

## JUDGE CHARLES SWAYNE.

MARCH 25, 1904.—Referred to the House Calendar and ordered to be printed.

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

## REPORT.

[To accompany H. Res. No. 274.]

On the 10th day of December, 1903, the House passed the following resolution:

*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has performed the duties of his office as required by law; whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

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

Testimony was taken in Pensacola, Tallahassee, and Jacksonville, Fla., and in the city of Washington upon several days. At all the hearings the Hon. Charles Swayne was present himself and by counsel, except at the last hearings in Washington, when he appeared in propria persona and argued his case before the subcommittee. All the witnesses asked for by the complainants and the respondent were sworn. Their evidence was reduced to writing and is presented with this report.

Specifications of the particular matters covered by the general charges were furnished the committee by the complainants. They were as follows:

*Specification 1.*—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for ten years, while he has been such judge,

was a nonresident of the State of Florida, and resided in the State of Delaware. That he never pretended to reside in Florida until May, 1903. That during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

*Specification 2.*—That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

*Specification 3.*—That the said Charles Swayne, as such judge, appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office except when notified of an arrest, necessitating people having business with the United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners often for a day or two, at their inconvenience, and in imprisonment at the expense of the Government, until said Porter sees fit to come to Marianna.

The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

*Specification 4.*—That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court. That so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

*Specification 5.*—That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding upon feigned, fictitious, and false charges of contempt of his said court.

*Specification 6.*—That said Charles Swayne has willfully, negligently, and corruptly maladministered bankruptcy cases in his court, to the extent that the assets of bankrupts have, in all or nearly all cases, been squandered and dissipated in paying extraordinary fees and expenses, and never paying any dividends to creditors.

*Specification 7.*—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins, upon an alleged contempt resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

*Specification 8.*—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

*Specification 9.*—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given, among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway; and in one case, that of *Sweet v. Owl Commercial Company*, in which he charged the jury to exactly and diametrically conflicting theories of law.

*Specification 11.*—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

*Specification 12.*—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge, in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

*Specification 13.*—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902, of perjury.

#### FINDINGS OF FACT AND LAW.

The facts proved by the testimony bearing upon the several specifications are found to be as follows:

*First, as to the evidence of Judge Swayne's residence in his district.*—Judge Charles Swayne was appointed district judge of the United States for the northern district of Florida in 1890. At that time the boundaries of the district included St. Augustine, where he resided. In the year 1894 the boundaries of the district were changed by an act

of Congress and St. Augustine and Jacksonville were included in the southern district, leaving Pensacola and Tallahassee as the only places at which a United States court was held in the northern district.

From the time the boundaries of the northern district were changed until the year 1903 Judge Charles Swayne boarded at hotels or boarding houses in Pensacola and Tallahassee during the times his court was in session, except a portion of the year 1900, about two or three months, when he lived with his family in Pensacola, in a house rented by his wife. The testimony establishes the fact that substantially he was not in the district at any other time except when his court was in session. From 1896 to 1904 his court was open for business four hundred and ninety-two days, being the average of sixty-one and one-half days per annum for eight years. No testimony was offered to show how many days the court was open or closed during the years 1894 and 1895.

In the year 1903 his wife purchased a house in Pensacola. There is no evidence that he has occupied it, or that he has ever been registered, paid taxes, or voted in the northern district of Florida since the boundaries of the district were changed, or that his family has been there, except a part of one winter.

Upon the part of Judge Swayne, a witness testified that he had, at the request of Judge Swayne, endeavored at different times between 1894 and 1903 to find a suitable house in Pensacola which he could purchase, and at one time endeavored to get a house built for him, but that he had not succeeded in either effort.

Judge Swayne testified that when he first went to Pensacola he asked a man connected with a bank to have his name placed on the registry. It was not done. Judge Swayne admitted that he never was registered in the northern district of Florida, never paid a tax, voted, or in any manner exercised the rights of citizenship. After making the request of a person not connected with the registration of voters, he never inquired to find if it had been done. He stated to at least one person that his home was at Guyencourt, Del.; that was the place where he went when court was not in session in Florida, or when he was not holding court in other States.

From the testimony in the case your committee find that Judge Swayne has never acquired a legal residence in the northern district of Florida, nor has he actually resided there, within the meaning of the act of Congress, which is as follows:

A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

This act needs no interpretation. Its purpose is plain. A nonresident judge can not perform the duties of his office properly or rightfully administer justice to the people of his district. Whether he can or not, the law requires him to live there, and makes him guilty of a high misdemeanor if he does not obey it. There is sufficient evidence, if evidence were needed, to satisfy your committee that the continued absence of Judge Swayne subjected lawyers and suitors to inconvenience, delay, and expense, and in some cases amounted to a denial of justice. Let it be granted that there is not; let us suppose that no one suffered harm. We do not find that Judge Swayne is therefore to be excused from obeying the law. No exception is contained in the act; we can not write one in for his benefit.

Judge Swayne does not claim that he had a residence in his district

from 1894 to 1903. His testimony is rather in the nature of a series of excuses for not having it. He says he authorized his clerk to look for a house in Pensacola; that he spoke to a bank cashier about being registered; that he was always ready to go back to his district when needed; that he was called to hold court elsewhere; that other southern judges go north in the summer season. All this does not excuse Judge Swayne for noncompliance with a highly penal statute. It ill becomes a judge to set up excuses for disobeying the law. After the Florida legislature had acted and passed the condemnatory resolution, upon which this proceeding is founded, he apparently awoke to the fact that his plain duty in respect to residing in the district had been neglected. His wife purchased a house in Pensacola. The evidence does not show that he ever even lived in that house. This statute is as binding upon Judge Swayne as any other law upon the statute book. If he may violate this act with impunity he ought to be allowed exemption from obedience to all laws.

It may be conceded that residence is ordinarily a question of intention. A man's legal residence is, doubtless, where, after having gained a residence, he intends to reside. But in order to comply with this statute we submit that there must be something more than an intention on the part of a judge to reside in his district. There must be an actual as well as a legal residence. One may establish and have a legal residence in the United States and remain continuously abroad any number of consecutive years without losing it; but such a constructive or legal residence certainly would not answer the purpose of this statute which clearly was to secure the bodily presence of the judge within his district where the people who had need of his official services could have them.

It has been said that the word residence is an elastic term of which an exhaustive definition can not be given, but that it must be construed in every case in accordance with the object and intent of the statute in which it occurs. (Eng. and Am. Enc. p. 696.)

It may happen that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion. In such case the place where he happens to be constitutes his residence so long as he is there, and ceases to be such as soon as he leaves for the other place. (Ibid., 699. *Walcott v. Bolfield*, 1 Kay, 534; 18 Jurist, 570; *Stout v. Leonard*, 37 N. J. L., 492.)

In the case of *The People v. Owen*, 29 Colorado, 535, it was held that when a statute requires a district judge to reside in his district the residence contemplated was an actual as distinguished from a legal or constructive residence.

Judge Swayne offered himself as a witness upon this question after the committee came to Washington after visiting Florida. He was sworn, and his testimony was as follows:

Mr. PALMER. Judge Swayne will proceed and will make his statement to the stenographer.

Judge SWAYNE. I was born in 1842 in Delaware, and resided there with my parents. I read law in Philadelphia and was admitted to the bar and took my degree of B. A. in the Pennsylvania Law School. I practiced law there, with the exception of one year, until 1885, when I removed with my family to Sanford, Fla. I practiced law there until 1887, when I was burned out, when I removed with my family to the county seat, where I was residing when appointed to the bench on May 17, 1889. I took the oath of office June 1, 1889.

Mr. PALMER. That was a recess appointment, was it not?

Judge SWAYNE. Yes, sir; I can not tell positively what date I was confirmed. The confirmation came up before Congress the following December, and in consequence of the election trials, which had taken place in the meantime, the confirmation did

not occur until April 1, 1890. I addressed the Senate on the subject, which can be seen by the Congressional Record of the first session of the Fifty-first Congress, volume 21, February 21, 1890, and which was a very interesting debate, showing exactly what the questions were. In the summer of 1890 I moved to St. Augustine. I think we arrived there the 1st of October, having been North on a vacation, as was the custom of most of the Federal judges, perhaps of all of them, to take such vacations.

I resided in St. Augustine with my family, and, about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July I went with my family to Europe. In the spring, in 1900, I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

Mr. GILLET. Was that in 1890?

Judge SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex., and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case and then came back, as his condition was very critical and serious, and, after a week or two, perhaps, I returned and held court and finished what I had to do and got back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that had been formerly occupied by Judge A. O. Blount, in Pensacola, and moved in it the 1st of October.

I never was a registered voter and I have not voted in fourteen years. When I left Delaware I moved my domicile, and have taken no part in political questions arising in the State of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in thirty-six hours, and the record will show I have always been there to attend to anything of a serious nature.

My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

Mr. GILLET. Did the business of the court suffer because of your absence?

Judge SWAYNE. I never heard of it.

Mr. GILLET. The summer time was the time usually taken for vacations?

Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.

Bearing in mind that Judge Swayne is presumed to be learned in the law, and that he is fully aware of what is needful to enable a man to gain a legal residence and also to maintain an actual residence in a given place, it is apparent that he does not claim that, prior to 1903, he had either gained a legal or maintained an actual residence in the northern district of Florida. His testimony is prolific of reasons why he did not do so.

Apparently he had an actual and legal residence in St. Augustine, which was in his district before the boundaries were changed. After that event he broke up housekeeping and stored his furniture; then

being advised, as he states, by some of his friends that the next or some succeeding Congress would be Republican and that the boundaries of his district would be extended. After that he attended the session of his court at Pensacola and Tallahassee, living at different boarding houses or hotels, being present substantially at no time except when court was in session. When he left Florida he states that he always left directions with his clerk that he would come back if needed. Correspondence was addressed to him at Guyencourt, Del.; that place he spoke of as his home. To that place he returned when his labors in his district were ended or after he concluded terms of court in other States. He had live stock and personal property at Guyencourt in Delaware. His family generally lived there; sometimes abroad. In the year 1900 his wife rented a house in Pensacola and lived there with her husband a portion of the winter, going North with him about the holidays. Rent was paid for the house a year or more, but it was not again occupied by him or his family. He spoke to a bank cashier about being registered, but the bank cashier had nothing to do with the registration; that was an act which, under the law, must be attended to personally.

Judge Swayne never was registered. When there did he gain even a legal residence in the northern district of Florida? Has he ever gained such a residence? His actual residence was measured by about sixty days in each year. Did he gain a legal residence when he broke up housekeeping and stored his furniture awaiting the time when a Republican Congress would change the boundaries of his district, so that he would not need to move away from St. Augustine? Did he gain a legal residence when he asked the bank cashier about being put on the register of voters? Asking his clerk to find a suitable home for him to rent or purchase evidenced an intention to reside in Pensacola when such a house was found. It did not gain a residence for him while the fruitless search progressed. It may be gathered from Judge Swayne's testimony that he intended to reside in Pensacola sometime when he could buy or build a house.

There was no place in the northern district of Florida where legal service of process could have been made on Judge Swayne during the ten months of each year when he was absent from the State. The fact that Judge Swayne held court in other States, being assigned to do so by the circuit judge, does not tend to show that he had or had not a residence in his district. If to be present in the district during the time necessarily spent in holding the terms of court fixed by law, in March and November of each year, was to reside in the northern district of Florida, within the meaning of the act that requires a judge to reside in his district under penalty of being guilty of a high misdemeanor if he does not, then Judge Swayne has complied with the law and is not subject to be charged on that ground. If he has persistently and continuously evaded and refused to obey this law, according to its plain intent, as the committee find from the testimony, then he should be impeached and sent before the triers.

Your committee can see no reason for overlooking or excusing his default. The law itself measures the grade of Judge Swayne's offense. It is a high misdemeanor. For that, by the express words of the Constitution, he is impeachable. It is not for the House of Representatives to seek for excuses exonerating a judge for a plain violation of statutory law, but to charge him before the tribunal fixed

for the trial and let him abide the consequences of his act. If the Senate chooses to regard his excuses and exempt him from just punishment, the House will have done its duty to the people, and responsibility for miscarriage of justice will rest elsewhere.

THE CASE OF E. T. DAVIS AND SIMEON BELDEN.

*Second.*—The facts of the case, as set forth by the testimony, are as follows:

In the year 1901 an action of ejectment was pending in the circuit court of the United States at Pensacola in which Florida McGuire was plaintiff, and the Pensacola City Company and numerous individuals, among them W. A. Blount and W. Fisher, attorneys at law, were defendants for a tract of land called the Rivas or Chavaux tract. The plaintiff's lawyers were Louis Paquet and Simeon Belden, of New Orleans. In the month of October, in the year 1901, Paquet and Belden joined in a letter to Judge Swayne which they addressed to him at the place where he resided when not holding court in his district or elsewhere, viz., Guyencourt, in the State of Delaware, stating that they had been informed that he, the said Charles Swayne, had purchased a portion of the land in controversy in the said ejectment suit, viz., Block 91, in the business part of the city of Pensacola, and requesting him to recuse himself and arrange for some other judge to preside at the trial of the case. To this letter no answer was returned by Judge Swayne.

At the term of court which convened at Pensacola in November Judge Swayne announced on the 5th of November that a relative of his had purchased the land, but later in the week he volunteered from the bench that the relative was his wife, and that she had purchased the land with money obtained from her father's estate. That the bargain had not been concluded for the reason that the owner, Mr. Edgar, offered a quitclaim deed. The evidence shows that the agents of Edgar, with whom Judge Swayne negotiated the purchase of block 91, and also of another lot, wrote him stating that Edgar would not give a general warranty because the land was part of a tract which was in dispute. Swayne answered saying that they might drop out block 91 without stating a reason. The agents had pending in October, when the letter to Swayne was written, a suit in the State court against Edgar for commission on the sale to Swayne. The agents had taken Judge Swayne over the tract, and had agreed upon the terms and had sold block 91 to him.

The custom in Judge Swayne's court was to dispose of the criminal calendar first, and when that was concluded to call the civil list, and set the cases for trial at convenient times in the future. The criminal cases were not concluded at the November, 1901, session until about 5 o'clock Saturday night. Judge Swayne then took up the civil list, upon which the case of Florida McGuire appeared, and made a further statement that the member of his family who had contracted through him for block 91 was his wife, and that she was purchasing with money derived from her father's estate. He declined to recuse himself, and stated that the case would be heard on the Monday following unless legal ground for continuance was laid.

The plaintiff's lawyer, Paquet, asked that the case should be set down for Thursday of the following week, averring that it was too

late to summon witnesses that night; that Sunday they could not be summoned, and therefore the case could not be ready on Monday. This request was refused by Judge Swayne, who insisted that the case should go on on Monday. At about 5.30 or 6 o'clock the court adjourned. Neither Simeon Belden nor E. T. Davis was present in court at any time when Judge Swayne made announcement concerning his connection with the purchase of block 91, Belden being ill with facial paralysis and confined to his bed at the hotel in Pensacola. E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock. During the evening Paquet drew up the necessary papers to commence an action of ejectment in the county court of Escambia County, Fla., against Judge Swayne for this block 91, upon the theory that he had contracted for the land with Edgar, who claimed to own it, and who had admitted that he was in possession and that the contract was subsisting between them, and that the title of the alleged owner could be tried out in the State court, where the parties would get better justice, Swayne standing in the shoes of Edgar. They took the liberty of believing, from all the evidence, that Judge Swayne was the real purchaser, though he had said that the title was to be taken by his wife.

The papers were taken to Simeon Belden at his hotel, where he was ill, and he signed them. E. T. Davis was employed to bring this suit. At the same time it was agreed that the suit of Florida McGuire in Judge Swayne's court should be dismissed on Monday. Davis was engaged to do it, Paquet having been called to New Orleans by sickness in his family. The suit against Judge Swayne was brought that Saturday night and the process served on him. On Monday, at the opening of the court, Mr. E. T. Davis asked for and obtained from Judge Swayne an order dismissing the suit of Florida McGuire. Immediately, Mr. W. A. Blount, esq., one of the defendants, and also attorney for defendants, arose and suggested that Paquet and Belden, attorneys for Florida McGuire, and Davis, who appeared to ask for a dismissal of the suit, had been guilty of contempt of court for bringing suit against Judge Swayne in the county court of Escambia County. This action was in pursuance of a previous conference between Blount and Swayne held before court convened, when it was agreed upon. Judge Swayne ordered a rule to show cause upon an unsworn statement prepared by Blount, which was served on Davis and Belden, Paquet being absent. The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

Some testimony was taken to show that the suit against Judge Swayne had been brought and process served on him Saturday night about 8 o'clock; that was all. Whereupon Judge Swayne proceeded to adjudge Belden and Davis guilty of the "charges which were in violation of the dignity and good order of the said court and a contempt thereof," and after some abusive remarks sentenced them to be disbarred for the term of two years, to pay a fine of \$100 each, and to undergo an imprisonment for the period of ten days in the county jail.

