

L E T T E R

FROM

THE ACTING ATTORNEY-GENERAL,

TRANSMITTING

Lists of certain accounts of United States attorneys remaining unpaid.

SEPTEMBER 13, 1888.—Referred to the Committee on Appropriations and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, September 11, 1888.

SIR: Inclosed are lists of accounts unpaid in favor of district attorneys for unofficial services for the fiscal years 1886, 1887, and 1888, under section 3, page 109, volume 18, Statutes, and of special assistants to district attorneys under section 833 Revised Statutes, disallowed by the accounting officers of the Treasury under section 3679 Revised Statutes, construed by them to apply to the appropriations for expenses of United States courts so far as to relieve them from the duty imposed upon them by the act of June 14, 1878, section 4, supplement to the Revised Statutes, page 350, chapter 191, the second paragraph of which makes it their duty "to receive, examine and consider the justice and validity of all claims under appropriations, the balances of which have been exhausted or carried to the surplus fund, under the provisions" of section 5 of the act June 20, 1874, "that may be brought before them within a period of five years"; and the third paragraph of which directs the Secretary of the Treasury to "report the amount due to each claimant at the commencement of each session to the Speaker of the House of Representatives, who shall lay the same before Congress for consideration."

The construction heretofore placed by the Department and the accounting officers of the Treasury upon section 3679, Revised Statutes, limited the application of the section directly to appropriations made for Department expenses in the District of Columbia, and not to expenses of a general nature made for other purposes than those of a Department. Attention is called to the fact that the appropriations for pay of district attorneys and pay of assistant attorneys are not made for a Department, but are appropriated as "the expenses of United States courts" for each fiscal year.

The following accounts are disallowances made by the First Auditor

of the Treasury with the consent of the First Comptroller of the Treasury, for which appropriations are respectfully requested:

Fees of district attorneys, United States courts, 1886.—Accounts of district attorneys for unofficial services.

Name of claimant.	District.	Amount.
A. Sterling, jr. (services relative to title to Hawkins Point Light-house, at request of Secretary of the Treasury). Exhibit A.	Maryland	\$250. 00
Thomas Smith (services rendered in case of United States vs. The Cañon del Agua Company). Exhibit B.	New Mexico	100. 00
Total		350. 00

Fees of district attorneys, United States courts, 1887.—Accounts of district attorneys for unofficial services.

Name of claimant.	District.	Amount.
J. T. Carey (services rendered in Chinese habeas corpus cases during second quarter, 1887). Exhibit C.	Northern California ...	\$2, 500. 00
G. N. Baxter (services rendered in the case of Beaulieu vs. Sheehan, the United States being a party in interest). Exhibit D.	Minnesota	150. 00
Thomas Smith (services rendered in the case of the Pueblo di Acoma vs. Joseph E. Saint et al., the United States being a party in interest). Exhibit B.	New Mexico	25. 00
Thomas Smith (services rendered in the case of the United States vs. The Cañon del Agua Company). Exhibit B.	do	100. 00
Charles Parlange (services rendered in the case of the rule for contempt taken against the United States marshal by the United States supervisor of elections). Exhibit E.	Eastern Louisiana	80. 00
O. T. Rouse (services rendered in case of Berger vs. Wheeler). Exhibit F.	Arizona	150. 00
Total		3, 005. 00

Fees of district attorneys, United States courts, 1888.—Accounts of district attorneys for unofficial services.

Name of claimant.	District.	Amount.
W. G. Ewing (services rendered in matter of arrest and return to Utah of Ah Gung). Exhibit G.	Northern Illinois	\$298. 30
G. Van Hoorebeke (services rendered in case of The People of the State of Illinois vs. Samuel Edwards). Exhibit H.	Southern Illinois	100. 00
Total		398. 30

Accounts approved by the Attorney-General, but disallowed under section 3679, Revised Statutes.—Fees of district attorneys, United States courts, 1886.—Accounts of assistant attorneys.

Name of claimant.	District.	Amount.
C. F. Ware (appointed May 19, 1883, in case of United States vs. M. M. McElroy; compensation to be determined upon completion of service). Exhibit I.	Kansas	\$635. 95
A. L. Rhodes (appointed August 16, 1884, in Mare Island and similar cases; compensation to be determined, but not to exceed \$5,000). Exhibit J.	Northern California ...	1, 000. 00
A. J. Fountain (appointed March 3, 1886, in case vs. Terence Muller et al.; compensation to be determined, etc.). Exhibit K.	New Mexico	1, 200. 00
G. W. Patton (appointed regular assistant December 30, 1882; compensation \$500 per annum). Exhibit L.	West Virginia	225. 00
William Phillips (appointed January 8, 1886, in suit on bond of ex-Marshall Fitzsimons; compensation not to exceed \$500). Exhibit M.	Northern Georgia	100. 00
C. H. Hanford (appointed regular assistant October 1, 1880; compensation same fees as attorney). Exhibit N.	Washington Territory.	73. 14
Wesley W. Hyde (appointed regular assistant January 17, 1882; compensation same fees as attorney). Exhibit O.	Western Michigan	250. 00

ACCOUNTS OF UNITED STATES ATTORNEYS.

3

Fees of district attorneys, United States courts, 1887—Accounts of assistant attorneys.

Name of claimant.	District.	Amount.
A. L. Rhodes (appointed August 16, 1884, in Mare Island and similar cases. Compensation to be determined, but not to exceed \$6,000). Exhibit J.	Northern California....	\$2,000.00
A. J. Fountain (appointed April 13, 1886, in land fraud cases. Compensation to be determined, etc.). Exhibit K.	New Mexico.....	600.00
G. W. Patton (appointed regular assistant December 30, 1882. Compensation \$300 per annum). Exhibit L.	West Virginia	27.75
William Phillips (appointed January 8, 1886, in suit on bond of ex-Marshall Fitzsimons. Compensation not to exceed \$500). Exhibit M.	Northern Georgia	400.00
Thomas H. Franklin (appointed February 23, 1887, in Washington County election cases. Compensation to be determined, etc.). Exhibit P.	Western Texas.....	500.00
H. T. Taggart (appointed December 15, 1886, in suit to establish title to Potomac Flats. Compensation to be determined, etc.). Exhibit Q.	District of Columbia...	1,500.00
		5,027.75

Inclosed are copies of the directions to district attorneys to attend to the unofficial duties and correspondence relating thereto, showing the services rendered, with similar exhibits respecting the accounts of the assistant attorneys. Besides the above referred to the Treasury, there are accounts of United States attorneys for unofficial services waiting an appropriation not reported to Congress as follows:

Name of claimant.	District.	Amount.
W. G. Ewing (services relative to the Lake Front at Chicago, Ill., claimed and used by a local railroad; \$1,000 payable 1887; \$3,077.50 payable, fees, 1888).	Northern Illinois	\$4,077.50
G. N. Baxter (for services in the case of the United States against Ann Olsen, before Crookston Land Office).	Minnesota	40.00
Joseph Boone (special assistant in prosecutions for perjury and subornation to perjury against Hopewell, Kohler, Emery, Johnson, Foster, Breret, <i>et al.</i>).	New Mexico.....	300.00
G. J. Denis (services rendered to the Department of Justice in securing the same rates to the Government in keeping its prisoners that the State of California pays).	Southern California....	175.00
R. Kleberg (services in <i>Salemas et al.</i> against Kellogg, involving the title to Fort Brown).	Western Texas	100.00
A. C. Campbell, United States attorney (services in Goshon Hole cases before land office at Cheyenne).	Wyoming.....	60.00

Recapitulation.

