GOVERNOR VS. PYLE

Interesting Letters Written by Governor Lee and Attorney General Pyle.

Simple Law to Secure Conviction of Kirk G. Phillips for Embezzlement of Interest on State Funds.

(Continued from last week.)

question. It hinged on the absolute liability of the treasurer, holding that having appropriated the interest money, the state had no right of recovery because, being absolutely liable under explicit provision of the Colorado constitution, the treasurer was in no sense a trustee, and could not therefore be held indebted for any accretion to the funds in his hands. Whether the rule fixing the absolute liability of the treasurer establishes the relation of debtor and creditor, thereby making the treasurer the owner of the funds in his hands, and entitling him to interest thereon, is a good rule, it is not my duty to decide, no matter what my opinion of the possible disasters and immoral results of such a rule may be. The Colorado decision is not parallel, therefore, in any respect, to the case under consideration, unless, under our law, the treasurer and state sustain the relation of debtor and creditor. Are you prepared to affirm such a proposition?

The Georgia case is even less pertinent and applicable than that of Colorado. It appears that the treasurer and governor of Georgia were authorized to contract with the banks for the payment of interest on state deposits; that the treasurer, ignoring the governor, executed a contract for interest on state funds by means of which the treasurer himself and his political friends profited largely. The treasurer was sued on his bond for the interest, and a majority of the court held that the state could not recover from the sureties on the treasurer's bond because the treasurer had made an unlawful contract entailing a penalty. The proposition that the state can lose its property right to its funds through the unlawful conduct of its servants is certainly very bad public policy. The contention that a treasurer may reap thousands of dollars in profits from the unlawful use of the people's money, and that the state cannot recover because the unfaithful public servant has subjected himself to a penalty for his unlawful acts is a pernicious doctrine; and that it was regarded as bad law is lucidly shown in the dissenting opinion of Chief Justice Jackson of the Georgia court, which I quote in full because of its strong doctrinal qualities, and for the further reason that, in your haste, you may have undervalued its importance. It is as follows:

I am wholly unable to concur with my associates in the judgment rendered, that the treasurer and his sureties on the bond sued on are not liable to the state for the interest made by the treasurer and used by himself and two of his sureties for their private profit. The law of the case is to be found in the statutes of this state, and there is no need of going elsewhere to determine that law. To my mind it is clear; and a few words will show the reasons which make it clear to me.

It is not a criminal case. It is not a question of mala fides in a civil case. It is a naked question of liability to pay money on a contract under seal made by a public officer and his sureties. Did the officer break the contract he made with the state when he put his signature to this bond, and did his sureties agree to make good that breach, when they signed the same bond? These are questions, and the only questions, arising on this demurrer, and both are answered in the affirmative by the facts alleged in the declaration and by the law prescribed by the statutes of the state.

The bond is set out in the declaration and speaks for itself. The breaches thereof, which the declaration alleges, or can allege, by amendment, are the failure "faithfully to discharge, execute and perform all and singular the duties of him required, and which may be required by the constitution and laws;" and the failure faithfully to "account for and pay over all moneys that may be received of him from time to time by virtue of his office," and the failure to "safely deliver to his successor all books, moneys, vouchers, accounts and effects whatsoever belonging to his said office." The allegation further is that the treasurer "did collect, in his official capacity, from different banks and individuals in the city of Atlanta, in said state, large sums of money, as interest and commissions for the use by said banks and others of the public money of said state, in the hands of said Renfroe, as treasurer as aforesaid, and did, in violation of law and of the obligations of said bond, appropriate the same in part to his own private use and benefit, and did allow one John W. Murphy and one Vincent R. Tommey to appropriate the same in part to their own private use and benefit respectively," and then the declaration sets out the amount Renfroe used for himself, and the amount which each of the others appropriated to their respective private use by his sanction, and afterwards, appended to the declaration and made part thereof, is a bill of particulars itemizing the several sums so used by the treasurer, with the dates thereof, in sundry banks, some of which were state depositories; and further, it alleges that the state is entitled to recover upon the bond from principal and sureties the money so used unlawfully and misappropriated by the treasurer, and also penalties therefor.

On these facts, alleged in the declaration and admitted by the demurrer, I am of the opinion that the state is entitled to recover, every condition of the bond having been clearly broken by this use of the public money by the treasurer.

