenses. In some cases silence, when there is a duty to speak, may constitute a fraud for which relief can be had in a civil action. This doctrine has no application to a criminal prosecution. The law has been so settled in this State from the earliest time to the present. In People v. Blanchard (90 N. Y. 314) it was held that an indictment for false pretenses may not be founded on the assertion of an existing intention. It must be a false representation as to an existing fact. Ranney v. People (22 N. Y. 413) is to the same effect, that a promise made with no intention of keeping it is not indictable.

It is equally clear that legal perjury cannot be predicated on falsely swearing to a matter that is not material. This is elementary law. (People ex rel. Hegeman v. Corrigan, 195 N. Y. 1.) Section 546 of the election law does require, as I construe it, that the statement filed by the candidate should set forth the contributions received by him, and in my opinion the contributions proved to have been made to the respondent, except possibly one or two, fall within the class and character of contributions denominated in the statute. But the election law does not provide that the statement filed in pursuance of it shall be verified, and no practice in the Secretary of State's office — while it might be of efficacy in the construction of a statute where doubtful — can enact or create a crime not prescribed by law. The Penal Law (section 776) does require a verified statement, but the statement so required need not state the contributions received by a candidate. The oath taken by respondent was, therefore, extra-judicial, so far as it related to his receipts, though his moral guilt remains the same.

The question, however, whether these acts of the respondent constituted crimes is not decisive of the issue before us. They displayed such moral turpitude and delinquency that if they had been committed during the respondent's incumbency of office I think

they would require his removal. This brings me to what I regard as the only serious question in the case.

Should a public officer be impeached for acts committed when he was not an officer of the State? The question before us is not one of power but one of right. Doubtless, if the Assembly impeaches and the court convicts and removes from office, that judgment cannot be attacked, no matter what the causes assigned for the judgment may be. But the questions remain: Are such acts rightly grounds for impeachment? Should this Court so decide? Never before the present case has it been attempted to impeach a public officer for acts committed while he was not an officer of the State. No suggestion to that effect can be found in any opinion of courts of impeachment, in the arguments of counsel on such trials or in the text writers. In several cases wherein it has been sought to remove officers for such acts by judicial proceedings, the right has been expressly denied. In the year 1853 the judiciary committee of the Assembly of this State reported "First, that no person can be impeached who is not at the time of the commission of the alleged offence and at the time of the impeachment holding some office under the laws of this State." In 1905 the Assembly committee reported that Justice Warren B. Hooker was not subject to impeachment because the acts did not constitute wilful and corrupt misconduct in office, but that the justice was subject to removal under the provisions of section 11 of article 6 of the Constitution, which authorizes judges to be removed by the joint action of two-thirds of both houses of the Legislature. In this view apparently, though not in express terms, the judiciary committee of the Assembly concurred, and the justice was proceeded against by address and not by impeachment. It is contended, however, that by the change made in the phraseology of the Constitution of 1846 from that of the preceding Constitution, a Court of Impeachment has been granted the right to remove a public officer on any ground that it may deem sufficient to disqualify. It seems to me it would be most unfortunate if such a doctrine were to prevail. The condition would then be that characterized by Judge Story as truly alarming. But I think the argument drawn from the change of the Constitution is unfounded. Before the Constitution of 1846 the provisions of the Revised Statutes stated the grounds of im-

peachment. Shortly after the adoption of that Constitution, commissions were appointed to codify various branches of the law and made their reports to the Legislature. One of those reports, made in January, 1849, recommended the Code of Criminal Procedure, which was not enacted as a law, however, until 1881. That report contained the provision now found in the statute as section 12, which defines the jurisdiction of Courts for the Trial of Impeachments as applicable to cases of wilful and corrupt misconduct in office. One of the members of that commission, Arphaxed Loomis, was also a member of the constitutional convention of 1846. The section was not reproduced from previous legislation inadvertently or without thought. On the contrary, the commissioners, in their report, called attention to the fact that the then present Constitution did not define the powers of the Court of Impeachment. Of course, neither the action of the commission nor the subsequent action of the Legislature could impair the powers conferred upon the Assembly and Court of Impeachment by the Constitution. But they constitute strong and contemporaneous evidence of the interpretation to be placed on the Constitution. This is further emphasized by the action of the constitutional convention of 1894. At that time this provision prescribing the jurisdiction of the Court of Impeachment had been on the statute book for over thirteen years. No attempt was made to vary or alter the language of the Constitution; no suggestion was made that the legislation was invalid. From this recital it would seem reasonably clear that either the jurisdiction of the Court was the subject of legislative regulation or that the existing regulation had properly construed and given effect to the constitutional intention, for constitutions are assumed to be made with recognition of existing statute law (People v. Roberts, 148 N. Y. 360). The only precedent cited by the learned managers for the Assembly to support their claim is the impeachment of Judge Barnard in 1872. Some of the offences charged had been committed in a previous term. The contention of the respondent in that case, that he was not liable to impeachment during one term for acts done in the previous one, was overruled, and, probably, the weight of precedent throughout the country is in accord with that decision. I am at a loss to see how that is an authority for the proposition that an officer can be impeached

for acts done when he was not in office at all. In fact, in the cases (Nebraska: impeachment of Governor Butler; Wisconsin: impeachment of Judge Hubbell) in which that ruling was made, the Constitution expressly limited impeachment to misconduct in office. Therefore, in those cases it must have been decided that liability for offences during a previous term and liability for offences when not in office were entirely distinct propositions. It is urged that the offences charged against the respondent were part of the means by which he obtained his office and, therefore, it is sought to distinguish them from other offences. A little reflection will show that this argument cannot be sustained. The respondent's dishonesty in diverting the money contributed to him could in no way help him to get the office. On the contrary, his failure to expend it properly would have, if any effect, the reverse. The falsification of the statement filed by him could have no effect on his election because it had already occurred, though doubtless the public was properly interested in knowing who had contributed and in what amounts. The statement was not required of all persons elected to office, but of all those who had been candidates for office, and on elected and on defeated was equally imposed the duty of making the statement. The falsification was made by the respondent not for any matter connected with his election, but to conceal the misappropriation of money.

The statute is directed to securing purity of elections, and enacted for that purpose is valid. The suggestion is made that it was intended also to insure publicity of the names of those who had assisted the successful candidate so that the people might judge of his subsequent conduct in office and know whether it was dictated by subservience to persons or interests who had contributed aid. A statute enacted to accomplish that object would, to say the least, be of doubtful constitutionality. The Constitution prescribes the oath to be taken by all public officers and then enacts " and no other oath, declaration or test shall be required as a qualification for any office of public trust." A statute prescribing that any one elected to office should state to whom and to what extent others had aided him as a condition of entry upon his office, might well be deemed in conflict with the constitutional provision. (See Bishop v. Palen, 74 Hun 289.) Will it be assorted that a law could require

an officer, as a condition of his entry upon office, to declare under oath all his dealings during the past years, the property he may own at the time in specific detail so that the people may judge how far personal interest affects his official conduct?

Doubtless, a public officer may be removed for misconduct in office, even though that misconduct does not relate strictly to the administration of his office. It is still accurately described as misconduct in office. As has been often expressed, the object of impeachment is to remove a corrupt and unworthy officer. But a corrupt and unworthy officer is an entirely different thing from an officer who has, before his office, been unworthy or corrupt. A master may discharge his servant, even though his term is unexpired, for improper conduct in his service, but not for improper conduct before he entered service. The assertion is erroneous that impeachment proceedings are in no respect punitive but solely preventive or to safeguard the State. If the doctrine contended for is correct, a man guilty of any offence in his past life of sufficient gravity to justify his removal, if committed when in office, may be removed from office without the opportunity to show that both his official conduct and private life during his official term had been of the most exemplary character. There is no statute of limitations on impeachments. The rule contended for amounts in reality to an ex post facto disqualification from office for an offence which had no such penalty when committed, without affording opportunity for showing repentance or atonement. Men have committed serious crimes, even felonies, and subsequently attained high public position.

If we assume that falsifying the certificate was technically a crime, which may be doubted, the sole penalty for it was fine and imprisonment not to exceed a year. Neither disqualification nor forfeiture of office was prescribed as the result of a conviction. In this it differs from a felony, on conviction for which a person, if sentenced to state's prison, forfeits all office. It is entirely within the power of the Legislature to enact that on conviction of a failure to file the prescribed statement, or of filing a false one, the offender shall forfeit any office to which he may have been elected. A similar punishment was enacted nearly a century ago and it still remains in our Penal Law. Section 732 provides that on convic-

tion for fighting a duel the offender shall be rendered incapable of holding or being elected or appointed to any office or place of trust or emolument within the State. The validity of this provision was adjudged also nearly a century ago (People v. Barker, 3 Cow. 686), and has never since been challenged.

If the Legislature may define the grounds of impeachment — a proposition I am not prepared to deny (nor to affirm), being impressed by the argument of Judge Vann to that effect — it may prescribe for what offences committed prior to the commencement of his term, if any, and committed during what period, an officer is subject to impeachment. With such legislation, an official's tenure of office would be safeguarded by law and not dependent on the conflicting views of varying tribunals as to what renders a person " unfit for office," for unless the man is disqualified by law his fitness for office is to be determined solely by the electors. That is their right. The matter is of particular importance in this State, because, under the Constitution, the mere presentation of articles of impeachment against a Governor or a judge suspends him from the powers and duties of his office. The very fact that we all agree that an officer may be impeached for offences not amounting to crime makes it absolutely necessary that we should not go back of his entry into office. Otherwise, one who has never violated any law may be removed because as a citizen he has failed to conform to our ethical standards. When he enters office his conduct becomes necessarily subject to other and greater limitations.

I vote not guilty.

The President.— Senator Cullen, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Cullen.— Mr. Presiding Officer, I find the respondent guilty under the first article of impeachment.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Duhamel.— Mr. President, while I may file a statement of my position at some future day, I vote not guilty.

I hold the respondent not guilty for reasons so elaborately argued that an offense, if any, committed before taking office does not apply while holding office.

Second, that respondent attempted to comply with the statutes under section 776, Penal Code, while he is being impeached under section 540 of the corrupt practices act.

Third, impeachment under the corrupt practices act fails, because this act provided abundant time for any citizen, or several citizens, to demand an amended report within sixty days, or after the date when respondent took office. Although this report was published in the press, was a public record for two months and open to scrutiny and known to people in his business office, no one objected to this report, and according to the act further proceeding is blocked.

It seems strange that in a State of 9,000,000 of population, where the respondent was opposed by several active political parties, that any discrepancies in the report were not discovered.

Witness Sarecky's story of the preparation seems sincere and truthful.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Emerson.— Not guilty.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Foley.— I vote guilty, and hold that the allegations of article 1 charge impeachable offenses. The Constitution grants the power of impeachment to the Assembly without limitation, and the enactment of section 12 of the Code of Criminal Procedure was a futile attempt by legislation to curtail this constitutional power. The acts charged against the respondent were directly connected with and incident to his duties as Governor. Corrupt practices acts are twofold in purpose: first, to guard against corruption at elections; and second, to acquaint the public with the influences, obligations and favors under which a candidate enters office. From the time of Governor Van Buren, the Executives of

this State have condemned the use of money at elections and the first statutory expression against it was enacted in 1829. Governor David B. Hill in his messages of 1889 and 1890 vigorously recommended the passage of a stricter law upon the subject and in the latter year, a section of the Penal Code similar to section 776 of the Penal Law, was passed by the Legislature and approved by him. It required verified statements of expenditures to be filed by all candidates. In 1906, the present corrupt practices law was enacted. The evil surrounding the use of money at elections both upon the electorate and upon the candidate has thus been recognized and regulated. In the words of Governor Marcy, "Power corrupted in this source disorders the whole government."

The respondent contends, however, that this Court cannot consider as an impeachable offense, an act committed by him before taking office. The criminal law of the State provides otherwise. Section 1823 of the Penal Law reads as follows:

> Asking or receiving bribes. An executive officer or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this State.

If the respondent had solicited a bribe immediately after election, he could have been convicted under this section and upon conviction would have forfeited his office. This statute was expressly continued and recognized by article 13, section 2, of the present Constitution. The framers of the Constitution of 1894 therefore contemplated responsibility for certain acts committed by an officer-elect between the time of his election and the time of his entrance into office. Can our criminal courts therefore have

greater jurisdiction in this regard than this High Court of Impeachment? I think not. An act of bribery cited as an example is similar in point of time and very little different in character from those charged here.

The respondent accepted money for his own use from persons whose affairs would be affected by his official acts after inauguration. He filed a false statement of these contributions after his election. The devious ways of concealing the contributions are conclusive evidence of their illicit character and the inference follows that the respondent would be influenced by them. I think the doctrine that this Court has not jurisdiction of acts committed by a public official before taking office, though closely connected with his official duties, is dangerous and unsound. Happily for our State and country, no similar case has arisen previously where necessity demanded the removal of such an official, but we should now establish the wholesome precedent that a Court of Impeachment has the power to remove an unfit public official for such acts.

The President.— Senator Frawley, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Frawley.— Mr. President, it is not necessary at this time for me to dwell at length upon the charges contained in the first article, for the reason that the evidence adduced by the board of managers stands upon the record of this proceeding uncontradicted by the respondent, and as a matter of fact, the learned counsel for the respondent has conceded upon the record that the acts charged in article 1 to the effect that the respondent, William Sulzer, received the contributions as therein set forth and failed to include the same in the statement filed by him as required by law, are true. We therefore come to the proposition as to whether a violation of the corrupt practices act by the respondent, as admitted and proved, constitutes an impeachable act, it being contended by the respondent that no acts or omissions committed prior to his induction into office, come within the purview of impeachable offenses.

Under the provisions of the Constitution it is not necessary that

the charge upon which the removal is asked, shall be one of misconduct or malfeasance committed after the induction into office; for nowhere is there written in the Constitution any restrictions in that regard.

It is specifically provided by the Constitution that the Assembly of the State of New York, by a majority vote, shall have the right to determine what are impeachable offenses, and the Court of Impeachment has the sole power to determine whether or not the charges upon which the impeachment are founded have been proved.

The respondent contends that under the corrupt practices act he was not required to file a statement, under oath, showing the names of the persons who contributed to his political campaign and the amounts which each one contributed, and that therefore his act in filing a statement, under oath, was extra-judicial, and that such false statement on his part did not constitute the crime of perjury.

It seems to me that the whole proposition hinges upon the question, "What was the respondent's intention at the time of making the false statement alleged in article 1?" The record of this proceeding is full of glaring instances of an intention on the part of this respondent to conceal the fact that moneys received by him as contributions to his political campaign, were not intended as such but were personal gifts or loans made to him by friends. But attention is directed to the fact that the respondent has failed to deny under oath these statements.

Surely it cannot be contended that the respondent did not know at the time he filed the statement alleged in article 1, that he was violating the corrupt practices act.

In view of the foregoing facts, I have come to the conclusion that the respondent is guilty of the charges alleged in article 1. I therefore vote guilty.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Godfrey.— I vote guilty.

The President.— Senator Griffin, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Griffin.— Mr. President, before announcing my vote on this charge, I want to formulate certain propositions of law and fact, which, in my opinion, have been clearly established upon this trial:

1. The commission of a crime by a public officer is not necessary to be proved in order to bring the conduct of the accused within the category of impeachable offenses, or within the jurisdiction of this Court.

2. That moral turpitude is a sufficient ground for impeachment, in that it tends to scandalize the official charged therewith, bring him into disrepute, destroy confidence in him, and prejudicially affect the proper and efficient performance of his public duties, as well as humiliate and scandalize the commonwealth.

3. The uncontradicted facts show that the respondent was guilty of moral turpitude.

4. That this moral turpitude was a continuing offense; that it continued so long as the respondent permitted his false and his dishonest statement of campaign expenses to remain in the archives of this State as a false public record.

After the first day of January, 1913, when he assumed his gubernatorial duties, if the taking of his solemn oath of office had awakened his sleeping conscience, and aroused in him a realization of his misconduct, he could and should have corrected this fraudulent record. He could have corrected it at any time before the adoption by the Assembly of the articles of impeachment.

I am inclined by the high respect and admiration in which I hold him, to follow the lead of the Presiding Justice of this Court, but, as much as my heart leans towards him, I cannot force my mind to yield to his viewpoint. I hold the view that it is unnecessary to pass on constitutional questions. If it were a question of conviction for a crime, the time when the physical act was committed might be competent, but I feel convinced that the moral guilt of the respondent involves as much acts of omission as a mere act of commission. These acts, which were discreditable

acts of omission, continued after his taking the office of Governor. I hold, therefore, that there is no need of establishing, nor is there any fear of establishing, any new precedent, where the act complained of was an offense, the gravamen of which not only consisted of the original violation of law by the filing of the false statement, but in permitting it to lie among the archives of this State as a false, misleading and fraudulent public record. Indeed, in public estimation, here is the head and front of his offending. The filing of the original statement might have been a mistake. The brazen effrontery of the respondent, as manifested in his failure to correct it, constituted an act of moral turpitude, of equal, if not greater gravity than the original offense. The filing of the false and fraudulent statement in violation of the statutory, as well as the moral law, was an offense of commission. His failure to correct it after the first day of January, 1913, was an offense of omission. Like that, for instance, of the criminal, who, having the means at hand, refuses to make restitution or reparation, but continues to profit by his own moral obliquity.

Therefore, I hold that the offense is sufficiently set forth in the articles of impeachment, and I quote from page 47 of the record, which states as follows:

> "And thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement thus made and filed by him caused great scandal and reproach to the Governor of the State of New York."

For these reasons, I vote guilty.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Heacock.— Mr. President, I vote not guilty.

The President.— Senator Healy, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Healy.— Mr. Presiding Judge: As a layman, I have listened to all that has been said by the learned members of the

Court of Appeals who are members of this High Court of Impeachment. I have also listened to the law as laid down by the attorneys, both for the managers and for the respondent.

I have endeavored to reach a conclusion that will justify me in voting on this question, and I believe that I am justified in voting as I shall.

It appears to me at this time that it has not even been stated that the facts complained of in article 1 are not true. It appears to me that it is conceded that article 1 is proved, and when we take into consideration the respondent's past life and environment, we find that we deal with a man who has been in public life and a public official for the past twenty years; of course, it must be conceded that he was not a public official in the sense of being the Governor of this State when these acts were committed, but he knew the law. He helped create the law to which he has given offense.

There has been a great deal said as to the constitutionality of the right of this Court to vote the respondent guilty for acts committed while not in office. The Constitution of the State of New York seems to me to be without restriction. It has been stated that some intent must have been in the minds of those who changed the Constitution in 1846 and again in 1894, that would still justify the contention that a restriction existed today, but I cannot see that. I cannot see it because of the fact that we have no manner of record that gives the attitude of mind or the intention of those who made that change. Therefore, I believe the Constitution as now written on the statute books of the State of New York does not restrict it in the slightest degree. I believe it is within the rights of this Court to find him guilty.

Believing further that the moral law and truth itself are of greater importance than any written law, as truth and morality are the pattern of law, I believe that the fear of setting a precedent of law by the finding of the guilt of the respondent is not of consequence when you consider truth and morality, as we should. Therefore, I find the respondent guilty.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Heffernan.— Mr. President, I believe the respondent guilty. I vote guilty.

The President.— Senator Herrick, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Herrick.— Mr. President, I believe the respondent committed the crimes charged in article 1, but I am convinced that we cannot consider and impeach for offenses, those acts done before he took office. I vote not guilty.

The President.— Senator Hewitt, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Hewitt.— Guilty.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Hiscock.— I vote that the respondent is guilty under this article. And inasmuch as I, like others, have stated in consultation in full my reasons for reaching that conclusion, and also shall file a written opinion setting forth those reasons, I shall only briefly outline at this time what they are as they lead me to this decision.

We are all, I think, certainly a majority of us, agreed that the respondent wilfully and wantonly violated the statute relating to corrupt practices, which required him to file a complete and honest statement of the contributions which he had received for campaign purposes.

I am unwilling to accept the view that the Constitution arbitrarily forbade the Assembly to impeach, or forbids this Court to try, the respondent because that offense was committed before he actually entered upon his office. The offense was committed after his election and, therefore, that argument which might sometimes apply that the people by electing him had absolved him from his fault does not apply here.

I think that the offense of which he has been convicted on

the facts, of violating this statute, rises to the dignity of an impeachable offense. It hardly seems to me pertinent, or very relevant, to discuss the possibility that some public official might be impeached and tried for some remote, or trivial, or political, or personal fault; that is not the question which is presented here.

It seems to me that this statute which we are considering had two purposes. One was by compelling a candidate to state the contributions which he had received, to furnish the starting point for the determination, whether in his expenditures he had been guilty of corruption, bribery, or fraud, and, in that aspect, the statute applied to every candidate, whether successful or not, and not especially to the respondent as a successful candidate. But it seems to me that the statute had that other aspect, which has been referred to, of compelling a candidate to disclose the contributions which had been made to his campaign, and in that way to disclose those influences which contributed to his election and which, perhaps, might attend and follow him as he entered upon his office, while he was in the office, and during the performance of his official acts, an influence which might enter into the performance of those acts, and in that respect it applied especially to the respondent as the successful candidate and, as I say, rises to the dignity of an impeachable offense.

I am not deterred, as perhaps others may have been, by the fear that we are setting a dangerous precedent. It seems to me, as I have indicated, that the statute and the violation of it relate to the official tenure and to the official acts of the respondent. If this view shall seem to be wrong in its interpretation of the Constitution, if the people of this State feel that we are indeed setting a dangerous precedent in adopting that view, we are on the eve of a constitutional convention and they can write into the Constitution in language which will be subject to no mistake, their determination that no official shall be impeached or tried for any offence which he has committed before he entered upon his office.

(Judge Hiscock filed the following opinion:)

So far as concerns the course of our deliberations, it is fortunate that there is little or no opportunity for difference concerning the meaning of the evidence which has been produced and the facts which have been established in this proceeding.

I do not understand the Presiding Judge and others to doubt, but rather they believe and concede, that all the substantial facts alleged by the managers in the first, second and sixth articles have been fully proved. The denials or explanations which all hoped the respondent might make under oath from the witness stand have not been made and there can be no doubt that he stands convicted of wrongful and disgraceful conduct.

Outside of the ready receipt of voluntary donations, he made his candidacy for the governorship a basis from which he importunately levied contributions on those within his reach, and these acts after his election found their natural sequel in a deliberate, systematic and wrongful violation of the corrupt practices act, which required him to make return of such contributions. As I say, these facts are undisputed. We are, therefore, spared the possibility in our deliberations of that bitterness and involuntary partisanship which sometimes spring up where there are involved the contradictions and credibility of witnesses and disputed questions of fact, and we are led for our final conclusions to the debate and consideration of questions of law which surely we can approach deliberately and coldly, seeking only that result which commends itself to our unimpassioned judgment.

I agree fully with what has been said by the learned Presiding Judge, to the effect that the respondent cannot be convicted of technical perjury under the second charge or of larceny under the sixth one, and I shall not discuss those matters. But the evidence offered in support of them does cast a very illuminating light upon the respondent's motives and acts which are involved in the first article and to the immediate consideration of which I now pass.

That article charges him with wilful and wrongful violation of the statute against corrupt practices in connection with elections because he did not make a full and true return of the contributions received for purposes of the campaign in which he was elected Governor. As I have said, there is no question about the fact of his violation of the act, and I understand it to be in effect conceded by some, if not all, of my associates, that if these acts had been committed after he entered upon the office of Governor, they would have constituted an impeachable offense. The only suggestion is that they fall short of this character, because, although happening after election, they still occurred before the taking of office.

It seems to me that to construe the Constitution thus is unwarranted and undesirable. Its broad language, deliberately stripped of restrictions affixed in earlier Constitutions, manifestly does not, in terms, thus limit the power and right of impeachment. It provides: "The Assembly shall have the power of impeachment." But it is said that by a process of interpretation we should read into the Constitution some restriction which would prevent impeachment for the present offense. I do not hear it clearly argued that it should be so construed as to prevent under all circumstances impeachment for acts occurring before taking office. The argument seems to be that there is a somewhat wavering line of distinction which I am not able at all times to follow, but which at least is claimed to exclude the present offense. There are, in my opinion, no commanding precedents or principles which require this construction. Perhaps the argument in support of it, which appears to be as strong as any, is the one that at the time our Constitution was last amended and adopted in 1894 there was, and for a long time had been, upon the statute books the provision now found in section 12 of the Criminal Code that "The Court for the Trial of Impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of justices' courts, police justices, and their clerks, for wilful and corrupt misconduct in office." And the principle is invoked that although a statute cannot impair the power of impeachment conferred by the Constitution, the latter should be interpreted as adopted in the light of an existing statutory provision and be regarded either as impliedly containing the limitation expressed in the statute or else as leaving to the Legislature the power to define, under the general constitutional clause, the offenses for which impeachment would lie.

So far as the latter contention is concerned, it would give to the Legislature the indirect power by so-called definition to accomplish what it is conceded it cannot directly do — override the Constitution. Thus we come back to the first contention that the broad language of the Constitution is by interpretation based in part on reference to the statute to be narrowed by the restrictions found in that statute.

The provision now in the Criminal Code was enacted in 1881, but it was in substance a reenactment of part of what had been

found in the Revised Statutes prior to 1846. The Constitution prior to 1846 contained a similar restriction, but in that year, with the statute still in force, it was amended by eliminating the restriction and placing the impeachment provision in the broad form now found. In view of this change thus made in the face of the statute, it does not seem to me that we can fairly say that there is evidence of any intention to narrow the meaning of the Constitution by impliedly writing into it the limitations of the statute which were then being explicitly stricken out.

Again, there was in existence at the time of the constitutional convention in 1894 a decision by a High Court of Impeachment in this State in the Barnard case holding that an official might be impeached and removed from office for offenses committed during a preceding term of office, which, in my opinion, must have been quite as much before the minds of the members of the constitutional convention as the provision of the Criminal Code and which decision is certainly an authority for the proposition that an official may be impeached for offenses committed before taking the office, from which it is proposed to remove him, and this view that an official may be thus impeached and removed is sustained by the argument of so distinguished and profound a constitutional lawyer as Senator Root in the recent Archibald trial.

Thus I reach the conclusion that a fair and reasonable interpretation of the Constitution does not arbitrarily prohibit the impeachment of an official for an act performed before entering upon his office; that its fair and reasonable construction is not to the effect that an official who might and would be impeached for a given act if committed on January 2d is arbitrarily and at all events made immune from such punishment if such act was committed on the 31st day of December.

It is unnecessary and would be unwise to attempt generally to define just what nature of acts committed before induction into office would justify and sustain impeachment. None of us contend for any general and dangerous enlargement of the right of impeachment. The only question for us to consider is whether the violation by the respondent of the statute against corrupt practices, under the circumstances and in the manner disclosed, is an impeachable offense, and that leads to a very brief consideration of the purposes of this act.

Undoubtedly one of the objects of the statute requiring a candidate to make a public statement of campaign contributions received by him, was to give a starting point and make it more easy to ascertain whether he had been guilty of the corrupt and unlawful expenditure of money in aid of his election. So far as that object is concerned, it has been rightly said that it is applicable to every candidate for office, whether successful or not, and has no special bearing upon the successful candidate who subsequently enters upon the office. But, as it seems to me, we may fairly attribute another purpose to this act. In view of the public agitation concerning, and deep feeling against, campaign contributions to a candidate by corporations and those who might have special and selfish interests in his official acts, it is reasonable to believe that another aim of this act was to compel the successful candidate, by publishing his campaign contributions, to make it clear what influences of this character, if any, attended and accompanied and surrounded him as he entered upon his office and upon the discharge of his official duties. Certainly this beneficial purpose is accomplished by the statute, and in this aspect it relates to and affects solely the successful candidate and the discharge of his official duties and, as it seems to me, its violation in the present case has such a relation to the office of the respondent, to his official tenure, and to the discharge of his official duties, that it reasonably and rightfully comes within the spirit of the Constitution and principles applicable to impeachment.

I do not share the feeling that there is any peril in so holding. Of course the possession of power always gives the opportunity for its misuse, but I cannot believe that the Assembly as an impeaching body, or the Senate and the Court of Appeals as the triers of the charges, would ever yield to any disposition to impeach and remove men from office for mere political offenses, or for remote and inconsequential misconduct totally disconnected with their incumbency of the office under consideration. In addition to this, we are on the eve of a constitutional convention, and if the people of the State feel unwilling to entrust to the bodies named the power to impeach and try for such an offense as I have described and as is here presented, it may easily place in the Constitution a prohibition against so doing.

Therefore, Mr. Presiding Officer, as I say, I vote guilty upon this article.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Hogan.— Mr. Presiding Officer, it is not surprising, in view of the eminent counsel on both sides of this proceeding, and the division of sentiment existing among members of the highest court of record in this State, that the question which has been presented so ably by the Presiding Judge, concurred in by Judge Bartlett and Judge Chase, should have caused more than ordinary controversy.

In consultation I expressed my views on the construction of the Constitution, the power of impeachment, largely in accordance with the views this moment expressed by one of my associates, Judge Hiscock, saving only that I extended the power of impeachment under our Constitution to acts of misconduct by officers prior to their induction into office, in some way related to or connected with the office which they were about to assume and limiting its application to the time of the selection of the candidate.

I am not going to take the time now to dwell upon the views that I expressed in consultation. I shall submit them in writing.

Entertaining the views I have briefly expressed, in my vote on this article I find the facts therein alleged undisputed and in my view of the power of the Court I am constrained to vote the defendant guilty on article 1.

(Judge Hogan filed the following opinion:)

I dissent from the views expressed by some of my associates, that under our Constitution a public officer may not be impeached for an act committed prior to his assumption of the duties of the office to which he has been elected.

The Constitution of 1777, section 33, provides: "That the power to impeach all officers of the State for mal and corrupt conduct in their respective offices be vested in the representatives of the people in Assembly, but that it shall always be necessary that two-thirds part of the members present shall consent to and concur in such impeachment."

Did the present Constitution follow the language of the Constitution of 1777, I would agree that their conclusions were beyond controversy.

The Constitution of 1821, section 2, article 5, provided: "The Assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office *and for high crimes and misdemeanors* but *a majority of the members elected* shall concur in the impeachment."

Was not the addition of the words "and high crimes and misdemeanors" a declaration of the people of an intention to clothe the Assembly with power of impeachment in cases not contemplated in the Constitution of 1777? The debates in the constitutional convention of 1821 disclose the reason for the insertion of additional causes of impeachment and the intention of the delegates in that convention. When the section was under consideration, Mr. Wheaton moved to strike out the words "The Assembly shall have the power of impeaching all officers of this State for misconduct in office," and to insert the following: "The Governor, Lieutenant Governor, and all civil officers of this State shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Colonel Young proposed a modification of the motion by making it read "The Assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors."

"Mr. Wheaton assented, and observed that he had taken the words of his proposed amendment from the United States Constitution, which was the nearest approach to a definition of the power of impeachment which he had anywhere met with. In certain periods of English history, this power had unquestionably been abused and perverted to the purposes of cruelty and oppression, *but it was indispensably necessary to extend it further than it was carried by the Constitution of 1777, which only went to try and punish public officers for official misconduct;* there might be many cases of crime which would render it wholly unfit that a public officer should remain in office, or be ever again entitled to the confidence of his country, *which were entirely unconnected with official misconduct.*"

Thereupon the clause of the Constitution of 1821 was adopted.

In 1846 the Constitution was again amended so as to read as follows (article 6, section 13): "The Assembly shall have power of impeachment by a vote of a majority of all members."

The same provision was incorporated into and is section 13 of article 6 of the Constitution of 1894, now in effect. Thus the limitations contained in the Constitutions preceding 1846 were obliterated and a broad and comprehensive power of impeachment granted to the representatives of the people in the Assembly. As stated by Judge Miller, the change made in 1846 was not accidental; a proposition by Mr. Dana to substitute and retain in substance the language of the Constitution of 1821 was rejected by the convention, and since the adoption of the Constitution of 1846 that grant of power has been a part of our organic law. The suggestion that such construction would be most unfortunate in view of the fact that a Court of Impeachment might remove a public officer on any ground that it may deem sufficient to disqualify, is effectively answered by the suggestion that the power thus claimed has existed for a period of upwards of sixty-five years and has not resulted in the presentation of articles of impeachment save in one or two cases, most prominent of which was the Barnard case where the respondent was convicted not only upon charges of misconduct in office during the term then under service, but upon charges involving misconduct in a former term of office. Neither is the construction asserted weakened by the suggestion that in none of the respective cases of impeachment referred to by counsel were the charges of misconduct based upon acts committed before the accused took office. A reference to the precedents cited discloses the fact that the acts of misconduct alleged were acts of officers *as such* and committed *during* their respective terms of office. Further, an examination of the various state Constitutions will disclose that four-fifths of the states have confined the power of impeachment of officers within certain limitations, principally for acts of misconduct, misdemeanors, or malfeasance *in office,* while in the remaining states unlimited power is granted similar to the language of our Constitution.

In the eighth session of the Legislature (1784, page 21) and by chapter 10, Laws of 1801, page 13, and continued in the

Revised Statutes, the Legislature embodied the provisions of the Constitutions of 1777 and 1821. Such legislation, however, was evidently due to the requirement of the Constitution of 1777, article 32, which provided: "A court shall be instituted for the trial of impeachments and the correction of errors *under the regulations which shall be established by the Legislature.*"

The language contemplating action by the Legislature was construed as a requirement that such laws as might be deemed necessary to carry out the provisions of the Constitution should be enacted, and thereupon substantially the language employed in the Constitution was embodied in the statutes cited.

The Revised Statutes of 1830 contained the following provision: "The Assembly has the power of impeaching all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors," which was in accordance with the provisions of the Constitution of 1821. That provision remained in the statutes for years after the adoption of the Constitution of 1846, and was followed in 1881 by the enactment of section 12 of the Code of Criminal Procedure, which is as follows: "The Court for the Trial of Impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of justices' courts, police justices, and their clerks, for wilful and corrupt misconduct in office." My associate, Judge Bartlett, is of opinion that the change in the Constitution of 1846, granting the power of impeachment to the Assembly without indicating what should constitute valid and sufficient cause for impeachment, was a recognition of the existing provision of the Revised Statutes limiting impeachable acts to misconduct in office, leaving to the Legislature the power to add other causes of impeachment if so advised.

As pointed out by Judge Miller, the commissioners who reported the Code of Criminal Procedure to the Legislature in 1849, in a note to the proposed section 12, said "The Constitution of 1821 defined this power by applying it to 'mal and corrupt conduct in office' which is substantially the same as in the Constitution of 1777" and asserted that the power referred to in the Constitution of 1846 is the same as formerly existing — a statement sufficiently inaccurate to destroy the efficacy of the same.

I cannot believe that the people intended to insert in the fundamental law a provision of public policy and subject the power therein granted to the operation of laws enacted from year to year by the Legislature, which might annul, extend or limit the express grant of power therein conferred and authorize a legislative body to overthrow and destroy the object and effect of the Constitution adopted by the people and render its provisions of no practical importance.

By article 4, section 5, of the Constitution "The Governor shall have the power to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper" and by article 10, section 1, "The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense." Under the provisions of the Constitution quoted, can it be argued that the Legislature could enact a law defining the cases in which the Governor should grant reprieves, commutations and pardons, or the causes for which a removal from office should be made? As well might the Legislature seek to limit the general jurisdiction of the Supreme Court in law and equity conferred by the Constitution.

In People ex rel. Killeen v. Angle, 109 N. Y. 564, the relator sought by mandamus to compel the New York Civil Service Commission to admit him to examination as to his fitness to perform the duties of the office of clerk to the collector of canal statistics, asserting a right by virtue of the provisions of chapter 354, Laws of 1883, creating such commission, and the rules issued in pursuance of the authority therein conferred. Respondent contended that the statute of 1883 and the rules thereunder, so far as they intrenched upon the power conferred upon the Superintendent of Public Works by the Constitution, were in conflict therewith and void. Under the Constitution as it read at that time the Superintendent of Public Works was empowered to appoint not more than three assistant superintendents, whose duties shall be prescribed by him. . . . "All other persons

employed in the care and management of the canals . . . shall be appointed by the Superintendent of Public Works and shall be subject to suspension and removal by him." Chief Judge Ruger, writing for an unanimous court, said: "The broad grant of power excludes the idea that it was intended that he (the Superintendent of Public Works) should be hampered, restricted or regulated in its exercise by any extraneous authority whatever, except such as might be authorized by other constitutional limitations expressly applicable thereto. . . . Any provision of law, therefore, which materially interferes with the freedom of selection conferred upon the Superintendent, and the exercise of his judgment in investigating and determining the fitness and propriety of contemplated appointments, seems to us not only to conflict with the terms of the Constitution but plainly to violate its spirit and intent."

I am led to a conclusion that the power of impeachment does exist for offenses committed before the incumbent took office. But while the power exists, the Court of Impeachment has a right to determine upon the facts whether or not such power should be exercised. I am of opinion that the power may be exercised when the proofs tend to show the guilt of the party accused, of acts which were so connected with and related to the office which he was to occupy, or the violation of some law upon the part of the officer accused, which in some measure related to, or was connected with, the office which he was about to assume.

The act of a man during the year 1912 which might shock the sense of a large number of the community would not, of necessity, be a ground for impeachment, especially after the people of the State had passed upon his qualifications for office; but the act of a candidate for public office subsequent to his election, in a violation of a statute of the State which required him, subsequent to his election, by reason of the fact that he was to assume office, to perform an act designed for the information of the people, is a cause into the merits of which the Court of Impeachment may well inquire, and the fact that such act was committed prior to his induction into office is not a reasonable argument why conviction under articles of impeachment may not be had. I would not extend the power of impeachment preceding induction into

office beyond acts connected with, or which related to, the election and assumption of office of the party against whom the accusation is made.

Compliance with the statute of 1906, now embodied in the election law, was a step required to the legal and proper performance of the duties of the respondent as Governor of the State of New York, and was connected with and related to the office of Governor, and a violation of such act may be inquired into and the effect of the same be determined by the Court for the Trial of Impeachments. The fact that unsuccessful candidates were required to file statements equally with the successful candidate emphasizes the general purpose and effect of the statute — publicity of the facts required by law to be stated, which, by reason of the investigations preceding the enactment of the corrupt practices law, was deemed of vital interest to the people.

The President.— Senator McClelland, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator McClelland.— Presiding Judge, I realize the importance of expedition in this matter, consistent with proper and efficient administration of justice, and I do not desire to trespass upon the patience or time of the Court in what I shall say.

I shall address myself briefly to just one consideration. That is this:

That the respondent has objected to the consideration of the act complained of in article 1 upon the ground that that act or those acts were committed before he entered upon the discharge of his duty as Governor of the State of New York. That argument has been answered by the judges of the Court of Appeals here, in my judgment sufficiently and conclusively, but there was one suggestion that occurred to me to which I thought I might call the attention of the Court.

The provisions of the corrupt practices act require that within ten or twenty days after the election he shall do something; that he shall file a statement, and that statement shall conform to certain requirements described in that section; that he shall make a statement of moneys received and moneys distributed.

As the judges have said here, this is not an act committed before election. It is an act committed after election, and one which it was necessary for him to do in order to acquire the right of possession to his office. Suppose, for instance, the respondent had just simply said, "I will make no statement, and file no statement of receipts and expenditures," and that he had not done it. The twentieth day had passed, and it came to the first of January and he had not filed it then. What would be the position? Is the State absolutely without any control or jurisdiction over the Governor? Ah, say some people, and you point to cases in the past where the courts have said that you cannot deprive an official of his office for any act that he has done heretofore. You point to the Barnard case and you point to other cases. Well, now, the situation there is entirely different from the one that is presented in this case. There was no corrupt practices act, there was no condition precedent that was required by law as to what this man should do, or this candidate should do. Seven or eight years ago the Legislature of this State passed a law which made it precedent that a candidate for public office, within a certain time after election, shall do something. That was not to be treated as a detail. That was a duty, and the policy of the State has been clearly described here by the distinguished jurists and the senators who have participated in this debate. It was a matter of public policy. And to say that the Legislature shall declare public policy and that it is absolutely without any power to enforce it is an absurdity. And here is just where the power of the Impeachment Court in the wisdom of those who have created it under the Constitution, not limiting it as originally, but giving to the Assembly the right and jurisdiction to find articles of impeachment, is presented in this case.

Let me call your attention to this situation by way of analogy. Suppose a candidate for Governor should obtain his office by bribery. Suppose a Governor should spend $100,000, and bribe public officials in order to be inducted into office, and that fact should come out, and he should be inaugurated. Is there any gentleman here who has any claim to any sort of reason that would say that a Court of Impeachment would not have jurisdiction to evict that man from office if that fact was found out?

