72D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 2065

# CONDUCT OF JUDGE HAROLD LOUDERBACK

FEBRUARY 17 1933.—Referred to the House Calendar and ordered to be printed

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

## REPORT

[To accompany H. Res. 387]

The Committee on the Judiciary, to whom reported the special committee of five members of the House of Representatives, being members of the Committee on the Judiciary of the House, designated by the chairman of said committee, under authority of H. Res. 239, Seventy-second Congress, to inquire into the official conduct of Harold Louderback, a district judge of the United States for the northern district of California, after consideration, recommends that the following resolution be adopted by the House of Representatives:

*Resolved*, That the evidence submitted on the charges against Hon. Harold Louderback, district judge for the northern district of California, does not warrant the interposition of the constitutional powers of impeachment of the House.

The committee censures the judge for conduct prejudicial to the dignity of the judiciary in appointing incompetent receivers, for the method of selecting receivers, for allowing fees that seem excessive, and for a high degree of indifference to the interest of litigants in receiverships.

# MINORITY VIEWS

We can not concur in the recommendation of the committee, favorably reporting a resolution against the impeachment of Harold Louderback, a judge of the northern district of California. We recommend the impeachment of Harold Louderback and attach hereto five articles of impeachment with notice that at the proper time and in accordance with the rules of the House of Representatives said articles of impeachment will be moved for adoption by the House.

The charges are specified in the five articles of impeachment. A summary of the cases in which the judge was guilty of misconduct follows:

(Page references are to the printed record of the hearing.)

## The Russell-Colvin Case

The Russell-Colvin Co. was a partnership firm of stock brokers in San Francisco. They got into desperate financial straits, and on March 10, 1930, were suspended by the San Francisco Stock Exchange. This precipitated the crisis. After much conference all the parties interested in the operation of the firm, including the stock exchange, determined on filing a petition for equity receivership in Federal court; and a creditor, Garner Olmsted, through his counsel, Thelan & Marrin, began the action. Defendant company consented in their answer to the receivership, provided Addition G. Strong would be allowed to act as receiver. (Rec. p. 36.) Mr. Strong was a public accountant of wide experience and good standing, who had been watching and auditing the Russell-Colvin Co. for several weeks at the instance of the stock exchange, and was intimately acquainted with all the details of the business. (Rec. p. 42.) He reluctantly consented to act after much persuasion by the parties in interest. (Rec. p. 42.)

The petition, when filed, was assigned to Judge Louderback, and on March 11, 1930, he held a hearing in his chambers, attended by attorneys for plantiff, defendant, the stock exchange, and by Mr. Strong, at which time the judge appointed Strong receiver. When he left the judge's chambers to make bond, the judge requested him to come back to see him after he had qualified. Strong presumed it was to discuss the business of the receivership, and as it was 6 p. m. when the bond was made, he thought the judge was gone, and he left to return first thing the next morning for the conference. (Rec. pp. 44–45.) On his way home he stopped to see Mr. McAuliffe of the prominent firm of Heller, Ehrman, White & McAuliffe, who was an expert in the laws governing brokerage firms, and requested him to serve as counsel for the receiver, which he agreed to do.

Strong returned to the judge's chambers that next morning at 9.30 to find the judge greatly displeased because he did not come back the night before, and inquired of him who he had in mind for attorney.

Strong insisted he did not understand he was to return the night before, had no idea the judge would wait because of the lateness of the hour, and advised of his conference with Mr. McAuliffe. Thereupon, the judge displayed great agitation and anger, threw his pencil down on the table and said:

> That is just exactly what I was afraid of. If you had returned last night as I told you, we would not have had this misunderstanding.

He then insisted that Strong appoint John Douglass Short, who was in the employ of Keys & Erskine as attorney, and said he had Short over there the night before to meet him. When Strong refused he reminded him that he, the judge, had power to fix receiver's fees, that they could range from $10,000 to $80,000 in this case, and asked Strong if he realized what a plum he had picked. He further suggested that if Strong did well in this case there would be other receiverships to give that he might be appointed to, but he was making no promises. (Rec. pp. 45, 52, 61.)

Strong left his conference with orders to think it over two or three days and come back, but not to discuss anything with any attorney. He found the conditions so urgent at the company office he returned at 12 that same day for further conference with the judge. He agreed to take Lloyd Ackerman as attorney for the receiver, if McAuliffe was rejected, but the judge asked him to either name Short or resign. (Rec. pp. 46, 47, 71.) Strong still refused, insisting that the order appointing him receiver authorized the receiver forthwith to employ attorneys and counsel. (Rec. p. 47.) The judge said if McAuliffe should be told there would be no fees allowed his firm he would not be so anxious to represent the receiver (Rec. p. 48) that he, the judge, "had many friends to whom he was under obligation and desired to take care of them whenever he could." (Rec. p. 48.) When Strong insisted he wanted capable attorneys and he did not know Short, the judge said any attorney in San Francisco could handle the work, as it took no special skill. (Rec. p. 49.) In none of these conversations did the judge mention any attorney except Short, and would have no other. (Rec. p. 61.) Short was employed by the firm of Keys & Erskine for $200 per month and a division of the business he brought in. (Rec. p. 116.) Strong left this second conference with permission to consult his counsel. (Rec. p. 49.)