The bond was broken, in that the treasurer did not "faithfully discharge the duties required of him by law." The act of 1876 specifies those duties. Among other things, it enacts that" "he may, with the approval of the governor, deposit all funds set apart for the purpose of education, or any other purpose not required for immediate use, in any other purpose not required for immediate use, in any chartered bank of this state, subject to his draft as treasurer, and with the governor, make such contract with said bank for the use of such funds as may be beneficial to the state." Acts of 1876, Sec. XII, sub-division 10, pp. 130, 131, Code of Georgia, Sec. 97, sub-sec. 10.

Did the treasurer "faithfully discharge the duties required of him" by law, when, instead of making the deposit so as to be beneficial to the state, he made it so as to benefit himself and two other individuals? Clearly he violated his bond, when, instead of making the contract with the banks to pay interest to the state, he made it to pay interest to himself and to two other favored persons. It is vain to reply that the governor, under the law above cited, must help him make the contract for the benefit of the state, in order to make the interest for the state. Was it not the duty of the treasurer, in whose possession the money was placed by law, to notify the governor that he had on hand funds not needed for immediate use, and that they could be deposited so as to be beneficial to the state in drawing interest thereon? And did he faithfully discharge his duty as treasurer, when, instead of notifying the governor and having his co-operation, he made the contract and used the fund for his own benefit? The failure to notify the governor, and the making the contract alone, and the appropriation of the interest to his own use and that of others, amounts to a violation of the obligation of the bond faithfully to discharge this duty required by law; and therein the bond was broken, and on this breach the state ought to recover.

So with the second condition of this bond. It is as clearly broken, under the allegations of fact and the law applied thereto. That second condition is "faithfully to account for and pay over all moneys that may be received of him from time to time by virtue of his office. As treasurer he received the principal. As treasurer he deposited it with the banks. It was subject to his check as treasurer, and the bill of particulars so distinctly states. Officially the deposit was made. Officially interest was agreed upon for the use of the money deposited; and by every rule of law, common sense and equity, that interest belonged to the state. The treasurer got it virtute officii and when he received it, he received it as trustee of the state. By virtue of his office, he was the custodian and trustee of this fund; and all that he made out of it belonged to the cestui que trust. His duty, his official duty, was to place it in the treasury for the state, his cestui que trust, and to account for it, if instead of putting it there to the credit of the state, he and others by his assent pocketed it.

I am aware that the books make a nice distinction between funds acquired colore officii and those obtained virtute officii; but I know of no case where, under the facts here disclosed and law at all analogous, the money could not be recovered out of the misteasant and those who indorsed his faithful discharge of duty. It seems to me that the obligation, the official obligation of the treasurer, under the act of 1876 supra, is not only to account for such money of the state as came into his hands from taxation and other sources of revenue, but for such interest as he actually makes on that money for its loan or deposit as treasurer; and if such be his official obligation, it binds his sureties as well as himself. They obligated themselves to make good any default of his in not paying over all that belonged to the state from any and every source.

The third and last condition of the bond makes this stronger. It is that he will safely deliver to his successor all books, moneys, vouchers, accounts and effects whatsoever belonging to his said office." Does not this sweeping clause embrace every cent that ex equo et bono belongs to the state? If the argument above, under the second breach, be found, then the word "moneys" would apparently include this interest; but the subsequent words, "accounts" and "effects" leave the position so strong as to be unassailable. Suppose the treasurer had in his office an account ex equo et bono—an equitable demand—against any bank or private person, would he not be bound by this law and this condition or obligation in his bond to turn it over to his successor; and failing to do so, would he and his sureties not be bound to pay its value? Would it not be one of the effects of the state belonging to his office, if such be the law, in case he had such a claim or demand on others, is he and are his securities to be relieved from the claim because it on him and two of his sureties? Does the fact that the claim is upon him make it a claim not "belonging to his said office?" It is an equitable claim, an account or effect belonging to his office, owed by him to the state, and which he is bound to deliver to his successor. The act of 1876 was passed at a time when the state was aroused in respect to defalcations of the person then treasurer; and the general assembly made this broad and sweeping law to cover every defelcation of every sort, and to secure, beyond peradventure, all her moneys, accounts and effects of every sort. "Whatsoever" is the broad word that enlarges the scope of liability and makes it expansive, I had almost said, as the universe. The great Maker of the universe and Redeemer of man used a kindred word in range and compass, when he said, "God so loved the world that he gave his only begotten Son to die, that whosoever believeth on Him should not perish but have everlasting life," and when, in the very last chapter of the great law book, he said, "and whosoever will, let him take the water of life freely."

