BIG RAILROADS OBJECT.

AGAINST RATE CONTROL.

Views of Many Companies Expressed by Samuel Spencer.

Washington, Jan. 12.—Samuel Spencer, president of the Southern Railway, and authorized to voice the sentiments of the New-York Central, the Erie, the Chicago, Milwaukee and St. Paul, the Northern Pacific, the Illinois Central, the Delaware, Lackawanna and Western, and other great railroad companies, spoke vigorously to-day before the House Committee on Interstate and Foreign Commerce against the Cooper-Quarles bill, or any proposition to authorize the Interstate Commerce Commission to fix railway rates. Mr. Spencer is the first direct and official representative of the railroads to be heard by the committee, and his testimony is regarded as the keynote of the opposition to the rate fixing by the government.

Mr. Spencer said at the outset that it was not his purpose to discuss the subject in its entirety. There were, however, a number of important points which he wished to emphasize. The Interstate Commerce law and the commission, he said, had been in operation eighteen years. Before this time the rebate, the secret contract and discriminatory devices of various kinds were the rule. Now the reverse is the case. Rates are substantially maintained.

"There is no difference of opinion," continued Mr. Spencer, "between the railroads of the country, Congress and the President on the subject that rebates are wrong. We agree with the language of the President that the highways of transportation must be kept open to all on equal terms. On that basis the railroad companies are ready and anxious to aid and cooperate. But I do not think any additional legislation is necessary in order to proceed against that particular class of abuses. If such legislation does not appear to Congress to be necessary, the railways of the country will certainly stand, and I have no hesitation in saying so, in co-operation and aid to that end. That particular phase of regulation has already been pronounced by the commission as fully covered by existing statutes. It simply becomes a question of enforcement of the law. But the question before you is not of that character—it is that of the power to name a rate upon the part of the commission after complaint and hearing. It has been claimed this will be a means of stopping rebates. This claim I have no hesitancy in disputing, and will give it attention later."

CO-OPERATING WITH COMMISSION.

Asked as to the necessity for the proposed legislation, Mr. Spencer answered by reviewing the situation for the last eighteen years. About 90 per cent of all the claims or questions of various kinds which have been presented to the Interstate Commerce Commission in that time have been adjusted without formal hearing and decisions on the part of the commission. "That," he said, "does not indicate either a fight or non-co-operation on the part of the railroads."

Of the remaining 10 per cent of the work of the commission, scarcely 2 per cent was the subject of litigation. Mr. Spencer said the railroads acquiesced in four-fifths of the decisions of the commission. "Out of the forty-three which went to litigation," he continued, "twenty-five related to rates, and in twenty-two out of the twenty-five cases the decisions of the commission were reversed by the courts. One case only was affirmed by the courts in its entirety, while two were partially confirmed and partially reversed." These figures covered eighteen years and a railroad mileage of 210,000 at the present time, and 135,000 miles at the beginning of the period named. "Does this indicate the necessity for legislation with respect to rates?" Mr. Spencer asked.

He expressed the confidence of the railway world in the commission, and said it was justly worthy of the respect of the country. There was only one feature of the Quarles-Cooper bill which he wished to discuss specifically, and that was the portion conferring power on the commission to substitute a rate for one complained of as unreasonable, after due hearing, said rate to remain in effect subject to change only by the commission or by the courts on appeal by the railroads. Mr. Spencer denied that the commission ever legally had such power, and said the courts in 1897 had prohibited the exercise of the power by the commission. "It is claimed," he continued, "that this power would be a weapon in the hands of the commission to prevent rebates. But a rate fixed by the commission can be rebated or evaded just as easily as any other. The use of that weapon if given the commission would punish not the evader of the rate, but the road which upheld the rate, as exercise of the power would be to let the rate down to the lower figure, thus working no hardship on the road making the less rate, but punishing the road maintaining the regular rate."

PROBLEM OF ADJUSTING RATES.

The most important argument in behalf of the proposition Mr. Spencer believed to be that such a power would enable the commission to prevent discrimination between localities. This question of adjusting rates between localities, he said, was the most difficult and intricate of all. The present adjustment was the outgrowth of natural competition, not only between localities, which had and would always exist, but between railroads as well. To disturb this adjustment or to begin its disturbance, he maintained, would not only be a task so enormous that no statement could convey a comprehension of it, but would be impossible of satisfactory completion in the hands of a body with authority only to take into consideration the one phase of adjusting rates with reference to their equalization so far as the carrier was concerned, and leaving out the question of competition between localities.

Mr. Spencer will continue his testimony to-morrow.

CASSATT AT THE WHITE HOUSE.

Has a Brief Talk with the President on Rate Legislation.

Washington, Jan. 12.—A. J. Cassatt, president, and Samuel Rea, fourth vice-president, of the Pennsylvania Railroad, had a brief talk with President Roosevelt to-day regarding proposed legislation affecting railroad rates. The details of the interview were not disclosed. Mr. Cassatt said, as he and Mr. Rea left the White House, that he had called merely to present Mr. Rea to the President. Asked whether they had taken up the question of freight rate legislation, Mr. Cassatt replied:

"Yes, we did refer to the matter briefly, but I can say nothing more than that."

