

JUDGE WILLIAM POINDEXTER DEFENDS BAILEY

Attorney for the State in the Legislative Investigation Reviews All the Evidence and Renders Judgment for the Senator.

Cleburne, Texas, April 11.—(Special.)—Judge William Poindexter, attorney for the state in the legislative investigation of Senator Bailey last year, tonight delivered the following eloquent defense of the senator:

Ladies and Gentlemen: One of the tenets of the religion of my father, who lived and died in this country, was to tell the truth and to pay his debts, and this he constantly enjoined upon his children. In my struggles to heed his admonitions I grew to manhood in the belief that no man could be honorable and refuse to pay his just debts when he was able to do so. Through my path has been rugged at times, I have never knowingly violated the injunction of repudiated the admonition, and my early training and belief has ripened into the conviction that the highest evidence of man's integrity is manifest by his disposition to pay his debts and to speak the truth.

In the memorable campaign between Senator Chilton and Mr. Bailey for the position of United States senator in 1900, reports became current that Mr. Bailey would not pay his just debts. I was inclined to believe these reports and though I regarded Mr. Bailey as the best equipped and qualified man for the position, I did not believe that a man who was able to pay his debts and would not was not fit to occupy the high office of U. S. senator, and so I made up my mind to support Senator Chilton, but upon inquiry I found these reports were untrue. I was convinced that Mr. Bailey in his efforts to pay his debts had done more than most men would have done under the same circumstances. He not only surrendered his library, which was exempt from forced sale, to his creditors to pay his debts, but he also gave up his homestead, which was likewise exempt from forced sale, and moved his family into a humble cottage. I know that no dishonest man would give up all of his earthly possessions except his wife and children to pay his debts, and therefore I supported and voted for Mr. Bailey for United States senator in that contest.

When the state Democratic convention met in Waco in August, 1900, an open attack was made upon Attorney General Smith and Mr. Hardy, secretary of state, for granting a permit to the Waters Pierce Oil company, as then reorganized, to do business in the state of Texas. Senator Bailey threw himself in the breach and assumed all responsibility for the readmission of the company. It is claimed by those who heard him that Senator Bailey in a speech before the convention called upon the convention to hold him and not Attorney General Hardy responsible for the readmission of the Waters Pierce Oil company into Texas.

First Investigation.

I was a delegate to that convention, but on account of sickness in my family I did not attend and hence took no part in that controversy. But from a distance I saw with certainty that Mr. Bailey's enemies would accept his gage of battle and hold him directly responsible as the active agent in the readmission of the Waters Pierce Oil company. So when the legislature convened in Austin in January, 1901, charges were preferred against Mr. Bailey, then congressman; T. S. Smith, attorney general, and D. H. Hardy, secretary of state, alleging in substance that Mr. Bailey was the active agent in procuring, and T. S. Smith, attorney general, and D. H. Hardy, secretary of state, the passive agents in issuing the permit and in securing the readmission of the Waters Pierce Oil company into the state of Texas. Investigations followed. The evidence was heard and all the parties exonerated, and Mr. Bailey was elected to represent Texas in the United States senate. I was not in Austin during this investigation and took no part in the controversy.

During the years intervening between January, 1901, and the spring of 1906, the fact of the services Mr. Bailey had rendered to J. H. Kirby and the amount of money he had made in that service was generally known and discussed throughout Texas, and his connection with the readmission of the Waters Pierce Oil company into Texas was revamped

and discussed over and over again. With all these facts before the people, Senator Bailey came before the Democracy of Texas in the spring of 1906 as a candidate for reelection to the senate of the United States and campaigned the state from end to end and was nominated by about 300,000 votes in the Democratic primaries.

Second Investigation.

When the legislature convened at Austin in January, 1907, charges were again preferred against Senator Bailey. A committee composed of seven members was appointed by the house and a committee composed of seven members was appointed by the senate to investigate these charges.