I think, too, that liability for the breaches of this bond covers the penalties prescribed in the event that the treasurer appropriated any of the money entrusted to him as the officer of the people and the custodian of their funds to his own use. The act of 1876 also covers all fours this position. The eleventh sub-division of the twelfth section of that act is as follows: "The treasurer shall not, under any circumstances, use himself, or allow others to use, the funds of the state in his hands, and for every violation of this section, he is lable to the state for the sum of five hundred dollars as a penalty, or a forfeiture of his salary, if such forfeiture will pay the penalty incurred." Page 131, subdivision 11, acts of 1876; Code Sec. 97, sub-sec. 11.

The fourteenth section of the same act is as follows:

"That if the treasurer fails to perform the duties of his office, misapplies or uses the funds of the state, fails to account for and pay over any moneys he may have, received by virtue of his office, whereby he becomes liable to the state, it shall not be necessary to sue his official bond, but the governor is hereby authorized to issue a fa. instanter against the treasurer and his securities for the amount due the state by the treasurer, with the penalties and costs." Acts of 1876, p. 132; Code, par. 97 (b).

Unquestionably this fixes the liability of the sureties on this bond for penalties. And if this bond had been an official bond, who can contend, with any sort of confidence, that the governor could not have issued execution instanter thereon for these penalties, and recover for the state by levy and sale? But the bond is not an official, but a voluntary bond, as has been adjudicated by this court. Therefore the remedy of the state is by suit on the bond. See 66 Ga., 648; 1 Kelly, 580, 582.

The only effect of these rulings is, that the state has no summary remedy on the bond, but is remitted to the usual suit at law on the bond. The bond is as good, but the remedy is different. Therefore these sureties are liable for the full extent in this suit as they would have been had the execution been issued; and the liability covers all that would have been covered had it been an official bond, and as such had execution been issued instanter.

The constitution of 1877, Art. 5, Sec. 2, Par. 5, codified in Sec. 5124, makes fundamental what the act of 1876, Section 12, sub-sec. 11, p. 131, Code, par, 97, sub-sec, 11, had previously declared to be legislative law. Both entered into and made part of this bond as its face shows and the statute requires. Code, par. 90, sub-sec. 1. It is no answer to this liability on this bond for penalties to say that the law generally is, that sureties are not responsible for penalties or forfeitures, because, in this case, the statute—the law of this case—expressly declares that they shall be liable. Nor is it any reply to lay down the general principle that, were a statute prescribes a remedy to enforce a penalty, no other can be resorted to—the law generally not favoring penalties, because that applies where the remedy is of force. Here the only remedy prescribed by the statute is on a statutory bond, and this bond was held in 66 Ga., supra, in a case between these same parties, to be not a statutory, but a voluntary bond. Therefore the statute gives no remedy on this bond, but, by the ruling in 1 Kelly, supra, followed by several other following cases, it is ruled that the state is remanded to her suit at law on the common law bond.

On the general liability of principal and security on this bond, see also the statutory provisions in the Code, par. 160, which declares that "every official bond executed under this code is obligatory on the principal and sureties thereon for any breach of the condition during the time the officer continues in office, or discharges any of the duties thereof, for any breach by a deputy, although not expressed, unless otherwise declared by law, for the faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein, (and) for the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office, as by his failure to perform, or by the improper or neglectful performance of those duties imposed by law."

These provisions, in my judgment make the treasurer and sureties liable on this bond for any wrongful act done under color of his office. Was not this act wrongful? When he could have made the interest for the state, was it right to make it for himself? If not done officially, as I think it was, was it not done by color of his office? The declaration and bill of particulars show it beyond possibility of cavil. In bank depositories of the public funds, he deposits those funds and pockets the interest. By virtue of his office, he makes the deposit; and by color of it, to put it weakest, he makes interest on the deposit, and he and two others appropriate that interest to their own use. These provisions of law also make the treasurer and sureties liable on this bond by his failure to make the interest for the state, and by the improper and neglectful performance of his duty when he made the deposit and absorbed the profit of that deposit instead of making entry of those profits for the state in a durable book under Section 97, subsection 2 of the code.