Why? Upon the ground of public policy. The necessities of protection of government requires that the State shall be preserved, and that was the purpose and object of the organization of the Impeachment Court. It is a court of emergency. So far as that is concerned, I do not desire to take up the time of this Court further than to say that the views that I entertain upon the culpability of the respondent under article 1 have been more clearly stated in the splendid argument of Judges Cuddeback, Hiscock and Hogan, more clearly than I can state, and with the suggestion in addition to that made, may it please you, Mr. Presiding Judge, I fix my vote as that of guilty.

The President.— Senator McKnight, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator McKnight.— Not guilty.

The President.— Senator Malone, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Malone.— Mr. Presiding Officer, as a lay member of this Court I listened very carefully to the testimony relative to this article. I have also listened to the opinions of the Court, and looking at it from all angles, always keeping in mind the notion of giving the benefit of the doubt to the accused, I have come to the conclusion that the respondent is guilty.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Miller.— Mr. Presiding Judge, the question whether the first article charges an impeachable offence is novel. The decision of it involves consequences which cannot be foreseen.

I entertain such decided views upon the subject that I consider it my duty to state them.

Article 6, section 13, of the Constitution provides: "The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the president of the Senate,

the senators, or the major part of them, and the judges of the Court of Appeals, or the major part of them."

A more unlimited grant of power could not be expressed. As the discussions in the convention of 1894 shed no light on the point, and as those words were taken literally from the Constitution of 1846, it is reasonably plain that no change was intended. When we go back to 1846, we find that a decided change was then deliberately made. The Constitution of 1821 provided, "The Assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors." It is significant that the words "and for high crimes and misdemeanors" were in 1821 added to the language of the Constitution of 1777, and it is reasonably plain that they were not tautological but were intended to enlarge the power conferred. Those words were doubtless used in the sense of the Law of Parliament, and not in the sense of common law or statutory crimes, and it is to be noted that they were not limited by the phrase "in office" as were the preceding words "mal and corrupt conduct." So we find that the power was first limited to "mal and corrupt conduct in office," next to "mal and corrupt conduct in office and high crimes and misdemeanors" and was finally conferred in general language without limitations or restrictions. The change in 1846 was not accidental. Mr. Dana offered a resolution to substitute practically the language of the Constitution of 1821 and it was rejected. The Revised Statutes of 1830, part 1, title 2, section 15, did provide for impeachment in the language of the Constitution of 1821 and that provision remained on the statute books long after the adoption of the Constitution of 1846. But in purposely omitting the limitation imposed by the Constitution of 1821 the framers of the Constitution of 1846 could not have intended by implication to incorporate the same limitation found in the Revised Statutes. And that consideration to my mind destroys the force of the argument that the present Constitution was adopted with reference to the Code of Criminal Procedure which primarily deals with procedure and not substantive law. Undoubtedly contemporaneous evidence is of the highest value in interpretation. The commissioners who reported the Code of Criminal Procedure

to the Legislature in 1849 said in their note to the proposed section 17, now section 12, among other things: "The Constitution of 1821, article 5, section 2, defined this power by applying it to 'mal and corrupt conduct in office' which is substantially the same as in the Constitution of 1777, section 33," and they dogmatically asserted that the power referred to in the Constitution of 1846 is the same as that formerly existing. The inaccuracy of their statement destroys its value as contemporaneous exposition. Another piece of contemporaneous evidence relied upon by counsel for the respondent is equally valueless. The judiciary committee reported to the Assembly on June 23, 1853, that after a hasty consideration of the subject they had concluded:

"1. That a person whose term of office has expired is not liable to impeachment for any misconduct under section 1, article 6, of the Constitution.

2. That a person holding an elective office is not liable to be impeached under section 1, article 6, of the Constitution for any misconduct before the commencement of his term, although such misconduct occurred while he held the same or another office, under a previous election."

They were overruled on the second point by the judgment in the Barnard case, and on the first point by the vote of a majority of the court in the Belknap case, although in the latter case less than two-thirds concurred. But writers on the subject now substantially agree that the decision of the majority in that case was right.

Could it have been intended to confer power on the Legislature to impose a limitation purposely omitted from the Constitution of 1846? The power to define necessarily involves the power to limit. Moreover, the words in section 12 of the Code of Criminal Procedure "for wilful and corrupt misconduct in office" like the earlier provisions on the subject in the Revised Statutes, and the Constitutions of 1777 and 1821, are words of limitation, not of definition. If that section is a valid limitation on the power broadly conferred by the Constitution, it virtually restores the constitutional limitation of 1777, although that limitation was first narrowed and then purposely omitted by successive Constitutions. I cannot believe that the Legislature has the power to limit the broad power conferred by the Constitution. The nature

of the subject precludes definition. As far as my research goes, no one has yet attempted accurately to define impeachable offenses.

There is strong internal evidence that it was not intended to limit impeachable offenses to misconduct in office. Article 10 relates generally to certain county officers and to those whose election or appointment is not expressly provided for. Section 7 thereof, which was taken from the Constitution of 1846, provides, "Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal." Plainly that section has nothing to do with impeachment, and the marked difference between its language and that of section 13 of article 6 could not have been accidental. The power of removal which could be lodged by the Legislature in a single officer might be abused, and so it was expressly limited to "misconduct or malversation in office." The danger was guarded against in article 6 by the constitution of the Court for the Trial of Impeachments, which prior to 1846 was the court for the correction of errors as well.

There is positive evidence that the framers of the Constitution of 1846 did not intend that the Legislature should have the power to limit by definition the causes of impeachment. Mr. Flanders offered the following substitute for the first section of article 6:

> "§ 1. The Legislature shall define offences in office, and provide for the trial and punishment of persons guilty of such offences in the ordinary courts of the State. The indictment of any officer for any act declared by law to be an official offence, shall operate as a suspension of the powers of such officer, until he shall be convicted on such indictment, such conviction shall operate as a removal from office."

The following debate occurred:

> "Mr. Flanders said his object was to introduce something into our Constitution that would be of some effect. He proposed to place persons liable to impeachment on a par with all other offenders, giving them the same right of defence and prescribing the result of a conviction."

Mr. Worden said all this (evidently referring to the last statement of Mr. Flanders) "was in the law now. All the Legislature could say would be, that any officer omitting to do his duty or acting corruptly, should be liable to indictment. He apprehended that it would be unsafe to define in a law what offences should be punishable. For it was beyond the power of human ingenuity to think of everything that would be punishable. And to name some, we should run the hazard of excluding others that should be included. He was fully convinced that the present law (evidently meaning the common law) was sufficient."

The substitute was rejected.

After all, the real question is what was the intention of the people who adopted the Constitution. That must be gleaned primarily from its language, which, when plain, should be given its natural import. And when we find in the Constitution a power over a subject, in its nature not susceptible of exact definition, conferred in the most general language without limitation, it should require strong evidence to show that it was intended that the Legislature should have the power to define or limit.

My conclusion, therefore, is that it was intended to confer the power to impeach upon the Assembly and the power to try upon the Court for the Trial of Impeachments, without restriction or limitation. But it by no means follows that that is an arbitrary power to be exercised ex post facto. As has frequently been said before, as well as during this trial, this is a government of laws and not of men. The people have entrusted this great power to a great court to be exercised according to the principles of the common law. This Court has the power, of course, to make a wrong decision, which cannot be reviewed or collaterally attacked, but so has every court of last resort.

From what then are the principles, controlling our action, to be deduced? Obviously, from the nature of the subject and of our institutions considered in the light of history and precedent. And here a word as to precedent. In the ever changing conditions and constantly increasing complexity of society, we cannot expect to find a precedent for every new state of facts. The common law would be a dead weight upon the progress of society if courts were afraid to make precedents; but in making prece-

dents we do not make law, although the contrary seems to be argued. We need not be disturbed because among the scattered cases in the history of impeachment trials we find no precedent for a particular state of facts. Those of us who are engaged in the ordinary administration of justice know that, although the great principles of the common law are of daily application, principles never exactly formulated or declared have to be applied at times, and new applications are of constant occurrence. Especially must that be true in the case of impeachment trials, occurring at rare intervals and dealing in the main with political offenses. If satisfied that according to the dictates of right reason a given act constitutes cause for impeachment, it should be enough for us to know that there is no precedent to the contrary.

I do not think that it was intended by the present Constitution or that of 1846 to adopt the law of impeachment of England, the law of Parliament as it is called. The purpose of impeachment in this State, as stated in the Constitution, is removed from office or removal and disqualification to hold office. The purpose in England was mainly punitive. The law of Parliament is not, equally with the municipal law of England, adaptable to our conditions. We borrowed from England on the subject of impeachment little if anything more than the process. But it is to be noted that according to the writers on the subject the causes of impeachment in England were not confined to offenses in office, as private citizens could be impeached.

While the matter was once debated, it may now be regarded as settled by precedent and the consensus of opinion that the causes of impeachment are not confined to official acts or indictable offenses. The Barnard case in this State is authority for the proposition that they are not limited as to the time of their commission by a particular term of office. We may start then with the premise that the act or offense need not be official and that the taking of the oath of office does not in point of time separate nonimpeachable from impeachable offenses.

The principle is to be deduced from the nature and object of impeachment that the cause must be some grave misconduct evidencing particular disqualification to hold the given office or any office. The people are the judges of the qualifications of their

elected officials, and it must follow that in a free government their determination cannot be reviewed by a Court of Impeachment. It logically follows from those two principles and from the propositions hereinbefore stated as established by authority, that a grave offense committed before induction into office may constitute cause for impeachment, provided it so touches the office and bears such a relation to the discharge of its duties as to unfit the offender to discharge those duties, and also provided that the consideration of it does not involve a review of the action of the people at the polls. In my opinion the evidence in this case establishes such a cause.

The facts have been discussed by others. We can entertain no difference of view respecting them. The respondent, in violation of law, made a false statement under oath of the contributions to his campaign fund, not as the result of carelessness or a misunderstanding of the law, but deliberately in the consummation of a preconceived plan to collect as many and as large contributions as possible and then to conceal the fact. I agree that he did not commit perjury or larceny, but his offense is not lessened by his moral theft of moneys given him for his campaign or by the fact that he made a false oath, which the statute did not require.

The offense charged in article 1 was committed after the election. Its consideration then does not involve a review of the determination of the electors. It was a political offense, an offense directly against the body politic, and not one whose immediate consequences were confined to particular individuals. Was it so related to his official life as to unfit him to discharge the duties of his office? That depends upon the purpose of the corrupt practices act, which was first passed in 1906, and amended by chapter 596 of the Laws of 1907, so as to require candidates as well as political committees to file a statement of campaign contributions. It is not strange that there is no precedent for precisely such a case. The strange thing, in view of the purpose of the act, the disclosures which preceded its passage and the public discussions of the last few years, is that anyone should have so grossly violated it as to give occasion for this trial.

The dominant purpose of the act as disclosed by its title, its text, and contemporaneous political history was to secure pub-

licity of campaign contributions and expenditures. That was a valid purpose and did not conflict with article 13, section 1, of the Constitution. Prescribing an oath, declaration or test as a qualification for an office is very different from requiring a statement of campaign contributions and expenditures to be filed. The officer-elect may not enter upon his duties without taking the oath prescribed; the failure to file the statement or the filing of a false statement may or may not constitute cause for impeachment according to the circumstances of the case. Requiring disclosure of acts connected with a candidate's election to office, which the public have the right to know, is far different from requiring disclosure of one's private affairs with which the public have no concern. Moreover the statute violated in this case does not come within the spirit or purpose of the said constitutional prohibition. Concededly the Legislature could provide for a forfeiture of the office upon conviction of a violation of the statute. A court of impeachment can convict and remove from office by a single judgment. I attach in this connection no importance to the fact that defeated as well as successful candidates are required to make the statement.

There was and is a growing body of opinion that special interests by secret campaign contributions are enabled to exert an invisible and sinister influence on the conduct of public affairs. The purpose of requiring publicity was not simply to impose a check but to enable the public to scrutinize the conduct of their public officials in the light of the influences contributing to their election. Possibly the respondent made concealment because he did not wish the donors to find out how much more was contributed than expended. But the evidence tends to prove that his concealment was also due to a sense of improper obligation to the donors or some of them. The guilty consciousness, evidenced by unlawful concealment, of accepting money given for some ulterior purpose would equally affect his official conduct, whether the money remained in his pocket, was invested in stocks in the hands of his brokers, or expended to promote his election. His violation of the corrupt practices act evidences a situation as intimately related to the discharge of his official duty as though he had taken money for an express promise to reward the donor by some official

act, and the case is brought squarely within the principle asserted by my Brother Bartlett in the Matter of Guden (71 App. Div. 426), when he wrote for the Appellate Division in the second department as follows:

> "Whatever the conclusion might be, if the acts committed before Guden entered into office had no direct relation to his subsequent official conduct, I am of the opinion that a corrupt promise, made before election, to exercise his official powers in a particular way, affords a sufficient basis in law for the removal of the officer by the Governor, under section 1 of article 10 of the Constitution. It seems to me that the relation of the promise to the subsequent official tenure is so close as to make the act of entering into such a corrupt agreement affect the usefulness of the officer as clearly and directly as could any misconduct committed wholly after the official term began."

While the decision of the Court of Appeals went upon another point (171 N. Y. 529), the soundness of that proposition was not questioned. That case involved the power of removal conferred upon the Governor in general language, and while not strictly analogous, is as closely in point as we could well expect to find.

The testimony of the witnesses Peck, Morganthau and Ryan exhibits the respondent's guilty consciousness of grave misconduct and illustrates what extreme acts in office one thus guilty may be led to commit. If the suppression of campaign contributions would lead to an attempt to suborn perjury, it would be likely to lead to grave official misconduct; and no one can say to what extent the respondent's official acts have been or may be influenced by his concealment of campaign contributions in violation of law.

It is my opinion that the evidence strictly relating to article 1 shows that the respondent is totally unfit to hold the great office of Governor of this State and I am unwilling to hold that there is no constitutional power to relieve the office of his incumbency.

I vote guilty.

The President.— Senator Murtaugh, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Murtaugh.— Mr. President, I have reached the conclusion that the respondent is guilty of the offense charged in article 1. In determining the guilt or innocence of the respondent, two propositions should be determined: Are the offenses charged in the articles impeachable, having been committed prior to the time the respondent became Governor of the State of New York, and is the respondent guilty of the offenses therein charged?

The power to impeach is derived from the Constitution and the history of the development of that power has weight in determining this proposition. The Constitution of the State was framed during the progress of the Hastings' impeachment in England. From that country we have adopted the theory of impeachment trials. At the period of the aforesaid impeachment, that form of trial was used to try all manner of offenses, from that of trying a minister for preaching unorthodox religious principles, to that of the impeachment of a governor general of India.

Much criticism was made of this unlimited power of impeachment and when the framers drafted our Constitution they concluded impeachment should be limited to public officials and the offenses for which they should be impeached must be committed during their term of office. It did not extend to private citizens. The Constitution of 1777 limited the Assembly to "the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices." Forty-five years after, the people, through their representatives, broadened this power and allowed the Assembly to impeach State officials, not only for mal and corrupt conduct in office, but also for high crimes and misdemeanors. In the discussions succeeding which this power was broadened, Mr. Wheaton said:

> "But it was indispensably necessary to extend it [power to impeach] further than it was carried by the Constitution of 1777, which never sent to trial and punished public officials for official misconduct, but there might be many cases of crime which would render it wholly unfit that a public officer should remain in office, or be ever again entitled to the confidence of his country, which are entirely unconnected with official misconduct."

In 1846, twenty-five years later, the constitutional convention recommended, and the people ratified its acts, that all limitations of the power of the Assembly to impeach for acts of public officials either in or out of office be stricken out. The constitutional convention of 1894 did not change this provision and thus the power of the Assembly to impeach was left as it was in 1846.

These steps taken in successive conventions, each broadening the power of the Assembly to impeach, are significant and establish the intention of the people to invest the Assembly with power to impeach a State official without limitation as to the nature and extent of the crimes, misdemeanors or offenses or to the time when they were committed, and section 12 of the Code of Criminal Procedure does not limit that power.

As I understand the Constitution, this Court has the power to determine what are impeachable offenses, and while I believe the Assembly has jurisdiction under the Constitution to impeach a public official for acts committed in or out of office, I am not ready to subscribe to a decision of this Court that would sustain an impeachment for every crime or offense committed prior to induction into office.

Impeachment should be confined to political characters and political crimes and misdemeanors. It should be limited, as in the case at bar, to offenses intimately related to or closely connected with the office from which it is sought to remove the offender, and the accused should be tried only for offenses with which the people of the State were not familiar when they voted for the election of the respondent.

The offenses committed by a Governor-elect stand in close relation to his official office and such offenses are very different from those committed while he was a private citizen. The Governor-elect of the State is a quasi-public official. From the day he is elected until the day he takes office, he stands in a different position from a private citizen and crimes or offenses committed by such an official are far more flagrant, reprehensible and far-reaching in effect on the morals of the public than those committed by a private individual, in whom the people have not reposed their confidence.

The respondent was impeached and tried under articles 1 and 2

for offenses he committed while Governor-elect of the State. A public duty was imposed upon him by the laws of the State; a solemn and sacred duty which he owed to the people to make a correct and true statement of all the moneys received, contributed to and expended by him in the aid of his election as Governor. That duty he violated. He filed a false and untrue statement, and in violating that law, in my opinion, he committed a crime. I am not clear that the respondent is guilty of the crime of perjury under article 2, but the making of a false oath, whether the oath was required by law or not, was an offense shocking to the sense of law-abiding citizens. If the records of our State show that in this age we are indifferent to the morality and civic virtue of our highest official, we will be justly subjected to the severe condemnation of succeeding generations.

When the respondent knowingly made the false statement of his election contributions and took the false oath annexed thereto, he was guilty of impeachable offenses. I therefore vote guilty.

The President.— Senator O'Keefe, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator O'Keefe.— Mr. President, I vote not guilty.

The President.— Senator Ormrod, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Ormrod.— Mr. Presiding Judge, I find him guilty as charged in the first article of impeachment.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Palmer.— Mr. Presiding Judge, I recognize in this whole matter that has been so long before us, questions of expediency, questions of morality and questions of legality, and it is only the two former types of questions that I feel myself in any manner qualified to discuss.

I did not know William Sulzer personally, and never even saw

him until he mounted the stairs of the Capitol at Albany on the first day of January last. I have not seen him, nor heard from him or any member of his family, since this impeachment began. I need not say I did not vote for him. A man for whom I vote for Governor of this State must have clean hands, must be a gentleman in all the walks of life, must be a man of transparent mind, must be a man not prone to thinking evil of others, must be a good man. He must not be afraid, moreover, to stand up on that witness stand, or anywhere under the sun — four square to all the winds that blow — and tell the truth. I do not say the Governor is or is not this type of a man. I only say this now to disclaim any personal or political relation to this matter.

The questions of expediency in this trial are (1) Is it for the interest of the State that this Governor should be impeached? (2) Is it wise now to stop these investigations which are in progress? Why should an honest man fear any investigation? (3) Is it well here and now to prove that cynical definition of a "reformer" to be true — that "a reformer is one who tries to stand a pyramid upon its apex; martyr is the title given his remains by his friends."

The questions of morality are the large questions in this impeachment trial. These are the questions I would gladly discuss, if this were the hour and this the presence. The corrupt practices act is a legal act, but from my standpoint it is far below the morals that that act requires. I believe that a man ought never to solicit a dollar from anyone in behalf of his candidacy for an office, lest he put himself under obligation which he has to pay with some public act, which is not his private property. I believe he should not pay a dollar to anyone to elect himself to an office, lest that money should be spent in debauching the suffrage, perhaps after it has passed out of his hands somewhere along the line.

Also, believing that an office should seek the man and not the man an office, the use of money coming to him or going from him is inconsistent therewith. It gives the man with money an unfair advantage in public life over the man without money, and is wrong from start to finish — rudimentarily wrong — and not to be justified upon any ground. Hasten the day when it shall pass away forever from our political life.

The very fact that Governor Sulzer, as shown in the testimony here, collected money from many sources, becomes, however, a matter of taste, rather than a matter of morals. It is immoral to steal money, but not to beg it. Moreover, it is not an immoral thing for a man to give another money. If he gives it thinking he will spend it in a way that he does not spend it, it becomes a question of taste, and a gentleman would naturally return it, or offer to return it, or say "I did not use it," or "I did not know what you intended me to do with it," if the donor was not satisfied with the disposition of it. But if the donor was satisfied and says "I gave it to you personally to do as you please with it," then I do not see how it is a crime for one to give money to another. I repeat, it is a question of taste rather than of morals. If this Governor had spent this money all over the State buying votes for himself, I would have said then that he was guilty of an immoral act, but they seem to have done the one thing that makes it moral. They kept it, they salted it away, and they have it now. So that if the friends who gave it to him now complain that he did not use it as they intended he should, it is in his power to return it to them, a thing he might not have been able to do if he had spent it in any way. Moreover, if he invested it in buying a horse and buggy, or a farm or a thousand shares of stock, it is a question of judgment rather than a question of morals.

I wish I could enter further into a discussion of the morals of this case. Morals are subjective rather than objective. It is the motive of a man that is to be considered, since morals inhere in motives. Moral standards are variable in varying lands and races. You have heard of the morals "east of Suez." The old distinction in moral science between veracity and truthfulness is germane here. It is what a man *intends* to do that is to be studied. Did this man whose moral standards are the product of his career, his environment and his heredity, *mean* to do wrong? Or did others, whose standards were not even like his, do this for him and in his name? The ethical standards of races enter into this question. The real motive of the most of the contributors to this fund should be determined — and I fancy it would throw a flood of light upon the moralities involved.

I do not, however, further here and now (because of the lateness of the hour and the uselessness of the task and because I hope at some future time in an elaborate way to discuss it) enter further upon the subject of the morals or of the expediencies of this case. This first article on which we are voting now is in the realm of legalities; whether or not it is legal to try a man for malfeasance in office — to impeach a man for an offense committed before he entered office — on the legalities of this case I have determined to follow strictly the example of those distinguished jurists inspired by yourself, who from your youth up, from the day you commanded a regiment in the service of your country to this hour, you who have no superior in the standing of your profession or of the esteem of the people of this State, I propose to follow your example, and therefore I vote as you did, not guilty.

The President.— Senator Patten, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Patten.— Mr. Presiding Judge and fellow members of the Court of Impeachment: I believe for me as a layman to discuss the constitutionality as to whether or not the respondent should be impeached for acts committed prior to his induction into office would be impudent. I accept the brilliant and logical exposition of the constitutionality of this case from Judge Miller. I have listened for the past three weeks to the evidence adduced on this particular charge and I believe that a case has been made out against the respondent. I believe the proof is indisputable that the corrupt practices act of this State has been violated, and because of that and not because of any particular views that I may have on the Constitution, although as I said I am willing to accept Judge Miller's opinion, I vote the respondent guilty on article 1 of the articles of impeachment.

The President.— Senator Peckham, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Peckham.— Mr. President, I believe that the first article should not be considered as a cause for impeachment as the

article alleges offenses committed before taking office. The opinions of Chief Justice Cullen, Judge Bartlett and Judge Chase have made clear to me at least the intention of the framers of the Constitution, namely, that acts committed before induction into office are not to be considered as grounds for impeachment after having taken such an office. I vote not guilty.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Pollock.— Mr. Presiding Judge, I vote guilty on the charge upon grounds which I have set forth in an opinion which I ask permission to file.

(Senator Pollock filed the following opinion:)

Articles 1, 2 and 6 of the articles of impeachment involve the same proposition of law, that is, whether the respondent can be impeached for acts committed prior to his induction into office on January 1, 1913. I shall briefly state my reasons, holding, as a matter of law, that these articles set forth impeachable offenses, but will consider the facts in the record in so far as they have a common bearing on the three articles.

I find that the respondent while a candidate for Governor collected large sums of money from various persons and that these sums were given to him as campaign contributions. Instead of using them for campaign purposes, it appears that a large sum of money was used in his stock transactions in Wall street and an insignificant number of contributions set forth in the statement sworn to by him and filed in the office of the Secretary of State on the 13th day of November, 1912. This statement shows total contributions of $5,460, and total disbursements of $7,724.09, while it appears that the respondent received in addition to these, checks, not reported, amounting to $12,700 and cash amounting to $24,700, besides the receipt of the sum of $26,000 from Hugh Reilly in cash, which was claimed by him to be a loan.

I also find that the affidavit of the respondent attached to his statement filed in the office of the Secretary of State was made by him knowing the same to be false.

In approaching the scope of impeachable offenses, it is not necessary to consider acts committed by an official prior to taking office and wholly independent of his office, however much or little they might involve turpitude. The acts contained in the articles under discussion relate to conduct of the respondent immediately prior to his taking office, and of which the electors had no knowledge when they elected him. As was most aptly expressed upon the argument, these transactions of the respondent occurred while he was passing to the executive chamber through the official vestibule created by the corrupt practices acts found in both the Penal Law and the election law of this State. These laws contain the provisions prescribing a course of conduct for the candidate. The interest of the people in a strict compliance on the part of the candidate need not be elaborated upon in this memorandum. Suffice it to say that a violation of the provisions of the corrupt practices acts on the part of the candidate is official misbehavior and not an offense committed as an ordinary private citizen.

It is therefore evident that the violation of the law relating to the conduct of the candidate so vitally affects his fitness for office that the power of impeachment to remove him from office should, in the interest of public policy, be exercised by this Court for the Trial of Impeachments, if the jurisdiction conferred upon it does not expressly forbid it making such acts impeachable offenses.

The Court for the Trial of Impeachments was created by the Constitution of 1777. We find the limitation upon its jurisdiction allowing impeachment for acts committed while in office. In the Constitution of 1821, we find the jurisdiction of this Court enlarged so as to consider impeachable offenses acts committed by the official in office and " for high crimes and misdemeanors."

In the Constitution of 1846, the jurisdiction of this Court was expressed in the same language which we now find in section 13 of article 6 of the Constitution of 1894, and we therefore have this jurisdiction defined without a change for a period of almost 70 years. In this section is found absolutely no restriction upon this Court as to what offenses will sustain a judgment of conviction. In arriving at a conclusion in applying this jurisdiction to the facts shown under these articles, consideration must be given to the intention of the framers of the Constitution at the

several constitutional conventions. Examining the gradual enlargement of the jurisdiction of this Court in the constitutional conventions of 1821, 1846 and 1894 it is evident that it was the intention of those participating in the making of the fundamental law to vest in this Court, by virtue of the language now contained in section 13 of article 6 of the Constitution, jurisdiction to decide what it deemed an impeachable offense, not in accordance with any statute, but in accordance with the common law and the development of the latter in accordance with the public policy of this State.

It is urged, however, that section 12 of the Code of Civil Procedure, which is an act of the Legislature adopted in 1881, restricts the jurisdiction of this Court "for wilful and corrupt misconduct in office," and that it was in the power of the Legislature in adopting section 12 to define what are impeachable offenses. It is conceded that the Legislature would not have power to abridge the jurisdiction of this Court, but it is attempted to sustain the constitutionality of section 12 by the assertion that this is a legislative definition of an impeachable offense. If this be a definition, the result is the same if it were a constitutional limitation upon the jurisdiction of this Court. A limitation, of course, will be unconstitutional and in the light of the effect of this section 12, it must be construed as an attempted limitation on the part of the Legislature and as such must be rejected as being a void act.

This now brings us to a consideration of the evidence in determining the guilt or innocence of the respondent as to each of these three articles.

The facts clearly show a violation of section 546 of the election law as the statement filed in the office of the Secretary of State on November 13, 1912, was a false and incomplete statement filed by the respondent with a wilful intent to defeat the provisions of the corrupt practices acts and for which he would be subject to a fine not exceeding $1,000 or imprisonment for not more than one year, or both, under section 560 of the election law. Space does not permit me to present fully the development in this State of a sound public policy regulating the conduct of candidates for office. But an examination of the acts of the Legislature for many years

back and the views of publicists on the subject of elections stand for the election of candidates free from influence of persons and interests adverse to the body politic. There is today a public conscience which condemns in a candidate acts which some years ago were not looked upon as criminal, if perhaps not proper. Therefore in the light of sound public policy today, the act of the respondent in filing a false statement and thereby concealing from the voters of this State who had a right to be informed, the sources of large campaign contributions made to him, leads one to the conclusion that the acts committed by him as set forth in article 1 constitute impeachable offenses.

Article 2 is based upon most of the facts which established the charge under article 1. While section 546 of the election law does not require the statement filed to be sworn to by the candidate, section 776 of the Penal Law requires a similar statement filed by a candidate to be verified. The difference between these two sections is that section 776 of the Penal Law does not require the candidate to set forth all the contributions received by him. Therefore, the acts would not constitute perjury as defined by our Penal Law since the oath of the respondent affixed to his statement to which he swore that it contained a true list of all *contributions received by him* was superfluous. Article 2 also charges him with knowingly and wilfully making a false oath. This he clearly did and in ethics and morals there is but little distinction between the legal crime of perjury and the act committed by the respondent upon which article 2 is based and I therefore find him guilty under it.

Article 6 is also based upon most of the facts which tend to establish the charge under article 1. Without reviewing the facts in detail, I am satisfied that there is not sufficient evidence to sustain the charge, the same being based upon the crime of larceny as defined in sections 1290–94 of the Penal Law.

I find that the transactions between the respondent and Duncan W. Peck which are, briefly, that at a certain time in July, 1913, while the Frawley committee was examining witnesses in relation to the acts of the respondent, Duncan W. Peck was requested to appear before that committee. That before doing so, he had an interview with the respondent regarding the request to give testi-

mony before the Frawley committee relating to the campaign contribution of $500 made by him to the respondent. Peck stated that the respondent advised him, in giving his testimony, to deny the making of this contribution, saying, " Deny it — forget it."

Article 6 charges this as a violation of section 814 of the Penal Law. It also charges the respondent with suppressing testimony. This action on the part of the respondent was clearly an attempt to suppress the testimony of Peck on this point, irrespective of any violation of a statutory offense of this nature. It is in addition to this a violation of section 814 of the Penal Law, the material part of which is as follows:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence with intent . . . to prevent any person, being cognizant of any fact material thereto, from producing or disclosing the same, is guilty of a misdemeanor."

There is brought clearly within the provisions of this section the action of the respondent in connection with Peck's testimony and respondent's intent to prevent Peck, cognizant of the fact of the campaign contribution made by him to the respondent and which was material to the investigation conducted by the Frawley committee, from disclosing the same. The additional element in this offense under section 814 is to show that the respondent maliciously practiced any deceit or fraud or used any threat, menace or violence in doing this. The scope of the word " fraud " as used in this section clearly embraces the intent of the respondent in advising Peck to refrain from disclosing the facts of his campaign contribution. It was one to work a fraud upon the proceedings conducted by the Frawley committee. That committee was entitled to have presented to it the facts material to the matter under investigation by it. Without all the facts, it was in no position to make any recommendations as a result of its investigation and to that extent the act of the respondent was a fraud upon the administration of justice in a like manner as where through similar acts on the part of a person, he attempts to induce a prospective witness in an action in a court of record to refrain from disclosing a material fact. There the jury trying the facts

would be prevented from arriving at a conclusion upon all the facts material to the issues. This would clearly be a fraud upon the administration of justice. I do not understand the word fraud as used in this section to be synonymous with the word deceit, otherwise there would have been no need to use both of these words. I therefore conclude that the facts establish the offense charged in article 6 and I consider them an impeachable offense.

Without going into the sufficiency of the allegations of articles 3, 5, 7 and 8, I am satisfied that there is no evidence in the record to sustain the charge of any impeachable offense alleged in any of these four articles.

The President.— Senator Ramsperger, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Ramsperger.— I vote guilty.

The President.— Senator Sage, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Sage.— Mr. President, that the respondent is guilty of the offence charged in article 1 there is ample proof. He made a false statement, but there is a connection between these acts done before inauguration and after inauguration. Why did he make this false statement? To conceal, first, the amount of his collections; second, the names of the contributors. I am convinced that these acts committed before inauguration are so closely connected with acts done after as to constitute one and the same offence for two reasons. First, that the respondent is now, as Governor, enjoying the benefits of the illegal acts committed before he became Governor. The squirrel who enjoys his garnered store in the winter months is the same old squirrel. He does not steal now because there is nothing to steal, but when a kind Providence provides more nuts his nature will again assert itself. Second, in the testimony of Ryan, in asking for money and trying to get as much as possible, the respondent said: "Tell your father I am the same old Bill." Yes, the same old useful Bill. Does not everyone know why he got ten thousand dollars from Ryan and

ten thousand dollars from Meany of the New York Telephone Company? He had been useful in Congress. He could be more useful as Governor, and this money was merely given as retainer for services to be rendered in his new position.

"I am the same old Bill" is a most illuminating clause. He was the same old Bill who got $26,500 from Reilly, without collateral. Does anyone ask why? When he became Governor he was bought and paid for. He was the same old Bill who asked a State officer to commit perjury. He is the same old Bill today. He was no longer a free agent when he took office, and I believe that the acts committed before he took office and after he took office cannot be divorced. I therefore vote guilty.

The President.— Senator Sanner, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Sanner.— I vote that the respondent is guilty under the first article.

The President.— Senator Seeley, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Seeley.— Not guilty.

The President.— Senator Simpson, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Simpson.— Mr. Presiding Judge, there has been so much said that little can I add, except that I desire to state my reasons for voting the respondent guilty, and they are these:

I am of the opinion that the causes of impeachment rest with the Assembly; that the Constitution does not, by its express terms, place any limitation upon the power of the Assembly to impeach. The respondent, in my opinion, is charged in article 1 with an impeachable offense, in that he did not make a true return in accordance with the corrupt practices act, but wilfully, wrongfully and corruptly violated the statute and knowingly filed a false statement — and this rises to the dignity of an impeachable

offense, not too remote, but which continued as an offense, in my judgment, into his induction into office.

For these reasons, and because I believe under my solemn oath, it is my duty, irrespective of precedent — and my duty being clear, I need not look for precedent — I vote the respondent guilty of the offenses charged in article 1 of the impeachment.

The President.— Senator Stivers, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Stivers.— Not guilty.

The President.— Senator Sullivan, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Sullivan.— Mr. President, I have listened most attentively to the arguments advanced both in private consultation and at the open sessions of this Court, by its various members, upon the charges contained in article 1 and I have come to the conclusion that there are two questions to determine before arriving at a decision. First, Have the charges alleged in the first article of impeachment been proved? Second, Do the charges contained in article 1 constitute an impeachable offense?

As to the first question the record of this proceeding, the admissions of counsel for the respondent and the unanimous opinion of this Court seem to be that so far as the facts alleged in article 1 are concerned, they have been proved beyond a question of a doubt. The respondent has failed to contradict the evidence offered in support thereof and it stands upon the record unchallenged. For this reason I am of the opinion that in so far as the first question is concerned it must be held that the facts charged in article 1 have been proved.

As to the second question which involves a grave question of law and in regard to which there is considerable dispute, I shall be guided to a great extent by the opinions heretofore rendered by the members of this Court who constitute the Court of Appeals of the State of New York. I find that a majority of this high tribunal have indicated and expressed as their opinion and judg-

ment upon this proposition of law that the facts alleged in the first article of the impeachment are legally impeachable offenses.

I find, therefore, from the facts and the law, that the respondent is guilty as charged in the first article of the impeachment and ask to be so recorded.

The President.— Senator Thomas, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Thomas.— Presiding Judge, I allude to the illustration of one of my fellow senators, solely for the purpose of emphasizing my position on this charge.

Let us assume, for the sake of the argument, that the squirrel did take the nuts. Shall we then take our gun and go after him in the closed season? Shall we violate the fish and game law to punish him? And which is the worse criminal of the two, the squirrel that yielded to overwhelming instinct, or the man of intelligence that broke the law?

Agreeing with the learned Presiding Justice in his opinion that the acts set forth in articles 1, 2 and 6 of the articles of impeachment do not constitute impeachable offenses, because such offenses are alleged to have taken place prior to the beginning of the term of office of this respondent, I vote not guilty upon this article.

The President.— Senator Thompson, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Thompson.— I accept the definition of the constitutional features respecting the case from the majority of the judges of the Court of Appeals, who have delivered exhaustive opinions on that subject.

I have no doubt that there is any constitutional limitation of the right of the Assembly to impeach. I do not believe that section 12 of the Code of Criminal Procedure in any way limits the Constitution. I do not think that section would be constitutional if it were in terms a limitation, which I think it is not. Assuming, however, that the Code of Criminal Procedure might be argued as a limitation, where it says the court, in the trial of

impeachment, has power to try impeachments when presented by the Assembly, of all civil officers of the State, for "wilful and corrupt misconduct in office," taking that literally, I believe that the facts stated in article 1 of the impeachment have been abundantly proved, and that they show wilful and corrupt misconduct in office.

I do not read the word "contribution" in the article in its ordinary sense. I do not believe that Jacob Schiff, Morgenthau and Ryan meant the contributions of those moneys to William Sulzer, candidate for Governor, for the purpose of having them expended in aiding in a legitimate way his election at all. I do not believe that is what the moneys were turned over to the man Sulzer for. I do believe that William Sulzer had had experience in the stock market; that he had experience since 1910 has been shown here. He knew the value of certain securities; he knew the value of certain stocks known by name on the market, and he knew the value of William Sulzer, and after the nomination at the Syracuse convention he knew also the value of William Sulzer, candidate, and he knew that, by adding the nomination, that security was of more value, and he proceeded to trade on the value of William Sulzer, nominee; it was found to be $2,500 and no more, and he accepted that.

In the course of his walks he found another market, and he found in that market that "the same old Bill" was worth more than the amount bid. He offered himself at $7,500 and received ten one thousand dollar bills.

The question has been raised as to whether those facts, having occurred before the first day of January, were impeachable offenses. I say those facts were so connected with acts to be performed that they were a part of the transaction at the time, and the performance of which was to be had after January 1st, and that it makes it an act which occurs partially before and completed afterward, after the man was inaugurated into the high office of Governor of the State of New York.

These moneys were given to him for a purpose. They were given to him as a candidate for something they expected to purchase of him after he should have been inaugurated as Governor; and I know from the evidence in this case what he, Sulzer, knew

at that time, because we have in evidence his book of short speeches, and he made a short speech on this subject some time in 1908, when he was a member of Congress, on the question of the publication of campaign contributions, which was then up, and let us see what he has to say. I will quote it in part. He says:

> "This is a bill for honest elections. It affects the entire people of this country. It concerns the honor of the country. The honest people of the land want it passed."

To quote him again:

> "In every national contest of recent years the campaign has been a disgraceful scramble to see which party could raise the most money, not for legitimate expenses, but to carry out a system of political iniquity that will not and cannot bear the light of publicity. Political corruption dreads the sun of publicity, and works in secret and in darkness."

To quote him again:

> "This measure especially appeals to those patriotic people in our country who see grave dangers to the Republic in the growing evils incident to these large campaign funds. We should all advocate the bill for publicity from patriotic motives;" and finally, "The passage of such a bill would be a great victory for the plain people of the land, and will go as far in my judgment as anything that can be devised at the present time by the ingenuity of the human mind to effectually put a stop to political iniquity."
>
> "These great political contributions made by the vested interests are not voluntary contributions, but are levied like taxes, and are generally made with the understanding, express or implied, that the contributors shall be protected against the rights of the people and shall be secure in robbing the many for the benefit of the few, and shall have meted out to them by the party in power certain special privileges which are repugnant to our free institutions."

That man knew that in 1908. He knew it the day he went to Ryan and knew it the day he went to Schiff. He knew it the day he got the money from Morgenthau.

Now, I do not put Morgenthau, Ryan or Schiff in any better class than Sulzer. If I had to classify them I might put them further down if it were possible. But this shows that Sulzer himself knew when he took this money that he had to deliver. And talk about an overwhelming instinct. I think that is a proper word. He had an overwhelming instinct, and if he did he carried it with him after the 1st day of January, 1913, and he has that overwhelming instinct today. If he did not, he would have been here on the stand and explained these matters to our satisfaction.

Therefore, Mr. President, it becomes unnecessary for me to pass upon the question as to whether or not there was a constitutional limitation. I believe the facts stated in article 1 are all proved. I vote guilty.

The President.— Senator Torborg, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Torborg.— Mr. President, the defense has chosen to rely entirely upon the grounds that the offences were committed before the Governor assumed his official duties, claiming that there is nowhere in the law a precedent for this Court to act upon the charges made against the Governor. Therein this case differs from any case tried before a Court of Impeachment.