After the senate committee was organized I received a phone message from the chairman of the committee requesting me to come to Austin and represent the senate committee in the investigation. I went to Austin and appeared before the committee. I stated to that committee that I had voted for Senator Bailey in the primaries, had attended the state convention and participated in his nomination and that I regarded him as the nominee of the Democratic party of Texas, but that I had not made up my mind as to the truth or falsity of the charges to be investigated. The chairman of the committee in the presence of the whole committee informed me that it was the desire of every member of the committee that I accept and serve as the attorney of the senate committee during the investigation. I stated to them that if they proposed to have a full, fair and honest investigation of the charges and they desired my service not as an attorney for Mr. Bailey nor as an attorney for the senate committee, but as the adviser and attorney of the committee to seek out and develop the truth as it might appear, I would accept the position, otherwise I would decline it; that I understood Mr. Bailey had selected his own attorneys and that Mr. Cooke would doubtless select his attorneys and that I would not be put in the position of being made the attorney of either, but that I was willing to serve the senate committee in the development of testimony and in advising the committee in all matters deemed necessary.

With this understanding I accepted the employment of the senate committee as a lawyer and as an attorney and undertook the discharge of my duties as such and discharged those duties throughout that long and tedious trial to the best of my ability. I did not seek this position and did not accept it with any desire for political notoriety. I never suffered myself to be interviewed by a newspaper reporter during the whole trial and never expressed myself on the question of the guilt or the innocence of Senator Bailey on any charge.

Fair and Correct.

While many of the incidents and details of the trial were not satisfactory to me, I believe the result was as fair and correct as could have been obtained under the evidence. There was nothing proved from which any fair-minded man could conclude that Senator Bailey had been guilty of official misconduct, malfeasance in office or that in any wise disqualified him from holding the office of United States senator. A majority of the committee exonerated Senator Bailey and acquitted him of all blame. The minority report filed by Messrs. Jenkins and McGregor reported the evidence pro and con on each charge, but made no finding as to the guilt or innocence of Senator Bailey. Judge Robertson filed a separate report concurring in the majority report and adding that he believed Senator Bailey had been indiscreet.

After the investigation closed I returned home with the determination not to make my opinion known as to the guilt or innocence of Senator Bailey until I had re-read and examined all the testimony. After the evidence was published and I obtained a copy I carefully reviewed the whole record and feel that I am thoroughly conversant with all the testimony offered. What I say to you tonight is the first public utterance I have made upon the questions involved.

I would not speak now were it not that I believe the people of Texas have a right to know my conclusions

formed from the evidence. I am out of politics and have no desire to be involved in the political strife of the hour. I do not speak as the personal friend of Mr. Bailey because I have no claims upon his friendship. Indeed, I do not know that he will even thank me for what I may say in his behalf on this occasion. I do not propose to denounce any man because he is an enemy of Senator Bailey, for many of his enemies are my friends. When I come to make up my choice among the candidates of Johnson county for local offices and to cast my ballot in the Democratic primaries I do not propose to vote for any man because he may be a Bailey man nor against any man because he may be an anti-Bailey man, unless some man may be foolish enough to run as a Bailey or an anti-Bailey candidate in which event I shall exercise my right to vote against him for I do not believe any Democrat should permit this question to enter into local politics.

I believe Senator Bailey has made mistakes, but I believe they were honest mistakes, and I shall vote for Senator Bailey May 2. When I come to vote for an anti-Bailey man who is a candidate for a local office I shall say, "I believe you are mistaken in your attitude toward Senator Bailey, but I believe your mistake is an honest one, and I shall therefore support you on your qualifications for the office."

It would be impossible as well as unprofitable for me to attempt to discuss all the charges presented against Senator Bailey, and upon which he was tried and acquitted at Austin. There are forty-two of these charges, covering almost the entire period of his political life in Texas. Specification No. 21 in effect charges that on account of Bailey's financial transactions with John H. Kirby and the Kirby Lumber company he was so embarrassed as to render him unfit and ineligible for the office of United States senator from Texas.