In law the act was not the less wrongful, improper and neglectful, if done in ignorance of the act of 1876, and under the idea that the joint resolution of 1871 was still in force, which desclaimed any claim of the state to interest in such cases. The act of 1876 repealed that resolution, and it was the duty of the treasurer to know. On a criminal charge, as on his impeachment, the fact that Mr. Renfroe was a member of the legislature of 1871, and was ignorant of the subsequent law, may have thrown light on his intent to do wrong, and thereby have been considered on that great issue before the senate, though even in criminal cases ignorance of the law is generally no excuse; but on a civil case for money growing out of his office, ignorance of all the law pertaining to that office can be no sort of legal defense to the suit.

Thus regarding the case as controlled by the statute of the state, I deem it unnecessary to examine critically the common law of England or the adjudications thereon in the United States or any of the American states. I add simply that the criminal statute of 1878, making such conduct felonious, expressly provides that the civil recovery shall not be affected thereby. Code, Sec. 4425 (b.) That act, however, was passed after this interest was made and received, and could hardly affect the result here, even if that provision was not in it. Appending hereto the citations of the attorney general and Mr. G. M. Lester, for the state, of authorities outside of our state, and some of our own, as they may throw further light on a broad view of the entire subject, I close what a sense of duty to the state required me to say, in order that views of law and construction of statutes damaging to the public, in my judgment, might not be cited hereafter as carrying, by a unanimous judgment of this bench, the force of a legislative enactment. Vol, 4 B., Meyer's Feb. Dec. Secs, 380, 382, 396, 397, 405, 407; 10 Otto 8; 56 Ga., 290; 60 Id., 296, 318; Williams Ext'rs, 1844; C. Lansing, p .33; 10 Central Law Journal, p. 34; Brandt on Suretyship, 456, 455; 17 Ala., 806; 46 Ga. St., 452, 209; 2 Gratt., Va., 134; 53 Ind., 231.

This opinion and that of the Colorado court were fully reviewed by the supreme court of the state of Wiscossin in the State vs. McFettridge, and dismissed as non-applicable. The Wisconsin court seems to have adopted the reasoning on the opinion of Justice Jackson of Georgia. Summed up, the Wisconsin case is the most recent, the most thorough, and to my mind the most sound of the cases cited, and it is the one which should control in forming a judgment concerning the ability of South Dakota to recover the money which was received by Mr. Phillips as interest on the funds of this state. I quote the opinion of Judge Lyon in the Wisconsin case in full, as it seems to meet every salient objection which could be raised against the right of South Dakota to recover the interest money unlawfully converted to the

On this appeal, therefore, this is simply an action of law on the official bond of the state treasurer, McFetridge, against him and his surviving sureties in such bond, to recover certain sums of money which he received from time to time during his specified term of office, from banks and banking associations and firms, as compensation paid by them on loans of public funds to, or deposits with, such banks, associations and firms. For convenience these depositories are referred to in this opinion under the general designation of banks. It is strongly urged on behalf of the defendant that, although the treasurer may be liable to the state in some form of action for the money thus received by him on account of such loans or deposits, yet, unless the sureties are also liable therefore on the bond in suit, there can be no recovery in this action against the treasurer. This is probably a correct statement of the law. At least, for the purposes of this case it will be so regarded. In determining whether the sureties are liable on the bond for the alleged breach thereof, it will not be forgotten that their liability must not be extended by mere implication beyond the letter of their undertaking. This court has always held rigidly to this rule. Its latest deliverance on the subject, in Drinkwine vs. City of Eau Claire, (Wisconsin) 53 N. W., Rep, 673, in the opinion of Mr. Justice Pinney, it is said: The liability of a surety is strictissimi juris, and cannot be extended by an implication. He has a right to stand on the exact words of his contract: 'The bond speaks for itself, and the law is that it shall so speak, and that the liabilities are limited by the exact letter of the bond, and, if words will not make them liable, nothing can.' There is no construction—no equity—against sureties. Dobbin D. Bradley, 17 Wend. 422; State v. Medary, 17 Ohio, 565; Myers v. Parker, 6. O. St., 504; Supervisors v. 17 N. Y., 242."