Strong was called back to the judge's chambers at noon the next day, March 13, and was again asked by the judge to resign. When he refused, the judge drew a paper out of his desk and said:

> I now hand you a formal notice of discharge as receiver for good cause.

Handing it to him, he said further:

> You understand what this is? You are fired; you are out.

Thereupon he took Strong by the arm, marched him to the door, sent a copy of the notice to the clerk, went back into his chambers and slammed the door behind him. (Rec. pp. 51.)

The judge stated to Attorneys Francis Brown and Max Thelen, just before the above action, that he had mentioned two prominent firms of the San Francisco Bar to Strong as attorneys for him, but never did mention his contention for the appointment of Short, who was the only one he had offered him. (Rec. pp. 81, 83, 147–148.) In the same conversation the judge complained that Strong consulted

McAuliffe contrary to orders (Rec. p. 81), whereas he had permission from the judge to do so. (Rec. p. 49). He further claimed he had been solicited and declined in this same case to appoint a man receiver who was high up in Masonic circles, because he had as his attorneys Shortridge & McEnerny. (Rec. pp. 84, 148); but he did appoint Shortridge in other cases. Senator Shortridge, at whose instance Judge Louderback was appointed, is the father of this attorney.

The evening of March 12, 1931, Judge Louderback was sitting in the lobby of the Fairmont Hotel in San Francisco talking to his most intimate friend, Sam Leake, when he requested Leake, to find him a man who could, according to Lake's testimony, be substituted for Strong as receiver. Leake asked for time to think. Just as they were talking about the matter H. B. Hunter, who also lives at the Fairmont, walked through the lobby, and Leake said "There is the man you should have, if you can get him." Thereupon the judge said "Who is he?" After a brief discussion of him Leake went over to Hunter and offered him the receivership. Hunter asked time to consult his employer, and was given till the next morning to do this. He reported back to Leake that he could take it, and was sent to the judge immediately by Leake. (Rec. pp. 98–99.) The judge reported back to Leake that he had appointed Hunter. (Rec. p. 99.) This is the version of the Hunter appointment as told by Sam Leake. The judge stated to Thelen and Brown that Hunter had been recommended to him by Sidney L. Schwartz, former president of the San Francisco Stock Exchange.

Hunter was appointed the afternoon of March 13, and called John Douglas Short that night at his Woodside home and told him he was to be appointed attorney for him as receiver. Short says this was his first information that he was being considered and that Judge Louderback told him of his interest in it for the first time on March 14, when the judge claimed the name of Short and a number of law firms were suggested by him to Strong who refused them all. (Rec. pp. 127–128.) Short claimed Hunter selected him. (Rec. p. 116.)

For their services as receiver and attorney in this case, Hunter and Short have been allowed fees on account by Judge Louderback in the sums of $40,500 and $50,000, respectively. (Rec. pp. 6, 10.) The total amount of disbursements was $464,491.39. (Rec. p. 10.) When application for fees was made, one Scampini, representing creditors, contested them on the grounds that they were excessive, and a three days' hearing ensued. At noon on the third day a settlement was agreed to by Scampini after the conference between him and the interested parties and the judge. (Rec. pp. 35, 36–38, 39–41.) The estate lost some $4,000 on a mistake by Hunter, and when mention was made of it Scampini interceded for Hunter to ask that he not be charged with it. (Rec. p. 28.) Afterwards, Scampini applied for a fee out of the estate for his services in contesting the fees and De Lancey Smith, attorney for defendant company, states that Short, on behalf of himself and Hunter, requested him to consent to it. But Short denies it. (Rec. p. 134.)

The attorneys for the plaintiff never consented to the fees allowed, but protested them at every opportunity. (Rec. p. 148.) Attorneys for defendant company were advised by the judge's secretary upon their return after noon of the third day of the hearing that agreement on the fees had been reached and the judge had decided the matter.

(Rec. p. 36.) The receiver and his attorney each separately claimed credit for performing practically every service in the record, and the compiling of the lists of items on which each claim for fees is based represents the most laborious effort in the record of administration. (Ex. 6.) When Strong and McAuliffe understood the task was to be theirs, they tentatively agreed that the fees for each of them would be from $10,000 to $15,000. (Rec. p. 52.)

When an effort was made to throw the company into bankruptcy, where the fees would have been fixed by statute, special counsel was employed by Short and Hunter to prevent it; and as a matter of precaution all creditors were contacted and pledged to support Hunter for receiver in bankruptcy in the event the effort succeeded. (Rec. pp. 140–141.)

W. L. Hathaway is the father-in-law of John Douglass Short. He has known Sam Leake intimately since the eighties, and they have both lived at the Fairmont Hotel for many years, and Hunter has also lived there for several years. In March, 1931, Hathaway loaned Leake $1,000 and took his note for it, which he did not consider good. (Rec. p. 295.) On May 17, 1931, he gave Leake $250 as a present, though he says he has never been a patient of Leake. (Rec. pp. 547, 292, 293.) These amounts were both handed to Leake in cash by Hathaway. (Rec. p. 293.) Two days after the $1,000 loan to Leake, Short paid to Hathaway $5,000 in an involved family transaction, which was more than Short owed him at that time. Rec. pp. 296–297.)

