

Hon Schuyler Colfax ^{Sup?} *Vice President*

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THE BASTILE.



TESTIMONY
OF
JOSEPH B. STEWART

BEFORE A
"Select Committee,"

Given on the 18th and 29th of January, 1873,

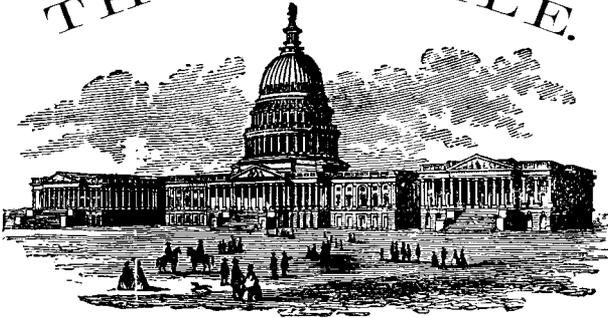
WITH REMARKS

ABOUT HIS "CONTEMPT."

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1873.

Suppl. May 14-1902
From Mr. Stewart

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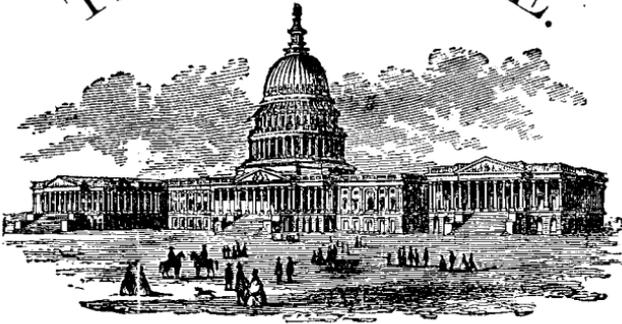
WASHINGTON, D. C.
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THE BASTILLE.



TESTIMONY OF JOSEPH B. STEWART,

GIVEN ON THE 18TH AND 29TH DAYS OF JANUARY, 1873, BEFORE A
"SELECT COMMITTEE," WITH REMARKS AND REFERENCE TO
AUTHORITIES OF THE SUBJECT OF HIS "CONTEMPT."

HAVING been denied the printing of my testimony by the House of Representatives, after being voted into prison for an alleged contempt in the giving of the same before a "*Select Committee*," I am compelled in self-defence to print it myself, and in doing so distinctly state that any matter attempted to be used by the House of Representatives or its Select Committee contrary to, or varying in word or sentence from, that which is here presented, is a false and fabricated statement, and is *not* my testimony, and no one has a right to use it as such, either in the House of Representatives or elsewhere.

On the 18th January, 1873, I was informed that it was intended to summon me before the said "Select Committee," of

which Hon. Jeremiah M. Wilson is chairman, and though then prepared to return to New York, I went directly to the committee-room and was examined at great length, and was requested to call again. On the 29th day of January (being the day of my first return to Washington) I did call, and was again examined, the questions asked me being an amplified reiteration of those propounded to me on the 18th, and which were answered by me according to what was correct, legal, and proper, to the best of my knowledge and belief.

At both of my examinations I was asked, and repeatedly asked, questions put in various shapes, desiring me to state matters and facts made known to me and *only* known to me as counsel; not only so, but transactions which had their origin over *twelve years*, and were concluded nearly *ten years* ago. These questions, though not authorized in my judgment by a political committee, I answered quite up to the point of trenching upon what was due to my clients—to the details of their private business communicated to me as counsel, and to these I respectfully but firmly refused to make answers, even could I have done so accurately after such a great lapse of time, which was impossible.

Seeing it so clearly manifested by the committee that the rules of law were to be no barrier to the latitude of their investigation, and that no regard would be paid to private rights, I felt constrained to insist upon the observance of some limit to the scope of their inquiry and respect to the rules of law as I understood them. I did not, however, suppose that the disregard of law in the manner of interrogating me would be still further evinced in not permitting me to see and correct my testimony before it was used for any purpose, and especially before it was used for arraigning me at the bar of the House for alleged contempt; or in other words, that the committee would not prepare my testimony for me, using and omitting such portions as pleased them, and substituting their own language for other portions of it to suit the occasion, without consulting *me, the witness*, and then proceed to prosecute me upon it at the bar of the House. *But they did!*

I had waited in an adjoining room to the committee for over three hours, supposing every moment I would be supplied with my testimony transcribed for my correction and signature, so as to make its language *mine*, and not that of the committee, or of a stenographic reporter taken by the sound in the midst of a current side conversation and discussion between myself and the committee, he being told to put down, or *not* put down, this, that, or the other, I having no power to give any directions. Surely, I need not state that the rules of law imperatively require that no deposition can be used until the witness has read or heard read every word of it, and altered or accepted its language; and, furthermore, that his *whole* deposition, and not a part of it, shall or can be used for any purpose, and especially to determine a question of contempt on the part of the witness. Simple, plain, and elementary, however, as this rule of law is, it went "by the board" on this occasion.

While I was so waiting to see, correct, and sign my deposition, I was being arraigned on only a part of it, selected for the occasion, before the House of Representatives, at 4 o'clock P. M. on the 29th January, 1873. At once surrendering myself into custody, I had no opportunity until 10 o'clock A. M. the next day, (30th January,) to know what the "*Select Committee*" had been pleased to have or allow me to say, when it appeared in *The Congressional Globe*.

Seeing such a mutilated, perverted, and untruthful statement of my testimony—a mere fraction of and caricature upon it, as stated by me, the witness, instead of my prosecutors—I addressed the following communication to the committee, respectfully, but emphatically, repudiating their *privileged* version of my testimony, and protesting against its further use for any purpose whatever, until I had read and corrected it, and demanding that the *whole* and not a *part* of my testimony should be used:

HOUSE OF REPRESENTATIVES,
OFFICE OF SERGEANT-AT-ARMS,
WASHINGTON, D. C., *Jan. 30, 1873.*

Hon. J. M. WILSON,
Chairman, &c., &c.:

In reading the report made by your committee to the House of Representatives yesterday in reference to my alleged refusing to answer questions, I observe that the representations made of my testimony are full of errors and misrepresentations, and that much of my testimony is omitted.

I desire that my full and complete testimony *verbatim* be produced, and the mistakes (for I see many) in transcribing it from the short-hand notes be corrected.

The matter accompanying the report and action of your committee *is not my testimony*, and I object to and protest against its further use in the pending proceedings against me until properly corrected and fully reported.

With the most distinguished consideration, I have the honor to be,

Your obedient servant,

JOSEPH B. STEWART.

This communication was sent soon after 10 o'clock A. M., full three hours before I was arraigned at the bar of the House, *but I received no reply to it.*

It was for this reason that I read said letter to the House as part of the statement I made in my defence, again repudiating the erroneous version of my testimony put before that body by the committee; and still denounce it as false and unjust to me, as I propose to demonstrate, by publishing both my real and pretended testimony in this paper, where whoever wishes to know the facts can see, read, and decide for themselves. As to what followed in the action of the House and my commitment to this prison I fully anticipated it..

I again, on the 30th of January, addressed the committee, respectfully requesting my testimony for correction before it should be printed, but again received no answer. Seeking to protect myself against this neglect, I, on the 1st of February, placed in the hands of the Speaker, as the prescribed medium of communication, a petition to be laid before the House, praying that my testimony should be furnished me by its order; and then, and not till then, to wit, February the 1st, at 3 o'clock P. M., did I get sight of any portion of my testimony,

the whole of it not reaching me until 7 o'clock P. M., two days after I was condemned.

I at once corrected my testimony, and having a clear copy made, signed it, and sent it on the 6th of February to the House of Representatives, through the Speaker, praying that it might be printed and referred to the Committee on the Judiciary, as I supposed it would not be denied me to have my testimony upon which I am declared to be in contempt and deprived of my liberty, and deprived of what is *termed* in the Constitution "privilege of the writ of *habeas corpus*," at least printed and made part of the record of my condemnation.

I was, however, denied that right, and my petition and testimony was sent to the committee which had mutilated and misused it in the first place.

The following is a copy of my petition as I sent it to the House of Representatives, with my testimony, on the 6th day of February, 1873 :

To the Hon. JAS. G. BLAINE,

Speaker House of Representatives :

I respectfully request that you lay before the honorable House of Representatives the annexed petition, with my testimony, given before your honorable committee, of which Hon. J. M. Wilson is chairman, all forming, and designed to form, one document, and exhibits the testimony and the only testimony of mine before your honorable body, for such action as may be proper.

Respectfully, your ob't serv't,

JOS. B. STEWART.

February 6, 1873.

To the Honorable

the House of Representatives of the United States :

Your petitioner, the undersigned, Joseph B. Stewart, respectfully states that he now presents to your honorable body his testimony, full and complete, as given by him before your honorable committee, of which Hon. J. M. Wilson is chairman, and respectfully states that the testimony now presented by him is the only deposition of your petitioner that is lawfully before your honorable body.

That the version of the testimony of your petitioner, brought before your honorable body by your honorable committee on the 29th of January, 1873, was not complete, for many reasons, it being full of errors and omissions, and had not been read, reviewed, or corrected by your petitioner, as he in

writing informed your committee before he was arraigned at the bar of the House, on the 30th January, 1873, when your petitioner again openly rejected the matter so presented as not being his testimony, and that he was not to be affected or bound by the matter so submitted, and stated in substance what was his testimony, as intended by him, in the remarks he was permitted to make to your honorable body.

Your petitioner presenting his full testimony and all the questions as propounded to and answered by him, with the matters he declined to state, and the reasons therefor at the time given, or intended to be given, he respectfully contends that he is not in contempt of your honorable body by reason of anything in his testimony contained, and is not rightfully or lawfully consigned to prison, where great and irreparable injury is being inflicted upon him, contrary to law, and prays to be discharged therefrom.

And your petitioner further prays that as he is imprisoned, and in such manner as to be denied the constitutional privilege of the writ of *habeas corpus*, that this, his petition, together with his testimony and all the testimony bearing on his individual case, may be referred to your honorable the Committee on the Judiciary, being the committee of your honorable body most learned in the law, to examine and report according to the merits of his case, and that he be allowed to be heard before said committee in person or by counsel in his own behalf.

And your petitioner further respectfully states that he has been advised that your honorable committee has extended the line of its investigation into the examining of witnesses involving the professional and personal character of your petitioner, and having examined Alexander Hay and other witnesses in that behalf. Your petitioner, while not conceding the lawful right to make such investigation by your committee, challenges, nevertheless, the fullest inquiry, and prays that he may be furnished a copy of all such testimony, and may be allowed to be present in person, or by counsel, to cross-examine such witnesses, and to introduce witnesses in behalf of your petitioner, as he will ever pray.

JOS. B. STEWART.

I waited from the 6th until the 10th February, and seeing that my testimony, instead of being printed and made part of the record of my arraignment at the bar of the House, was going to be buried beneath a mass of immaterial rubbish and waste-paper, which has been harvested in by the drag-nets of the pending investigation, I resolved to make another effort to rescue my testimony (which must either justify or condemn my incarceration in this prison) from the fate which experience and observation of many years has taught me is the general disposition made of such papers. I, therefore, on the 10th

February, further petitioned the House of Representatives as follows :

TO the Hon. JAMES G. BLAINE,

Speaker House of Representatives :

SIR: Through you I respectfully beg to lay before the House of Representatives the annexed petition.

J. B. STEWART.

February 10, 1873.

To the Honorable the House of Representatives :

The undersigned, your petitioner Joseph B. Stewart, on the 6th day of February respectfully submitted his petition, placing before your honorable body his full and complete testimony given before your honorable committee, at whose instance he is imprisoned. That, among other reasons for so doing, your petitioner deemed it but just to himself, to your honorable body, and to the public, that his complete testimony, and not a part of it, what he did say, and as he said it, and not a mutilated version of it, should be placed before your honorable body and entered upon its records, and printed, so that each and every member of your honorable body shall be able to judge from the whole testimony of your petitioner as to whether he has refused to answer any question that it was or is lawful and proper for him to answer unto.