The history of this matter is too long to be repeated here. The evidence bearing upon it covers several hundred pages. The sum of the whole may be stated as follows: The Houston Oil company and the Kirby Lumber company were Texas corporations and were incorporated at the same time. John H. Kirby was the owner of the Kirby Lumber company and the owner of a large body of timbered land in Southeast Texas. This land he transferred to the Houston Oil company in consideration of the stock of the Houston Oil company issued to the Kirby Lumber company. A Mr. Calhoun of New York was made the financial agent of both companies and agreed with Kirby to finance the lumber company. Calhoun was to sell the stock of the oil company for money and turn the money over to the Kirby Lumber company, and was to receive a commission for his services. In November, 1902, Mr. Kirby ascertained that Calhoun had violated his trust, had hypothecated the stock of the oil company in various places to secure individual loans and when he demanded of Calhoun the stock or the money he could obtain neither a dollar threatened with financial disaster and ruin. He was a comparative stranger in New York, had no counsel there and in this condition he appealed to Senator Bailey to come to his relief, agreeing to give him the same compensation he had agreed to give Calhoun.

Bailey's Services to Kirby.

Senator Bailey accepted the service and in two years succeeded in redeeming the stock and in selling the same, and for this service he received from Kirby in commissions the sum of about \$225,000. In his efforts to redeem this stock Senator Bailey, on behalf of the Kirby Lumber company, was forced to execute a note for \$150,000, and as collateral security he placed with the bank holding the note a large amount of the stock of the Houston Oil company, and at the request of the bank obtained the indorsement on the note of H. C. Pierce. He afterwards sold the stock and with the money derived from the sale of the stock paid off and discharged this note.

The twenty-second specification charges in effect that Senator Bailey's connection with the Tennessee Construction company was inconsistent with his public duty and calculated to embarrass his public

service. The sum of the evidence touching this matter is that the Tennessee Construction company built Tennessee railroad, and in doing so incurred a large amount of indebtedness to various parties and concerns, and to secure it took the bonds of the railroad secured by a trust deed. One Mr. Van Blarcom and H. C. Pierce were the owners of a large number of these bonds, and had become personally responsible for much of the indebtedness of the construction company, and the railroad was practically insolvent.

Railroad Transaction.

In this condition Van Blarcom and Pierce sought the service of Senator Bailey in December, 1904, to straighten out the tangled mesh and to advise them what to do to save and extricate themselves. Senator Bailey agreed to take the matter up only after the adjournment of congress in March, 1905. He absolutely refused to give his attention to the matter until after congress adjourned. After the adjournment of congress he took the matter in charge, ascertained the status of the business and advised Van Blarcom and Pierce not to foreclose on the railroad as it would not pay operating expenses, but advised them to sell the bonds to some connecting railway line. He was then employed to negotiate, if possible this sale. After obtaining the consent of all other parties interested, these stocks and bonds and liens were transferred to the Southern railroad and to the Illinois Central railroad. If this transaction ever directly or remotely affected Senator Bailey's official duties the evidence fails to disclose it.

Specifications No. 2 and including specification No. 18 relate to Senator Bailey's connection with the readmission of the Waters Pierce Oil company to Texas.

As before stated Senator Bailey was charged in 1901 before he was ever elected to the United States senate and whilst he was yet a congressman with being the active agent in procuring the readmission of this company.

Old Case Over Again.