Fees of attorneys, 1886:		
Attorneys	\$350.00	
Assistants.....	3,484.07	
		\$3,834.07
Fees of attorneys, 1887:		
Attorneys	4,005.00	
Assistants.....	5,027.75	
		9,032.75
Fees of attorneys, 1888		3,875.80
Pay of assistant attorneys, 1888		475.00

These appropriations are in addition to the deficiencies heretofore applied for.

Very respectfully,

G. A. JENKS,
Acting Attorney-General.

The PRESIDENT OF THE SENATE.

EXHIBIT A.

TREASURY DEPARTMENT,
January 11, 1888.

SIR: Respectfully referring to your letter of the 5th instant, requesting the return to the Department of Justice of the original account of Mr. Archibald Stirling, jr., late United States attorney for the district of Maryland, for legal services in the matter of investigating the title of the United States to the site of the Hawkins' Point, Maryland, light station, I have the honor to transmit a copy of a letter of the Light-House Board of the 9th instant, inclosing the account requested, with papers in the case pertaining thereto.

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

The ATTORNEY-GENERAL.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF CUSTOMS,
Washington City, D. C., May 19, 1887.

SIR: The letter of the Light-House Board of the 13th instant, inclosing a copy of an account presented by Mr. Archibald Stirling, jr., late United States district attorney for the district of Maryland, for professional services rendered by him in examining the validity of the title of the United States to the site of the Hawkins' Point light-house, Maryland, and asking from what appropriation the amount due him should be paid, has been carefully considered.

In reply I would respectfully state that I am not aware of any appropriation which is applicable to the object for which the services of the district attorney appear to have been rendered.

Very respectfully,

JOHN S. MCCALMONT,
Commissioner of Customs.

To the CHAIRMAN OF THE LIGHT-HOUSE BOARD.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., May 11, 1887.

SIR: I transmit herewith, for the information of the Light-House Board and the proper action in the premises, a letter of the honorable the Attorney-General, dated the 7th instant, inclosing a bill in favor of Mr. Archibald Stirling, jr., late United States attorney for the district of Maryland, approved in the sum of \$250, for professional services in the matter of investigating the title of the United States to the site of the Hawkins' Point Light-House, Md.

Respectfully, yours,

I. H. MAYNARD,
Assistant Secretary.

Vice-Admiral S. C. ROWAN, U. S. Navy,
Chairman Light-House Board.

WASHINGTON, January 9, 1888.

SIR: As requested by Department letter (P. B.) of January, 1888, the Light-House Board has the honor to transmit herewith, to be returned to the Department of Justice, the original account of Archibald Stirling, esq., for legal services rendered by him in the matter of investigating the title of the United States to the site of the Hawkins' Point (Md.) light station.

The copy of this account heretofore transmitted to the Department, and returned with other papers in the case by the honorable the Attorney-General with his letter of January, 1888, has been retained by the Board, and the other papers are also transmitted herewith.

Respectfully,

JAMES F. GREGORY,
Major of Engineers, U. S. Army, Engineer Secretary.

The SECRETARY OF THE TREASURY.

DEPARTMENT OF JUSTICE,
Washington, May 7, 1887.

SIR: I transmit herewith an account of Archibald Stirling, jr., late United States attorney for the district of Maryland, for professional services rendered while such attorney in making an investigation and report as to the validity of the title of the United States to the site of the Hawkin's Point light-house. These services were performed under instructions of this Department issued in order to answer a call of the Secretary of the Treasury, made April 5, 1886, for an opinion upon such title. The action of this Department upon the account is shown by remarks indorsed thereon.

I am, sir, very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE TREASURY.

EXHIBIT B.

[Received at Santa Fé, dated Washington, D. C.]

JANUARY 22, 1885.

To THOMAS SMITH, U. S. Attorney:

At special request of Interior Department you are directed to appear on behalf of the Government in Cañon del Agua suit.

JOHN GOODE,
Acting Attorney-General.

United States of America to Thomas Smith, Dr.

January, 1886, to January, 1888. For professional services in appearing in behalf of the Government of the United States, in pursuance of instructions from the Department of Justice (a copy of which is herewith filed), in the chancery cases of the United States vs. Cañon del Agua Company, at the January terms of the supreme court of the Territory of New Mexico for the years 1886, 1887, and 1888, including the preparation of papers and argument in the interval between said courts. In the case were involved novel issues of great public consequence, and the care and responsibility involved in its consideration and presentation were proportionate	\$500. 00
For professional services in the cases of the Pueblo de Acoma vs. Joseph E. Saint <i>et al.</i> No. 363 and 364, including appearances in the district court of the county of València at the spring term 1887, in the month of April, and the supreme court for the year 1888, I having been ordered and employed by the Department of Justice to appear for the said pueblo at the instance and request of the Interior Department.....	100. 00

I, Thomas Smith, being duly sworn, upon my oath do say, that the services charged for in the foregoing account were actually rendered as therein set forth, and the same are not covered and can not be included in my salary or fees as United States attorney.

THOMAS SMITH.

Subscribed and sworn to before me this 30th day of January, 1888.

R. M. FOREE,
Clerk.

Let an order be entered approving the account, it appearing to the court of its own knowledge and from the testimony of members of the bar familiar with the services rendered by Thomas Smith in the foregoing cases is reasonable and just.

ELISHA V. LONG,
Chief Justice, etc.

TERRITORY OF NEW MEXICO,
In Supreme Court:

"Whereas Thomas Smith, United States district attorney, has rendered and presented to the court an itemized statement of the services performed by him at and previous to the present term of this court, and the same being supported by the oath

of said district attorney, and it appearing to the court that said account is just and reasonable: It is therefore ordered by the court that said account, amounting to the sum of \$600, be allowed and approved."

The above is a true copy from the record of an order made by said court on the 30th day of January, A. D. 1888.

Witness my hand and the seal of said court this 31st day of January, 1888.

R. M. FOREE,
Clerk.

Items of account.

United States to Thomas Smith, Dr.