Your petitioner is advised that his petition, with his said testimony, was not ordered to be printed, nor referred, as he respectfully prayed it might be referred, to your honorable the Committee on the Judiciary, but was referred to the honorable committee by whom your petitioner was arraigned, to be considered and disposed of as that honorable committee might see proper.

Your petitioner, with all due respect to said committee, as well advised from facts known to him that a very antagonistic feeling prevails in said committee against your petitioner, so that he could not, in any event, hope for action unbiased with prejudice at their hands, and against the effects of which your petitioner has no means of defence, but may be assailed with impunity; your petitioner, therefore, and to the end that he may stand condemned or justified according to the facts, as would be conceded in any criminal indictment, prays that his petition and his testimony, duly signed by him as presented to your honorable body, through your Speaker, on the 6th day of February, shall be printed, so that his real testimony shall be seen and known by each member of your honorable body, as your petitioner will ever pray.

When this, my third petition, was presented to the House, and the only one which was read, a motion was made by Mr. Maynard (Tenn.) to have my testimony printed, when Mr. Hoar (Mass.)—

“desired to call the attention of the gentleman from Tennessee (Mr. Maynard) to the fact that the testimony of this witness, as reported in full by the

official stenographers of the House, has already been printed in connection with the rest of the testimony ;”

and upon *this* statement the printing of my testimony as given by me was refused, and something else, “as reported by a stenographic officer of the House,” under the direction of the “Select Committee,” is printed in the place of it.

This is the very abuse, and I will add violation, of my rights as a witness as well as of a citizen that I am trying to avoid, and hence asked the House to print *my* testimony as given by myself, and not the perverted and erroneous statement given by the committee or a stenographic reporter against my protest.

Even the blood-stained criminal when called to account for his crime is furnished with the indictment against him, describing with accuracy the time and place of his offence, before he is tried, and is only condemned upon the testimony of witnesses given in their own language and not in the language of his prosecutors, even were they a “Select Committee of Congress.”

No official stenographic reporter, be him never so accurate, can coin the words for any witness before any court of justice; even where the most exact pains are taken and the language spoken read over to the witness after he utters it, he has yet the right to see and correct it; and if this inflexible rule of law has no force before a political committee appointed by either House of Congress, it is at least pleasant and gratifying to know that it is respected and observed by all judicial tribunals where *rights are protected* and *justice administered*.

But what *has* been printed, as stated by Mr. Hoar? It is the doubtful answer to this question that causes me to incur the labor and expense of writing and printing this paper. If it is my testimony as given by me that is printed, as stated to the House by the honorable gentleman named, it is all right so far as it goes, though it does not alter the fact that my full testimony should form a part of the record of my condemnation; but if it is the language of others or a stenographic reporter, applied to me as my language and printed as my testimony,

as stated by Mr. Hoar, then it is all *wrong*, and not only wrong, but inexcusable, because I gave the committee due notice of the errors and omissions exhibited in their report of my pretended testimony to the House on the 29th of January before I was arraigned, and have sought in every way since to get my correct testimony before the House, but the committee have disregarded both my rights and efforts in the premises. I can only, therefore, at present say that if my testimony as printed by the committee is the same as that communicated to the House through the Speaker on the 6th of February, I am willing to be bound by it, and shall feel thankful for even that measure of justice; but if it is different from that, then it is *not* my testimony, but is an arbitrary statement, gotten up and printed by the committee, for which I am not responsible and by which I am not bound.

I am the more particular about this matter for two reasons:

First. I have good reason to apprehend that the report of the committee, so far as I may be involved in it, will be such as to justify their action and to condemn me, it being in their power to do me great injustice, in a way that I have no means of correcting, protected, as they are, by their "*privileges*" as "members of Congress." I am therefore determined to place just what I did say and refuse to say, and the reasons why I so stated or refused to state, before the House of Representatives and the public, and by it am willing to be judged.

Second. There is a further fact much to be regretted, and which has been the source of much mischief and injustice in this whole proceeding, and that is the opportunity it has afforded to busybodies, sneaks, gossipers, liars, and calumniators to glut their malice and indulge their natures in the annoyance of others. I am aware that statements and hints, verbal and written, by such cowardly wretches, have been plied to and poured upon "the Select Committee" without limit, and with most harassing effect, many of which were aimed at me personally by those who would not dare make such state-

ments to my face, or to others designed to be injured by them, but could nevertheless influence the committee to make that injury effective. I know that several of my clients have been summonsed before the committee under these malicious suggestions, and pressed by unauthorized questions to tell or to disclose anything they were supposed to know about my actions as their counsel, and one of them (a lady) was advised that she might be put where I am if she did not give the information the committee desired or supposed she could give.

Just think of it! A committee of the House of Representatives of the United States, elected by the people to pass laws for the courts to administer, being used as an inquisitorial agency, *with unlimited power* to extort, by the threats of the bastile, an exhibition of the private affairs of a citizen at the suggestion of a skulking informer and calumniator! Let the committee in their report expose to the public the names of those people, and it will be about the greatest benefit that will result from these extraordinary investigations.

Before producing my testimony, I will invite the attention of the reader to the rules of law applicable to my position as a witness in this case, as those who have not made the law a study and pursuit may not understand what has governed my action, and ever must regulate the man who acts as legal adviser to others. The rule is not one of mere caprice or undue favor to the legal profession, but is a right secured by law to the client and not to the lawyer. The origin of the rule was this: As there was a time when every man built his own house and made his own shoes with his own hands, also did he assert and defend his own rights before those who were appointed to adjudge them. With the progress of agriculture, commerce, and mechanics, so progressed the science of the law applicable to these multiplied interests, and which became a distinct study. One man could not pursue all trades or callings, and about the time he employed a carpenter to build his

house, or a shoemaker to make his shoes, he found it useful to employ counsel before the courts. But this he could not do with safety if his counsel would or was permitted to disclose or expose the matters made known to and confided to him by the client, because, instead of getting useful advice, he was simply exposing himself to utter destruction; to prevent which, the law, by its policy, letter, and spirit, and the courts by their absolute authority and prohibitory power, put a seal upon the mouth of a lawyer which the client alone can remove.

In order to present to the mind of the reader the rules of evidence which sustain the ground I have taken in this case, and which is, indeed, but asserting the universal principle of law, I will quote first from the text-books as to the general rule, and next from adjudicated cases, each referring to and sustaining the other. Our own standard authority Professor Greenleaf, at section 237, says:

“And in the first place, in regard to professional communications, the reason of public policy which excludes them applies solely, as we shall presently show, to those between a client and his legal adviser; and the rule is clear and well settled, that the confidential counsellor, solicitor, or attorney of the party cannot be compelled to disclose papers delivered or communications made to him, or letters or entries made by him in that capacity. ‘This protection,’ said Lord Chancellor Brougham, ‘is not qualified by any reference to proceedings pending or in contemplation, if, touching matters that come within the ordinary scope of professional employment, they receive a communication in their professional capacity, either from a client, or on his account and for his benefit, in the transaction of his business, or, which amounts to the same thing, if they commit to paper, in the course of their employment on his behalf, matters which they know only through their professional relations to the client, they are not only justified in withholding such matters, but *bound* to withhold them, and will not be compelled to disclose the information or produce the papers in any court of law or equity, either as party or as witness.’”

And in assigning the reason for this rule, the same learned authority adds:

“The foundation of this rule is not on account of any particular importance which the law attributes to the business of legal professors, or any particular disposition to afford them protection. But it is out of regard to the interest of justice, which cannot be upholden, and to the administration of justice, which cannot go on without the aid of men skilled in jurisprudence, in

the practice of the courts, and in those matters affecting rights and obligations which form the subject of all judicial proceedings.”

After thus stating the foundation and the reason for the rule which forbids a lawyer from testifying in relation to the affairs of his client as to any matters whatsoever confided to him or made known to him as counsel, the learned author designates to whom such knowledge shall be imparted, and by whom, as follows :

“ In regard to the persons to whom the communication must have been made in order to be thus protected, they must have been made to the counsel, attorney, or solicitor acting for the time being in the character of legal adviser. For the reason of the rule, having respect solely to the free and unembarrassed administration of justice and to the security in the enjoyment of civil rights, does not extend to things confidentially communicated to other persons, nor even to those which come to the knowledge of counsel when not standing in that relation to the party then.

“ Whether he be called as a witness, or made a defendant, and a discovery sought from him as such by a bill in chancery, whatever he has learned as counsel, solicitor, or attorney, he is not obliged or permitted to disclose.”

Nor is the protection thus extended by the law to clients limited to counsel only, but extends to such clerks and agents as the attorney may be required to use or have about his office, or to use as agents to conduct and guard the interests intrusted to him by his clients.

On this subject, the law, as stated by the same author, is :

“ And this protection extends also to all the necessary organs of communication between the attorney and his client; an interpreter and an agent being considered as standing in precisely the same situation as the attorney himself, and under the same obligation of secrecy. It extends also to a case submitted to counsel in a foreign country, and his opinion thereon. It was formerly thought that an attorney's or a barrister's clerk was not within the reason and exigency of the rule; but it is now considered otherwise, from the necessity they are under to employ clerks, being unable to transact all their business in person; and, accordingly, clerks are not compellable to disclose facts, coming to their knowledge in the course of their employment in that capacity, to which the attorney or barrister himself could not be interrogated. And as the privilege is not personal to the attorney, but is a rule of law, for the protection of the client, the executor of the attorney seems to be within the rule, in regard to papers coming to his hands, as the personal representative of the attorney.”

And in declaring the above rules of law, our American author but followed in the footsteps of the English writers upon the same subject.

Starkie, in stating the law of evidence where the relation of attorney and client exists, says :

“The rule that counsel, solicitor, or attorney shall not be *permitted* to divulge any matter that has been communicated to him by his client, is founded upon the most obvious principles of convenience. That it is the privilege of the client, and is founded on the policy of the law which will *not permit* a person to betray a secret which the law has intrusted to him. To allow such an examination would be a manifest hindrance to all society, commerce, and conversation.” (See 2 Starkie on Evidence, p. 319.)

And further, treating upon the same subject, the writer says :

“The privilege is that of the client, and not of the witness, and therefore the court will interfere to protect the client, although the witness should be willing to *betray his trust*, and a court of equity would order such matter to be expunged.” (*Ibid.*, p. 322.)

Such is the language of the text-books that every student of law has placed in his hands when being taught the principles of jurisprudence, and which enter into the moral essence of the oath he takes when admitted to practice before courts of justice.

And these principles, so useful, just, and commendable within themselves, are not of modern growth, but were announced and enforced in the earliest dawn of the common law of England, and were the birthright of every British subject.

As early as the year 1601, during the reign of Queen Elizabeth, in the case of *Berd vs. Lovelace*, (see Sir George Cary's collection of Chancery reports, page 62,) it was held as follows :

“Thomas Hawtry was served with a subpoena to testify his knowledge touching the cause in variance, and made oath that he hath been, and yet is, a solicitor of the defendant, and hath received several fees from the defendant; which being informed to the Master of Rolls, it is ordered that the said

Thomas Hawtry shall not be compelled to testify touching his knowledge of the suit, and that he shall be in no danger of any contempt for not obeying said subpoena.”

It is fortunate for “Thomas Hawtry” that he was not subpoenaed before a select committee of the American Congress, for he must have either betrayed his clients or been imprisoned for contempt. The same ruling as above was had in the case of *Austin vs. Veary*, *Kiliamy vs. Kiliamy*, and *Deanio vs. Codington*, pages 89, 126, and 143, respectively.