I had never read nor understood the evidence that was offered before the investigating committee in 1901 until my connection with the investigation of 1907, but when I looked into that record I found to my surprise that practically the same evidence was introduced in the investigation of 1901 that was introduced in the investigation of 1907 on this issue. They sought to show in that investigation not only that Bailey procured the readmission of the company but that as a consideration for his services he received the Grapevine ranch commonly known as the Gibbs ranch. Governor Francis did not testify at that time but ex-Lieutenant Governor Barney Gibbs did testify that the sale and transfer by him of this ranch had absolutely no connection with Pierce or the readmission of the company. He testified that he only received \$4,000 in cash in the transaction and 20,000 acres of land in Pecos county conveyed to him by Governor Francis. The balance was paid by the assumption of mortgages existing upon the land. A part of this land was conveyed by Gibbs to Francis and the deed was held by him until Bailey secured the reconveyance to Francis of the Pecos county land and paid Gibbs the price at which it was reconveyed. Every dollar that Bailey paid for this land and in redeeming it from prior mortgages was accounted for in that investigation and the evidence showed that not a dollar of it came directly or indirectly from H. C. Pierce. In the last investigation Governor Francis testified as did Governor Gibbs and his evidence shows conclusively that H. C. Pierce had absolutely no connection, directly or indirectly with the purchase of the ranch by Bailey from Gibbs.

It is most remarkable that on this issue the same charge was made against Senator Bailey in 1901 that was made against him in 1907 and that he was acquitted in 1901 and retried for the same thing in 1907 except that in 1907 it was further charged that in addition to the Gibbs ranch Bailey received as consideration for his services the several sums of money disclosed by the vouchers

introduced in evidence in the last trial.

The evidence offered in 1901 shows conclusively that Bailey had absolutely nothing to do with procuring the permit or with the readmission of the company to Texas and there was not a line nor syllable nor word nor scintilla of evidence showing or tending to show that he did.

Waters Pierce Readmission.

Now what does the record show? It shows that a judgment had been rendered in the district court at Austin prohibiting the Waters Pierce Oil company from doing business in Texas. It shows that a suit was pending in Waco, Texas, against the same company for penalties for making exclusive contracts in violation of law and that H. C. Pierce and others were under indictment for violating the anti-trust law. It shows that H. C. Pierce appealed to ex-Governor Francis, a man of honor and integrity, and an old and intimate friend of Mr. Bailey as the proper man for him to see. He gave to Pierce a letter of introduction to Mr. Bailey and requested Mr. Bailey to do what he could for H. C. Pierce. Bailey came to Waco and thence to Austin with the suggestion that the litigation be compromised. He saw Attorney General Smith and Smith showed him the judgment could not be compromised and after Bailey had examined the judgment he agreed with Smith.

Bailey then told Pierce that the judgment of the state could not be compromised and that the only thing he could do was to dissolve the old company and organize a new company, come back into Texas with clean hands and obey the law. Bailey suggested that he organize a Texas company.

A Devoted Friend.

But the question is asked, if Senator Bailey did not procure the readmission of the company to Texas, why did he assume responsibility for its readmission at the Waco convention in August, 1900? Fellow citizens, during the long investigation at Austin I studied very carefully the traits of character possessed by Senator Bailey and came to the conclusion that he is the most devoted friend mortal man ever possessed. I believe he confides to the uttermost in his friends, and that he will sacrifice more for a friend than any man I ever knew. T. S. Smith, the attorney general, was his friend and was most viciously attacked in the Waco convention because of his action in advising Secretary Hardy to issue the permit. Senator Bailey believed the attack was an outrage upon the integrity of Smith and it aroused in him the utmost indignation, and with all the manhood he possessed he came to the defense of Smith, and in his defense he went further than the facts required and therefore said, "I assume responsibility for this; don't blame Smith but blame me." Senator Bailey did not say, "I asked Smith to issue this permit." He did not say, "I was instrumental in securing the readmission of the Waters Pierce Oil company," but he said, "I assume the responsibility for what Smith has done."

I heard men for political purposes, during the latter days of the life of Attorney General Smith, denounce him in the bitterest terms for his action in readmitting this oil company to Texas. I saw General Smith in the latter days of his life when his feet were gradually slipping into the chilly waters of death, and I know how keenly he felt the sting of these poisonous shafts, but I have never heard one of these political orators read a line of law or cite a single decision from any court in this or any other state holding that the action of Smith under the facts presented to him at the time was wrong. The enemies of Smith knew and the enemies of Bailey know today, that under the facts as they appeared to Attorney General Smith at the time, under the affidavit of H. C. Pierce, and under the laws of Texas, he did no more nor less than the law required him to do.