They were duly committed and remained confined three days, when they were released pending a habeas corpus allowed by Judge Pardee, of the circuit court. That habeas corpus case resulted in a decision that Judge Swayne had jurisdiction of Belden and Davis in a contempt

proceeding, as the averment in the paper filed by Blount was that they were officers of the court, and therefore the circuit court could not question his decision, his findings of fact, or the correctness of his judgment that they had committed a contempt, except in so far as he had exceeded his jurisdiction by imposing both fine *and* imprisonment, the statutes providing in certain cases for fine *or* imprisonment as a punishment for contempt. To that extent the decision of Judge Swayne was reversed and the culprits allowed to choose which they would suffer, fine *or* imprisonment. Belden, who was a very sick man, about 70 years of age, chose to serve out his sentence in prison; Davis paid the fine of \$100.

Your committee are of opinion that Judge Swayne was guilty of gross abuse of judicial power and misbehavior in office in this case. They believe that he had no authority or right to adjudge Simon Belden and E. F. Davis guilty of a contempt of court under the circumstances of the case.

Second. That if authority can be found in the law for holding the action of these attorneys a contempt, that in the absence of evidence of intent to commit a contempt other than that to be gathered from the fact that the suit was brought Saturday night and the process served the same night, and in the face of their answer that no contempt was thought of or intended, to adjudge them guilty was a gross abuse of power.

Third. That the sentence imposed by Judge Swayne was unauthorized and unlawful. It can be accounted for only on the theory that the judge imposing it was ignorant or vindictive.

The statute conferring power upon the court of the United States is as follows :

The said courts shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

In his address to the subcommittee Judge Swayne was asked to point out the part of the statute which conferred the authority for his action. He said, "The words 'the misbehavior of any of the officers of the said courts in their official transactions.'"

At the time he sentenced Davis and Belden Judge Swayne declared that the contempt did not consist in bringing the suit in the State court; that the attorneys had a perfect right to sue him there, but that his belief was that the suit was brought to force him to recuse himself in the case of Florida McGuire.

It must be remembered that at the time the sentence was pronounced, indeed, before the contempt proceeding was commenced, the case of Florida McGuire had been ended by the consent of Judge Swayne, upon motion of E. T. Davis, for the plaintiff, and that the agreement to end the case had been reached by the lawyers, Paquet, Davis, and Belden, before the suit was instituted against Swayne in the State court on Saturday. How, then, could their action in bringing that suit be construed into an attempt to force Judge Swayne to recuse himself in the case of Florida McGuire? Such a pretense was idle, especially in view of the fact that the purpose to arrest and punish

these men for contempt of court had been formed and agreed upon between Blount and Swayne in the morning before court met and before either could know that the Florida McGuire case was to be dismissed by the plaintiffs. The accused lawyers had a right to bring the suit. Their motive could not have been to affect in any way the disposition of the Florida McGuire case in Judge Swayne's court, because that case being ended could not be affected or the conduct of the judge influenced thereby.

There was no testimony before the court from which a conclusion as to the motives of the accused could be judged except the fact that the suit had been brought in the State court Saturday night and the process served that night. The fact, viz, that the process was served Saturday night, was, in Judge Swayne's eyes, according to his statement before the committee, the chief gravamen of the offense. From that fact he concluded that the motive of the accused was to "insult the dignity and disturb the good order of his court." The committee is of opinion that there was no evidence before Judge Swayne from which such a motive could be inferred, certainly not from the facts in evidence before him.

The words under which he claims the right to condemn have been quoted, but they do not fit the case. They are the "misbehavior of any of the officers of the said courts in their official transactions." The act complained of was not done by these men as officers of the district court of the United States. They were acting as officers of the court of Escambia County, Fla., in bringing the suit. Therefore the action was not susceptible of being construed as a contempt of the district court. It was not an official transaction in any sense by officers of the United States court. Their character as officers or attorneys of that court gave them no power to do the act complained of. It was only because they were attorneys of the court in which the suit was brought that they could do it.

If it was an "official transaction" it was an official transaction in the county court of Escambia County, not in the district court of the United States. Certainly no one will contend that Judge Swayne could punish them for an official transaction in another court, no matter how offensive it might be to his dignity or humiliating to his pride or disgracing to his character; certainly such an act could not offend against the "dignity or good order of his court."

If, then, they could not be properly fined and imprisoned for bringing the suit, what offense did they commit that warranted such severe and disgracing punishment?

But it may be contended no judge can be held responsible for a mistake of law. All judges make mistakes. For an error of judgment or wrong exercise of discretion a judge ought not to be and can not be punished. Let this contention be granted. At the same time, none can dispute that for a misbehavior in office a judge may be impeached.

All the cases that have been tried may be cited as proof of that proposition.

Judge Pickering was impeached by the House and convicted by the Senate for releasing the ship *Eliza* to her owner without taking a bond after she had been seized for violating the excise law, and for appearing upon the bench when drunk, and for using profane language.

Judge Addison was impeached and removed from office for refusing to allow an associate judge to address a grand jury and a petit jury.

Judge Chase was impeached for refusing to allow counsel to address the court and jury upon a point of law that had already been decided.

Judge Peck was impeached for disbaring and imprisoning a lawyer who wrote and published a criticism of one of his opinions.

In all these cases the defense was stoutly made that they were mere mistakes of law, not indictable, and therefore not subject for impeachment. It did not avail to prevent the House from preferring charges. If this reason is good, then no judge can be called to answer for a misbehavior in office which is not also an indictable offense. This is not the law nor the practice.

In imposing sentence upon Davis and Belden Judge Swayne exceeded his authority by imposing both fine and imprisonment. This error was set right by Judge Pardee, the circuit judge, but not until both had served three days in the common jail.

The animus and evil intent of the judge was manifest by his action and speech. So eager was he to punish that he disbarred these lawyers for a term of two years. If his amicus curia, Blount, had not warned him, that unlawful sentence would have remained. His speech when imposing sentence is described by the witness.

SIMEON BELDEN testifies:

Q. Now I will ask you what was the manner of Judge Swayne when he was inflicting this penalty.—A. Well, it was gross and offensive; he entered with a slanderous attack on the attorneys.

Q. Very slanderous?—A. Yes.

Q. Tell what he said.—A. I don't recollect his words exactly; it was published in the newspapers here.

Q. It was harsh and offensive?—A. Very, indeed. (P. 264-265.)

E. T. DAVIS, page 284:

Q. At the time of imposing this sentence what was Judge Swayne's manner?—A. Very abusive.

Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant, said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.

Q. His manner was very harsh and abusive?—A. Extremely so.

For a constructive or indirect contempt it is the law that one charged may purge himself, and that he can not thereafter be punished. In this case Judge Swayne listened to no excuse. He found an evil motive for a lawful action without evidence and against the oath of the accused. The excessive and unlawful character of the sentence and the grossly offensive manner in which it was pronounced leave no room for doubt that Judge Swayne was not animated by a desire to protect the dignity and good order of his court, but to punish what he considered a personal affront to himself. This constituted an arbitrary, unlawful, and oppressive abuse of his judicial power, and a high misdemeanor in office.

The fact can not be disputed that Judge Swayne imposed a punishment on Davis and Belden which the law did not warrant. The only question in the case, then, is whether he is to be excused and go unpunished on the ground that he made an innocent mistake of law. No one doubts the proposition that a judge can not and ought not to be held responsible for innocent mistakes of law. Neither can anyone justly contend that a judge should not be punished according to law for knowingly and willfully imposing an illegal sentence. Whether his motive be revenge or mere wanton disposition to exercise arbitrary power or an intention to punish for a personal insult, in either case he can not be held guiltless or excused on the plea that he innocently erred.

The great question, then, in every case that arises must be, Why did he do it? What motive prompted? What intent animated? Being a human being and not divine or infallible, the actions of a judge are to be interpreted by the same rules that apply to the actions of other men. It is not to be supposed that a judge who evilly intends to do an unlawful act will declare his intention or publish his purpose. The motive and intention of a judge must therefore be sought and generally will be made plain by the circumstances surrounding the particular case. If a judge has no personal interest or feeling in a matter under consideration, if coolly, calmly, and with deliberation he reasons himself into giving a wrong judgment, a wrong motive is never or rarely ever attributed to him. On the other hand, if the case involves a question of insulted dignity, a personal affront, or, if with heat and passion, if with vituperation and denunciation a judge imposes a harsh and unlawful sentence upon a prisoner, his motive is not a matter of doubt. His motive is as plain as that of a man who assaults with a deadly weapon. Such a man is held responsible for the natural and reasonable consequence of his act. He can not be heard to say, I made a mistake; I thought I had a right to strike with a club a blow which produced death. The law pronounces a layman and a judge who knowingly does an unlawful act conclusively guilty of an unlawful intent.

Apply these principles to the case in hand. Judge Swayne knew that the act of 1831 limited the powers of United States courts over contempt to the special cases named in the act. He knew it, because the Supreme Court of the United States has many times decided the very point, notably in 19 Wallace, 511, where it is said:

The act of 1831 is therefore to them (the district courts) the law specifying the cases in which summary punishments for contempt may be inflicted. It limits the power of these courts in this respect to three classes of cases—

First. Where there has been misbehaviour of a person in the presence of the court, or so near thereto as to obstruct the administration of justice;

Second. Where there has been misbehavior of any officer of the court in his official transaction; and,

Third. Where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful process, order, rule, decree, or command of the courts. And thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes.

Presuming that Judge Swayne knew the law he knew that proceeding for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (*Burke v. The State*, 47 Ind., 528; *Batchelder v. Moore*, 42 Cal., 412; *Rapalje on Contempts*, p. 122.)

The most common and, in the United States, the almost universal practice in this matter is to present to the court an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (*Burke v. State*, 47 Ind., 528; *Re Judson*, 3 Blatch., U. S. 148; *Batchelder v. Moore*, 42 Cal., 412; *Whittem v. State*, 36 Ind., 196.)

Judge Swayne knew that issuing of proofs without filing the proper affidavit was erroneous, and that the error is not cured by a subsequent

filing thereof. (*Wilson v. The Territory*, 1 Wyo., 155; *Whittem v. The State*, 36 Ind., 196; *McConnell v. The State*, 46 Ind., 298.)

He knew that in a rule to show cause why a person shall not be punished for contempt the actual intention of the respondent is material, in which respect it differs from an indictment for the like offense. Therefore, when the respondent meets the words of the rule by disavowing, upon oath, any intention of committing in contempt of court the rule must be discharged. (63 N. C., 397.) He knew that the practice in the courts of the United States, as well as in the State courts, was:

If the party purge himself on oath the court will not hear collateral evidence for the purpose of impeaching his testimony and proceeding against him for contempt, but if perjury appear the party will be recognized to answer. (*U. S. v. Dodge*, 2 Gall., 313 Circuit Court U. S. 1st Circuit, Mass.; in the matter of John I. Pitman, 1 Curtis, 189, contempt proceedings.)

The master did not treat the answer of the clerk as evidence. This was erroneous, as will plainly appear when we consider what this proceeding is. \* \* \*

Now, one of the most important privileges accorded by the law to one proceeded against as for a contempt is the right to purge himself if he can by his own oath. So rigid is the common law as to this that it does not allow the sworn answers of the respondent to be controverted as to matter of fact by any other evidence. (*U. S. v. Dodge*, 2 Gall., 313.)

The rule was the same at common law:

If any party can clear himself upon his oath he is discharged. (4 Bl. Com., 286, 287; *Burke v. The State*, 214 Ind., 528.)

When the answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disrespect to the court of purpose to obstruct its process the rule should be discharged. (In re *Wilson Walker*, 82 N. C., 95.)

Knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount. He put upon the record another statement of his own presumptively as evidence or as a justification of his act—an unsworn statement of alleged facts, some of which were true and some untrue.

He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt and without any evidence whatever to establish the fact, except that they had brought a suit against him in the State court and served him with process Saturday night. He condemned them to be disbarred for two years, to be fined, and cast into prison. The charge against them and of which they were convicted was a contempt of the "dignity and good order" of the district court of the United States. The offense consisted, as stated by Judge Swayne, not in the act, but in the intent with which it was done, viz, to force him to recuse himself in the case of Florida McGuire.

Suppose, for the sake of argument, that such was their intention, viz, to force the judge to recuse himself. The intent was never carried out. No one was harmed. The judge was not forced to recuse himself. The suit against him in the State did not exercise any influence on him in that direction, for the very good reason that the suit in his court was disposed at the request of the plaintiff, with his consent, at the opening of the court on the first secular day after the suit was brought against him in the State court. The law does not punish guilty intentions. One may intend to slander, steal from, or even kill his neighbor. If the intent is never carried out no human law exists to punish.

All these plain and common principles Judge Swayne must be presumed to have known. Therefore he knowingly and unlawfully held these attorneys guilty of a contempt when none had been committed, when none could have been committed which were punishable under the act of Congress, and he did it in violation of the well-established law of procedure in such cases.

We are seeking for the motive which actuated Judge Swayne in the light of the circumstances. He must have known that he had no right to impose a fine and also an imprisonment upon these officers of his court. The act of Congress is very plain. A wayfaring man, though a fool, need not err there. It provides fine or imprisonment, not fine and imprisonment. The Supreme Court, with whose decisions Judge Swayne will not plead that he was not familiar, has also settled that point. (See 131 U. S., 267.)

Again, still in search of the motive of Judge Swayne in imposing this unlawful punishment, attention is called to the fact that he sentenced these lawyers to disbarment for two years; in other words, to ruin. To forbid a lawyer the right to practice his profession for two years is, standing alone, a severe sentence. Such a sentence will scatter a lawyer's practice; seriously damage, if not irretrievably ruin, his reputation, and generally destroy his usefulness and earning power. Ought Judge Swayne be heard to say that he knew no better? Evidently if he might it would be true, because when his *amicus curia* stepped up to the bench and suggested to him that he had exceeded his authority he remitted that part of the sentence. He ought not to be heard to plead his ignorance, because the highest court decided (19 Wallace, 512) that punishment by disbarment could not be imposed under the act of 1831. The fact that he found it in his heart to impose such an unlawful sentence is helpful in ascertaining the true intent that actuated him in the whole transaction.

The last evidence that Judge Swayne was actuated by an evil intent to punish a personal affront by a clear violation of the law and an arbitrary abuse of judicial power is found in his vituperation and abuse of the respondents at the time he sentenced them. The facts, as stated by them, are not denied by the judge or his *amicus curia*, who both testified in the case. His manner was "offensive and insulting." He denounced these lawyers as "ignorant." He vituperated them as a "stench in the nostrils of the people." From these circumstances the fact is found that Judge Swayne had something in his heart besides an honest intent to vindicate the dignity of his court, and that that something was an intent to punish these unfortunate persons who had fallen into his power, not for offending against the dignity and good order of the court, but for what he conceived to be a personal affront.

Doubtless an argument may and will be made that Judge Swayne believed that the lawyers, Paquet, Belden, and Davis, brought an unfounded action against him for the purpose of influencing his action in the Florida McGuire case, and also that their conduct in bringing the suit after dark Saturday night and procuring the service of process upon him that night was intended as a personal affront, and that he also believed they caused to be published in the papers next morning notice of the suit (which was not proved), and therefore he was properly and righteously indignant and should be leniently dealt with,

because what he did was done under provocation and in the heat of his displeasure.

The answer is that if he had observed the common rules of administering justice and had decided the case as the law requires, he would never have thought for a moment of punishing a constructive contempt after the accused had purged themselves under oath.

Certainly no hurt feelings, no offended dignity, even no legitimate desire to punish a punishable contempt, could justify or excuse the grossly unlawful and excessive punishment imposed in this case.

If the independence of the judiciary and their power to protect their own dignity and honor are indispensable to a free government, the right of the great body of earnest, learned, and faithful men who practice at the bar to be exempt from cruel, unusual, and unlawful punishments at the hands of judges for imaginary or real offenses is no less sacred.

For such a high misdemeanor in office no judge should be allowed to escape just punishment on the plea that he made a mistake of law. If allowed, there is no arbitrary abuse of discretion, no disobedience of law, no oppression or outrage upon the rights of liberty or property that could not go unwhipt of justice.