To services in the Cañon del Agua case as follows:

To preparation for argument at the supreme (1886) term, argument being engaged thereon and therein ten days.....	\$200.00
To preparation of brief and reargument at supreme (1887) term, involving ten days.....	200.00
To study of opinion of court, consisting of 100 pages of close type-writing, preparation of decree thereon, and superintendence of matters thereto incident in supreme (1888) court for five days.....	100.00
To services in the cases of the Pueblo de Acoma vs. Jos. S. Saint and others:	
To going to and returning from Los Lunas, in the county of Valencion, to attend the April (1887) term, requiring two entire nights' travel and attending the said court for two days in said suits.....	75.00
To appearing in supreme court (1888) term, resisting motion of defendant and making motion for plaintiff, two days.....	25.00

THOMAS SMITH,
United States Attorney.

EXHIBIT C.

SAN FRANCISCO, August 26, 1887.

SIR: I have the honor to transmit herewith an account for services rendered by me in Chinese habeas corpus cases, heard and determined in the district and circuit courts of the United States for the northern district of California, during the quarter ending the 30th day of June, 1887, amounting to \$7,795.

A statement in relation to the nature of the cases and the services performed by me accompanies the account.

Very respectfully, your obedient servant,

JOHN T. CAREY,
United States Attorney.

Hon. A. H. GARLAND,
Attorney-General, Washington, D. C.

EXHIBIT D.

The United States to George N. Baxter, Dr.

To services in case of Beaulieu vs. Sheehan, as follows:

1887.	To answer.....	\$50.00
July 11.	To attendance upon the trial and affidavits and motion for continuance.....	20.00
	11. To motion for continuance.....	15.00
	15. To argument for motion to dismiss.....	50.00
	16. To attendance and argument at trial.....	50.00
Dec.	12. Paid for transcript of evidence.....	9.50
	15. Brief on motion for new trial.....	25.00
	17. Motion for new trial.....	25.00
		244.50

DISTRICT OF MINNESOTA, ss :

George N. Baxter, being duly sworn, says that he was the United States attorney in and for said district during the period covered by the foregoing account.

That he actually and necessarily rendered all the services charged for in the foregoing account, and that the same is in all respects just, true, and correct, and that no part thereof has been paid.

GEO. N. BAXTER.

Sworn to before me this 5th day of March A. D. 1888.

EXHIBIT E.

- [Telegram.]

DEPARTMENT OF JUSTICE,
Washington, December 10, 1886.

United States Attorney PARLANGE,
New Orleans, La. :

Defend Marshal Pleasants in the supervisor's rule.

A. H. GARLAND,
Attorney-General.

EXHIBIT F.

United States to O. T. Rouse, United States attorney for Arizona, Dr.

November 12, 1887. To fee in the case of Maria Martinez, plaintiff, vs. Roswell G. Wheeler, defendant, \$150.

The above case was a suit in ejectment, instituted by plaintiff against defendant to recover possession of a piece of land within the exterior limits of the Papago Indian Reservation, in Pima County, Arizona.

Plaintiff claimed the land under a Spanish or Mexican grant to her father; the grant had been referred to the former surveyor-general of Arizona for action, and that officer had made a report against the validity of the grant.

Defendant, as agent of the Papago Indians had been ordered by the Indian Department to eject plaintiff, and in consequence of his obedience to that order was sued.

Under instructions of the Attorney-General, of date February 17, 1886, "N. T. N. R.," No. 2436, I appeared and defended Agent Wheeler.

O. T. ROUSE,
United States Attorney.

I, W. H. Barnes, judge of the first judicial district before whom the above case was tried, have to state that I have examined the above account of O. T. Rouse, United States attorney, for \$150, and from a knowledge of the legal questions involved in the case, and of the labor which it was necessary for him to perform in the case, consider the sum of \$150 a small fee for handling the case. That is the amount which parties would expect to pay by contract for such services.

WM. H. BARNES,
Associate Justice of the Supreme Court, and Judge of the District Court, first district.

EXHIBIT F.

OFFICE OF UNITED STATES ATTORNEY,
DISTRICT OF ARIZONA,
Tucson, Ariz., December 17, 1887.

The ATTORNEY-GENERAL,
Washington, D. C. :

SIR: Your letter "N. T. N. R.," file No. 2436-1885, of date November 25, 1887, with which my account for services in the case of Berger vs. Wheeler was returned for further explanation, etc., has been received.

Complying with your request, I will state briefly as best I can a history of the case and the work I had to do in the case.

Plaintiff, Mrs. Berger, claimed the land in dispute by inheritance from her father, one Martinez. She instituted this suit in ejectment against Roswell G. Wheeler, agent for the Papago and other Indians.

It was claimed by plaintiff that her father, Martinez, about forty years ago was residing at the village of Tubac; that about that time said village was destroyed by the Apache Indians, and that Martinez moved to the land in question at that time; that he received permission to occupy the land in accordance with the provisions of the law applicable to the occupancy of lands at a pueblo.

Plaintiff's papers were filed with Mr. Wasson, former surveyor-general of Arizona, and Wasson made one report that the grant, or claim, of Martinez was void, and a second report that there was no record of the grant, and that it was not legal, but in which he made an appeal to Congress to confirm the grant. During President Grant's administration, the Papago Indian Reservation was set off by executive order, and the land claimed by plaintiff was within the said reservation. After said reservation was established the conduct of plaintiff's husband and of other persons who resided with them, was such that Wheeler, the defendant, who was then the agent of the Papago Indians, was ordered to put plaintiff off of the reservation; this order he obeyed, and in its execution had the assistance of the military.

Plaintiff filed the complaint on January 30, 1886.

Defendant filed demurrer to complaint March 1, 1886. The demurrer was argued on March 10, 1886, and overruled, and on the same day defendant filed his answer.

The complaint was an ordinary complaint in ejectment, and was filed in the district court in and for the county of Pima, a Territorial court. The answer was an ordinary answer, and also set up the fact that the land in controversy was in an Indian reservation; that the defendant was the Indian agent; that he put plaintiff off by order of the Interior Department; that he had no personal possession of the land, and never had been in possession of the land personally; that the Papago Indians were in possession. The answer also denied plaintiff's title, etc.

The trial was before the court, without a jury, and commenced April 5, 1886. On several different days from the 5th to the 13th of April evidence was offered by the parties to suit the convenience of the court, and on that day the case was argued and submitted to the court for decision; the court took it under advisement, and on a subsequent date rendered judgment for plaintiff. I then filed in due time all necessary papers for a new trial, and an appeal in case a new trial was not granted, as required under the practice then existing. The motion for new trial was argued and overruled, and final judgment entered against Wheeler and his successor in office; against Wheeler individually, and his successor officially. The suit being against Wheeler individually, and he having been removed from the office and having gone from the Territory, there was no one to file a bond for an appeal. I could not perfect the appeal in compliance with the permission you gave me in letter "N. T. N. R.," file No. 2,436, of date July 6, 1887.