Sam Leake has as his only occupation and means of livelihood the practice of metaphysics, or some kind of healing by mental treatment, for which he receives voluntary contributions. He estimates his income at $2,400 or $2,500 per year. He has no bank account nor safe deposit of any kind. His transactions are all in cash. His hotel bill for himself is about $200 per month, and he pays $72 per month for an office. (Rec. p. 106.)

When Leake was asked where Judge Louderback lives, he said he understood he lives in Contra Costa County, where the judge told him he voted. (Rec. p. 102.) He later stated the judge sleeps, at times, in a room at the Fairmont charged to Leake. (Rec. p. 104.) It developed that the judge stays regularly in this room which is charged to Leake, and has done so for many months; and Leake settles all the bills, mostly with cash, and Judge Louderback's name does not appear in any connection with this room. He produced checks to show that he pays Leake the amount of his bill at the hotel each month.

This investigation revealed to the public for the first time the unusual and strange conditions under which Judge Louderback was living at the Fairmont Hotel, and it was with great difficulty the committee, with the broad powers of investigation, discovered them.

It was developed at the hearings that Judge Louderback had established a fictitious residence in Contra Costa County for the purpose of being able to remove for trial to that county a cause of action which he expected would be filed against him. The judge admits that had his actual residence at the Fairmount Hotel become known his alleged residence in Contra Costa County would have been null and void for the purpose he had in mind.

The judge's statement is as follows:

Then, after a month or two, I found that the separation was probably permanent. In the meantime I had gone over and had established my legal residence with my brother—with legal residence, voting and registration of my machine—in Contra Costa County. But I realized that in actually doing my work when I was in San Francisco, and crossing the bay, that it was quite a burden and wear. And so I continued on there at the hotel.

I asked Mr. Leake, "Have you any objection to my remaining in this room and letting it stay as it is?" because registration is an element upon which to predicate residence and I wanted to maintain residence in Contra Costa County. And I assure you, gentlemen, I believe the only reason why that suit was not instituted was because I had that residence; because, it could have been transferred to Contra Costa County on account of the California law, and Mrs. Louderback would have had to contest it in Contra Costa County; and she thought it would be an advantage to her to have it tried in her own county.

So I continued on. (Rec., p. 342.)

GUY H. GILBERT

Until March, 1932, Guy H. Gilbert was employed by Western Union Telegraph Co. for the past 34 years in respective capacities of clerk, telegrapher, wire chief, supervisor, chief operator, traffic manager. (Rec. pp. 217–218.) The largest salary he drew from Western Union was $255 per month. (Rec. p. 243.) He met Judge Louderback 15 or 16 years ago in his race for police judge, supported him actively for that, and later for superior judge. Growing out of this political connection, Gilbert asked the judge for a receivership to supplement his salary. (Rec. p. 222.)

His first appointment by Judge Louderback was as appraiser in some State court case about 1925 or 1926. He never went on the premises to be appraised, did nothing in the case except sign his name, and received a fee of $500 for such services.

Gilbert and his wife are both patients of Sam Leake and consult him professionally very often. He has been very close to Leake for some 20 years. He and his wife have made contributions to Leake from time to time, possibly $400 in amount. At one time three or four years ago he gave Leake $150. (Rec. p. 221.)

His next appointment as receiver by Judge Louderback was in the Stempel-Cooley case, with five apartment houses involved. He had no kind of previous experience in handling real estate. (Rec. p. 219.) It was a case in bankruptcy and ran for four or five months. He collected $12,000 and was allowed a fee of $500. He continued his job with Western Union, as his duties as receiver were performed after office hours. When he received this appointment he went to Sam Leake for direction, who suggested John Douglass Short as his attorney. He approached Leake on this matter because he is rather influential. (Rec. pp. 220, 221.)

SONORA PHONOGRAPH CASE

Some two years after the Stempel-Cooley case—in 1929 Gilbert was called by Miss Berger, secretary to Judge Louderback, who informed him he was appointed receiver in the Sonora Phonograph Co. case. He intended to appoint John Douglass Short his attorney, but he went to see Sam Leake in the evening after his notice of appointment. (Rec. p. 423.) When he went to the judge's chambers, Attorney J. W. Dinkelspiel was there to draw up his qualifying

papers, and virtually notified Gilbert that he was to be his attorney in the case. This was the first time Gilbert ever saw Dinkelspiel. (Rec. pp. 223, 265–266.)

Gilbert never conferred with the judge about the appointment. (Rec. p. 417.) Dinkelspiel never met the judge until he came into court with Gilbert's petition to appoint him attorney in the case. (Rec. p. 512.) This receivership lasted six or seven months. Not a claim went to litigation. Dinkelspiel was allowed a fee of $20,000 by Judge Louderback. (Rec. p. 266.)

Gilbert continued to work regularly for Western Union through this receivership. The same parties who were in charge before continued to manage the company through the liquidation. (Rec. pp. 225, 226.) For his part-time six months' service Gilbert was allowed $6,800. His version of the disposition of this fee is that he deposited in savings accounts $3,200, paid $960 in obligations, and put the balance in cash in a safe deposit box. (Rec. pp. 226, 227.) The receiver was required to handle some $350,000 and received the statutory award of fees.