#### HOSKINS CASE.

*Third.*—The case of W. H. Hoskins is one of peculiar hardship. This man was advanced in years and was unable to read or write. He was engaged in the business of producing turpentine, growing cotton, and general merchandising. He had accumulated property worth about \$40,000, and owed debts amounting to about \$10,000. A part of this indebtedness was of the firm of Hoskins & Hilton, of which he had been a partner. He had sold out his interest in the firm under an agreement that the purchaser would pay the indebtedness of the firm. This agreement was not kept, and some suits were brought against Hoskins, in which he was defended by a lawyer named J. N. Calhoun, on the ground that the suit should have been brought against the person who had agreed to pay the debts. Of course, the defense failed and Hoskins paid.

This was the beginning of trouble. The evidence is full and convincing that a lawyer named Boone conspired with Calhoun to put Hoskins in bankruptcy in order to plunder his estate. Some claims came into their hands for collection. Hoskins paid promptly on demand, and notified Boone, through his counsel, Judge Liddon, that he was prepared to pay everything he owed. Boone secured claims to the amount of \$500, and without authority of his clients commenced proceedings involving bankruptcy against Hoskins, swearing to the petition himself. Certified checks were sent to all the creditors; some took them and withdrew; others were deterred by Boone's action. He told them that they would subject themselves to large costs and fees if they took their money.

Judge Swayne, against objection, gave time to Boone to obtain a proper verification of the complaint; then to get more creditors to sign the petition in place of those withdrawn. This he did at least twice. Hoskins filed a denial of insolvency and demanded a trial. Meantime one Tunison, United States commissioner and next friend of Swayne, was taken into the conspiracy. Hoskins was adjudged

bankrupt, a receiver was appointed, all his property seized, his store closed, his men intimidated, and ruin stared him in the face, as his business of producing turpentine needed daily care. He went to Boone with the money to pay all his debts. Boone told him he would be in contempt of court if he attempted to pay money to the creditors, and demanded \$1,000 for himself, and \$1,000 for Tunison, and all costs. Hoskins refused.

Calhoun, as receiver, sent a man named Richardson to seize Hoskins's books of account at one of his branch stores. He found a book belonging to the firm of Hoskins & Bro., which had been left there for a bookkeeper to make up. On his return he met C. H. Hoskins, a son of W. H. Hoskins, one of the firm of Hoskins & Bro., who demanded the book, stating that it did not belong to his father and contained nothing pertaining to his business. Richardson refused to give it up; a fight ensued, and young Hoskins took the book by force. The next step of the conspirators was to commence proceedings for contempt of court against young Hoskins. The motive is fully explained by a letter from Boone to Tunison.

[Robt. J. Boone, attorney and counselor.]

MARIANNA, FLA., *March 13, 1902.*

GENTLEMEN: In re W. H. Hoskins, involuntary bankruptcy.

I beg to inclose you herewith another claim to be added to the amended petition, to the amount of \$200, which you will please have the court to include. I have just received telegram from Calhoun stating that the petition had not yet arrived. I have wired for same three times in the last two days and trust same will reach you to-night. This additional claim of \$200 is a stunner to them I presume.

I trust you all will be able to handle the matter all right. *I feel sure that we have them coming our way now, and if we can have C. D. Hoskins attached for contempt it will break the old man down sure.*

Please advise me in the premises as early as possible and oblige,

Very truly, yours,

ROBT. J. BOONE.

Messrs. TUNISON & LOFTIN, *Pensacola, Fla.*

(Inclosures.)

W. H. Hoskins, finding that he was not allowed to pay everything, averred his solvency, and demanded a trial on that question. Judge Swayne refused to proceed with the case until the book taken by young Hoskins was produced.

The following motion was made by Mr. Tunison on behalf of petitioning creditors:

On account of the forcible taking away of certain books belonging to the estate of the alleged bankrupt, by the son of the bankrupt, from the possession of the receiver herein, as fully set forth in the petition and affidavit of J. M. Calhoun, receiver, heretofore filed, which books are essential to the ascertainment of the true condition of the estate, and the continued withholding of the books from the custody of the receiver, petitioning creditors ask for a postponement for such a time as will enable them to secure the information believed to be contained in those books.

By Mr. Eagan, representing intervening creditors; also by Judge B. S. Liddon and W. H. Price, representing W. H. Hoskins, respondent.

Now, your honor, we desire to oppose the action for a postponement and continuance on the grounds stated, for the reason that the said C. H. Hoskins alleged to have the books in question is not a party to the record of these proceedings; for the further reason that those books are not under the control of the intervening creditors or respondent, W. H. Hoskins; on the further ground that it is not true that the books contain any matter, items, or accounts, or any business transactions of any kind or in connection with the business of W. H. Hoskins, who is the respondent, or of

any firm with which he was ever connected, or of which he was a member, and we are ready now to submit to your honor proof of these facts by W. H. Hoskins, W. H. Price, who has recently examined these books, and also by T. A. Jennings, vice-president of the J. P. Williams Company, Savannah, Ga., that he has recently examined these books—that is, since the beginning of these proceedings—and that the same did not contain any accounts or business transactions of any kind of the business of W. H. Hoskins or in connection with these proceedings.

We also proffer to prove the same things by W. H. Hoskins, who also knows the books and what they contain.

We offer to prove that the books in question are the books of a firm called Hoskins Brothers, composed of J. P. and C. D. Hoskins, and have reference solely to the matters of said firm, and that W. H. Hoskins was never in any manner a partner or in any way connected with said firm; and further, that the books are not absent by the consent or advice of counsel or any of the intervening creditors herein, or of the said W. H. Hoskins, and that none of them know the whereabouts of the said books, or have seen them since the absconding of the said C. D. Hoskins.

By the court: The court, in answer to the motion, states that it believes from the showing and circumstances, the only showing before the court was an affidavit by Calhoun, who had never seen the book, that he believed it contained something important; that the bankrupt in this case is in a measure responsible for the absence of the books in question, and under these circumstances can not permit the bankrupt nor his friends to testify to their contents in their absence until some better showing is made or tendered as to their whereabouts.

W. H. Hoskins was present in court with his counsel and offered testimony of several disinterested persons who knew the facts that the books to which Judge Swayne alluded had been taken by one C. D. Hoskins, to whom, as one of the firm of Hoskins & Bros., they belonged; that W. H. Hoskins, the alleged bankrupt, had no interest in said firm; that the said books were not in the possession of W. H. Hoskins or under his control; that they contained no written items or accounts of any business transacted of any kind connected with the business of W. H. Hoskins, or of any firm of which he was ever a member, and that he had nothing whatever to do with the taking or any knowledge of their whereabouts.

Notwithstanding, the said Charles Swayne, in the absence of any evidence to the contrary save an affidavit of one Calhoun, who had never seen the books, but swore he believed they contained something of importance in the case, refused to proceed with the case, stating that he "would not believe the evidence offered if sworn to by his brother," and continued the hearing of the same without day, to the great injury of the said W. H. Hoskins.

Young Hoskins had been hiding out to escape arrest, of which he was so fearful that he said he would rather die than go to jail. His uncle, one Rhodus, went to Tunison, who had instituted the contempt proceeding, and paid him \$50 and agreed to give \$50 more if Tunison would intercede with Judge Swayne to let young Hoskins off with a fine without imprisonment. Tunison took the money, but Swayne insisted upon going on with this case against young Hoskins, who finally put an end to Swayne's persecution by taking his own life.

W. H. Hoskins, despairing of getting justice or a hearing, paid the creditors in full and such costs as Calhoun demanded.

The whole disgraceful perversion of law and justice was made possible by the complaisancy, stupidity, or worse, of Judge Swayne, who lent himself to a conspiracy to ruin an honest man by aiding the conspirators in every way in his power. He had no right to refuse a hearing to Hoskins on the ground that a book taken out of the custody of the receiver's clerk by any other person must first be produced. It was a denial of justice. It was an arbitrary and oppressive abuse of

power. There was no sufficient testimony before the judge that the book had any relevancy to the case; nothing but the affidavit of the receiver, who had never seen the book, that he believed it contained something necessary to the determining of the question of Hoskins's solvency. In the face of an offer to prove the fact by disinterested and competent testimony, among others that of a person who had examined it, the judge refused to believe anything, saying that he would not believe his own brother if he would swear to it. In his argument before the subcommittee, Judge Swayne was asked why he refused to hear Hoskins's witnesses to prove that the book was that of Hoskins Brothers, and contained nothing whatever pertaining to the business of W. H. Hoskins. His answer was because he would not believe the witnesses.

Being interrogated by the subcommittee as to why he refused to hear Hoskins's witnesses, Judge Swayne testified as follows:

Mr. PALMER. Did not you state it was unnecessary for Hoskins to submit any proof about these books? Does not the record show that?

Judge SWAYNE. There was a witness upon the stand who testified as to Mr. Hoskins's ability to pay his debts.

Mr. PALMER. But what had that to do with the proof submitted by the witness Jennings?

Judge SWAYNE. Well, that requires a further answer. And there was, I believe, some evidence by a man they called Price, on this subject, but that man's name was not Price, although he went by that name. He was designated as Price, but his name was really something else, which I do not now recall.

Mr. PALMER. Then you mean to say in substance that you did not have any confidence in that witness?

Judge SWAYNE. I certainly did not.

Mr. PALMER. Well, do you think a judge has the right to take that view of a witness in the administration of justice?

Judge SWAYNE. Yes, sir.

Mr. PALMER. At the time you made that ruling was there any proof that Hoskins had ordered his son to take the books back?

Judge SWAYNE. Well, I wanted to have the books in court when the trial came on or show that they could not be had.

Mr. PALMER. That is just the point; and you refused to hear anything on the point, and would not hear the witness or hear the testimony?

Judge SWAYNE. I did not see how I could.

Mr. PALMER. That is correct, is it?

Judge SWAYNE. Yes, sir.

This action of the judge presents at least an entirely new feature in the administration of justice. A suitor is denied the right to offer evidence in support of his case because the judge has made up his mind in advance that the witnesses offered are not worthy of belief.

In this case Mr. Price, one of the witnesses, was a practicing attorney of the courts of Florida, and, presumptively, a perfectly worthy man. Mr. Jennings was one of the largest producers of turpentine in the State, a substantial business man, personally known to at least one member of the committee to be of irreproachable character and standing. W. H. Hoskins was at least competent to testify that the book was not his and was not used in his business.

To refuse to hear these witnesses was an unwarranted and unheard-of proceeding. To continue the case of Hoskins without day, under the circumstances, was an unparalleled abuse of discretion on the part of the judge which amounted to a denial of justice.

## O'NEAL CASE.

*Fourth.*—The facts in the case of W. C. O'Neal are as follows:

One Greenhut had been appointed trustee in bankruptcy of one Scarritt Moreno. Greenhut brought an action in the county court of Escambia County for the purpose of having certain land, the title to which was in the bankrupt's wife, brought into the bankrupt's estate, and also to relieve the said land of a certain mortgage of \$13,000, which appeared to be a lien upon it, which had been given the National Bank of Pensacola and by them assigned to the bank. Greenhut was a director and O'Neal was president. Greenhut was also indorser on Moreno's paper in the bank for \$1,500.

On the 20th day of October O'Neal was passing along the street in front of Greenhut's store. Greenhut was in conversation with another man. O'Neal spoke to him and said when he was at leisure he wished to speak with him. Greenhut said he could speak at once and invited him to enter his store. O'Neal reproved Greenhut for including the bank in the suit which he had brought. He stated to Greenhut that he, Greenhut, was aware of the fact that the \$13,000 mortgage was genuine; that the bank had advanced the money and had parted with it for a valuable consideration; also that he, Greenhut, had often promised to pay the indorsed paper upon which he was liable to the bank, but had not done so. But words passed, when O'Neal passed out of the store, followed by Greenhut to the sidewalk, where an affray occurred in which Greenhut was stabbed by O'Neal with a pocket knife and seriously injured. O'Neal swore that Greenhut assaulted him and that, being a much weaker man physically, he defended himself with a small pocketknife.

A proceeding for contempt of the district court of the United States was commenced, in which B. C. Tunison appeared for the receiver, Greenhut.

At the time of the affray the district court was not in session. The difficulty took place at a considerable distance from the court-house on a public street. Judge Swayne was not at the time in the district.

The charge for contempt proceeded upon the theory that the assault having been made upon a receiver in bankruptcy appointed by the district court, for some matter growing out of his actions as receiver, that a contempt of the district court had been committed. O'Neal had been arrested in the State court for his offense against the law. When the rule to show cause why he should not be committed for contempt was served, he employed counsel and made answer, denying any intent to commit a contempt of court.

The testimony of Greenhut and O'Neal was taken; none of the bystanders were sworn, nor was any other person sworn. O'Neal denied the contempt and explained that the quarrel grew out of the relations of Greenhut to the bank, and what he claimed to be his dishonesty in including the bank in the suit. Greenhut contended that he was an officer of the court, and that he had been assaulted on account of his official acts, and, as a consequence, had been laid up for a period of time and rendered unable to perform his duty as receiver.

Judge Swayne sentenced O'Neal to be imprisoned in the county jail for a period of sixty days.

The act of Congress defining the power of the United States courts to punish contempt is as follows:

The said courts shall have the power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempt of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

Manifestly the case of O'Neal was not within the act. The offense was not committed.

- (a) In the presence of the court.
- (b) Or so near thereto as to obstruct the administration of justice.
- (c) It was not a misbehavior of an officer of the court in an official transaction.

(d) Was not resistance of any lawful act, order, rule, decree, or command of said court by any person.

This act was passed after an unsuccessful attempt to impeach Judge Peck for striking the name of an attorney from the roll for an alleged contempt of court committed by him in publishing a criticism of a published opinion of the judge in a case in which the attorney had appeared and which had been appealed.

The impeachment proceedings provoked long discussion as to the common-law power of United States courts to punish contempt not committed in the presence of the court. To set doubts at rest and to define the powers of such courts this salutary act was passed. It bounds and limits the rights and powers of these courts and its transgression ought not to be regarded lightly in cases involving the liberty of citizens of the Republic.

The action of Judge Swayne was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions, an excuse which he will not be likely to set up.

If an unlawful act is committed by judge or layman the law conclusively presumes an evil intent.

The theory upon which O'Neal was held guilty of contempt of court was:

- (a) That Greenhut was an officer of the court.
- (b) That he was assaulted for performing an official act in the line of duty.

(c) That he was disabled by the assault from performing his duties as receiver for about two weeks.

Suppose all the allegations to have been proved, before the assailant of Greenhut could be held guilty of contempt of court some proof should have been produced to show that O'Neal's purpose in committing the assault was to punish Greenhut for his official action and to disable him from performing his duty as receiver.

If his purpose was to rebuke Greenhut for his bad faith as a bank director, or if the quarrel between the men which resulted in the fight had its origin in a dispute about Greenhut's knowledge that the mortgage was genuine or that Greenhut was endeavoring to escape liability upon his indorsement to the bank of Moreno's paper, and if he had no thought of the court or intention to interfere with its operations, then certainly he was not guilty of a contempt. O'Neal did not assault

Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false. That was the occasion of O'Neal's remonstrance which led to the fight.

Whatever his purpose, the assault was not committed in resistance of any order, decree, rule, or command of the court. No one pretends that it was. The only claim is that the court has power and should protect a receiver in bankruptcy by punishing anyone who quarrels with him on account of anything he does in the line of his duty as receiver. If it has such power, it is not conferred by the statute. And as the district court has no other authority to punish for contempt except that which is conferred by the statute, the conclusion is that in this case a citizen of the United States was unlawfully condemned to prison.

The answer of O'Neal purged the contempt, and it was error to punish him for it.

#### CASE OF YOUNG HOSKINS.

The contempt proceeding against young Hoskins was instituted by Brown Calhoun and Tunison to "break the old man down" in furtherance of their nefarious scheme to force him into bankruptcy to the end that they might plunder his estates. It was based upon the theory that Hoskins had resisted an order of the court—not a special order but the general authority of the receiver in bankruptcy, to possess himself of the property of the bankrupt. If the book did not belong to the elder Hoskins, and contained nothing pertaining to his business, then the receiver had no right to take it. If he had no right to take the book, then young Hoskins could not be lawfully adjudged guilty of contempt in resisting.

The law upon this point is settled to numerous cases as follows:

Disobedience to unauthorized requirement is not a contempt. An order punishing is void when the court had no authority to make the order disregarded. (104 U. S., 612.)