In the case *Cox, secretary, et al., vs. U. S., 9th Wall, 298*, it was decided that the judgment could not bind the successor in office; and under that and other decisions I entertained the opinion that the judgment was of no value and not binding against any one except Wheeler, individually; hence there was no necessity for an appeal. Among the many questions that I was compelled to differ with the court, which were decided in this case, was the decision that as plaintiff's father had resided on the land for over thirty years, that fact would warrant a recovery against the United States; that the title must be presumed from the long possession, and can be presumed against the Government the same as against an individual.

I suppose this is all you desire in order to pass on the account which I presented for the services in this case; and inasmuch as the clerical work of my office requires much of my time, I have made the necessary report of the case, and hope it will not be out of place in this connection.

Very respectfully,

O. T. ROUSE,
United States Attorney.

P. S.—I return the account, as requested, attached hereto.

United States to O. T. Rouse, United States attorney for Arizona, Dr.

November 12, 1887.—To fee in the case of Maria Martinez Berger, plaintiff, *vs.* Roswell G. Wheeler, defendant, \$150.

The above case was a suit in ejectment, instituted by plaintiff against defendant, to recover possession of a piece of land within the exterior limits of the Papago Indian

Reservation, in Pima County, Arizona. Plaintiff claimed the land under a Spanish or Mexican grant to her father; the grant had been referred to the former surveyor-general of Arizona for action, and that officer had made a report against the validity of the grant.

Defendant, as agent of the Papago Indians, had been ordered by the Indian Department to eject plaintiff, and in consequence of his obedience to that order was sued. Under instructions of the Attorney-General, of date February 17, 1886, "N. T. N. R.," No. 2436, I appeared and defended Agent Wheeler.

O. T. ROUSE,
United States Attorney.

I, W. H. Barnes, judge of the first judicial district, before whom the above case was tried, have to state that I have examined the above account of O. T. Rouse, United States attorney, for \$150, and from a knowledge of the legal questions involved in the case, and of the labor which it was necessary for him to perform, consider the sum of \$150 a small fee for handling the case. That is the amount which parties would expect to pay any contract for such services.

WM. H. BARNES,
Associate Justice of the Supreme Court, and Judge of the District Court, First District.

EXHIBIT G.

DEPARTMENT OF JUSTICE,
Washington, August 30, 1887.

SIR: The United States attorney for Minnesota reports to the Department under date of the 26th instant that you are needed at Winona, Minn., on the 1st proximo, to assist him in the prosecution of John W. O'Connor, charged with the theft of some \$15,000 of postage-stamps from the post-office at Minneapolis.

I have telegraphed you to-day instructing you to proceed to Winona for the purpose, if it is consistent with the duties of your office.

The telegram is hereby confirmed.

Respectfully,

G. A. JENKS,
Acting Attorney-General.

W. G. EWING, Esq.,
United States Attorney, Chicago, Ill.

[Telegram.]

DEPARTMENT OF JUSTICE,
Washington, August 30, 1887.

W. G. EWING,
United States Attorney, Chicago, Ill. :

United States Attorney Baxter desires your professional assistance and presence for Government trial, John W. O'Connor, Winona, September 1.

You are so instructed, if consistent with your official duties.

G. A. JENKS,
Acting Attorney-General.

DEPARTMENT OF JUSTICE, OFFICE UNITED STATES ATTORNEY,
NORTHERN DISTRICT OF ILLINOIS,
Chicago, July 2, 1888.

SIR: Herewith I inclose you my account for expenses and services in the prosecution of John W. O'Connor, in the district of Minnesota, for the robbery of the Minneapolis post-office. The services were rendered in pursuance of your letter and telegram dated August 30, 1887.

As directed by you, I went to Winona September 1, but the case was continued until the October term of the district court at Saint Paul. October 10, 1887, I appeared and assisted in the prosecution of O'Connor. The trial resulted in the jury's failing to agree, and the case was again continued. Before the next term of court O'Connor made his escape, and has not yet been apprehended.

Attached to the certified copy of the order of court approving my account is a duplicate original of the account. I will be obliged if you will certify to the expenses incurred by me in this prosecution, and to such compensation for the services as you think proper.

Very respectfully,

The ATTORNEY-GENERAL,
Washington, D. C.

W. G. EWING,
United States Attorney.

EXHIBIT H.

DEPARTMENT OF JUSTICE,
Washington, May 2, 1888.

SIR: I send you a copy of a letter of the 30th ultimo from the Secretary of War, and with it certain papers which accompanied the letter relating to proceedings against Mr. Meigs, United States civil engineer, and Mr. S. Edwards, overseer, instituted in the circuit court of Hancock County, Ill., by George Ritter for trespass and damage to his property arising from the prosecution of the work for the improvement of the Mississippi River. In accordance with the request of the Secretary, you are instructed to appear for and defend the parties named in the suit, conferring in regard to the matter with Major Mackenzie, Corps of Engineers, whose address is Rock Island, Ill.

Very respectfully,

A. H. GARLAND,
Attorney-General.

GUSTAVUS VAN HOOREBEKE, Esq.,
United States Attorney, Springfield, Ill.

EXHIBIT I.

DEPARTMENT OF JUSTICE,
Washington, May 19, 1883.

SIR: At the request of Hon. H. T. French, Acting Secretary of the Treasury, I hereby appoint you as an assistant to the district attorney for the district of Kansas to aid him in the further prosecution of the case of the United States *v.* M. McElroy and Charles Bull. You will apply to the district attorney for information and directions in the matter.

For your services in this behalf such compensation will be paid you by this Department at the end of the litigation as the Attorney-General shall deem just and reasonable.

Calling your attention to section 366 of the Revised Statutes of the United States, you will please take the oath therein required and forward the same to this Department.

Very respectfully,

BREWSTER,
Attorney-General.

CHARLES F. WARE, Esq.,
Attorney at law, Fort Scott, Kans.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., May 15, 1883.

SIR: I have the honor to transmit herewith a copy of a letter dated the 7th instant, from the Solicitor of the Treasury, in regard to the employment of Charles F. Ware, esq., of Fort Scott, Kans., to assist the district attorney of the district of Kansas to further prosecute the case of the United States against M. McElroy and Charles Bull, under directions of the district attorney.

In view of the facts stated, I think the interests of the United States require the employment of Mr. Ware as suggested by the Solicitor of the Treasury.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

Hon. B. H. BREWSTER,
Attorney-General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., May 7, 1883.

SIR: At the October term, 1869, of the district court for the district of Kansas, a judgment was rendered in favor of the United States and against M. McElroy and Charles Bull, sureties on the forfeited recognizance of Joseph H. Rae for \$2,000, debt, and \$32.70 costs. The case was carried to the circuit court on writ of error and the judgment of the district court affirmed. Under an alias execution dated April 27, 1871, certain lots in the city of Fort Scott, Kans., were levied on as the property of said McElroy, and on the 6th of June following lot 1, in block 104, and lot 11, in block 120, were struck off to the United States subject to a then existing mortgage for the sum of \$2,192 and \$275, respectively, and the sale subsequently confirmed by the court.