J. D. YEOMANS RENOMINATED.

To Interstate Commerce Commission Until March 4.

Washington, Jan. 12.—The President to-day sent to the Senate the nomination of James D. Yeomans, of Iowa, to be Interstate Commerce Commissioner. Commissioner Yeomans's term expired on January 7. It was the idea of the President that he would continue as a member of the commission until his successor had qualified. Lawyers in Congress held, however, that the appointment of a member of that commission is for a definite period, and therefore that Mr. Yeomans ceased to be a member of the body on the 7th. The President referred the question to Attorney General Moody, whose opinion, submitted to the President to-day, is in accord with the general view in Congress that Mr. Yeomans is not now a member of the commission. The President consequently sent the appointment of Mr. Yeomans to the Senate, the understanding being that he will serve until the term of Mr. Cockrell in the Senate expires.

TAFT MAY VISIT PHILIPPINES.

Washington, Jan. 12.—If the business of the War Department will justify it, Secretary Taft will make an official visit of inspection to the Philippines next summer. Unless it becomes necessary to change his plans, the Secretary will start from San Francisco for Manila early in July.

PAUL MORTON'S VIEWS.

How He Would Solve the Rate Problem.

Washington, Jan. 12.—Paul Morton, Secretary of the Navy, and formerly vice-president of the Atchison, Topeka and Santa Fe Railroad Company, is the author of an article on the railway rate question, which will be published in "The Outlook" to-morrow. He expressly disclaims writing as a representative of President Roosevelt's administration, and says he speaks merely as one with a somewhat extensive experience on an important subject. He says there are few complaints against railroad rates per se in the United States, the chief trouble being with "the relation of rates as between markets." He says there are as many rates that are too low as there are which a court would decide to be too high, and that either class may be equally disastrous to communities. He expresses the opinion that federal supervision of railroads is necessary, but adds that regulation and protection should go together. He says that one of the three things following is sure to take place in the conduct of railways:

First—Legalization of pools; the right of the railroads to make enforcable contracts between themselves as to a division of earnings, so that they can resist the temptations of big shippers and be assured a fair share of the business moving at stable rates which shall apply alike to all patrons.

Second—The further unification of ownership, thereby delivering in time the entire railway ownership of the country into the hands of a few individuals or one syndicate.

Third—Government ownership, the worst of the three "evils," if such they may be called.

In the opinion of Mr. Morton government ownership of railroads would be the beginning of industrial and political chaos. He rather favors the first proposition, with adequate provision to assure rates being reasonable.

As to pending legislation, Mr. Morton favors the continuance of the Interstate Commerce Commission in substantially its present form, saying:

Let it go on making investigations and findings. If it finds a rate is unreasonable (either too high or too low, everything else being considered), let it order such rates as it deems reasonable, and if the railroads do not make them effective in thirty days, then the entire matter to be referred to a central court of transportation, of, say, three or five members, to be created especially to consider and expedite all questions of interstate commerce, so far as the transportation of the country is concerned, it being understood that this central court shall have power to adjudicate in all such cases, except those involving constitutional questions; and the findings of this court in interstate matters to be final.

I would urge severe punishments for railroads or steamboat lines engaged in interstate commerce which by any device paid rebates, commissions or in any way afforded preferential rates, and the punishment should be just as severe to shippers or commission agents seeking or receiving them. I would permit the railroads to divide their earnings or tonnage among themselves, filing all such agreements with the Interstate Commerce Commission for its information, and I would make these contracts enforceable as between the railroads. I would do this as an insurance to the small shippers securing the lowest rate, and as a protection to the transportation lines against the vast tonnage and consequent temptation offered by the big shippers which so frequently have been used to secure inside rates. If these contracts were illegal or against public policy, or unreasonably in restraint of trade, then let them be reviewed by the same court of commerce.

I would favor, even if it were necessary to have a constitutional amendment to accomplish it, the declaration that all transportation by rail was hereafter to be considered interstate commerce and subject only to federal supervision, thereby relieving the States of this prerogative and establishing one central regulation, the federal power.

I would make it impossible for others than those directly interested as shippers or commercial bodies to bring suit for action under the Interstate Commerce act.

I would favor an agitation and shaping of public opinion that would not tolerate such a thing as a preferential rate and would make it equally disagreeable to grant or receive it. The President's Message on this subject meets the views of all good citizens, whether engaged in railroading or shipping.

SHAW GRANTS DRAWBACK.

On Flour and Byproducts from Imported Wheat.

Washington, Jan. 12.—Secretary Shaw to-day issued a regulation allowing a drawback on flour and the byproducts resulting from the grinding of wholly imported wheat. The duty on imported wheat is 25 cents a bushel. The question of a drawback on flour produced from mixed imported and domestic wheat is still pending before the department.