In the fifteenth year of Charles II, A. D. 1685, in a case of *Sparks vs. Middleton*, (1 Kelb’s Report, p. 505,) the question was again mooted, and was ruled upon by the court as follows:

“Mr. Aylet, being counsel for the defendant, was subpoenaed to testify on the part of the plaintiff, and, upon being sworn, stated that he had no knowledge except such as he had derived as counsel; having no knowledge of his own aside from his information from his client, the court refused to allow him to testify.”

This question was again fully discussed in the celebrated case of *Ansley vs. The Earl of Anglesea* before the Barons of the Irish Exchequer, in the year A. D. 1743, (17 Howell’s State Trials, 1139,) and touching the immediate point. The Lord Chief Baron held that—

“In the first instance the court will not permit him, (the counsel,) though willing, to discover what came to his knowledge as an attorney, because it would be a breach of trust between him and his employer.”

And further added:

“If I employ an attorney and entrust to him secrets relative to the suit, *that trust is not to be violated.*”

In *Sanford vs. Remington*, A. D. 1793, (2 Vesey, Jr., p. 189,) the motion was made to exclude the testimony of counsel offered to be filed, when the Lord Chancellor said:

“That it is not adequate to let such testimony in, trusting to never let it have any effect, saying the judge may strike the evidence out of his notes, *but it has its effect*; the court, therefore, takes upon *itself* to stop a witness *testifying against his client*, and does not require the exception to be taken ”

on the part of the client. And this position is sustained by a multitude of authorities.

In *Rex vs. Watkinson*, A. D. 1795, (2 Strange Report, page 1122,) it was held—

“That upon an indictment for perjury in an answer in chancery, the master who took it was called, but could not speak to the identity of the person; upon which the prosecution insisted upon examining the defendant’s solicitor, who was present at putting in the answer, and had been subpoenaed upon the part of the prosecution; but he, insisting upon his privilege, the Chief Justice would not compel him to be sworn. So the defendant was acquitted.”

I have taken pains in citing these several decisions by the English courts in equity, common law, and criminal proceedings, to refer to their respective dates, so as to let the reader not familiar with these questions see what sort of rights our forefathers had as subjects of the crown of Great Britain before we abandoned “*Magna Charta*,” and sought refuge under the Declaration of Independence in the concurrent date of 1776, the starting point of securing greater liberty by defined laws as *written* in our Constitution for the purpose of creating a government of delegated and defined powers, as against discretionary powers, which they denounced before the world as a reason for waging war.

The doctrine taught and enforced for over two hundred and fifty years had lit up the path that was readily followed in administering our own laws when we became a separate government. The question has repeatedly came up in various shapes in all the States, and has with slight exception always been settled in the same way, to some of which decisions I will refer. In *Dixon vs. Parmeley*, (2 Vt. Reports, page 185,) it was held that—

“It has long been the established law that counsellors, solicitors, and attorneys *ought not to be permitted to discover the secrets of their clients*. It is declared to be repugnant to the law to permit the disclosure of secrets by him who the law has entrusted therewith.

“That it is the privilege of the client that the mouth of his counsel should be forever sealed against the disclosure of things necessarily communicated to him for the better conduct of his cause.” (*Ibid.*, p. 188.)

“That in such cases the attorney is in *loco* of the client.” (*Ibid.*, p. 189.)

In the case of *Coveny vs. Tannihill* and others, (1 Hill’s N. Y. Report, page 33,) all the cases were elaborately discussed, and the doctrine that has been stated was fully maintained, and it is there distinctly declared—

“That all confidential communications between attorney and client, whether written or oral, are alike privileged; that if the plaintiff, at any particular time, delivered or exhibited the account to his attorney without the evidence of a settlement endorsed upon it, it was the same thing, in substance, as though he had at the time told him verbally that he had an account in that plight, and the one form of communication is as much privileged as the other.”

The same doctrine was again maintained in the Supreme Court of New Hampshire, in *Brown vs. Payson*, (6 New Hampshire Reports, page 443,) where the court held—

“That the attorney cannot be required to testify concerning the state of a written instrument at the time it was received from his client; that there was no distinction between the oral statement of a fact to counsel and a communication of the same fact by delivering to him a deed or other written instrument.”

I beg to invite the attention of the reader to these points as I shall apply them hereafter to the attempts of the “Select Committee” to have my testimony parcelled out, treating certain parts of the information acquired from my clients as privileged, and certain other parts as not, and to allow them to do the parcelling; to sustain which assumption, in the absence of any better authority, they justified themselves by a resolution of their own, as which will be seen when my testimony is read.

In the supreme court of Virginia in the important case of *Parker vs. Carter* and others, (4 Munford’s Report, 273 :)

“In that case the lawyer had been employed by the grantor to prepare a deed, to be executed by him to a trustee for his daughter and her issue, and although the client was dead and the contest was between the parties claiming under such deed and the creditors of the son-in-law of the grantors, the attorney was not permitted to testify, the court declaring that it was a well-settled principle in relation to private communications between an attorney and his

client that the seal of confidence is not the seal of the attorney but of his client. That *the attorney is by law, as well as by professional honor, bound to keep that seal intact*, 'and it cannot be removed except by the consent of his client.'

This decision has been recognized as law in all the States ; and such being the law, where does it place me as the confidential counsel of the late Samuel Hallett, whose business matters confided to me in his lifetime the "Select Committee" propose to pluck from my tongue through the tortures of the Bastille, and force me to expose the matters now entrusted to me by his children, whose counsel I am ?

In a still later case of the Bank of Utica *vs.* Mersereau *et. al.*, (3 Barbour's Chancery Reports, page 528,) the authorities were all again reviewed, and the principle fully sustained. The court in that case held that one Cotton, the attorney,

"was employed by Mersereau and others to assist them in a transaction which, from what was said in his presence, he must have known to be a fraud upon their creditors, but which did not deprive their communication of the seal of professional confidence :"

and the testimony of the attorney which had been received by the referee showing this fraud was ruled out and the case reversed.

In a case still later of Whiting *vs.* Barney, (30 N. Y. Reports, page 330,) the doctrine was again reviewed and maintained to its fullest extent, as shown by the authorities cited, and, if anything, carried a step further, the court using the following language, (see page 338, *Ibid.* :)

"It is said that in one case the court, led, as it would seem, by the idea of the betrayal of confidence had something to do with the rule, *would not permit a trustee* for the plaintiffs and defendants who had been employed by them in the purchase of offices to be examined, and on the ground that he should not be allowed to *betray a trust*—"

and referred to 2 Starkey on Evidence, page 322 ; Greenough *vs.* Gaskell, (1 Moyl. and Keen., p. 98,) and other cases.

In a still later case, and the last I shall refer to, and decided

within the last year by the court of appeals of New York, *Britton vs. Lorenze*, it was held that—

“ All communications made by a client to his counsel, with a view to professional advice or assistance, *are privileged*, whether such advice relates to a suit pending or contemplated, *or to any other matter proper for such advice or aid—*”

and referring to many cases in support of the doctrine.

I have now aimed to invite the attention of those who may wish to form a correct opinion on this subject, so important to every relation of society, to the decisions and rulings by courts of justice for over two hundred and fifty years without the slightest retrograde movement, but has been steadily advanced and maintained coextensive with the growth of civilized laws, and from the observance of which I do not feel at liberty to depart.

But there are yet a few propositions which I wish to meet, because I have seen them distorted in various ways in the public prints by flippant writers for the press, by persons who knew not either the facts or the law, or perhaps caring not for either, desired to assert or fabricate conclusions convenient for their own purposes.

The first point I want to allude to is as to when the duty of absolute secrecy as to any matter learned by a lawyer from his client ceases, and in this I am fortunately as well sustained in my position as I am in all other respects. Greenleaf on Evidence, section 243, states the law to be that—

“ The protection given by the law to such communications does not cease with the termination of the suit, or other litigation or business in which they were made, nor is it affected by the party ceasing to employ the attorney and retaining another, nor by any other change of relations between them, nor by the death of the client. The seal of the law, once fixed upon them, *remains forever*, unless removed by the party himself in whose favor it was there placed.”

See also *Wilson vs. Rastall*, (4 T. R., 759;) *Parker vs. Yates*, (12 Moore, 520;) *Merle vs. Moore*, (R. and M., 390,) where it was held that—

“The client does not waive the privilege merely by calling the attorney as a witness, unless he also himself examined him in chief to the matter privileged.” (*Valient vs. Dodmead*, 2 A. T. K., 524; *Waldron vs. Ward, Stiles*, 449.)

“And the seal is not removed without the client’s consent, even though the interests of criminal justice may seem to require the production of the evidence.” (1 *Greenleaf*, 340; *Rex vs. Smith*, Phil. and Am., 182; *Rex vs. Dixon*, 3 *Burr*, 1687; *Armors*, 8 *Mass. Reports*, 370.)

From these authorities it is very clearly shown that time does not remove the seal of confidence from the attorney or counsel, as some of the *wise* jurists who wrote paragraphs for the papers seem to think.

The next proposition is, that where an attorney acts as counsel between or for several parties, he cannot communicate matters confided to him unless by the consent of all, unless it be as to a matter that would apply to and affect him alone who gave the consent. Such is the law in the text-books, and which is fully maintained in all adjudicated cases.

In ruling upon this point the chancellor of the State of New York said :

“And where the privilege belongs to several clients, I do not think that any one of them, or even a majority of them, contrary to the express *will* of the others, can waive the privilege so as to justify an attorney in testifying.” (See 3 *Barbour Chancery Report*, p. 596.)

And again :

“If several clients consulted him (the same attorney) respecting their common business, *the consent of them all* is necessary to enable him to testify, and that, too, in an action in which only one of them is a party.” (See *Bank of Utica vs. Messeran et al.*, 3 *Barbour Chancery supra*.)

And again, in *Prichard vs. Foulks*, (1 *Cooper*, p. 14,) it was decided that—

“Where the parties’ solicitor became trustee, it was held that communications subsequent to the deed were still privileged.”

Now, let those who are so ready to see beyond the letter of the law, and to assert rules unknown to its provisions, place

themselves in my attitude, representing, first, a number of persons against the railway company, and then finally, with their approval, being employed by the company to act in its behalf in other matters, whereby they had acquired a knowledge of the affairs of both parties as counsel, and answer the question whether they could or would disclose those matters without violating the positive rules of law which I have endeavored to point out, and forfeiting their honor as attorneys as well as men.

But there are exceptions to the rule, and which, though they do not apply to my position, I will refer to, lest I may seem wanting in frankness, or seek to avoid the law to which I appeal. These exceptions are distinctly stated by Greenleaf at section 245, who says :

“*First.* The attorney may be compelled to disclose the name of the person by whom he was retained, in order to let in the confession of the real party in interest.”

To this I reply, let a proper case be made before a judicial tribunal, or even a select committee of Congress, and a confession of any one of my clients be brought forth and alleged to exist, and then I will obey the rule, and give up the name of that client. But without that case made and rule brought to bear, I will never disclose the name of my client merely to gratify curiosity or feast the appetite of gossip.

“*Second.* The character in which his client employed him, whether that of an executor or trustee, or on his own private account.”

I reply, let this question be properly made and I will properly answer it.

“*Third.* The time when an instrument was put in his hands, but not its condition and appearance at that time, as whether it was stamped, endorsed, or not.”

I answer to this rule that I did state, so far as interrogated, what papers I had, and described their character; but the committee demanded that I should produce and deliver the papers to them. This I respectfully refused, and shall ever refuse.

“*Fourth.* The fact of his paying over to his client moneys collected for him.”

I reply that I have so sworn that I did pay over the money.

The other exceptions named in the rule are too remote from the matter under consideration to need mentioning. All the exceptions, however, are held subject to the great qualifying rule at the end of the section, in these words :

“ But in all cases of this sort the privilege of secrecy is carefully extended to all the matters professionally disclosed, and which he, the attorney, would not have known but from his being consulted professionally by his client.”