No deed to the United States was, however, made. The property sold to the Government is now estimated to be worth upwards of \$5,000. The United States attorney, after having inquired into the subject, expresses the opinion that the Government can, notwithstanding the lien of the mortgage, obtain possession of the premises or at least make a sufficient amount out of the property to satisfy the judgment. He however states, in view of the fact that his duties have been so much increased by the addition of a large portion of the Indian Territory to his district that it will be impossible for him to give his personal attention to the matter, and he therefore suggests the employment of Mr. Charles F. Ware, of Fort Scott, who, he says, is a good lawyer to prosecute the case under his direction. I accordingly advise the employment of Mr. Ware, under the provisions of section 363, R. S., with the understanding that he shall be allowed such reasonable compensation for his services, dependent upon the result of the suit, as may hereafter be agreed upon.

Very respectfully,

K. RAYNER,
Solicitor of the Treasury,

HON. CHARLES J. FOLGER,
Secretary of the Treasury.

EXHIBIT J.

DEPARTMENT OF JUSTICE,
Washington, August 16, 1884.

SIR: Upon the request of S. G. Hilborn, district attorney for California, received the 24th ultimo, for an assistant to himself in the Mare Island and similar cases, and his expression of a preference for yourself as an associate, you are appointed a special assistant attorney for the district of California, upon the terms expressed in departmental letter of the 4th instant to Mr. Hilborn. If you accept the terms thus proposed and will forward the oath of office a retainer will be paid you of \$2,000, and upon the conclusion of your services such a sum as shall be determined upon by the Attorney-General under a maximum limitation of \$6,000 (inclusive of the retainer of \$2,000).

Very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney-General.

AUGUSTUS L. RHODES, Esq.,
San Francisco, Cal.

[S. G. Hilborn, United States attorney, district of California.]

SAN FRANCISCO, *August 2, 1884.*

HON. BENJAMIN HARRIS BREWSTER,
Attorney-General:

SIR: I deem it my duty to again call your attention to the case of *Boulden et. al. vs. Phelps*, involving the title to Mare Island, the site of the navy-yard. The importance of this suit can hardly be overestimated. The place is admirably situated for a navy-yard, and the Government has expended upon it in permanent improvements millions of dollars.

I have heretofore regarded the suit in the light of a threat to frighten the Government into a compromise. Within a few days I have learned certain facts, which convince me that the plaintiffs mean to push the case to immediate trial, and they mean to exert all the power that money, legal skill, and influence can command to win the case.

In addition to the counsel originally employed in the case, the plaintiffs have recently retained Hon. S. W. Sanderson, general solicitor for the Central and Southern Pacific railroad companies, and also W. D. McResick, reputed to be the best equity lawyer in this State. He is also one of the regular attorneys of the railroads.

Judge Sanderson stands at the head of the bar on this coast. The employment of these gentlemen as additional counsel in the case means that all the machinery for selecting juries and obtaining evidence which these great companies possess shall be brought into requisition to win this case. I regard the situation as very serious. It is possible that the companies themselves are not interested in the result of the suit. Upon this point I am not certain. But whether the companies have a direct interest in the suits or not, we shall find their best lawyers and all the influence the companies possess arraigned against us. I fear the *outside help* which these attorneys can bring into the case more than I do the legal knowledge they will contribute. We must have help in this case, and the assistance must come at once. A fine first class lawyer should be at once put to work in the case, who should give it his attention until it is closed.

More than this, some skillful man should be employed to look up the testimony for the Government.

This is very essential, as plaintiff has been preparing his case for years and has used money liberally in hunting up evidence. We know now the names of many of their witnesses, and with proper exertion I think we can break the chain of their proof.

On the 12th ultimo I addressed a letter to your Department in answer to a letter from you stating that W. W. Bishop had applied for appointment as special counsel in this case. In my letter I explained why I preferred the appointment of some person familiar with the questions which would arise in the case. I did not object to Mr. Bishop on personal grounds, for we are the best of friends. I felt that the interests of the Government would be best subserved by the appointment of some person possessing the special knowledge requisite to the trial of this peculiar case. I suggested the name of Judge Rhoades. But I am not so fixed in opinion in his favor that I would not gladly accept some one else if you think proper. There are several lawyers in this city whose ability and experience would render their appointment proper.

I would mention Hon. B. C. Whitman, ex-judge of the supreme court of Nevada, who practiced law in California in the early days and is familiar with this class of cases.

The same can be said of Hon. T. S. Belcher, ex-judge of our supreme court, and W. C. Belcher; also of Hon. Wm. Stewart, ex-United States Senator for Nevada, and Hon. James McM. Shafter; also Hon. S. H. Dwinell (of the firm of Dwinell & McClun) ex-district judge of California. There are several other leading attorneys of this bar in every way fitted to undertake the defense of this case.

The case is set down for some time in October, and you will therefore see the necessity of immediate action.

Very respectfully,

S. G. HILBORN,
U. S. Attorney.

DEPARTMENT OF JUSTICE,
Washington, September 5, 1888.

Hon. JOHN H. ROGERS,
House of Representatives:

SIR: Your letter of the 30th ultimo has been received, in which you request information relative to the pay of A. L. Rhodes, in the sum of \$4,000, for services in the cases of D. W. Bouldin *et al.* against Thomas S. Phelps, and the San Francisco Savings Union *et al.* against John Irwin. The inclosures of your letter are herewith returned as you requested.

Mr. Rhodes was appointed August 16, 1884, to attend to the cases above mentioned, a copy of which appointment is herewith inclosed. He served the Government as special counsel in the cases from August 16, 1884, to July 30, 1887.

According to the contract he was paid \$2,000 December 1, 1884. He was to receive, inclusive of the payment of \$2,000 on final settlement, a sum not exceeding \$6,000. The remaining \$4,000, in accordance with the contract, was approved by this Department February 24, 1888.

The value of the property involved in the action of Bouldin against Phelps exceeds \$1,000,000, and in accordance with some estimates exceeds the sum of \$5,000,000.

The value of the property involved in the suit of the Savings Union against John Irwin is estimated at \$100,000.

The lands for which suit was brought by Bouldin against Phelps, and a large part of the lands for which suit was brought by the Savings Union against Irwin, have

been occupied and used and held ever since some time in the year 1854 as a navy-yard. The United States claim the title in fee.

Herewith is also inclosed a copy of the final account of Mr. Rhodes, itemized in accordance with a request of the Department to show when he performed particular services, and the estimate at which he valued each service.

Mr. Rhodes states that for twenty years he has been acquainted with the rates of fees paid to the attorneys at law in the city of San Francisco, and that he believes the charges made in his bill do not exceed the rate paid for similar services during the last eight years in that city. A period of eight years covers the time during which Mr. Rhodes rendered services, from 1884 to 1887. The account of the attorney is made under oath. According to his schedule, taking the fees of attorneys in San Francisco as the standard by which his services are valued, he claims that he would have charged private parties for the services rendered \$26,550.