CANADIAN RECIPROCITY.

Reassembling of Commission Not Yet Decided, Mr. Fairbanks Says.

Washington, Jan. 12.—Senator Fairbanks and Secretary Hay had a long conference to-day concerning Canadian reciprocity and other subjects which were to have come before the Joint High Commission. After the conference Senator Fairbanks made the following statement:

The subject of reassembling the Joint High Commission will be considered after the prorogation of the Canadian Parliament. The matter will rest in abeyance until then.

THE SMOOT INQUIRY.

More Testimony for Defence—Political Conditions in Idaho.

Washington, Jan. 12.—Nearly the entire day in the Smoot investigation was devoted to testimony relating to political conditions in Idaho. Frank Martin and F. H. Holzheimer, prominent Idaho Democrats, testified that a majority of the Democrats of the State opposed "an unnecessary attack" on the Mormons, which they said was the effect of the anti-polygamy plank of the party's State platform. James H. Brady, chairman of the Republican State Committee, told of taking advantage of the Democratic charges in order to get votes for the Republican ticket. He also charged that the Democrats traded off votes for Judge Parker for votes for ex-Senator Heitfeld, the Democratic candidate for Governor. J. W. N. Whitecotton, of Provo, Utah, gave evidence in relation to political conditions in Utah.

SENATE PROCEEDINGS.

Merchant Marine Bill Reported—Legislative Bill Taken Up.

Washington, Jan. 12.—The Legislative, Executive and Judicial Appropriation bill was read at length in the Senate to-day, and there was considerable discussion of the Civil Service question and the provision for an investigation of foreign trade conditions by the Department of Commerce.

The bill for the encouragement of the merchant marine was reported to the Senate, and Mr. Bailey made the point that the commission had been pledged to report in favor of discriminating duties, and not in favor of ship subsidies. The suggestion was combated by Senators Gallinger and Lodge, who were members of the commission.

LINCOLN TRUST ELECTION.

The annual meeting of the stockholders of the Lincoln Trust Company for the election of officers and directors was held yesterday at the offices, No. 208 Fifth-ave. William Darrow, jr., was made third vice-president, a newly created office; Frederick Phillips was elected secretary, and Joseph Z. Bray assistant secretary. The other officers are Henry R. Wilson, president; Frank Tilford, vice-president; Owen Ward, second vice-president; Robert C. Lewis, treasurer, and Edward C. Wilson, assistant treasurer.

The directors whose terms expired were, with the exception of Robert M. Gallaway, who for business reasons was not a candidate, re-elected. The Lincoln Trust Company reports a prosperous year, with undivided profits equal to 40 per cent on its capital stock. Its deposits now stand at more than $13,000,000, having about doubled during the year.

WYNNE MAKES A CHANGE.

BRISTOW OVERRULED.

Postmaster General Assumes Direct Charge of Inspectors.

Washington, Jan. 12.—Postmaster General Wynne has issued an order transferring the entire corps of postoffice inspectors from the jurisdiction of the Fourth Assistant Postmaster General and placing them immediately under the Postmaster General. The action is taken on the ground of serving the best interests of the government, and is also based on the fact that the inspectors of the other executive departments of the government are directly under the head of the department. The order is to take effect next Monday. It affects over two hundred men scattered throughout the country. The order is one of the most important issued by the Postoffice Department for a long period, and may create significant developments.

Fourth Assistant Postmaster General Bristow, who is strenuously opposed to the transfer, has given definite expression of his opposition and made efforts to avert the change. Mr. Bristow discussed the subject with the President to-day. At the close of his interview he would say nothing as to the order or regarding the course he would pursue.

NEW SUPERINTENDENT OF MAILS.

Francis R. Roome Appointed in the Postoffice Here.

Washington, Jan. 12.—Postmaster General Wynne has appointed Francis R. Roome as superintendent of mails of the New-York City Postoffice. The appointment is made on the recommendation of Postmaster Willcox, and is in line with the determination of the Postmaster General to allow the Postmaster to manage his office in every way so far as is consistent with the regulations, thereby maintaining the latter's responsibility for the proper administration of the office.

Mr. Roome is forty-six years old, and has been in the New-York Postoffice since he was twelve years old. He was formerly superintendent of the order department of instruction, and will now fill the place formerly held by Augustus B. Maze.

COMMISSION FOR DUKE.

Gaynor Appoints It on Wife's Application.

The web of litigation about Brodie L. Duke was tangled a little more yesterday when John M. Gorham and Levy & Unger, attorneys for Mrs. Duke, obtained from Justice Gaynor, in Brooklyn, an order appointing a commission to examine Mr. Duke as to his sanity, through a jury. The commission appointed by Justice Gaynor consists of Professor Isaac F. Russell, of the New-York University Law School; Dr. Thomas L. Fogarty, of No. 250 Union-st., Brooklyn, and Edward D. Candee, of No. 323 Garfield Place, Brooklyn. The time for taking testimony by the commission before a jury to be drawn by the Sheriff of Kings County is set as January 19.