In the light of the above rule we are to determine whether there has been any breach of the condition of the bond in suit, to the injury of the state, for which, under legal rules, the sureties can be held liable on their bond. If there has been such breach it is of the condition that "said Edward C. McFetridge shall deliver over to his successor in office, all moneys belonging to his said office." As a matter of course, if he has not done so there is also a breach of the condition that he" shall faithfully discharge the duties of said office of state treasurer" one of which duties is to deliver to his successor, at the expiration of his official term, all moneys belonging to his office remaining, or which should be in his hands. It will be assumed for the purposes of the case that, if the deposits in question were made without lawful authority, the interest thereon was illegally received by the treasurer, and that in such case there is no liability therefore on the official bond of the treasurer. If the money received by Treasurer McFetridge from banks as interest on the state funds loaned to or deposited with them was lawfully received by him, and if the same belongs to his office as state treasurer— that is to say, if such interest is of right the money of the state, and not of the treasurer in his individual capacity, it was his duty to deliver or pay over the same to his successor in office, and his failure to do so is a breach of the condition of his bond for which he and his sureties are liable in an action at law thereon, to the extent of the money thus received and not accounted for. Hence the question is, was the money received by Treasurer McFetridge from the various banks as the consideration of his depositing the public funds with them lawfully received by him, and, if so, does it belong to the treasurer individually, or to his said office of treasurer, that is, to the state?

If we correctly understand the arguments on the part of the defendant, it is that on either of three propositions or hypotheses the money here in controversy belongs to the treasurer individually. These propositions are: First. The legal title to the public money which came to the hands of Treasurer McFetridge is in him, and not in the state; that the relation between him and the state was that of debtor and creditor, only, and hence that it is no concern of the state what the treasurer did with the public money or how much profit he made out of it, provided he accounted properly for what he received; that his obligations to the state were fully performed when he paid or delivered to the persons entitled thereto the amount of money which he received in the first instance; and hence that the sums received by him from the banks in which he deposited the public funds, as interest on such deposits, whether paid to him as a gratuity, or pursuant to a previous agreement or understanding, belonging to him individually, as incident to the legal ownership of the money.

Second. The deposit of the public funds in banks by Treasurer McFetridge was without authority of law, and it was not in the contemplation of the state or the sureties in the official bond, that he would make such deposits and receive interest thereon. Hence liability for such interest, even though the state may recover of the treasurer, is not within the true intent and meaning of the condition of his bond, and the sureties are not liable therefor.

Third. If the first proposition above stated is negatived and the state held to be the owner of the public funds that came to the hands of Treasurer McFetridge, he is still absolutely liable on his bond to account for and pay over to the persons entitled thereto, or deliver to his successor in office all such funds. Because he is thus absolutely liable therefor, the ordinary liability of a trustee to account to his cestui que trust for all profits made by him out of the trust money or property does not exist, and the money claimed in this action is not recoverable by the state, but belongs to the treasurer individually. This proposition assumes that the deposits were lawfully made, and the interest claimed lawfully received by the treasurer.

We now proceed to consider the above propositions in the order stated, and the determination of them is believed to be decisive of the judgment which ought to be rendered in the case.

I. It is assumed for the purpose of the case that, if the legal title of the public funds which lawfully came to the hands of Treasurer McFetridge was vested in him, there can be no recovery by the state, either against him or the sureties in his official bond, for any profit he may have made by the use of such funds. The question whether the state is the owner of the public funds in the hands of its treasurer, or whether the legal title thereto is in the treasurer, must be determined by the statutes prescribing the rights, duties, and liabilities of the treasurer. These statutes will be referred to and considered as briefly as possible. Sec. 152, Rev. St. is as follows: "The treasurer shall keep his office at the capital; shall receive and have charge of all money paid into the state treasury, and shall pay out the same as directed by law." Section 153 requires him to give a bond, with sureties, conditioned (among other things) for the faithful discharge of the duties of his office, and that he shall deliver to his successor in office, or other person authorized to receive the same, all moneys, property, etc., "belonging to his said office." Section 154 requires the governor to exact an additional bond of the treasurer in several contingencies, one of which is, "Whenever the funds in the treasury shall exceed the amount of the treasurer's bond." Section 157, Subd. 1. makes it the duty of the treasurer to keep a cash book, and to enter therein "a detailed account of all money received by him and disbursed," which book he is required to deposit weekly with the secretary of state. Sub-division 2 makes it the duty of the treasurer "to pay out of the state treasury, "on demand, the amounts specified in proper warrants drawn by the secretary of state, and provides that "he shall pay no money out of the treasury" except in pursuance of some law authorizing him to do so. Sub-division 7 requires him to report quarter yearly to the governor "the total amount of funds in the treasury, specifying in what kinds of currency they consist, and the amount of each kind," etc. Sub-division 8 requires him also to report to the governor, at stated times, "a full and detailed satement of all money received into and paid out of the treasury" during the time specified in the statute. Section 159 is as follows: "The governor and attorney general shall, at least once in each quarter, and at such other times as the governor may elect, examine and see that all of the money appearing may elect, examine and see that all of the money apearing by the books of the secretary of state and state treasurer, as belonging to the several funds is in the vaults of the treasurer, and, in case of a deficiency, shall require the treasurer to make up such deficiency immediately; and if such treasurer shall refuse or neglect for ten days thereafter to have the full sum belonging to said funds in the treasury, the attorney general shall institute proceedings to recover the same."