Very respectfully,

G. A. JENKS,
Acting Attorney-General.

EXHIBIT K.

DEPARTMENT OF JUSTICE,
Washington, April 13, 1886.

SIR: You are appointed an assistant to the attorney of the United States for the district of New Mexico, to assist him in the prosecution of the land-fraud cases mentioned in his letter of April 2, 1886, to the Attorney-General. Your compensation will be adjusted and fixed by the Attorney-General at such times and at such amounts as he shall deem just and reasonable.

Execute and return the inclosed oath.

Very respectfully,

JOHN GOODE,
Acting Attorney-General.

A. J. FOUNTAIN,
Las Cruces, New Mexico.

DEPARTMENT OF JUSTICE,
Washington, March 3, 1886.

SIR: You are hereby appointed an assistant to the attorney of the United States for the Territory of New Mexico, to assist in the cases mentioned in telegram dated March 3, from Thomas Smith, United States attorney, as follows:

UNITED STATES
against

TERENCE MULLER, EDWARD ROCKWELL, CHARLES CRUICK-
shank, Charles Cox, James Murphy, Charles M. Elliott,
William Provence, C. Conwell, James M. Hoy, and Francis-
co Gomez, *charged with conspiracy and perjury.*

You will be allowed a reasonable compensation for your services, to be determined by the Attorney-General after the same have been performed.

Execute the customary oath of office and return the same to this Department at your earliest convenience.

A. H. GARLAND,
Attorney-General.

A. J. FOUNTAIN, Esq.,
Care United States Attorney, Las Cruces, N. Mex.

[Telegram.]

LAS CRUCES, N. MEX., *March 3, 1886.*

Foundain needed in following cases, United States against Terence Muller, Edward Rockwell, Charles Cruickshank, Charles Cox, James Murphy, Charles M. Elliott, William Provence, C. Conwell, James M. Hoy, Francisco Gomez, charged with conspiracy and perjury.

THOMAS SMITH,
U. S. Attorney.

A. H. GARLAND,
Attorney-General, Washington, D. C.

[Telegram.]

SANTA FÉ, N. MEX., *February 15, 1886.*

A number of arrests have been made, parties to be heard before commissioner at Las Cruces to-morrow, and as I am engaged in court here it will be impossible for me to appear for the Government there. I therefore ask authority to employ A. J. Fountain to attend to these cases as they are the beginning of important prosecutions against land grabbers in that region.

THOS. SMITH,
United States Attorney.

Attorney-General GARLAND,
Washington, D. C.

[Office of Thomas Smith, United States district attorney.]

SANTA FÉ, N. MEX., *February 19, 1886.*

Hon. A. H. GARLAND,
Attorney-General :

SIR: The inclosed letter from Colonel Fountain was received this morning, and I inclose it to you for your consideration, and with the expression of the hope that you will see, in his representations, the justice of continuing his services in association with me to the final disposition of the cases in question. His services are almost if not absolutely essential to me in view of the fact that I will not be able to leave here until the adjournment of court, which will be the day before the commencement of the term at Las Cruces, and without any opportunity to take hold of the cases without his assistance, as should be done in order to lay them before the grand jury satisfactorily. I regret to report to you that the grand jury of this district has evinced the most determined opposition to the prosecution of the land grabbers and has recklessly ignored their oath and the evidence, and peremptorily refused to find indictments. I hope, however, for a more favorable disposition in the grand jury at Las Cruces, but the influences that will be exerted to deter or persuade from proper action will be immense.

In view of the circumstances, I therefore ask to have the benefit of Colonel Fountain's association in the prosecution of the cases, and I submit that as he has acted under the presumption of such retainer, and refused a large fee against the Government, it would scarcely be gracious to discard him. I wrote to him, thinking there was no doubt that his employment went to such extent, to proceed as he proposed in the preparation of the cases for the grand jury.

As the court will commence at Las Cruces next Monday week, I will be obliged if you will wire me a reply.

Very respectfully,

THOMAS SMITH,
U. S. Attorney.

[A. J. Fountain, attorney at law.]

LAS CRUCES, N. M., *February 17, 1886.*

Hon. THOS. SMITH,
United States Attorney :

DEAR SIR: I am in receipt of yours of 15th instant, inclosing telegram from Attorney-General, notifying me of my appointment as assistant to United States attorney to represent the Government "before the United States commissioner" in certain pending cases. Am I to understand that my connection with these cases terminates with their final disposition by the commissioner? If so, it ceased yesterday, the commissioner having committed all the defendants to await the action of the grand jury. Have the kindness to inform me on this point at your earliest convenience, for, if it is so intended that I shall continue to assist the prosecution of these cases, I desire to brief the testimony, prepare a history of each case, and complete all that is necessary to present the cases intelligently to the grand jury and obtain prompt action. I have desired the clerk to issue subpoenas to the witnesses, and furnished him with their names and places of residence, and have requested the marshal to serve them.

My acceptance of the appointment tendered me by the Government in these cases was based upon the assumption that my services were desired until the final disposition of the cases by the district court. Acting upon this assumption I declined to

accept a retainer fee of \$1,000, tendered me by one of the defendants. I certainly should not have accepted an appointment to simply attend to the cases before the Commissioner.

Respectfully,

A. J. FOUNTAIN.

EXHIBIT L.

DEPARTMENT OF JUSTICE,
Washington, December 30, 1882.

SIR: You are appointed an assistant to the United States attorney for the district of West Virginia, at a compensation of \$300 per annum. This appointment will take effect upon your taking the oath and assuming the duties of the office.

Very respectfully,

BREWSTER,
Attorney-General.

G. W. PATTON, Esq.,
Charleston, W. Va.

EXHIBIT M.

DEPARTMENT OF JUSTICE,
Washington, January 8, 1886.

SIR: You are hereby appointed a special assistant to the attorney of the United States for the northern district of Georgia, to assist in the suit instituted on the bonds of Owen P. Fitzsimons, late marshal of the United States for the northern district of Georgia.

Your compensation will be determined upon the completion of the work, at such sum as may seem reasonable, not to exceed five hundred dollars (\$500).

Execute the customary oath of office and return the same to this Department at your earliest convenience.

Very respectfully,

A. H. GARLAND,
Attorney-General.

Mr. WILLIAM PHILLIPS,
(Through Benjamin H. Hill, esq., United States attorney, Atlanta, Ga.)

[Office United States attorney.]

ATLANTA, GEORGIA, *January 5, 1886.*

Hon. A. H. GARLAND,
Attorney-General, Washington, D. C.:

SIR: In pursuance of directions received from the honorable Solicitor of the Treasury, contained in his letter of date October 7th last, I have instituted suit on the bonds of Owen P. Fitzsimons, late marshal of Georgia, for balance due by him to the United States, amounting to \$14,249.09. This suit will require a full and detailed examination into the accounts of the said Fitzsimons during his official term, including his report and settlement. This investigation will necessarily be tedious, laborious, and protracted. During the present term of the United States circuit court his honor Judge H. K. McCay passed an order referring the suit to an auditor with directions to report his findings to the court at its next March term. The auditor selected by the court is Robert P. Trippe, late associate justice of the supreme court of Georgia, who is in every way qualified to discharge the duties of the position. It is desirable to commence the hearing at as early a day as possible, in order that the auditor may have his report ready to submit to the court.