There is an important link between the candidate for office and the officer himself. You cannot sever the connecting link between the candidate and the officer any more than you can sever the connection between sowing the seed in the fall and reaping the harvest in the spring. If there had been no sowing there could not have been a harvest.

Suppose, for instance, that Governor Sulzer had been elected in the year 1910 and that the election in 1912 would have been his reelection to office. Could the offence be charged to his former occupancy of the office? If he could be so held, then it may be well to take into consideration the fact that he was a member of the House of Representatives at the time.

As has been cited before, former Sheriff Guden had been removed from the office of sheriff of Kings county for preelection

promises. No doubt the framers of the Penal Law and the corrupt practices act had in mind the greater danger with the candidate than the elected official. It is then indeed timely that this High Court of Impeachment recognize these acts and firmly establish and permanently fix such precedents.

It must have been considered a good law by the respondent when he hastened to comply with the existing law and file a statement acknowledging the receipt of $5,460, and expenditures of $7,724.09. He knew the law and I believe claims some credit for having had it enacted.

Mr. Sulzer has convicted himself by his refusal to take the stand and disprove the revelations of Allan A. Ryan, that the Governor had sought him to approach Mr. Barnes through United States Senator Root, and also Mr. Murphy through former District Attorney Nicoll of New York for their political influence with members of this Court, and that was during his term of office.

The Governor could have denied the allegation of Duncan W. Peck, who claims to have been advised by the Governor to perjure himself. The records show an uncontradicted statement of Henry Morgenthau that he had repelled a suggestion of the Governor to withhold the truth in connection with his contribution.

Why did the Governor request Mr. Jacob H. Schiff to draw his check to the order of a third person? Why did he invariably ask for cash contributions instead of checks? These questions have not been answered. No attempt was made to disprove the receipt of $10,700 in checks and $26,700 in cash, $37,400 more than appeared in his sworn statement.

A recapitulation of transactions made by the Governor as furnished by the managers reaches the sum total of nearly $100,000. How do we know but what the sum actually reached nearly a quarter of a million?

Mr. President, I am constrained to vote guilty.

The President.— Senator Velte, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Velte.— Mr. President, I am in thorough accord with

the view of the law as enunciated by Judges Miller and Hiscock and also by the facts as they have applied them in this case to the law.

My reasons will be more fully expressed in an opinion which I shall file with the clerk. I do not care to argue any more at present. I vote guilty.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Wagner.— Mr. President, I am keenly sensible that this, in a manner, is the most serious moment in the history of the State of New York. As judges of the highest court in the land, and in the trial of the highest official in the State, I am conscious that we ought to bring to the occasion the most scrupulous thought and most impartial consideration.

As judges, I take it we must first decide whether the facts alleged in the articles 1, 2 and 6 constitute, as a matter of law, valid grounds for impeachment.

I shall briefly state my reasons, at the risk of repetition and being somewhat tedious.

The first question of law which propounds itself relates to articles 1, 2 and 6. The respondent has placed in issue the legal sufficiency of these articles, urging principally that the acts alleged therein were preofficial, whereas impeachment would lie only for misconduct in office. I have come to the conclusion that this objection is not well taken. First, because, as an abstract proposition, misconduct in office need not be alleged; and, second, because the acts described in articles 1, 2 and 6 are, in their nature, connected with the office.

The history of the constitutional provisions relative to impeachment clearly shows that the respondent's contention is an erroneous one. In the Constitution of 1777 we read:

> "The power of impeaching all officers of the State, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in the Assembly."

There can be no doubt that, under that clause, impeachment was limited to misconduct in office.

The Constitution of 1821 provided that the Assembly shall have power of impeaching all civil officers of the State for mal and corrupt conduct in office and for high crimes and misdemeanors. Here impeachment may be instituted for official misconduct as under the Constitution of 1777, and in addition for high crimes and misdemeanors, whether official or not.

The Constitution of 1846 has this language:

> "The Assembly shall have the power of impeachment by a vote of a majority of all the members elected."

This also is the wording of the present Constitution. It will be noticed that the principal change effected was the omission of the limitation for mal and corrupt conduct in office and for high crimes and misdemeanors.

In the "Law of Constitutional Construction":

> "It is a sound presumption that the omission of a limitation or qualification from the original Constitution was the intentional act of the framers of the amended Constitution and was designed to remove the limitation and thus correspondingly to enlarge the scope of the provision.
>
> "We cannot assign as a reason for the omission that the clause was forgotten or overlooked, or that it was disregarded without thought to the effect of its elimination."

In fact, the debates in the constitutional convention show that they were intentionally omitted. Every presumption of law and every presumption of logic compel the conclusion that the removal from the constitutional provision of the limitation, to the effect that impeachment would lie only for misconduct in office, operates to give to the Assembly an unlimited power to impeach for misconduct in office or anterior to office. It is contended that there is no precedent of any case of impeachment where an official has ever been impeached for other than misconduct while actually in office. While that may be true, it is also true that there is no precedent or opinion rendered that under the law similar to our constitutional provision, the Assembly cannot impeach for acts committed prior to the office from which the re-

spondent is sought to be removed. If this reasoning be correct, and I am satisfied that it is, this Court cannot well sustain the respondent's objection.

I do not think it is necessary to go behind the different constitutional instruments, and to penetrate into the various offenses for the purpose of ascertaining the express reason and views of the distinguished delegates who were active in those conventions. An examination of the debates and argument, however, shows very clearly that the legal effect contended for by the managers of this trial was within the contemplation of those who, at the conventions, discussed the change. Aside from the inherent meaning of the constitutional provision, there is a persuasive precedent for the theory that impeachment can properly be directed against misconduct for the very office for which the respondent is sought to be removed. Judge Barnard was impeached and removed from his second term of office for acts committed in his first term, and I can see no distinction in principle between the offenses charged in the Barnard case and the misconduct alleged in this proceeding. I am aware of the provisions of section 12 of the Code of Criminal Procedure, which seem to limit impeachment to misconduct in office. But I cannot conceive of any maxim of legal construction which would justify the curtailment of a constitutional power by a legislative enactment. Even if such a construction were possible, is it not sound law to hold that section 12 of the Code of Criminal Procedure, enacted in 1891, was rendered nugatory by the subsequent readoption in 1894 of the absolute clause of the present Constitution?

By reason of all these considerations, here somewhat briefly expressed, the conclusion is inevitable that misconduct in office need not be charged in order to sustain an impeachment.

As a matter of fact, I am of opinion that articles 1 and 2 actually do charge misconduct in office. Articles 1 and 2 charge the respondent in substance with having committed perjury in making the statement required by law of the moneys received by him as contributions to his campaign fund. In reference to the perjury charge, I cannot separate in my mind the acts of the respondent as the successful candidate and de facto Governor, from the acts of the respondent as actual Governor. These acts, although prior in time

to actual incumbency, are not prior in nature, but are so essentially identified and connected with the office that they should, in all justice, and in all propriety, be deemed to be official acts. The respondent, by law, was required to file a true and complete statement of the finances of his candidacy. The statute was meant, primarily, to cover successful candidates, and it would seem that a successful candidate, doing certain acts connected with the office which he is about to take, ought to be held responsible for them, as official acts. If the respondent came to the threshold of the office with perjured credentials, even if it be only moral perjury, he cannot vindicate those credentials by crossing the threshold. He carries them with him, perjury and all, and I think it is the act of the official, as well as that of the candidate. It is certainly such a disregard for morality and law as clearly to unfit him for the office of Governor.

If I am right in this process of reasoning, and in the conclusions which I have made, the general result is that the objections of the respondent are not well taken, and that articles 1 and 2 set forth facts sufficient to constitute a cause for impeachment.

The objections made by the respondent to the sufficiency of these two articles, are the only serious questions of law which have arisen.

The next proposition is whether or not the evidence adduced on the part of the managers, counterbalanced by that introduced by the respondent, justifies the conviction or the acquittal of the respondent. Whether proof by a preponderance of credible evidence or conviction beyond a reasonable doubt be required, the record will not permit me to find any other verdict but that of guilty. Most of the evidence offered against the respondent stands uncontroverted, unimpeached and unassailed. The implausible and almost impossible testimony of the witness Sarecky is, indeed, the only attempt on the record to interpose a defense, and this attempt becomes abortive when due consideration is given to the contradictions, the evasions, the insincerity and the obvious prejudice which manifests itself in the testimony of this witness. The respondent, though the honor of the State was involved, did not appear to explain under oath these serious charges. The record of these proceedings is a one-sided story, and although I regret it, I am compelled to vote guilty.

The President.— Senator Walters, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Walters.— Presiding Judge, I vote the respondent guilty, and beg leave to file an opinion later.

The President.— Senator Wende, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Wende.— Mr. President, I recognize the fact that anything that I might say here would be of little or no consequence at this time. I am so far down the list that what is to be, will be, whatever happens. I will avail myself of the opportunity of putting myself on record before this Court, registering my opinion. I vote not guilty.

(Senator Wende filed the following opinion:)

We live under a written Constitution. Under our system of government the people are the soverign power and in them are reserved all the powers not definitely delegated to the various branches of government. The Legislature and both its branches find their power and its limitation in the Constitution and have no power not found there.

The Consitution not only defines the fundamental law, but in some instances prescribes the mode of procedure for transacting the public business. It provides that the political year and legislative term shall begin on the first day of January, and that the Legislature shall every year assemble on the first Wednesday in January (article 10, section 6), and when thus assembled constitute the "regular session," and if it assembled on the first Tuesday instead of Wednesday it would not be a regularly constituted Legislature and its acts on that day would not be valid although the term of office of the members had already commenced.

At a regular session the lawful business of the Assembly can be transacted and would be valid. Such business includes the right of impeachment; such right continues during the entire

term so long as the regular session continues, but when the Assembly adjourns its regular session sine die, the Assembly ceases to exist and all its rights to act are terminated and foreclosed. Section 4 of article 4 of the Constitution provides, "He (the Governor) shall have power to convene the Legislature or the Senate only on extraordinary occasions. At extraordinary sessions no *subject* shall be acted upon except such as the Governor may recommend for consideration." These are the only sections of the written Constitution of this State having any bearing on the question except section 13 of article 6, which provides that, "The Assembly shall have the power of impeachment by a vote of a majority of all the members elected."

The vice of nearly every discussion has been that it was assumed that a majority of the *members* of Assembly can impeach. This is not so; it requires *the Assembly* by a vote of a majority of its members duly elected. All the members of the Assembly congregated in the assembly chamber do not constitute *the Assembly* unless the Assembly is in regular session or extraordinary session called by the Governor.

All the members of Assembly being congregated in the assembly chamber do not constitute a legal, official body any more than all the judges of the Court of Appeals or the justices of an Appellate Division of the Supreme Court constitute a court, unless convened in a regularly and duly appointed term in order to get jurisdiction, and if all the judges were assembled in the court room anxious to act as a court, they could not do so unless a term of court had been duly appointed for the time.

The Assembly can be called together only by the constitutional provision which requires the Legislature to meet on the first Wednesday in January in *regular session* or by the Governor during a recess and after the Legislature has adjourned sine die. The regular session was over; the Legislature had adjourned without day and was *functus officio* unless the Governor brought it to life by convening it in extraordinary session. This he did, and when so convened the Constitution says that, "No subject shall be acted upon except such as the Governor may recommend for consideration." Impeachment is most assuredly a *subject*. To say that it is not a subject is to do violence to every rule of construc-

tion and to the English language. It does not say legislative subject, it says *subject* and nothing could be more a subject or a more important subject than the impeachment of the Governor of the State; to try to prove this by argument is to amplify the obvious and illustrate the evident. So I think it apparent that the Governor cannot, by following the written Constitution, be impeached at an extraordinary session unless "recommended" by himself. There is certainly nothing in the written fundamental law allowing it otherwise, unless read into it by a court in a process called construction; and a just complaint of the times is that courts do occasionally, by so-called construction, put things in the Constitution that no ordinary citizen had ever supposed were there, although he had been looking that same document through at intervals all his life.

To hold that the Assembly has an inherent power to convene for the purpose of impeachment is untenable. We live under a written Constitution in which the people of the State expressly provided that the Legislature as a whole could be convened on extraordinary occasions. It also provides that the Senate could be separately so convened, but omits to provide that the Assembly could be separately convened, and by this very exclusion and omission it is evident that it was a power purposely withheld and that the limitation that at extraordinary session "no subject shall be acted upon except such as the Governor may recommend for consideration," the broadest meaning was intended.

There is seldom an extraordinary session of the Legislature that does not grow out of differences between the Executive and the Legislature and for the purpose of compelling consideration of some specific, important and mooted question, and the Constitution undertook to protect the Governor from embarrassment and assaults of all kinds by this very provision that no subject other than those he submitted should be acted upon.

To argue that the Constitution never intended to make it impossible to impeach a Governor during legislative recess is to beg the whole question. That is exactly what the Constitution does do in terms. This is a government of laws and due process of law and orderly procedure must be observed.

It often happens that justice has to wait on ceremony and the rules of procedure. In some counties only one or two grand juries meet in a year; in many counties of this State only three meet in a year. If a murder or other serious crime is committed just after a grand jury adjourns sine die no indictment can be found until the next grand jury convenes in a regular and orderly manner, and this must be so no matter how great the clamor; otherwise this is not a government of laws but a government by hue and cry. So if the Governor has committed any offense for which he should be impeached, let it be submitted to the next Assembly regularly and constitutionally convened as our fundamental law provides.

As bearing on any implied power of the Assembly or the Legislature as a whole to come back to life of its own volition, we may look at section 11, article 6, which provides that judges of the Court of Appeals and Supreme Court justices may be removed from office by concurrent resolution of both houses of the Legislature if two-thirds of all the members elected to each house concur therein. Suppose that one of these officials should commit murder or should go violently insane so that decency and order would be best served by a removal from office, and the Legislature being in recess, the Governor should refuse to call an extraordinary session, does any one suppose that the Legislature itself would then have power of some inherent sort to come to life and have an extraordinary session of its own calling? Of course no one would think of suggesting that such a thing could be done, although the power of removal in this case is vested in the Legislature exclusively, and no more can the Assembly come to life to impeach a Governor after the Legislature has adjourned sine die. The truth is that it has ever been assumed that no such power existed or exists, and the public business of the various states, no matter how important, has been transacted in the manner and at the times prescribed by the several constitutions.

I understand that Presiding Judge Cullen ruled that, while the Assembly could not while in recess be convened except by the Governor calling the Legislature together in extraordinary session, the Legislature was in extraordinary session regularly called by the Governor and as the act of impeaching was for the Assembly

alone, it did not fall within the constitutional inhibition that "no subject shall be acted upon except such as the Governor may recommend for consideration." This cannot be a correct view; it violates the very axioms. Particularly "The whole includes all the parts." When the Constitution forbade the Legislature to act on any subject not recommended by the Governor, it did not mean that a part or fraction of the Legislature could violate that provision and do what the whole could not do.

This is a government of laws and there is full power in the next Assembly regularly and constitutionally convened to impeach the Governor of the State, and better a thousand times adhere to the law than yield to the expediency of the moment.

For the reasons given I hold that the resolution introduced in the Senate by Senator Thompson at its special, irregular or extraordinary session authorizing the Frawley committee, so called, to investigate, not having been recommended by the Governor, was unlawfully introduced and adopted; that the Assembly acted without warrant of law in presenting the articles of impeachment and that the Senate had no right to act thereon.

I therefore vote not guilty on the various charges and withhold my vote to remove William Sulzer from the office of Governor.

The articles of impeachment presented by the Assembly should be dismissed.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Werner.— Mr. President and members of the Court: During the many roll calls which have been had since this Court was first convened, I have become painfully conscious that by the time my name is reached my vote is of much more consequence than my opinion, since nearly every question that has been discussed has been crystallized and disposed of. For that reason I have often remained silent, when I would feign have spoken, and I do not propose to depart from the rule of silence now, except to the extent of briefly stating my views upon this question, which, as I understand it, is the only question now before the court: Whether this respondent is guilty or not guilty under article 1?

If the question of his guilt were dependent entirely upon the facts which have been established beyond dispute I should, of course, join with those who have declared this respondent guilty, because we know that he has committed acts which are so morally indefensible that they can hardly be described in language of judicial air and form; but there is another part of this question. Assuming the facts, as they have been stated and proved, is he legally guilty of any offence for which he is impeachable under article 1? That depends wholly upon the view which we take of the Constitution.

What is the constitutional argument? Judge Miller has stated it very brilliantly and forcibly for the one side; the presiding officer, Judge Bartlett and Judge Chase have stated it on the other side. It may be summarized in a very few words. The argument on the one hand is that because the Constitutions of 1877 and 1821 refer to certain enumerated grounds for impeachment, and those alone, and the Constitution of 1846 eliminated those grounds, therefore, there is now no limit upon the power of the Assembly to impeach.

What is the other side of the argument? That in 1881 the Legislature of this State declared that the Court for the Trial of Impeachments has power to try impeachments when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of justices' courts and justices of police courts, and their clerks, for wilful and corrupt misconduct in office.

That is a legislative declaration of what the Constitution was which immediately preceded the adoption of this statute, and it is in effect a reenactment of the statute which reaches back to when the Constitution of 1846 was in force and before that. My view is that this is not a question which can be disposed of with dogmatic certainty. I have grave doubts whether the argument on one hand or the other is strictly tenable, and for that reason I am constrained to give this respondent the benefit of the doubt, and upon this particular article I vote not guilty.

The President.— Senator Wheeler, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Wheeler.— Mr. Presiding Judge, I vote not guilty.

The President.— Senator White, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator White.— Guilty.

The President.— Senator Whitney, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Whitney.— Mr. Presiding Judge, I believe the charges in article 1 have been sustained, but I am convinced by the opinion of the learned Presiding Judge that you cannot impeach a person for crimes or offences committed before taking office.

I therefore am compelled to vote not guilty.

The President.— Senator Wilson, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Wilson.— Mr. President, I am a layman, and after hearing the able lawyers and judges of this Court discuss the points of law in this case and disagree, and as the respondent has not been willing to come on the witness stand and deny the testimony of either Peck, Morgenthau or Ryan, I am constrained to use my own judgment as to the facts proved in this case. There seems to be no question as to the guilt of this respondent. I therefore vote according to the dictates of my own conscience, and vote guilty.

The President.— The clerk will announce the result.

The Clerk.— Guilty, 39; not guilty, 18.

The President.— Read the second article.

The Clerk.— That the said William Sulzer, now Governor of the State of New York, then being Governor-elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to

file in the office of the Secretary of State within ten days after his said election as aforesaid, an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election, giving the names of the various persons who received such moneys, the specific nature of each item and the purpose for which it was expended and contributed; and was further required to attach to such statement an affidavit, subscribed and sworn to by him, such candidate, setting forth, in substance, that the statement thus made was in all respects true and that the same was a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election.

That, being thus required to file such statement, and attach thereto such affidavit, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under such statutes, made and filed in the office of the Secretary of State what purported to be a statement made in conformity with the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit:

That all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic party for the office of Governor of the State of New York, in connection with the general election held in the State of New York, on the 5th day of November, 1912, were receipts from sixty-eight contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred and twenty-four and nine one-hundredths ($7,724.09) dollars, the detailed items of which were fully set forth in said statement so filed as aforesaid.

That attached to such statement thus made and filed by him as aforesaid was an affidavit, subscribed and sworn to by said William Sulzer, stating that said statement was in all respects true and that the same was a full and detailed statement of all moneys received or contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election.

That said statement thus made and filed by said William Sulzer,

as aforesaid, was false, and was intended by him to be false and an evasion and violation of the statutes of the State and the same was made and filed by him wilfully, knowingly and corruptly, being false in the following particulars, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2,500
Abram I. Elkus	500
William F. McCoombs	500
Henry Morgenthau	1,000
Theodore W. Myers	1,000
John Lynn	500
Lyman A. Spalding	100
Edward F. O'Dwyer	100
John W. Cox	300
Frank S. Strauss Co.	1,000
John T. Dooling	1,000

That said affidavit thus subscribed and sworn to by said William Sulzer was false and was corruptly made by him.

That in making and filing such false statement as aforesaid the said William Sulzer did not act as required by law, but did act in express violation of the statutes of the State and wrongfully, knowingly, wilfully and corruptly, and in making said affidavit as aforesaid, the said William Sulzer was guilty of wilful and corrupt perjury and of a violation of section 1620 of the Penal Law of the State; and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement and affidavit thus made and filed by him caused great scandal and reproach to the Governor of the State of New York.

The President.— Call the roll, Mr. Clerk.

The President.— Senator Argetsinger, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Argetsinger.— Guilty.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Bartlett.— Not guilty, on the ground that the acts charged in this article were not committed after the respondent took office.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Blauvelt.— Mr. President, this article charges the respondent with having filed a false statement, and having attached thereto a false affidavit. The statement which he made and filed was admittedly false. The certificate attached to the statement and sworn to by the respondent was also concededly false. It is claimed that because section 776 of the Penal Law does not require a candidate to make oath as to contributions received by him the respondent committed no statutory crime in falsely swearing to such contributions in his statement and that is undoubtedly true, but, measured by moral standards, the offense which he committed was just as great. When he signed that affidavit he knew that the statement he was making was false, and that he was not disclosing all the contributions which had been received by him in aid of his election.

At the time he made the affidavit, he believed that the statutes of the State required him to disclose contributions received by him, else why did he not correct the affidavit before taking the oath? The intent to deceive was fixed in his mind at the time. He must have felt at least that he was committing perjury in so swearing. Can he, therefore, escape condemnation? I think not.

For the reason, therefore, that the statement was known to be false to the respondent, and for the further reason that the moral crime committed by him at a time and under such circumstances as must have led him to believe he was committing a statutory offense, and in view of the fact that, in my opinion, it is not necessary to hold the respondent guilty of any statutory offense in order to show his unfitness to hold public office, I vote the respondent guilty under this article.

The President.— Senator Boylan, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Boylan.— Mr. President, I would ask that the remarks that I made in voting on the first article apply with equal force and effect to this my vote on the second article. I find the respondent guilty as charged in the second article of impeachment.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Brown.— For the reason stated by Senator Blauvelt, guilty.

The President.— Senator Bussey, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Bussey.— Guilty, your Honor.

The President.— Senator Carroll, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Carroll.— Mr. President, I am not concerned as to whether or not the acts charged against the respondent in article 2 of the impeachment constitute the legal crime of perjury. The question is whether or not the respondent intentionally and wilfully made the false statement charged against him; he having failed to meet the charge, there is no alternative but to vote him guilty, and I ask to be so recorded.

The President.— Senator Carswell, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Carswell.— Mr. President, I do not find that the respondent has committed the legal crime of perjury, but I do find under this article that it charges and the proof sustains an impeachable offence. I find him guilty.

The President.— Judge Chase, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Chase.— For the reasons stated by me when I answered the question submitted under article 1, I answer under this article, not guilty.

The President.— Senator Coats, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Coats.— For the reasons stated by Senator Blauvelt, and for the further reason, that I consider the acts committed by the respondent as recited in this article to be in furtherance of the policy followed by him of concealment, I vote him guilty.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Collin.— Presiding Judge, for the reasons stated by Senator Blauvelt and those stated in the written statement of my reasons for voting under article 1 as I did, I find him guilty, and vote him guilty.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty, as charged in the second article of the impeachment.

Judge Cuddeback.— Following the vote which I gave on the first article, I must vote guilty on this article.

The President.— I vote not guilty, for the reasons that induced me to vote not guilty on the first article of impeachment.

The President.— Senator Cullen, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Cullen.— Guilty.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Duhamel.— Mr. President, I received from the Secretary of State last fall a blank to be filled out with a report as to my receipts and expenditures in compliance with section 776 of the Penal Code. I endeavored to comply with this section, and somehow sent it to the county clerk; the recording clerk, who was a neighbor and constituent of mine, called me up and told me that my report was incorrect and informal, and he instructed me how to make out a report in compliance with section 542 of the corrupt practices act. I did so, and the statement was placed on file. I am confident that if Governor Sulzer had had someone in the Secretary of State's office sufficiently friendly to him to instruct him as I was instructed in regard to the making out of the report, that he would not have been impeached under this section, and I vote not guilty.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Emerson.— Not guilty.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Foley.— Guilty, upon the ground given by Senator Blauvelt.

The President.— Senator Frawley, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Frawley.— Mr. President, it is charged in the second article of the impeachment that the respondent made and filed a false statement under oath. These facts have been proved by competent evidence and appear unchallenged upon the record of this proceeding. For reasons advanced by me in explaining my vote upon the first article of the impeachment and for the further reasons stated by Senator Blauvelt, I find the respondent guilty as charged in article 2 of the impeachment.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Godfrey.— Guilty.

The President.— Senator Griffin, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Griffin.— Guilty.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Heacock.— Not guilty.

The President.— Senator Healy, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Healy.— Guilty.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Heffernan.— Guilty.

The President.— Senator Herrick, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Herrick.— On the grounds which I gave for my vote on article 1, and on the further ground that I do not believe the acts charged in article 2 constitute perjury, I vote not guilty.

The President.— Senator Hewitt, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Hewitt.— Guilty.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Hiscock.— I think the reasons which led me to vote guilty on the first article, logically lead me to vote guilty on the second article, which I do.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Hogan.— For the reasons which prompted me to vote as I did on the first article, and yet finding that the respondent is not guilty of the crime of perjury, I vote guilty.

The President.— Senator McClelland, how say you, is the respondent guilty or not guilty, as charged in the second article of the impeachment?

Senator McClelland.— Presiding Judge, for the reasons that I presented in explaining my vote on article 1, and upon the grounds presented by Judges Collin and Cuddeback, and Judge Hiscock, Judge Hogan and Judge Miller, in support of their vote, in support of the guilt of the respondent under article 1, I feel constrained to vote guilty upon article 2.

The President.— Senator McKnight, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator McKnight.— Not guilty.

The President.— Senator Malone, how say you, is the respondent guilty or not guilty, as charged in the second article of the impeachment?

Senator Malone.— Mr. Presiding Judge, for the same reasons given by me in voting guilty on article 1, I also vote guilty on this article.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Miller.— For the reasons stated by Senator Blauvelt and those stated by me with respect to article 1, I vote guilty.

The President.— Senator Murtaugh, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Murtaugh.— Mr. President, I do not find the respondent guilty of perjury. I think, however, that he is guilty of the impeachment charge. I vote guilty.

The President.— Senator O'Keefe, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator O'Keefe.— Not guilty.

The President.— Senator Ormrod, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Ormrod.— I find him guilty.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Palmer.— Not guilty.

The President.— Senator Patten, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Patten.— Mr. President, I concur in the opinion of Senator Carswell, and hold him guilty.

The President.— Senator Peckham, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Peckham.— Not guilty.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Pollock.— Upon the grounds stated by Senator Blauvelt, I vote guilty.

The President.— Senator Ramsperger, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Ramsperger.— Guilty.

The President.— Senator Sage, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Sage.— For the reasons stated by Senator Blauvelt, guilty.

The President.— Senator Sanner, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Sanner.— Guilty.

The President.— Senator Seeley, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Seeley.— Not guilty.

The President.— Senator Simpson, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Simpson.—Mr. President, for the reasons stated on the vote upon article 1, and for the further reason that even though this was not legal perjury, in my opinion, it was an impeachable offense, I vote the respondent guilty under article 2.

The President.— Senator Stivers, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Stivers.— Not guilty.

The President.— Senator Sullivan, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Sullivan.— For the reasons advanced by me in my opinion on article 1 and for the further reasons given by Senator Blauvelt, I vote guilty.

The President.— Senator Thomas, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Thomas.— Not guilty.

The President.— Senator Thompson, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Thompson.— Guilty.

The President.— Senator Torborg, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Torborg.— Guilty, in accordance with my vote on the first article.

The President.— Senator Velte, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Velte.— I believe that article 2 is an impeachable offence, but I do not believe that the defendant committed technical perjury. I vote guilty.

The President — Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Wagner.— For the reasons given by Senator Blauvelt and the reasons I gave in support of my vote on the first article, I vote guilty.

The President.— Senator Walters, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Walters.— Presiding Judge, I vote guilty.

The President.— Senator Wende, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Wende.— For the reason that the article charges perjury and no perjury is proved, I vote not guilty.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Werner.— Not guilty.

The President.— Senator Wheeler, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Wheeler.— Not guilty.

The President.— Senator White, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator White.— Guilty.

The President.— Senator Whitney, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Whitney.— Mr. President, for the reasons stated when I voted on article 1 and for the further reason that I do not find the respondent guilty of legal perjury, I vote not guilty.

The President.— Senator Wilson, how say you, is the respondent guilty or not guilty, as charged by the second article of impeachment?

Senator Wilson.— Mr. President, I vote guilty.

The Clerk.— Those voting guilty 39; not guilty 18.

The President.— Clerk, read the third article of impeachment.

The Clerk.— (Reading): That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty

of mal and corrupt conduct in his office as such Governor of the State and was guilty of bribing witnesses, and of a violation of section 2440 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation, and had full authority in the premises, he, the said William Sulzer, in the months of July and August, 1913, fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell, and one Melville B. Fuller, each, to withhold true testimony from said committee, which testimony it was the duty of said several persons named to give to said committee when called before it, and which, under said inducements of said William Sulzer, they and each of them refused to do.

That, in so inducing such witnesses to withhold such true testimony from said committee, the said William Sulzer acted wrongfully and wilfully and corruptly, and was guilty of a violation of the statutes of the State and of a felony, to the great scandal and reproach of the said Governor of the State of New York.

Senator Wagner.— Presiding Judge, I would like to inquire whether upon this roll call we could not be recorded without going through the formality? I think we are of one opinion.

The President.— What is the opinion? That it is substantial or it is not?

Senator Wagner.— It is not, I understood in our private consultation.

The President.— That was only informal, gentlemen, by way of discussion.

Senator Wagner.— I wanted to save the time of the Court and a lot of labor for the Presiding Judge.

The President.— Each gentleman will just say guilty or not guilty, as the clerk calls his name. That will expedite matters and we will comply with the law.

The clerk thereupon called the roll with the following result:

Not guilty.— Senator Argetsinger, Judge Bartlett, Senators Blauvelt, Boylan, Brown, Bussey, Carroll, Carswell, Judge Chase, Senator Coats, Judges Collin, Cuddeback, Cullen, Senators Cullen, Duhamel, Emerson, Foley, Frawley, Godfrey, Griffin, Heacock, Healy, Heffernan, Herrick, Hewitt, Judges Hiscock, Hogan, Senators McClelland, McKnight, Malone, Judge Miller, Senators Murtaugh, O'Keefe, Ormrod, Palmer, Patten, Peckham, Pollock, Ramsperger, Sage, Sanner, Seeley, Simpson, Stivers, Sullivan, Thomas, Thompson, Torborg, Velte, Wagner, Walters, Wende, Judge Werner, Senators White, Whitney, Wilson — 57.

The Clerk.— 57, not guilty.

The President.— Read the fourth article.

The Clerk.— That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of suppressing evidence and of violation of section 814 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain and report at an extraordinary session of the Legislature, then in session, all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, practised deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance and testimony of

certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons, severally, they or many of them having in their possession certain books, papers and other things which might or would be evidence in the proceedings before said committee, and to prevent such persons named, and all other persons, they, severally, being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do.

That, in thus practising deceit and fraud and using threats and menaces as, and with the intent, aforesaid, and upon the persons before named, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

The President.— Call the roll.

The President.— Senator Argetsinger, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Argetsinger.— Guilty.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Bartlett.— The Court having determined that this article is sufficient in form to justify a consideration of the Peck incident as a substantive offence, and that offence having been proved without any substantial denial or, indeed, any denial whatever by the respondent in person, I feel constrained to vote guilty on this article.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Blauvelt.— Guilty.

The President.— Senator Boylan, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Boylan.— Guilty, Mr. President.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Brown.— Mr. President, very briefly, in my opinion article 4 may be fairly interpreted as broad enough in terms to justify treating the evidence of Morgenthau and Peck as the basis of a substantive charge. Stripped of verbiage and casuistry, the article would read:

> "That the said William Sulzer, then being Governor of the State of New York, unmindful of the duties of his office and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of suppressing evidence to the injury of the State."

And this article is sustained by the uncontradicted testimony of Morgenthau and Peck that the respondent asked them not to tell the truth about the contributions they had made to him. This substantial proof of the broad allegation cannot be obliterated because it justifies a much more serious charge or charges, to wit, the subornation of perjury and the use of a threat to prevent the giving of testimony. I am unable to concur with those members of this Court who are of the opinion that the Governor committed the offenses before he became Governor alleged in the articles of impeachment, but are unable to vote for impeachment, because acts committed before taking office are not within the purview of the Constitution, who are of the opinion that the Governor in committing the acts testified to by Morgenthau, Peck and Ryan committed impeachable offenses in office for which he should be removed from office, but cannot vote for conviction because the language of article 4 is not broad enough to enable them to consider the charges; and who decline to be bound by the ruling of

the Court that article 4 is broad enough to consider such testimony as the basis of substantial charges.

Courses of reasoning leading to such an absurd conclusion must be reexamined. Sound reasoning does not produce such a conclusion. If it prevails here today, it will be the duty of the Assembly to convene tomorrow and formulate articles of impeachment based upon the opinions of judges who have voted for acquittal. Such a result would bring discredit upon the administration of justice. I vote guilty.

The President.— Senator Bussey, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Bussey.— Mr. President, as charged in article 4 I vote guilty.

The President.— Senator Carroll, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Carroll.— This Court having decided that the provisions of article 4 are sufficiently broad to permit the testimony of the witness Peck to come within its province, which is uncontradicted and shows conclusively that the respondent is guilty of the acts charged in the fourth article of the impeachment, I vote guilty.

The President.— Senator Carswell, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Carswell.— Upon the grounds stated by Senator Brown, eliminating the reference to the witnesses Morgenthau and Ryan, I vote guilty.

The President.— Judge Chase, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Chase.— I find that the testimony of Duncan W. Peck is true. I also find that the relation of the parties to the conversation related by Peck and the circumstances surrounding the

parties, as shown by the testimony received in this proceeding, show that the respondent not only asked Peck to commit perjury, but by menace sought to prevent him from disclosing the facts stated in the testimony given in this Court relating to his contribution to the respondent's campaign expenses.

Because of such findings of fact, and for the reasons stated by Judge Bartlett, I vote guilty.

The President.— Senator Coats, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Coats.— For reasons stated by Judge Chase and Senator Brown, I vote guilty.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Collin.— Guilty.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Judge Cuddeback.— The testimony of the witness Peck as to the conversation between him and the respondent had at the executive chamber in July last shows, if true, attempted subornation of perjury on the part of the Governor. Peck's testimony was admitted without objection and without limitation so far as I can find and it stands uncontradicted in the case. The importance of the testimony was accentuated by the Court in calling the attention of counsel to it specifically and the question whether it could be considered as affording substantive ground of impeachment under article 4 was debated for a whole day. No application was made for an opportunity to offer further evidence upon the subject of the conversation.

It seems to me that if Peck's testimony can fairly be considered under article 4 of the charges of impeachment, it ought to have the force and effect to which it is plainly entitled. The attempt has been made to limit article 4 to offenses included in section 814 of the Penal Law. If it be true, as it undoubtedly is, that

an impeachable offense need not necessarily be an offense against the Penal Law, then article 4 ought not to be tested by comparison with any statute. Article 4 would not be good as an indictment under section 814, and it is a fact that none of the articles of impeachment are drawn with the care and precision which courts require in the preparation of indictments.

The language in section 814 should be liberally construed and be extended to any offense fairly within its provisions. If article 4 named Duncan W. Peck specifically as one of the persons upon whom the Governor attempted to exercise the influence which the article charges, it would be plain that proof under that article such as is furnished by the testimony of Peck would be sufficient and the fact that it is not in all respects the same as the charge would be regarded as an immaterial variance. It is admitted that the words "all other persons" contained in article 4 are sufficient to include any individuals besides those mentioned by name in the article and to render admissible proof that the Governor sought to influence such other individuals.

The article charges that the respondent used deceit and fraud with the intent to prevent the Frawley committee from procuring the attendance and testimony of certain persons and with intent to prevent such persons from disclosing their evidence before the committee. The testimony of Peck, it is admitted, meets all these specifications of article 4 except that which charges deceit and fraud. I think it is not straining the testimony of Peck to say that it does show deceit and fraud, and if it does not, in view of the liberal interpretation to be given to the article, that the variance between the proof and the charge is immaterial and should be disregarded.

I am anxious to do no wrong to the respondent and anxious to do no wrong to this Court, but it would be a gross miscarriage of justice to find, as we must, that this gross offense has been committed and also find that the case must go off on a question of pleading. I do not believe this Court is so pitiably weak as that conclusion would show.

I vote guilty.

The President.— I vote not guilty. Ordinarily, I would subordinate of course any feeling of myself or judgment of my own

on questions of pleading or procedure to those in the majority of the Court, but the question here involved is in my judgment, however mistaken, too substantial for a man to vote any way except in accordance with his judgment, and I have this to say, because this article rests as I suppose on what may be termed the Peck incident or conversation.

(Here Judge Cullen, President, read from the opinion filed by him. See page 1614.)

The President.— Senator Cullen, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Cullen.— Guilty, your Honor.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Duhamel.— Mr. President, I am impressed with the opinion of the Presiding Judge and vote not guilty.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Emerson.— Guilty.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Foley.— Presiding Judge, I vote guilty under this article, and I desire to call attention to the fact that a reply was made on behalf of the respondent by his counsel to this particular charge as covering the Peck and Morgenthau testimony. In one case it was said, at page 1464:

"There are a couple of others not charged in the impeachment, but they show you the atmosphere that was attempted to be created in this case."

And then came an explanation or a comment not only upon the evidence as given by Peck but somewhat extraneously upon the motives for giving that vote.

I hold that the evidence shows a corrupt and continuous disposition by the respondent to suppress testimony in the cases of Sarecky, Peck and Morgenthau. This is especially clear from his attempts to influence Morgenthau the very day he returned from Europe. I vote guilty.

The President.— Senator Frawley, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Frawley.— The charges alleged in the fourth article of impeachment have been proved against this respondent. The evidence offered by the board of managers in support thereof stands upon the record of this proceeding uncontradicted and unchallenged. It discloses and evidences a wrongful, wilful and corrupt scandal and reproach upon the respondent and proved beyond a reasonable doubt that the respondent violated the Penal Law of the State of New York and is guilty of every charge contained in article 4.

I therefore vote guilty.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Godfrey.— I vote guilty.

The President.— Senator Griffin, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Griffin.— Mr. President, I agree with the view of Judge Bartlett, that the misconduct of the respondent with respect to Peck and as testified to by Peck, is established. I consider that article 4 is sufficient to include the testimony of Peck. It is not, in my opinion, however, sufficient to include the misconduct testified to by Morgenthau and Ryan.

The transaction between Peck and the respondent took place

after July 13, 1913. The transaction between Morgenthau and the respondent took place on September 2d or 3d. The transaction as testified to by Ryan, between him and the respondent, took place a week before the convening of the Court of Impeachment.

I cannot concur in the view that this charge should have been laid under section 813 of the Penal Law, nor with the contention that it is improperly laid under section 814. The latter section, skeletonized, will be found to read as follows: "A person who maliciously practices any deceit . . . with intent to prevent any party to an action or proceeding from . . . procuring the attendance or testimony of any witness therein . . . is guilty of a misdemeanor."

An examination of Peck's testimony shows that deceit is precisely the offense the respondent was guilty of in endeavoring to have Peck conceal from the Frawley committee the fact that he (Peck) had made a contribution to the respondent's campaign.

It must be kept carefully in mind that at the time of the interview between the Governor and Peck, the latter was not under subpoena. He had simply received a formal communication from the Frawley committee, inquiring as to whether or not he had made such a contribution. He thereupon asked the Governor what he would do about it. The latter replied, "Do as I shall; deny it." In other words, practice a deceit upon the committee by denying the contribution and thus throw the investigation off the track. It is quite apparent that if Peck had followed the respondent's suggestion, he would never have been subpoenaed.

If Peck had been under subpoena at the time of this interview, the respondent's suggestion would have come under section 813 of the Penal Law which I believe is specially aimed at an offender who tampers with one who *is* a witness (i. e. under subpoena); for the section skeletonized, reads: "A person who . . . incites or attempts to procure another to commit perjury, or to give false testimony *as a witness* . . . is guilty of a misdemeanor."