PRUDENTIAL HOLDING CO. CASE

In August, 1931, a petition seeking an equity receivership was filed in Federal court, and Gilbert was called by Miss Berger, secretary to Judge Louderback, reported to his chambers, and was appointed receiver. He named Dinkelspiel & Dinkelspiel attorneys for receiver. (Rec., p. 232.) Petition alleged assets of $1,150,000 and liabilities, $1,100,000. (Rec., p. 243.) It was stated at the hearing, on authority of Judge Louderback, that Prudential Holding Co. came into court and consented to the appointment of a receiver through its vice president, James H. Stephens. (Rec., pp. 243–244.) But the attorney for the company states that the first notice the company had of the commencement of suit or appointment of a receiver was when receiver Gilbert and his attorney, Dinkelspiel, appeared at the office to take charge. (Rec., p. 310.) The company at once took steps to resist receivership. The petition was verified on information and belief by an attorney in the case, and no bond of indemnity to the defendant was required when receivership was ordered. (Rec., p. 318; Ex. 24, 25.) Receivership was entirely without justification, without notice, and truthless. The objections to it made by defendant are absolutely conclusive. Judge Louderback failed to dismiss the equity receivership until application for receiver in bankruptcy was applied for. The sole ground alleged for the bankruptcy receivership was the existence of equity receivership which he had wrongfully ordered. (Rec., p. 311.) He then crossed over into Judge St. Shure's division, named Gilbert and Dinkelspiel receiver and attorney there; then, two days later, dismissed the equity receivership as groundless. (Rec., p. 243.)

Judge St. Shure dismissed the bankruptcy receivership at the first hearing before him as no insolvency was shown. (Rec. p. 232.) Petition was then filed seeking to set aside the order dismissing bankruptcy receivership, and in refusing to reopen the matter, Judge St. Shure stated there was a bad smell about the case. (Rec. pp. 311, 312.) Gilbert and Dinkelspiel failed to receive any fees, through the action of Judge St. Shure, into whose court the bankruptcy proceedings fell.

FAGEOL MOTOR CO.

This company was a corporation with assets of $3,000,000 book value, and $1,700,000 liabilities. (Rec. p. 259.) It had an assembling plant, with branch offices and properties in California, Washington, Oregon, and Utah. It had extensive operations in all these places, with sales and service, parts, assembly, and manufacturing, all under control of the Oakland, Calif., office. (Rec. pp. 259, 260.) The largest creditor was Central National Bank of Oakland, with $174,000, and the next largest was Waukesha Motors.

In February, 1932, the company got into financial difficulties, and, in conference with the creditors, decided that the best course, was equity receivership. After difficult negotiations they agreed on Edward Fuller, of Oakland, as receiver, because of his special qualifications with the entire problem. (Rec. pp. 251–254.) All interested parties went to court on February 17, filed the petition, and drew the name of Judge Louderback in the case. (Rec. pp. 251–257.) They took the papers to the judge's chambers at noon, but were asked by his secretary, Miss Berger, to leave the papers and come back at 1.30, when the judge could see them. Miss Berger asked what matter was involved in the case, and they explained the Fageol Co. condition, told her the principal creditors were present by representatives, that they had after difficulty all agreed on the man they wanted for receiver, and wished her to convey the information to the judge and request the privilege of discussing it with him, which she agreed to do. (Rec. pp. 251, 252.)

They came back at 1.30 and the secretary said the judge left early, but if they would come back at 2.30 the judge would see them. (Rec. p. 252.) They returned at the appointed time, and just before they reached his chambers, they met the judge, who walked by them rapidly in the hallway. (Rec. p. 257.) When they entered, the secretary told them the judge was gone, and had already appointed Guy H. Gilbert receiver. She said she did not know who Gilbert was, what his address or telephone number was, but promised to get the information and phone it to them (rec. p. 252), which she did by 3.14 that afternoon. They went away feeling discouraged that after spending four or five days selecting a man for receiver familiar with the automotive industry and able to handle this matter, they were not even granted a hearing. (Rec. pp. 257, 258.)

They went back to their office for further conference. J. W. Dinkelspiel called them at 3.25 that afternoon and said he had been appointed attorney for the receiver, that Gilbert had already qualified, which defeated their chance to dismiss the suit and get rid of Gilbert as receiver. (Rec. p. 253).

The parties in interest then decided to contact Gilbert and Dinkelspiel, and unless they would agree to a limitation on their fees and to take orders from the creditor's committee headed by Mr. J. A. Wainwright of the Central National Bank they would go into bankruptcy at once. (Rec. pp. 254, 255.)

The conference with Gilbert and Dinkelspiel was held the next morning, February 18. They explained to Gilbert the problems of financing, production, and operation of the business, and found he knew nothing whatever about any of it. He was advised of and agreed to his lack of experience and ability, and gave assurance if

left in as receiver he would abide by the counsel and advice of the creditors. (Rec. pp. 257–258, 235).

The creditors protected themselves in the situation by having Gilbert to employ a Mr. Lundstrum to carry on the business (rec. pp. 239, 240, 259), Mr. Wainwright and the creditor's committee to attend to all matters of policy (rec. p. 258). The department foremen handled the employment and construction, the sales manager the orders (Rec. pp. 236, 237), and Gilbert was only regarded as a shield to keep other arrangements from coming in. None regarded him as having the ability to contribute anything to working out the problem; and he was content to do just what he was told. (Rec. pp. 258, 259.)