Let this rule be remembered by those who read my testimony, and they will see that I stand upon solid ground. But where does the attorney stand who knows that his clients do not desire their names to be given out, and to avoid which they had ten years previous submitted to heavy discount of the amount of their demand rather than engage in controversy before the courts, and some of whom he had never seen and would not know by sight, having only known them through correspondence by mail, whereby he became advised of their desire to avoid publicity, and who had paid him liberally to adjust their interest without it? Such is precisely my position in this case, and for the observance of which confidence I inhabit a prison.

And I further submit, in behalf of every member of the bar, that there is not one who, after having become engaged in a general practice, do not constantly have cases of that kind on hand, and who would not disclose their names for any purpose, and which no court, if appealed to, would *compel* or *permit* them to do; and surely it should not be done before a political committee, impelled by a panic to seek to unmask the most confidential relations of life lest they may not seem to be discharging their duty, or who may not be wanting in a disposition to make capital for themselves, though sadly at the expense of the rights and feelings of others, for whose wrongs or sorrows they can afford no remedy.

There is yet one more point to be taken, and that is the insinuating remarks I have seen, that all the money paid into my hands "was a corruption fund," and was designed to bribe members of Congress and Government officials, and that I of course did so some ten years ago; and having established this fact in their own mind, proceed to say that myself nor clients or those for whom and between whom I acted, are not entitled to the protection of the rules of law I have relied on as justifying my course, and all this gross accusation has no other support, moral or specific, than because I don't feel at liberty to violate the imperative rules of law by disclosing the confidence reposed in me by my clients. Was ever the insolence of the false accuser carried to a more barbarous extent than where it says, if you do not perjure yourself and betray the confidence of your clients, we will call you a thief? It is just this, and nothing more. It seems not to be sufficient that those whose money was paid to me are satisfied, and that those for whom it was received are satisfied; I must give the names of these parties to whom it was paid, or else be accused before the public of having committed a felony, and that felony the general corrupting of the Congress of the United States nearly ten years ago.

Of course there is no proof offered to establish any such presumption, much less fix any fact which can justify the assertion that any such thing was done; while, on the contrary, my own testimony states distinctly every dollar that came to my hands, for what purpose I received it, and how I disposed of it. In this respect I am corroborated by one of my employers who paid the money to me, Mr. T. C. Durant, who, so far as his knowledge extends, approves and justifies my action as counsel and the use and appropriation of the large amount of means which were placed in my hands, and states that I discharged the duties so assigned me fully and satisfactory to him. Mr. Samuel Hallett, the other person who employed me in connection with Mr. Durant, and placed the means referred to in my hands, was cognizant of all my

transactions in reference thereto, is dead, and I therefore cannot avail myself of his testimony. But the fact that I am still the confidential counsel of his children ought to be accepted as evidence that I had rendered satisfaction to him while living. The testimony of Alexander Hay fully corroborates mine, in so far as his knowledge extends, and so does the testimony of C. P. Huntington in the matter of the money paid by him. The testimony of these witnesses thus supported by the facts and circumstances referred to, and the further fact, as elsewhere stated, that I am not complained of by any of those whom I serve, is proof conclusive in law and morals that my own statement is correct, and that I did my duty as an attorney; if indeed it be *that I must prove a negative—must prove my innocence*—instead of those who accuse being required to substantiate their charges by good and sufficient proof, and not by the use of broad and sweeping assertions.

There is no code of laws or morals recognized by civilized men that can subject me, or any other attorney or person, to such an ordeal and abuse of my rights, and no man of sound mind and candid judgment can fail to condemn such conduct.

As to my seeking to escape such assaults or to appease the malignance of such inquisitorial accusers by unfolding the confidence of my clients and giving their names, amounts paid, and why paid to this one, that one, or the other, thereby presenting new victims for slander, gossip, and abuse in the persons of those who have acted under my advice, and causing them to be dragged forward to give an account of their private affairs before a "Select Committee of Congress," in the presence of an eager multitude, ready to snuff up and launch to the wind, to be borne to the public ear, aught that could seem to adorn a tale of scandal, however perverted for the occasion it might be, as has been transpiring for some time past at this Capitol—I will no more do it than I would be willing to fire with my own hands the fagots that should consume my body to ashes, let the consequences be what they may.

And if for observing this course, enjoined upon me alike by the written law, and professional honor, I am to be accused and assailed and my character villified, I must endure it as best I can, adopting such means to resist and resent as circumstances may afford me.

As there are no facts adduced, and not even a charge made in my arraignment by the "Select Committee," with which I can take issue or which can justify the assertions bruited through the public press, that I had a corruption fund or bribed Congressmen or others in official position, I do not see what more I can say upon the subject.

I now submit to the judgment of the candid reader my testimony, as given by me before the "Select Committee," of which Hon. J. M. Wilson is chairman, on the 18th day of January, 1873 :

WASHINGTON, *January 18, 1873.*

JOSEPH B. STEWART sworn and examined.

By the CHAIRMAN :

Q. 1. Where do you reside ?

A. In New York city.

Q. 2. How long have you resided there ?

A. My residence has been in New York since 1864. I had an office in Washington city for twenty-seven years.

Q. 3. What is your occupation ?

A. I am a lawyer.

Q. 4. Do you practice law in the city of Washington ?

A. I do.

Q. 5. In what courts ?

A. In all the courts.

Q. 6. Have you at any time, and if so, when, rendered any service for the Union Pacific Railroad Company or the Credit Mobilier of America, and if so, when did you render that service ?

A. The scope of that question calls for a great deal.

Q. 7. I have not called for the character of the service, merely for the time ?

A. I will answer generally, *yes*, commencing within the scope of this question, about February, 1864, and continuing until the close of that year. Now, in justice to myself as a witness here, and as an individual, (and I can perhaps thereby enable you to direct your further inquiries,) I would like to say just a word here. For reasons which I have seen fit to entertain, I have for many years been a very earnest advocate of a railroad to the Pacific, and have done everything I could to promote every Pacific railroad project that has come up since 1855. Therefore, the subject was not a new one to me, but one I

sought to participate in. When the act of July 1, 1862, was passed, I took an active interest in that, and watched its progress up to 1864, when, at the instance of Mr. Samuel Hallett, who brought me a letter from ex-Governor Hunt, of New York, I started a more immediate connection, as I may term it, growing out of the complications surrounding that particular portion of the enterprise provided for in the Pacific railroad bill, known originally as the Leavenworth, Pawnee and Western railroad; then known as the Union Pacific railroad, eastern division; now known as the Kansas Pacific; the connection of a professional character commenced specifically about the period I have indicated. Now, to go back again to May, 1863; and I then had something to do as counsel, and something to do in matters connected with the contract between Stone, Ewing, Isaacs, and McDowell, and also when they sold the corporation known as the Leavenworth, Pawnee and Western railroad to Hallett and Fremont; and it is very likely that the fact that I was interested in that matter *professionally*, as well as individually, caused my further connection with the road in a more active character at the period I have indicated, 1864.

Q. 8. You say you took an active interest in the enterprises; in what particular way was that interest manifested; in what way were you participating in these things?

A. At that stage of it, of course, when there was no corporation existing, it could only be by advocating it, occasionally by my pen and more frequently by my tongue, and constantly urging it before the public whenever I could.

Q. 9. Was it a part of your business in Washington to urge that thing upon members of Congress and Senators?

A. It was by no means a specific part of my business other than I made it a part of my business, as any citizen had a right to do.

Q. 10. And when this period came around, when you came connected with the Union Pacific Railroad Company, did you participate actively in securing further legislation in that behalf?

A. I used my utmost endeavors to induce Congress—I speak of it as a body—of course I could not address myself to all, but did so far as I could, so as to foster, sustain, and favor the persons who were disposed to engage in and invest their private fortunes in building those roads, for reasons which I believed were sufficient.

Q. 11. Did you use those endeavors, of which you have spoken in this general way, upon members of Congress and Senators for the purpose of influencing them or inducing them to pass the amendment of 1864?

A. As I had a pretty active part in getting up the amendment, it may well be supposed that I did all I could to procure its passage.

Q. 12. You did so, then?

A. I did so, publicly and notoriously.

Q. 13. Did you do so privately with individual members?

A. As I had not the privilege of speaking on the floor of Congress, and, except when permitted, in the presence of committees, I had no other means of addressing members of Congress than through the press or personally; but it

was not privately—it was not addressed to any particular member of Congress to the exclusion of the rest.

Q. 14. I want to know whether you were engaged in what is called lobbying in behalf of the scheme?

A. I disclaim the performance of that service, within the terms indicated by the question, at any time or on any occasion. I have had, during the last twenty-seven years, a good deal of business before Congress as constituted to administer certain rules of justice to the citizens in their dealing with the Government, there being no other tribunal; and whatever arbitrary terms may be employed, calling it lobbying or what not, I am not responsible for that.

Q. 15. But you have had a great deal to do, as I understand you, within the last twenty-seven years in getting measures through Congress?

A. You have no right to understand that.

Q. 16. What did you mean, then, in your answer to my former question?

A. I mean to say that during the last twenty-seven years I have had a great deal of business before Congress as organized, as attorney, and not otherwise.

Q. 17. Well, hold on; right there I will ask you a question, or make a suggestion in the form of a question: Is there any mode known to you by which Congress does any business other than by acts of Congress becoming laws?

A. I should regret it if there were.

Q. 18. Was not, then, the mode by which you were accomplishing, or seeking to accomplish, the ends you desired by getting acts of Congress passed?

A. I will put my language in this way: It was to address myself to Congress as a legislative body, through its committees, submitting reasons why a law should be passed for the relief of my client, or to present his case, as, for instance, before the Naval Committee, Committee on Post Offices, Post Roads, and so forth. I speak now more particularly before the organization of the Court of Claims. There was a time when I had a calendar every winter and every Congress before the several committees. It was openly, not in the spirit of persuading any man or Senator as a member or Senator, but to submit to him, as a member of a committee or member of Congress, reasons why the thing requested ought to be done.

Q. 19. Did you labor for the enactment of this Pacific railroad act of 1864 as you did in these other cases to which you have referred?

A. Most actively and earnestly.

Q. 20. Was this labor you rendered in getting this legislation rendered gratuitously on your part?

A. No, sir; not gratuitously on my part.

Q. 21. Who paid you for it?

A. I was paid for my services by the company, or those acting for and representing the company at that time.

Q. 22. What were you paid for the purpose of getting this legislation?

A. For my individual services I was paid \$30,000.

Q. 23. On account of this railroad?

A. On account of the railroads.

Q. 24. Who paid you that \$30,000?

A. Now, the question you are asking is calculated to lead to a conclusion which I wish to prevent being misunderstood. Now, I will answer just as the facts transpired. I think the entire amount and all that was paid, with one exception, was paid through Mr. Durant and Mr. Hallett, but mostly through Mr. Durant. The other payment was made by Mr. C. P. Huntington.

Q. 25. What amount did he pay you ?

A. Ten thousand dollars.

Q. 26. Was that in addition to the \$30,000 ?

A. Yes, sir.

Q. 27. Who is Mr. C. P. Huntington ?

A. A president of the Central Pacific railroad. He paid me in stock of the Central Pacific railroad.

Q. 28. When was that ?

A. In 1864.

Q. 29. Was that in consideration of aiding and procuring the passage of this act of 1864 ?

A. It was.

Q. 30. Was the \$30,000 of which you have spoken paid for services rendered in aiding and getting the same act passed ?

A. It was ; but that was not all that came into my hands.

Q. 31. Well, go on.

A. A great deal more than that came into my hands, and I received it in discharge of my duty and undertaking as attorney where the roads were concerned, and where parties having interests preceding 1864 had, or alleged to have had, a prior right, resting largely upon the corporation which I have described, now known as the Kansas Pacific railroad ; some growing out of the Union Pacific main line. These matters were discharged in the course of my professional relations as counsel to the company and to the other parties, and as mediator, negotiator, and compromiser between conflicting interests, all of which I do not purpose to explain here to this committee, because the confidence reposed in me in these matters is the confidence of my clients, and they refer to matters which were settled then, and which had no reference to any member of Congress or Senator, or anybody else outside of the private interests involved. Now, for this purpose I received a great deal more than \$30,000, or \$100,000 either.