If Peck had replied to the Frawley letter, denying that he had made a contribution, he would not have committed perjury or given false testimony *as a witness*. He would simply have been guilty of deceit as was also the respondent in so advising him.

The conduct of the respondent as testified to by Peck was therefore not assailable under section 813, but was clearly within the purview of section 814 under which, in my opinion, the charge is properly laid.

Those transactions testified to by Morgenthau and Ryan, respectively, took place after the articles of impeachment were framed and presented by the Assembly. That was done on August 13, 1913, and I hold that nothing to the detriment of the respondent taking place after the articles were framed can be considered against him; but, agreeing with Judge Bartlett that the transactions between the respondent and Peck have been established without contradiction, I vote guilty.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Heacock.— Not guilty.

The President.— Senator Healy, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Healy.— Guilty.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Heffernan.— Guilty.

The President.— Senator Herrick, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Herrick.— Mr. President, this Court having decided that the testimony of the witness Peck could be considered as substantive evidence of the allegations set forth in article 4, I find that his testimony is true, as it stands on the record absolutely unexplained, uncontradicted and unimpeached.

I vote guilty.

The President.— Senator Hewitt, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Hewitt.— Guilty.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Hiscock.— While I find that the evidence of Mr. Peck is true, and while I believe the evidence of Mr. Peck to be true, I am unable to find in the evidence the facts which, in my judgment, are necessary to sustain this particular article. Therefore I am compelled to vote not guilty on this article.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in this fourth article of impeachment?

Judge Hogan.— Guilty.

The President.— Senator McClelland, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator McClelland.— Coinciding with the views expressed by Judge Chase and Judge Bartlett, I am constrained to vote on article 4 guilty.

The President.— Senator McKnight, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator McKnight.— Not guilty.

The President.— Senator Malone, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Malone.— Guilty.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Miller.— I entirely agree with all that the Presiding Judge has said on the subject of this article, and, for the reasons stated by him, I vote not guilty.

The President.— Senator Murtaugh, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Murtaugh.— Mr. President, upon the record, uncontradicted and unchallenged, stands the testimony of Duncan W. Peck and by it the respondent is proved guilty of the suppression of testimony and subornation of perjury. The failure of the respondent to come on the stand and deny and clear away this serious evidence, carries to the mind a strong impression of his guilt. This is practically conceded by all the members of the Court. It is, however, contended that section 814 of the Penal Code does not cover by its provisions the crime proved by the board of managers. On this question I regard myself concluded by the ruling and action of the Court on this question yesterday. The substance, and not the form, is the point to which justice should be directed.

The respondent as Governor of the State could ill afford to place himself in such an atmosphere of suspicion and, whether legally guilty or not of the crime, the evidence shows that the offence is clearly an impeachable one. I therefore vote guilty.

The President.— Senator O'Keefe, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator O'Keefe.— Not guilty.

The President.— Senator Ormrod, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Ormrod.— Mr. President, the respondent has already been adjudged guilty on two charges by this Court of Impeachment. The Court has found the respondent guilty in that he filed with the Secretary of State a false statement of his receipts and other monetary transactions in his gubernatorial campaign,

and second, that he committed perjury in his statement to the Secretary of State relative to his receipts and disbursements.

We have now come to the fourth count of the articles of impeachment, that the respondent suppressed evidence by means of threats to keep witnesses from testifying before the legislative investigating committee.

While it has been argued that the acts complained of in the first two charges did not occur during the term of office of the respondent, it cannot be claimed that those of which the respondent is accused by this fourth count did not then occur. The application of the managers to amend this article was denied, and the Court has held that article 4 is broad enough to permit consideration of the Peck instance as the basis of a substantive charge. The testimony of the witness Peck not only reveals the shameful fact that the respondent urged the witness not to disclose his contribution, but also that he suggested that the witness commit perjury and forget the solemnity of his oath. Without attempting to marshal further the evidence which has been given before this Court to substantiate this article of impeachment, it is only necessary to remind the members that the evidence is uncontradicted and that the respondent has failed to appear in person and answer these charges or to contradict the damning evidence which proclaims his guilt. The offense which is charged in this article is a mal and corrupt conduct in office and is such a high crime and misdemeanor that it is the duty of this Court to adjudge the respondent guilty. It cannot be claimed that the acts charged in this article are of a political nature, for it is clear they are distinctly personal, attempts to suborn perjury and to suppress proper and competent evidence. An innocent man, a fearless man, even a brave scoundrel would have faced this Court and attempted to contradict the overwhelming evidence which more than sustains the accusations made by this article. The respondent is self-destroyed and self-convicted. There does not rest in any member of this Court any discretion in relation to his vote after the evidence has been found sufficient to sustain the charge. Under such circumstances, it is the sworn duty of a member to vote guilty and it would be violative of his oath to do otherwise. I vote guilty.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Palmer.— Mr. Presiding Judge, this is the article concerning which in the private meetings of this Court, I asked the question, or raised the question of date. Believing that was involved in the question, I let my vote stand as it was. I regretted that the views of the Presiding Judge did not stand with the Court. Voting with him at that time I feel that I must bow to the verdict of the Court itself, that makes the Peck incident germane to this article 4. I regretted that it was uncontradicted; that the Governor did not come here himself and deny it, if he could; that no cross-examination was had; that if a witness to discredit Mr. Peck appeared, he was not allowed to testify, and that the evidence is, therefore, uncontradicted.

I remember that I took an oath here that I would vote according to the testimony that was here given. This being a matter of fact, and not a matter of law, occurring at a date since the adjournment, when there was no question as to who was the Governor, I regretfully vote guilty.

The President.— Senator Patten, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Patten.— Guilty.

The President.— Senator Peckham, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Peckham.— Agreeing with the opinion expressed by the Presiding Judge, I vote not guilty.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Pollock.— Guilty.

The President.— Senator Ramsperger, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Ramsperger.— Guilty.

The President.— Senator Sage, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Sage.— Guilty.

The President.— Senator Sanner, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Sanner.— Guilty.

The President.— Senator Seeley, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Seeley.— Not guilty.

The President.— Senator Simpson, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Simpson.— Mr. President, for the reasons given by Judge Bartlett, I vote guilty.

The President.— Senator Stivers, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Stivers.— Not guilty.

The President.— Senator Sullivan, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Sullivan.— Mr. President, the evidence in regard to the fourth article of the impeachment shows conclusively to my mind that the respondent was guilty of deceit and fraud and that the testimony of the witness Peck is substantial proof and

not a suspicion, and that the respondent attempted to suborn the witness Peck to commit the crime of perjury. I am therefore constrained to record my vote against the respondent and ask to be so recorded. I vote guilty.

The President.— Senator Thomas, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Thomas.— Mr. Presiding Judge, I have been rather chary of intruding upon my colleagues up to this time. I now desire a statement to go into the record regarding my position on article 4.

I can scarcely subscribe to the statement that we took an oath to decide this case according to the evidence alone. I certainly did not. My oath was to truly and impartially hear, try and determine the impeachment. That includes the law as well as the evidence. My attention has just been called to the fact that, "according to the evidence," is in that oath. But whether it is in the oath or not, we are judges both of law and of the fact.

Mr. President, if you will recall, the members of the Court carefully considered, before amending this article, whether or not the Peck incident would be included under the idea of a threat or a menace; and also whether an additional name could be included under the words "and all other persons." I did not hear any emphasis laid upon this clause, which is a part of article 4, that in thus practicing deceit and fraud, and using threats and menaces as, and with the intent, aforesaid, the persons upon whom these things were practiced were Sarecky, Colwell and Fuller, "and all others;" but the point of this article 4 is contained in that last paragraph that "in thus practicing fraud and deceit and with the intent aforesaid and upon the persons before named."

I understand perfectly well that there is a wide difference of opinion as to the action of the Court on this article, and as I feel more strongly upon this than upon any other article, I shall ask the Court to bear with me just a moment to put myself on record.

I am of the opinion that the language of article 4 is not broad enough to include the so-called Peck incident, and that the action

of this Court in making it so was not warranted by the rules of evidence as applied to the language of the article. I know of no rule of construction to justify the taking of an article of impeachment, placing it upon the Procrustean bed of evidence, there to chop it off or stretch it out as the necessity of the case may require. I regard this action as the fatal defect in this proceeding. Through the coming years, at this the accusing finger will keep silently pointing, and I believe it will be condemned in due time by the accepted canons of statutory construction and the just judgment of fair-minded men. I deplore this action of the Court. I deplore the precedent so established. I believe that we have charged a man with one crime and convicted him of another. If this be so, surely we have this day sown the dragon's teeth which shall some day spring up in clashing forms to strike down one of the valued safeguards which centuries of legal procedure have developed for the protection of the citizen. I shall be no party to this action, and to that end I vote not guilty on the charge contained in this article.

The President.— Senator Thompson, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Thompson.— Mr. President, before entering upon this undertaking I took an oath to try the impeachment according to the evidence. I therefore vote guilty.

The President.— Senator Torborg, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Torborg.— Guilty.

The President.— Senator Velte, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Velte.— Guilty.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Wagner.— For the reasons which I gave in the private consultation, which I shall file with my opinion, I vote guilty.

The President.— Senator Walters, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Walters.— Guilty.

The President.— Senator Wende, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Wende.— Presiding Judge, I understand the rule to be that you can observe the conduct of a witness on the stand and that a witness' own conduct on the stand is capable of elucidating the testimony of the witness. For the reasons stated by the Presiding Judge and by Senator Thomas, and for the further reason that I do not believe the evidence of the witness Peck, I vote not guilty.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Werner.— For the reasons stated in private consultation, which will be more elaborately stated in the opinion which I shall file, I vote guilty.

(The following opinion was filed by Judge Werner:)

Some of the articles of impeachment presented against the respondent have given rise to questions upon which there is considerable difference of opinion. For the purpose of focusing the discussion directly upon those charges, I will first eliminate articles 3, 5, 7 and 8, none of which has been sustained by the evidence. This leaves for consideration articles 1, 2, 4 and 6.

In respect to article 6, which charges the respondent with larceny, I conclude that the defendant is not guilty and adopt the views expressed by Chief Judge Cullen, Judge Bartlett and others, based upon the authorities which they cite.

As to articles 1 and 2, which charge the respondent with the

making of a false statement and with the commission of perjury in that he made a false affidavit in connection with the statement of his campaign expenses filed with the Secretary of State, it is enough to say that the law did not require this statement to be verified by affidavit and, therefore, the defendant was not guilty of perjury. The crime of perjury can be predicated only upon wilful false swearing when an oath is required by law or is material to the matter in issue.

I also agree with Chief Judge Cullen and Judge Bartlett in the conclusion that the defendant should not be convicted under articles 1 and 2 because the acts therein charged were all committed before the respondent assumed the office of Governor. These acts, although sufficiently charged and amply proved, do not constitute impeachable offenses within the purview of the Constitution and statutes. Section 12 of the Code of Criminal Procedure provides, "that the Court for the Trial of Impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of the justices' courts, police justices and their clerks, *for wilful and corrupt misconduct in office.*" Article 6, section 13, of our present Constitution declares, "the Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the president of the Senate, the senators or a major part of them, and the judges of the Court of Appeals or the major part of them." If this were all the law to be found on the subject, I think we would all agree that the broad language of the Constitution which was adopted in 1894, should be construed in the light of the more restricted language of section 12, which was enacted in 1881 as a part of our Code of Criminal Procedure; and it seems to me that a search into the earlier history of these constitutional and statutory provisions leads to the same result. Those who contend for the sufficiency of articles 1 and 2 as charging acts which constitute impeachable offenses, rely wholly upon the constitutional history of the subject without considering the history of the statutes relating to the same subject. They argue that the Constitution of 1777 authorized the impeachment of civil officers of the State only "for mal and corrupt conduct in their respective offices;" and that the Con-

stitution of 1821 granted the power to impeach "all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors." From these premises they proceed to the conclusion that since the Constitution of 1846 merely provided that "the Assembly shall have the power of impeachment by a vote of a majority of all the members elected," the inference is irresistible that the makers of the Constitution of 1846 intended to sweep away all the restrictions upon the power of impeachment contained in the Constitutions of 1777 and 1821; and to give the Assembly absolute and unrestricted power of impeachment for any cause whatsoever, without regard to the question whether the offenses charged as grounds of impeachment are alleged to have been committed during an officer's term of office or before it began. If this is true, it is of course still the law, for the Constitution of 1894 is in this respect an exact reproduction of the Constitution of 1846. But this argument is fallacious, it seems to me, because it ignores the construction given to the Constitutions of 1821, of 1846 and of 1894 by the several legislative enactments upon the subject of impeachments. While the Constitution of 1821 was in force, and in 1830, the Legislature of the State adopted a statute in exact accordance with the provisions of the Constitution of 1821. Its language was "the Assembly has the power of impeaching all civil officers of this State for mal and corrupt conduct in office and for high crimes and misdemeanors." This law remained upon the statute books unrepealed until the adoption of the Constitution of 1846, and for many years thereafter, and it was succeeded in 1881 by section 12 of the Code of Criminal Procedure which, as has already been stated, provides for impeachment only "for wilful and corrupt misconduct in office." I cannot subscribe to the argument that the general language of the Constitution of 1846, which does not define the grounds of impeachment, compels the view that the makers of the Constitution thereby intended to adopt what is known as the law of Parliament. I think it was simply a recognition of the existing provisions of the statutes limiting impeachable acts to misconduct in office, and of the power of the Legislature to add other causes of impeachment from time to time as it might see fit.

Even if it be assumed that by the Constitution of 1846 we

adopted the English common law of impeachment as applied to civil officers, that should not subject the respondent to impeachment for offenses committed before he became an officer of the State and which had no relation to his conduct in office. The first two articles charge the respondent with having violated section 546 of the election law, which is a part of what is commonly known as the corrupt practices act. This section requires candidates to file statements of their campaign receipts, but the subsequent provisions of the election law do not seem to make it a criminal offense to disregard this requirement of the statute, or to file a false statement. The several provisions of the corrupt practices act apply to all candidates; those who are successful and those who are not successful. It does not seem to me that the failure to comply with the directions of such a statute, which deals wholly with acts done out of office, can be regarded as sufficient ground for impeachment, and as Judge Bartlett has clearly shown in his opinion, we have to go back more than five hundred years in the history of our jurisprudence to find support for any such view; a view which in that early time was discarded even in England, and which has never since been revived. (1 Hen. IV, ch. 14.) I am unwilling to say that the framers of the Constitutions of 1846 and 1894 intended to restore in this State the so-called law of Parliament which was abolished in England five centuries ago, and for that reason I conclude that the language of these two Constitutions of 1846 and 1894 left it to the Legislature to define and declare causes of impeachment.

The only remaining charge to be considered is the fourth, and here the question is whether it sufficiently charges an act of wilful and corrupt conduct which was concededly committed by the respondent while he was in office. One of the acts of misconduct proved against the respondent was that he has attempted to persuade or influence Duncan W. Peck, State Superintendent of Public Works, to suppress or conceal his contribution to the respondent's campaign fund. This was a contribution which had not been accounted for in the statement subscribed by the respondent and filed with the Secretary of State, and Peck had been subpoenaed as a witness before the so-called Frawley committee, upon whose report the articles of impeachment were framed and presented.

It is unnecessary to go into the details of Peck's evidence, for it is uncontradicted, and it is enough to say that if the facts testified to by him were properly charged, they were clearly a sufficient ground for the respondent's impeachment.

The fourth charge, stripped of its redundant verbiage, is that the respondent while Governor of the State was guilty of mal and corrupt conduct in office and was guilty of suppressing evidence, and of a violation of section 814 of the Penal Law of the State, while the Frawley committee was conducting its investigation, and that by the practice of deceit and fraud and the use of threats and menaces the respondent intended to prevent the said committee from procuring the attendance and testimony of certain witnesses, namely, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller and all other persons. This is, I think, a fair paraphrase of the fourth charge. It will be observed at a glance that it does not mention Peck by name, and the first question which arises is whether he is fairly brought within the designation " and all other persons," contained in the fourth article. It seems to me to require the narrowest kind of technical reasoning to hold that, because Peck was not mentioned by name in the fourth charge, it must be regarded as insufficient to charge the offense established by his testimony. That view, it seems to me, is at war with every modern rule of directness, simplicity and liberality in pleading, and particularly with the provisions of our Codes of Civil and Criminal Procedure which now give great latitude, and explicitly provide for the right of amendment in respect to just such pleading as is here the subject of criticism. (Code of Criminal Procedure, sec. 293; Code of Civil Procedure, secs. 721–23.)

It is urged, however, that there are other defects in the fourth article which are more serious than the one which I have discussed. It is said that the explicit reference therein to section 814 of the Penal Law, when read in connection with the charge that the effort to suppress Peck's testimony was by the practice of deceit and fraud and the use of threats and menaces, renders it clear that this article was intended to be brought strictly and only within the provisions of section 814 of the Penal Law. From this contention some of the judges and senators proceed to the con-

clusion that the fourth charge is not supported by Peck's evidence because it reveals no deceit, fraud, menace or threat. That is a conclusion in which I cannot concur. The "deceit or fraud" referred to in section 814 of the Penal Law is not mere deceit or fraud practiced upon the person whose testimony it is sought unlawfully to suppress, but any deceit or fraud which results in the fact of suppression as the result of an effort to accomplish that purpose. I am inclined to go even further, and to hold that a "menace" need not be by word of mouth, by gesture or manner, but may be fairly implied when the relations of the parties to such a transaction, as was testified to by Peck, are such that the very request carries with it the menace in case of non-compliance. Beyond all that, however, the reference to section 814 of the Penal Law does not preclude the consideration of the fourth article under section 813 of the Penal Law. Both sections 813 and 814 refer to the same general subject, although set forth under different titles, and under section 813, it is clearly a misdemeanor for one to incite or to attempt to procure another to "withhold true testimony," even where there is no deceit, fraud, threat, menace or violence. The simple change of one figure in the numbering of the sections of our Penal Law is all that is necessary to bring the charge and the evidence into strict accord.

For these reasons I am constrained to hold that the fourth charge is sufficient, and to vote that the respondent is guilty under it.

The President.— Senator Wheeler, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Wheeler.— Not guilty.

The President.— Senator White, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator White.—Guilty.

The President.—Senator Whitney, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Whitney.— Mr. Presiding Judge, I have been unable to find anything in the evidence to sustain the charges made in article 4. I therefore feel compelled to vote not guilty.

The President.— Senator Wilson, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Wilson.— Mr. President, I vote guilty.

The Clerk.— Guilty, 43; not guilty, 14.

The President.— The Presiding Judge of the Court forgot to announce that on the second charge the respondent had been convicted by more than two-thirds of the members of the Court. On the third charge he has been acquitted. On the fourth charge, by the vote now announced, he has also been convicted by more than two-thirds of the members of the Court.

Senator Thompson.— I move that we do now adjourn or recess until tomorrow morning at 10.30.

The President.— All those in favor of the motion please say aye, opposed no. Carried.

Whereupon, at 7.10 o'clock p. m., an adjournment was taken until Friday, October 17, 1913, at 10.30 o'clock a. m.

FRIDAY, OCTOBER 17, 1913

SENATE CHAMBER
ALBANY, NEW YORK

Pursuant to adjournment the Court convened at 10.30 o'clock a. m.

The roll call showing a quorum to be present, Court was duly opened.

The President.— The clerk will read the fifth article.

The Clerk.—

Article 5. That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of preventing and dissuading a witness from attending under a subpoena in violation of section 2441 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate, for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, wilfully prevented and dissuaded a certain witness, to wit, Frederick L. Colwell, who had been duly summoned or subpoenaed, to attend as a witness before said committee hereinbefore named for the 8th day of August, 1913, from attending pursuant to said summons or subpoena.

That, in so preventing or dissuading said Frederick L. Colwell, who had thus been duly summoned or subpoenaed to appear before

said committee on said day named, from attending before said committee pursuant to said summons or subpoena, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State and of section 2441 of the Penal Law, and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

The President.— Call the roll.

The President.— Senator Argetsinger, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Argetsinger.— Not guilty.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Bartlett.— Not guilty.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Blauvelt.— Not guilty.

The President.— Senator Boylan, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Boylan.— Not guilty.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Brown.— Not guilty.

The President.— Senator Bussey, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Bussey.— Not guilty.

The President.— Senator Carroll, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Carroll.— Not guilty.

The President.— Senator Carswell, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Carswell.— Not guilty.

The President.— Senator Coats, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Coats.— Not guilty.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Collin.— Not guilty.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Cuddeback.— Not guilty.

Judge Cullen.— Not guilty.

The President.— Senator Cullen, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Cullen.— Not guilty.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Duhamel.— Not guilty.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Emerson.— Not guilty.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Foley.— Not guilty.

The President.— Senator Frawley, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Frawley.— Not guilty.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Godfrey.— Not guilty.

The President.— Senator Griffin, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Griffin.— Not guilty.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Heacock.— Not guilty.

The President.— Senator Healy, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Healy.— Not guilty.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Heffernan.— Not guilty.

The President.— Senator Herrick, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Herrick.— Not guilty.

The President.— Senator Hewitt, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Hewitt.— Not guilty.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Hiscock.— Not guilty.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Hogan.— Not guilty.

The President.— Senator McClelland, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator McClelland.— Not guilty.

The President.— Senator McKnight, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator McKnight.— Not guilty.

The President.— Senator Malone, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Malone.— Not guilty.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Miller.— Not guilty.

The President.— Senator Murtaugh, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Murtaugh.— Not guilty.

The President.— Senator O'Keefe, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator O'Keefe.— Not guilty.

The President.— Senator Ormrod, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Ormrod.— Not guilty.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Palmer.— Not guilty.

The President.— Senator Patten, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Patten.— Not guilty.

The President.— Senator Peckham, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Peckham.— Not guilty.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Pollock.— Not guilty.

The President.— Senator Ramsperger, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Ramsperger.— Not guilty.

The President.— Senator Sage, how say you, is the respondent

guilty or not guilty, as charged in the fifth article of impeachment?

Senator Sage.— Not guilty.

The President.— Senator Sanner, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Sanner.— Not guilty.

The President.— Senator Seeley, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Seeley.— Not guilty.

The President.— Senator Simpson, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Simpson.— Not guilty.

The President.— Senator Stivers, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Stivers.— Not guilty.

The President.— Senator Sullivan, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Sullivan.— Not guilty.

The President.— Senator Thomas, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Thomas.— Not guilty.

The President.— Senator Thompson, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Thompson.— Not guilty.

The President.— Senator Torborg, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Torborg.— Not guilty.

The President.— Senator Velte, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Velte.— Not guilty.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Wagner.— Not guilty.

The President.— Senator Walters, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Walters.— Not guilty.

The President.— Senator Wende, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Wende.— Not guilty.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Werner.— Not guilty.

The President.— Senator Wheeler, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Wheeler.— Not guilty.

The President.— Senator White, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator White.— Not guilty.

The President.— Senator Whitney, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Whitney.— Not guilty.

The President.— Senator Wilson, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Wilson.— Not guilty.

The Clerk.— Not guilty, 57.

The President.— The respondent, under the vote as announced by the clerk, is not guilty of the charges contained in this article.

Read the sixth article.

The Clerk.—

Article 6. That the said William Sulzer, now Governor of the State of New York, was duly and regularly nominated by the Democratic party of said State as its candidate for Governor, at a regular convention of said party held in the city of Syracuse, on or about the 1st day of October, 1912, such nomination having been made on or about the 2d day of October, 1912, and he was, thereafter, until the 5th day of November, 1912, when he was elected to such office of Governor, such candidate of said party for said office.

That being, and while, such candidate for said office of Governor, various persons contributed and delivered money and checks representing money, to him, said William Sulzer, to aid his election to said office of Governor, and in connection with such election; that said money and checks were thus contributed and delivered to said William Sulzer as bailee, agent, or trustee, to be used in paying the expenses of said election and for no other purpose whatever; that the said William Sulzer, with the intent to appropriate the said money and checks representing money, thus contributed and delivered to him as aforesaid, to his own use, having the same in his possession, custody, or control as bailee,

agent, or trustee as aforesaid, did not apply the same to the uses for which he had thus received them, but converted the same and appropriated them to his own use and used the same, or a large part thereof, in speculating in stocks, through brokers operating in the New York Stock Exchange, and thereby stole such money and checks and was guilty of larceny.

That among such money and checks thus stolen by said William Sulzer was a check of Jacob H. Schiff for $2,500; a check of Abram I. Elkus for $500; a check of William F. McCombs for $300; a check of Henry Morgenthau for $1,000; a check of John Lynn for $500; a check of Theodore W. Meyers for $1,000; a check of Lyman A. Spalding for $100; a check of Edward F. O'Dwyer for $100; a check of John W. Cox for $300; a check of Frank V. Strauss Co. for $1,000; a check of John T. Dooling for $1,000; and cash, aggregating $32,850.

That in so converting and appropriating said money and checks to his own use, the said William Sulzer did not act as required by law, but did act wrongfully and wilfully and corruptly, and was guilty of a violation of sections 1290 and 1294 of the Penal Law, and of grand larceny, and the same was done for the purpose of concealing, and said action and omission of said William Sulzer did conceal, the names of persons who had contributed funds in aid of his election and defeated the purpose of the provisions of the statute which required such publication that the people might know whether, or not, said Governor, after he had taken office, was attempting to reward persons who had so contributed in aid of his election, by bestowing official patronage, or favors, upon them, and thereafter, having taken the oath as Governor of the State of New York and proceeded to perform the duties thereof, the said appropriation to his own use, and his larceny of the same, caused great scandal and reproach of the Governor of the State of New York.

Senator Wagner.— Mr. President, I believe that there is practical unanimity upon the three articles upon which we now vote, and I therefore suggest to the Presiding Officer, in order to save himself a good deal of labor and effort, that the roll be called and the Presiding Officer not put the question to each member of the Court individually.

The President.— All those in favor of that motion please say aye.

(The members of the Court responded accordingly).

The President.— Opposed no. Carried.

Gentlemen, you will answer, though, to this not either yes or no, but guilty or not guilty, as your name is called. Call the roll, clerk.

Senator Argetsinger.— Your Honor, I cannot find him guilty under the article of impeachment on which we are now voting, although I do consider the offense an immoral one, and of sufficient consequence under certain conditions to be impeachable. But, however, I vote not guilty under the article.

Judge Bartlett.— I vote not guilty on the grounds stated by me with reference to the first article, and on the further ground that the acts proved thereunder do not constitute larceny in any legal sense.

Senator Blauvelt.— Not guilty.

Senator Boylan.— Not guilty.

Senator Brown.— Mr. President, the acts proved under this article lap over onto the other articles under which the respondent has been found guilty, and the allegation lacks so much correspondence with the proof that I vote not guilty.

Senator Bussey.— Mr. President, while the offense which has been committed by the Governor under this article is unnamed, in the common parlance of the street it is designated as panhandling. I vote not guilty.

Senator Carroll. —Not guilty.

Senator Carswell.— Not guilty.

Judge Chase.— Not guilty.

Senator Coats.— Not guilty.

Judge Collin.— Mr. Presiding Judge, I hold that the dispo-

sition made by William Sulzer of the contributions made to him for campaign purposes, although highly dishonorable, do not have, when considered apart from the false statement in regard to them, that degree of moral turpitude and the relation to the office of Governor which is essential to constitute it an impeachable offense. For that reason and for those stated in my written statement, I vote not guilty.

Judge Cuddeback.— Not guilty.

The President.— I vote not guilty, but as I have already said, in that portion of my written opinion which I read to you, I find that the respondent took advantage of the occasion of his nomination to collect and receive large sums of money, substantially all of which was received by him to aid in his election, converted that to his own use for the purpose of enriching himself. But I believe that this was not larceny; I do not think it is really a debatable question.

The difference between the conversion of money belonging to another and the conversion of money given for one's self is plain. If a master gives his clerk money to go on a trip for the master, and the clerk converts that to his own use, that is larceny under our statute; it would be embezzlement under the previous statute. But if the master gives to a clerk, even though for a specific purpose, and the purpose is for the clerk, as for instance, to give it to the clerk to go on a trip for his recreation or health, it is not illegal to the extent of being a crime, and possibly not illegal at all, for him to use it for another purpose. Dishonorable it is in the highest degree, but it is not illegal, and certainly it is not criminal.

I vote not guilty, and for the reasons as stated in reference to the first and second charges.

Senator Cullen.— I concur in the opinion expressed by the President, and for that reason, I vote not guilty.

Senator Duhamel.— Not guilty.

Senator Emerson.— Not guilty.

Senator Foley.— Not guilty.

Senator Frawley.— Not guilty.

Senator Godfrey.— Presiding Judge, for the reasons given by Judge Cullen, I vote not guilty.

Senator Griffin.— Mr. President, if the framers of this charge had been content to set out the facts without characterizing them as larceny, I should have voted guilty. A finding of guilty would practically convict the respondent of a crime. As the guilt or innocence of the respondent of a criminal offense can be tried out in a criminal court, and as this is not a court for the trial of crime, I am constrained to vote not guilty.

Senator Heacock.— Not guilty.

Senator Healy.— For the reasons given by Judge Cullen, I vote not guilty.

Senator Heffernan.— Not guilty.

Senator Herrick.— For the reasons given in my vote on article 1 and article 2, I vote not guilty.

Senator Hewitt.— Not guilty.

Judge Hiscock.— I vote not guilty, and I adopt as reasons for my vote those stated by the Presiding Judge, with the exception of the one that seems to imply that independent of any other consideration, he could not be convicted on this charge because the act occurred before he took office.

Judge Hogan.— Not guilty.

Senator McClelland.— Mr. Presiding Judge, in voting as I do, I merely wish, in passing, to say that it would bankrupt the English language to find an adequate description of the acts included in this article, and I have taken the liberty that our language permits, to improvise in my humble way a definition of this act. I have designated it as "candidatial mendicancy." I vote not guilty.

Senator McKnight.— Not guilty.

Senator Malone.— Not guilty.

Judge Miller.— Presiding Judge, for the purpose of sharply marking the limitations, or some of the limitations upon the grounds of impeachment, which I endeavored to formulate in the opinion delivered by me with respect to article 1, I desire to state for the purpose of the record, the distinction which I find between the acts charged in article 6 and those charged in articles 1 and 2, which lead me to vote not guilty on article 6. Those distinctions are:

1. That the act was committed before and not after the election, though I do not now say that that would necessarily be a conclusive limitation.

2. That the act or the wrong, the moral wrong, was a wrong in its immediate consequences to the donors, and not to the State.

3. That the use which the respondent made of the moneys contributed to him has no necessary relation to the subsequent discharge of his official duty, such as I find that his failure to file the statement or his filing of a false statement in violation of law has. For these reasons I vote not guilty.

Senator Murtaugh.— Not guilty.

Senator O'Keefe.— Not guilty.

Senator Ormrod.— Not guilty.

Senator Palmer.— Not guilty.

Senator Patten.—Not guilty.

Senator Peckham.— Not guilty.

Senator Pollock.— Not guilty.

Senator Ramsperger.— Not guilty.

Senator Sage.— Mr. President, in voting on this article, which has to be taken in connection with articles 1 and 2, I believe very largely in what Judge Miller has just stated. I think the real wrong was committed on articles 1 and 2, when the respondent, for the purpose of keeping this money, tried to conceal the source from which it came, and signed the false statement and swore to it. Having found him guilty on articles 1 and 2, I

think this article might well be dispensed with, and therefore I vote not guilty.

Senator Sanner.— Not guilty.

Senator Seeley.— Not guilty.

Senator Simpson.— Presiding Judge, I vote the respondent not guilty under this article, for the reason that in my judgment the acts charged therein do not rise to the dignity of an impeachable offense.

Senator Stivers.— Not guilty.

Senator Sullivan.— Not guilty.

Senator Thomas.— Not guilty.

Senator Thompson.— Mr. President, I feel the same with reference to a state of mind regarding article 6 that I did regarding articles 1 and 2. There was nothing last fall, three weeks prior to election, more certain in the minds of students of political affairs from a political sense than that William Sulzer would be elected Governor at the ensuing election. That is proved in this case and because I remember asking the witnesses Morgenthau and Schiff on the stand whether they thought at the time that William Sulzer would be elected Governor, and they each answered in effect that they had no doubt of it.

Therefore, these men, in giving this money, could not have meant it as a necessary expenditure for the purpose of electing the man who in their mind already was as good as elected.

I think that this article was drawn wrong. The word "larceny" as it appears in it should have been replaced by the substitution of another word. I believe with special reference to the testimony of the witness Meany on the stand that this act committed by the Governor was no different than the act committed by a certain senator in which he spent considerable time walking up and down one of the corridors of this Capitol and obtained $250 for a friend. In this case the candidate for Governor received $10,000. Of course Meany is a clever man. He had no business at Albany or anywhere else except to lend to deserving persons about to receive power, money with no security and no memo-

randum. The experience learned by the candidate for Governor from the man Meany led him to perform the same operation on the witness Riley to the extent of $26,500.

I wish, Mr. President, this article contained the language that I think it ought to have contained, but inasmuch as it does not, and simply charges the one charge of larceny, I feel that I cannot vote guilty, and therefore vote not guilty.

Senator Torborg.— Not guilty.

Senator Velte.— Not guilty.

Senator Wagner.— Not guilty.

Senator Walters.— Not guilty.

Senator Wende.— Not guilty.

Judge Werner.— Not guilty.

Senator Wheeler.— Not guilty.

Senator White.— Not guilty.

Senator Whitney.— Not guilty.

Senator Wilson.— Not guilty.

The Clerk.— Not guilty, 57.

The President.— Under the vote as announced by the clerk, the respondent is declared not guilty of the charge contained in the sixth article of impeachment.

Read the seventh.

The Clerk.—

Article 7. That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of the corrupt use of his position as such Governor, and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to

wit, the office of Governor, he promised and threatened to use such authority and influence of said office of Governor for the purpose of affecting the vote or political action of certain public officers; that among such public officers to whom the said William Sulzer promised, or threatened, to use his authority and influence as Governor, for the purpose of affecting their votes, said persons to whom such promises or threats were made were, Hon. S. G. Prime, Jr., a member of Assembly, for the county of Essex, for the year 1913, the promise being that if said Prime would vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would sign a bill that had already passed the Legislature and was pending before him, reappropriating the sum of about $800,000 for the construction of roads in said county of Essex, and counties adjoining thereto, the said Governor at the time of said promise well knowing that the said Assemblyman S. G. Prime, Jr., was desirous of having said bill for said appropriation for roads signed by the Governor.

Hon. Thaddeus C. Sweet, a member of Assembly for the county of Oswego for the year 1913, the threat being that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested, and, as Governor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain moneys for the construction of a bridge in said county of Oswego, the said Governor at the time of said threat well knowing that the said Assemblyman Thaddeus C. Sweet was desirous of having said bill for said appropriation signed.

That in so using the position and authority of the office of Governor the said William Sulzer acted wrongfully and wilfully and corruptly, and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

The President.— Unless there is objection made, the vote will be taken in the same manner as the last article.

Call the roll.

Senator Argetsinger.— Not guilty.

Judge Bartlett.— Not guilty.

Senator Blauvelt.— Not guilty.

Senator Boylan.— Not guilty.

Senator Brown.— The attitude of the Court upon this article is an evidence of its capacity to detach itself from knowledge obtained outside the record. If you should interrogate the senators you would probably find that at least three-fourths of them felt the charges made in this article were matters of such notorious information that they believed them completely, but no man has suggested, and I am grateful to the Court that no man has acted, as though any information obtained outside the record would in any way influence him in relation to this or any other article.

I shall gladly vote "not guilty" upon this article, but I hope that the information contained in the press, which must be spread throughout the State, of the practices in this regard, may not serve to encourage any future Executive that any such practices will be endorsed in this State.

I vote not guilty.

Senator Bussey.— Mr. President, not guilty.

Senator Carroll.— Not guilty.

Senator Carswell.— Adopting every word uttered by Senator Brown in this connection, I vote not guilty.

Judge Chase.— Not guilty.

Senator Coats.— Not guilty.

Judge Collin.— Not guilty.

Judge Cuddeback.— Not guilty.

The President.— Not guilty.

Senator Duhamel.— Not guilty.

Senator Emerson.— Not guilty.

Senator Foley.— Not guilty.

Senator Frawley.— Mr. President, I ask to be excused from voting on this article.

The President.—You may be, if there is no objection made.

Senator Godfrey.— Not guilty.

Senator Griffin.— Not guilty.

Senator Heacock.— Not guilty.

Senator Healy.— Not guilty.

Senator Heffernan.— Not guilty.

Senator Herrick.— Not guilty.

Senator Hewitt.— Not guilty.

Judge Hiscock.— Not guilty.

Judge Hogan.— Not guilty.

Senator McClelland.— Not guilty.

Senator Malone.— Not guilty.

Judge Miller.— Not guilty.

Senator Murtaugh.— Not guilty.

Senator O'Keefe.— Not guilty.

Senator Ormrod.— Not guilty.

Senator Palmer.— Not guilty.

Senator Patten.— Not guilty.

Senator Peckham.— Not guilty.

Senator Pollock.— Not guilty.

Senator Ramsperger.— Not guilty.

Senator Sage.— Mr. President, I have sworn to judge in this matter according to the evidence furnished before this Court. For that reason, and for that reason alone, I vote not guilty.

Senator Sanner.— Not guilty.

Senator Seeley.— Not guilty.

Senator Simpson.— Mr. Presiding Judge, I endorse every word that Senator Brown has said in connection with this article, and I vote not guilty.

Senator Stivers.— Not guilty.

Senator Sullivan.— Not guilty.

Senator Thomas.— Not guilty.

Senator Thompson.— Mr. President, I have no sympathy whatever with this accusation. I think a member of the Legislature who could be influenced in his official action by either threats or menaces of a Governor would not be worthy to represent his people. I vote not guilty.

Senator Torborg.— Not guilty.

Senator Velte.— Not guilty.

Senator Wagner.— Not guilty.

Senator Walters.— Not guilty.

Senator Wende.— Not guilty.

Judge Werner.— Not guilty.

Senator Wheeler.— Not guilty.

Senator White.— Not guilty.

Senator Whitney.— Not guilty.

Senator Wilson.— Not guilty.

The Clerk.— Fifty-six, not guilty; one excused.

The President.— Under the vote as announced by the clerk, the respondent is acquitted of the charges contained in the seventh article of impeachment.

Read the eighth article, Mr. Clerk.

The Clerk.—

Article 8. That the said William Sulzer, then Governor of the State of New York, unmindful of the duties of his office

and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of the corrupt use of his position as such Governor and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit, the office of Governor, he corruptly used his authority, or influence as such Governor to affect the current prices of securities listed and selling on the New York Stock Exchange, in some of which securities he was at the time interested and in which he was speculating, carrying, buying or selling, upon a margin or otherwise, by first urging, recommending and pressing for passage, legislation affecting the business of the New York Stock Exchange and the prices of securities dealt in on said Exchange, which legislation he caused to be introduced in the Legislature, and then by withdrawing or attempting to withdraw from the consideration of the Legislature, such legislation which was then pending therein — all the time concealing his identity in said transactions by subterfuge.

That, in so using the position and authority of the office of Governor, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

The President.— Call the roll and we will take a vote on this article in the same manner as the vote has been taken on the two preceding articles, unless there is objection made.

Senator Argetsinger.— Not guilty.

Judge Bartlett.— Not guilty.

Senator Blauvelt.— Not guilty.

Senator Boylan.— Not guilty.

Senator Brown.— Mr. President, I shall act on this article as I did upon the last article, but I cannot let this vote pass without giving some idea of the astonishment produced in my mind by the revelations in relation to the dealings in the stock market by the Governor.

Some seventeen bills affecting the Stock Exchange and trading upon the Stock Exchange were introduced by direction of the Governor in the last Legislature. Several of them affected seriously the conduct of the business of the Stock Exchange, and it was not unlikely that they would affect the prices of stocks. What was my emotion I need not say when I discovered that at the time these bills were placed before us and were pending before us in the Legislature, the Governor was receiving duns from his stockbrokers to make good deficiency in his account. And when he received contributions prior to his election they were hastened by his confidential messages to make good those accounts, and that those accounts existed and continued from the time of the introduction of the bills down to long after the adjournment of the Legislature.

The matter has not been well developed by the evidence, owing to difficulties probably, and I think I have no right to resort to the knowledge I have outside of the record, and therefore I vote not guilty.

Senator Bussey.— Not guilty.

Senator Carroll.— Not guilty.

Senator Carswell.— Mr. President, the allegations in this article, considered in the light of the evidence, do not in my judgment constitute an impeachable offense, and I vote not guilty.