Section 4419, the provisions of which doubtless extend to and include the state treasurer, makes it prima facia evidence of the embezzlement thereof if the state treasurer loans or dposits the public moneys in his hands "for his own gain, profit, or advantage, without special authority." This section also contains the fololwing provision: "Every public officer shall promptly pay over, as required by law, the same moneys received and held by him by virtues of his office, and the whole thereof." The above statutes were all in force when, and for a long time before, the bond in suit was executed. From beginning to end they are entirely inconsistent with the theory that the legislature intended by the enactment of any of them to vest the state treasurer with the legal ownership of the public moneys which come to his hands, thus making him merely the debtor of the state in respect thereto. If such were his relation to the state, it would be difficult to show that such funds were not subject to be seized for his debts, or, in case of the death of the treasurer in office, that the same would not go to his administration as part and parcel of his estate, the state being, perhaps, a preferred creditor. It is inconceivable that any legislature could intend such results, and there is nothing in any statute which forces the conclusion that they did so. A close analysis of the above statute, or any extended discussion of them, is quite unnecessary, for a perusal of them is sufficient to carry conviction to the mind that the legislature never intended to divest the state of its title to the public funds in the hands of its treasurer, and the consequent control over those funds which results from ownership thereof. We must therefore negative the first proposition above stated, and hold that the state was the owner of the public funds which came to the hands of Treasurer McFetridge. Some of the above statutes are hereinafter referred to on another branch of the case, and a construction given them; but such construction does not diminish their persuasive course, as showing that the state is the owner of such funds.

Before leaving this branch of the case it may be observed that, in the argument of this appeal, the question of the ownership of these funds was not made as prominent as it appears to have been on the trial of this and the Harshaw case in the circuit court. At least one of the counsel in the latter case conceded that the state remains such owner. However, all of the counsel for the defendants who participated in the argument disclaim that they conceded in the circuit court that the mon-

Continued in next week's issue.

KAUTZ IS UPHELD

PRESIDENT ENTIRELY SATISFIED WITH HIS CONDUCT.

No Undue Restraint Has Been Placed Upon the Admiral Which Should Encourage the Insurgents—Admiral Kautz Was Given a Free Hand With the Injunction to Avoid Unnecessary Bloodshed—Present for the Purpose Simply of Carrying Out the Treaty Obligations.

Washington, May 4.—It is denied officially here that any undue restraint has been imposed upon Admiral Kautz which should encourage the insurgents in Samoa. On the contrary, Admiral Kautz has bee nadvised that the president supports him in all that he has done; that he is entirely satisfied with his conduct, and the only injunction laid upon the admiral has been to avoid unnecessary bloodshed. This injunction is not understood to restrain the officer in any way from such military and naval operations as, in his opinion, are necessary to protect fully the interests of the United States, British and German residents in Samoa, but it is expressly understood that Admiral Kautz is present simply for the purpose of carrying out the treaty obligations as to the interests of the citizens of the tripartite agreement, and not as a representative of any one power.

So far no advices have come to either the state or navy departments on the date of these press dispatches, hence it is assumed that no events of very great importance have occurred warranting the sending of a cablegram by either Admiral Kautz or Consul Osborne.