When fees were allowed Dinkelspiel accepted $6,000 in full, which was doubtless by agreement, as it is a pittance compared to the usual fees allowed by Judge Louderback in such cases. (Rec. p. 274.)

When the case closed for them Gilbert and Dinkelspiel requested letters from Mr. Wainwright commending their ability and successful conduct of the receivership, which he declined to give, but he did write acknowledging their cooperation. (Rec. pp. 261, 262.)

### GOLDEN STATE ASPARAGUS CO.

Equity receivership petition was filed in this case September, 1930, showing assets of $1,100,000 and liabilities $700,000. (Rec. p. 283.) The parties in interest asked Judge Louderback to permit them to name the receiver and his counsel, because of the nature of the business, but he said they could designate one. They selected the receiver, and he said he would submit a list of attorneys to the receiver for his selection. (Rec. p. 284.) Instead, he called Dinkelspiel and named him, without reference to the receiver. (Rec. pp. 276, 286.) The legal work connected with the conduct of the receivership was no more or difficult than the ordinary running of the business. The charges had been less than $1,000 per year. But for this same kind of service Dinkelspiel has already been allowed $14,000 on account. (Rec. pp. 283, 285.) If the parties in interest had known of the excessive fees allowed, they never would have filed the petition. (Rec. p. 286.) The only big legal service in the case was performed by the attorneys for plaintiff and defendant before the receiver and his attorney took charge, in stopping a forced sale of property. (Rec. pp. 288, 289.) Judge Louderback allowed this excessive fee to Dinkelspiel on account, but denied the uncontested fees of attorneys for plaintiff and defendant, who asked for $1,500 each and who had opposed Dinkelspiel's fee. (Rec. pp. 290, 291.) When Dinkelspiel's fee was reduced from $15,000 to $14,000, parties partially acquiesced in it, as they realized it was the best they could do. (Rec. p. 292.)

### LUMBERMEN'S RECIPROCAL ASSOCIATION

This was a Texas corporation, but writing insurance in California. The California business was prosperous, but the parent company got into difficulty in Texas. Concern was felt for holding California assets for the benefit of local policyholders. Equity receivership was decided on, and it was agreed to have the State commissioner of insurance named as receiver, as he could serve without additional

cost, and the fees in Federal court there were too large. (Rec. p. 152.) It was necessary to have an award made on a claim against the association by the industrial accident commission as a basis for the petition. This was expedited on the basis of above agreement, and a tentative award made (rec. p. 152), as the commission were afraid of large fees to a receiver and attorney in Federal court, and the whole plan was to avoid these (rec. pp. 154, 155). Petition was filed July 29, 1930. The morning after the petition was filed a deputy State insurance commissioner went to Judge Louderback's office, and was told by his secretary that he took the papers in the case home with him the night before to study them. The deputy requested the secretary to make known to the judge the claim to recognition of the commissioner, in accordance with the agreement, which she agreed to do. When the deputy returned to the commissioner's office the secretary immediately telephoned that a receiver, Samuel Shortridge, jr., son of Senator Shortridge, was appointed the night before. (Rec. pp. 158, 159.)

Prior to the filing of the petition the attorneys who appeared never heard who would be appointed receiver or attorney for him; but Shortridge, jr., had been told in advance of the filing he would be appointed, and had Marshall Woodworth to call on the judge before the petition was filed to know whether he would be willing to name him attorney for Shortridge as receiver. (Rec. p. 171.) But when Woodworth called on the attorneys for plaintiff and defendant the next day after appointment he claimed to them he never heard of the case till after the petition was filed; that he just happened to be in Judge Louderback's courtroom, when the bailiff called him as he passed through and advised that the judge wished to see him, and appointed him. (Rec. p. 188.) Shortridge, jr., says after he was appointed he immediately conferred with Judge Louderback; one of them mentioned Mr. Woodworth and appointed him counsel. (Rec. p. 198.)

When the receiver was appointed a list of three names was handed to the attorneys by the judge's secretary to select from, and they were made to understand the judge's wishes. They selected Shortridge as the one he had indicated he wanted. (Rec. p. 187.) When this action in failing to name the State insurance commissioner receiver became known, the industrial accidents commission set aside the tentative award on which the petition was based, and the judge was advised of this action at a hearing before him contesting his right to appoint a receiver. (Rec. p. 153.)

In cases of this kind the State insurance commissioner had summary power to seize all available assets and protect them for the policyholders, which he did on July 25, four days before the filing of the petition. (Rec. pp. 207–208.) Judge Louderback permanently enjoined the commissioner from proceeding under the State statute, but issued an order allowing an appeal, and directing issuance of a citation to be served on the Federal receiver within 30 days. Counsel for the State commissioner was in constant touch with Mr. Woodworth trying to settle the matter, and permitted 30 days to expire without service of a formal citation; but as actual notice was its only purpose, which they had, the order could only be directory. (Rec. pp. 209–210.)