The court could not lawfully order the receiver of W. H. Hoskins, the father, to seize and carry away the property of C. H. Hoskins, the son. If such an order had been made it might have been lawfully resisted, but no such order was made. The receiver was acting under his general power which certainly gave him no right to take and carry away the book in question if it did not belong to the bankrupt. Hence the important and only question was, Whose book was it? Upon this question Judge Swayne refused to hear testimony. He had no evidence before him bearing upon the question of the ownership of the book but the affidavit of Calhoun, the receiver, who had never seen it and swore only to his belief that it was the book of the elder Hoskins.

Young Hoskins hid in the woods for some weeks to avoid arrest. He had a mortal dread of going to jail, and said he would die first; and die he did. Judge Swayne refused the request of Tunison, the receiver's counsel, to let Hoskins off with a fine without imprisonment if he would plead guilty, although the bankrupt business had all been settled, and the production of the book was no longer of the least consequence. Judge Swayne refused to hear evidence on the subject of the ownership of the book on the ground, as before stated, that he would not believe the witness, and that he would not believe his own brother if he swore that the book did not belong to old Hoskins.

When the news of the failure of the effort to procure his discharge reached young Hoskins, he committed suicide. These facts need no comment.

#### TUNISON CASE.

*Fifth.*—The evidence established the fact that Judge Swayne reappointed B. C. Tunison commissioner of the United States after a trial in his court in which Tunison, as prosecutor, had been successfully impeached as a witness.

The evidence also establishes that the members of the bar at Pensacola, Fla., and elsewhere in the district, and suitors in the United States court are of opinion that Tunison has the power to exercise undue influence over Judge Swayne and that he does exercise such influence. To such an extent does this belief prevail that lawyers advise their clients to employ Tunison in their business as the best and only way to succeed in Judge Swayne's court.

No special acts of favoritism were shown. Neither was it proved that Tunison won an undue proportion of cases in the United States court. Nevertheless, the opinion stated is widely entertained. Tunison was shown to be very friendly with Judge Swayne—so friendly that he declined to pursue a habeas corpus case in which he had received a fee of \$100, averring that he did it because Judge Swayne was his friend. The case referred to is that of Davis and Belden, committed by Judge Swayne for contempt of court. It may be remarked that Tunison neglected to return the retainer. The testimony satisfies the committee that Tunison is a dishonest man; also that he is indorser on a note of Judge Swayne that has been renewed for seven successive years in the Pensacola Bank.

The charges and specifications not covered by the foregoing findings were not proved by sufficient evidence to warrant action upon them.

Upon the whole case it is plain that Judge Swayne has forfeited the respect and confidence of the bar of his court and of the people of his district who do business there. He has so conducted himself as to earn the reputation of being susceptible to the malign influence of a man of notoriously bad character. He has shown himself to be harsh, tyrannical, and oppressive, unmindful of the common rule of a just and upright judge. He has continuously and persistently violated the plain words of a statute of the United States, and subjected himself to punishment for the commission of a high misdemeanor. He has fined and imprisoned members of his bar for a constructive contempt without the authority of law and without a decent show of reason, either through inexcusable ignorance, a malicious intent to injure, or a wanton disposition to exercise arbitrary power. He has condemned to a term of imprisonment in the county jail a reputable citizen of the State of Florida over whom he had no jurisdiction, who was guilty of no thought of a contempt of his court, for no offense against him or in the presence of the court, or "in obstruction of any order, rule, command, or decree," and after the accused had purged himself on oath.

For all those reasons Charles Swayne has been guilty of misbehavior in his office of judge and grossly violated the condition upon which he holds this honorable appointment. The honor of the judiciary, the orderly and decent administration of public justice, and the welfare of

the people of the United States demand his impeachment and removal from the high place which his conduct has degraded.

It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges, the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist.

The Committee on the Judiciary recommend the adoption of the following resolution:

*Resolved*, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high misdemeanor."

O



JUDGE CHARLES SWAYNE.

APRIL 1, 1904.—Referred to the House Calendar and ordered to be printed.

Mr. GILLET, of California, from the Committee on the Judiciary,  
submitted the following

VIEWS OF THE MINORITY.

[To accompany H. Res. No. 274.]

On the 10th day of December, 1903, the House passed a resolution,  
a copy of which is as follows:

[House Resolution No. 86, Fifty-eighth Congress, second session.]

Mr. Lamar, of Florida, submitted the following resolution:

Whereas the following joint resolution was adopted by the legislature of the State of Florida:

"SENATE JOINT RESOLUTION in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

*"Be it resolved by the legislature of the State of Florida:* Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

"Whereas it also appears that the said Charles Swayne is guilty of a violation of section five hundred and fifty-one of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

"Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

"Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent and that his judicial opinions do not command the respect or confidence of the people;

"Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

*"Be it resolved by the house of representatives of the State of Florida, the senate concurring,* That our Senators and Representatives in the United States Congress be, and

they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

*Resolved further*, That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.

"THE STATE OF FLORIDA,  
"OFFICE OF THE SECRETARY OF STATE.

"UNITED STATES OF AMERICA, *State of Florida, ss:*

"I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the legislature of Florida, session of nineteen hundred and three, and on file in this office.

"Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the seventh day of September, anno Domini nineteen hundred and three.

[SEAL.]

"H. CLAY CRAWFORD,  
"Secretary of State."

*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law, whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

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

The author of said resolution, Representative Lamar, was requested by the subcommittee appointed to investigate said charges contained in said resolution, to submit to it a statement setting forth specifically the charges referred to in a general way in said resolution. In compliance with this request, Mr. Lamar presented to said subcommittee the following, to wit:

In re Charles Swayne, United States district judge in and for the northern district of Florida: Specifications of matters to be presented for investigation before the investigating committee of the House of Representatives, United States Congress:

*Specification 1.*—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for ten years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware; that he never pretended to reside in Florida until May, 1903; that during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failure to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

*Specification 2.*—That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

*Specification 3.*—That the said Charles Swayne, as such judge, appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office except when notified of an arrest, necessitating people having business with United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners often for a day or two, at their inconvenience and in imprisonment at the expense of the Government until said Porter sees fit to come to Marianna.

The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

*Specification 4.*—That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court; that so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

*Specification 5.*—That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding, upon feigned, fictitious, and false charges of contempt of his said court.

*Specification 6.*—That said Charles Swayne has willfully, negligently, and corruptly maladministered bankruptcy cases in his court, to the extent that the assets of bankrupts have, in all or nearly all cases, been squandered and dissipated in paying extraordinary fees and expenses and never paying any dividends to creditors.

*Specification 7.*—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins upon an alleged contempt, resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

*Specification 8.*—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

*Specification 9.*—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given. Among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway, and in one case, that of *Sweet v. Owl Commercial Company*, in which he charged the jury to exactly and diametrically conflicting theories of law.

*Specification 11.*—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

*Specification 12.*—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

*Specification 13.*—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902, of perjury.

The committee, on February 10, 1904, proceeded to Florida to take testimony in support of said charges, and examined many witnesses and received a large amount of documentary evidence. After receiving all the evidence and hearing arguments for and against the matters set forth in said specifications, your committee met to consider the same and we all agreed that specifications numbered 2, 3, 6, 7, 8, 9, 11, 12, and 13 were not proven or were not of sufficient gravity to warrant impeachment charges being made.

The majority of the committee were of the opinion that specifications 1, 4, and 5 had been proven; that Judge Swayne also had wrongfully granted a continuance in the case of W. H. Hoskins, a bankrupt, when he desired to go to trial, and refused to hear his witnesses, and

that charges of impeachment against him on these grounds should be preferred.

From this I dissented, because I did not believe that the evidence and the law warranted such a conclusion. I looked upon the impeachment of a Federal judge as a very serious matter, the proceeding being a quasi criminal one, and felt that before charges should be preferred, that the mind should be satisfied beyond a reasonable doubt and to a moral certainty of the truth of the matters alleged, and that said matters should be of a most serious character, if not a high crime or misdemeanor, of such a willful and intentional misbehavior in office as to amount to a denial of justice to litigants or to cast discredit upon the court and to cause a loss of confidence in the honesty, integrity, and morality of the judge. I could not persuade myself to believe that every error made by the court, or every mistake made by him in the discharge of his high duties should be considered sufficient grounds to impeach him. I realized that even the judge of a court is liable to err, both as to law and facts, that his decisions are not always correct, that his judgments are likely to be wrong and oppressive, and that he may exercise his discretion in such a manner as to defeat justice.

If a judge were to be impeached for every error which he committed that inflicted injury upon others, Congress would have to remain in constant session, and it would be the busiest court in the world. If every judge who has wrongfully found a person guilty of contempt should be cited to appear before the bar of the Senate to answer charges of impeachment, the business of that body would be blocked for many a day. How long would the authority of our courts and their decrees be respected if every dissatisfied litigant and every person found guilty of contempt could come to Congress, introduce a resolution with a great flourish of trumpets charging the judge with ignorance, corruption, tyranny, incompetency, and dishonesty, and thereupon the judge be investigated and brought before the bar of the Senate? The dignity of the courts must be maintained, and their judgments and decrees must be respected. Therefore Congress should be very guarded and careful in preferring charges of impeachment. The case, to warrant such charges, should be a very strong one, and before Congress acts there should remain no reasonable doubt that the judge against whom complaint has been made has willfully, knowingly, and intentionally been guilty of serious misbehavior in office, or has been guilty of some high crime or misdemeanor.

With this rule in my mind, I have carefully considered all of the evidence submitted, and I can not say that I feel satisfied therefrom that Judge Swayne has misbehaved in office; that he has been guilty of any high crime or misdemeanor; that he has been corrupt, tyrannical, or oppressive, or that his conduct is unbecoming a judge. Neither am I prepared to say that in the matters charged against him by the majority that he has committed any error of law, or that he acted in a tyrannical, vindictive, or oppressive manner. Neither do I believe that the evidence in the case warrants the action taken by the majority or is sufficient to cause the House of Representatives to prefer charges of impeachment, and to substantiate this belief I shall now consider the evidence in connection with charges preferred by the majority and the rules of law governing the same.

## NONRESIDENCE.

First, as to the charge of nonresidence and the inconvenience, annoyance, injury, and expense to litigants in his court by reason thereof:

The evidence shows that in the year 1885 Judge Swayne moved from Pennsylvania to the State of Florida to practice law. In the year 1890 he was appointed district judge of the northern district of Florida, and shortly thereafter he moved to St. Augustine, which was in his district. In June, 1894, the boundaries of the district were changed, and St. Augustine became a part of the southern district of Florida. After this Judge Swayne ceased keeping house in St. Augustine and stored his furniture. He went to Pensacola, Fla., then the largest city in his district, and requested a friend to place his name on the register of voters. This was not done. From 1895 until 1900 Judge Swayne did not own or rent any house in Pensacola, or in his district, but boarded when there in hotels and with private families.

When he went to Pensacola first he directed Mr. Marsh, the clerk of his court, to find him a suitable house. Mr. Marsh testifies that he tried to find a house from October, 1895, to October, 1897, but could not get a suitable one. After that he tried to buy a house for him, and sought to purchase the Wright house, the Pingio house, and the Chipley house, but failed to get either. Captain Northrup testified that when Judge Swayne first came to Pensacola he asked him to get for him a suitable house and that he took Judge Swayne in his buggy and drove him about to find a house but failed.

In 1900 he rented a house from Thomas C. Watson & Co., put his household furniture in it, and paid rent and insurance until May, 1903, when he moved into a house purchased by his wife and where he now lives. There is no direct and positive evidence or any evidence at all that from the year 1895 down to May, 1903, Judge Swayne had a home anywhere in the United States excepting in Florida. During a part of this time his family were in Europe. They lived with him for a short period in Pensacola, and his son came and lived with him for a while.

In the resolution it is charged that during this time he resided in Delaware or Pennsylvania, but no evidence of this kind was offered, and it is very evident if Judge Swayne resided in either State and made his home there that it would have been a very easy matter to have established that fact by an abundance of proof. A list of witnesses to prove that he resided in Delaware was furnished the committee, but none were called, and the prosecution rested without offering to call any of them, hence it is reasonable to suppose that it could not be proven that Judge Swayne resided in that State. In fact, he says he left Delaware in 1867 and has never since that date made his home there. Judge Swayne must have a residence somewhere. He established a residence in Florida in 1885, and there is no proof that he ever left that State to make his home elsewhere, or that he intended to do so.

The fact that he went north every summer to spend his vacation, or be with his aged mother, does not prove that he changed his residence, because this is a practice followed by some of the Federal judges in the South. The heat of that country becoming intolerable, they go north during the summer months. In 1900 he moved his furniture

into a house in Pensacola rented from Thomas C. Watson & Co., and for three years paid the rent. He boarded at times in the Escambia Hotel, and part of the time in private boarding houses during the time he was in Pensacola. The records of the court show that he averaged about two months each year in his district in the actual trial of cases; that he usually came to Pensacola a day or two before the term of court, and after the term was over would depart. It also appears in evidence that he would return to Pensacola also at times when the court was not in session and between terms.

Now, then, it being charged that he was a nonresident of the district and therefore guilty under the statute of a crime, to wit, a high misdemeanor, it falls upon the prosecution to prove beyond a reasonable doubt that Judge Swayne did not reside within the district but maintained a resident elsewhere, and I submit that absenting himself any length of time from the district does not alone prove that he is a nonresident of it. The prosecution have not shown where his residence is if it is not in his district. Between 1895 and 1899 Judge Swayne requested parties in Pensacola—W. H. Northrup and Fred March—to find for him a suitable residence, and they testified that no suitable place could be found. He also attempted to purchase a house and also took some steps toward building one. This clearly shows the intent on the part of Judge Swayne to reside in his district, and surely a man's intent always controls on a question of residence. Residence is clearly a question of intent. A man chooses his own residence and that residence remains until he decides to have another. There is no evidence that Judge Swayne had no intent to establish his residence in Florida and in his district, or that he had any intent to establish it somewhere else. That he paid no taxes or did not vote is not conclusive that he did not reside in his district. Neither are necessary to establish residence.

But it is said he was absent from his district nearly ten months during each year. But this, as said before, does not prove his residence was not there. Well, it is said, it is a strong circumstance and it proves that he was neglecting his business; that he was not discharging the duties of his office, and from this fact he should be impeached. Let us see. It is true that Judge Swayne was absent from his district, and for months; but it is not true that litigants in his court suffered great or any inconvenience thereby, or that they suffered any loss. Judge Swayne tells us the reason why he was away, and where he was. He was on duty. He was not on a vacation, enjoying the quiet and rest of Guyencourt, Del., or idling away his time in seeking pleasures, but he was on duty most of the time. Under the law the circuit judge of a district may order a district judge to go into other districts and hold court, and also to sit on the circuit court of appeals.

The records in this case show that Judge Pardee and Judge McCormick ordered Judge Swayne to hold court in Alabama, Texas, and Louisiana at different times, and also to sit on the circuit court of appeals, and that he obeyed this order, as it was his duty to do. The certificates of the clerks of different courts in the States just named show when Judge Swayne held court therein, and here follows the record, not giving the States and courts, which can be obtained, but the number of months in which he held court in each year in said States and out of his district commencing with 1895:

1895.—April, May, November, and December, four months.

1896.—January, February, March, April, May, June, November, and December, eight months.

1897.—January, February, March, April, May, June, and July, seven months.

1898.—January, February, March, April, May, November, and December, seven months.

1899.—January, February, March, April, May, June, October, and November, eight months.

1900.—January, May, June, September, October, December, six months.

1901.—September.

1903.—January and February.

Holding court for two months on an average in his own district would make him holding court on an average of about nine months each year. And this, it must be admitted, is a good record for holding court in the Southern States. A large part of the other three months, no doubt, were used by the court in preparing decisions and taking a vacation, unless he decided all of his cases from the bench, which is not likely. The record also shows that not only did he hold court in other districts seven and eight months during the year, but when the time for holding court in his own district arrived that he went there and dispatched all of the business and kept his docket clear. What does the majority want to impeach him for? Because he was absent from his district under orders; because he only worked nine and ten months a year holding court; because he kept his docket clear; because he did not work hard enough? No; certainly these can not be the reasons. Then what are they? If litigants were subjected to "inconvenience, annoyance, injury, and expense," as stated in the specifications, during the time he was absent from his district under orders from Judges Pardee and McCormick, then whose fault was it? And what right have parties to make this the basis for charges of impeachment, and what just reason can this committee give to accept the same as sufficient for preferring charges?