In view of the laborious character of this investigation, added to the already heavy duties of my office, I feel warranted in asking for the appointment of an assistant to aid me in the preparation and conduct of this special case, and at such compensation

as may seem reasonable and just, but not to exceed \$500. If you decide to make this appointment, I respectfully suggest William Phillips, esq., of Manilla, Ga., as competent and reliable.

Very respectfully,

BENJ. H. HILL,
United States Attorney.

EXHIBIT N.

DEPARTMENT OF JUSTICE,
Washington, October 1, 1880.

SIR: You are authorized to appoint, as your assistant, C. H. Hanford, to be paid by you out of your fees and emoluments the same compensation that would be yours were you to discharge the duties. You will so notify him. Let him render an account for his services in your name, for the approval of the court, and for the accounting officers of the Treasury. You will approve the account, upon the authority of this letter, and forward it to the First Auditor.

Very respectfully,

CHAS. DEVINS,
Attorney-General.

J. B. ALLEN, Esq.,
United States Attorney, Olympia, Wash.

EXHIBIT O.

DEPARTMENT OF JUSTICE,
Washington, August 20, 1885.

SIR: Your request of the 10th instant, that your assistant, W. W. Hyde, may be authorized to attend with you and assist at the coming term of court at Marquette, is declined.

Assistant attorneys are not employed for the purpose mentioned by you, except in cases of protracted terms of court.

The method of payment for the services of Mr. Hyde is not approved. You may state to him that instead of being paid as heretofore, according to the fee bill, if he desires to retain his office as assistant attorney, on and after the 1st of September next his salary will be fixed at the rate of \$1,000 per annum. He ought to reside at Marquette.

If he accepts the proposition he will notify the Department.

Very respectfully,

A. H. GARLAND,
Attorney-General.

J. W. STONE, Esq.,
*United States Attorney,
Grand Rapids, Mich.*

EXHIBIT O.

DEPARTMENT OF JUSTICE,
Washington, January 17, 1882.

SIR: You are hereby appointed assistant United States attorney for the western district of Michigan, your compensation to be fees earned by you, the same as are allowed to the district attorney under the fee bill.

Your accounts must be approved in open court and forwarded to this office. You will please take the oath required of United States attorneys and forward the same to this Department.

Very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney-General.

WESLEY W. HYDE,
Grand Rapids, Mich.

EXHIBIT P.

DEPARTMENT OF JUSTICE,
Washington, February 23, 1887.

SIR: You are hereby appointed an assistant to the attorney of the United States for the western district of Texas, to assist in the prosecution of the cases growing out of the alleged election frauds in Washington County, Tex.

Your compensation will be determined by the Attorney-General upon the completion of your services.

Execute the customary oath of office and forward the same to this Department without delay.

A. H. GARLAND,
Attorney-General.

THOMAS H. FRANKLIN, Esq.
(Through Rudolph Kleberg, Esq.,
United States Attorney, Western District Texas).

[Telegram.]

AUSTIN, TEX., February 18, 1887.

Can you allow me special assistant counsel in the Washington County election-fraud cases? I need it at once outside of the regular assistance.

RUD. KLEBERG,
Attorney.

Hon. A. H. GARLAND,
Attorney-General United States, Washington, D. C.

[Telegram.]

AUSTIN, TEX., February 21, 1887.

I recommend Thomas H. Franklin, of Cocke, Denman & Franklin, attorneys, San Antonio, as special assistant. He asks \$1,000. Answer.

RUD. KLEBERG,
Attorney.

Hon. A. H. GARLAND,
Attorney-General United States, Washington, D. C.

COCKE, DENMAN & FRANKLIN, ATTORNEYS,
San Antonio, Bexar County, Tex., December 21, 1887.

DEAR SIR: Yours of the 14th instant, requesting a report upon the Washington County election cases in United States district court at Austin, together with copy of letter from Senator Coke therein inclosed, received.

Replying thereto, we beg leave to say:

The indictment upon which a trial was had at the last term of said court at Austin contained the following counts:

First count, charging conspiracy to interfere with the officers of election at Flewellyn precinct, in said Washington County, in the performance of duties required of them by law, at which said election a member of the Federal Congress was voted for and elected.

Second count, charging conspiracy to commit similar offenses at Graball precinct.

Third count, charging the robbing of the ballot-box at Graball precinct.

Fourth count, charging general conspiracy to interfere with officers of election at Graball, Flewellyn & Lott's store.

The indictment is not before us and we state its contents from memory.

Motion was made to quash the bill and overruled.

The Government proved the following facts on the trial:

(1) That an election was held as charged in the indictment, the candidates for Congress thereat being Hon. R. Q. Mills and — Rankin.

(2) That the election precincts named in the bill were heavily Republican.

(3) That there were two local parties in the field at said election, a straight Republican and "People's" or Democratic party,

(4) That the Republican ticket was printed on a diamond-shaped ballot.

(5) That at the precincts named in the bill the officers of election had decided to count the diamond-shaped ballots, but at other precincts they were declared illegal by the officers of election and not counted. At none of these last-mentioned polling-places were the officers of election interfered with in any way.

(6) That if all the diamond-shaped ballots cast had been counted, also the votes at Flewellyn, Graball & Lott's store, then the straight Republican ticket would have been elected by a large majority.

(7) That on the night of the election whilst the officers of election at Graball were counting the votes, the ballots and ballot-box were forcibly taken by armed men, who were masked by having white cloths or handkerchiefs tied over the lower part of their faces.

(8) That on the night after the election the ballot-box containing the ballots cast at Lott's store was forcibly taken from one of the officers of election by masked and armed men while said officer was taking same to the county seat as required by law.

(9) That on the night of the election armed and masked men undertook to take the ballot-box at Flewellyn, when one of them, subsequently proved to be Dewees Botton, was shot dead by a negro named Polk Hill, who is now, we are informed, in jail in Milam County, Tex. The defendants contended that when shot Botton was alone, unarmed, and unmasked; but this theory, we believe, was thoroughly demolished by the Government; Botton's own father testifying that when he got to his son's body, shortly after the shooting, he (his son) had on a "slicker," or rain coat, and had a handkerchief knotted around his throat. The weather was dry and mild, and no necessity was shown for the use of such a coat on such a night.

(10) That a number of negroes who were present when Botton was shot were arrested and put in jail the day after the killing, and subsequently three of the number were taken from jail by a mob and hanged.