Counsel for appellant tried repeatedly to see the judge to apply for extension of time to docket the cause, but the judge deliberately refused to see him. (Rec. p. 210.) He left an order of extension for the judge to sign on or within two days of November 18. On December 4, counsel called at the judge's chambers and asked for the engrossed statement of the evidence which had been agreed on by counsel and signed by the judge. The judge's secretary took the statement back into the room where the judge was, consulted him, came back out, and in the presence of counsel for appellant clipped the judge's name from it and turned it over. (Rec. pp. 211–212.) Counsel then requested the copy of order to extend the time which he had left there November 18, as he wanted to submit it to the circuit court for action, and to save the time it would take to return to his office and redraft it. This request was refused him, and he had to travel over a mile and back to get another order drawn. (Rec. p. 213.) The judge must have kept in constant touch with Woodworth, for when counsel got back to the circuit court he had already called in and asked to be advised when counsel returned. The order extending the time was granted by the circuit court on Saturday, December 6, and appeal was perfected. (Rec. p. 214.) But after the extension was granted counsel tried for five days and prepared a petition for order of mandate before he procured the signature of the judge to the record. (Rec. p. 214.)

On appeal the case was reversed and remanded. (Rec. p. 401.) On order of the circuit court, Judge Louderback decreed that the Federal receiver turn over to the State commissioner all the assets within 30 days, but only on condition that no appeal was taken by the commissioner from the allowance by him of fees to the Federal receiver and his attorney. And the reversal had been on the ground that no jurisdiction was in the Federal court to appoint a receiver after the State had taken charge. (Rec. p. 215.) The judge's statement as to this order is as follows:

Mr. BROWNING. At the time that the first order of reversal came down to turn over the assets to the receiver in the State court, or the State commission, you provided in the order that the property should be turned over if there was no appeal taken from the fees allowed?

Judge LOUDERBACK. I think that was a very erroneous order to make. That order was presented to me by Mr. Woodworth. I will concede to you that that was erroneous.

He pleaded with me this way: He said, "Can we tell what to hold out? Shall we hold out on all the 52 objections of Mr. Guerena?" He said, "Now, couldn't that order be made in that form?" And he told me that Mr. Guerena was not going to take the appeal, anyway, and then I signed it and later I told him I would not let that stand, that I had made a grave mistake in suggesting even that the money be held, and I will concede that I should not have done that. It was an error. I suppose every judge has been trapped into errors by attorneys. That was wrong, and I do not think that should have been done.

Mr. BROWNING. The property was turned over on stipulation.

Judge LOUDERBACK. I think it was with my order, and my recollection is that it probably was by stipulation, in a way. I will tell you what happened. I sent for Woodworth and I said to him, "I am going to change that; it is not proper." He said, "Judge, if you feel that way, it is all right with me." He may have gone out and stipulated, but the impelling cause was my own act. (Rec. pp. 363, 364.)

A second appeal resulted in a very substantial reduction in the fees and expenses allowed by Judge Louderback to the Federal receiver and his attorney.

Samuel M. Shortridge, jr., has known Sam Leake all his life, and has been a patient and consultant of Leake. He has paid to Leake more than a thousand dollars. His mother is also a patient of Leake, and Shortridge, jr., has delivered to Leake envelopes containing money (Rec. p. 200) from his mother.

GORDON BROWNING.
MALCOLM C. TARVER.
F. H. LAGUARDIA.
CHARLES I. SPARKS.

# MINORITY VIEWS OF MR. SUMNERS, OF TEXAS

I agree with the findings of facts of the majority of the Committee on the Judiciary incorporated in its censure of Judge Louderback, and agree with the minority that the facts call for the exercise of the constitutional power of impeachment.

HATTON W. SUMNERS.

## PROPOSED ARTICLES OF IMPEACHMENT

*Resolved*, That Harold Louderback, who is a United States district judge of the northern district of California, be impeached of misdemeanors in office; and that the evidence heretofore taken by the special committee of the House of Representatives under H. Res. 239, sustains five articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Harold Louderback, who was appointed, duly qualified, and commissioned to serve during good behavior in office, as United States district judge for the northern district of California, on April 17, 1928.

### ARTICLE I

That the said Harold Louderback, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned and while acting as a district judge for the northern district of California did on divers and various occasions so abuse the power of his high office, that he is hereby charged with tyranny and oppression, favoritism and conspiracy, whereby he has brought the administration of justice in said district in the court of which he is a judge into disrepute, and by his conduct is guilty of misbehavior, falling under the constitutional provision as ground for impeachment and removal from office.

In that the said Harold Louderback on or about the 13th day of March, 1930, at his chambers and in his capacity as judge aforesaid, did wilfully, tyrannically, and oppressively discharge one Addison G. Strong, whom he had on the 11th day of March, 1930, appointed as equity receiver in the matter of Olmsted *v.* Russell-Colvin Co. after having attempted to force and coerce the said Strong to appoint one Douglas Short as attorney for the receiver in said case.

In that the said Harold Louderback improperly did attempt to cause the said Addison G. Strong to appoint the said Douglas Short

as attorney for the receiver by promises of allowance of large fees and by threats of reduced fees did he refuse to appoint said Douglas Short.