Q. 32. From whom did you receive this large amount of money that went through your hands ?

A. The bonds, you mean ?

Q. 33. From whom did you receive these bonds ?

A. From Mr. Samuel Hallett and Mr. Thomas C. Durant.

Q. 34. What bonds were they ; railroad bonds or Government bonds ?

A. They were railroad bonds.

Q. 35. What railroad bonds were they ?

A. Of the Union Pacific and the Union Pacific, eastern division, now known as the Kansas Pacific.

Q. 36. What reason have you for declining to state what the subject-matter of these controversies were that were settled by the use of the bonds ?

A. Because they are the private interests of other people, who are or were my clients, and who have not the remotest idea of having them disclosed here, and because I have no right to disclose them.

Q. 37. It is very hard for the committee to appreciate your motives without a more detailed statement of the matter.

A. I am the judge of that. No part of that fund was either directly or indirectly paid to a member of Congress or Senator. When you go outside of that I claim to have duties to observe and obligations to perform as well as you, and they cannot be disregarded.

Q. 38. What amount of money was at any time placed in your hands by Mr. Durant?

A. That does not state the case, as I thought I explained it a moment since.

Q. 39. I will put it money, bonds, or stock?

A. Now, then, I will place the proposition before you in this way: At the time these things transpired there were disputes and demands, in some of which I was myself counsel for the parties; others were represented by different counsel. They give rise to embarrassments and to controversies, and threatened injurious litigation—litigation which if commenced or persisted in would tend to discourage, and certainly to seriously embarrass the progress of the road. Mr. Durant and Mr. Hallett together paid me a very large amount—to exceed \$250,000.

Q. 40. Was that in money or in bonds?

A. I have said a moment ago, money and bonds.

Q. 41. And bonds of the U. P. R. R.?

A. Not all of the Union Pacific.

Q. 42. What amount of these were bonds of the Union Pacific?

A. As high as I can remember it, I think 100 to 150 bonds. Whatever they were I could not get at specifically now. I must here do justice to say, and it is proper to say—for these amounts sound large—if I placed before this committee all the reasons and all the matter involved which laid the foundations for that proceeding it would not look as disproportionate. I do not think there were over 10 or 15 per cent., so far as the claims being controverted were concerned, that were allowed. They were claims for land, and bonds, and various things.

Q. 43. What did you do with the Pacific railway bonds that came into your possession?

A. That is the very thing I do not propose to disclose, because I acted as counsel.

Q. 44. What were those stipulations?

A. They were matters between clients and persons who were urging these claims; who submitted to have them settled, sometimes by me directly, sometimes by myself in connection with others; sometimes at the end of serious controversy; some involving litigation, but all of which were confided to me as counsel, and for which reason I do not propose to state them to this committee.

Q. 45. Who were the parties interested in these disputes of which you have spoken?

A. There were a number of persons. The question in my mind, Mr. Chairman, is how far your inquiry proposes to lead me on. So far as you are interrogating me about this resolution of inquiry—what pertains to things done with Congress—that I feel called upon to answer distinctly and fully; but outside of it, into my profession, I come to a point where I do not propose to permit myself to be interrogated or answer questions exposing matter which reached me as counsel.

Q. 46. I simply want to know who these parties were?

A. They were not members of Congress, but were my clients, acting under my advice as counsel.

Q. 47. I have not asked who they were not?

A. I decline to allow any inquiry into my clients' business. Learning I was going to be summoned, I got the resolution and read it. I was going away to-night, but not desiring to leave in the face of a summons, I read the resolution and fully understand its object. Having occupied the position of attorney and trustee, and participated in the settlement as counsel of matters previously controverted, I should feel I was very recreant to my trust if I disclosed them now.

Q. 48. Well, Mr. Stewart, we have traced into your hands a certain amount of bonds of the U. P. railway—

A. Allow me to say in the first place that I object to the use of the language of having "traced anything" into my hands. You have traced nothing into my hands.

Q. 49. Well, did you receive into your possession any of the stock or bonds of the U. P. R.R., and if so, how much?

A. I have stated most distinctly that exceeding \$250,000 of bonds passed through my hands. Now, to whom I paid them I decline to say. I say that no member of Congress received any. I paid the bonds to different persons who were my clients or my *cestui que trusts*, whose private affairs I do not think are involved in this resolution.

Q. 50. What bonds were those?

A. The bonds issued by the railroad company. They were the construction bonds, convertible into the first mortgage bonds. I do not think a Government bond came into my hands at all.

Q. 51. Did you pay any of these bonds to any officer of the Government?

A. I never did.

Q. 52. Directly or indirectly?

A. I never did.

Q. 53. Do you know of any bonds being given by any other person with reference to this legislation?

A. No, sir.

Q. 54. Do you know of any money being given to members of Congress with reference to this legislation?

A. I do not.

Q. 55. Since the organization of the U. P. R.R. Co., do you know of any bonds, stock, or money being paid to any legislator or member of Congress or officer of the Government by said company?

A. No, sir, I answer that with great emphasis. I do not.

Q. 56. Have you any information that anything of that kind was done?

A. I have fortunately no such information. I would not allow myself to speak of such information if I had it.

Q. 57. Why would you not allow yourself to speak of it?

A. I would not allow myself to publish what others might say in matters so serious and detrimental to the character of gentlemen in public position unless I knew the fact. I would not retail gossip.

Q. 58. If you had been told by some one that so and so had been done, would you refuse to state the fact that somebody had told you so?

A. If I had been told by some one so and so, you ask, would I refuse to state that somebody had told me it? I should be very much disinclined to repeat what I heard in that way, when the person from whom I heard it might deny that he had told me, or when the matter so stated might be false.

Q. 59. Do I understand you to say that nobody ever did tell you such a thing?

A. Nobody ever did tell me that they knew personally such a thing. The step beyond that is to pick up Dame Rumor. Such stories have been in my ears day in and day out, but nobody has told me about them whose word I believe, and I never heard the rumor from anybody whose opinion I thought worth cherishing.

Q. 60. In what way were you paid \$30,000 for your services in aiding this legislation in 1864?

A. For the labor I performed I was paid the bonds, as agreed by Mr. Hallett and Mr. Durant.

Q. 61. Mr. Durant paid you the \$30,000?

A. He paid me a much larger amount than that.

Q. 62. Did you have an accounting with Mr. Durant with regard to the large amount that came into your hands?

A. Now, I will answer that question just as it transpired, and you must bear with me, as my answer may perhaps save other questions. When the basis was determined upon which these matters in dispute should be settled, in which I acted as counsel, it was reduced to a memorandum, the parties having this memorandum. A man claimed a hundred thousand dollars' worth of stock, or he would claim that equivalent or some other equivalent in land, that would possibly be settled for 10 per cent. of the amount, or 15 per cent.—the best terms that could be effected to avoid litigation—all the claims having at least some color to maintain them, and sometimes very well defined obligations. These memorandums, whatever the amount was, 10, 15, or 20 per cent., for in no instance did it go above 20 per cent. to any one person, were grouped together, and Mr. Hallett on the one part would approve them, for before I concluded the settlement I had consulted sufficiently close with him and Mr. Durant to know what would be acceptable to them. These were reduced to a general memorandum, upon which the bonds were to be delivered. If the party relinquished what he had in the way of a claim, he received this memorandum that he would get so many bonds, and when these were all brought together they were paid, and the memorandum taken in. There was no other mode of settlement.

Q. 63. Taken in by whom?

A. By Durant and Hallett.

Q. 64. What time did you get these bonds?

A. The latter part of June, 1864, and extending into 1865. Now, as to my own employment. The records of Congress will advise you that when the Kansas Pacific railroad, as it is now called, was sold to Hallett and Fremont, it gave rise to a series of controversies between parties who were interested in the road previous to that, who had certain claims upon it. During the fall of that year Mr. Hallett and Mr. Fremont differed and separated, which eventuated in Mr. Durant coming into the Union Pacific, eastern division. That is the road commencing at Kansas City and going back to Denver, and forming a junction with the main line at Cheyenne. That gave rise to contest and litigation between Hallett and Fremont. After it had been well ascertained that the road could not be built under the act of 1862, and when, in 1864, they were seeking here to get further strength in their financial condition, by the friendly legislation of Congress, amongst other embarrassments there sprung up a contest between Hallett and Fremont, each well sustained by counsel, the quarrel having commenced in New York and found its way here, and in the committee room. Several gentlemen were brought here as counsel, and what was known as the eleventh section of the act of 1864 was got into the bill as reported—*mark* you, as reported—for it never became a law. When that eleventh section was put in, it provided that the Leavenworth, Pawnee and Western railroad, commonly known as the Union Pacific, eastern division, should have neither land nor bounty until the parties to the controversy, represented as they were by two boards of directors, Fremont president of one, and Perry the other, should be settled or determined by a court of competent jurisdiction, and in that shape, with that clause in the bill, it was reported from the Committee on the Pacific Railroad. I was retained more specially to advocate what was called the Hallett and Durant side of the controversy, and it was our design to get the bill free from that clause. It was in connection with that that I took an active part, and for that reason you will understand that the bonds that were paid me for my services were the construction bonds of the U. P. R.R., eastern division. There were five corporations embraced in one bill, and whatever embarrassed one, embarrassed the whole.

Q. 65. Was it not for the purpose of settling that dispute with reference to the Leavenworth, Pawnee and Western road that those bonds of the U. P. R.R. were placed in your hands; and didn't they go into the settlement of that dispute?

A. They most certainly did.

Q. 66. Then all the bonds that were used by you were paid over in settlement of that dispute, and for your fees?

A. Certainly; every solitary one of them.

By Mr. HOAR:

Q. 67. In this transaction, whose agent did you consider yourself?

A. I considered myself the agent and attorney of all the corporations, because I was employed to endeavor to frame a proposition that would be ac-

ceptable to Congress, and so far as I could to aid and strengthen the financial condition of the road. I am the author of the 10th section of the act of 1864, which was framed by myself on consultation with Mr. Durant.

Q. 67½. Did you report to Dr. Durant how these sums of money were disposed of?

A. I most certainly did.

Q. 68. Have you any objection to stating what you then reported to Dr. Durant?

A. I have.

Q. 69. Do you understand the protection of counsel to extend beyond the confidential communications of counsel and client?

A. I understand pretty well the rule. I understand the rule to extend to all relations that come within the scope of counsel or adviser on one part and client the other. I understand it to extend where there was confided in my bosom as counsel the conflicting facts between parties who were both, or one or the other of them, my clients, but who allowed me to act as arbitrator between them, and that I have no right to revive those controversies.

Q. 70. What I want to know is whether you refused to disclose those facts which the chairman inquired of you about on the ground of your relation or duties to your client, or whether you based it on your construction of the resolution authorizing the committee to act?

A. Exclusively upon a sense of duty to my clients.

By Mr. SHELLABARGER :

C. 71. Did you furnish a written statement or account to Dr. Durant of the amounts that you had paid out, and for what purpose?

A. There was no other memorandum than the one I have spoken of; no vouchers given, required, or needed.

Q. 72. Do I understand that you had made a settlement of these conflicting interests of claimants before you received the bonds, and that you knew the amount that would be required to make the settlement, and obtained the necessary quantity of bonds to pay off the claimants?