(11) The Government then proceeded to show by evidence that the defendants were some of the conspirators who participated in the alleged conspiracy and the acts done in pursuance thereof. The testimony on this branch of the case was in the main circumstantial. It was shown that they took an active part in the canvass in the interest of the People's ticket; that some of them were candidates for office on that ticket; that some of them were at different voting-places on election day, armed; that some of them had threatened negroes because of their activity in the canvass; that some of them had threatened the life of some of the Government witnesses; that they were seen together leaving Chapell Hill on the night of the election and going in the direction of Graball; that later at night some of them were seen, together with other persons not identified, and were guided into a short road to Graball; that defendant Kirk left Brenham about 5 o'clock of the evening of election day and rode to Chapell Hill; when next heard of that night he is at Flewellyn about midnight, making inquiry as to how the vote stood; that he called out the presiding election officer and held a brief conversation with him, then rode off, and shortly after the attempt was made to rob the box; that at 12 m. of that day he sent to D. D. Botton the following telegram from Brenham: "Things here look gloomy; do your work." Other circumstances tending to identify the defendants were proven, but we do not deem it necessary to here refer to them, but simply state that we believe the facts to show that the defendants on trial participated in the commission of the offenses charged.

The defendants each relied upon an alibi as a defense. None of them testified in their own behalf, but introduced a number of witnesses to establish that defense. In argument counsel for the defense conceded that grave offenses against the law had been shown by the testimony, but contended that the defendants were not the guilty parties. They also contended that the offenses committed were violations of the State and not the Federal statutes. The real issue in the case, however, is simply this: Are the defendants the persons or some of the persons who committed the offenses charged in the bill?

The Government did not undertake to show that these defendants had conspired to rob ballot-boxes, and had robbed ballot-boxes, with the single intent to affect the result of the Congressional election, for the result of their conspiracy and the effect of their acts necessarily affected the Congressional election, regardless of the motive which prompted the conspiracy and directed the acts.

We do not understand the law to be that one can rob a ballot-box in which citizens have cast their ballots for a member of Congress, and destroy the votes cast for such member, and then claim immunity from punishment under the laws of the United States upon the ground that his intent in the robbery and his purpose in such destruction was not to affect the Congressional contest, but to defeat some candidate for constable who had been voted for on the same ballots.

We think the authorities establish the law to be that the Federal statutes were enacted to secure fairness at Congressional elections, and to protect the citizen in the

free exercise of his right of suffrage at such an election. We refer to the following adjudications:

Ex parte Yarborough, 110 U. S., 651. *Ex parte Siebold*, 100 U. S., 371-404. *United States vs. Jackson*, 25 Fed. Rep., 548. *United States vs. McBosdy*, 29 Fed. Rep., 897.

The jury trying the case found some of the defendants not guilty on the count charging them with the robbery of the Graball box and disagreed upon all other counts in the bill. None of the defendants have been acquitted on any of the conspiracy counts.

The stenographic report of the trial is in the hands of the clerk of the Federal court at Austin. It is very voluminous and in some respects inaccurate.

These cases have received our careful attention and the facts an impartial consideration by us. We have not allowed the Republicans of Washington County to give any political coloring to the prosecution, nor have we permitted our attachment to the Democratic party to sway us from the full performance of our duty as sworn officers of the Government in the prosecution of the defendants. We have given them a quiet, determined, and impartial prosecution, and believe it was demanded by the offenses committed and the facts connecting them with the commission of same.

Regarding the facts in our possession calmly and impartially, we are convinced that they show the commission of grave offenses against the laws of the Federal Government by the indicted parties; and if such offenses are left unprosecuted and the perpetrators unpunished the right of suffrage in this country can have no protection save that which each citizen may find in his own strong arm.

The stability of this Government depends on the virtue of its citizens, and that virtue can only be carried into the Government through the medium of the ballot-box; and if in one community the right of suffrage of a number of citizens is trampled upon by others, who are permitted by organized society to go "unwhipped of justice," then certainly the lawless element in any community is given full license to dominate over the virtuous, and order will soon resolve itself into chaos.

So believing, we feel that it is our duty to prosecute these cases to a final hearing, and if the defendants are acquitted that the responsibility of such acquittal should rest with a jury of their countrymen.

This being our duty, we must either do it and be true to our oaths as officers of the Government, or not do it and be false to our oaths and false to ourselves.

If the Department of Justice wishes these prosecutions dismissed and shall so direct, we shall follow instructions, informing the court our directions; but if we are not so directed we shall bring these cases to trial, if possible, and give the defendants a fair hearing and a vigorous prosecution.

Very respectfully, your obedient servants,

RUD. KLEBERG,
United States Attorney.

THOS. H. FRANKLIN,
Special Assistant in Washington County Election Cases.

Hon. A. H. GARLAND,
Attorney-General, Washington, D. C.

EXHIBIT Q.

DEPARTMENT OF JUSTICE,
Washington, December 15, 1886.

SIR: You are hereby appointed an assistant to the attorney of the United States for the District of Columbia, to assist in the matter of the suit to establish the title of the United States to the Potomac Flats.

The said appointment is to be taken subject to any change that the Department may make in these offices.

Your compensation will be determined by the Attorney-General upon the completion of your services.

Execute the customary oath of office and forward the same to this Department without delay.

A. H. GARLAND,
Attorney-General.

HUGH T. TAGGART, Esq.

(Through A. S. Worthington, esq., United States attorney, District of Columbia, city).

OFFICE OF THE ATTORNEY OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA,
City of Washington, December 11, 1886.

SIR: In the matter of the suit to establish the title of the United States to the Potomac Flats, I have the honor to ask for the appointment of special counsel to assist me in preparing that case for a final hearing in the supreme court of the District. To properly present and collect the evidence for the Government in this case will require the constant labor of at least one man for from three to six months. It will be impossible for me to provide for this emergency with my present office force without stopping the criminal court and allowing scores of persons accused of crimes to lie in jail during the interregnum. The need of expedition in this case is well known to the Attorney-General. The order of publication against unnamed defendants requires all claims to be presented on or before January 3, 1887; and I wish it possible to proceed at once after that date with the taking of testimony for the Government.

Mr. H. T. Taggart, one of my regular assistants, is, in my judgment, better qualified than anybody else to represent the United States in the taking of the evidence. He has for years been investigating the question which will come up in this suit, and has already a mass of information on the subjects needed which could be acquired by other counsel only after much time and labor. I suggest, therefore, that, if this request for special counsel be favorably received, Mr. Taggart be appointed. I have arranged with him that in that event he shall temporarily retire from his present position, with the understanding that he shall be re-appointed when he shall have finished his work as special counsel.

Mr. Taggart has a large family, and his present salary is \$166.66 per month. He says it will be necessary for him to receive about that much from month to month in the event of his being appointed special counsel. With that exception, he is quite willing that the usual provision as to the amount of his compensation being determined by the Attorney-General when his work is done shall go in his case.

Very respectfully,

A. S. WORTHINGTON,
United States Attorney, District of Columbia.

The ATTORNEY-GENERAL.

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