SOME ALARM FELT.

The Orders to Stop Hostilities Are Not Well Received.

Wellington, N. Z., May 4.—Advices from Samoa indicate that the instructions received from the powers to cease hostilities makes the situation in the islands very serious, as the rebels hold the main food supplies and are again near the municipality of Apia. The correspondent of Reuter's News Agency thinks it is evident that the home authorities have misunderstood the situation in Samoa. The Germans and rebels are already jubilant, and claim a victory over the American and British forces. The correspondent says that unless the rebels are made to submit the difficulties will remain unsolved. The American vice consul's store at Falifa was looted last week while a German store was left untouched. British and American residents all strongly condemn the action of the powers in ordering a cessation of hostilities at this stage.

THE CRUISE ENDED.

Admiral Sampson's Squadron Returns to New York.

New York, May 4. — Rear Admiral Sampson's squadron of three battleships and two armored cruisers dropped anchor off Tompkinsville yesterday afternoon after a ten weeks' cruise in the West Indies. The ships will remain at anchor for some time, and visitors to the ships will be welcomed. One by one they will be placed in dry dock at the Brooklyn navy yard to have their bottoms scraped preparatory to the summer evolutions off the New England coast.

ANOTHER COMBINE.

Makers of Agricultural Implements Will Get Together.

Chicago, May 4.—The Times-Herald says: Representatives of a number of the great plow manufacturing concerns of the United States are in Chicago. The object of their assembling is said to be the formulating of a plan for the combination of those engaged in the business. The combination of these interests is said to be but a step toward a general massing into one corporation of all the makers of agricultural implements in the country.

KENTUCKY'S GIFT.

Silver Service for the Battleship of the Same Name.

Louisville, Ky., May 4. — The contract to furnish the silver service for the battleship Kentucky has been given to a Philadelphia firm at a cost of $6,000. The service will be composed of over seventy pieces, and next to those of the battleship Indiana and the cruiser New York, will be the handsomest of any ship in the navy. The service will be ready for presentation when the Kentucky puts to sea in November.

MAHER AND RUHLIN.

They Fight Twenty Rounds to a Draw in New York.

New York, May 4.—Peter Maher and Gus Ruhlin, the Akron giant, fought a twenty-round draw before the Lenox Athletic club. Maher was nine pounds the lighter of the two. Maher was the odds-on favorite at 100 to 60. Six thousand persons saw the fight. Maher weighed 181 pounds and Ruhlin 190.

Wade Hampton's Home Burned.

Columbia, S. C., May 4.—The home of Gen. Wade Hampton, in the suburbs of Columbia, was burned. There was no insurance on the property, and a fine library, containing about 6,000 volumes, was lost. In attempting to save a dog the general was scorched about the face. Among his papers were several hundred unanswered letters from persons in all parts of the country.

Eight Hundred Out of Work.

Peoria, Ill., May 4.—As a result of a demand for advance in wages the glucose sugar refining works have been closed and 800 men are out of work. The grain in the warehouse of the company will be shipped at once.

Totally Destroyed.

Kittanning, Pa., May 4.—The Buffalo woolen mills at Worthington, six miles from here, owned by the Graff Bros., were totally destroyed by fire. The loss is estimated at from $60,000 to $100,000; well insured.

FLOUR MILL COMBINE.

Nineteen Mills Are Included in the List.

New York, May 1.—Articles of incorporation of the United States Flour Milling company, filed in New Jersey Saturday, mark the consolidation of nineteen of the large mills, including those in Duluth, West Superior, Milwaukee, Buffalo and Syracuse, N. Y. The organizers of the trust have purchased only such properties as they could procure at a reasonable market price. The nineteen mills included in the list have a daily capacity of about 40,000 barrels of flour.

It was expected that the Pillsbury-Washburn Milling company, the Washburn-Crosby and the Northwestern consolidated companies would go into the consolidation, but it is stated that the English shareholders wanted such exorbitant prices for their holdings that those companies were left out of the consolidation.

The combination is on a par with the American Sugar Refining company and American Tobacco company in its scope and ramifications, and was bitterly fought by the Northwestern trade journals and by the Minneapolis milling interests from the start.

FOR ALLEGED LIBEL.

Senator Whiteside Sues Senator Clark and His Butte Paper.