Judge Chase.— Not guilty.

Senator Coats.— Not guilty.

Judge Collin.— Not guilty.

Judge Cuddeback.— Not guilty.

President Cullen.— Not guilty.

Senator Cullen.— Not guilty.

Senator Duhamel.— Not guilty.

Senator Emerson.— Not guilty.

Senator Foley.— I vote not guilty upon this article, but in do-

ing so I desire to comment also on the fact that the respondent seized upon certain issues which he thought were popular in certain parts of the State to conceal his other action. He seized upon these issues when he knew that he had committed certain wrongs, which wrongs were exposed in the evidence here. In doing that he was guilty of hypocrisy and all that may be condemned in the actions of a demagogue. But I do not think that he was guilty of the specific allegations charged in article eight. I therefore vote not guilty.

Senator Frawley.— Not guilty.

Senator Godfrey.— Not guilty.

Senator Griffin.— Not guilty.

Senator Heacock.— Not guilty.

Senator Healy.— Not guilty.

Senator Heffernan.— Not guilty.

Senator Herrick.— Not guilty.

Senator Hewitt.— Not guilty.

Judge Hiscock.— Not guilty.

Judge Hogan.— Not guilty.

Senator McClelland.— Not guilty.

Senator McKnight.— Not guilty.

Senator Malone.— Not guilty.

Judge Miller.— Not guilty.

Senator Murtaugh.— Not guilty.

Senator O'Keefe.— Not guilty.

Senator Ormrod.— Not guilty.

Senator Palmer.— Not guilty.

Senator Patten.— Not guilty.

Senator Peckham.— Not guilty.

Senator Pollock.— Not guilty.

Senator Ramsperger.— Not guilty.

Senator Sage.— Not guilty.

Senator Sanner.— Not guilty.

Senator Seeley.— Not guilty.

Senator Simpson.— Mr. President, the acts of the Governor deserve the condemnation of every fair, thinking man, but they do not rise to the dignity of an impeachable offense as shown by the evidence. For that reason I vote not guilty.

Senator Stivers.— Not guilty.

Senator Sullivan.— Not guilty.

Senator Thomas.— Not guilty.

Senator Thompson.— Mr. President, I do not believe, as stated by Senator Carswell, that this article charges an impeachable offense, but I want to vote on this article on the merits, and I think on the merits the Governor has not been shown to be guilty of the acts charged. As I see it, his operations in the stock market are distinguished from his legislative acts — his legislative acts, as I see it, were against his personal interests. I vote not guilty.

Senator Torborg.— Not guilty.

Senator Velte.— Not guilty.

Senator Wagner.— Mr. President, during the course of the progress of the so-called stock exchange bill, I was brought in contact with the Governor very largely. I shall spare the respondent at this time, giving my personal views, or at least the views I entertained when the revelations with reference to the Stock Exchange transactions became public. I, however, must vote upon this article, according to the evidence at this trial, and upon that I vote not guilty.

Senator Walters.— Not guilty.

Senator Wende.— Not guilty.

Judge Werner.— Not guilty.

Senator Wheeler.— Not guilty.

Senator White.— Not guilty.

Senator Whitney.— Not guilty.

Senator Wilson.— Not guilty.

The Clerk.—Not guilty, 57.

The President.— Under the vote as announced by the clerk, the respondent is acquitted of the charges contained in the eighth article of impeachment.

The respondent having been convicted of the first, second and fourth articles of impeachment, it now becomes necessary that the Court should determine on the judgment to be passed on such conviction.

Under the rules the first question is: "Shall the respondent be removed from office?"

If there is no objection, the vote on that proposition will be taken in the same manner as the preceding vote, but the gentlemen instead of saying yes or no will please say whether they vote for removal from office or not.

As I am one of the minority who did not vote for conviction, I pray to be excused from voting on this subject.

Call the roll, Mr. Clerk.

The Clerk.— Shall I read the rule or call the roll?

The President.— First read the rule.

The Clerk.— Shall William Sulzer be removed from his office of Governor of this State, for the cause stated in the articles, of the charges preferred against him upon which you have found him guilty?

Senator Wagner.— I do not know whether it is very important, but I would like to call the attention of the President to the provision of the Code which says that the vote upon the judgment shall be by yeas and nays. That is section 126.

Judge Bartlett.— That is substantive, I think.

The President.— You may answer yes or no, then.

Senator Argetsinger.— Yes.

Judge Bartlett.— Yes.

Senator Blauvelt.— Yes.

Senator Boylan.— Yes.

Senator Brown.— Yes.

Senator Bussey.— Yes.

Senator Carroll.— Yes.

Senator Carswell.— Yes.

(Senator Carswell filed the following opinion:)

Preliminarily involved in the determination of what constitutes an impeachable offense is the question of the power of this Court to consider as such the offenses alleged to have been committed by the respondent prior to his induction into office. This necessitates an examination of article 6, section 13 of the Constitution which is the sole repository of the constitutional grant of power relating to the presentment and trial of an impeachment. There is no limitation in terms in this section of the jurisdiction of this Court with respect to the period into which this Court may go to pass upon offenses alleged to be impeachable. Is there a limitation upon this broad grant of power of a definitional character or as a result of the historical development of the section referred to and the corresponding sections in previous State Constitutions? An examination of the authorities satisfies me that there is not. I believe that an impartial examination of the history of this section and its predecessors in the Constitutions of 1846, 1821 and 1777, instead of discovering an implied limitation upon the grant of power, will reveal an affirmative intention to enlarge the grant of power from time to time as Judge Miller in his opinion demonstrates conclusively.

No serious attempt has ever been made to define an impeachable offense, so that a limitation by a definitional route cannot be invoked to off-set or negative the affirmative historical evidence of enlargement of the grant of power to its present degree.

Probably this attempt has never been made for reasons similar to those which have prompted courts of equity to refrain from defining their jurisdiction in cases of fraud. As Lord Hardwicke stated in 1745:

> "The court very wisely hath never laid down any general rule beyond which it will not go, lest other means for avoiding the equity of the court should be found out."

Such statements of principle as have tended toward definition have invariably been directed toward the qualities to be sought for in an offense to determine whether or not it is an impeachable one rather than toward the time of the alleged commission or omission of the act considered. The authorities clearly hold (and I believe respondent's counsel concede) that the offense need not be a crime. They do require that the offense either be a crime or have some of the characteristics of a crime or reveal moral turpitude.

Careful consideration of the grant of power, hereinbefore referred to, and the so-called definitional statements of principle in the authorities respecting impeachable offenses, has caused me to conclude that the true method of determining whether or not the particular offense charged and the evidence adduced thereunder constitutes an impeachable offense under our basic law is to be ascertained by the queries: Can it be reasonably said that the offense is sufficiently proximate to the time of the present inquiry to show fitness or unfitness for office? Are the charge and the evidence thereunder of such quality, by reason of its being a crime or partaking of the characteristics of a crime and involving moral turpitude, as to show present unfitness for the discharge of public trust? Applying these queries in a spirit of reasonableness — in the light of reason — precludes the possibilty of either of Judge Vann's extreme supposititious cases being declared impeachable offenses, which he seems to insist they must be if the broad grant of power I assert and adhere to is sustained by this Court.

For the reasons so ably stated by Judge Miller, I hold the provisions of section 12 of the Code of Criminal Procedure nugatory in their attempt to cut down the grant of jurisdiction made by

the Constitution. To concede that one Assembly acting with a Senate and Executive in their law-making capacities has the power to cut down the grant of power in the Constitution to all successive Assemblies acting in their judicial capacities and Courts of Impeachment acting as triers of law and fact in such cases, would be to concede the power of one coordinate body to destroy in whole or part the constitutional jurisdiction of a successive Assembly and the Impeachment Court — coordinate bodies — by the process of defining what offenses shall be impeachable or by the process of declaring the period during which the offenses of omission or commission shall be considered as impeachable. The power in this instance to define involves the power to destroy just as truly as, in John Marshall's words, " The power to tax involves the power to destroy."

To hold that the statute does limit the constitutional grant of power would be to hold that there is a hiatus in our scheme of government and that the all-pervading system of checks and balances which has outstanding a lodgment of power in some body or person as a check for every public officer or body during every minute of the official career of such person or body, is subject to an exception in the case of an elected executive who may be guilty of the grossest misconduct; such as personally debauching the electorate during his canvass or other misconduct during the interim between his election and induction into office, making unthinkable his entrance upon the duties of his office or his continuance in office and leaving him free to remain unwhipped of justice through the exercise of the powers of his office over those law-enforcing officers throughout the State who are amenable and subject to his official power. No such conclusion reasonably flows from the authorities or sound principle. A kindred idea is differently expressed by the celebrated lawyer, Joshua Van Cott, at page 171, volume 1, of the Barnard case, where he says:

> " Yes, within the scope of their authority the people are supreme, but the people have limited their own authority. The people have said: ' Yes, in the first instance we have the power of election but that is subject to all the other provisions of the Constitution; subject to all the limitations; subject to all the powers lodged by the Constitution else-

where. We have put him in from what we know or think of him, but you put him out for what is discovered and proved against him. If we have by mistake put in a criminal, you by the exercise of your constitutional power purge the office of the offender and see that fit men fill the great offices of the State.' "

Indeed the Barnard case, in removing Judge Barnard from office for misconduct committed during a previous term of the office to which he had been reelected, established the principle that impeachable offenses are not limited to offenses committed during the term of the office from which the officer is sought to be removed. One's official acts in a previous term do not show one's unfitness for continuance in office during the new term for which one is reelected any more cogently than would acts involving the same degree of moral turpitude committed while not in office but at the same relative time with respect to the time of the inquiry. Furthermore, the grant of power to remove judges by concurrent resolution contained in article 6, section 11 of the Constitution, and the grant of power contained in article 10, section 1 empowering the Executive to remove sheriffs, etc., does not contain any limitation in express terms restricting their operation to causes occurring during the official term of the alleged offender. And in both instances they have been considered as not so limited — the former in the Hooker case in 1905 and in the Cohalan case in 1913; and the latter in the Guden case in 171 New York 529, as well as in the same case in 71 App. Div. 422 (Judge Bartlett writing for the Court in the Appellate Division). These two grants of power are analogous to the one under which this Court assumes to act and they, as well as article 6, section 13 (the impeachment section) of the Constitution, are significantly free from the language of limitation that is contained in article 10, section 7 of the Constitution which relates to removal from office of inferior officers for offenses which are confined to "misconduct or malversation in office," by that section of the Constitution.

No discussion of the evidence is necessary in this case as there is no real conflict on any essential or important point. This be-

ing so, there can be but one finding, that the respondent is guilty of impeachable offenses under impeachment articles 1 and 2 committed prior to his induction into office, and under impeachment article 4 for offenses committed after his induction into office (being the suppression of evidence article which the proof not only sustains but establishes the commission of the more serious uncharged offense, subornation of perjury). They are of such a character as to show conclusively his moral obliquity and unfitness to hold any office.

In voting on the question to declare formally the logical effect of finding the respondent guilty under impeachment articles 1, 2 and 4, that he should be removed from office, there are one or two things of somewhat extra-judicial character referred to by counsel worthy of consideration. Judge Herrick, of counsel for respondent, in his argument invoked by quotation an extract from Lord Macaulay to the substantial effect that the verdict of a court of this character is most true which most accurately forecasts the judgment of history. I have no doubt that the verdict of this Court will be held to be the correct one by posterity, and only wilful misrepresentation or misinformation can cause it to be otherwise accepted by anyone. I am fortified in that regard by another extract from Lord Macaulay which shows to my mind the inappositeness of the quotation made by Judge Herrick. Macaulay says — and I pretend to quote with only substantial accuracy — in his essay on Robert Clive, Lord Bacon or Warren Hastings "That the sober judgment of mankind will always distinguish between crimes and misconduct originating in inordinate or excessive zeal for the commonwealth, and crimes or misconduct originating in base personal selfish cupidity." Clive and Hastings had the task of sustaining and extending British rule in a land where British standards of morality did not prevail. While, disclaiming, as I do, making comparison in point of the respective ability between them (Bacon and the respondent), this respondent is guilty of indefensibly base, sordid misconduct and mortgaging of his official character to special interests for private gain and prostituting the nomination of a great party to the same end. Likewise, Bacon degraded "the most exquisitely constructed intellect ever bestowed on any of the children of men" to the per-

formance of vicious acts of personal cupidity. Clive and Hastings misconducted themselves for Great Britain's benefit as they saw it; the respondent for his personal benefit. They operated in a land where British standards of morality *did not* obtain; the respondent where American standards of morality do obtain. The respondent is responsible for spreading the false and incorrect notion that previous candidates for the office of Governor of this State of the great parties resorted to the same sort of misconduct when the truth is that he is the only man who ever did so demean himself.

There comes to my mind a famous remark of the honest, brilliant, keen, though somewhat cynical judge of men, the late Speaker of the House of Representatives, Thomas B. Reed, which discloses his ability to penetrate pretense and see through sham. I recall that he was a member of Congress at the same time the respondent was. I have wondered since these proceedings were begun who inspired his statement when he said that "Doctor Johnson — Samuel Johnson — when he defined the word 'patriotism' as the last refuge of a scoundrel overlooked the infinite and boundless possibilities of the word 'reform.'" Especially is this borne in on me when I see pass before me on the witness stand Hugh J. Reilly, from whom the respondent extracted over $26,000, Hugh J. Reilly, being the Cienfuegos (Cuban) contractor in difficulty with his associates and this Government at the time the respondent was chairman of the Committee on Foreign Affairs in Congress. And when I see similar large sums extracted by the respondent from the public service corporation owners and lobbyists, as the evidence in this case shows, I have no difficulty in passing on the question of his unfitness to remain in office or in convincing myself that the cause of honesty and efficiency in public affairs cannot be advanced by so corrupt and inefficient an agency as the respondent shows himself to be. But that I may not apply too high a standard to the respondent in passing on his fitness to remain in office I will apply to him, in my view of the law and facts in this case, an expression which he has given wide currency in this State, the real author of which, however, I do not know, in regard to men in public life "that their mentality and character should be such as to withstand the

searchlight of publicity." A brief play of the searchlight reveals not a few instances of defect of character over which the mantle of charity might be drawn, but demonstrates to my satisfaction that he has in numerous instances shown the possession of an inherently unmoral nature which accounts for his wilfully and cunningly devised plans and schemes for corrupt enrichment and other misconduct, while he was preaching virtue in public and outraging her in private. He has reached the day when his *real character* has come to light and outrun and given the lie to a seemingly long sustained false *reputation*. Hence my unhesitant vote for removal.

Judge Chase.— Yes.

Senator Coats.— Yes.

Judge Collin.— Yes.

Judge Cuddeback.— Yes.

Judge Cullen, President. Not voting, excused.

Senator Cullen.—Yes.

Senator Duhamel.— Mr. President, the legal points involved in this impeachment seem very simple. Articles 1 and 2 charge questionable acts committed before the respondent took office and for which the Constitution does not in actual words provide impeachment. It did, however, during half of the life of the Commonwealth declare against impeachment for acts before an official took office. In some forty-three impeachments on record none were for acts committed before taking office, but the nearest approach, the Barnard case, was for acts in a previous term but during the period for which the accused continued to hold office. With weak and uncorroborated evidence and in the absence of rebuttal testimony, it would seem that the statutes are being strained to establish this new precedent.

On the broadening of the scope of article 4, a new and dangerous precedent seems to be set up on the testimony of a man fighting to hold his job and against whom testimony was ruled out that might have shown his animus and his desire to reflect adversely on the respondent. I vote no.

Senator Emerson.— No.

Senator Foley.— Yes.

Senator Frawley.— Yes.

Senator Godfrey.— Yes.

Senator Griffin.— Yes.

Senator Heacock.— No.

Senator Healy.— Yes.

Senator Heffernan.—Yes.

Senator Herrick.— Yes.

Senator Hewitt.— Yes.

Judge Hiscock.— Yes.

Judge Hogan.— Yes.

Senator McClelland.— Yes.

Senator McKnight.— No.

Senator Malone.— Yes.

Judge Miller.— Yes.

Senator Murtaugh.— Yes.

Senator O'Keefe.— I have already voted not guilty on each count.

Notwithstanding I am in the minority, I am of the opinion that the respondent should not be removed for acts committed before he assumed office. Neither do I believe that the Peck testimony should have been admitted as a substantive charge. It seems to me that on article 4 the respondent has been charged with one offense and convicted on quite a different one. I must therefore vote against his removal. I vote no.

Senator Ormrod.— Yes.

Senator Palmer.— No.

Senator Patten.— Yes.

Senator Peckham.— No.

Senator Pollock.— Yes.

Senator Ramsperger.— Yes.

Senator Sage.— Yes.

Senator Sanner.— Yes.

Senator Seeley.— I have written a statement which I will file. I vote no.

(Senator Seeley filed the following opinion:)

To impeach the Governor for offenses committed before he assumed the duties of office seems to me in plain violation of the Constitution and law of the State. I seriously question the jurisdiction of this Court to try the Governor on impeachment resolutions passed at an extraordinary session of the Legislature by the Assembly when the Constitution plainly says: "At extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration."

The attorneys for the managers have been unable to explain away the plain meaning of these words to my mind.

In casting my vote against the Governor's removal, I feel that I should distinguish between his acts as a private citizen and his official acts as Governor; and even though I were convinced of serious offenses as a private citizen, I should still vote against his removal, on the ground that he has rendered great and meritorious services to the State.

He has not been seriously charged with any wrongdoing in office, unless it be in trying to secure the passage of a bill to destroy boss rule. It is not claimed that corruption now exists in any department of the State, except one, and it is known that evidence for grand jury investigation of this department has already been obtained by a commissioner appointed by the Governor for this purpose. It is not claimed that the Governor has directly or indirectly connived at corruption or wrongdoing in any department or any office of the State. It is not charged that any campaign contributions made to the Governor have wrong-

fully influenced him in the slightest degree as to any official acts since he became Governor. On the contrary, it is his integrity, his refusal to turn the State over to political machines, coupled with his determination to probe grafting, that has led to the impeachment proceedings.

It is to be regretted that the testimony of John A. Hennessey and Samuel A. Beardsley could not have been admitted in evidence; it might have thrown a flood of light upon these proceedings. Mr. Hennessey's testimony in showing the animosities that the Governor has aroused in his efforts to expose official grafters and secure their punishment, and Mr. Beardsley's testimony in showing the Governor's attitude toward campaign contributors. Moreover, he has been convicted largely upon the testimony of three men, Peck, Morgenthau and Ryan, whose testimony did not concern any offenses charged in the articles of impeachment, the ruling of the Court being reversed to admit the testimony of the latter.

In view of these facts, it would seem that any official can be impeached at the caprice of the Court, for any offense, no matter how trival, or convicted for one offense when accused of another.

Therefore, for these reasons, and in consideration of the motives which prompted the impeachment, I vote no.

Senator Simpson.— Yes.

Senator Stivers.— No.

Senator Sullivan.— Yes.

Senator Thomas.— No.

Senator Thompson.— Yes.

Senator Torborg.— Yes.

Senator Velte.— Yes.

Senator Wagner.— Yes.

Senator Walters.—Yes.

Senator Wende.— For the reason I have voted not guilty on all occasions, and for the reason that my associates by a large majority have seen fit to convict and for the reason that if that

judgment is right, it is my belief the respondent would be unfitted for holding office, I ask to be excused from voting on this question.

The President.— No objection, Senator Wende will be excused.

Judge Werner.— Yes.

Senator Wheeler.— No.

Senator White.— Yes.

Senator Whitney.— No.

(Senator Whitney filed the following opinion:)

Mr. Presiding Judge, if the question before us was, Was the respondent ever fit or qualified to hold the office of Governor of this great State? my reply would be, as it was a year ago, no, and I have seen no reason in the past year or in the past month to cause me to change my opinion. He is the same man who was nominated by a great party for this high office and elected at the last election by a flattering vote. To me the question is not so much one of morals and ethics as it is, Have the charges preferred against the respondent in the articles of impeachment been sustained? Striking out articles 1, 2 and 6 for the reason stated yesterday, namely, that I am convinced from the opinion of the learned Chief Judge and his associates that acts committed by a person before taking office are not valid causes for impeachment, the only other charge on which the respondent has been found guilty is in article 4, and I can find no evidence to show that the Governor used deceit, fraud, threats or menaces with Colwell, Sarecky, Fuller or Duncan W. Peck to suppress evidence. I am frank to say that, while it may be good law, which with the Presiding Judge I seriously doubt, it does not seem to me justice, to charge a man with one crime and convict him of another. This is not a question of imagination or suspicion, but one of evidence in support of certain specific charges. I have not found the evidence sufficient to maintain those specific charges, and, therefore, I am compelled to vote in the negative. I vote no, Mr. President.

Senator Wilson.— Yes.

The Clerk.— Yes, 43; no, 12; excused, 2.

The President.— The next resolution to be submitted, gentlemen, is: Shall William Sulzer be disqualified to hold any office of honor or trust or profit under this State? Under that you may vote the same as you did on the previous one, yes, or no.

Read the provision, Mr. Clerk, and call the roll.

The Clerk (reading).—"Shall William Sulzer be disqualified to hold any office of honor, trust or profit under this State?"

Senator Argetsinger.— No.

Judge Bartlett.— No.

Senator Blauvelt.— No.

Senator Boylan.— Mr. President, I feel that I would not like to be in a position of saying to a man that the doors of opportunity are forever barred against him, because I have always felt that no matter to what depth a man has fallen there is always hope for his ultimate redemption; and for the further reason that I believe the people of this State should decide this question, I vote no.

Senator Brown.— No.

Senator Bussey.— No.

Senator Carroll.— No.

Senator Carswell.— No.

Judge Chase.— No.

Senator Coats.— No.

Judge Collin.— No.

Judge Cuddeback.— No.

The President.— I ask to be excused from voting on this for the same reason that you granted me an excuse on the preceding question. If there is no objection, I shall consider myself excused.

Senator Cullen.— No.

Senator Duhamel.— No.

Senator Emerson.— No.

Senator Foley.— No.

Senator Frawley.— No.

Senator Godfrey.— No.

Senator Griffin.— No.

Senator Heacock.— No.

Senator Healy.— No.

Senator Heffernan.— No.

Senator Herrick.— No.

Senator Hewitt.— No.

Judge Hiscock.— Mr. Presiding Officer, as I have already indicated, I believe that this question of the future of this respondent, with reference to holding office, should be left to the people themselves, who have the power and who have the right to pass on that question. Therefore, I vote no.

Judge Hogan.— No.

Senator McClelland.— No.

Senator McKnight.— No.

Senator Malone.— No.

Judge Miller.— No.

Senator Murtaugh.— No.

Senator O'Keefe.— No.

Senator Ormrod.— No.

Senator Palmer.— No.

Senator Patten.— No.

Senator Peckham.— No.

Senator Pollock.— No.

Senator Ramsperger.— No.

Senator Sage.— No.

Senator Sanner.— No.

Senator Seeley.— No.

Senator Simpson.— No.

Senator Stivers.— No.

Senator Sullivan.— No.

Senator Thomas.— No.

Senator Thompson.— Mr. President, this Court has convicted the Governor of this State for acts which the people did not and could not have known at the last election. I think the question of the future disqualification should be left to the people, they now being in possession of the facts. I therefore vote no.

Senator Torborg.— No.

Senator Velte.— No.

Senator Wagner.— No.

Senator Walters.— No.

Senator Wende.— No.

Judge Werner.— No.

Senator Wheeler.— No.

Senator White.— No.

Senator Whitney.— No.

Senator Wilson.— No.

The Clerk.— 56 noes, 1 excused,

The President.— The respondent, William Sulzer, having been convicted by the vote of more than two-thirds of the members of this Court on the first, second and fourth articles of impeachment, and the Court having resolved that for the offenses of which he has been convicted, the respondent be removed from

office, it is the judgment of the Court, and it is now the duty of the President, to declare that for those offenses the said William Sulzer, Governor of the State, be, and he is hereby, removed from his said office as Governor.

Senator Murtaugh.— Mr. President, I move that the President be authorized to appoint a committee of three for the purpose of editing and revising the final record in the proceeding.

Mr. President.— All in favor of that motion please say aye; opposed, no. Carried.

Senator Murtaugh, Senator Sage and Senator Blauvelt will be appointed as that committee.

The President.— I am not appointing any member of the bench, because they will have enough other work to do when they leave this Court.

Mr. Kresel.— May it please the Court, for the purpose of completing the record, may the counsel for the managers have included in the record the compilation which was made and which was passed around to the Court?

The President.— Put it as part of your argument?

Mr. Kresel.— Yes, your Honor.

The President.— Of course it is not evidence.

Mr. Kresel.— Make that a part of the summation.

The President.— Is there anything further?

Senator Wagner.— On a point of information, Mr. President. May I ask the Presiding Judge whether the judgment is now completed, so far as the record is concerned; that it needs only now the certification of the Presiding Judge?

The President.— In my opinion all it needs now is the certification of the clerk and the Presiding Judge. As a matter of fact, I doubt whether it needs even that. It is the judgment of this Court, pronounced in open court, and I think is effective from this instant.

Senator Murtaugh.— Before the motion to adjourn is made, the committee on revision requests the counsel and the members of the Court who wish to revise their remarks in the printed record and who wish to file statements with the reasons for their votes, and counsel who wish to revise their remarks, file the same with the clerk of the Senate before Wednesday of next week. That will be the last day that any statements will be received pertaining to a revision of the record.

The President.— Is there any further business?

Senator Thompson.— Mr. President, I desire to suggest to the Presiding Officer that he make a statement to this effect, that now all matters which were discussed or performed by this Court in private session can become public.

The President.— The ban of secrecy is now abrogated. Every member of the Court is at liberty to tell anything that he sees fit.

Senator Thompson.— Mr. President, my suggestion was that all matters that transpired in secret session have already become public —

The President.— They may become public so far as the members of the Court choose to divulge them. That is for every member. I know of no obligation the Court can impose or any obligation to tell any one else unless he sees fit.

Senator Wagner.— Mr. President, for the convenience of the members of the Court I have been requested to announce that they leave their files of the records upon their desks, and the full record of the trial will be sent to them within the next few days. I was going to make a motion but I do not know as that is necessary.

The President.— Yes.

Senator Wagner.— The business for which the Court was convened having been finished, I move that the Court for the Trial of Impeachments do now adjourn sine die.

The President.— All those in favor of that will please say aye; opposed, no. The motion is carried.

The President.— Crier, adjourn Court without day.

The Crier.— Hear ye, hear ye, hear ye, to all whom it may concern: This Court held in and for the State of New York for the trial of the impeachment of Governor Sulzer now stands adjourned sine die.

JUDGMENT ROLL

PROCEEDINGS OF THE COURT OF IMPEACHMENT HELD AT THE CAPITOL, IN THE CITY OF ALBANY, ON THE 18TH DAY OF SEPTEMBER, 1913, AND SUCCEEDING DAYS, TO TRY THE IMPEACHMENT PREFERRED BY THE ASSEMBLY OF THE STATE OF NEW YORK, AGAINST WILLIAM SULZER, GOVERNOR OF SAID STATE.

On the 13th day of August, 1913, the Assembly of the State of New York presented to the Senate thereof, the following articles of impeachment, against William Sulzer, Governor of said State:

ARTICLES EXHIBITED BY THE ASSEMBLY OF THE STATE OF NEW YORK

In the name of themselves and of all the people of the State of New York against William Sulzer, Governor of said State, in maintenance of their impeachment against him for wilful and corrupt misconduct in his said office, and for high crimes and misdemeanors.

ARTICLE 1

That the said William Sulzer, now Governor of the State of New York, then being Governor-elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to file in the office of the Secretary of State within twenty days after his said election, a statement setting forth all the receipts, expenditures, disbursements and liabilities made, or incurred, by him as a candidate for Governor at said general election at which he was thus elected, which statement the statute required to include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the

person or committee to whom it was made and the date thereof, and all contributions made by him.

That, being thus required to file such statement, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under said statutes, made and filed in the office of the Secretary of State what purported to be a statement made in conformity to the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit: that all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic party for the office of Governor of the State of New York, in connection with the general election held in the State of New York on the 5th day of November, 1912, were receipts from sixty-eight contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred twenty-four and nine one-hundredths ($7,724.09) dollars, the detailed items of which were fully set forth in said statement so filed as aforesaid.

That said statement thus made and filed by said William Sulzer as aforesaid was false, and was intended by him to be false and an evasion and violation of the statutes of the State, and the same was made and filed by him wilfully, knowingly and corruptly, it being false in the following particulars among others, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2500
Abram Elkus	500
William F. McCombs	500
Henry Morgenthau	1000
Theodore W. Myers	1000
John Lynn	500
Lyman A. Spalding	100
Edward F. O'Dwyer	100
John W. Cox	300
The Frank V. Strauss Co	1000
John T. Dooling	1000

That in making and filing such false statement, as aforesaid, the said William Sulzer did not act as required by law, but did act in express violation of the statutes of the State, and wrongfully, wilfully and corruptly, and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement thus made and filed by him caused great scandal and reproach of the Governor of the State of New York.

ARTICLE 2

That the said William Sulzer, now Governor of the State of New York, then being Governor-elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to file in the office of the Secretary of State within ten days after his said election, as aforesaid, an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election, giving the names of the various persons who received such moneys, the specific nature of each item and the purpose for which it was expended or contributed; and was further required to attach to such statement an affidavit, subscribed and sworn to by him, such candidate, setting forth, in substance, that the statement thus made was in all respects true and that the same was a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election.

That, being thus required to file such statement, and attach thereto such affidavit, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under such statutes, made and filed in the office of the Secretary of State what purported to be a statement made in conformity to the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit: that all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic party for the office of Governor of the State of New York, in connection with the general election held in the State of New York on the 5th day of November, 1912, were receipts

from sixty-eight contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred twenty-four and nine one-hundredths ($7,724.09) dollars, the detailed items of which were fully set forth in said statement so filed as aforesaid.

That attached to such statement thus made and filed by him as aforesaid was an affidavit, subscribed and sworn to by said William Sulzer, stating that said statement was in all respects true and that the same was a full and detailed statement of all moneys received or contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election.

That said statement thus made and filed by said William Sulzer, as aforesaid, was false, and was intended by him to be false and an evasion and violation of the statutes of the State and the same was made and filed by him wilfully, knowingly and corruptly, being false in the following particulars, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2500
Abram Elkus	500
William F. McCombs	500
Henry Morgenthau	1000
Theodore W. Myers	1000
John Lynn	500
Lyman A. Spalding	100
Edward F. O'Dwyer	100
John W. Cox	300
The Frank V. Strauss Co	1000
John T. Dooling	1000

That said affidavit thus subscribed and sworn to by said William Sulzer was false and was corruptly made by him.

That in making and filing such false statement as aforesaid, the said William Sulzer did not act as required by law, but did act in express violation of the statutes of the State and wrongfully, knowingly, wilfully and corruptly; and, in making said affidavit as aforesaid, the said William Sulzer was guilty of wilful and corrupt perjury and of a violation of section 1620 of the Penal Law of the State; and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said

false statement and affidavit thus made and filed by him caused great scandal and reproach of the Governor of the State of New York.

ARTICLE 3

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of bribing witnesses, and of a violation of section 2440 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation, and had full authority in the premises, he, the said William Sulzer, in the months of July and August, 1913, fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell, and one Melville B. Fuller, each, to withhold true testimony from said committee, which testimony it was the duty of said several persons named to give to said committee when called before it, and which, under said inducements of said William Sulzer they, and each of them, refused to do.

That, in so inducing such witnesses to withhold such true testimony from said committee, the said William Sulzer acted wrongfully and wilfully and corruptly, and was guilty of a violation of the statutes of the State and of a felony, to the great scandal and reproach of the said Governor of the State of New York.

ARTICLE 4

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt con-

duct in his office as such Governor of the State and was guilty of suppressing evidence and of a violation of section 814 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, practised deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit: Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons, severally, they or many of them having in their possession certain books, papers and other things which might or would be evidence in the proceedings before said committee, and to prevent such persons named and all other persons, they, severally, being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do.

That, in thus practising deceit and fraud and using threats and menaces as, and with the intent, aforesaid, and upon the persons before named, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

ARTICLE 5

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of

preventing and dissuading a witness from attending under a subpoena in violation of section 2441 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate, for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, wilfully prevented and dissuaded a certain witness, to wit: Frederick L. Colwell, who had been duly summoned or subpoenaed, to attend as a witness before said committee hereinbefore named for the 8th day of August, 1913, from attending pursuant to said summons or subpoena.

That, in so preventing or dissuading said Frederick L. Colwell, who had thus been duly summoned or subpoenaed to appear before said committee on said day named, from attending before said committee pursuant to said summons or subpoena, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State and of section 2441 of the Penal Law, and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

Article 6

That the said William Sulzer, now Governor of the State of New York, was duly and regularly nominated by the Democratic party of said State as its candidate for Governor, at a regular convention of said party held in the city of Syracuse, on or about the 1st day of October, 1912, such nomination having been made on or about the 2d day of October, 1912, and he was, thereafter, until the 5th day of November, 1912, when he was elected to such office of Governor, such candidate of said party for said office.

That being, and while, such candidate for said office of Governor, various persons contributed and delivered money, and checks representing money, to him, said William Sulzer, to aid his election to said office of Governor, and in connection with such election; that said money and checks were thus contributed and delivered to said William Sulzer as bailee, agent, or trustee, to be used in paying the expenses of said election and for no other purpose whatever; that the said William Sulzer, with the intent to appropriate the said money and checks representing money, thus contributed and delivered to him as aforesaid, to his own use, having the same in his possession, custody, or control as bailee, agent, or trustee as aforesaid, did not apply the same to the uses for which he had thus received them, but converted the same and appropriated them to his own use and used the same, or a large part thereof, in speculating in stocks, through brokers operating on the New York Stock Exchange, and thereby stole such moneys and checks and was guilty of larceny.

That among such money and checks thus stolen by said William Sulzer was a check of Jacob H. Schiff for $2,500; a check of Abram I. Elkus for $500; a check of William F. McCombs for $500; a check of Henry Morgenthau for $1,000; a check of John Lynn for $500; a check of Theodore W. Myers for $1,000; a check of Lyman A. Spalding for $100; a check of Edward F. O'Dwyer for $100; a check of John W. Cox for $300; a check of Frank V. Strauss Co. for $1,000; a check of John T. Dooling for $1,000; and cash, aggregating $32,850.

That in so converting and appropriating said money and checks to his own use, the said William Sulzer did not act as required by law, but did act wrongfully and wilfully and corruptly, and was guilty of a violation of sections 1290 and 1294 of the Penal Law, and of grand larceny, and the same was done for the purpose of concealing, and said action and omission of said William Sulzer did conceal, the names of persons who had contributed funds in aid of his election and defeated the purposes of the provisions of the statute which required such publication that the people might know whether or not said Governor, after he had taken office, was attempting to reward persons who had so contributed in aid of his election, by bestowing official patronage, or

favors, upon them, and thereafter, having taken the oath as Governor of the State of New York and proceeded to perform the duties thereof, the said appropriation to his own use, and his larceny of the same, caused great scandal and reproach of the Governor of the State of New York.

ARTICLE 7

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of the corrupt use of his position as such Governor, and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit, the office of Governor, he promised and threatened to use such authority and influence of said office of Governor for the purpose of affecting the vote or political action of certain public officers; that among such public officers to whom the said William Sulzer promised, or threatened, to use his authority and influence as Governor, for the purpose of affecting their votes, said persons to whom such promises or threats were made were,

Hon. S. G. Prime, jr., a member of Assembly for the county of Essex for the year 1913, the promise being that if said Prime would vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would sign a bill that had already passed the Legislature and was pending before him, reappropriating the sum of about $800,000 for the construction of roads in said county of Essex and counties adjoining thereto, the said Governor at the time of said promise well knowing that the said Assemblyman S. G. Prime, jr. was desirous of having said bill for said appropriation for roads signed by the Governor;

Hon. Thaddeus C. Sweet, a member of Assembly for the county of Oswego for the year 1913, the threat being that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain

moneys for the construction of a bridge in said county of Oswego, the said Governor at the time of said threat, well knowing that the said Assemblyman Thaddeus C. Sweet was desirous of having said bill for said appropriation signed.

That in so using the position and authority of the office of Governor the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

ARTICLE 8

That the said William Sulzer, then Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of the corrupt use of his position as such Governor and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit, the office of Governor, he corruptly used his authority, or influence, as such Governor to affect the current prices of securities listed and selling on the New York Stock Exchange, in some of which securities he was at the time interested and in which he was speculating, carrying, buying or selling, upon a margin or otherwise, by first urging, recommending and pressing for passage legislation affecting the business of the New York Stock Exchange and the prices of securities dealt in on said exchange, which legislation he caused to be introduced in the Legislature, and, then, by withdrawing, or attempting to withdraw, from the consideration of the Legislature such legislation which was then pending therein — all the time concealing his identity in said transaction by subterfuge.

That, in so using the position and authority of the office of Governor, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

And the said Assembly saving to themselves by protestation the

liberty of exhibiting any other articles of impeachment against the said William Sulzer, Governor as aforesaid, and also of replying to the answers which he may make to the impeachment aforesaid, and of offering proof of the said matters of impeachment, do demand that the said William Sulzer, Governor as aforesaid, be put to answer all and every of the said matters, and that such proceedings, trial and judgment may be thereunder had and given as are conformable to the Constitution and laws of the State of New York; and the said Assembly are ready to offer proof of the said matters at such time as the honorable Court for the Trial of Impeachments may order and appoint.

Albany, New York, August 12, 1913

AARON J. LEVY
PATRICK J. McMAHON
ABRAHAM GREENBERG
WILLIAM J. GILLEN
THEODORE HACKETT WARD
J. V. FITZGERALD
TRACY P. MADDEN
THOMAS K. SMITH
HERMAN F. SCHNIREL

Attest:

ALFRED E. SMITH
Speaker

GEORGE R. VAN NAMEE
Clerk

Thereupon the Honorable Robert F. Wagner, temporary President of the said Senate, did cause the Senate and the judges of the Court of Appeals to be summoned to meet at the Capitol, in the city of Albany, on the 18th day of September, 1913, as a Court for the Trial of Impeachment; and on the 14th day of August, 1913, did cause to be served on the respondent a copy of the said articles of impeachment, with a notice to appear and answer the same at the Capitol, in the city of Albany, on the said 18th day of September, 1913, the same being the time and place appointed for the meeting of the Court, and the said Court having

been duly convened, there appearing thereat the following named senators:

George F. Argetsinger
George A. Blauvelt
John J. Boylan
Elon R. Brown
Thomas H. Bussey
Daniel J. Carroll
William B. Carswell
Herbert P. Coats
Thomas H. Cullen
James F. Duhamel
James A. Emerson
James A. Foley
James J. Frawley
Frank N. Godfrey
Anthony J. Griffin
Seth G. Heacock
John F. Healy
William J. Heffernan
Walter R. Herrick
Charles J. Hewitt
James D. McClelland
John W. McKnight
John F. Malone
John F. Murtaugh
Thomas H. O'Keefe
William L. Ormrod
Abraham J. Palmer
Bernard M. Patten
William D. Peckham
Henry W. Pollock
Samuel J. Ramsperger
Henry M. Sage
Felix J. Sanner
John Seeley
George W. Simpson
John D. Stivers
Christopher D. Sullivan
Ralph W. Thomas
George F. Thompson
Herman H. Torborg
Henry P. Velte
Robert F. Wagner
J. Henry Walters
Gottfried H. Wende
Clayton L. Wheeler
Loren H. White
George H. Whitney
Thomas B. Wilson

the same being more than a majority of the senators of the State, and the following named judges of the Court of Appeals:

Willard Bartlett
Emory Chase
Frederick Collin
William H. Cuddeback
Edgar M. Cullen
Frank H. Hiscock
John W. Hogan
Nathan L. Miller
William E. Werner

the same being more than a majority of said Court, and the members thereof having been duly sworn truly and impartially to try and determine the impeachment according to the evidence,

and the managers of the Assembly having appeared by their counsel,

Alton B. Parker	Eugene Lamb Richards
John B. Stanchfield	Isidor J. Kressel
Edgar Truman Brackett	Hiram C. Todd

and the respondent, William Sulzer, having appeared at said time by his counsel,

D-Cady Herrick	Louis Marshall
Irving G. Vann	Harvey D. Hinman
Austin G. Fox	

And having made objection to the jurisdiction of the Court and the same having been overruled, and thereupon the respondent having made objection to the sufficiency of articles 1, 2 and 6 of impeachment, and the same having been overruled, and thereupon the respondent having made answer to said articles of impeachment as follows:

STATE OF NEW YORK
IN
THE COURT FOR THE TRIAL OF IMPEACHMENTS

The People of the State of New York, by the Assembly thereof, against William Sulzer, as Governor	ANSWER

The above-named respondent, William Sulzer, in answer to the articles of impeachment preferred against him, answers and alleges as follows:

First: In answer to the first article of impeachment, this respondent admits that he is the Governor of this State, for the term beginning January 1, 1913, having been elected at the general election held on the 5th day of November, 1912, and admits that he made and filed in the office of the Secretary of State, a statement of moneys received, contributed or expended, as in said first article set forth and contained; but denies each and every other allegation, matter and fact therein set forth and contained.