A. That is it, exactly.

Q. 73. Then you got the bonds on your exhibit of what had been adjusted?

A. I did; but all these things were understood as they progressed, by Mr. Hallett and Mr. Durant.

Q. 74. And they never received from you any other vouchers of what you had done?

A. Only the receipt for the bonds.

Such is *my* testimony given on the 18th day of January, 1873, before the "Select Committee." Let any one read carefully the answers as given to each question, and say whether I am not justified in the letters I addressed to the "Select Committee," and read before the House on the 30th of January, protesting against and repudiating the following gar-

bled and unauthorized *substitute* for my testimony, as given on the 18th January, in answer to the seventy-four questions asked me by the committee. I quote from the *Congressional Globe* of January 30, 1873 :

“ Mr. WILSON, of Indiana. I rise to a question of privilege. I am directed by the Select Committee charged with the investigation of the affairs of the Union Pacific railroad and the Credit Mobilier to make a report to the House, which I ask to have read.

“ The Clerk read as follows :

“ ‘ The committee, who by the resolution of the House of January 6, 1873, and January 9, 1873, were directed to inquire into certain matters connected with the Union Pacific Railroad Company and Credit Mobilier, with authority to send for persons and papers, report that they have made progress in executing the order of the House, and have sent for divers persons as witnesses ; that evidence has been produced before said committee tending to show that just before the passage of the act of 1864, entitled ‘ An act to amend an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean,’ &c., sums of money and a quantity of bonds issued by the Union Pacific Railroad Company, both being its property, were brought to Washington by T. C. Durant, then vice-president of said corporation, and placed in the hands of one Joseph B. Stewart, and by him in some way disposed of. Thereafter the said Joseph B. Stewart was called and duly sworn as a witness, and testified in substance as follows : that said bonds, to an amount from \$100,000 to \$150,000 were received by him of said Durant, and that \$30,000 had been paid him by said Durant as his own fees ; that he did not pay over any of said bonds or their proceeds to any member of Congress or person connected with the Executive department of the Government, and that he acted in such transaction partly for said railroad, partly for clients of his own, and partly as arbitrator between the said Union Pacific railroad and such other persons, and gave over the said bonds to such other persons. Therefore, the following questions were propounded to Mr. Stewart by direction of the committee.’ ”

This statement is not my testimony. Not one sentence of it was uttered by me. It is a statement of Jeremiah M. Wilson, George F. Hoar, Samuel Shellabarger, Henry W. Slocum, and Thomas Swann, members for the time being of the United States Congress, who, being a “ Select Committee,” appointed for certain purposes, received from me, on the eighteenth day of January, as stated, my answers to *seventy-four* questions asked by them—questions many of which are unauthorized by law, and which only would be asked by a political committee amenable to no law—but still were patiently, fully, and repeatedly answered by me. I say *repeatedly*, because the same question was repeatedly asked, until my answers, with their questions, accumulated into the space of seven or eight pages,

which this same committee found it convenient to cram into a four-inch paragraph in *The Congressional Globe* in their “*report of progress*” to the House on the 29th of January, for the purpose of arraigning me for alleged contempt—a statement never read to or seen by me until it appeared in print after I was under arrest by the Sergeant-at-Arms, when I at once denounced it as untrue, and protested against its use for any purpose.

But the forcing upon me and spreading upon the records of Congress this unauthorized statement in the place of my own full and explicit testimony was not the greatest wrong done to myself and others by the committee. They have made a statement which a proper respect to the position they occupy demands they should correct. I quote the following sentence from their report :

“ That evidence has been produced before said committee tending to show that just before the passage of the act of 1864, entitled ‘ An act to amend an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean,’ &c., sums of money and a quantity of bonds issued by the Union Pacific Railroad Company, both being its property, were brought to Washington by T. C. Durant, then vice-president of said corporation, and placed in the hands of one Joseph B. Stewart, and by him in some way disposed of.”

I was utterly astounded when I saw the statement made and signed by the distinguished gentlemen who are the authors of it. My whole testimony—or even a decent fraction of it—not being presented by the committee, I was not able to notice the above misrepresentations, as I would have done in decided terms, while defending myself at the bar of the House. As soon as I could read *my* testimony, I looked to see upon what grounds the committee had felt justified in making such a statement, and at once saw, as I knew there was in fact, no proof whatever to justify it; and I will here state that if they will waive their respective privileges as members of Congress, I will convict each of them of having published a libel before any jury of twelve honest men in their respective districts, as I will

now proceed to convince any one who will read the proof in full and not in part; and this at once illustrates the wrong perpetrated upon myself and others by the committee fabricating a statement instead of reporting the testimony as given, and taken together, as in law and morals it should have been done.

We are dealing now with the examination of the 18th January—with the seventy-four questions asked and the seventy-four answers given, substituted as it is by this sentence coined by the committee. It must be observed that I stated of my own volition (see answers 31 to 42) what passed through my hands, and there was no reluctance disclosed on my part under the interrogations of the committee, as might be inferred from the language of their report. And I here repeat that had not Mr. Durant been present, and not only consented, but requested that I should state all that he placed in my hands, I should not have stated it to the committee, if against the wish of my clients, and they would have had to hear it from somebody else. Being asked many questions, which I answered according to what I deemed right and proper, I was asked :

“ Q. 64. When did you get these bonds ?

“ A. The latter part of June, 1864, and extending into 1865,” &c.

I was not asked what was done in 1864 and what in 1865, though quite willing to state. But read the balance of the answer to the 64th question, and then follow up that with my answers to the 65th and up to the 74th question, and from those answers look back to all the previous answers, and see what a wrong is perpetrated by this fabricated statement on the part of the committee, who seem to have ignored the testimony, and to have substituted a conclusion for *facts*.

Take my whole examination of the 18th of January, and also that of the 29th, (as we shall see presently,) and there is not one word of proof to justify the statement of the committee that T. C. Durant ever at any time brought a bond or a

dollar to Washington and placed the same in my hands previous to the passage of the act of 1864, or at any other time. On the contrary, the proof shows that not a bond or a dollar was delivered to me until after the passage of that act, and that both the bonds and money I received were delivered upon my order to my agent, sent to New York for the bonds and money, and that Mr. Durant brought nothing to Washington to deliver to me, either before or after the passage of the act of 1864, and the committee had no authority for saying so.

But in addition to the total absence of proof, this statement is wholly disproved and swept away by the unsurmountable fact that the Union Pacific Railroad Company had not issued a bond of any species previous to the passage of the act of 1864, and did not for some two or three years later. I do not think that it had its mortgage prepared until after 1866, and issued its bonds still later; therefore the statement that "*a quantity of bonds issued by the Union Pacific Railroad Company, being its property, were brought to Washington by Thomas C. Durant, then vice-president of said corporation, and placed in the hands of one Joseph B. Stewart, and by him in some way disposed of,*" is absolutely untrue.

Also, as to the "*sums*" of money. There are two "*sums*" of money spoken of—\$10,000 and \$60,000—but there is not a word said about it being the "*property*" of the Union Pacific railroad, nor was the question asked. It will be seen, however, that the proof shows that the \$10,000 was paid by me for certain matters contracted by Mr. Hallett, and that Mr. Durant repaid it to me, and that the \$60,000 was paid to my order through Mr. Hay by Mr. Durant long after July, 1864, and not a word of proof that either sum was the "*property*" of the Union Pacific railroad; thus showing that the "*Select Committee*" drew upon a perhaps too eager imagination when they invented that *four-inch paragraph*, and reported it to the House as the substitute of my answers to the seventy-four questions, constituting some eight pages of printed testimony.

And here let another fact be noted by those who seek to find fault. In 1864, at the time emphasized by the committee, the Union Pacific Railroad Company had no "sums of money" or "property," except such as T. C. Durant, C. S. Bushnel, H. S. McComb, and a few others, provided for it; and when the committee speaks of "sums of money" or "bonds" at that date belonging to that company, they assume what has but a very shallow basis, and not warranted by the proof. But I do not rest the point in any respect on the then limited resources of the Union Pacific railroad. *I challenge the whole statement as being untrue*, and as casting unjust reflections upon Mr. Durant and myself.

I will now refer to my examination of the 29th of January, which it will be seen was not much less mutilated and perverted in the report of the "Select Committee" than has just been shown was the case with my examination of the 18th January, above referred to.

As before stated, I returned to Washington on the 28th expressly to see what further examination the "Select Committee" might wish to make, and appeared before them, when they asked me to call next day, the 29th. I did so, and was examined again at great length—not by propounding any questions involving new matter, but re-propounding the questions asked me on the 18th—in a manner that fully indicated an aggressive purpose. How I was interrogated, and what were my answers, will be seen in what follows:

WASHINGTON, D. C., *January 29, 1873.*

JOSEPH B. STEWART recalled.

By the CHAIRMAN:

Q. 75. In your former answer in this examination you stated to the committee that Mr. Durant and Mr. Hallett together paid you a very large amount, to exceed \$250,000 in bonds; and also that exceeding \$250,000 in bonds had passed into your hands; that of that amount from \$100,000 to \$150,000 was in bonds of the U. P. R.R. Co., and that you received those bonds in the latter part of June, 1864; now state to the committee, so far as you can recollect, the names of the persons to whom you delivered or paid out those bonds of the U. P. R.R. Co., or any part thereof, or the proceeds thereof?

A. The question asked me assumes what is erroneous. It covers two quan-

ties of \$250,000 of bonds, &c.; assumes that I have received and paid out that quantity. I have not stated that.

(Question repeated.)

A. The word "*paid*," in the sense used there, has no proper place.

Q. 76. That is the only criticism you make on that, is it?

A. Yes. I stated that I received that money and those bonds as counsel to adjust matters wherein I was acting for my clients, and in a fiduciary capacity, sometimes as negotiator and sometimes as umpire and arbitrator, and that I appropriated the money and bonds so received in discharge of that duty as counsel. All matters of fact in every instance came to me in my capacity as counsel, and that it had no reference to, and was not by me applied to, any one connected with the Government in its legislative or executive capacity, and that the matters performed by me and facts confided to me as counsel I did not mean to state to this committee.

Q. 77. Were any of the bonds that you have now referred to the bonds of the U. P. R.R. Co.?

A. I refer to the same bonds in reference to which I testified before.

Q. 78. You stated, I believe, in your former examination that of that amount of bonds that went into your hands from \$100,000 to \$150,000 were the bonds of the U. P. R.R. Co.?

A. To the best of my recollection, something exceeding \$100,000.

Q. 79. Now, I ask you to state to the committee, so far as you recollect, the names of the persons to whom you paid those bonds of the U. P. R.R. Co., or any part thereof?

A. Declining, as I have before done, (and giving now my final answer on that subject,) that not one bond or dollar was paid to any member of the Government; but I will not speak of my dealings with my clients, or state matters confided by them to me as counsel, or came to my knowledge as such.

Q. 80. Do you refuse to state to whom you paid or delivered those bonds of the U. P. R.R. Co. of which you have spoken, or any part of them, or the proceeds of them?

A. I have repeatedly stated, and I now again say, that I will make no statement about the business of my clients.

Q. 81. Do you refuse to state to the committee to whom you delivered those bonds, or what you did with them?

A. That is but changing the question again.

Q. 82. Answer my question?

A. I refuse to speak about the business of my clients.

Q. 83. Do you refuse to state to this committee to whom you delivered those bonds, or any part of them?

A. The persistence with which I am sought to be placed in a false position by this question I protest against.

Q. 84. It is an easy matter to state whether you refuse to answer the question?

A. I refuse before this committee, and desire the fact to be noted by this audience, that I only refuse to speak of the business of my clients, or repeat matters only known to me as counsel, and I know how far the question asked involves the business of my clients.

Q. 85. I will give you another opportunity ?

A. You need not give me any opportunity to answer that question again.

Q. 86. Do you refuse to answer it ?

A. I have answered the question as I mean to answer it, and hope it will not be repeated.

Q. 87. I am putting a plain question to you, which you may answer or refuse to answer ?

A. If you repeat your former question it is answered.

Mr. HOAR. I move that the witness be informed by the chairman that in the opinion of the committee a disclosure of the names of the persons to whom he delivered money or bonds is not protected by the legal privilege existing between counsel and client.

The motion was agreed to.