Butte, Mont.—State Senator Fred Whiteside, who started the cry that bribery had been done in the recent legislature to secure the election of W. A. Clark to the United States senate, late last evening brought a libel suit in the district court against Senator Clark and his Butte newspaper, the Butte Miner, asking $100,000 damages. The suit is the result of articles on Senator Whiteside by the paper during the senatorial contest, in which he was charged with conspiracy, and the accusation was made in the paper that the $30,000 which Whiteside claimed to have received from Clark had been given him by the alleged conspirators.

Ravages of Prairie FGire.

Woonsocket, S. D.—Sunday was a day was a day of awful fires about here. First, a high wind of forty-five miles per hour drove a prairie fire upon this city from the south. The artesian well again saved the city. The firemen met it at the outskirts of the city, and the deluge of water from the greatest artesian well in the world put it out. Later the wind changed to the northwest and blew at the rate of sixty miles per hour, filling the air with dust, sand and smoke. The barn of James West, located near the city, was destroyed, with 1,000 bushels of corn, 400 bushels of wheat, seven head of horses and much other valuable property. Alex Miller, living eight miles south of here, lost his barn and house and about $2,000 worth of personal property. D. C. Bassett's house and barn; John McCormack's house and barn and $1,000 worth of personal property; Ed McCormack's barn, machinery and sheds; H. O. Kellson's house, barn and $800 worth of personal property; A. B. Kingsbury's house, barn, eight head of cattle and $1,000 worth of grain and other property; G. O. Kilson's barn and corn cribs; L. P. Cook's house and barn and everything on the farm, including $150 in currency in the house; William Soule's house and Ed Newcomb's barn are among the losses. It is reported that the town of Waterbury, in western Jerauld county, was entirely burned, not a building remaining.

South Dakota Corporations.

Pierre, S. D.—Articles of incorporation have been filed for the Wyoming, South Dakota & Eastern railroad, with headquarters at Rapid City and a capital stock of $6,500,000. Incorporators, John R. Brennan, James W. Fowler, Virgil T. Price, Myron Willsie, James Halley, of Rapid City; A. Ewert, C. H. Burke, C. C .Bennett, H. R. Horner, of Pierre. The purpose of the corporation, as stated in the articles, is the construction of a railroad from the coal fields of Wyoming to Aberdeen, crossing the river at this city. The incorporators are the men who have charge and control of the grade between this city and Aberdeen and the grade between Rapid City and the Sheyenne river. For the Franklin Gulch Mining company at Pierre, with a capital of $1,000,000. Incorporators, E. L. Squire, Edmund Tweedy and S. A. Travis. For the Call Publishing company, at Pierre, with a capital of $10,000. Incorporators, J. W. Hyder, G. W. Lord and H. T. Zinsmaster. For the Co-Operative Threshers company, at Sioux Falls, with a capital of $250,000. Incorporators, G. M. Henderson, G. E. Darrow, O. E. Martin, R. F. Pettigrew, W. C. McAllister, C. W. Reynolds The objects of the company, as shown by the articles, is to unite and propagate a fraternal feeling among owners and operators of threshing machines and to deal in farm implements.

Kirby Reinstated.

Pierre, S. D.—The supreme court, last evening, granted the petition of Joe Kirby of Sioux Falls, for reinstatement as an attorney, holding that the action of the United States court of appeals was sufficient to wipe out all the cause of his disbarment. Kirby was readmitted by taking the oath of office. Justice Fuller dissented, on the ground that he believed that Mr. Kirby should pass another examination, and that he was not satisfied as to the good moral character of the applicant. After taking the oath, Kirby spoke for a few minutes, declaring that no court nor attorney in the state should ever regret his readmission to the bar, and that he had learned forbearance by his experience of the past year.

Everybody Satisfied.

Huron, S. D., April 30.—The date and place, June 28, at Redfield, for holding the state Republican convention for nominating candidates for judges of the supreme court, appears to meet with general favor. Numerous messages have already come to the secretary of the central committee, Frank Crane of Watertown, approving of the action of the committee, and suggesting that the present bench be re-nominated, and also pledging full support of the ticket that shall be named. A canvass among the committeemen and visitors indicated that a feeling of earnestness and determination to keep the party thoroughly organized and for sustaining harmonious relations now existing between the leaders and the rank and file prevails.