And in further answer thereto alleges that he made the statement in said first article referred to in good faith, and that at the time of making and filing the same this respondent believed it to be a true and accurate account of the moneys received and paid out for his election expenses, and it was not intended by him to be false, or an evasion of, or in violation of, the statutes of the State.

Second: In answer to the second article of impeachment, this respondent admits that he is now the Governor of the State, having been elected thereto on the 5th day of November, 1912, as in said second article set forth, and that he filed a statement purporting to be a statement of all the moneys received, contributed or expended by him, as candidate for the office of Governor, as set forth in said second article; but denies each and every other allegation, matter and fact therein contained and set forth.

And this respondent, further answering the said second article of impeachment, alleges that he made the statement in good faith and that at the time of making and swearing to the same he believed it to be a true and accurate statement, and that the same was not intended by him to be false, or an evasion of, or in violation of, the statutes of the State.

Third: In answer to the third article of impeachment, he admits that at the time therein alleged and set forth, he was, and now is, the Governor of the State of New York, and denies each and every other allegation, matter and fact in said third article set forth and contained.

Fourth: In answer to the fourth article of impeachment, he admits that at the time therein alleged and set forth, he was the Governor of the State of New York; and denies each and every other allegation, matter and fact in said fourth article set forth and contained.

Fifth: In answer to the fifth article of impeachment, he admits that at the time therein alleged and set forth, he was, and now is, the Governor of the State of New York; and denies each and every other allegation, matter and fact in said fifth article set forth and contained.

Sixth: In answer to the sixth article of impeachment, this respondent admits that he now is the Governor of the State of

New York, that he was regularly nominated by the Democratic party therefor, and thereafter elected to such office, as alleged and set forth in said sixth article; but denies each and every other allegation, matter and fact therein contained and set forth.

Seventh: In answer to the seventh article of impeachment, he admits that at the time therein alleged and set forth, he was, and now is, the Governor of the State of New York; and denies each and every other allegation, matter and fact in said seventh article set forth and contained.

Eighth: In answer to the eighth article of impeachment, he admits that at the time therein alleged and set forth he was, and now is, the Governor of the State of New York; and denies each and every other allegation, matter and fact in said eighth article set forth and contained.

Wherefore this respondent asks that said articles of impeachment against him be dismissed.

WM. SULZER.

(Endorsed)

STATE OF NEW YORK

IN

THE COURT FOR THE TRIAL OF IMPEACHMENTS

The People of the State of New York, by the Assembly thereof

against

William Sulzer, as Governor

Copy

ANSWER

D-CADY HERRICK
IRVING G. VANN
AUSTIN G. FOX
LOUIS MARSHALL
HARVEY D. HINMAN
Of Counsel for Respondent

And the said impeachment having been tried and the respondent having been convicted of the charges specified in the first, second and fourth articles of impeachment, by the vote of more than two-thirds of said Court, and having been acquitted on the re-

mainder of said articles, and the said Court having duly resolved that for the offenses of which he has been convicted, the said respondent, William Sulzer, be removed from the office of Governor of this State;

It is hereby adjudged that the said William Sulzer, the respondent herein, on this seventeenth day of October, nineteen hundred and thirteen, be, and he hereby is, removed from the office of Governor of the State of New York.

Albany, October 17, 1913

EDGAR M. CULLEN, *Chief Judge Court of Appeals*
[L. S.] *President.*

PATRICK E. McCABE,
Clerk.

STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } ss.:

I have compared the preceding copy of judgment roll of Assembly of the State against William Sulzer, Governor of the State, with the original judgment roll on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole thereof.

Given under my hand and the seal of office of the Secretary of State, at the city of Albany, this twenty-
[L. S.] first day of October, in the year one thousand nine hundred and thirteen.

CARL VOEGEL,
Deputy Secretary of State

(Endorsed)

ASSEMBLY OF THE STATE

AGAINST

WILLIAM SULZER

GOVERNOR OF THE STATE

Judgment Roll

STATE OF NEW YORK

OFFICE OF THE SECRETARY OF STATE

FILED OCT. 18, 1913

MITCHELL MAY
Secretary of State

EXHIBITS

COMMITTEE ON FOREIGN AFFAIRS.

HOUSE OF REPRESENTATIVES, UNITED STATES.

WASHINGTON, D. C.

One Fifteen Broadway,

New York, November 4, 1912.

Hon. Charles A. Stadler,

Foot of East 63rd Street,

New York City.

My dear Senator:

Your letter was duly received. Many thanks for all you have done in my behalf. I certainly appreciate it.

With best wishes, believe me,

Very sincerely your friend,

Louis Sarecky

Exhibit M-44

COMMITTEE ON FOREIGN AFFAIRS.

HOUSE OF REPRESENTATIVES, UNITED STATES.

WASHINGTON, D. C.

En Route

Oct. 22, 1912.

Mutual Alliance Trust Co

Gentlemen:

This is to inform you that I have authorized my Private Secretary, Mr. Louis A. Sarecky to endorse my name to any checks donated to my campaign fund, and to deposit same to his credit.

Very truly yours,

Louis Sarecky

Exhibit M-29

COMMITTEE ON FOREIGN AFFAIRS

One Fifteen Broadway,

New York, Nov. 6, 1912

August Luchow, Esq

14th Street near 4th Avenue

New York City

My dear Mr. Luchow:

Many thanks for your congratulations and good wishes. I certainly appreciate all you say and all you did for me.

With best wishes believe me, as ever,

Sincerely your friend,

Exhibit M-69

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES, UNITED STATES

WASHINGTON, D. C.

J. T. G.
NOV 7 1912

One Fifteen Broadway,

New York, November 4, 1912.

J. Temple Gwathmey, Esq.,

C/o Geo H. McFadden & Bro.,

2 South William St.,

New York City.

My dear Mr. Gwathmey:

Many thanks for your very kind letter. I certainly appreciate all you say and all you have done.

With best wishes, believe me,

Very sincerely your friend,

Exhibit M-64

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES, UNITED STATES

WASHINGTON, D. C.

One Fifteen Broadway,

New York, October 19, 1912.

William J. Elias, Esq.,

403 East 54th Street,

New York City.

My dear Mr. Elias:

Many, many thanks for your very kind letter and inclosure. I appreciate all you say and all you have done. You are indeed a good friend of mine.

With best wishes, believe me,

Very sincerely your friend,

Wm Sulzer

Exhibit M-59

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES, UNITED STATES

WASHINGTON, D. C.

One Fifteen Broadway,

New York, November 7, 1912.

Hon. Charles A. Stadler,

Foot of East 63rd St.,

New York City.

My dear Senator:

Many thanks for your kind telegram of congratulations and good wishes. I certainly appreciate all you say and all that you did.

Believe me, as ever,

Very sincerely your friend,

Wm Sulzer

Exhibit M-46

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES UNITED STATES

WASHINGTON, D. C.

, Sec. Rep. Com.

William Hoffman,

St., & Third Av.,

New York City.

Dear Mr.Hoffman:-

Just a line to thank you for all you are
in my behalf, and to tell you how deeply I
it.

With best wishes, and hoping to see you before
, believe me,

Sincerely yours,

Exhibit M-58

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES, United States

WASHINGTON, D. C.

Geo. C. Hawley, Esq.,

Dodler Brewery,

Albany, New York.

My dear Mr.Hawley:-

Just a line to thank you for all you
are doing in my behalf, and to tell you how deeply
I appreciate it.

With best wishes, and hoping to see you
before long, believe me,

Sincerely yours,

Exhibit M-57

COMMITTEE ON FOREIGN AFFAIRS

One Fifteen Broadway,

New York, October 21, 1911.

Ronald Fisman, Esq.,

30 Liberty St.,

New York City.

My dear Mr. Fisman:

Your letter to Congressman Sulzer inclosing check for $100.00 as contribution from Mr. Stolber was duly received by me during the Congressman's absence on a campaign trip up the State. I know Mr. Sulzer appreciates this very much indeed. I want to thank you also for your good wishes. Hope you will write Mr. Stolber to this effect.

With best wishes, believe me,

Very sincerely yours,

Louis A. Sarecky

Secretary.

Ent W 48

Exhibit M-48

House of Representatives U. S.

Washington D. C.

Hon. Charles A. Stadler,

Ft 63rd St. & E. R.

New York City.

My dear Mr. Stadler:-

congratulations and good wishes. I sincerely appreciate all you say.

With best wishes, believe me, as ever,

Sincerely yours,

Wm Sulzer

Exhibit M-45

COMMITTEE ON FOREIGN AFFAIRS.
HOUSE OF REPRESENTATIVES, UNITED STATES.
WASHINGTON, D. C.

New York, Oct. 5, 1912

Hon. Abram I. Elkus,
170 Broadway
New York City

My dear Commissioner:

Many, many thanks for your very kind letter of congratulations. I appreciate every word you say, and all you have done.

With best wishes, believe me,

as ever,

Sincerely your friend,

Wm Sulzer

Exhibit M-26

COMMITTEE ON FOREIGN AFFAIRS.
HOUSE OF REPRESENTATIVES, UNITED STATES.
WASHINGTON, D. C.

New York, Oct. 14, 1912.

Col. William Barthman,
174 Broadway,
New York City

My dear Colonel:

Many thanks for your very kind letter of congratulations. I certainly appreciate all that you say and all that you have done. You are a good friend of mine and can help me very much during the campaign. You know just what to do and how to do it, and a word to the wise is sufficient.

With best wishes believe me,

Sincerely your friend,

Wm Sulzer

Exhibit M-127

New York, N.Y.
July 24, 1913.

Messrs Harris & Fuller,
New York, City.

Gentlemen:

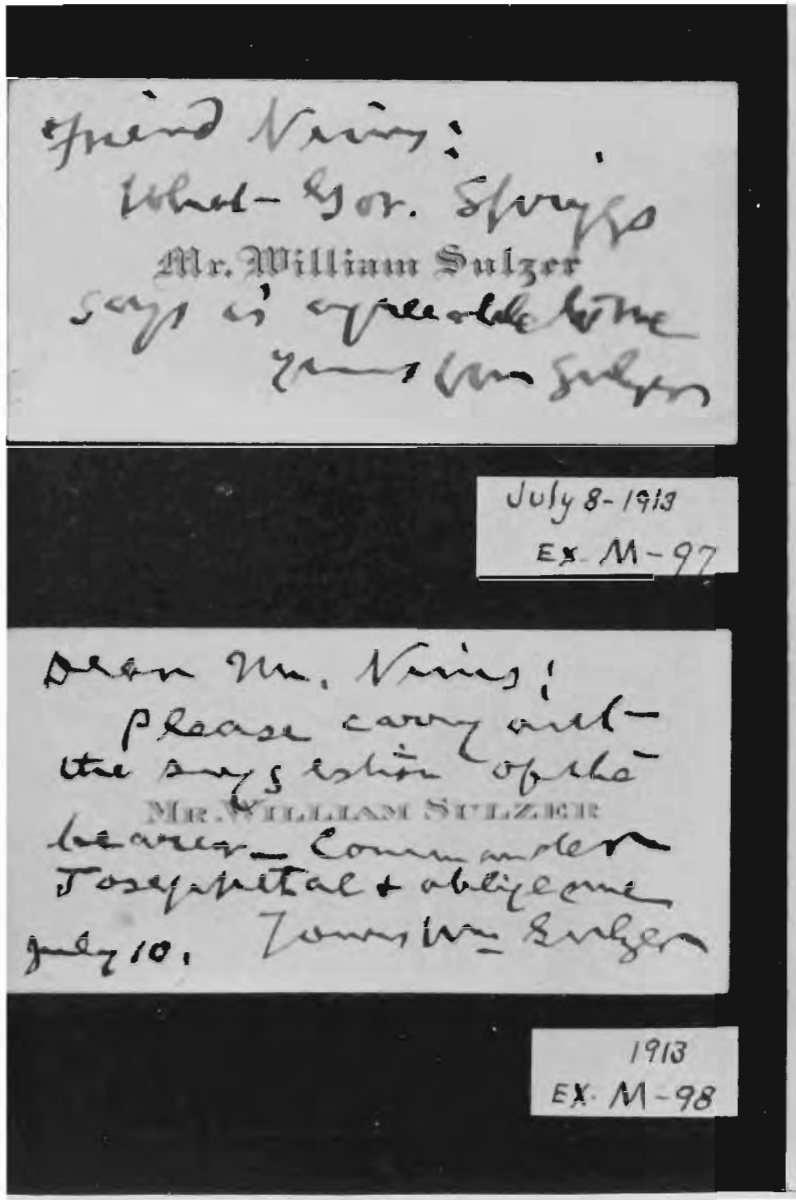
Please deliver to Lieut.Commander, L.M.Josephthal, the securities now held as collateral in my loan upon payment of the debit balance due thereon.

Yours truly,

Wm Sulzer

Jon Wm Sulzer

Exhibit M-99



Friend Nevins:
What-Gov. Sulzer
Mr. William Sulzer
says is agreeable to me
Yours Wm Sulzer

July 8-1913
Ex. M-97

Dear Mr. Nevins:
Please carry out-
the suggestion of the-
Mr. William Sulzer
bearer- Commander
Josephital + obliged me
July 10. Yours Wm Sulzer

1913
Ex. M-98

COMMITTEE ON FOREIGN AFFAIRS.
HOUSE OF REPRESENTATIVES, UNITED STATES.
WASHINGTON, D. C.

One Fifteen Broadway.

New York, October 11th, 1912.

Charles A. Stadler, Esq.,
C/o American Malting Company,
Buffalo, N. Y.

My dear Mr. Stadler:-

Many thanks for your good wishes and congratulations. You are a good friend of mine and I certainly appreciate all you say. You can help very much in the campaign.

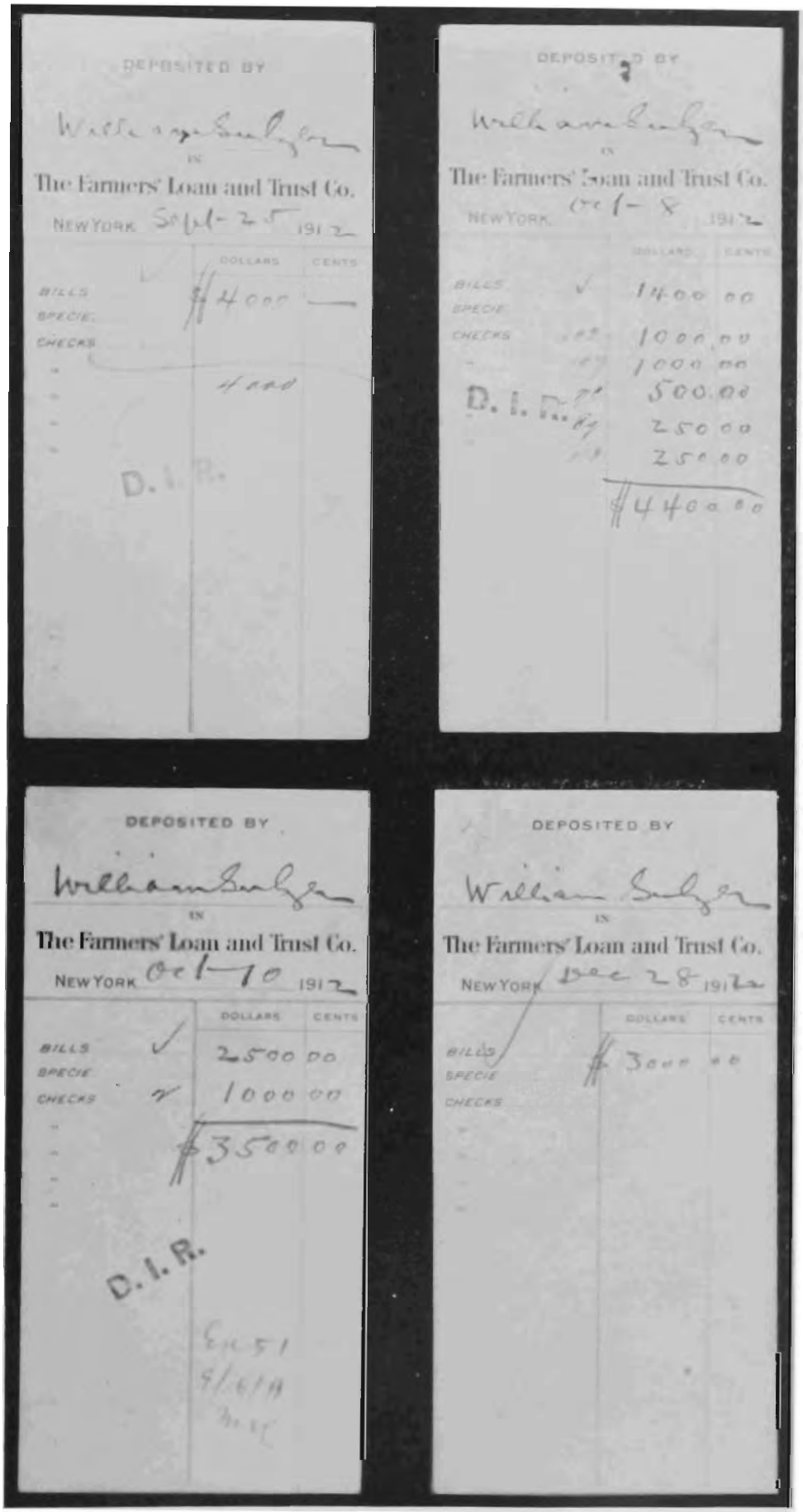
With best wishes for your health and success, believe me,

Very sincerely your friend,

Wm Sulzer

Exhibits M-97 and M-98

Exhibit M-43



DEPOSITED BY

William Sulzer

IN

The Farmers' Loan and Trust Co.

NEW YORK Sept 25 1912

		DOLLARS	CENTS
BILLS		$4000	—
SPECIE			
CHECKS			
"		4000	
"			
"			
"			

D. I. R.

DEPOSITED BY

William Sulzer

IN

The Farmers' Loan and Trust Co.

NEW YORK Oct 8 1912

		DOLLARS	CENTS
BILLS	✓	1400	00
SPECIE			
CHECKS		1000	00
"		1000	00
D. I. R.		500	00
"		250	00
"		250	00
		$4400	00

DEPOSITED BY

William Sulzer

IN

The Farmers' Loan and Trust Co.

NEW YORK Oct 10 1912

		DOLLARS	CENTS
BILLS	✓	2500	00
SPECIE			
CHECKS	✓	1000	00
"			
"		$3500	00
"			
"			

D. I. R.

Ex 51
9/6/18
H.C.

DEPOSITED BY

William Sulzer

IN

The Farmers' Loan and Trust Co.

NEW YORK Dec 28 1912

		DOLLARS	CENTS
BILLS		$3000	00
SPECIE			
CHECKS			

Exhibits M-12, M-16, M-20, M-21

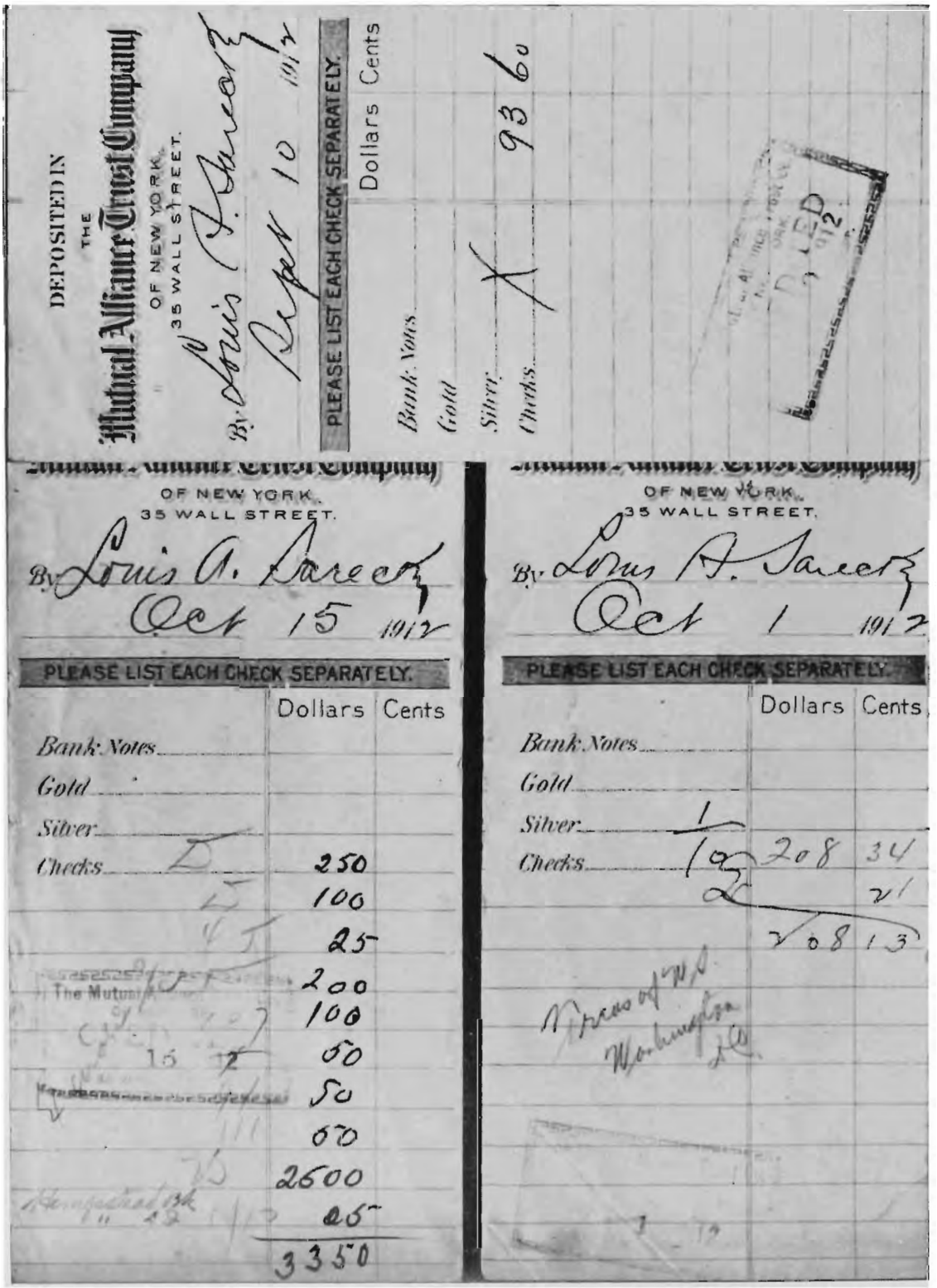


Exhibit M-27

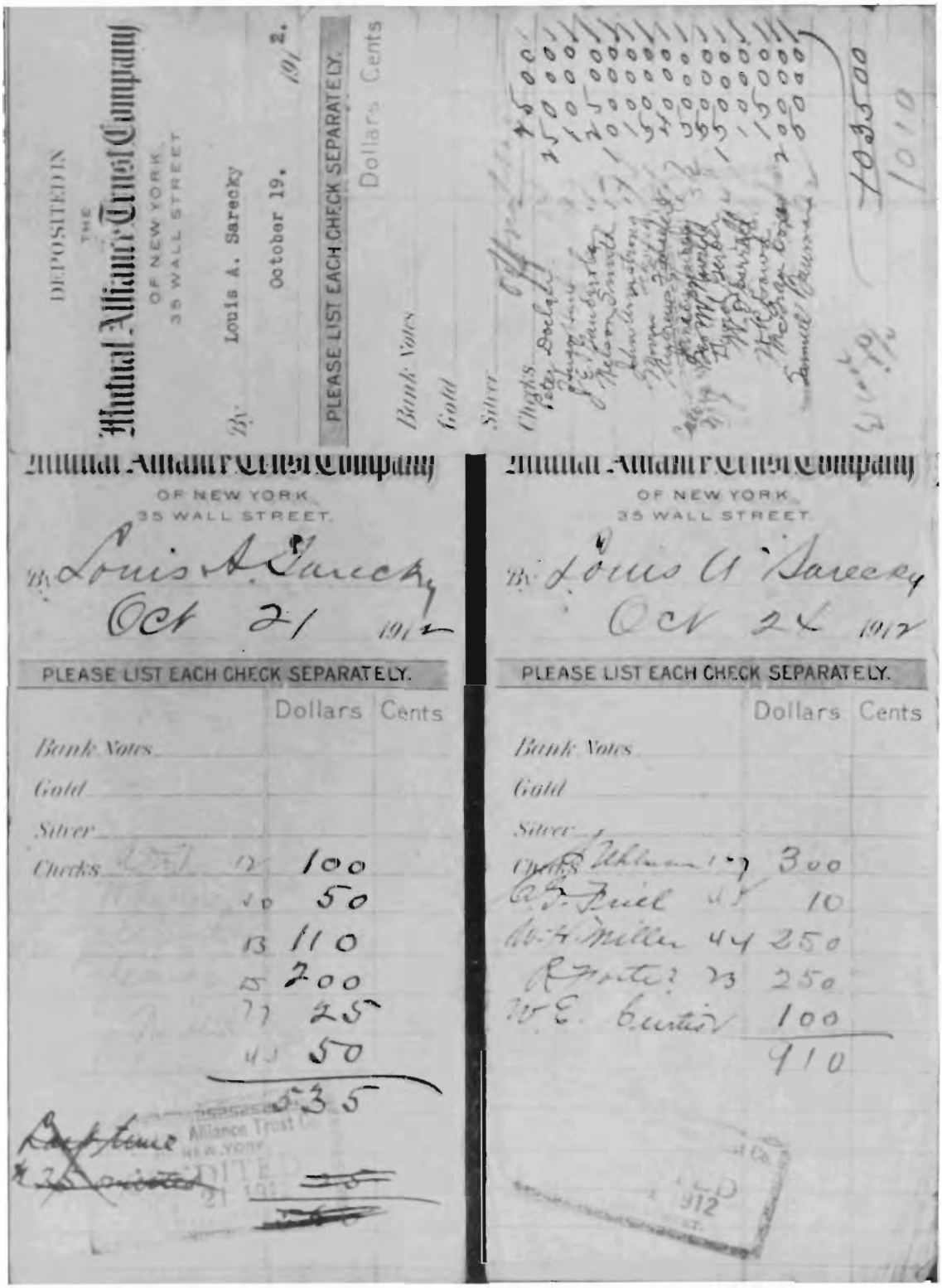
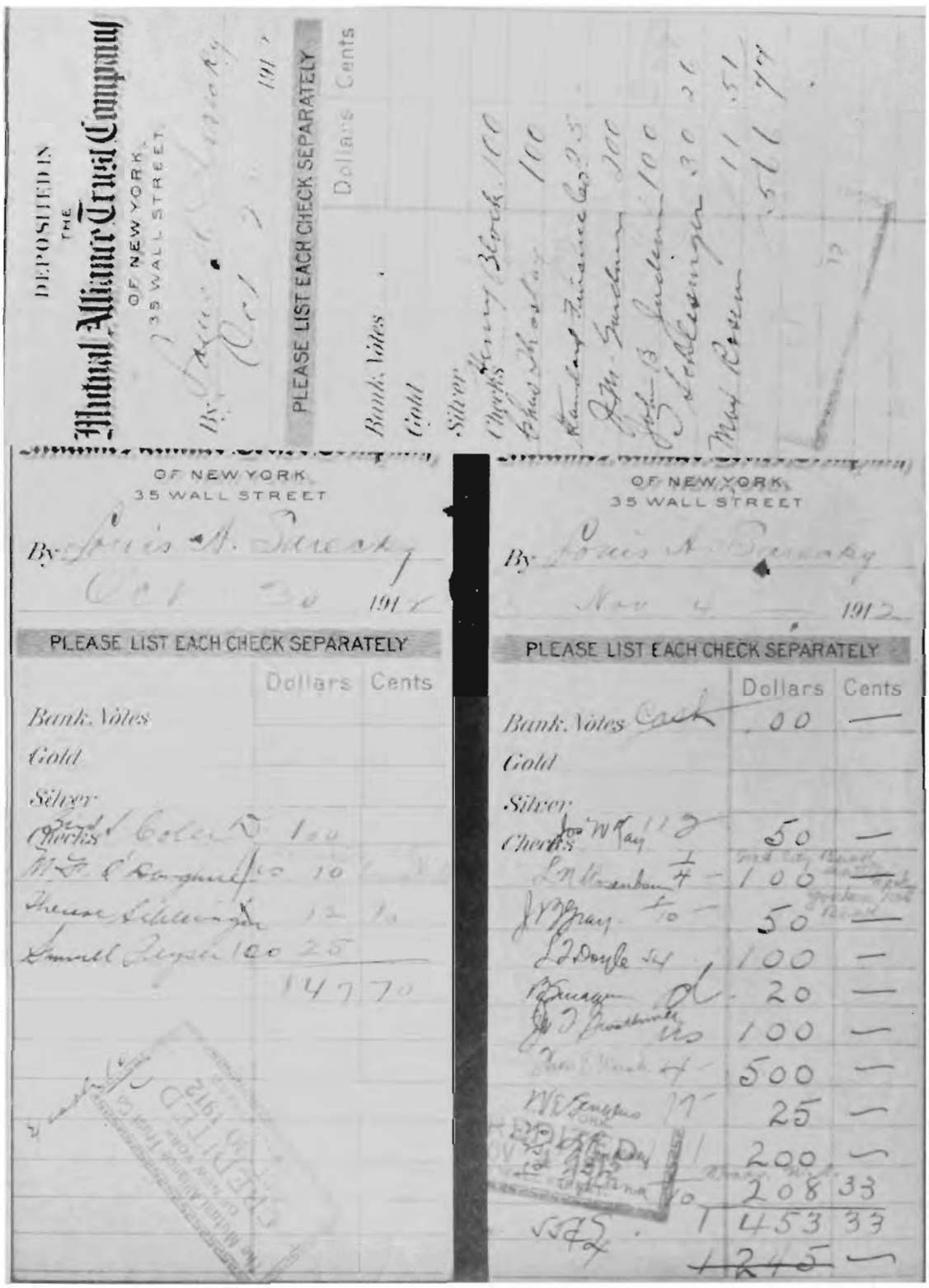


Exhibit M-27



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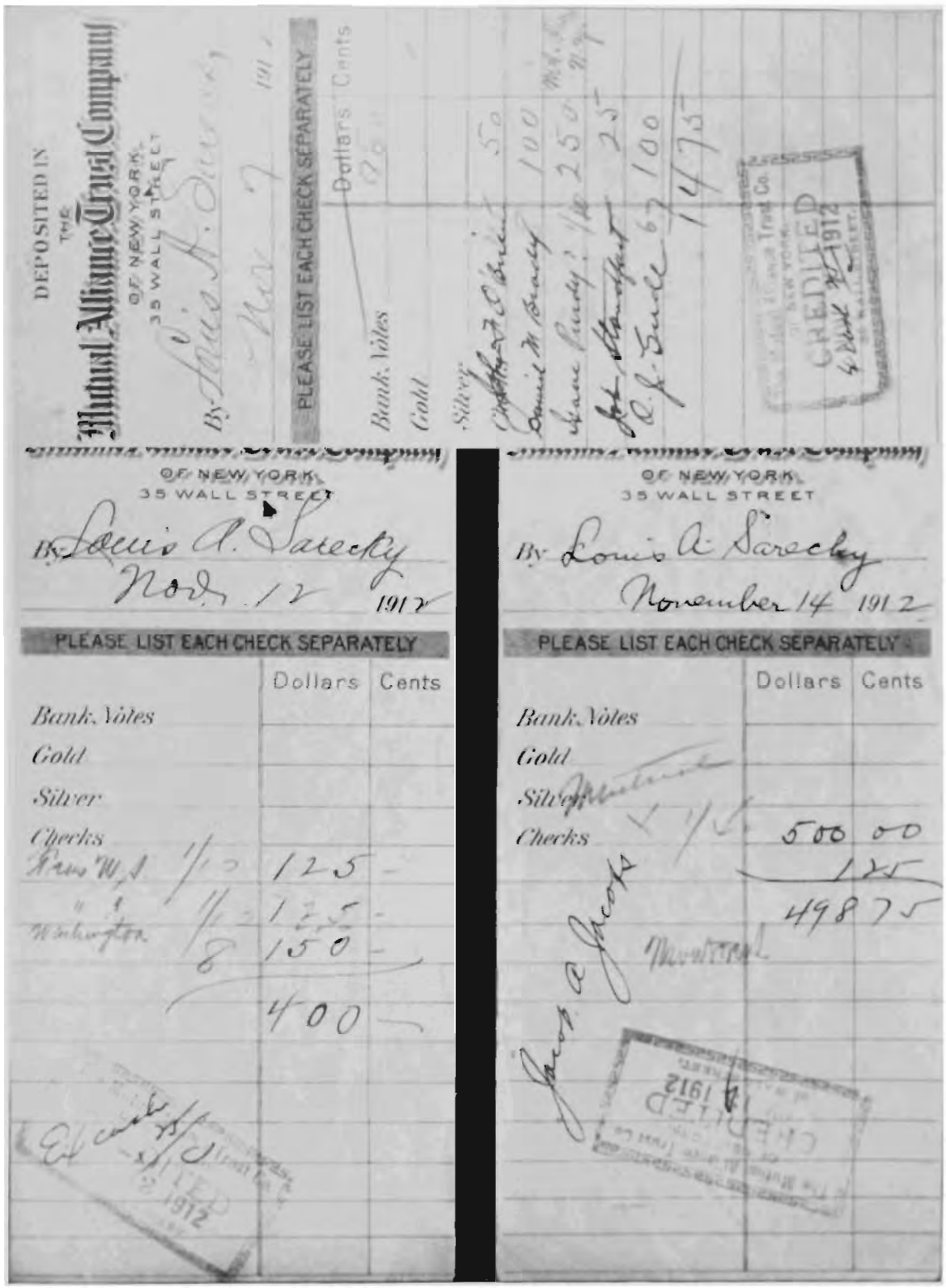

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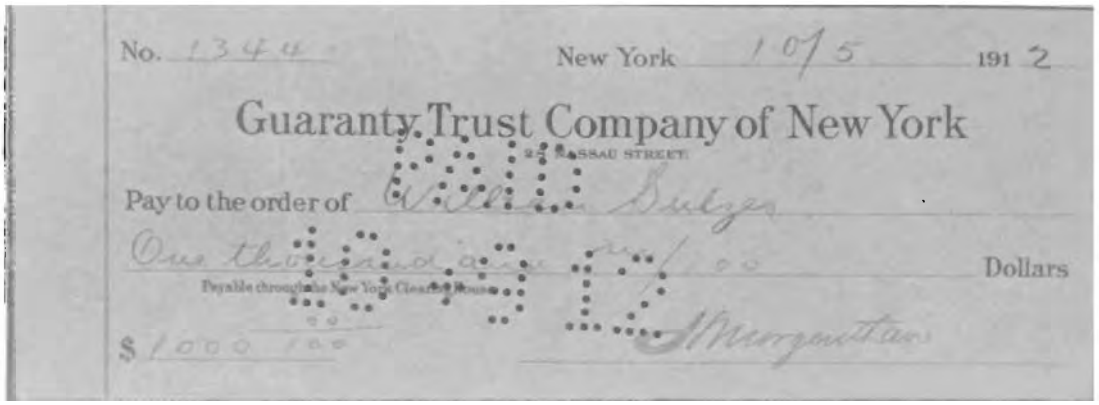


No. 1344 New York 10/5 1912

Guaranty Trust Company of New York

23 NASSAU STREET

Pay to the order of Wm. Bulger

One thousand and 00/100 Dollars

Payable through the New York Clearing House

$ 1000 00

J. Morgan Jr.

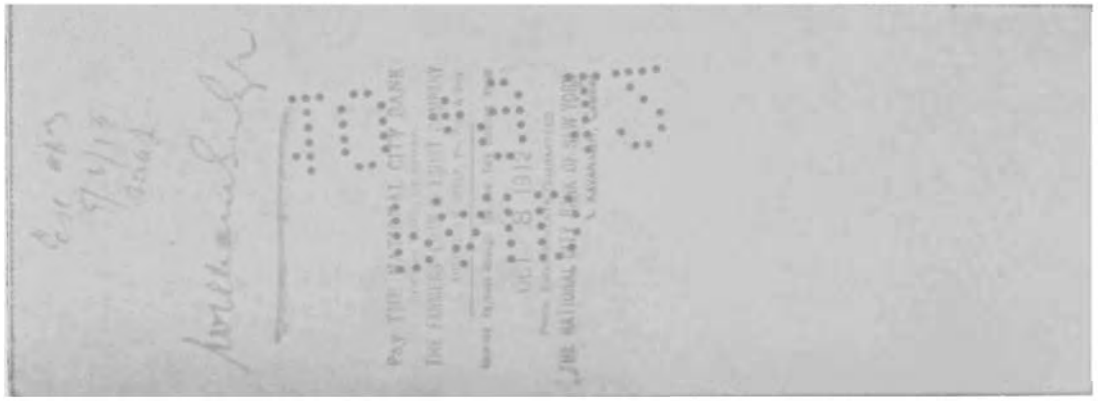


Exhibit M-10

No. 119755

Kuhn, Loeb & Co.