McFall Bill.

But they ask: "If Senator Bailey did not procure the readmission of the Waters Pierce Oil company to Texas, why did he return from Washington to Texas in March, 1901, for the purpose of defeating the McFall bill?" My answer to this is that Bailey had advised Pierce to reorganize his company and to come back into Texas. The company was reorganized and a new permit granted under the advice of Attorney General Smith under the belief that the company was an independent concern and not a trust. Smith had been attacked in the Waco convention and Bailey had publicly assumed responsibility for the readmission of the company. The bill introduced by

McFall into the legislature denounced the readmission of this company as a fraud upon the laws of Texas and declared the permit void. Senator Bailey knew that this was a political move by the enemies of himself and Attorney General Smith, and that the only thing sought or that could be accomplished by the passage of the bill was a legislative declaration that the readmission of the company was a fraud was through the courts of the country, and not by legislative enactment. He knew, and every well informed lawyer knows, that the McFall bill itself was a fraud, and was intended to accomplish nothing but a reflection upon Senator Bailey and Tom Smith, and therefore Bailey returned to Texas in March, 1901, and boldly declared the fact that he was opposed to this bill because it was intended as a thrust at him and was not intended to cancel the permit of the oil company.

Subsequent events have developed the fact that at the time Bailey advised the compromise of the cases at Waco and Austin, the Standard Oil company owned a majority of the stock of the Waters Pierce Oil company. Did Bailey know these facts at the time he advised the compromise? The evidence shows he did not.

Pierce's Deception.

Pierce told Bailey it was an independent concern. Bob Henry told Senator Bailey at Waco that he thought the Waters Pierce Oil company was a party to the Standard Oil agreement, and submitted to Bailey a copy of that agreement. Bailey examined this copy and found to his satisfaction that the agreement did not evidence a trust but proved to the contrary. The judge who tried the case of the state against the company at Austin instructed the jury that there was not sufficient evidence to establish the fact that the Waters Pierce Oil company was a party to the Standard Oil agreement and to ignore that issue altogether in their deliberation. This charge I examined myself at Austin and know that the judge so instructed the jury. The only issue submitted to the jury in that case was as to whether or not the company had made exclusive contracts in the state of Texas and the jury found against the company upon this issue, and this alone, Senator Bailey swore that he did not know that the Standard Oil company owned stock in the Waters Pierce Oil company or that the Waters Pierce was a trust, but that he believed it was an independent concern.

It is contended by those opposed to Senator Bailey that the records of the Waters Pierce Oil company and the vouchers introduced in evidence in the investigation last had in Austin shown conclusively that Senator Bailey received from the company \$3,300 April 25, 1900, \$1,500 June 15, 1900, \$8,000 March 1, 1901, and \$1,750 March 28, 1901. It is true also that that books of the company introduced in evidence showed that these vouchers had been regularly entered upon the books of the company. Both the vouchers and the books evidence the fact that Pierce had paid Bailey these sums of money—the item of \$3,300 and the item of \$8,000 as loans and the other two items as expenses, and the vouchers and the books show that Pierce had received from the company these several amounts of money. The books further show that Pierce never at any time repaid these sums of money to the company, and that all these sums were ultimately charged to profit and loss.

Bailey Not Responsible.

While these are the facts as they appear from the vouchers and the books I assert that no court in Christendom would have admitted either the vouchers or the books as evidence against Senator Bailey because there was no evidence before the committee that Senator Bailey ever borrowed this money from the company or authorized his notes or checks to be passed into the company or to be placed upon the books of the company. This evidence was purely hearsay in so far as Senator Bailey is concerned. Why, then, were these papers and these books admitted in evidence before the investigating committee? Simply because they had been published to the world and had assumed the form of charges against the character of Senator Bailey and the question for the determination of the committee was whether Senator Bailey was connected with these vouchers and books.