The CHAIRMAN informed the witness that the committee had had the matter under consideration, and had examined the question, and that it was the opinion of the committee that the witness had no right to refuse to answer the question on the ground of privileged communication, or for any other reason.

WITNESS. Now I will again give my reasons to the committee for declining to speak of the matters inquired about, and I presume I have some rights here. In my examination heretofore, I stated the facts known to me in the scope of the questions ; and the duties discharged by me as counsel, trustee, negotiator, and sometimes as umpire, and involved a great many parties. Their confidence and interest is my rule and my guide ; their rights are my rights. And were I to attempt a statement, I at this late date could not be accurate for the want of proper data. It is now going on ten years since these matters closed, and facts essential to accuracy are not in my control, and it would but lay the foundation for controversy. I might impress Mr. Brown with the belief that he should have got \$7,000, while he got but \$3,000, or cause Mr. Jones to believe that he should have got something else than what he did ; and I would create dissatisfaction where satisfaction exists, and distrust where confidence exists, disclosing nothing that would aid the object of your inquiry, while myself and others who would be affected by the reviving of such matters would be left without any remedy which you could or would afford the means of adjusting the strife thus generated. Your investigation and questions aim directly at that which I claim, as a lawyer, appertain to my clients' private rights, which are only known to me as their counsel. I think there are some rights which a citizen has, and which are proper to be respected everywhere, and even by Congress, under the Constitution and laws of this country. I have repeated my reasons for refusing to answer your questions as asked. I wish them to go to the public, for I shall stand very firm on the ground I have taken.

Mr. HOAR moved that the further examination of witness be postponed for two hours.

The WITNESS. I have a case on trial in New York which has been postponed for me until to-day, and I shall certainly go to New York to-day to try that case.

The CHAIRMAN. You can go very readily by answering the questions.

WITNESS. I consider I have answered the question properly and legally.

By the CHAIRMAN :

Q. 88. What kind of bonds did Mr. Hay receive at the time this negotiation was going on ?

A. Mr. Hay, to the best of my judgment, received, and I believe only received, bonds of the same description as I did. I believe they were part of the bonds which I received from Mr. Durant, as I have before stated. Except through me, I do not think Mr. Hay (indeed, I can speak positively) had anything to do with the matter.

Q. 89. Mr. Hay was acting in concert with you ?

A. That word "concert" I object to. Mr. Hay was acting under my direction.

Q. 90. Was he your agent in assisting you in managing the matter ?

A. Mr. Hay did certain things which I requested him to do at the instance and request of my clients.

Q. 91. What was it that you requested Mr. Hay to do ?

A. I have stated that I requested him to draw or to bring some bonds from New York to Washington to me. I gave him an order on Mr. Durant, also, for some money.

Q. 92. Did Mr. Hay bring those bonds over from New York to Washington ?

A. He did.

Q. 93. Did he bring over some money also ?

A. Not at that time. It was before the time he brought the bonds that he brought the money.

Q. 94. How much money did he bring ?

A. Sixty thousand dollars.

Q. 95. What time was that ?

A. I will not be precise as to the date, but it was current with the other transaction, some time after the matter was adjusted and closed up.

Q. 96. What did you do with that money ?

A. I made the same disposition with it that I did with the bonds. I paid it, or caused it to be paid, to those to whom it belonged.

Q. 97. Do you know from what source that money came ?

A. I know that it came from Mr. Durant.

Q. 98. Was Mr. Durant acting on behalf of the U. P. R.R. Co. at that time ?

A. At that time (1864 and '5) Mr. Durant, to my certain knowledge, was carrying on the U. P. R.R. pretty much on his own resources.

Q. 99. He was the acting, managing man of the U. P. R.R. Co. at that time ?

A. Yes ; Mr. Durant was at that time—I know from knowledge which came to me professionally—the person upon whom the progress of the work on the road mainly depended ; but I shall not testify as to these matters.

Q. 100. To whom did you pay that \$60,000 ?

A. I paid it, or caused it to be paid, to those of my clients and *cestui que*

trusts that were entitled to it, and they were not members of Congress, or Senators, or Government officials.

Q. 101. Give their names to the committee?

A. I decline to give any names with reference to my transactions with my clients or disclose matters derived from them as counsel or their legal adviser.

By Mr. SLOCUM :

Q. 102. When were these occurrences?

A. In 1864 and 1865.

Q. 103. Who was president of the U. P. R.R. at that time?

A. General Dix; but the road, at the time of which I am testifying, in 1864 and '5, had no very active support, outside of such as Mr. Durant and a few individuals associated with him brought to it. It was at a later period that other gentlemen, who have testified here, came into it.

By the CHAIRMAN :

Q. 104. Did you ever receive any moneys or bonds from Mr. Durant, or at any other time than as you have stated?

A. With the exception of one matter, as to which I wish to make a correction. I stated in my former examination that Mr. Huntington paid me \$10,000. I find that he paid me but \$2,000, and that Mr. Durant paid me the other \$8,000. I wish to make this correction.

Q. 105. When was that?

A. That was at the time of the close of the labor which was performed in 1864 and 1865.

Q. 106. What was this \$10,000 paid for?

A. It was paid to me to discharge some obligations contracted by Mr. Hallett. I think I paid the money myself for Mr. Hallett, and Mr. Durant afterwards paid it to me. Seeing that round figure, \$10,000, opposite Mr. Huntington's name in a memorandum which I accidentally came across some time ago, I supposed that I had received all this money from Mr. Huntington.

Q. 107. How long is it since you came across that memorandum?

A. About a year ago. I came across it among my professional papers and laid it away.

Q. 108. Where is that memorandum?

A. That memorandum is in my possession.

Q. 109. Will you produce it to the committee?

A. I will not, because it relates to my clients' business.

Q. 110. Is that memorandum in this city?

A. That memorandum is in this city at this time.

Q. 111. Does that memorandum contain a statement in reference to all these transactions?

A. It does not; nor the tithe of them.

Q. 112. To what extent does it go; any further than as to the \$10,000?

A. Nothing further, so far as money is concerned, than the altering the \$10,000 into \$2,000, but it relates to other things.

Q. 113. You refuse to produce this memorandum?

A. I do refuse to produce any memorandum that has reference to business between me and my clients.

Q. 114. That was a memorandum which you made yourself, was it?

A. A memorandum which I made myself in transaction with my client, and in perfecting the adjustment with my clients and *cestui que trusts*.

Q. 115. I understood you to say that in some portions of these transactions you were acting as arbitrator or umpire between the parties?

A. I did so state, with the further fact, that in whatever ultimate capacity I acted in any particular case, my relation originated in that of counsel, and in which capacity all matters of fact were confided to me, and I could give no facts derived in any other way.

Q. 116. Do we understand you to claim that an arbitrator and umpire has a right to regard what transpires in his presence between parties who are controverting questions before him as a privileged communication?

A. Since I was interrogated in the manner I was by the committee as to that I have made it a special study, and I am very well prepared to sustain my position by authorities. I hold it to be law, that facts learned as counsel cannot, under any circumstances, be divulged for any purpose, and no court of justice would require or permit it. In every case I was counsel or had been counsel for one party or other, and if the relation of counsel and client were temporarily absolved, it was simply to constitute me (they having sufficient confidence in me) an arbitrator or umpire to settle between them. That confidence has not yet been impaired, nor my professional obligation absolved to hold sacred matter confided to me.

Q. 117. To what extent did these matters pass under review by you, as umpire or arbitrator between the parties?

A. In no instance so exclusively, as umpire or arbitrator, as to divest me of my obligation as counsel as to facts confided to me. It resulted in every instance from my previous relation as counsel or confidential legal adviser to one party or both.

Q. 118. So that you were counsel and umpire at the same time?

A. I stated that I was always placed so specially by the consent of the parties, but that my relation and knowledge of facts, in every instance, had its origin in my professional capacity.

Q. 119. But after they had absolved you from your responsibilities as counsel, and you came to be umpire alone, then being no longer counsel, do you regard the communications that were made to you by those parties between whom you were arbitrator as confidential?

A. No lawyer at any time has absolved his relation between him and his client as to any matters of fact confided to him, and no lawyer who has self-respect or honor will ever divulge them.

Q. 120. You don't mean to be understood as saying that, after the relation of counsel and client have ceased, communications that are made to him are confidential?

A. That relation never ceases, as far as the matters that transpired and knowledge received as counsel is concerned, whatever may be the relation of the parties in some future transaction. It is the right of the client, and not the choice of the lawyer, to say when he shall disclose facts.

Q. 121. Then, once a man's lawyer always his lawyer?

A. Not necessarily; but in regard to the matters once confided to him as a lawyer he always is the lawyer of his clients, and his mouth is always shut in speaking of that business transaction, or of anything that would disclose facts so confided to him.

Q. 122. Were any of those bonds paid out or delivered to the parties by Mr. Hay, or were they all delivered by you?

A. Everything was so immediately under my direction that any action of his would not be such as would impart to him the reason therefor. He acted under my direction as counsel, as far as I have any knowledge.

Q. 123. Was he cognizant at the time of the delivery of any of these bonds?

A. I should think not. Certain it is that I aimed to so arrange, and to so distinctly settle between all parties before the delivery was made, that that act finished, released, and discharged, and everything of that sort was closed on the spot, and has stood so for now nearly ten years, and I feel burdened at being interrogated about it here after such a lapse of time, and for other objections stated.

Q. 124. Are you simply apprehensive that your disclosure of these names would stir up strife between these clients of yours?

A. I am perfectly certain that such would be the result. But my views of the relations existing between counsel and client would be sufficient reason for me, even if I did not apprehend and know that there are elements of dissatisfaction that could be very easily moved.

Q. 125. Did you deliver any of these bonds to newspaper correspondents?

A. That is repeating the question which I have declined to answer; but from a sense of justice to these gentlemen I will say that I did not.

Q. 126. Did you deliver any of them to newspaper publishers?

A. I decline to answer.

Q. 127. Were those newspaper men your clients?

A. Two of them were.

Q. 128. Where did they live?

A. That is immaterial to the purpose of this examination.

Q. 129. You do not consider where they live a confidential communication, do you?

A. I judge that it is not necessary to inquire.

Q. 130. Do they live in the city of Washington?

A. I decline to answer.

Q. 131. Did you ascertain where they lived from any communication they made to you, or did you know it prior to your engagement by them as counsel?

A. I ascertained where they lived from having been their counsel and adviser for ten or twelve years.

Q. 132. Then the place of their residence was not a confidential communication to you?

A. I choose, for the purpose of this examination, to regard it as such. I do not see what the committee has to do with the names of those newspaper editors who were my clients.

Mr. SHELLABARGER to witness :

Q. 133. You may not have observed carefully the part of the resolution under which the committee is acting, which requires the committee to investigate the interests of the Government in the proper and legal disposition of the assets of the road, and in so far as that branch of our resolution is concerned it has no special relation to influences brought to bear on members of Congress. Now it may not be amiss to state to you that one object of these inquiries is to ascertain and report to the House on the matter of the just and legal disposal of the assets affecting the solvency of the corporation, and it is partly in that view that the committee desires, in obedience to the order of the House, to get information as to what was done with those assets. In that view I trust that you will see that the committee is not desiring anything else than faithfully to discharge its duties to the House. We therefore desire to find out what disposition has been made of the assets, which it is the concern of the Government to know whether or not they have been used according to law.

A. In answer to that suggestion put in the way of a question, I beg to state that I, as a citizen of the United States, know of no other rights than legal rights vested in the Government, and that by the laws of the land as they exist I am willing to abide and obey. I know of no right the Government has in regard to this inquiry beyond those provided by existing law applicable alike to all parties. As to the Government itself, let Congress take proper care of the legal and equitable rights of every individual American citizen according to the law as written, and fully protect and respect the same; and then the Government will already have been provided for to the utmost that it can demand, and to the greatest measure of its interests. It can have no legal rights above the citizen.