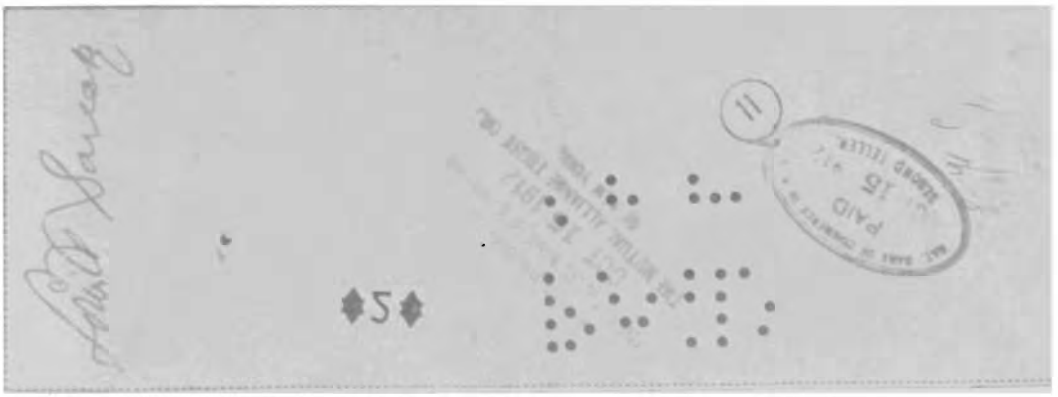
New York, Dec 11th 1912

NATIONAL BANK of COMMERCE in NEW YORK

Pay to the order of Louis A. Sarecky

Two thousand five hundred & — Dollars

$ 2500



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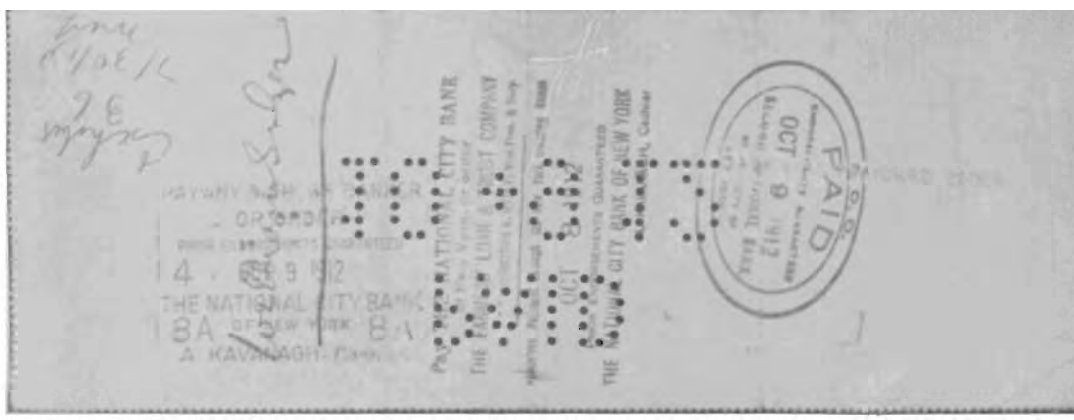

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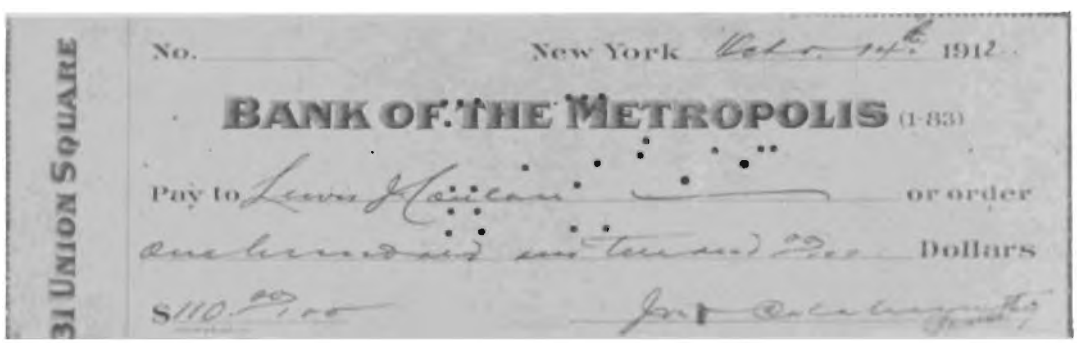

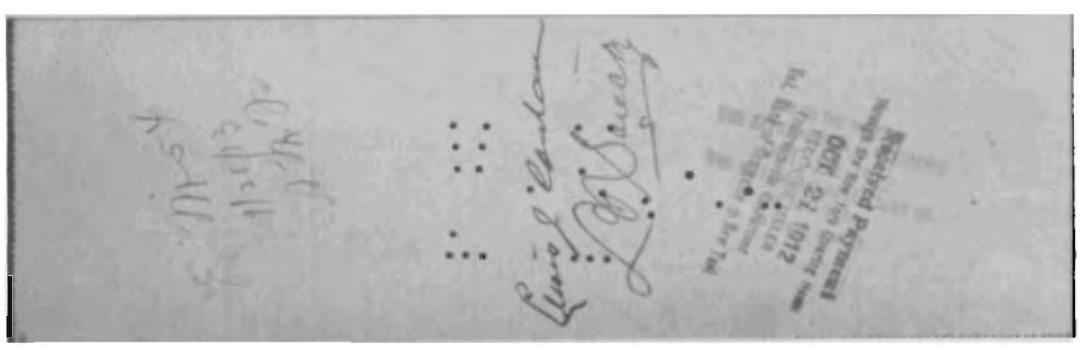

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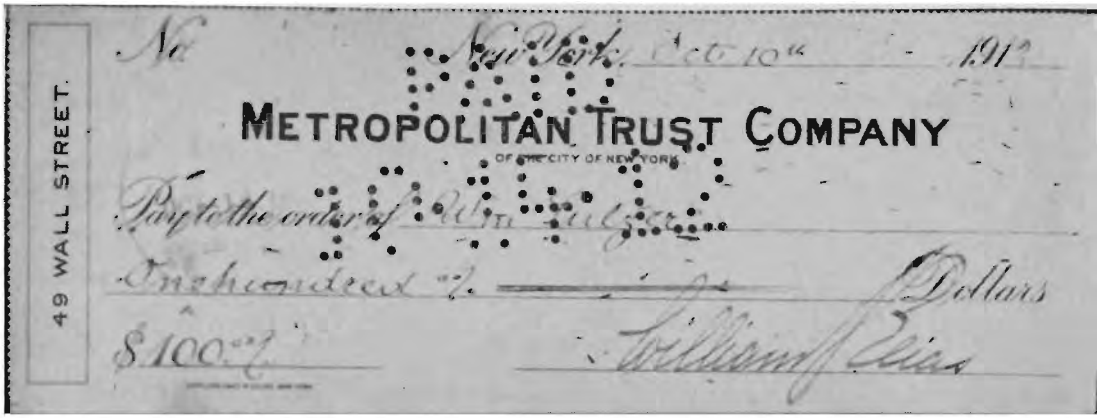

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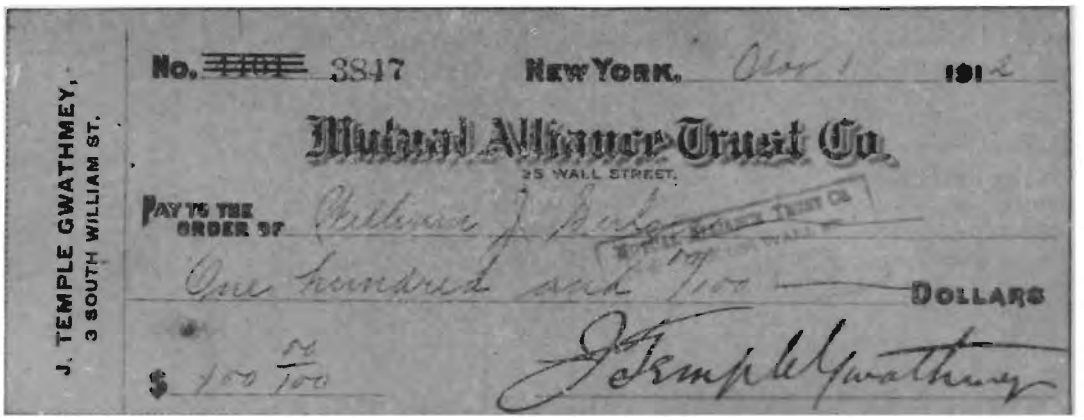

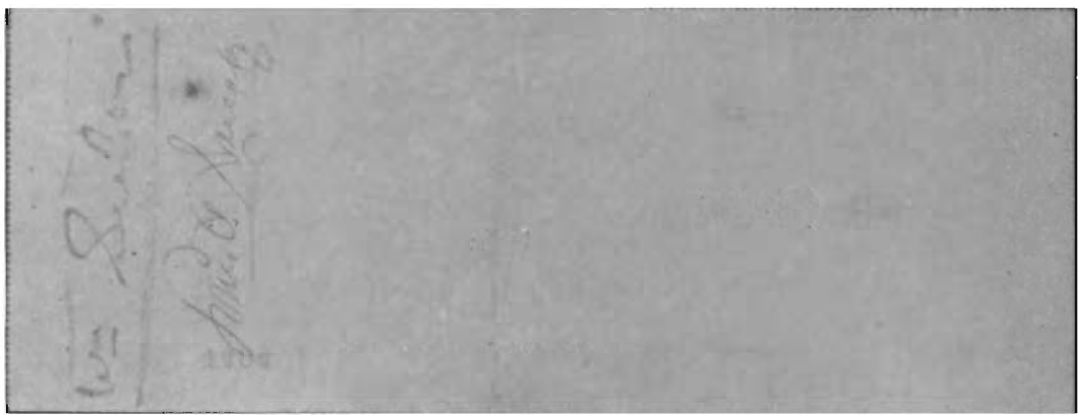

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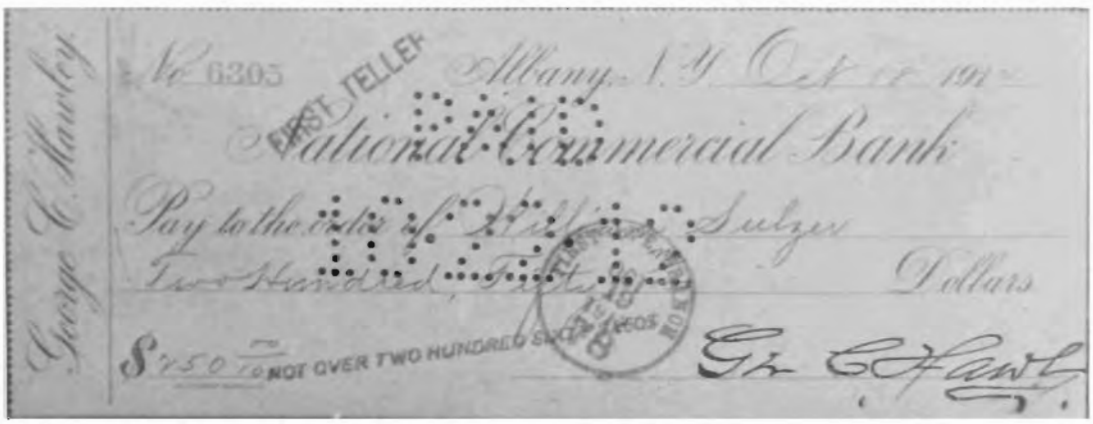

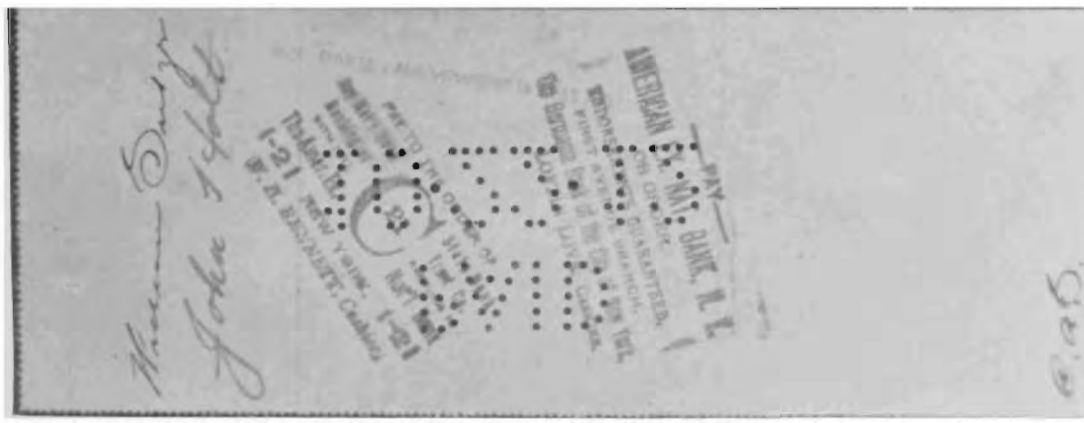

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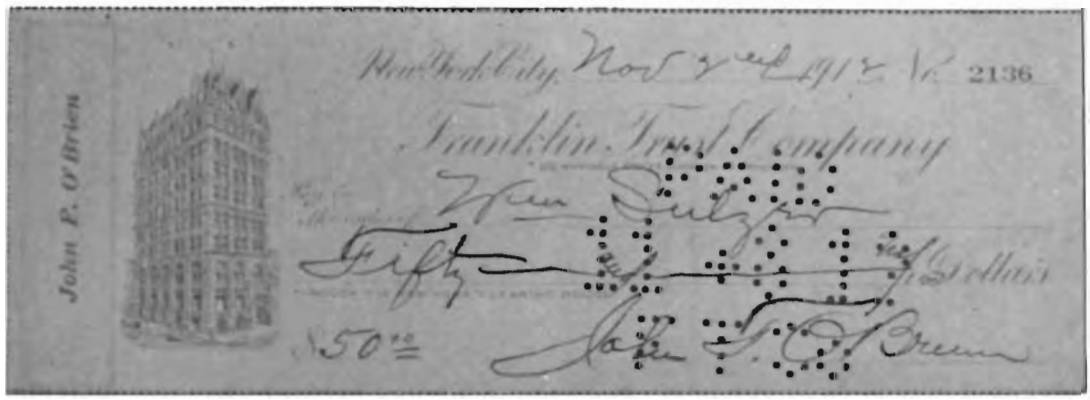

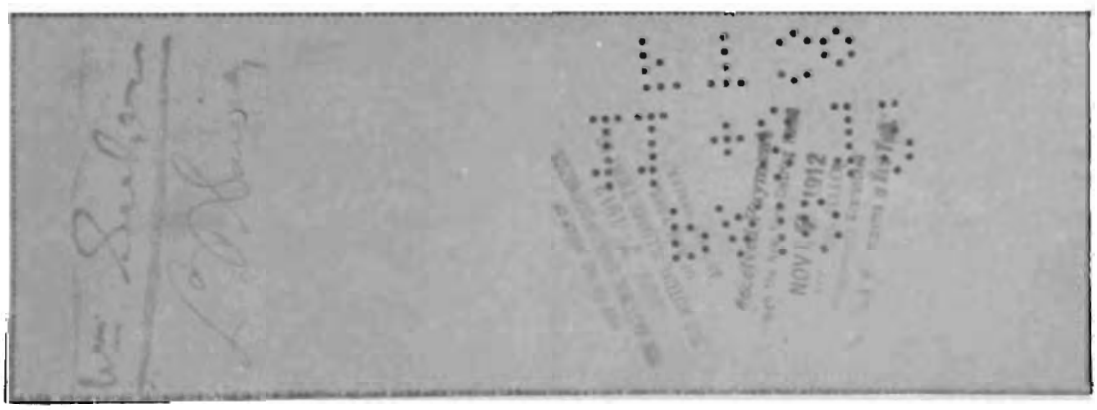

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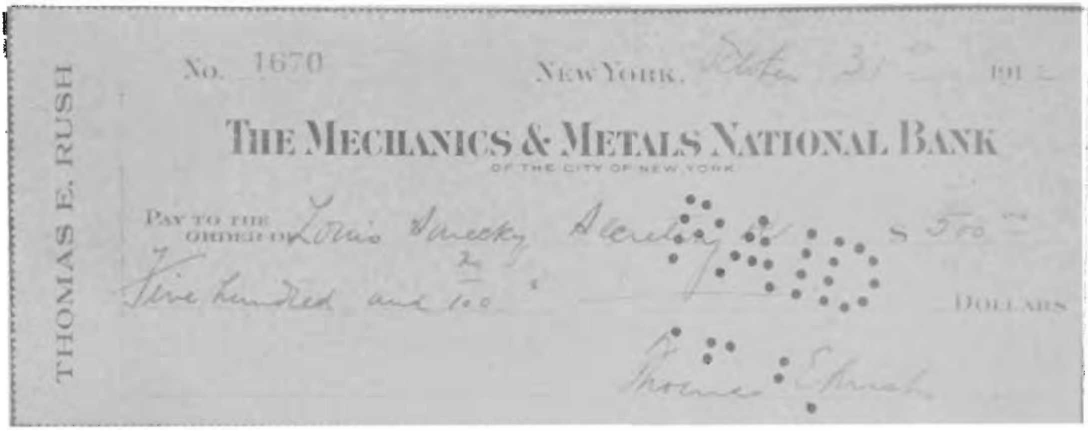

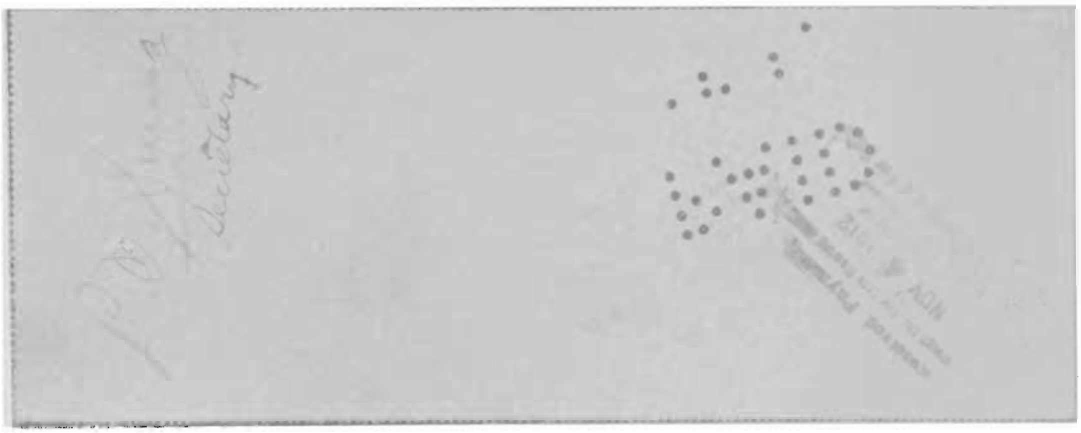

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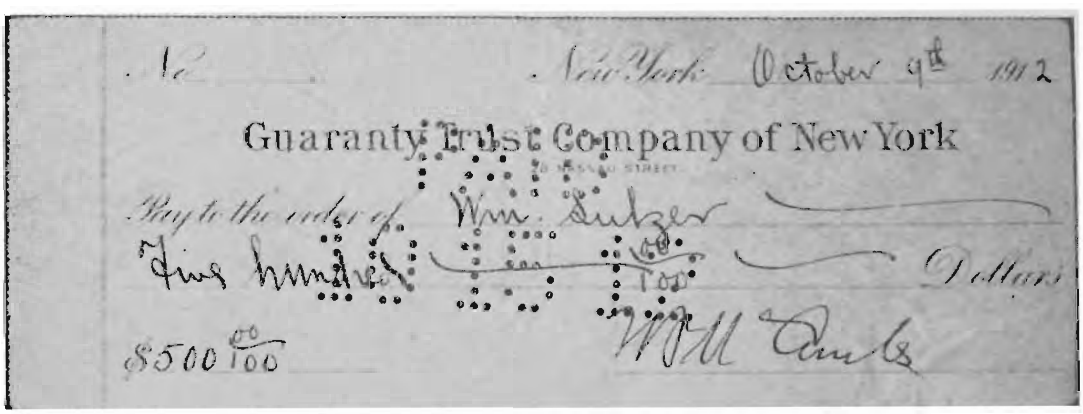

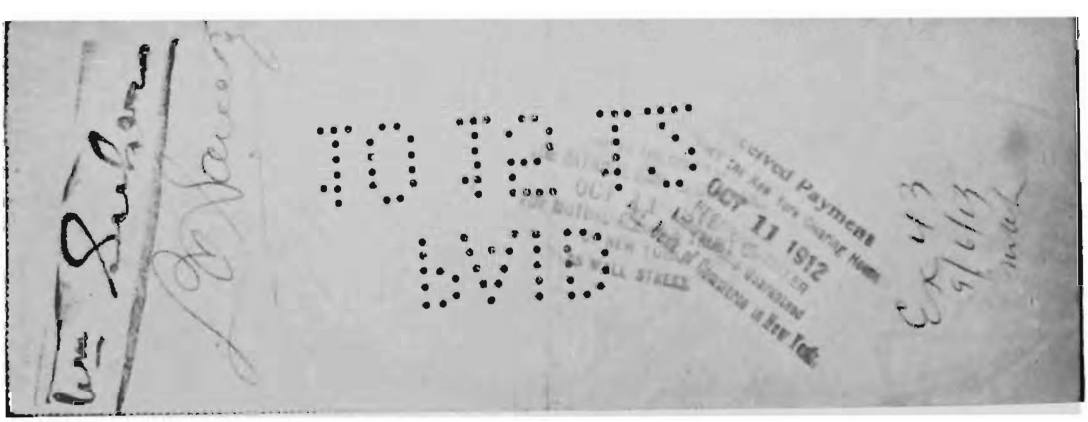

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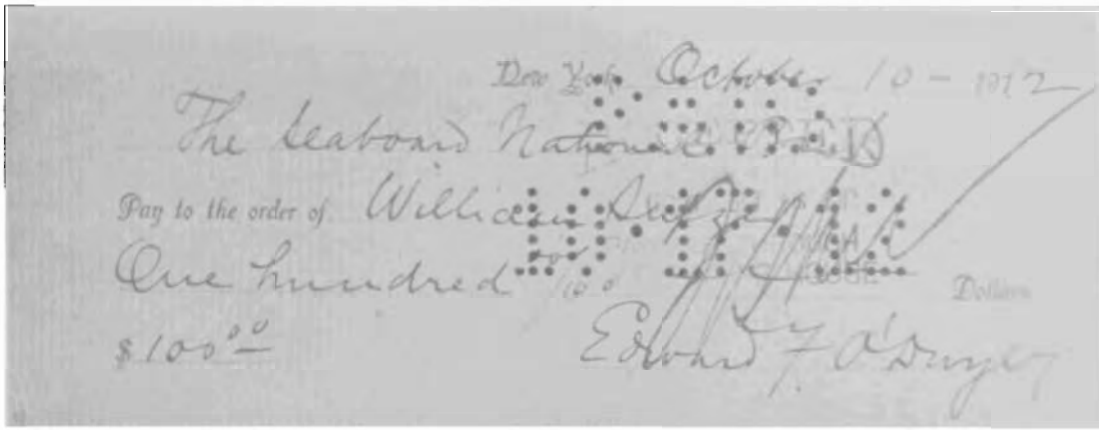


New York October 10 1912

The Seaboard National Bank

Pay to the order of William Seeger

One hundred 00/100 Dollars

$100.00

Edward F. Dwyer

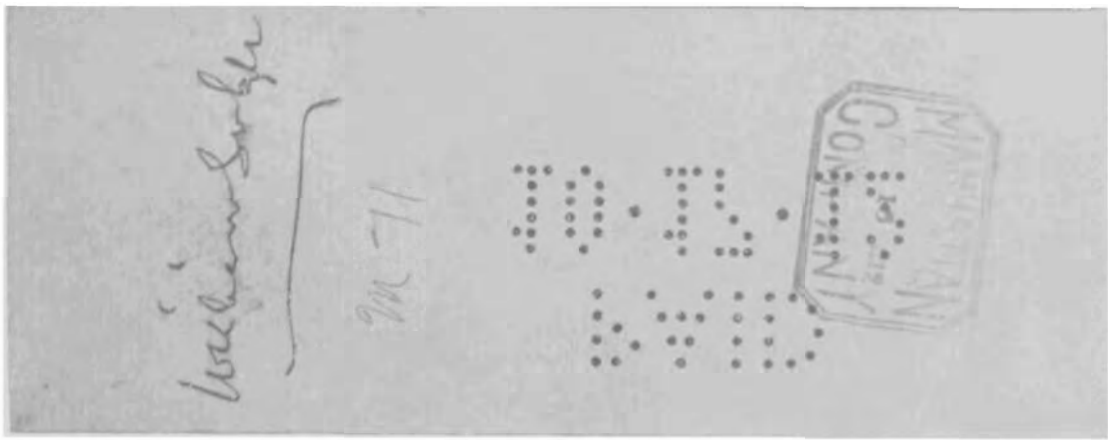


Exhibit M-71

25 Broad Street.

No

New York, Oct 18th 1912

The Standard Trust Company

of New York.

Pay to the order of Louis L. Sweeky

Three hundred 00/100 Dollars

$300 00/100

Simon Uhlmann

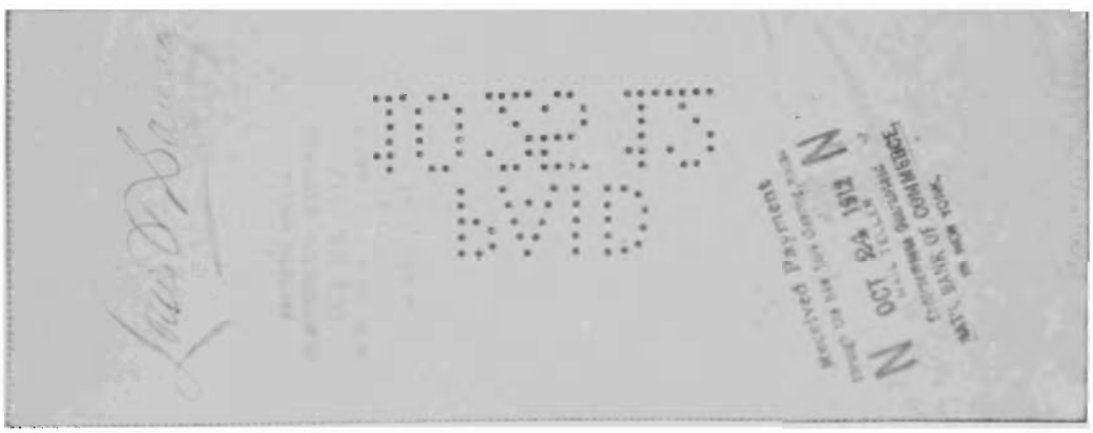


Exhibit M-33


No. 223 New York, October 18 1912

Hudson Trust Company

$250

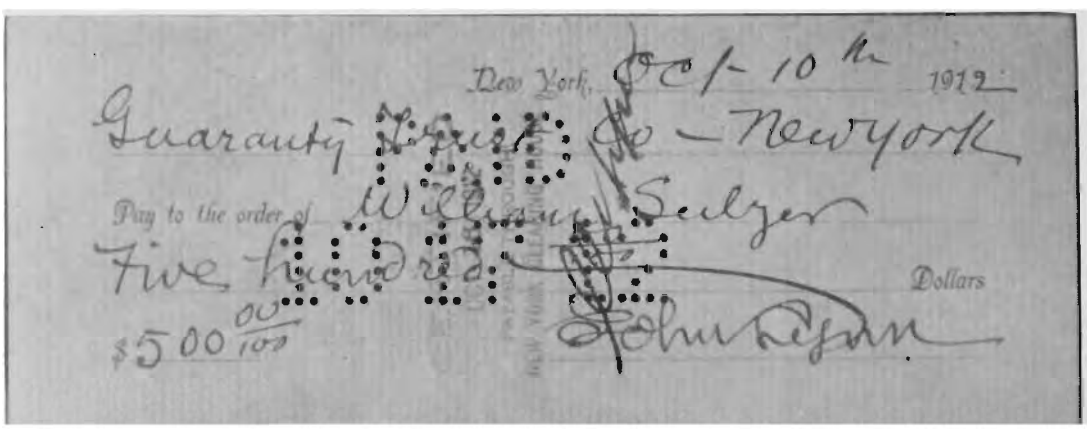
Pay to the order of Chas. A. Farber

Two hundred & fifty 00/100 Dollars

$250 00/100

Wm. H. Hoffmann

Exhibit M-42


New York, Oct 10th 1912

Guaranty Trust Co — New York

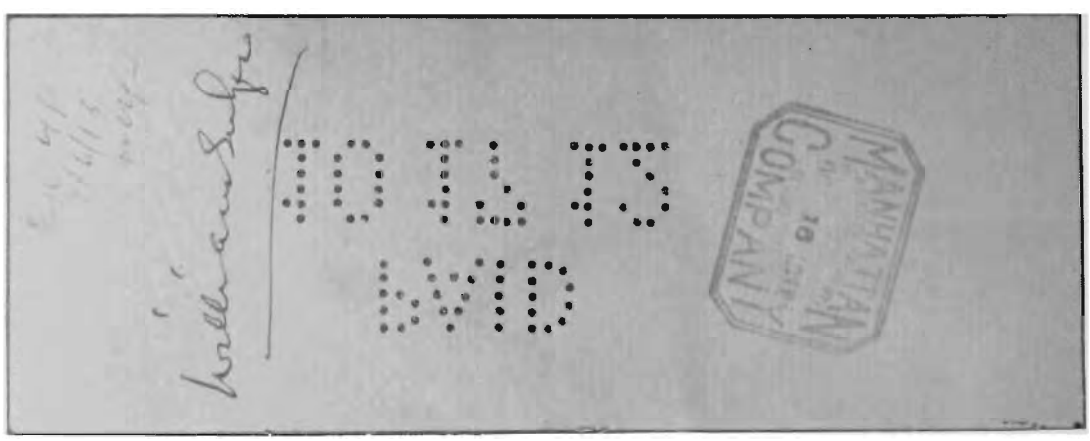
Pay to the order of William Seltzer

Five hundred

Dollars

$500 00/100

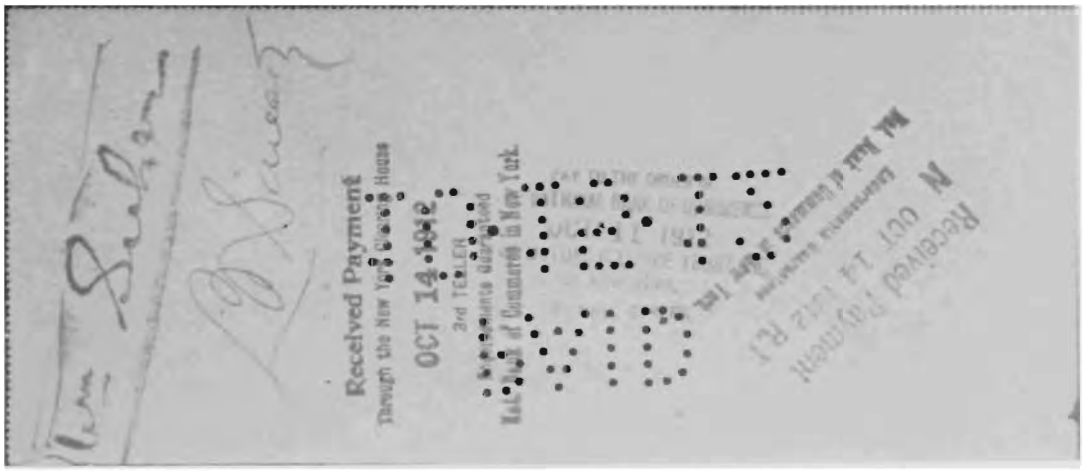
John Regan


William Seltzer

$500

MANHATTAN COMPANY

Exhibit M-56



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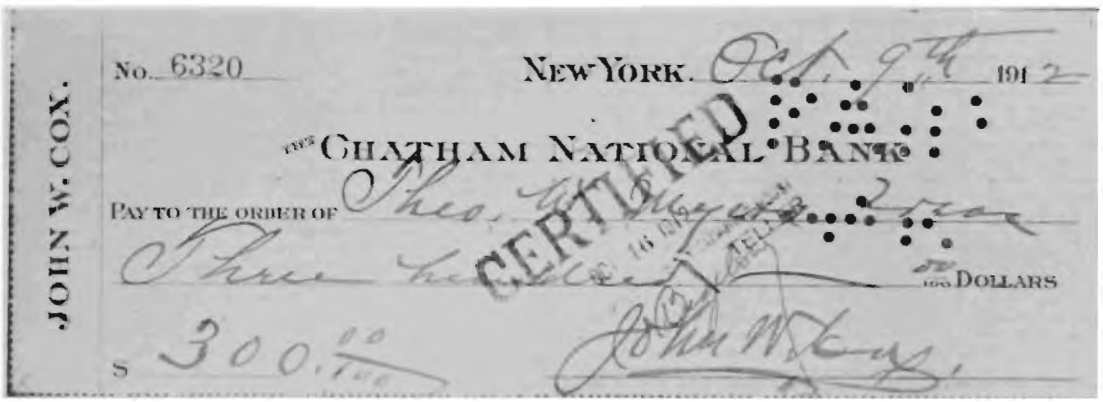


Exhibit M-67


No. New York Oct 10 1912
National Bank of Commerce in New York
Pay to the order of L. J. Leonard
Two hundred
$200.00/100
Frank N. Bolte

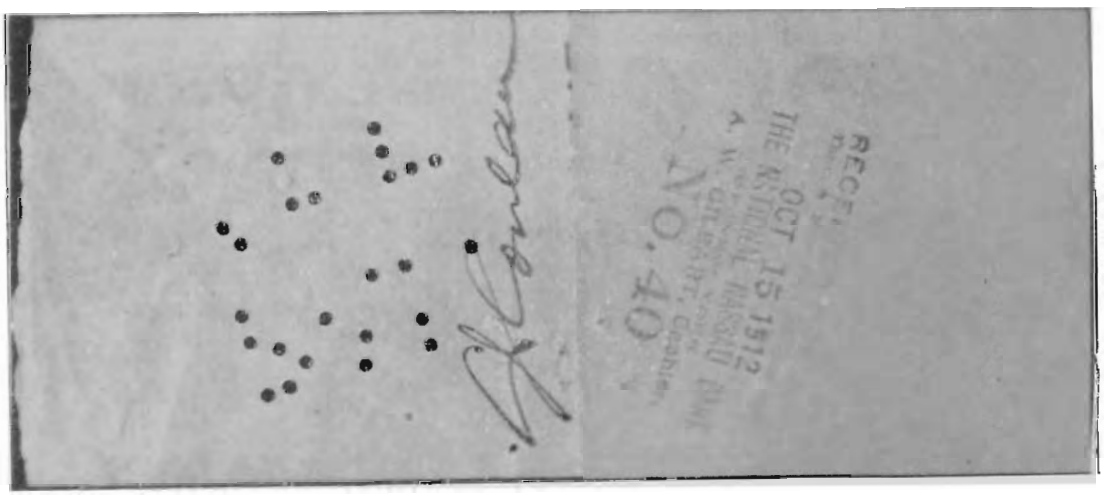

L. Leonard
RECEIVED
THE NATIONAL BANK
OCT 15 1912
N.Y.
NO. 40

Exhibit M-53


C. S. PINKNEY.
No 849
NEW YORK Nov 1 1912
COLUMBIA TRUST COMPANY
NEW YORK
PAY TO THE ORDER OF Louis A Leonard
$ 200 00/100
Two hundred
DOLLARS
C S Pinkney

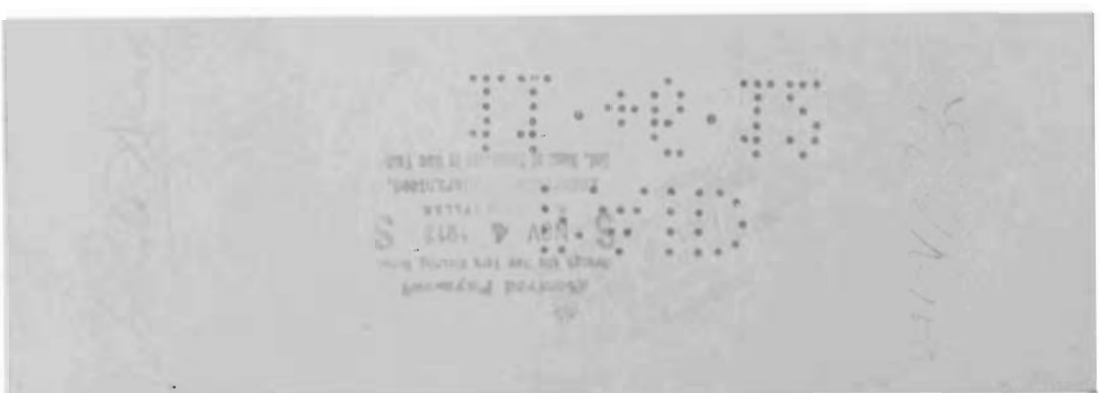
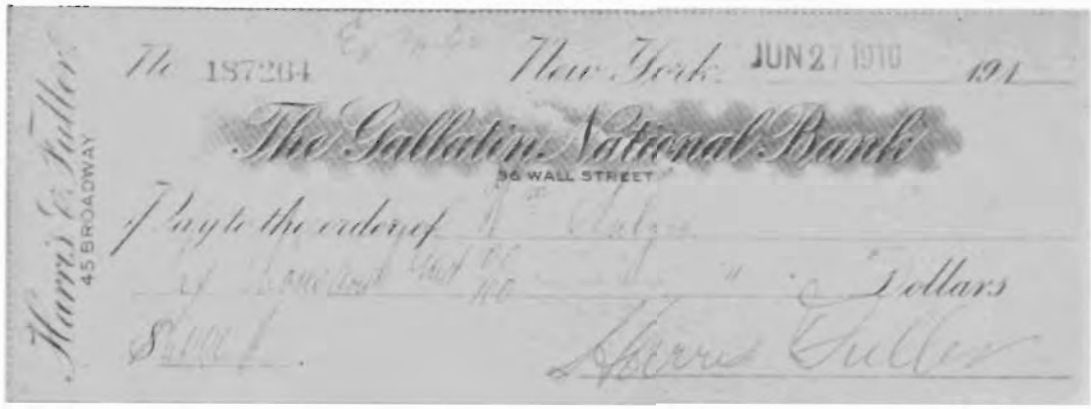


Exhibit M-100



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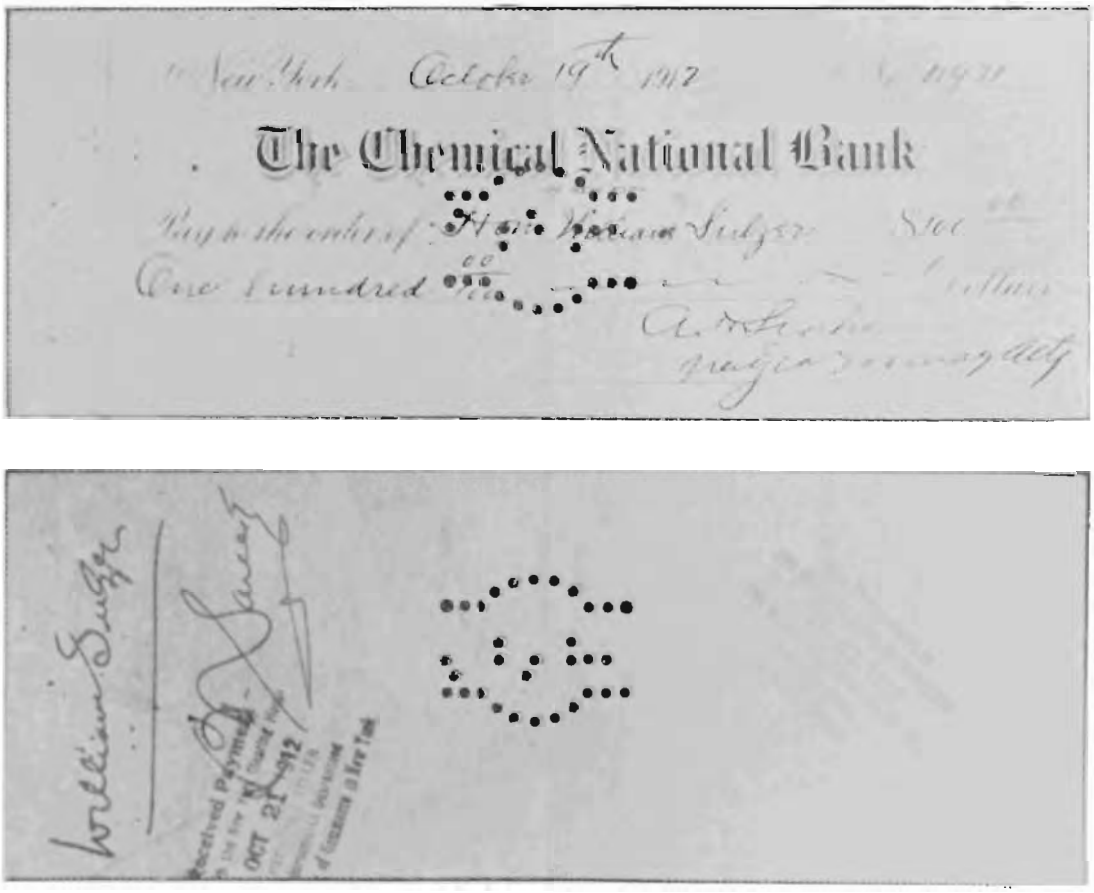

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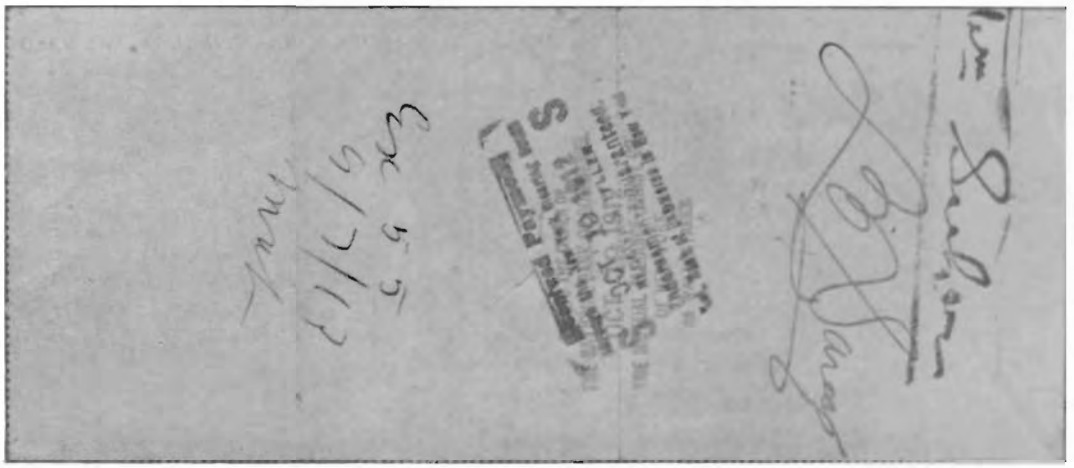
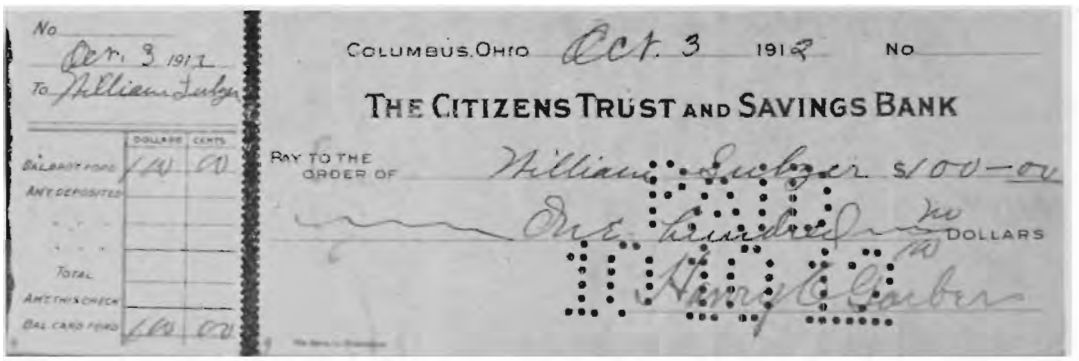