Senator Bailey could not in law be held responsible for any statement of Pierce made in writing or otherwise, or for any entry upon the books of the Waters Pierce Oil company with-

out proving that he was in some way connected with the transaction. Senator Bailey swore that April 25, 1900, Pierce agreed to loan him as much as \$5,000. That on that day he advanced him \$3,300 and took Bailey's due bill for the amount, and that June 13 of the same year he drew a draft upon Pierce for \$1,500, aggregating \$4,800. He also swore that about March 1, 1901, he borrowed from Pierce the sum of \$8,000 and executed his note due in four months for the amount, but received only a part of it in cash, and March 28 drew upon Pierce for \$1,700 as a part of the \$8,000.

The prosecutors of Bailey contend that these several sums of money were paid to Bailey by the Waters Pierce Oil company as compensation for his services in securing the readmission of the Waters Pierce Oil company to Texas. On the other hand Senator Bailey contends that he did not receive one cent's compensation for making the trip to Texas and attempting to compromise the cases at Waco and Austin; that he did so simply upon the request of D. R. Francis and that these sums of money were borrowed by him from Pierce individually and were repaid by him to Pierce.

Personal Loans.

The prosecution contends that Bailey did not borrow these sums from Pierce individually, that he received them as a fee for the purpose stated, and that the note and the due bill executed by him were not intended to be obligations, and that he never repaid any of this money to Pierce or the company. Now the proposition is a plain one. Bailey either borrowed this money from Pierce and repaid it or he received it from the Waters Pierce Oil company as a fee and as compensation for his services in securing the readmission of that company to Texas. If he received the money as a fee and as compensation rendered at the time, and to be rendered in securing the readmission of the company to Texas then it follows as night the day, that he is the most corrupt man who ever filled a public office in Texas or walked upon shoe leather, because if that be true he has not only deceived the people of Texas but he has lied, repeatedly lied and more than that he has willfully and deliberately sworn falsely and is guilty of perjury under our law. On the other hand if these were loans, and if he has repaid the money to Pierce then it follows with equal certainty that he has been and is the worst abused, mistreated and slandered man who has figured in public life.

Now what evidence have we that these sums of money were advanced to Bailey by Pierce on behalf of the company or by the company as compensation for his services? I answer by the record and by all the facts introduced upon the investigation that there is not one particle of evidence except the vouchers and the books of the company, and these are purely hearsay statements in so far as Senator Bailey is concerned. The vouchers and the books simply show that when Bailey received a dollar from Pierce, Pierce in turn received \$6 from the company, and when Bailey repaid it Pierce put it in his pocket. Did Bailey borrow the money from Pierce?

The due bill Bailey executed to Pierce April 25, 1900, evidences the fact. The note Bailey executed to Pierce March 1, 1901, proves the fact. The evidence of Governor Francis to the effect that Pierce told him that Bailey would not accept a fee but that he had loaned him some money proves the fact. The sworn testimony of Senator Bailey establishes the fact beyond controversy. Did Bailey repay to Pierce this money? It seems to me that the evidence of Governor Francis should settle this question once and forever. How any living man can doubt the truth of the statement of Governor Francis on this question is past my comprehension.

Testimony of Francis.

Governor Francis swore before the committee that by request of Senator Bailey he paid to H. C. Pierce in St. Louis, the sum of \$4,800 in satisfaction of the \$1,500 draft of date June 15, 1900, and the \$3,300 due bill of date April 25, 1900, and received these papers from Mr. Pierce and forwarded them to Senator Bailey by letter Nov. 22, 1900. He produced before the committee his old letter book and exhibited the press copy of the letter of that date in which he stated to Senator Bailey that he had paid to Mr. Pierce this sum of money in satisfaction of this draft and this due bill and enclosed them in the letter to Senator Bailey.

Why will any living man doubt the truth of this statement of Governor Francis? Why would any human be-