In that the said Harold Louderback improperly did use his office and power of district judge in his own personal interest by causing the appointment of the said Douglas Short as attorney for the receiver, at the instance, suggestion or demand of one Sam Leake, to whom the said Harold Louderback was under personal obligation, the said Sam Leake having entered into a certain arrangement and conspiracy with the said Harold Louderback to provide him, the said Harold Louderback, with a room at the Fairmont Hotel in the city of San Francisco, Calif., and made arrangements for registering said room in his, Sam Leake's, name and paying all bills therefor in cash under an arrangement with the said Harold Louderback to be reimbursed in full or in part in order that the said Harold Louderback might continue to actually reside in the city and county of San Francisco after having improperly and unlawfully established a fictitious residence in Contra Costa County for the sole purpose of improperly removing for trial to said Contra Costa County a cause of action which the said Harold Louderback expected to be filed against him; and that the said Douglas Short did receive large and exorbitant fees for his services as attorney for the receiver in said action, and the said Sam Leake did receive certain fees, gratuities, and loans directly or indirectly from the said Douglas Short amounting approximately to $1,200.

In that the said Harold Louderback entered into a conspiracy with the said Sam Leake to violate the provisions of the California Political Code in establishing a residence in the county of Contra Costa when the said Harold Louderback in fact did not reside in said county and could not have established a residence without the concealment of his actual residence in the county of San Francisco, covered and concealed by means of the said conspiracy with the said Sam Leake, all in violation of the law of the State of California.

In that the said Harold Louderback, in order to give color to his fictitious residence in the county of Contra Costa, all for the purpose of preparing and falsely creating proof necessary to establish himself as a resident of Contra Costa County in anticipation of an action he expected to be brought against him, for the sole purpose of meeting the requirements of the Code of Civil Procedure of the State of California providing that all causes of action must be tried in the county in which the defendant resides at the commencement of the action, did in accordance with the conspiracy entered into with the said Sam Leake unlawfully register as a voter in said Contra Costa County, when in law and in fact he did not reside in said county and could not so register, and that the said acts of Harold Louderback constitute a felony defined by section 42 of the Penal Code of California;

Wherefore the said Harold Louderback was and is guilty of a course of conduct improper, oppressive, and unlawful and is guilty of misbehavior in office as such judge and was and is guilty of a misdemeanor in office.

ARTICLE II

That Harold Louderback, judge as aforesaid, was guilty of a course of improper and unlawful conduct as a judge, filled with partiality and favoritism in improperly granting excessive, exorbitant, and unreasonable allowances as disbursements to one Marshall Woodward and to one Samuel Shortridge, jr., as receiver and attorney, respectively, in the matter of the Lumbermen's Reciprocal Association.

And in that the said Harold Louderback, judge as aforesaid, having improperly acquired jurisdiction of the case of the Lumbermen's Reciprocal Association contrary to the law of the United States and the rules of the court did, on or about the 29th day of July, 1930, appoint one Marshall Woodward and one Samuel Shortridge, jr., receiver and attorney, respectively, in said case, and after an appeal was taken from the order and other acts of the judge in said case to the United States Circuit Court of Appeals for the Ninth Circuit and the said order and acts of the said Harold Louderback having been reversed by said United States Circuit Court of Appeals and the mandate of said circuit court of appeals directed the court to cause the said receiver to turn over all of the assets of said association in his possession as receiver to the Commissioner of Insurance of the State of California, the said Harold Louderback unlawfully, improperly, and oppressively did sign and enter an order so directing the receiver to turn over said property to said State commissioner of insurance but improperly and unlawfully made such order conditional that the said State commissioner of insurance and any other party in interest would not take an appeal from the allowance of fees and disbursements granted by the said Harold Louderback to the said Marshall Woodward and Samuel Shortridge, jr., receiver and attorney, respectively, thereby improperly using his said office as a district judge to favor and enrich his personal and political friends and associates to the detriment and loss of litigants in his, said judge's court, and forcing said State commissioner of insurance and parties in interest in said action unnecessary delay, labor and expense in protecting the rights of all parties against such arbitrary, improper, and unlawful order of said judge; and that the said Harold Louderback did improperly and unlawfully seek to coerce said State commissioner of insurance and parties in interest in said action to accept and acquiesce in the excessive fees and the exorbitant and unreasonable disbursements granted by him to said Marshall Woodward and Samuel Shortridge, jr., receiver and attorney, respectively, and did improperly and unlawfully force and coerce the said parties to enter into a stipulation modifying said improper and unlawful order and did thereby make it necessary for the State commissioner of insurance to take another appeal from the said arbitrary, improper, and unlawful action of the said Harold Louderback.

In that the said Harold Louderback did not give his fair, impartial, and judicial consideration to the objections of the said State commissioner of insurance against the allowance of excessive fees and unreasonable disbursements to the said Marshall Woodward and Samuel Shortridge, jr., receiver and attorney, respectively, in the case of the Lumbermen's Reciprocal Association, in order to favor and enrich his friends at the expense of the litigants and parties in interest in said matter, and did thereby cause said State commissioner of insurance and the parties in interest additional delay, expense, and

labor in taking an appeal to the United States Circuit Court of Appeals in order to protect their rights and property in the matter against the partial, oppressive, and unjudicial conduct of said Harold Louderback.