The new proceeding is in the nature of an appeal from the order of Justice Truax, which committed Mr. Duke temporarily to the Sanford Hall sanatorium in Flushing, and Mrs. Duke's counsel, it was explained yesterday by Mr. Levy, selected Justice Gaynor to hear the appeal because he had already issued a writ of habeas corpus on which Mr. Duke is to be brought into court in Brooklyn at 10 o'clock this morning. Mrs. Duke's counsel had nothing to do with the issuance of the writ, which was obtained by counsel for W. G. Bramham, Mr. Duke's secretary.

The order of Justice Gaynor appointing a commission permits Mrs. Duke's counsel to take a short cut and get ahead of Nicoll, Anable & Lindsay, counsel for the Duke family, in their effort to have a commission in lunacy appointed to take charge of Mr. Duke's person and property. The order which counsel for the Duke family obtained from Justice Greenbaum on Wednesday was to show cause on January 20 why a commission in lunacy should not be appointed. Mr. Levy said yesterday afternoon that if the commission appointed by Justice Gaynor found that Mr. Duke was sane it would not be possible for the Duke family to press other proceedings to have Mr. Duke declared insane.

There is a possibility that Justice Gaynor will examine Mr. Duke and some witnesses in his case this morning, at the request of Mr. Duke's secretary, who obtained the writ of habeas corpus. In the application for the writ Mr. Bramham declared that business matters of importance made it necessary that he be permitted to talk with Mr. Duke, who was being confined in the sanitorium against his will and in spite of the fact that he was sane and able to attend to his business affairs. If Justice Gaynor should decide that Mr. Duke is sane he might discharge him and thus put an end to all the other litigation.

It became known yesterday that messengers of rival law offices had a race between the Flushing railroad station and Sanford Hall late on Wednesday afternoon. One of the messengers was attached to the law office of Champe S. Andrews, counsel for Mr. Bramham, and the other messenger was from the office of Nicoll, Anable & Lindsay. The messenger of Mr. Andrews was on his way to the sanatorium to serve the writ of habeas corpus on the superintendent, and on the train he discovered that a messenger from the office of Nicoll, Anable & Lindsay was also on the way to the sanatorium to deliver an order transferring Mr. Duke from Flushing to Amityville. When the train reached Flushing both messengers hired cabs and ordered the drivers to get to the sanatorium in the quickest possible time, but the messenger of Mr. Andrews won the race by a few minutes and served the habeas corpus writ before the order to transfer Mr. Duke could be served.

It was said by counsel for the Duke family yesterday that Superintendent Brown, of the Sanford Hall Sanatorium, had asked to be relieved of the care of Mr. Duke, as he wished to go South for the remainder of the winter. For that reason an application had been made to the State Board of Lunacy for an order transferring Mr. Duke to an asylum at Amityville pending the appointment of a commission in lunacy.

In the petition which Mrs. Duke made yesterday to Justice Gaynor, she stated that she was the wife of Brodie L. Duke and that on January 6 two persons representing themselves to be police officers forcibly seized her husband in the apartment at the Park Avenue Hotel and took him away.

DID NOT URGE A NATIONAL CHURCH.

Primate Declares the History of America Shows It Would Be Impossible Here.

London, Jan. 12.—There has been given out a letter written by the Archbishop of Canterbury to a correspondent who calls his attention to an article in a recent number of "The New-York Churchman." It appears that "The Churchman" considered that the Primate, in a recent letter, advocated the establishment of some branch of religion as the national church of America. The Archbishop emphatically denies that he had any intention of conveying such an idea, and says:

Nothing could have been further from my thoughts or wishes. The whole circumstances of the history and character of the Constitution of the United States render such a notion entirely out of the question.

Continuing, the Archbishop points out that the National Church of England is an absolute necessity as a part of her existence. Such a fact, he says, is possible in the old country, but impossible in America. In conclusion he says:

Let America cherish and forward her own characteristic life in her own admirable way; but let England retain the system which history has shown is peculiarly adapted to the maintenance within our borders of a strength capable of rendering the world a service never more truly needed than it is to-day.

"TALK TO CONGRESSMEN"—COGHLAN.

At the annual dinner last night at the Hotel Astor of the Twenty-four Karat Club, Rear Admiral Coghlan, commandant of the Brooklyn Navy Yard, responded to the toast, "The Navy." He strongly urged a larger navy. He said:

Every man here should use his influence with his Congressman to promote legislation looking to a larger navy. I can assure you it will bring a good return on your investment.

SILLIMAN LECTURER AT YALE.

New-Haven, Conn., Jan. 12.—Ernest Rutherford, F. R. S., MacDonald professor of physics in McGill University, Montreal, has been appointed Silliman lecturer at Yale for 1906. Professor Rutherford is considered one of the greatest authorities on the subject of radio-activity. The lectureship was established by the will of Augustus Ely Silliman, of Brooklyn, who died in 1884.