Now, the presumption of law is that Judge Swayne is a resident of his district. As long as a party retains an office which he holds during good behavior he is presumed to continue his domicile in the place where he is to exercise his functions. (*Oakey v. Eastin*, 4 La., 69.) This presumption, as already stated, must be overcome by evidence sufficiently strong to satisfy the mind beyond a reasonable doubt, because under the statute it is made a high misdemeanor not to reside in the district. It can not be overcome by hearsay evidence or by opinions of parties, as sought to be done in this case, but by satisfactory evidence which is competent and relevant. One may be considered as dwelling and having his home in a certain town, though he has no particular choice there as the place of his fixed abode. (2 Mc. Repts., 411.) A man is not prevented from obtaining a residence in a place where he goes to permanently make his home by the fact that his wife and children remain in his old home. (1 Bond, 578.)

Neither does absence from a man's place of business for a reasonable time cause him to lose or forfeit his residence there. Of course the judge's residence must be a legal one as distinguished from a constructive one, and his intent, coupled with his acts, go to make up this residence; that he pays no taxes or does not vote is not evidence sufficient to rebut the presumption of his residence. He may not have any property to pay taxes on, and may not, under some circumstances, care to vote. When a judge goes to a place avowedly for the

purpose of making it his home, requests others to try and rent him a suitable house in which to live, endeavors to purchase a suitable place when he learns he can not rent one, contemplates building a home when he can not buy, and finally succeeds in renting a house which he moves into and pays rent thereon for three years, and finally occupies, with his family, a house purchased by his wife, surely must have established the fact that it was his intent in good faith to make his home in that place, and in the absence of a very strong showing it must be conceded that he has established a residence there.

Having established this residence he can not lose it, because his duties as a judge required him to hold court in other States within the circuit in which his district is for seven and eight months a year, or by spending a vacation during the hot months of July and August with his aged mother in Delaware. Under all these facts it can not be said that Judge Swayne has violated the statute, and neither has he made any excuses for his nonresidence. He explained his absence from the district, as above stated, and surely this can not be urged as a sufficient ground for his impeachment.

This brings me to the other question stated in the first specification, to wit:

That during said time of his nonresidence, by such nonresidence he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters, and other matters arising between terms of court needing disposition.

Of course, if, as has just been stated, he was absent under orders holding court elsewhere, he is to be excused. But what are the facts on this question? J. E. Wolfe, a United States district attorney from 1895 to 1898, and for two years thereafter assistant district attorney, speaking of the loss and inconvenience to litigants caused by the absence of Judge Swayne from the district, says:

I do not know of any case in which there has been an embarrassment on account of Judge Swayne's absence, and I do not know of any civil proceeding in which litigants were damaged or injured by the absence of the judge.

Mr. Marsh, the clerk of the court, was asked this question (237 of record):

Q. Do you know of any loss to litigants by any inconvenience resulting by reason of the absence of Judge Swayne?—A. Never a complaint, except in one instance, and that was the signing of a bill of exceptions \* \* \* when Judge Swayne was holding a term of court in Waco, Tex. I shipped the bill to him and it was signed and returned in time.

W. A. Blount, one of the leading lawyers of Florida, says:

Whether, as a matter of fact, his absence has resulted in injury or expense, I do not know. I can not say now if any cases have been delayed by his absence.

B. S. Liddon, one of the attorneys for the prosecution, attempted to show that he had a case which he was forced to settle because the judge was absent, and that he had a good defense to it. He said the action was commenced in the summer, and that Judge Swayne would not return until November. The facts are, as finally admitted by the witness when confronted with the record, that the suit was commenced on January 25, 1897, after the court had adjourned on January 9; that it was settled in February, and that the court returned from Texas where he had been ordered to hold court, and held a term of court in Pensacola on March 6.

Another lawyer for the prosecution, Mr. Davis, was put on the stand to testify to inconvenience caused litigants by the judge's absence. He complained that he could not get a bill of exceptions signed readily because the court was absent in Delaware. It appears from the evidence that the delay was caused by the fault of Mr. Davis by not incorporating into the bill certain documentary evidence which the court directed to be included in it, but even then the bill was signed in time and no loss followed to anyone. One Marshall was sworn as a witness to prove that he was forced to settle a bankruptcy case owing to the fact that he could not get a hearing. A short time after the matter was commenced the judge was holding a term of court and Marshall never asked to be heard. I have cited the only three instances shown by the prosecution to substantiate this charge. All amounted to nothing; and it is quite evident, with the great industry of the gentlemen behind this movement, that if there was anything to support the charge they would have found it.

#### CONTEMPT OF O'NEAL.

Second. The majority contend that Judge Swayne should be impeached because he found W. C. O'Neal guilty of contempt and sentenced him to jail; that there is no law authorizing such a judgment, and that the judge acted arbitrarily and oppressively. I can not agree with the majority either as to their construction of the law or as to the facts. They have stated the strongest case possible in this matter against Judge Swayne without inquiring if the record does not contain facts to justify his conduct and to uphold his judgment. The facts are these:

On the 29th day of August, 1902, one Scarritt Moreno filed in the district court for the northern district of Florida his petition in bankruptcy. On September 15, 1902, one Adolph Greenhut was appointed trustee of the estate of said bankrupt. That the said Greenhut, as such trustee, in carrying out the implied orders of the court appointing him, and in the discharge of his duties to collect and recover the assets of the bankrupt, commenced an action in equity for the purpose of having a certain deed of property purchased by said bankrupt in the name of his wife, and to have certain mortgages thereon declared null and void.

The American National Bank of Pensacola was made a party defendant in this action, W. C. O'Neal was the president of the bank. The action was commenced Saturday afternoon, October 18, 1902. On the following Monday morning the said W. C. O'Neal, when passing the office of the said Greenhut, where were kept the papers of said estate and the business thereof transacted, stopped and said to Greenhut that he wished to speak to him, and Greenhut replied, "I will see you right now," and both gentlemen stepped into Mr. Greenhut's office. What transpired in that office was only seen by Greenhut and O'Neal, and their statements are conflicting, O'Neal testifying that he went in there to reproach Greenhut for commencing the action, that hot words passed between them, and that Greenhut threatened to do him up; that as he started to leave the office he turned around and told Greenhut that he had lied about the Moreno acceptance, and that Greenhut then struck him and he pushed him away, and as he rushed upon him again he drew his pocket knife and cut Greenhut in self defense.

Greenhut, in his affidavit, says that O'Neal went in his office with him, where he kept and had the custody of the papers, books, etc., relating to and connected with the books of said Moreno, bankrupt; that he asked him, Greenhut, why he had commenced the action against the American National Bank, and made the remark that he would settle with him, or will settle the matter, and that O'Neal then started to walk out, and that Greenhut not knowing of his purpose followed. That when at the doorway O'Neal, without any provocation, turned and wheeled suddenly about with his knife in his hand and struck at his, Greenhut's throat, cutting him at a point behind the left ear, cutting through a portion of it, thence across the left cheek to the corner of the mouth, stabbed him four times, inflicting serious injuries upon him which prevented him from attending to his duties as a trustee. Seventeen or eighteen days after this assault the said Greenhut filed in Judge Swayne's court an affidavit of which the following is a copy:

UNITED STATES OF AMERICA,  
Northern District of Florida, City of Pensacola, ss:

Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

That theretofore, to wit, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court that on September 15, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

That thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, esq., referee in bankruptcy; and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

That affiant was, by his counsel, advised that it was his duty as trustee of the estate of said Scarritt Moreno as aforesaid to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things asking the relief above referred to.

That by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States, in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

That on Monday, the 20th day of October, A. D. 1902, between the hours of 9 and 10 o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. — East Government street, in the city of Pensacola aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books,

etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid; that at the said time deponent was engaged in conversation with one Alex Lischkoff, when one W. C. O'Neal, who was at the said time president of said American National Bank of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid, and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him. Thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about 5 feet from the door of said office.

Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal in effect asked this affiant why he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant, as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal; that thereupon said O'Neal said we'll settle the matter, and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk; that affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing as aforesaid toward the door of said office leading into the street.

That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and, with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through the lower portion of said left ear, then across the left cheek, ending at left corner of mouth; and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) On left side over lower ribs, (2) upon left hip, (3) on left elbow, and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days; and has ever since been and is now under the care and treatment of a physician who is attending to said wounds.

That said assault and attempt to murder was committed by said O'Neal as aforesaid solely because and for the reason that affiant, as an officer of the United States district court in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court; and the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of the said Scarritt Moreno, bankrupt.

A. GREENHUT.

Sworn to and subscribed before me this 7th day of November, A. D. 1902.

E. K. NICHOLS, *Referee in Bankruptcy.*

To this affidavit O'Neal filed an answer, a copy of which is as follows:

And thereafter, and in the said day, to wit, on the 22d day of November, A. D. 1902, the following answer was filed in the said cause by the respondent therein, to wit:

In United States district court, northern district of Florida, at Pensacola. In re rule upon W. C. O'Neal to show cause why he should not be punished for contempt upon the statement set forth in the rule and the affidavit of A. Greenhut, thereto attached.

Respondent, for answer to the rule and to the said affidavit, says:

1. That he knows in part and presumes in part that the allegations of the first paragraph of the said affidavit are true.

2. That he knows in part and presumes in part that the allegations of the second paragraph of the said affidavit are true.

3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying, and surrounding the affray between himself and the said Greenhut on October 20, 1902, are true:

That the said Greenhut had been, from the organization of the American National Bank, of Pensacola, in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of \$13,000, to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, S. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid, was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

That prior to the said 20th of October said A. Greenhut became indorser upon certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about \$1,500; that the said Greenhut refused to make good his said indorsement or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia County, Fla., upon said paper, and that in the said suit the said Greenhut interposed a defense which this respondent believed and believes to be untrue and known to the said Greenhut to be untrue.

That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank, when he, the said Greenhut, knew as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff. The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank, of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned, and in the bringing of an unfounded suit against it; the conversation, however, concerning chiefly the bringing of the said suit against the said bank. Hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, "Well, you know how you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it, in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated; that respondent does not know how many or where located were all the wounds inflicted with said knife and hence he is unable to admit or deny the allegations of the said affidavit relating thereto; that it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court; that in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in any wise in the execution or performance of any of his duties as such trustee, and specially disclaim any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

W. C. O'NEAL.

W. C. O'Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

W. C. O'NEAL.

Sworn and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.]

JNO. PFEIFFER, *Notary Public.*

On the 9th day of December the matter came on for trial, and the court, after hearing all of the evidence and all of the witnesses, rendered the following judgment:

And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court issued thereon by this court against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court; and it is therefore

Ordered, adjudged, and directed that the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of sixty days, and that he stand committed until the term of this sentence be complied with or until he be discharged by due process of law.

And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law, and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supersedeas to the judgment heretofore rendered in this cause.

There is no evidence that Judge Swayne acted arbitrarily in the matter, that he was oppressive, or that he wrongfully and willfully in defiance of law tried the action and pronounced judgment. The majority of the committee contend that there is no law to warrant the decision of the court; that no contempt had been committed; that the judge was in error; and for these reasons and because he made a mistake in the law, because he rendered an erroneous judgment he should be impeached.

The judge certainly had the right to pass on the credibility of the witnesses and certainly had the right to believe Greenhut's statement in preference to that of O'Neal's, and if the evidence supported the allegations of Greenhut's affidavit—and the judge found that it did—then he had the right under the law, in my judgment, to find O'Neal guilty of contempt.

A trustee in bankruptcy, under the bankrupt act, is made an officer of the court. It is his duty, under an order of the court appointing him, to commence any actions necessary to recover property belonging to the bankrupt, and when he commenced such an action he is acting as an officer of the court and under its orders, or he would have no right to commence and prosecute the action at all. And any interference with him, either in the commencement of the action or in its prosecution, is a resistance by a party to a lawful order of the court and clearly falls within the express language and meaning of section 725 of the Revised Statutes. The action of O'Neal was not only to reproach Greenhut, but to frighten and terrorize him and to interfere with him in the lawful discharge of his duties as trustee and as an officer of the court.

Is it possible that the court may direct its trustees and officer to commence an action to recover assets to be distributed by the court to creditors and can not punish for contempt a party who stands in the street blocks away from the court-house and by force of threats intimidates the trustee so that he, through fear of personal violence, dare not commence his action? Surely such can not be the law, and such is not the law. What are the decisions on this question?

In the case of the *United States v. Anonymous*, reported in Vol. 21, Federal Reporter, p. 761, it is held that—

it is a contempt of court to interrupt and violently break up the examination of a witness before an examiner by persisting in the claim to dictate, prompt, and control the answers of the witness. It is also a contempt to insult the examiner by use of violent and abusive language to him after he has left the office and is upon the street. Nothing in the Revised Statutes, section 725, has taken away the power of the court to punish such contempts.

The court, on page 771, uses this very strong language, which applies with great force to the O'Neal case. It says:

The privilege of protection to all engaged in and about the business of the court from all manner of obstruction to that business, from violence, insult, threats, and disturbance of every character is a very high one, and extends to protect the persons engaged from arrests in civil suits, etc. It arises out of the authority and dignity of the court and may be enforced by a writ of protection, as well as by punishing the offender for contempt.

The court further on says if the misbehavior was not in the presence of the court, or so near thereto as to obstruct the administration of justice, it was nevertheless the disobedience or resistance by a party to a lawful order, decree, or command of the court.

In the case of *In re Higgins*, reported in volume 27, Federal Reporter, page 443, it is held that receivers are sworn officers of the court, and their agents and servants in operating the railway are pro hac vice the officers of the court, and that it is well settled that who unlawfully interferes with property in the possession of the court is guilty of contempt of that court, and it is equally well settled that whoever unlawfully interferes with officers and agents of the court in the full and complete possession and management of property in the custody of the court is guilty of a contempt of the court, and it is immaterial

whether this unlawful interference comes in the way of actual violence or by intimidation and threats. To the same effect are the cases of *In re Acker* (66 Fed. Rep., 290), and *In re Tyler* (149 U. S., 181).

One of the most interesting decisions on this question of the power of the court to punish for contempt is by Judge Jones, of Alabama, and reported in volume 120, Federal Reporter, page 130, *ex parte McLeod*. This case discusses the causes that led up to the enactment of section 725, Revised Statutes. The court holds that—

An assault upon a United States commissioner because of past discharge of duty is a contempt of the authority of the court, whose officer the commissioner is, in the administration of criminal laws, although no proceeding against the offender was then pending and the commissioner at the time was not in the performance of any duty.

This must be so. The court must have its officers to enforce and carry out its decrees, to enforce and protect the rights of litigants, to preserve peace and good order, and to assist it in the performance of those duties which are imposed upon it by law. The judge himself is only an officer of the court, and, indeed, the court would be weak that had no power to punish a party for contempt who interfered with one of its officers for the purpose of preventing him from discharging his duty as an officer of the court, as trustees, or receivers. If trustees, commissioners, and other officers of the court are to be deterred in the performance of their duties by reason of violence or threats, if they may be assaulted and stabbed because they are carrying out the mandates of the law, then we will have no law, no order, no security, no protection of person or property.

It is necessary for the peace and good order of the law and of society that a trustee in bankruptcy may, without fear, commence actions in the courts to recover property which belongs to creditors. It is also necessary that after the action has been commenced that he shall not be terrorized to the extent that he dare not prosecute further. His duties are, among other things, to collect and reduce to money the property of the estate for which he is a trustee, under the direction of the court, and there is vested in him title to all of the property belonging to the bankrupt, including property transferred by the bankrupt in fraud of creditors. In trying to declare the deed of Moreno to his wife and the mortgages therein as void in the suit which he commenced, Greenhut was "acting, under the direction of the court," or, in other words, under its order, as its officer; and when Mr. O'Neal went into his office to reproach him for commencing this suit and used violence upon him he was resisting and interfering with an officer of the court in the performance of an order of the court, and was guilty of a contempt. Being guilty of a contempt, Judge Swayne's duty was to punish him therefor, and he would not have been mindful of the peace and good order of his court and the due administration of justice therein if he had not done so.

But the majority contend that "the answer of O'Neal purged the contempt, and it was error to punish him for it," and therefore the judge should be impeached. We can not agree to this for two reasons: First, the answer does not purge the contempt, and, second, growing out of an equity proceeding, the court had the right to inquire into and pass upon the merits.

In proceedings for criminal contempt the answer of the respondent in so far as it contains statements of fact must be taken as true. If

false, the Government is remitted to a prosecution for perjury. This is the common-law rule. But the answer must be credible and consistent with itself, and if the respondent states facts which are inconsistent with his avowed purpose and intent the court will be at liberty to draw its own inferences from the facts stated. (In re May, 1 Fed., 737; in re Crossley, 6 Term R.; ex parte Nowlan, 6 Term R.; U. S. v. Sweeney, 95 Fed., 447; in re Debs, 64 Fed., 724.)