Wherefore, said Harold Louderback was and is guilty of a course of conduct oppressive and unjudicial and is guilty of misbehavior in office as such judge and was and is guilty of a misdemeanor in office.

ARTICLE III

The said Harold Louderback, judge aforesaid, was guilty of misbehavior in office resulting in expense, disadvantage, annoyance, and hindrance to litigants in his court in the case of the Fageol Motor Co., for which he appointed one Guy H. Gilbert receiver, knowing that the said Gilbert was incompetent, unqualified, and inexperienced to act as such receiver in said case.

In that the said Harold Louderback, judge as aforesaid, oppressively and in disregard of the rights and interests of litigants in his court did appoint one Guy H. Gilbert as receiver for the Fageol Motor Co., knowing the said Guy H. Gilbert to be incompetent, unfit, and inexperienced for such duties, and did refuse to grant a hearing to the plaintiff, defendant, creditors, and parties in interest in the matter of the Fageol Motor Co. on the appointment of said receiver, and the said Harold Louderback did cause said litigants and parties in interest in said matter to be misinformed of his action while said Guy H. Gilbert took steps necessary to qualify as receiver, thereby depriving said litigants and parties in interest of presenting the facts, circumstances, and conditions of the said equity receivership, the nature of the business and the type of person necessary to operate said business in order to protect creditors, litigants, and all parties in interest, and thereby depriving said parties in interest of the opportunity of protesting against the appointment of an incompetent receiver.

Wherefore, the said Harold Louderback, was and is guilty of a course of conduct constituting misbehavior as said judge and that said Harold Louderback was and is guilty of a misdemeanor in office.

ARTICLE IV

That the said Harold Louderback, judge aforesaid, was guilty of misbehavior in office, filled with partiality and favoritism, in improperly, wilfully and unlawfully granting on insufficient and improper papers an application for the appointment of a receiver in the Prudential Holding Co. case for the sole purpose of benefiting and enriching his personal friends and associates.

In that the said Harold Louderback did on or about the 15th day of August, 1931, on insufficient and improper application, appoint one Guy H. Gilbert receiver for the Prudential Holding Co. case when as a matter of fact and law and under conditions then existing no receiver should have been appointed, but the said Harold Louderback did accept a petition verified on information and belief by an attorney in the case and without notice to the said Prudential Holding Co. did so appoint Guy H. Gilbert the receiver and the firm of Dinkelspiel & Dinkelspiel attorneys for the receiver; that the said Harold Louderback in an attempt to benefit and enrich the said Guy H. Gilbert and his attorneys, Dinkelspiel & Dinkelspiel, failed to give his fair, im-

partial, and judicial consideration to the application of the said Prudential Holding Co. for a dismissal of the petition and a discharge of the receiver, although the said Prudential Holding Co. was in law entitled to such dismissal of the petition and discharge of the receiver; that during the pendency of the application for the dismissal of the petition and for the discharge of the receiver a petition in bankruptcy was filed against the said Prudential Holding Co. based entirely and solely on an allegation that a receiver in equity had been appointed for the said Prudential Holding Co., and the said Harold Louderback then and there wilfully, improperly, and unlawfully, sitting in a part of the court to which he had not been assigned at the time, took jurisdiction of the case in bankruptcy and though knowing the facts in the case and of the application then pending before him for the dismissal of the petition and the discharge of the equity receiver, granted the petition in bankruptcy and did on the 2d day of October, 1930, appoint the same Guy H. Gilbert receiver in bankruptcy and the said Dinkelspiel & Dinkelspiel attorneys for the receiver, knowing all of the time that the said Prudential Holding Co. was entitled as a matter of law to have the said petition in equity dismissed; in that through the oppressive, deliberate, and willful action of the said Harold Louderback acting in his capacity as a judge and misusing the powers of his judicial office for the sole purpose of benefiting and enriching said Guy H. Gilbert and Dinkelspiel & Dinkelspiel, did cause the said Prudential Holding Co. to be put to unnecessary delay, expense, and labor and did deprive them of a fair, impartial and judicial consideration of their rights and the protection of their property, to which they were entitled.

Wherefore the said Harold Louderback was, and is, guilty of a course of conduct constituting misbehavior as said judge and that said Harold Louderback was and is guilty of a misdemeanor in office.

ARTICLE V

That Harold Louderback, on the 17th day of April, 1928, was duly appointed United States district judge for the northern district of California, and has held such office to the present day.

That the said Harold Louderback as judge aforesaid, during his said term of office, at divers times and places when acting as such judge, did so conduct himself in his said court and in his capacity as judge in making decisions and orders in actions pending in his said court and before him as said judge, and in the method of appointing receivers and attorneys for receivers, in appointing incompetent receivers, and in displaying a high degree of indifference to the litigants in equity receiverships, as to excite fear and distrust and to inspire a widespread belief in and beyond said northern district of California that causes were not decided in said court according to their merits, but were decided with partiality and with prejudice and favoritism to certain individuals, particularly to receivers and attorneys for receivers by him so appointed, all of which is prejudicial to the dignity of the judiciary.

All to the scandal and disrepute of said court and the administration of justice therein.

Wherefore the said Harold Louderback was, and is, guilty of misbehavior as such judge and of a misdemeanor in office.



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