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SWAYNE FIGHT BEGINS.

CHARGES UP IN HOUSE.

Littlefield and Lamar, of Florida, in a Hot Altercation.

Washington, Jan. 12.—The House of Representatives to-day devoted its entire session to a discussion of the impeachment charges against Judge Charles Swayne, of the Northern District of Florida. A dramatic incident occurred when Mr. Littlefield, of Maine, called on Mr. Lamar, of Florida, who filed the charges against the judge, to admit or repudiate an alleged interview which the former asserted tended to incite the people to commit an act of violence against Judge Swayne. Mr. Lamar admitted giving an interview, but emphatically denied any suggestion that could be construed into advising assassination or murder. He said that although Judge Swayne was known to be the most lawless man in Florida, he had remained secure from bodily harm.

Mr. Palmer vehemently asserted that the statements that other judges than Swayne had charged $10 a day for expenses were a slander on the judiciary of the United States. "There is not," he said, "a syllable of testimony in this record or anywhere on earth that any judge ever did this thing but Judge Swayne." To refuse to support the impeachment charges, Mr. Palmer exclaimed, would make the members of the House the laughing stock of the United States.

Mr. Littlefield said he felt it his duty to give to the House what the record showed and what it did not show. He analyzed the evidence in the case in all its phases and said that none of the majority of the committee except the sub-committee had read the report when they voted for impeachment.

Turning his attention to Mr. Lamar, Mr. Littlefield called on him to admit or deny an alleged interview published in "The Metropolis" of Jacksonville, Fla., reprinted from "The Atlanta Constitution," on March 29, 1904, which Mr. Littlefield said did violence to Mr. Lamar's reputation as a gentleman and an honorable member of the House. Mr. Littlefield quoted from the interview, in which Mr. Lamar is alleged to have said that the people of Florida had stood Judge Swayne just about as long as they could, and that he was going to tell Congress that, if some action was not taken to relieve the people of Florida, Judge Swayne's life would be in danger.

Mr. Lamar said that any language imputing to him the statement that Judge Swayne's life was in danger was absolutely incorrect, but he had said that if the proceedings in the House terminated in nothing it would be because the House did not understand the conditions in Florida; that he looked on Judge Swayne "as utterly corrupt and utterly tyrannical, and the most lawless man in the State of Florida." He declared that he said in the interview "that if nothing appealed to Judge Swayne, neither law nor humanity, in his own lawless career, then I would point out to him the fact that his arbitrary and tyrannical action might result in some ill ordered brain or some revengeful brain that suffered at his hands inflicting violence upon him."

The most intense interest was exhibited in this phase of the debate, and members leaned forward to catch every word.

Mr. Littlefield said it grieved him profoundly that a member of the House had preached "incitement to assassination and murder."

"I deny any suggestion of violence to Judge Swayne!" exclaimed Mr. Lamar, who further said that "the fact that he has remained in my State so long secure in his lawless career is evidence of that."

"Do you think," interjected Mr. Robinson, of Arkansas, addressing Mr. Littlefield, "after the statement by the gentleman from Florida, that he justified assassination?"

"I protest here and now," exclaimed Mr. Littlefield, "that no language put into public prints and read by the common people, and which urges assassination or incitement to murder, is trivial in its character."

Mr. Lamar was promptly on his feet, and declared that, while he did not think Mr. Littlefield intentionally charged him with inciting murder, Mr. Littlefield certainly had almost blindly misapprehended what really was said. If, said Mr. Lamar, any one used his language in the interview to impute that he suggested violence to Judge Swayne, he would denounce it as a malicious falsehood.

"The gentleman's denunciation disturbs nobody," replied Mr. Littlefield, adding that, unfortunately for Mr. Lamar, the ordinary citizen of the United States would so construe it, "and it is for that reason the language does great violence to the character of the distinguished gentleman from Florida."

General applause greeted an inquiry by Mr. Gaines, of Tennessee, why Mr. Littlefield did not confine himself to a discussion of the record, as he a short time before was "kicking" about it not being done.

"Is the gentleman disturbed?" sarcastically retorted Mr. Littlefield.

A storm of applause followed the reply of Mr. Gaines that he was disturbed in his confidence in Mr. Littlefield's fairmindedness. Mr. Littlefield then declared that a part of the testimony of Judge Swayne was not reported, and asked who did the reporting.

"Oh!" answered Mr. Palmer, "the colored man employed by the Judiciary Committee."

Mr. Littlefield charged that the Judiciary Committee, had edited out of the record certain statements of Judge Swayne, which they embodied in their report.

Mr. Littlefield will continue his remarks to-morrow.

The Shackleford resolution, authorizing the committee on Interstate Commerce to investigate the Panama Railway Company, was adopted, after which the House adjourned.

KING CALLS PARLIAMENT.

Date Set for February 14 and a Short Session Is Thought Likely.