Disclaimer of intentional disrespect or design to embarrass the due administration of justice is, as a rule, no excuse, especially where the facts constituting the contempt are admitted or where a contempt is clearly apparent from the circumstances surrounding the commission of the act. (Cyclopedia of L. & P., vol. 9, 25.)

Courts may make inquiry as to the truth of the facts notwithstanding the answer denies fully the allegations of the affidavit, statement, or petition and disclaims any intention to do any act in contempt of the court. (Territory v. Murray, 7 Montana, 251; Crow v. State, 24 Tex., 12; State v. Harper Bridge Co., 16 W. Va., 864; U. S. v. Debs, 64 Fed., 724; In re Snyder 103 N. Y., 178; 48 Conn., 175; 19 Fed., 678.)

The law as above stated is clearly applicable to the answer filed by O'Neal.

He admits that he knew that Greenhut had been appointed trustee. He admits that he knew that Greenhut as such trustee had commenced an action to recover assets which it was alleged belonged to the bankrupt and which he was endeavoring to cover up by fraud. He admits that the bank of which he was president was a party defendant in this action, and he admits that "it suddenly occurred to him to reproach the said Greenhut with having brought the suit against the said bank." He also admits that when he entered Greenhut's office he reproached the said Greenhut for bringing an unfounded suit against the bank; "the conversation, however, concerning chiefly the bringing of the said suit against the said bank," and that hot words passed between them and that he invited Greenhut into the street to fight. He says—

that it is not true that the assault charged in the said affidavit was committed by respondent solely because and for the reason that the said Greenhut had instituted the suit against the said American National Bank, or to interfere with or prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court.

He says that the assault was not made solely for that reason, but he does not deny that that was one of the reasons, and thereby admits that it was.

Having made an affidavit in which he admits so much, the court could well find that it was inconsistent with his claim that he had no intent to commit any contempt or to interfere with Greenhut in discharging his duties as trustee. In fact, nowhere does it appear that O'Neal ever asked to be dismissed, because he had fully purged himself of contempt by his answer.

But the action commenced by Greenhut, being an equitable action, and his duties as trustee being more as an officer in equity than one at law, the court had the right to inquire into the merits even if O'Neal filed an affidavit fully and completely purging himself of the contempt charged, a different rule obtaining in equity than at law. (Buck v. Buck, 60 Ill., 105; 114 Mass., 230; 37 N. H., 450; 48 Conn., 175.)

When O'Neal was found guilty of contempt he took a writ of error to the Supreme Court of the United States and the cause was dismissed. Then he sued out a writ of habeas corpus before Judge Pardee, and on the 10th of November last the court, Judges McCormick and

Shelby concurring, dismissed the writ. This decision is reported in volume 125, Federal Reporter, page 967.

The court says:

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders, and in that respect, it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court, nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1880, section 2, the district courts of the United States, sitting in bankruptcy are continuously open; and, under section 33, and others of the same act, a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for an account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was. Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits.

If O'Neal was guilty of the matters charged against him, and there was sufficient proof of that fact as shown both by Greenhut's affidavit and his own, then there is no doubt that he was guilty of contempt.

Judge Swayne having been fearless enough on the proof of these facts to find a banker and an influential citizen guilty of contempt the majority in their report say, on page 20, that—

Judge Swayne's action was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions.

If the court has no power to punish those for contempt who beat, assault, and intimidate its officers when discharging their duty, then what protection have they, and how will the law be enforced? If a sheriff can not serve a process without being beaten, if a clerk can not file a paper without being threatened, if a juror can not proceed to hear a case without interference, and if a trustee can not commence an action without being stabbed, and neither have any right to appeal to the court for protection, then men will not be found who will discharge their duties; and if a judge dare to punish for contempt for the doing of any of these things he lays himself subject to impeachment and to be charged with tyranny, oppression, and ignorance, and his acts characterized as being "arbitrary, unjust, and unlawful."

But the majority in their report in this matter give their whole case away. They say, on pages 20 and 21—

O'Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false.

Here is an admission that O'Neal did assault the trustee, and that the assault grew out of the action that Greenhut commenced against O'Neal's bank, but the assault is sought to be justified because O'Neal claimed that the suit was an unfounded one and Greenhut knew it. The question of whether or not a suit is well founded is always a question for the court before whom the action is pending. If a defendant has the right to walk into the office of a receiver, trustee, executor, or administrator, and stab him and try to cut his throat, and

justify his action by claiming that a suit brought against him by such officer is unfounded, then how can the court protect its officers in the discharge of their duties? Happily no such right as this exists under the laws of this or any other civilized nation.

In punishing O'Neal Judge Swayne did his duty. Out of this trouble grew this impeachment proceeding. O'Neal at once started in to get even on the court and the evidence shows that he employed lawyers to go to Tallahassee and lobby through the resolution passed by the legislature of the State of Florida. The two most prominent lawyers now prosecuting this matter, Mr. Liddon and Mr. Laney, admit that they were employed by O'Neal to lobby this resolution through.

There is considerable feeling of prejudice and malice in this proceeding and it is well to be careful and not be influenced by it to the end that no mistakes are made and no injustice done.

#### BELDEN AND DAVIS.

Third. The majority are of the opinion that Judge Swayne should be impeached because he found one Davis and one Belden guilty of contempt. With this we can not agree; neither can we agree with the statement of facts set forth in Mr. Palmer's report, as important matters are omitted which put a very different phase to the transaction.

The trouble grew out of the following facts: In February, 1901, Florida McGuire commenced an action in Judge Swayne's court to recover about 200 acres of land known as the Rivas tract. This tract of land is described as one body, though it is divided into lots and blocks and owned by a number of people. On this tract is a block known as block 91 of the new city; but there is nothing in the said description of the tract of land that would show this fact. In the summer of 1901 Judge Swayne's wife was negotiating with a real estate firm for the purchase of several pieces of land, one of which was said block 91. This block was owned by a Mr. Edgar, who lived in New York, and upon whom service of summons had never been made in the said Florida McGuire suit. Mr. Edgar made a deed in favor of Mrs. Swayne and sent it to Thomas C. Watson & Co., the agents above named. Mr. Hooten in July, 1901, wrote to Judge Swayne that he had received the deed, but it was not a warranty deed, as Edgar was afraid of the Caro claim. To this letter Judge Swayne replied as follows:

Gentlemen, you may omit block 91 and send papers for the others along and oblige.

This ended the negotiations of Judge Swayne's wife to purchase said block. Afterwards it was sold to the Pensacola Improvement Company, and neither Judge Swayne nor his wife ever owned it or were ever in possession of it. Before the commencement of the November term of court the attorneys for the plaintiff in the Florida McGuire suit requested Judge Swayne, by letter, to recuse himself, as he owned an interest in the property in dispute. The judge did not answer this letter. On November the 5th, when court opened, the judge brought this matter up in the presence of the attorneys for plaintiff, Florida McGuire, and stated that he had received a letter from them asking him to recuse himself because he had purchased a piece of land which was a part of the land embraced in the Florida McGuire case. (Testimony of W. A. Blount; Mr. Palmer states they had no notice.)

The judge stated he had not purchased any such land; that his wife through him had negotiated for the purchase of a block of this tract, but when the deed was sent to close the trade he saw it was a quitclaim, and he asked why a warranty deed had not been given. The reply by Watson & Co., Edgar's agents, was the reason a warranty deed was not given was because this land was in controversy in this suit and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and as no formal demand had been made of him to recuse himself, he would try the case.

The foregoing is the statement of W. A. Blount, Florida's foremost attorney, who was in the court at that time. The criminal calendar was taken up first, and the court informed the parties that he would take up the civil docket right after the criminal calendar. The only case on the civil docket was the case of Florida McGuire. A jury was in attendance. During the week the attorneys for Florida McGuire informed W. A. Blount, attorney for defendants, that they were ready. All of their witnesses were in Pensacola and easy to reach. Saturday morning it was apparent that the last criminal case would be finished that day, and Mr. Blount took out a subpoena for his witnesses. Again I quote from the testimony of Mr. Blount:

The first we knew that they would not be ready was the application by Judge Paquet for a postponement of the case to Thursday. I objected very strenuously. I had tried the same issues eleven times. I called the court's attention to the fact that my knowledge of the witnesses and the issues led me to believe that 90 per cent of the witnesses were in half-hour call of the court room; there was no reason for delay. The court took that view, would not call it then, but would call it Monday, unless there was an application for a continuance in accordance with the rule.

That night, Saturday, after the court had refused to postpone the case, Davis, Belden, and Paquet, attorneys for the plaintiff, Florida McGuire, met together in a store of one of their clients, and there discussed the question of suing Judge Swayne and decided to do so. Belden admits he was present at this meeting, though the majority report says, page 8, "The papers were taken to Simeon Belden, into his hotel, where he was ill, and he signed them." The following are the facts as sworn to by Belden:

A. I was at the Park Hotel a short time, and they sent for me to come down to Judge Paquet.

Q. Where was he?—A. At Mr. Pryor's store, I think; I went there and signed the papers and left. It was a suit against Judge Swayne for the recovery of that property.

The suit was commenced after 8 o'clock at night in the circuit court of Escambia County, Fla., after the clerk had gone home, and the statement was made to him that the writ must be served that night at all hazards. After the writ was issued the sheriff was hunted up and instructed to serve Judge Swayne with it that evening. These attorneys also, in carrying out their scheme, wrote an article for the paper, to be published next morning—Sunday—stating that the suit had been brought and the object of it, and procured its publication.

The majority in their report say that they did not procure its publication, but the evidence is positive that they did. The suit was won in ejectment to recover from Judge Swayne block 91 and mesne profits amounting to \$1,000, and all three of these parties well knew that Judge Swayne had never owned the land and had never been in the possession of it. Judge Belden claimed that the land was Lydia C. Swayne's, and Mr. Davis, in his petition for a writ of habeas corpus, stated the same fact. It was open, unimproved land. The action was not commenced in good faith with the intention of prosecuting it, and

nothing more was ever done with it. If the parties had been acting in good faith they certainly would have sued Mrs. Swayne, whom they claimed to be the owner of the land, and not Judge Swayne, who had never negotiated for it. When forced to state what caused them to act in this great haste, they gave as an excuse that they were afraid that Judge Swayne would leave before they could get service upon him. Monday forenoon Judge Blount talked the matter over with Judge Swayne, and he, acting on his own suggestion, prepared the papers upon which Davis and Belden were found guilty of contempt.

At the trial Judge Swayne said, so states Mr. Blount in his evidence, that he had no doubt that the people in the city had a right to sue him, but the circumstances showed it to be an attempt to influence a United States judge in his duty by putting him where he would have to declare himself disqualified, and knew he had so announced, and had no reason to believe so. Before Davis and Belden were cited for contempt they dismissed the Florida McGuire suit. They probably heard contempt proceedings were being started. They claim now that Saturday evening they had decided to dismiss the case pending before Judge Swayne. But if this is a material fact in the case, it could only have been such by calling Judge Swayne's attention to it at the time of the contempt proceedings, which they did not do. As far as the court knew, no intention of that kind ever existed. It was not sworn to, was not put in their answer, and was mentioned in no way when it ought to have been, and it seems rather late in the day to make that claim now.

Mr. Davis claims that he was not retained in the Florida McGuire suit until Sunday, after the suit against Judge Swayne had been commenced, and the majority in their report say that "E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned, on Saturday, November 9, at 6 o'clock." We believe that Davis was retained and was connected with the suit before Judge Swayne was sued, and had been for some time, and the evidence clearly establishes that fact beyond all doubt. J. C. Keyser was interested in the suit on behalf of plaintiff; in fact, he was one of the plaintiffs, though his name did not appear of record. He said, when asked what attorney asked Judge Swayne to recuse himself, "I think Mr. Davis and General Belden."

On page 250, Mr. Marsh, the clerk of the court, says:

I don't think any precepices had been gotten out. I had told Mr. Davis I would wait as late as he desired to get them out. He did not seek any precepices.

Q. Was Mr. Davis in the case, then, that Saturday afternoon?—A. Yes.

On page 278 Mr. Belden says:

After receiving the telegram from Judge Pardee, Mr. Davis was to make up the record in the case, so if there was error we could appeal it—take it up by writ of error. We intended to proceed, but the judge calling the case Saturday evening, 9th of November, refusing to allow us time to get our witnesses before the court, we were deprived of the facilities of making up such a record as Judge Pardee contemplated we should make, and we had to discontinue it.

Here is a positive statement by Mr. Belden that Davis was in the case before Swayne was sued:

Mr. Paquet says, page 423, that—

Davis was brought into the suit on Saturday, November 9, before Judge Swayne was sued; that he was one of the advising counsel of the clients, that he was associated, and asked if I had any objections; during the week he was in court very frequently, advising with some of the plaintiffs.

Davis also admits in his petition for a writ of habeas corpus that he was an attorney for plaintiffs, a copy of which writ is as follows:

United States circuit court, fifth judicial circuit, ex parte Elza T. Davis, habeas corpus.

The relator in this case, Elza T. Davis, comes into court and excepts to the consideration of what is filed herein as a certificate of Charles Swayne, judge, without date, because it contains charges and statements amounting to charges of contempt against this defendant not contained in motion and order charging contempt, and which statements and charges he has never been ordered to answer, or in any way given a chance of reply to.

Should this exception be overruled then defendant, with permission of court first had and for which he prays, says:

That on the 5th day of November, 1901, in open court of the United States circuit court of the northern district of Florida, Charles Swayne, United States district judge presiding, in answer to a letter from this defendant and Louis P. Paquet, of counsel for Mrs. Florida McGuire, of date October 4, 1901, to said judge at Guyencourt, in the State of Delaware, requesting him to recuse himself on the trial of the suit of Mrs. Florida McGuire *v.* Pensacola City Company et al., among other reasons, because of his interest in the said suit pending before him, refused to recuse himself, and went on to state from the bench in open court that a relative of his had purchased a part of the said land in litigation before him in said suit of Mrs. Florida McGuire, that the deeds had been sent north to him (the judge), and that he had returned them.

Second. In the second paragraph of the judge's certificate he mentions the desire of his wife to purchase block 91, being the block that he is sued for in the State court, but he has not stated as fully as he did in open court on the 11th of this month the facts in reference to said purchase. On said date, 11th November, 1901, said judge stated in the hearing of all present, this relator and Simeon Beldin, also counsel for Mrs. McGuire being present, that the relative referred to in his statement from the bench in open court on the 5th of November "is his wife;" that she purchased said block of ground on the Rivas tract with her own money; that finding that it was on the "Rivas" tract in litigation before him he returned the deed. At no time has he ever stated or furnished us any proof that said sale had been resolved at his request or by his wife's vendor, or that his wife, who purchased the same with her own money, desired it canceled.

Third. In paragraph 5 in said judge's certificate the facts in reference to trial of suit of Florida McGuire *v.* Pensacola City Company et al. the material facts are suppressed. They are as follows: The criminal term of said court ended Saturday, late in the evening of November 9, when said judge announced that he would take up the trial of the McGuire case the following Monday at 10 o'clock a. m. The case had never been fixed for a day to which we could have our witnesses summoned, and we therefore asked the court to allow us until the following Thursday to get our evidence in the case. The judge seemed willing, but counsel for defendant, W. A. Blount, and who is also one of the defendants in the McGuire suit, which is an ejectment suit, with much warmth insisted on the trial on Monday, November 11, to which the judge acquiesced.

This was Saturday, 9th, after office hours; next day being Sunday, no summons for witnesses could issue, thus having only from the opening of clerk's office at 9 o'clock Monday, 11th, until 10 o'clock, opening of court (one hour) to issue summons and serve more than fifty witnesses, which was physically impossible. While we were satisfied that said judge is interested in the result of said suit, still he refused to recuse himself, our intention was to try the case before him had he fixed a day for trial so that we could have secured our evidence thereto and made our record, but when thus arbitrarily cut off therefrom our duty to our clients was to discontinue the suit to prove their rights, which discontinuance of said suit, upon motion, was ordered by Judge Swayne at 10 o'clock on the morning of November 11, 1901, and after which the motion or rule for contempt was inaugurated by W. A. Blount, attorney, and a defendant.

Fourth. In paragraph 7 of said certificate said judge refers to consultation with some members of the bar, but does not name them, but finally selects W. A. Blount to call the matter of contempt before the court, assisted by W. Fisher, of whom are defendants in the suit of Mrs. McGuire *v.* Pensacola City Company et al., and trespassers on a large portion of the land in question. Now, while there is no act charged against us which under the law we were not entitled to do, still we make reply to statements and certificates, to place it beyond doubt, that we have acted strictly within the line of our sworn duty to our clients, which we have a right to do

under the law, and there can be no contempt, and no contempt was ever intended or thought of, in suing Charles Swayne in a State court, and especially is it so demonstrated by a discontinuance of suit in Federal court.