Exhibit M-34



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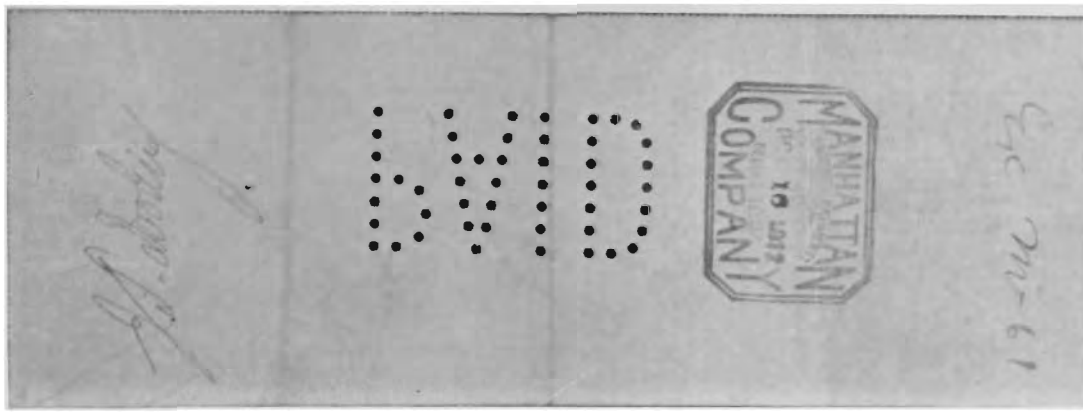

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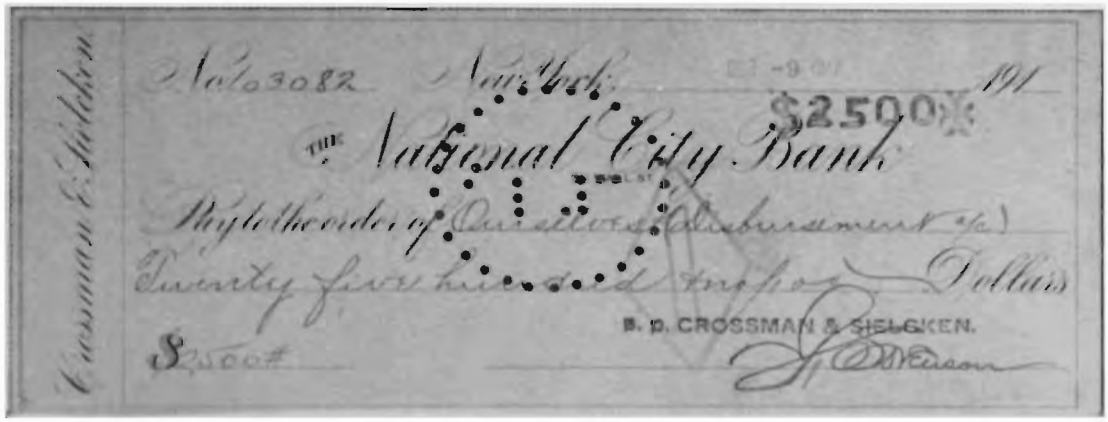

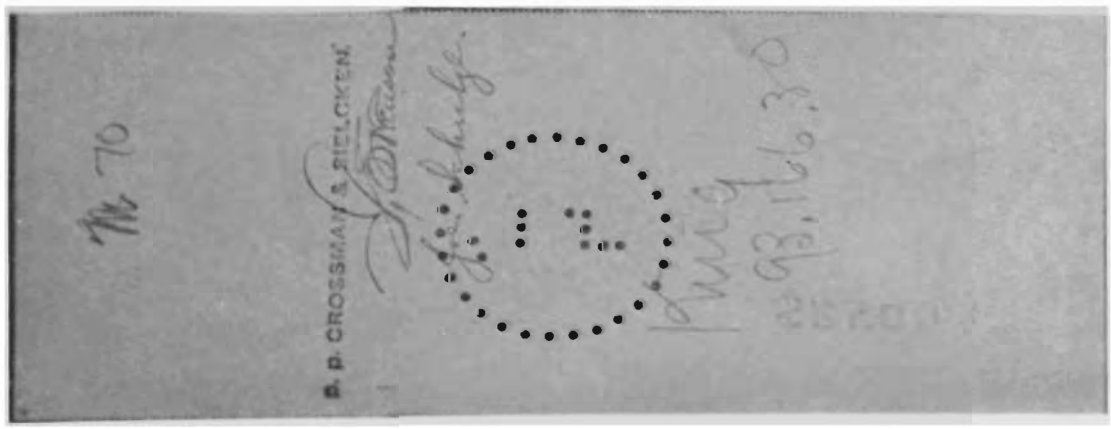

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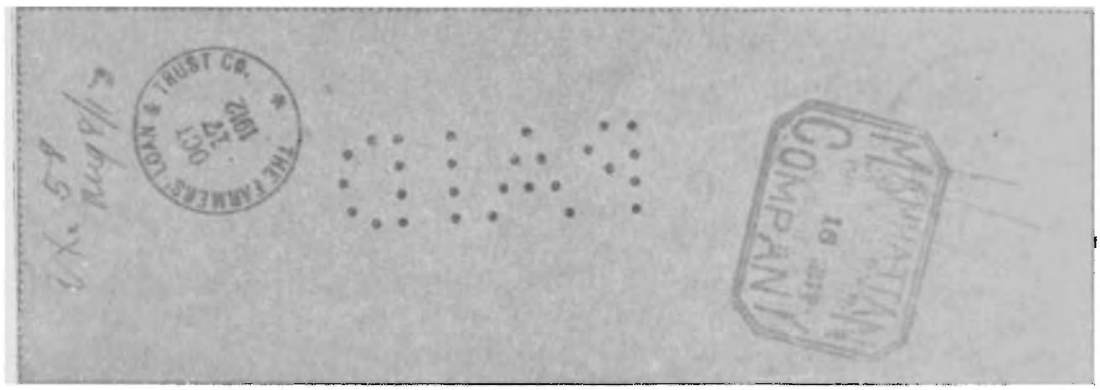

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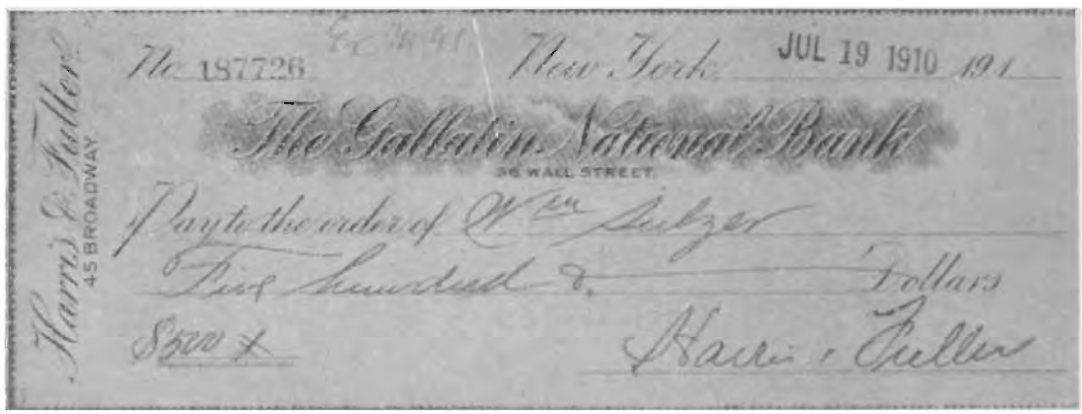

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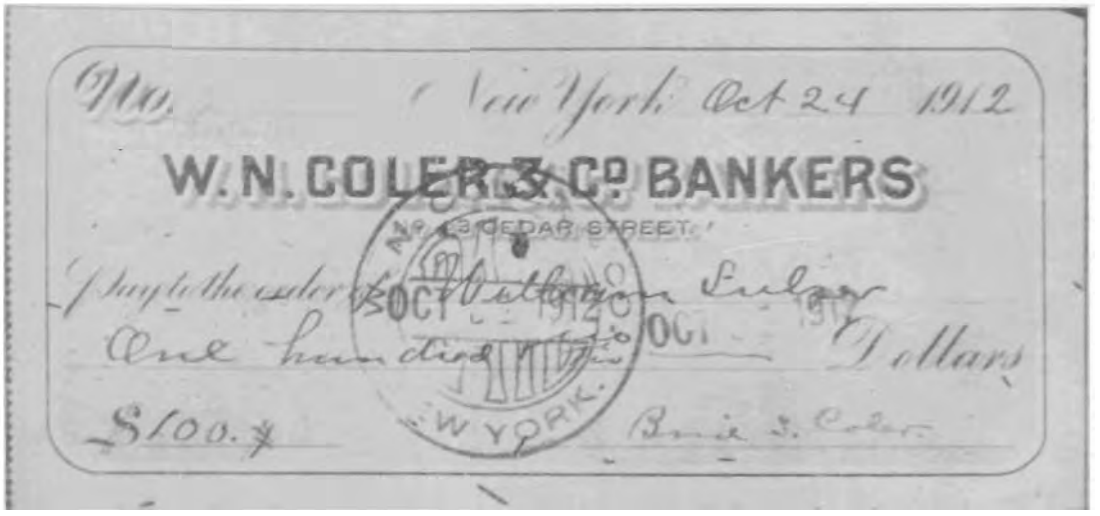

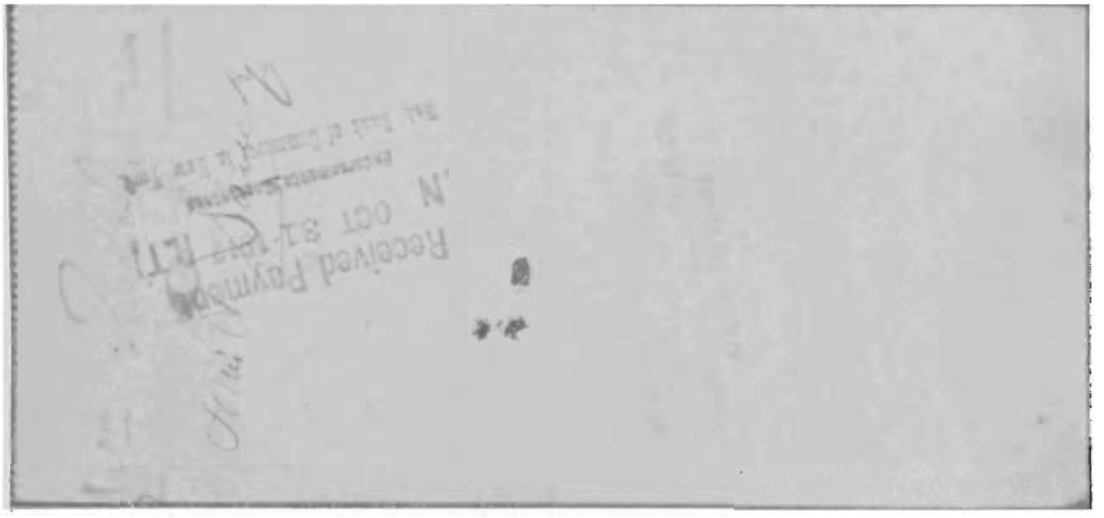

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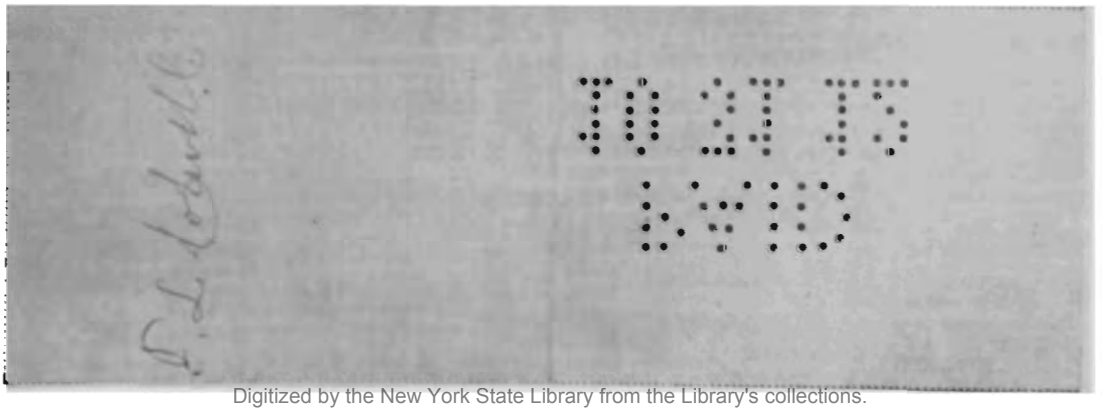

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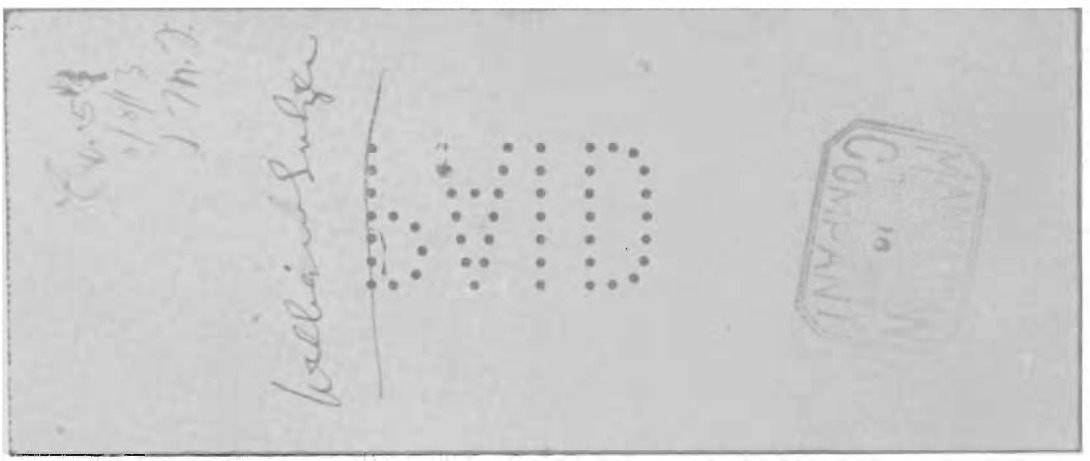

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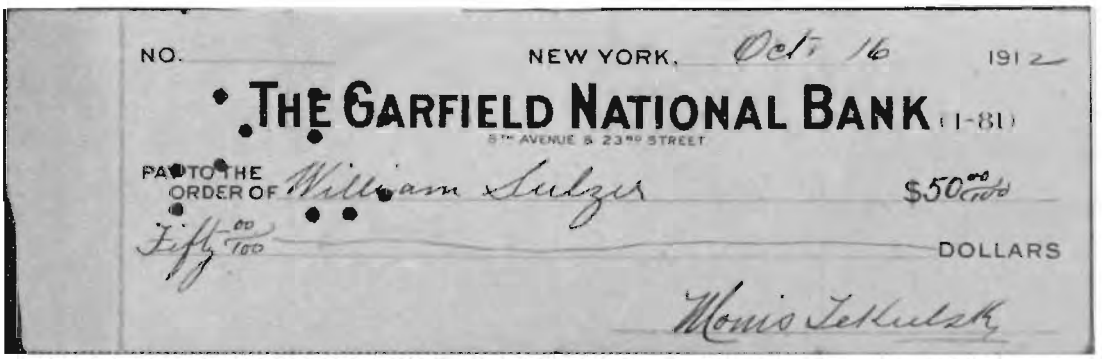


Exhibit M-32

No. 188902 New York SEP 26 1910 191

The Gallatin National Bank

36 WALL STREET.

Pay to the order of Wm. Sulzer

One thousand ## Dollars

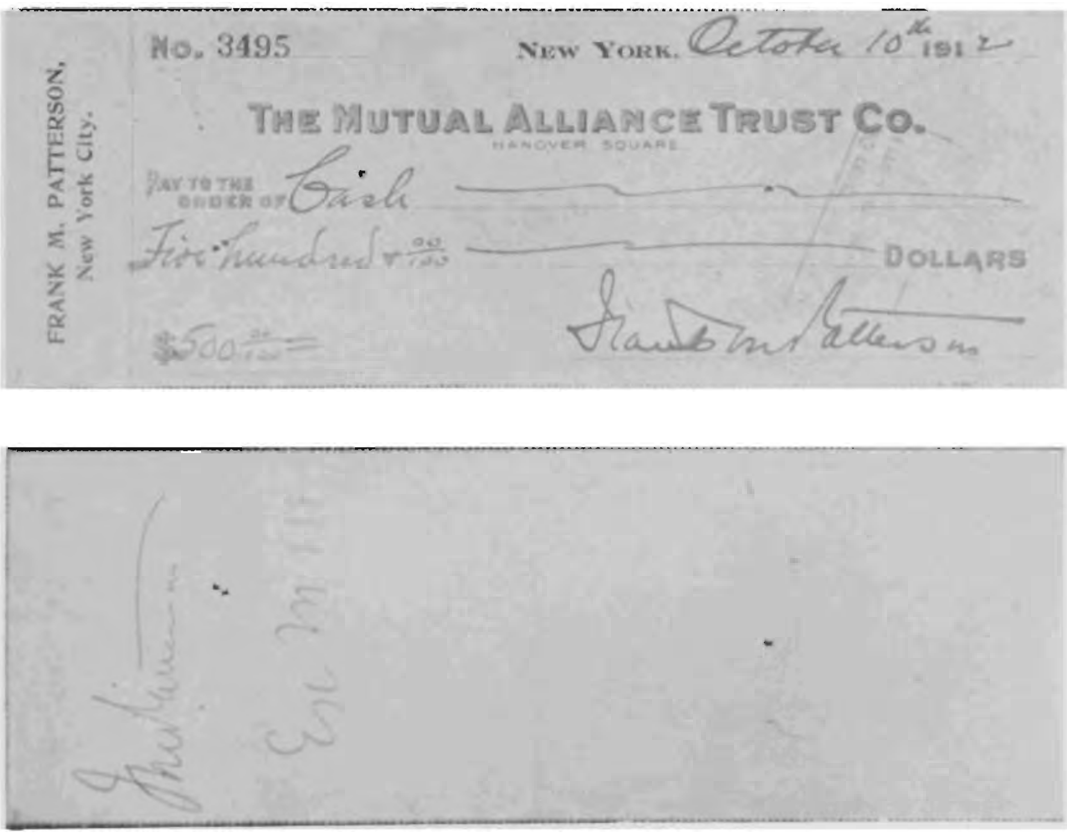
$1000 ##

Harris & Fuller

Harris & Fuller
45 BROADWAY

For deposit
William Sulzer

Exhibit M-92



No. 3495 New York, October 10th 1912

THE MUTUAL ALLIANCE TRUST CO.

HANOVER SQUARE

Pay to the order of Cash

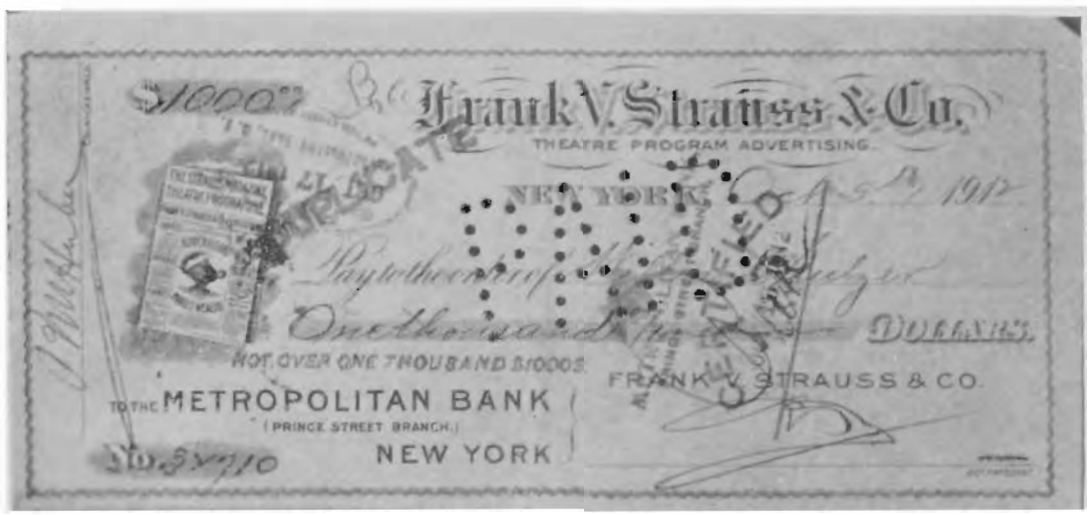
Five hundred & 00/100 Dollars

$500 00/100

Frank M. Patterson

FRANK M. PATTERSON,
New York City.

Exhibit M-118



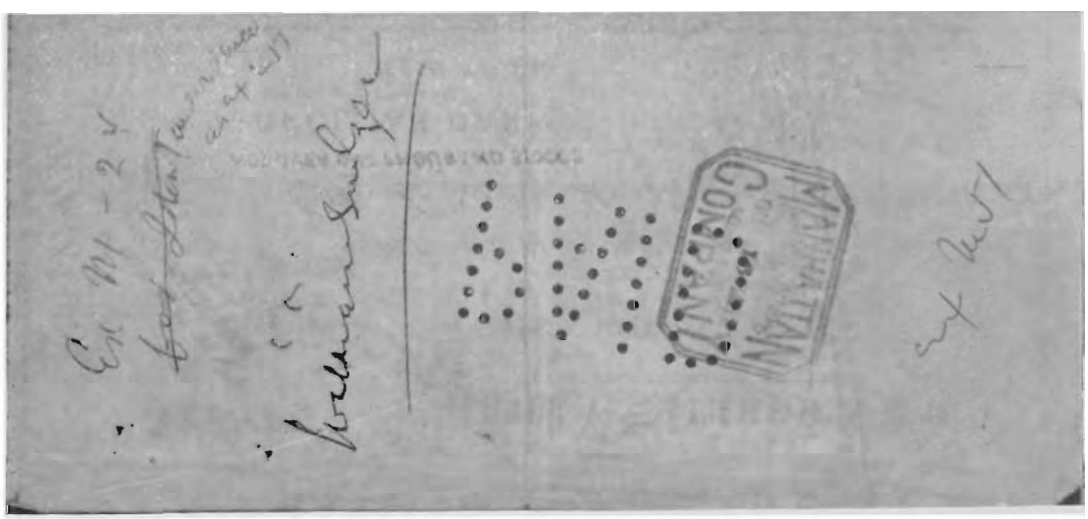


Exhibit M-51

INDEX

INDEX

Admissibility of testimony concerning contributions not specified in impeachment articles — PAGES
objection of Mr. Marshall 551–54, 557–61
argument of Mr. Stanchfield 554–57, 561–62
opinion of Judge Cullen 562–64
vote of Court 564–66
Admissibility of testimony of Peck, Morgenthau and Ryan as substantive evidence
argument of Mr. Stanchfield 1533–42, 1581–84
Mr. Herrick 1543–59
Mr. Marshall 1559–80
decision of Court 1588
Amendment of articles, power of Court as to
argument of Mr. Stanchfield 1533–42, 1581–84
Mr. Herrick 1543–59
Mr. Marshall 1559–80
decision of Court 1588
Answer of respondent 433–34
Appearance, special notice of for respondent 9
Articles of impeachment 46–56

Bartlett, Judge Willard, on rules committee 12
Blauvelt, Senator George A., on committee on revision 1763
Brackett, Edgar T.
argument as to jurisdiction of Court 186–205
sufficiency of articles 1, 2 and 6 280–340
closing argument 1496–1527
Brown, Senator Elon R., on rules committee 12

Challenge to
Senator Frawley 112–24
Senator Sanner 124–27
Senator Ramsperger 127–30
Senator Wagner 130–31
Challenge, right of
argument of Mr. Herrick 17–28, 39–42, 43
Mr. Parker 28–39, 42–43
opinion of Judge Cullen 43–45
vote of Court 45

PAGES

Closing address by
Mr. Marshall for respondent 1313–1404
Mr. Parker for managers 1405–49
Mr. Herrick for respondent 1449–93
Mr. Brackett for managers 1496–1527
Contributions to Governor Sulzer, list of, prepared by respondent's counsel 1470–76
Counsel, for managers 5, 11
for respondent 6, 9
Court for the Trial of Impeachments
members of 3–5
opinions as to assigned members of Court of Appeals sitting in. 7–8
rules of 13–17
Cullen, Presiding Judge Edgar M., opinion of
as to assigned members of Court of Appeals sitting 7–8
right of challenge 43–45
jurisdiction of Court 219–22
action on sufficiency of articles 1, 2 and 6 429–31
admissibility of testimony concerning contributions not specified in articles 562–64
accompanying final vote 1614–26

Dismissal of articles 1, 2 and 6 for lack of sufficiency
argument of Mr. Herrick 230–73
Mr. Vann 273–80
Mr. Brackett 280–340
Mr. Kresel 340–58
Mr. Parker 358–60
Mr. Fox 361–90
memorandum of Mr. Root 391–429
opinion of Judge Cullen 429–31
Dismissal of impeachment articles on account of lack of jurisdiction
objection of respondent 56–62
replication of managers 63–65
argument of Mr. Marshall 67–111, 132–75, 206–15
Mr. Parker 175–86
Mr. Brackett 186–205
vote upon 218–25
Disqualification of Governor Sulzer to hold office, vote of Court upon 1760–62

Editing and revision committee 1763
Eighth article, vote upon 1744–48
Exhibits (managers')
1 Governor's oath of office 507
2 Resolution of impeachment 451
3 Statement of receipts and expenditures filed by Governor Sulzer 508
4 Statement of receipts and expenditures filed by William Sulzer Progressive League Party 513
5 Articles of impeachment 46

Exhibits (managers')—*Continued*	PAGES
6 Authorization for managers to employ clerk	516
7 Impeachment notice to Senate	517
8 Clerk's affidavit of service of impeachment articles	517
9 Check of Jacob H. Schiff	519
10 Check of Henry Morgenthau	520
11 Check of Abram I. Elkus	532
12 Deposit slip of William Sulzer	635
15 Deposit slip of William Sulzer	635
16 Deposit slip of William Sulzer	636
20 Deposit slip of William Sulzer	636
21 Deposit slip of William Sulzer	637
22 Transcript of account of William Sulzer in Farmers Loan and Trust Company	637
25 Letter of Abram I. Elkus to William Sulzer	531
26 Letter of William Sulzer to Abram I. Elkus	533
26½ Transcript of account of Louis A. Sarecky in Mutual Alliance Trust Company	639
27 Twenty-one deposit slips of Louis A. Sarecky	645
28 Check of Thomas E. Rush	653
29 Letter signed "William Sulzer" to Mutual Alliance Trust Company (en route)	544
30 Check of William V. Elias	653
31 Check of E. C. Benedict	654
32 Check of Morris Tekulsky	654
33 Check of Simon Uhlmann	655
34 Check of Charles P. Doelger	655
35 Check of William McCombs	656
36 Check of A. H. Stoiber	656
37 Check of Bird S. Coler	657
38 Check of J. Temple Gwathmey	657
39 Check of John F. O'Brien	658
40 Check of George C. Hawley	578
41 Check of August Luchow	579
42 Check of William and Philip Hoffman	580
43 Letter of William Sulzer to Charles A. Stadler	586
44 Letter of William Sulzer to Charles A. Stadler	587
45 Letter of William Sulzer to Charles A. Stadler	587
46 Letter of William Sulzer to Charles A. Stadler	587
47 Letter of Ezekiel Fixman to William Sulzer	606
48 Letter of Louis A. Sarecky to Ezekiel Fixman	607
49 Cablegram from Frank V. Strauss	608
50 Letter of Frank V. Strauss & Company to William Sulzer	609
51 Check of Frank V. Strauss & Company	609
52 Letter of Simon Uhlmann to Louis A. Sarecky	626
53 Check of Mark W. Potter	660
54 Check of John Delahanty	632
55 Check of Lyman A. Spalding	633
56 Check of John Lynn	634

Exhibits (managers')—*Continued* PAGES

57 Letter of William Sulzer to George C. Hawley..... 659
58 Letter of William Sulzer to William Hoffman 659
59 Letter of William Sulzer to William J. Elias 660
60 Check of Theodore W. Meyers..... 663
61 Check of John T. Dooling..... 685
62 Transcript of stock transaction..... 693
63 Letter of J. Temple Gwathmey to William Sulzer..... 707
64 Letter of William Sulzer to J. Temple Gwathmey..... 708
65 Check of Gwathmey & Company..... 713
66 Receipt signed by Louis A. Sarecky..... 716
67 Check of John W. Cox..... 725
68 Check of Richard Croker, Jr..... 740
69 Letter of William Sulzer to August Luchow..... 752
70 Check of J. A. Sorenson..... 754
71 Check of Edward F. O'Dwyer..... 756
72 Transcript of account of William Sulzer with Fuller & Gray 765
73 Receipt of Frederick A. Coe for stock..... 787
74 Receipt of Frederick A. Coe for stock..... 789
75 Direct primary bill..... 792
76 Direct primary bill..... 793
77 Bill for construction of bridge in Oswego county..... 823
78 Bill to amend highway law in relation to State routes in Essex and Warren counties..... 825
79 Bill to reappropriate funds for new State routes in Essex and Warren counties 826
87 Message of Governor to Legislature..... 822
88 Message of Governor to Legislature..... 822
90 Check of Harris and Fuller..... 840
91 Check of Harris and Fuller..... 841
92 Check of Harris and Fuller..... 843
93 Check of Harris and Fuller..... 846
94 Check of Harris and Fuller..... 847
96 Entry in books of Harris and Fuller..... 862
97 Card of William Sulzer to Mr. Nims..... 874
98 Card of William Sulzer to Mr. Nims..... 876
99 Letter of William Sulzer to Harris and Fuller..... 878
100 Check of C. S. Pinkney..... 901
101 Check of Harvey C. Garber..... 908
102 Chapter 475, Laws of 1913..... 916
103 Chapter 476, Laws of 1913..... 916
104 Chapter 500, Laws of 1913..... 916
105 Special message of Governor Sulzer to Legislature..... 918
106 Bill in relation to bucket shops 920
107 Bill in relation to trading by brokers..... 920
108 Bill in relation to manipulation of prices of securities... 921
109 Bill in relation to delivery to customers of memoranda of transaction by brokers..... 921

Exhibits (managers') — *Continued* PAGES
110 Bill in relation to discrimination by exchanges..... 921
111 Bill in relation to organization and regulation of exchange corporations 922
112 Bill in relation to listing of securities for sale on stock exchanges 922
113 Bill in relation to listing or trading in securities..... 922
114 Bill in relation to speculative trading in securities on credit or margin..... 922
115 Bill in relation to fictitious transactions over stock exchange ticker 923
116 Bill in relation to interest permitted on advances on collateral security 923
117 Bill in relation to amount of tax on stock transfers..... 923
118 Check of Frank M. Patterson..... 935
122 Letter of Chester C. Platt to State Civil Service Commission 961
123 Special message of Governor Sulzer to Legislature..... 977
124 Special message of Governor Sulzer to Legislature..... 977
125 Letter of William Barthman to William Sulzer..... 1010
126 Check of William Barthman..... 1011
127 Letter of William Sulzer to William Barthman..... 1012
131 Letter of William Sulzer to Charles Kohler..... 1266
132 Report of John N. Carlisle to William Sulzer..... 1289
133 Letter of William Sulzer to Herbert H. Lehman..... 1405
Exhibits (respondent's)
1 Four signatures of William Sulzer written by Louis A. Sarecky 1163
2 Appointment of John A. Hennessy as special commissioner to investigate State Highway Department..... 1310
3 Appointment of John A. Hennessy as special commissioner to investigate any State department..... 1311
Extraordinary session, jurisdiction of Assembly to prefer impeachment articles at
argument of Mr. Marshall.....67–111, 132–65, 206–15
Mr. Parker 175–86
Mr. Brackett 186–205
provisions in other states..... 165–75

Fifth article, vote upon..... 1725–32
First article, objection as to sufficiency of
objection of respondent..... 228
argument of Mr. Herrick..... 230–73
Mr. Vann 273–80
Mr. Brackett 280–340
Mr. Kresel 340–58
Mr. Parker 358–60
Mr. Fox 361–90
memorandum of Mr. Root..... 391–429

PAGES

First article, vote upon 1591–1686
Fourth article, vote upon 1701–23
Fox, Austen G.
argument as to sufficiency of articles 1, 2 and 6 361–90
to strike out certain testimony 1016–25
Frawley, Senator James J., challenged 9, 18, 112–24

Herrick, D-Cady
argument as to right of challenge 17–28, 39–42, 43
sufficiency of articles 1, 2 and 6 230–73
power of Court to amend articles 1543–59
closing address for respondent 1449–93
Hinman, Harvey D., opening address for respondent 1065–95
Hogan, Judge John W., on committee to maintain order 112

Impeachment articles 49–56, 1767–77
argument on dismissal of 56–59, 60–62
vote upon 1591–1748
Impeachment articles, validity of
argument of Mr. Marshall 67–111, 132–65, 206–15
Mr. Parker 175–86
Mr. Brackett 186–215
vote of Court 218–25
Impeachment resolution adopted by Assembly 451–52
Impeachments, list of (accompanying Mr. Brackett's argument) .. 320–40

Judgment roll 1767–82
Judiciary committee, report of, relative to power of impeachment (accompanying Mr. Root's memorandum) 422–25
Jurisdiction of Court
objection of respondent 56–59
answer of managers 60–65
argument of Mr. Marshall 67–111, 132–65, 206–15
Mr. Parker 175–86
Mr. Brackett 186–205
vote of Court 218–25

Kresel, Isidor J., argument as to sufficiency of articles 1 and 2 340–58

Legislative investigating committee, report of 115–24

Managers on behalf of the Assembly 5
Marshall, Louis
argument as to jurisdiction of court 67–111, 132–65, 206–15
admissibility of testimony concerning contributions not specified in articles 551–54, 557–61
power of Court to amend articles 1559–80
closing address for respondent 1313–1404
Members of Court 3–5

Murtaugh, Senator John F. PAGES
on committee to maintain order 112
on committee on revision 1763

Oath administered
to members of Court 7
witnesses 447
Opening address
by Mr. Richards for managers 435–44
Mr. Hinman for respondent 1065–95
Opinions of members, *see* Vote of Court

Parker, Alton B.
argument as to right of challenge 28–39, 42–43
jurisdiction of Court 175–86
sufficiency of articles 1, 2 and 6 358–60
closing address 1405–49

Ramsperger, Senator Samuel J., challenged 11, 18, 127–30
Removal from office, vote of Court upon 1749–59
Replication of managers 63–65
Richards, Eugene Lamb, opening address for managers 435–44
Root, Elihu, Jr., memorandum on motion to dismiss articles 1, 2 and 6 391–429
Rules committee, appointed 12
report of 13–17

Sage, Senator Henry M., on committee on revision 1763
Sanner, Senator Felix J., challenged 11, 18, 124–27
Second article, objection as to sufficiency of
objection of respondent 228–29
argument of Mr. Herrick 230–73
Mr. Vann 273–80
Mr. Brackett 280–340
Mr. Kresel 340–58
Mr. Parker 358–60
Mr. Fox 361–90
memorandum of Mr. Root 391–429
Second article vote upon 1688–98
Seventh article, vote upon 1741–43
Sixth article, objection as to sufficiency of
objection of respondent 229
argument of Mr. Herrick 230–73
Mr. Vann 273–80
Mr. Brackett 280–340
Mr. Parker 358–60
Mr. Fox 361–90
memorandum of Mr. Root 391–429
Sixth article, vote upon 1734–39

	PAGES
Stanchfield, John B.	
argument on dismissal of proceedings	60–62
argument as to admissibility of testimony concerning contributions not specified in articles	554–57, 561–62
power of Court to amend articles	1533–42, 1581–84
Sufficiency of articles 1, 2 and 6	
argument of Mr. Herrick	230–73
Mr. Vann	273–80
Mr. Brackett	280–340
Mr. Kresel	340–58
Mr. Parker	358–60
Mr. Fox	361–90
memorandum of Mr. Root	391–429
opinion of Judge Cullen	429–31
final decision left open	431–32
Third article, vote upon	1700
Vann, Irving G., brief as to sufficiency of articles 1, 2 and 6	273–80
Vote of Court	
as to right of challenge	45
upon dismissal of articles for lack of jurisdiction	218–25
dismissal of articles 1, 2 and 6	432
admissibility of testimony concerning contributions not specified in articles	564–66
article 1	1591–1686
article 2	1688–98
article 3	1700
article 4	1701–23
article 5	1725–32
article 6	1734–39
article 7	1741–43
article 8	1744–48
removal from office	1749–59
disqualification to hold office	1760–62
Wagner, Senator Robert F.	
on rules committee	12
challenged	11, 18, 130–31
Walters, Senator J. Henry, on committee to maintain order	112
Witnesses examined	
Adams, Henry G	913, 1298
Barthman, Henry C	1009
Beardsley, Samuel A	1108
Becannon, Charles M	821
Bell, Joseph H	910
Birdseye, John C	937, 959
Boyer, Philip	688, 705
Brady, Daniel M	677
Carlisle, John M	1288

Witnesses examined — *Continued* PAGES

Coe, Frederick A..... 783
Coler, Bird S..... 602
Conlon, Lewis J..... 627, 660
Cox, John W..... 721
Croker, Richard, Jr..... 737
Cumming, Robert C..... 971
Dersch, Charles 588
Dooling, John T..... 684
Egbert, George W..... 1305
Elkus, Abram I..... 530
Fay, Ernest A..... 917
Fixman, Ezekiel 605
Floyd, Webb 536, 1302
Frank, Samuel M..... 947
Fuller, Arthur L..... 759
Fuller, Melville B.....790, 828, 831, 943
Garber, Harvey C..... 907
Goodwin, Thomas M.....494, 504, 526, 569
Graves, George B..... 802, 815
Gray, John Boyd..... 978
Gwathmey, J. Temple..... 706, 717
Hennessy, John A..... 1299
Houghton, William P..... 747
Josephthal, Louis M..... 1135
Lehman, Herbert H..... 1114
McCabe, Patrick E..... 466
McCormack, Patrick 571
McGlone, Ignatius V..... 1043
Mandelbaum, Leopold 714
May, Mitchell 447, 452, 458
Meany, Edward P..... 1060
Miller, James C..... 1307
Morgenthau, Henry 491, 503, 702
Murray, Alexander 698
Neville, George W..... 710
O'Brien, John F..... 757
O'Dwyer, Edward F..... 755
Patterson, Frank M..... 933
Peck, Duncan W..... 718
Pinkney, Cornelius S..... 900
Platt, Chester C..... 799, 829
Prime, Spencer G., 2d..... 816
Reynolds, Charles A..... 695, 704
Riley, Hugh J..... 1292
Ryan, Allan A.....1030, 1050, 1099
Sarecky, Louis A..... 1148
Schiff, Jacob H..... 485, 612
Sorenson, John S..... 752

Witnesses examined — *Continued* PAGES
Stadler, Charles A..... 572
Sutton, Effingham E..... 776
Sweet, Thaddeus C..... 804
Tekulsky, Morris 548, 567
Trier, Ralph 607
Uhlmann, Simon 624
Van Namee, George R.....449, 459, 792
Wolff, Alfred J..... 469