London, Jan. 12.—King Edward at to-day's meeting of the Privy Council signed a proclamation convening Parliament for February 14. The session will be opened by the King personally with full state ceremony. The unusual lateness of the date of the reopening is interpreted to mean that the government does not purpose to press any Redistribution bill, but to give the Aliens bill, which Mr. Balfour has definitely promised, the first place in its legislative programme.

Recent speeches of Ministers confirm the belief in an early dissolution of Parliament, and it seems likely that unless previously defeated, possibly through the intentional abstention of the Chamberlainites, the government will find a pretext for voluntarily dissolving Parliament toward the end of March and so hand over to the Opposition the seemingly thankless task of formulating the budget.

NEW DEVELOPMENT IN POWERS CASE.

Decision of Judge Evans Intimates That Pardon by Governor Taylor Was Legal.

Louisville, Jan. 12.—An interesting if not important decision rendered by Judge Walter Evans in the United States Court a year ago has recently come to the light of publicity by its publication in "The Federal Reporter," Volume CXXIX. The opinion was rendered in an application for a writ of habeas corpus for Caleb Powers, then under sentence of death for conspiracy in the assassination of William Goebel, to whom the Court of Appeals has since granted a new trial.

Although Judge Evans denied the writ, he gives Powers much comfort in the long opinion rendered. The denial of the writ was simply on the ground that that was not the time for granting it, the matter not having been pressed in the State court, but he foreshadowed that at the "proper time" he would throw open the prison gates and let Powers go free upon the pardon granted by W. S. Taylor, who, the court holds, was Governor of the State at the time it was issued.

FOUNDLINGS IN ARIZONA.

Application for Habeas Corpus Heard By Supreme Court.

[BY TELEGRAPH TO THE TRIBUNE.]

Phœnix, Ariz., Jan. 12.—The time of the Supreme Court of Arizona was wholly taken up to-day by the hearing of an application for a habeas corpus sued out by the New-York Foundling Asylum for the possession of sixteen children, who were sent last October to Clifton, Ariz., and there by the townspeople seized and redistributed, after having been placed in American homes.

It is understood that the interest of the President is shown in the case by the presence, acting for the petitioners, of the United States District Attorney for Arizona. All the children, well dressed and healthy, were produced in court by the respondents, respectable citizens of Clifton, who have grown to love them as their own. The whole day was consumed in argument over technicalities and the case went over.

MAJOR MITCHELL MAY RETIRE.

Major E. H. Mitchell, of the 14th Regiment, N. G. N. Y., who was recently tried by court martial and sentenced to be reprimanded for violating the military code, has applied to be placed on the retired list.

PORT ARTHUR TROPHIES.

Fortress's Strength Greater than Had Been Supposed.

Tokio, Jan. 12.—The Japanese achievement at Port Arthur seems more remarkable in the light of further investigations. The original Russian strength is now estimated to have been almost fifty thousand men. It is announced at the army headquarters that in addition to the prisoners already reported (878 officers and 23,491 men) about thirteen thousand wounded combatants will eventually be brought to Japan.

General Nogi's headquarters staff at Port Arthur are at present devoting their energies to dispatching the prisoners to Japan, placing the wounded in hospitals and clearing the way for a thorough investigation of the spoils of war. Confused reports reach Tokio as to the condition of the city buildings.

It was said to-day that General Nogi would not return to Tokio at present.

Sixteen survivors of the third detachment of Japanese who attempted to block the entrance of Port Arthur by sinking stone laden steamers in the channel are expected to arrive at Sasebo today. The fate of their seventy companions is unknown.

General Nogi reports that the Japanese captured at Port Arthur 546 guns, 82,670 shells, 30,000 kilos of powder and 2,266,800 rounds of rifle ammunition.

Washington, Jan 12.—The Japanese Legation has received a dispatch from Tokio saying that General Nogi reports that the delivery of Port Arthur has been completed. It includes the following:

Permanent forts, 50; guns, 546, of which 54 are of large calibre, 149 of medium calibre and 343 of small calibre; cannon balls, 82,670; ammunition, 30,000 kilos; rifles, 35,252; horses, 1,920; battleships, 4, beside the Sevastopol, which is entirely sunk; cruisers, 2; gunboats and destroyers, 14; steamers, 10, etc., beside small steamers, 35 of which will be serviceable after slight repairs.

WHY STOESSEL GAVE PAROLE.

St. Petersburg, Jan. 12.—The War Office explains that the reason for Lieutenant General's Stoessel's returning to Russia, instead of remaining with the troops as a prisoner of war, is that it is incumbent on him to bring a detailed report of the defence of the fortress to the Emperor. Rear Admiral Dochinsky, who is senior naval officer, will bring the naval report.

REINFORCEMENTS FOR OYAMA.

Berlin Hears That 368 Guns and 32,000 Men from Port Arthur Have Reached Him.

Berlin, Jan. 12.—The "Neueste Nachrichten" to-day published a dispatch from Moukden saying that, according to Russian intelligence, the Japanese army facing General Kuropatkin's forces has been reinforced by 368 siege guns recently used in the investment of Port Arthur, and also by 32,000 infantry, making a total of 388,000 men, with 1,245 guns.