## OATH.

Elza T. Davis, being duly sworn, deposes and says that all the facts and allegations recited in the foregoing exception and statement are true and correct, to the best of his knowledge and belief.

E. T. DAVIS.

Sworn to and subscribed before me this 23d of November, 1901, at the city of New Orleans, La.

[SEAL.]

BENJAMIN ORY,

*Notary Public for the Parish of Orleans, La.*

(Indorsed:) United States circuit court, fifth judicial circuit, northern district of Florida, ex parte Elza T. Davis applying for writ of habeas corpus. Exceptions and statement of relator received and filed November 23, 1901. H. J. Carter, clerk. Filed December 10, 1901. F. W. Marsh, clerk.

NORTHERN DISTRICT OF FLORIDA, ss:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of a certain paper filed in the matter of the application of E. T. Davis for a writ of habeas corpus, in the said circuit court, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 24th day of February, A. D. 1904.

F. W. MARSH, *Clerk.*

A petition in the same language was prepared, sworn to, and filed by Mr. Belden.

There can be no doubt, from this positive evidence, that Mr. Davis was an attorney in the case when he commenced the action against Judge Swayne, and that he knew Judge Swayne had no interest in the land can not be doubted, and the finding to the contrary by the majority is not supported by a preponderance of evidence.

The following is the record in the case of Simeon Belden, and the record of Mr. Davis is just the same.

## THE UNITED STATES AGAINST SIMEON BELDEN.

Be it remembered that on the 11th day of November, A. D. 1901, at a term of the United States circuit court in and for the northern district of Florida, the following motion was made in open court and entered of record, to wit:

And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91, in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition, that he or some member of his family were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida

McGuire, involving the title to the said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely occupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire v. Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the instituting of the said suit against the judge, cognizant of all the facts herein set forth.

W. A. BLOUNT,  
*An Attorney of this Court.*

November 11, 1901.

And afterwards, and on the same day, to wit, on the 11th day of November, A. D. 1901, the following order was made and entered of record in the said cause, to wit:

In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

Upon reading the motion of W. A. Blount, an attorney and counselor of this court, for a citation to Simeon Belden, Louis Paquet, and E. T. Davis, why they should be committed for contempt, for the reason set forth in said motion, and after consideration of the same, it is ordered:

That the said Simeon Belden, Louis Paquet, and E. T. Davis be, and they are hereby, cited to appear before me, Charles Swayne, judge of this court, at 10 o'clock, on Tuesday, November 12, 1901, to show cause why they should not be punished for contempt upon the grounds and for the reasons set forth in the said motion, which is now of record in the records of said court, and a copy of which is to be attached by the clerk to the copy of this order served upon the said Simeon Belden, Louis Paquet, and E. T. Davis.

Ordered in open court this 11th day of November, A. D. 1901.

CHAS. SWAYNE, *Judge.*

At the time of the presentation of the said motion by the said W. A. Blount, in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract, mentioned in said motion, to wit:

On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept, nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Company et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

W. A. Blount, an attorney and counselor at law of this court and practicing therein, and as amicus curiæ, moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they should not be punished for contempt of this court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida

McGuire was plaintiff and the Pensacola City Company et al. were defendants upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Florida McGuire v. Pensacola City Company et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said counselors, Simeon Belden and Louis Paquet, that the allegation of the said petition that he, or some member of his family, were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to the said tract was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said case of *Florida McGuire v. Pensacola City Company et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

(Indorsements:) In re contempt proceedings Simeon Belden, E. T. Davis, and Louis Paquet. Filed November 11, 1901. F. W. Marsh, clerk.

(Marshal's return:) United States of America, northern district of Florida, ss. I hereby certify that I served the annexed citation on the therein-named Simeon Belden and E. T. Davis, the within-named Louis Paquet not found, being outside the northern district of Florida, by handing to and leaving a true and correct copy thereof with Simeon Belden and E. T. Davis personally, at Pensacola, Escambia County, in said district, on the 11th day of November, A. D. 1901. T. F. McGourin, United States marshal. By R. P. Wharton, deputy.

And thereafter, to wit, on the 12th day of November, A. D. 1901, the following answer was made and entered in the said cause by the said defendants therein, to wit:

Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of the contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished for contempt, showeth:

First. That the general grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of *Florida McGuire v. Pensacola City Company, et al.* was made.

Third: To the second paragraph showeth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe there is in existence a deed to Mrs. Charles Swayne unanceled, and that they have no knowledge of its repudiation, and as the negotiations for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Fourth. That E. T. Davis, for himself, showeth that this court had no jurisdiction

over him in said matter of Florida McGuire v. Pensacola City Company et al. until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

SIMEON BELDEN.  
E. T. DAVIS.

(Indorsements:) Before the Hon. Charles Swayne, judge of the circuit court of the United States for the northern district of Florida, at Pensacola. In re contempt against Simeon Belden, Louis Paquet, and E. T. Davis. Filed November 12, 1901. F. W. Marsh, clerk.

And afterwards, to wit, on the same day, November 12, 1901, the following proceedings were had in open court:

The United States v. Simeon Belden, No. 249, contempt of court.

This cause coming on to be heard on the motion of W. A. Blount, attorney and consellor at law of this court, as amicus curiae, to cite the said Simeon Belden to show cause why he should not be punished for contempt of this court for the reasons in said motion distinctly alleged, and on the rule granted on said motion, dated November 11, 1901, a certified copy of which has been duly served on said Simeon Belden, and on the answer to said rule on this day read and filed in open court by and on behalf of the said Simeon Belden; and after hearing the testimony of the witnesses introduced by the United States and by the said defendant, and after duly considering the same:

*It is now ordered and adjudged*, That the said Simeon Belden is guilty in manner and form as in said motion and rule set forth of the facts therein alleged; and it is further adjudged that the same constitutes a substantial contempt of the dignity and good order of this court.

Wherefore it is ordered and adjudged that the said Simeon Belden do pay a fine or penalty to the United States Government of one hundred dollars, and that he be taken hence to the county jail of Escambia County, Fla., at Pensacola, there confined for and during the term and period of ten days from the 12th day of November, 1901, and that he stand committed until the terms of this sentence be complied with or until he be discharged by due course of law.

*Ordered and done* this 12th day of November, A. D. 1901.

CHAS. SWAYNE, *Judge*.

At the hearing witnesses were examined, but their testimony is not furnished us and all we have is a short statement by Mr. Blount of what took place.

In the absence of any of the testimony taken at the hearing we have no right to assume that the allegations of the statement filed charging the contempt were not proven, or that the evidence was not sufficient to warrant the finding of the court that a contempt had been committed. On the contrary, the presumption is that they were and that the evidence was sufficient to warrant and support the judgment of contempt entered by the court.

Mr. Belden and Mr. Davis were attorneys of Judge Swayne's court, and were both attorneys in the case of Florida v. McGuire, pending in his court. When they requested the judge to recuse himself because he owned a part of the property involved in the litigation they were informed by the judge that he owned no interest whatever in this land and they must have known that he did not. The slightest inquiry on their part would have disclosed this fact, and they admit if anyone owned an interest it was Mrs. Swayne. On Saturday the court informed them that on Monday he would proceed with the case; they desired a postponement until Thursday. A jury was in attendance and there was no reason why the case should be postponed for that length of time. The witnesses were all within a half an hour call of the court-house, and the parties had all week in which to get ready.

The court said he would proceed with the trial Monday morning

unless they made a motion for continuance under the rule, and they said they would do so, and at that time they had in their mind what they afterwards did. Now, what followed? Paquet, Davis, and Belden in the evening met in the grocery store of one of the plaintiffs and consulted what course to take. It was decided to bring an action against Judge Swayne individually, to oust him from a portion of the land embraced within this litigation and for \$1,000 mesne profits, when they all well knew, and must have known, that he had never been in the possession of the land and never owned it. They went to the clerk's office, got him to go to the court-house and file the suit. Then the sheriff was found and he was instructed to serve the papers at all hazards that night. They were not satisfied with this, but they wanted to give the suit publicity. They wanted to advertise to the world that Judge Swayne was intending to try the question of title to property in which he owned an interest, and, following this out, prepared a statement of the case and gave it to the morning paper to be published, which was done.

The only excuse they have yet been able to give for this unseemly haste is that they wanted Swayne served before he left the State, a most flimsy and unreasonable excuse. There is only one conclusion that a fair and reasonable mind can draw from all of these facts, and that is, they wanted, desired, and expected, by bringing a fictitious suit, to force Judge Swayne to recuse himself and continue the action. They wanted to so embarrass him that though not disqualified he would refuse to hear the action, and if this conclusion is true there can be no doubt, as attorneys and officers of the court, they were guilty of gross misbehavior, and clearly were guilty of contempt within the meaning of section 725 of the Revised Statutes.

It is true that Judge Swayne, for this contempt, imposed both fine and imprisonment, but this error of law was corrected by Judge Pardee, and surely it can afford no reason for impeachment. Belder and Davis say his manner in passing judgment was harsh and abusive, but all Davis can remember that was said is that the court charged them with ignorance and that their actions were a stench in the nostrils of the community.

This last remark must be very doubtful. But if they were guilty of what they stood charged, if they had collusively and in bad faith commenced this action to interfere with the trial of the case by Judge Swayne and prevent the defendants from securing a speedy trial before the judge of the court, then they were guilty of contempt, and this contempt was not purged by coming in later and dismissing the suit or by the judge using toward them harsh and abusive language.

Mr. Davis sued out a writ of habeas corpus before Judge Pardee. At the hearing Judges McCormick and Shelby sat with him and concurred in his opinion.

The court says:

The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and, as such, one of the officers of the court, within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent, or if it had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court.

The writ of habeas corpus was discharged. There is no doubt that this suit was brought with no intention to ever try it. In fact it was

dropped. And there can be no other conclusion but that the commencement of this action could have no other effect than to embarrass and obstruct the administration of justice. The fact that the suit was commenced in the State court can make no difference, because its effect, as intended, was to embarrass Judge Swayne in trying the action pending before him in the United States court.

Plaintiffs dismissed the suit, but in a few months commenced it again in Judge Swayne's court, which fact shows that when they dismissed it first they had no intention to abandon it.

But the majority find fault and lay great stress upon the fact, that, in his judgment, finding Belden and Davis guilty of contempt, that he does not, in the language of the statute, find them guilty of misbehavior as officers of his court, but adjudged that their conduct constituted a substantial contempt of the dignity and good order of the court. And is it not true that a misbehavior of an attorney is a contempt of the dignity and good order of the court?

To embarrass the court in the administration of justice surely must be a contempt of the orderly conduct of the court in its business.

In discussing Judge Swayne's action in passing judgment of contempt against Belden and Davis, the majority show considerable feeling. The committee charge that he was "guilty of gross abuse of judicial power and misbehavior in office," and that knowing the law, and knowing that no contempt had been committed, he, with a bad and evil intent, declared them guilty. This is making a very broad accusation when we consider all of the facts and surrounding circumstances and the law controlling the same.

The committee say that Judge Swayne "knew that proceedings for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt" and "knew that issuing of proofs without filing was erroneous," and "knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount."

Now, it is to be hoped that the House will not vote to impeach any one for a mistake of law or ignorance of it, for if such a precedent is established none of us will be safe. It might be possible that Judge Swayne did not know the law as stated above, and it might be possible that such is not the law. It is true that the committee cite one California and two Indiana cases, but in California the Code of Civil Procedure provides that a contempt committed out of the presence of the court can only be called to its attention by affidavit, and no doubt Indiana has a similar statute.

There is no settled practice in contempt proceedings (*United States v. Sweeney*, 95 Fed., 446). In volume 9, page 38, of the *Cyclopedia of Law and Procedure* we find the law stated as follows:

As a rule the proceeding to punish for contempt committed out of the presence of the court should be instituted by a *statement* or some *writing* or affidavit presented to the court setting forth the facts.

Numerous authorities from all over the United States are cited to support this proposition of law.

And it has been held that in such a case the court may even act of its own motion and make the accusation. (24 W. Va., 416; 81 Mich., 592; 27 How. Prac., 14.)

It might have been possible that Judge Swayne did not know of the

decision in California or the statutes of Indiana, but followed the rule as stated above.

It is claimed that Davis and Belden purged themselves of contempt. The law on this question has already been given, and it is not necessary to report it again. The affidavit or answers filed by Davis and Belden were not broad enough under the rule, and Belden said, when asked a question at the hearing, that he did not purge himself and would not do it. But look at the matter seriously from the facts and circumstances that existed at the time judgment was pronounced.

The majority report proceeded on the theory that the action was commenced in good faith and upon substantial grounds; that having commenced the action in the State court no contempt could have been committed against the Federal court. If attorneys, who are officers of the Federal court, to embarrass the judge of that court in the administration of justice, commence an unmeritorious action in the State court against him, is it not contempt? Is there any law by which the place in which the contempt has been committed excuses it? Was the action brought in good faith? No; for this reason: Belden, Davis, and Paquet are all good lawyers; they knew that Mrs. Swayne was buying the land; they knew that the deed had been made in her favor, and therefore they knew that if the title had ever left Edgar it vested in her. Being lawyers, they must have known that if the title was in her no judgment against Judge Swayne individually would divest her of that title, and therefore such a judgment would avail their clients nothing. If they were acting in good faith for the purpose of trying title to land, knowing all of the facts just stated, they certainly would have sued Mrs. Swayne as the owner of the land and joined her husband with her.

Belden says:

It was so positive she had purchased it.

Q. Did you have any reason to suppose Judge Swayne had exercised any acts of ownership?—A. No.

Q. Did you have any such information before you brought the suit?—A. I did not. When we learned that suit was pending in the county judge's court against Edgar that revealed the fact that sale had been made to Mrs. Lydia C. Swayne.

Commencing an action against Judge Swayne *alone*, after he had stated that he would proceed with the trial of the case unless they made a motion to continue it under the rule, and they having stated they would do so, is very suspicious, and is made more so when they never did anything further with the suit. There can be no doubt that they were acting in bad faith. There can be no doubt of their motives and what they sought to accomplish. Why was it necessary to proceed with such haste? Why was it necessary to find the clerk and sheriff that Saturday night and cause one to file the papers and the other to serve them? If they intended to dismiss the suit Monday morning, as they now claim, why did they not wait until Monday and commence the suit after the other action had been dismissed? Why was it necessary to prepare an article for the paper and procure its publication that night?

There can only be one answer to all these questions, one explanation of their conduct—that it was their intention to carry out the statement made to the court that they would show grounds for a continuance Monday morning. There can be no other sane reason; no other reason can explain their conduct. All of this was done to embarrass the court in the trial of the case pending before him. They were seek-

ing to force him to recuse himself, or, if he persisted in trying the case, to do so in the face of the charge, made public by the press, that he was, as judge, trying title to a piece of land in which he owned an interest. Where is the court in the land that would permit such conduct as this to pass unnoticed and unchallenged? Did not Judge Swayne, under all these circumstances, have the right to inquire into this matter and punish the parties if guilty? And having committed the contempt, could they purge themselves by dismissing the action? The contempt was committed Saturday evening, for, if they could have been punished then, and can it be seriously urged now that dismissing the action, perhaps because of what they had done, that they stood innocent of any wrong when their trial took place? Such a contention can have no support in reason. The judge did his duty as he saw it, and the facts certainly warranted his belief. This seems to be a very slim charge on which to impeach a Federal judge. There were certainly good grounds for his action, and he had the right, from all the peculiar facts and circumstances, to believe a contempt had been committed.

After the hearing was closed the following papers filed in the contempt proceedings of Belden and Davis were received, and the same are hereby embodied in this report.

The following is a copy of the newspaper article which it is alleged Belden, Davis, and Paquet prepared and procured to be published:

JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," in the eastern portion of the city, near Bayou Texas, by the filing of a praecipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which as part of the property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

The summons was placed in the hands of Sheriff Smith late last night for service. Filed November 12, 1901.

F. W. MARSH, *Clerk.*

The following is a copy of a statement filed by Louis P. Paquet in Judge Swayne's court, and connected with the commencement of the action against Judge Swayne by himself, Belden, and Davis in the State court of Florida, referred to in the foregoing newspaper article:

United States circuit court, northern district of Florida, at Pensacola.--In the matter of contempt proceedings against Louis P. Paquet.