MACARTHUR GOING TO MANCHURIA.

Washington, Jan. 12.—Major General Arthur MacArthur, commanding the Pacific Division, with headquarters at San Francisco, will start shortly, with permission of Japan, for Manchuria to observe the operations of the Japanese troops in the war with Russia. His successor has not been selected.

DANGER TO CHINA.

Russia, in Recent Note, Claims Right to Act "in Her Own Interests."

St. Petersburg, Jan. 12.—The Russian government has issued a circular to the powers calling their attention to alleged violation of Chinese neutrality by Japan and citing numerous instances in the war in the Far East tending to prove that China is unable to fulfil her obligations. This state of affairs, the circular says, is calculated to bring the country into perilous paths, and it concludes by saying that Russia claims the right to act in her own interests.

RUSSIAN LOAN QUICKLY TAKEN.

St. Petersburg, Jan. 12.—The Russian subscription to the new loan opened at 10 o'clock this morning and was fully subscribed to within half an hour. It went at a premium of one point.

Berlin, Jan. 12.—Applications for the Russian loan were so large that the subscription list was closed immediately after it opened this morning.

URGES COLONIAL UNION.

Balfour Declares Development of the Empire Is Britons' Duty.

London, Jan. 12.—Mr. Balfour, speaking at a dinner given in his honor at Glasgow to-night, avoided the fiscal question except to say that he had nothing to add to or retract in his Edinburgh speech. He hoped conferences with the colonies soon would be quite as essentially a working part of the Empire as the House of Commons.

The two great problems with which the army had to deal, Mr. Balfour said, were the defence of Afghanistan and rearmament, which involved a cost as much as any Continental nation was able to bear. When this was completed, the British army would be in advance of that of any other nation in the world.

Mr. Balfour said that the fault with the Empire was not that it was too small, but that it was too great and powerful, and at the same time undeveloped. One of the greatest problems before the country was that of development, and the country was just beginning to realize the importance of further development of all countries under the British flag.

Mr. Balfour briefly alluded to the Dogger Bank affair. He said Great Britain was leading in the movement looking to the world's peace, and in the case of the Dogger Bank incident had skirted the precipice of war, where a small want of tact would have been a discredit to civilization.

Referring to the dangers of "particularism" and the imperfect development of the empire, Mr. Balfour instanced the United States as in its earlier days being on the verge of perishing by that disease, for then State rights seemed on the point of absorbing and destroying the sense of national unity. He said:

Fortunately for themselves, our brethren across the Atlantic had the sense to see what was an absolute necessity for them, so that America is now in rank among the greatest, if not the greatest, nation of the world. We have a similar task and even greater difficulties before us than ever beset the great statesmen who laid the foundations of the American Republic: but though I do not pretend to offer a solution, I do not believe them to be insuperable.

In conclusion, Mr. Balfour urged that it was the duty of all Britons to build up the machinery by which a closer union with the colonies could be produced.

DISORDER IN FRENCH CHAMBER.

M. Doumer Assumes Presidency—Test of Ministry's Strength Likely To-day.

Paris, Jan. 12.—Consideration is being given in the highest quarters to the possibility of the retirement of the Cabinet as a result of the election of M. Doumer as president of the Chamber of Deputies. It is expected that M. Millerand or M. Rouvier will form a Cabinet in the event of the retirement of the present Ministry. Foreign Minister Delcassé is expected to remain without reference to the other changes.

M. Doumer assumed the presidency of the chamber this afternoon amid disorder which threatened to precipitate a crisis, though a test of the Ministry's strength will probably not reach a decisive vote until to-morrow.

TALBOT INQUIRY TO-DAY.

Majority of Board Already in Reading.

[BY TELEGRAPH TO THE TRIBUNE.]

Reading, Penn., Jan. 12.—A quorum will be present to-morrow when the board of inquiry will meet to consider the charges preferred by the Rev. Dr. Irvine against Bishop Talbot and to determine whether the latter shall be tried. There are sixteen members of the board. These are here now: The Rev. Drs. Henry L. Jones and Rogers Israel, of the Central Pennsylvania Diocese; the Rev. Drs. W. B. Bodine and John E. Hardin, of the Diocese of Pennsylvania; the Rev. Dr. Harry P. Nichols, of the Diocese of New-York; the Rev. Drs. E. A. Enos and Joseph E. Carey, of the Diocese of Albany, and these lay members: William R. Butler and J. M. Lamberton, of the Diocese of Central Pennsylvania, and Francis Lynde Stetson, of the Diocese of New-York. In addition at least four others are expected on the morning trains.

One of the first questions which will be considered to-morrow morning is whether the board can go ahead with the investigation since the presentment has been withdrawn. It is believed that those who think that the withdrawal of the presentment must be accepted as final are in the minority. The other side, which now appears in the majority, wants to go ahead with the inquiry. This party constitutes the friends of Bishop Talbot, and they are eager that everything be brought out now, confident that he will be vindicated.

DR. IRVINE'S LETTER.

Willing to Have Proceedings Public—What He Says of Members of Court.

Philadelphia, Jan. 12.—The board of inquiry appointed to consider the Talbot-Irvine controversy, which failed to take action on Tuesday because of the lack of a quorum, will meet again to-morrow at Reading, Penn. Chairman W. B. Bodine has been in communication with various members of the board, and has been assured that enough members will be present to make a quorum. There is grave doubt among some of the board members and other churchmen versed in the canons of the Church whether the board can take up the controversy under the new canon which went into effect on January 1. Several members of the board, notably Francis Lynde Stetson, of New-York, will argue that the board is not properly constituted, and therefore without jurisdiction.

The Rev. Dr. I. N. W. Irvine to-night gave to the press a copy of a letter which he has sent to the board of inquiry. In it he says he is willing to waive canonical restriction and have the proceedings open to the public.

Continuing, he says:

Though the amazing spectacle will manifest itself to you and the world that there are three gentlemen of Central Pennsylvania on the board who are, perhaps, committed to the fact of upholding Bishop Talbot whatever the evidence may be, I am ready to appear before you and testify.

The gentlemen to whom I refer are the Rev. Drs. Jones and Israel and James M. Lamberton, esq.

The Rev. Dr. Jones was a member of the standing committee of Central Pennsylvania, to whom Bishop Talbot brought the false charges against me, concocted by the Bishop and Mrs. Emma D. Elliott, and his vote advised the Bishop to proceed against me. Within the last few weeks (and since this board was appointed) it has been reported that Bishop Talbot and his legal advisers met at the Rev. Dr. Jones's rectory, at Wilkesbarre, to consider what steps should be taken in this matter before you.

The Rev. Dr. Israel was one of the three gentlemen appointed by Bishop Talbot to act for him as a committee of inquiry to receive both his and Mrs. Elliott's false charges. It was this same Dr. Israel who signed the defective presentment against me, and finally, when he had failed to grind out witnesses to sustain all of his specifications in the ecclesiastical court, transgressed all precedent by going on the witness stand to give evidence against me, suppressing even the points in my favor, so anxious did he seem to be that I might be convicted.

James M. Lamberton, Esq., served on a committee which, while not having given me the opportunity to present one particle of evidence, signed a report declaring that the sentence of deposition delivered against me by Bishop Talbot was just.

All this being so, may not the church and the world expect a similar fiasco to that of the one in Harrisburg, when the faithful four friends of Bishop Talbot, of a like interesting history, perpetuated the scandal by voting against his being presented?

Regarding statements alleged to have been made by P. R. Stetson, treasurer of the Central Pennsylvania Diocese, to the effect that Dr. Irvine "has cost the diocese a great deal in both time and money by his campaign against Bishop Talbot, whose best friends hope that the whole affa[illegible] will now get the proper kind of an airing," Dr. [illegible] says:

For Mr. Stetson's better information, as [illegible] that of the board, let me say: That I ha[illegible] everything an innocent mortal soul could do to save both Bishop Talbot, the diocese and the church at large from scandal, but from first to last he has ignored all entreaties and reason in order to fulfil his promise to Mrs. Elliott to unfrock me for her. And I leave it to the church and the world whether when I neither by word, presence nor action assailed him before the Philadelphia Catholic Club, he had the right to assassinate me by writing that vile letter to Dr. Upjohn.

Dr. Irvine, continuing, contends that a conspiracy existed to unfrock him, and he quotes in support of his contention proceedings before the Pennsylvania Supreme Court, when the matter was before that body.

I beg, sirs, to leave my wrongs to God, if the church refuses to right them, reserving a future course.

Respectfully yours,
Respectfully wours,
INGRAM N. W. IRVINE.

P. S.: For fear that I should be misrepresented by any technicalities on the part of the board not to proceed, I have given this letter to the public press.
I. N. W. I.

STETSON OFF FOR READING.

Francis Lynde Stetson left town yesterday to attend to-day's meeting at Reading, Penn. of the board of inquiry into the charges against Bishop Talbot.

While Henry Lewis Morris could not be seen last night, it was said at his home that he did not purpose to attend the meeting. The same statement was made at the home of Herbert Noble, counsel for the presenters.

ACID KILLS AN AGED WOMAN.

Mrs. Frances R. Cubberly, the mother of Franklin G. Cubberly, the Republican captain of the First Election District of the 17th Assembly District, Brooklyn, died as the result of carbolic acid poisoning at her home, No. 10 Brevoort Place, that borough, yesterday afternoon. She took the acid by mistake. She was eighty-two years old, and had been ill for two years. In the last year Mrs. Cubberly's mind had been failing.

ANOTHER CARNEGIE LIBRARY.

Appleton, Wis., Jan. 12.—Andrew Carnegie has given $50,000 for a library at Lawrence University, the Wisconsin Methodist College here. Work on the new structure will begin in the spring.

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