Now comes Louis P. Paquet, respondent in the above-entitled matter, and says: That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

LOUIS P. PAQUET, *Respondent.*

Filed March 31, 1902.

F. W. MARSH, *Clerk.*

The contempt proceedings against Mr. Paquet were dropped.

## HOSKINS CASE.

Fourth. The majority contend that Judge Swayne should be impeached because he refused to proceed to trial in the W. H. Hoskins bankruptcy proceeding, when the attorneys for the petitioners were asking for a continuance for two weeks in which to secure certain evidence.

I find the facts of this case to be as follows:

On February 10, 1902, an involuntary petition in bankruptcy was filed in Judge Swayne's court against W. H. Hoskins.

On February 24, B. S. Liddon appeared in said matter on behalf of said Hoskins and demurred to the petition. On the 24th of February, John M. Calhoun was appointed receiver and on the 25th gave the usual bond, which was approved on the 26th.

On the 27th of February the court sustained the demurrer to the petition, one of the grounds being that the petition was not verified as required by law, and also that the petition did not set forth if the petitioning creditors were firms, partnerships, or corporations, and gave petitioners ten days in which to amend their petition. After that, and in fact before this date, B. S. Liddon, the bankrupt's attorney, and who appears in this proceeding as the chief counsel for the prosecution, commenced industriously to get creditors to withdraw their petitions and claims, and, it is alleged, made misrepresentations and threats to secure affidavits from petitioners and to cause them to withdraw their claims, so as to defeat the bankrupt proceedings pending before the court, which facts are set forth in affidavits filed in the cause by J. W. Calhoun and J. Hartsfield; and in the case of Hartsfield it is stated that he signed the affidavit through fear of Hoskins and one Justice, and that notwithstanding the petition he signed he desires the proceedings to go forward.

The court on motion extended the time to file an amended petition to March 9, and on March 22 W. H. Hoskins filed his answer thereto. On March 20, Hoskins having given a bond in the sum of \$5,000, had his property all turned over to him by the receiver, and he took the possession thereof and continued his business. On the 5th day of March, 1902, Charles D. Hoskins, son of the said alleged bankrupt, at the suggestion of his father to get a certain book, made an assault upon one J. N. Richardson, the deputy of the receiver; pulled him out of his buggy, beat him violently, causing the said Richardson, who was an old man, to remain in his bed for some time, and took from him the book; that this book was a book taken by the receiver from the place where the bankrupt Hoskins carried on his business, and which it was alleged by the receiver, upon information and belief, belonged to the alleged bankrupt and contained his accounts. For this assault upon Mr. Richardson, an officer of the court, Judge Swayne issued a rule for C. D. Hoskins to appear before the court and show cause why he should not be punished for contempt. Hoskins concealed himself, was never served and never appeared before the court and never surrendered the book.

On March 24 or 25 the cause was set down for trial to take place on the 31st. Mr. Hoskins contended that he was solvent and could meet all his obligations and was ready and willing to do so, which was a fact. But he, through his attorney, refused to pay one cent of costs, and

here is where all the trouble arose. Had he been willing to arrange for the payment of the costs everything could have been settled and dismissed at once without any trial. He never requested the court to fix the amount of costs, because he refused to pay any at all.

Considerable cost had been incurred, the United States marshal alone having a bill of \$304 for taking care of property and feeding stock. On the morning of March 31 the attorneys for petitioners requested the court to continue the case for two weeks, as they could not safely proceed to trial without the book, which they were informed and believed contained material evidence, and which C. D. Hoskins had by force and violence taken from the custody of the receiver, and which he refused to return.

This motion was resisted by the bankrupt, he contending that he was ready for trial, that the book was not his and that he could prove by witnesses present that the book was not his. He also claimed that he had no control over the book. Judge Swayne, notwithstanding this offer, refused to hear the evidence; said he would not believe his brother under the circumstances, and insisted he would continue the case until the book was produced. The majority condemn Judge Swayne for this conduct and contend that he should be impeached for it. The case had only been at issue five or six days; all of the property was then in the possession of the bankrupt and not under expense. He had full control of his business. Also many things had come to the attention of the court in this matter besides taking the book that might well cause him to proceed with caution, to doubt the honesty of the bankrupt, and to believe that the book contained material matters and which the court should know.

Petitioning creditors had been requested to withdraw their claims, some had been threatened, and the deputy of the receiver had been assaulted in a most brutal manner and a book taken from his possession which it was alleged contained the accounts of the bankrupt. Under all of these circumstances it can not be said the court did not act with due discretion when the case was continued.

The right to continue a case rests always in the discretion of the judge. He did not deny Hoskins a trial; he did no act which injured him in his rights. Hoskins already was in the possession of his property, and the judge was ready to try the case and did offer to try it in June, but the parties had stipulated to try it in the following November, showing there was no hurry about a trial. It never was tried, but was settled, the bankrupt agreeing to pay part of the costs, and in fact the question of costs was all there was in the case and all that kept it from being settled in March.

The majority lay great stress on the fact that some lawyers had entered into a conspiracy to ruin Hoskins and plunder his estate. If this should be true the court was not a party to it, and it was never brought to his notice. The judge acted absolutely in good faith, and there is no evidence whatever that he lent himself to any conspiracy.

The attorneys on both sides are not to be commended for their conduct in this matter, and surely what they did or what they desired to do can not be used as a basis to impeach the judge, especially when he was ignorant of it all. He sustained the demurrer; he released the property; he was willing to try the case and came to Pensacola in June to do so, and did not do so from the fact that these parties, who

were so desirous for a speedy trial to the end that they would not be ruined in their property and credit, had entered into a written stipulation that the case should be tried at the November term.

This is the Hoskins's case, as it appears from the record, and for the judge's conduct in this case this committee is asked to impeach him. Still, if he is to be impeached, the grounds for doing so in this particular case are just as good and substantial as in any other instance presented by the prosecutors of the resolution. Liddon, who is the chief prosecutor in this action, was trying to force matters and was also interfering with the clients of the creditor's attorneys. The creditors wanted a book produced in court that Hoskins told his son to take from the receiver. The books must have been in Hoskins's control, and were the best evidence of what they contained. Had the books been produced for the inspection of the court there would have been no trouble or delay, and this, no doubt, Hoskins could have done. Under the circumstances the court could well have granted the continuance asked, and there was no abuse of discretion in doing so. Hoskins could not have been injured by reason of this continuance, because he had all of his property in his possession, was carrying on his business, and was suffering no loss. In fact, he agreed to postpone the trial until the following November, notwithstanding that the court was willing to try it earlier, which alone is a strong reason that no injury was done to Hoskins.

#### TUNISON CASE.

They say Judge Swayne appointed one B. C. Tunison a United States commissioner after Tunison had been impeached in his court. Tunison was a commissioner in 1892 or 1893. He claimed to have been shot by one Humphreys and caused his arrest. Humphreys was tried in 1892 or 1893, and the trial was a bitter one. Tunison was impeached at that time. Tunison is one of the ablest lawyers in Florida and is so conceded. He discharged the duties as United States commissioner well and without complaint. He had the very best citizens of Pensacola for his clients and as his friends.

In 1897 the entire bar of Pensacola indorsed him for United States district attorney for the northern district of Florida. At the same time many of the best and most prominent citizens wrote letters in his behalf. After this indorsement by the bar in 1897 his term expired and he was reappointed by Judge Swayne. Most of those who impeached him were his enemies. His friends said his reputation as a citizen was good. His enemies spoke ill of him, and his friends spoke well of him, but no charge was ever made against him for neglect or wrongdoing in his official duties, and he has been commended for the able and efficient manner in which he discharged them. But it is said that it is reported in Florida that Tunison has and exercises an undue influence over the court, so that, as generally understood, to win in Judge Swayne's court you must employ Tunison.

There is no evidence that this rumor ever came to the attention of Judge Swayne, or that it is well founded. There is no instance shown wherein Judge Swayne ever granted any favor to Tunison. There is nothing to prove that at any time, or in any proceeding, Judge Swayne was corruptly or otherwise influenced by Tunison. But this

charge caused an examination of the records to be made, and it appeared therefrom that out of 18 cases tried by Mr. Tunison before Judge Swayne he lost 12. And to further show that this charge is untrue—that is, that Tunison has influence with the court—I only have to call the attention of the committee to the instance where Tunison was employed to see Judge Swayne and induce him to dismiss the charge for contempt against C. D. Hoskins for assaulting and cruelly beating an officer of the court, and the Judge's refusal to do so until Hoskins, who had been evading the officers of the law, should present himself before the court.

It is not an uncommon thing to hear that an attorney has influence with a judge, and some go so far as to state that it is a corrupt influence; but never before now did I hear it seriously contended that because of such a rumor, of which the judge had no knowledge and which is unfounded in fact, the judge should be impeached and removed from office.

This ground for impeachment demonstrates one thing, and that is the animus behind this entire proceeding is to impeach Judge Swayne at any hazards. A number of witnesses, many enemies of the court, or in the pay of O'Neal, go on the witness stand and swear to a rumor which they have heard, to wit, that Tunison exercises an undue influence over Judge Swayne, and without any evidence showing such to be the fact, without the showing of a single instance in which the court ever favored Tunison or decided a case in his favor wrongfully, without showing that the Judge ever acted corruptly or ever knew of such rumor, the majority of the committee present this as a ground for impeachment, and as a companion piece to this ground present another equally as unfounded in the contempt proceedings instituted against C. D. Hoskins.

#### CASE OF C. D. HOSKINS.

When the members of the subcommittee met to disagree, it was then agreed by us all that there was nothing in the charges concerning the contempt proceedings preferred against C. D. Hoskins which would warrant any impeachment, but I see that Mr. Palmer has now embraced the same within his report, and I am glad that he has, as it will show the members of the House the character of charges preferred and how unwarranted they are.

On the 5th day of March, 1902, C. D. Hoskins, a young man, assaulted a Mr. Richardson, who was a deputy of the receiver appointed in the Hoskins bankruptcy proceeding, dragged him out of his buggy, brutally beat him, and took from him a certain book or ledger, which it was alleged belonged to said bankrupt and contained accounts of his business transactions. Young Hoskins claimed that the book belonged to him. Mr. Richardson was an old man, and the beating was so severe that he was confined, because thereof, to his bed for several weeks.

The matter was brought to the attention of Judge Swayne by an affidavit filed for the purpose of commencing contempt proceedings against young Hoskins. The affidavit was in proper form and stated sufficient facts to justify the court in granting a rule for the attachment of young Hoskins to show cause why he should not be punished

for contempt. Young Hoskins was never served. He kept in hiding. An attempt was made to get the court to dismiss the matter or to impose a fine, but Judge Swayne, considering the character of the assault and the fact that Hoskins had evaded the officers of the court, refused to do anything until Hoskins appeared in court and was examined. Hoskins was in the habit of becoming intoxicated, and one day he left for Pensacola with \$450 on his person, got to drinking hard, and was found dead, it being claimed that he took laudanum to commit suicide. Now it is claimed that he took the poison rather than face Judge Swayne. A more unreasonable and unfounded statement never was made. He was not under arrest. This was a long time after the contempt had been committed. Judge Swayne had made no threats against him, and had done no act to oppress him. All he ever did was to issue a rule upon an affidavit which made it his duty to do so. He did what any judge in the land would have done when it was brought to his notice that an officer of his court, while in the discharge of his official duties, had been assaulted, brutally beaten, and property in the custody of the law taken from him by force.

I am glad that the majority have made Young Hoskins's case a ground for impeachment, because it emphasizes the effort that is being made to unjustly ruin a man who has faithfully discharged his judicial duties. He has been guilty of wrongdoing, oppression, and tyranny because he found one man guilty of contempt for stabbing an officer of his court and interfering with him in the discharge of his duties and for issuing an order for the arrest of another who brutally assaulted another officer and took from him by force property in his custody as an officer of the court. No judge was ever before in this country maligned, abused, slandered, and illtreated as Judge Swayne has been, and this maliciously, too. It has been reported of him by his enemies, and caused to be published in the press throughout the land, that he is a corrupt judge, ignorant and incompetent; that he has managed bankrupt estates pending in his court in such a manner as to absorb the entire estate in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is, in effect, legalized robbery and a stench in the nostrils of all good people.

The foregoing language first found form in a resolution lobbied by the said O'Neal through the Florida legislature. It was again stated on the floor of the House of Representatives when this resolution was offered, and it has been published throughout the land in the public press, and there is not a scintilla of truth in any part of it, or no fact proven to warrant even the suspicion of such grave and serious charges. A subcommittee spent ten days in Florida investigating these charges, and the result of their labors is now printed and on file with the documents of this House. Every opportunity was given to Judge Swayne's accusers to prove their charges. Every witness they wanted was subpoenaed, hearsay, irrelevant, and immaterial matters were received in evidence, and no obstacles were put in their way. Five lawyers for the prosecution for some time had been diligently at work, and I submit that not one single bit of proof can be shown where Judge Swayne ever did an act that was corrupt or unbecoming a just and upright judge. So much for the charges of corruption. The record introduced and printed, giving a list of cases tried by him and appealed,

shows that as a judge he has made an excellent record and that he is not incompetent and ignorant.

The fact that Judge Pardee assigned him to sit on the circuit court of appeals and to try cases in different parts of the district for six, seven, and eight months during the year is a good recommendation for his standing as a judge. In fact, no one so far has had the hardihood to come forward and swear that he is an incompetent and ignorant judge, and there is nothing in the record that shows it.

As to the bankruptcy business, there can be no excuse for the slanderous statements made, to wit: That "all cases were managed corruptly, the assets frittered away, no dividends paid, until the matter became so notorious as to be a stench in the nostrils of the people." This is hard language, and, more than this, it is not supported by the evidence.

Out of 175 cases of bankruptcy commenced in his court the prosecutors picked out five or six. They were requested to call the attention of the committee to any wrongs committed in these particular cases, and this they failed to do. Out of 175 cases not one was shown to have been managed as they had charged. On the contrary, the report of the Attorney-General shows that the bankruptcy business before Judge Swayne was managed prudently and well. Every judge has the right to have his honesty and integrity protected. Nothing so weakens the respect for a judge as to charge him with corruption. Nothing should be quicker frowned down by the people than such charges when false. Judge Swayne has for months stood up under these false and malicious reports—and they were malicious when made because they were based on no fact. He is entitled to vindication somewhere. The charges have been preferred in this House, the evidence is on file here, and he should receive his vindication here.

J. N. GILLETT.  
ROBT. M. NEVIN.  
D. S. ALEXANDER.  
GEO. A. PEARRE.

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#### IEWS OF MR. LITTLEFIELD.

I have not had the time to examine carefully the minority views of Mr. Gillett, but I have examined with care the record in this case, and I have no hesitation in saying that in my opinion it does not disclose a state of facts that would justify impeachment proceedings.

C. E. LITTLEFIELD.

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#### IEWS OF MR. PARKER.

In the opinion of the subscriber, proceedings for impeachment of Judge Charles Swayne should not be begun. It is not necessary always to justify his action, or to maintain that his behavior has always been consistent with judicial dignity or the duty that he owes to his district. He has been out of that district a great deal of each year, but since 1901 he has rented a house there, and more lately his wife has purchased, and it can hardly be said that he has not resided there,

within the meaning of this criminal statute, for a period covering all ordinary limitations of criminal prosecutions. Those limitations should govern this case.

It does not appear that his behavior in any of the cases cited by the majority renders him liable to impeachment. He was justifiably severe with O'Neal for getting into a quarrel with an officer of his court about his official action as receiver in bankruptcy and then stabbing him. He was right to be severe when young Hoskins beat the clerk of another such receiver and took from him books claimed by that receiver. He had occasion for righteous indignation against two attorneys of his court, who doubted his word when he denied all interest in a case pending before him, and brought suit against him personally in order publicly to emphasize that doubt. In such a case he should not be censured even if he went to the limit of his jurisdiction to defend the honor of his court.

The adjournment of the proceedings in bankruptcy of the elder Hoskins was intimately connected with the contempt proceedings as to the younger one. There appears to be no substantial proof of the charges of corruption, ignorance, incompetency, and liberate waste of bankruptcy assets, criminal or improper favoritism to certain lawyers, failure to hold terms, improper acceptance of accommodation, indorsements from attorneys or litigants, or the wrongful discharge of convicts. In the opinion of the majority all these charges appear to be without foundation. Whether the conditions that prevail in this district demand some legislative remedy may be a question, which is not here now. In my opinion Judge Swayne is not liable to impeachment.

RICHARD WAYNE PARKER.

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