By Mr. SHELLABARGER :

Q. 134. In view of the statement which I have just made to you as to what we deem the duties of this committee to the House, do you still decline to answer the question which you have hitherto declined to answer?

A. The questions and the only questions which I refuse to answer are those which (I repeat) enter into my duties and my rights as an attorney as well as a citizen; and in order to protect the rights and interests of those who have confided them to my care, (as counsel, which I shall do,) I will state that I will answer no question that tends to involve, or complicate, or imperil those rights and interests confided to me by my clients.

By Mr. SHELLABARGER :

Q. 135. Then I understand you as still adhering to your refusal heretofore made?

A. I cannot make myself plainer than the language which I have already used has done.

JOS. B. STEWART.

Thus concluded my examination on the 29th day of January, which I supposed would be resumed, or at least what I

had stated would be presented to me for my approval before it was used; but instead of which, the "Select Committee" were pleased to prepare and present to the House of Representatives the following statement of their own, which needs but to be read and compared with the preceding full and complete answers given by me to their questions to expose the wrong and outrage perpetrated upon me by their action.

My answers to their *one hundred and thirty-five questions*, making fifty-seven pages of manuscript and thirteen pages of print, showing that I fully answered every question, and, I believe, gave legal and proper answers, no odds how impertinent or harassingly repeated, were reduced to the following seventeen skeleton and fractional answers, omitting what they pleased and inserting what they desired, and presented the same to the House of Representatives as my testimony, accompanied with a resolution asking that body to declare me in contempt, and consign me to this prison, before I could be heard, or show, as I now show, that their presentation of my testimony was perverted and false:

“ WASHINGTON, *Jan'y 29*, 1873.

“ JOSEPH B. STEWART recalled :

“ By the CHAIRMAN :

“ Q. In your former answers in this examination you stated to the committee that Mr. Durant and Mr. Hallett together paid you a very large amount, to exceeding \$250,000 in bonds, and also that exceeding \$250,000 in bonds passed through your hands, and of that amount one hundred thousand to one hundred and fifty thousand dollars was in bonds of the Union Pacific railroad, and that you received those bonds in the latter part of June, 1864. Now state to the committee, as far as you can recollect, the names of all persons to whom you delivered or paid out those bonds of the Union Pacific railroad, or any part thereof, or the proceeds thereof ?

“ A. The word ‘ paid,’ in the sense used there, has no proper place.

“ Q. That is the only criticism you make on it—is it ?

“ A. Yes.

“ Q. You stated in your former examination that of that amount you paid out from one hundred thousand to one hundred and fifty thousand dollars in bonds of the Union Pacific Railroad Company ?

“ A. To the best of my recollection something exceeding \$100,000.

“ Q. Now I ask you to state to the committee, as far as you recollect, the names of all persons to whom you delivered or paid out those bonds of the Union Pacific railroad, or any part thereof, or the proceeds thereof.

“ A. Giving my answer finally on this subject—that not one dollar was paid to any member of the Government—I do not speak of my dealings with my clients.

“ Q. Do you refuse to state to whom you delivered those bonds of the Union Pacific railroad, or any part of them, or the proceeds thereof ?

"A. I have repeatedly stated, and I again say, that I will make no statement to the committee about the business of my clients.

"Q. Do you refuse to state to the committee to whom you delivered these bonds, or any part of them?

"A. I refuse, to this committee and to the audience, to speak of the business of my clients; and I know how far the question is the business of my clients.

"The CHAIRMAN. I will give you another opportunity to answer the question.

"The WITNESS. You need not give me any opportunity to answer that question again.

"Q. Do you refuse to answer it?

"A. I have answered the question as I mean to answer it.

"Mr. HOAR. I move that the witness be informed by the chairman that, in the opinion of the committee, a disclosure of the names of the persons to whom he delivered money or bonds is not protected by the legal privilege existing between counsel and client.

"The motion was agreed to.

"The chairman informed the witness that the committee had had the matter under consideration, and had examined the question; and that it was the opinion of the committee that the witness had no right to refuse to answer the question, on the ground of privileged communication, or for any other reason.

"The WITNESS. In my examination heretofore I stated that the duties discharged by me as counsel, as trustee, as negotiator, and as umpire, involve a great many parties." * * * "Their confidence is my rule and my guide, their rights are my rights."

* * * * *

"Q. How much money did Mr. Hay bring to you from Mr. Durant in New York?

"A. Sixty thousand dollars.

"Q. Was Mr. Durant acting in behalf of the Union Pacific Railroad Company at that time?

"At that time, 1864 and 1865, Mr. Durant, to my certain knowledge, was carrying on the Union Pacific railroad pretty much on his own resources.

"Q. He was the managing man of the Union Pacific Railroad Company at that time?

"A. Yes." * * *

"Q. To whom did you pay that \$60,000?

"A. I paid it, or caused it to be paid, to those of my clients and my *cestui que trusts* who were entitled to it; and they were not members of Congress or Senators or Government officials.

"Q. Give the names to the committee.

"A. I decline to give any names with relation to my transactions with my clients."

* * * * *

"Q. Did you ever receive any money or bonds from Mr. Durant at any other time than as you have stated?

"A. With the exception of one matter, about which I wish to make a correction in my former testimony. I stated that Mr. Huntington paid me \$10,000. I find that he paid me but \$2,000, and that Mr. Durant paid me the other \$8,000. I find this by a memorandum which I came across accidentally some time ago.

"Q. Where is that memorandum?

"A. It is in my possession.

"Q. Is it in this city?

"A. It is in this city at this time."

* * * * *

"Q. Will you produce that memorandum?

“A. I refuse to produce the memorandum.”

* * * * *

“Q. Did you deliver any of these bonds to newspaper correspondents ?

“A. That is repeating the question which I declined to answer ; but for the credit of those gentlemen I will say that I did not.

“Q. Did you deliver any of them to newspaper proprietors ?

“A. I decline to answer.

“Mr. SHELLABARGER, (to witness.) You may not have observed carefully the part of the resolution under which the committee is acting, which requires the committee to investigate the interests of the Government in the proper and legal disposition of the assets of the road, and in so far as that branch of our resolution is concerned it has no special relation to influences brought to bear on members of Congress. Now, it may not be amiss to state to you that one object of these inquiries is to ascertain and report to the House on the matter of the just and legal disposal of the assets affecting the solvency of the corporation ; and it is partly in that view that the committee desires, in obedience to the order of the House, to get information as to what was done with those assets. In that view I trust that you will see that the committee is not desiring anything else than faithfully to discharge its duties to the House. We therefore desire to find out what disposition has been made of assets, which it is the concern of the Government to know, whether or not they have been used according to law.

“The witness still declined to answer.”

The committee are of opinion and report that it is necessary for the efficient prosecution of the inquiry ordered by the House that said questions should be answered, and that there is no sufficient reason why the witness should not answer the same, and that his refusal is in contempt of this House. The committee recommend the adoption of the accompanying order.

J. M. WILSON,
SAMUEL SHELLABARGER,
GEORGE F. HOAR,
THOMAS SWANN,
H. W. SLOCUM.

Ordered, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, or his deputy, commanding him to take into custody, wherever to be found, the body of Joseph B. Stewart, and the same in his custody to keep, subject to the further order and direction of this House.

And then, as if to complete the programme of this extraordinary disregard of law and exercise of power, and for the purpose of cutting off all debate or possible explanation on my part through any member, the committee being manifestly my prosecutors, its chairman moved the previous question, as follows :

“Mr. WILSON, of Indiana. Mr. Speaker, the report of the committee puts the House pretty fully in possession of the facts of this case ; and I will therefore move the previous question upon the adoption of the order that has been reported by the committee.”

When the record proves that not one tithe of the facts was put before the House by the report of the committee, and that my testimony as given by me was not reported nor produced at all, either then or afterwards, until I, by the force of a petition placed in the hands of the Speaker, secured a copy of my testimony from the stenographic reporter after I was condemned, and tried to place it before the House myself, on the 6th of February, as is shown by my petition addressed to the House of that date.

If Mr. Wilson, in moving the previous question, had asserted that the writings of Voltaire exhibited all the truths of Holy Writ, he would have stated as nigh the fact as that the report of his committee correctly exhibited the matters contained in my testimony upon which he was seeking to imprison me. And why such a misrepresentation was made is a question for that distinguished gentleman and his "Select Committee" to answer and explain.

That their report did not and does not state the facts, or correctly exhibit my testimony, is a matter so thoroughly demonstrated *by the record*, by the questions and answers themselves, and by the hundred and thirty-five answers to as many questions, full and complete, while the so-called report of the committee *exhibits but a small fraction of my answers to seventeen of their questions*, leaving *one hundred and eighteen* of my answers buried in the rubbish of their committee room; and the mutilated answers they did give are so shaped, framed, and pointed as to place me in the worst possible light, while the committee selected a much better, but a wholly unwarranted position for themselves.

Why suppress *a hundred and eighteen* of my answers to their questions? Why mutilate and cut away any portion of an answer they did attempt to give? Who authorized the committee to strike out my language and fill blanks with

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thus depriving me of the terms and rational effect of my own language, and imposing upon me their construction of it?

How could the House of Representatives properly determine my contempt without having my own—the whole, and not a part of my language—before it? Would any court of justice tolerate any such a proceeding for a moment, or have anything else than *the* language, and the whole language, of the witness produced; and when considering a contempt, would not the sternest repulse and the severest rebuke be administered by a court to those who should attempt to proceed otherwise? I should be pleased to have the “Select Committee” give such answers to these questions as their truth and importance demands, if they deem the position they occupy as members of the United States Congress imposes upon them the duty of replying.

Certain it is that the facts show that the report of the “Select Committee,” made upon the 29th day of January, 1873, purporting to lay before the House of Representatives my testimony given before them, upon which I was alleged to be in contempt, *is not correct*, and that I am imprisoned upon a FALSE RECORD, depriving me of my liberty, and subjecting me to irredeemable injury and loss.

Wholly disregarding, as false and immaterial, the report or version of the matter presented as my testimony, as I contend the facts justify and demand, I now submit the question upon my own testimony, full and complete, whether I have or have not committed any act of contempt of the rightful authority of the House of Representatives of the United States, and this proposition directly presents the immediate and material inquiry, what questions were propounded to me which I refused to answer or should have answered differently to what I did, and upon what ground, under the Constitution of the United States, did or could any answer I might have given or refuse to give subject me to an act of contempt to the House of Representatives of the United States?

As the first inquiry addresses itself to the substance and subject-matter, terms, and language used in my deposition, I invite the attention of the reader to the deposition itself.

From No. 1 to No. 31 I am asked questions, all of which I answered, and volunteered information beyond the call of the questions as to what amount of bonds and money I received, and from whom I received the same, to wit: Samuel Hallett and Thomas C. Durant; and in a full and complete answer to question 31, I stated for what specific purposes those funds came into my hands and the disposition made of them—that is, that they were to discharge obligations against the corporations represented by Mr. Hallett and Mr. Durant, mainly resting upon the Union Pacific Railway, eastern division, and in which I was acting as counsel for the parties claiming previous to my being employed by Hallett and Durant in the early part of the year 1864 to represent their interests in other issues, I making it a condition that the rights and claims of my previous clients should be adjusted, and which was done, and that those matters were solely and exclusively known to me, as growing out of those conflicting interests, I did not feel at liberty and hence refused to explain them to said committee, stating at the same time that they had nothing whatever to do with a member of either House of Congress or any officer of the Government. I with confidence refer the reader, and especially the lawyer, to my answer of question 31, and ask his judgment whether it is not just, legal, and proper.

At questions 36 and 37 I was asked to explain the nature of these controversies between those whom I represented, which directly called for facts only known to me as counsel, and which I of course declined to answer, making such disclosures, and refer to said questions and answers 36 and 37 for my justification, which cannot fail to be accorded. These questions were again repeated at Nos. 43, 44, and 45. I met them by stating everything I could state without disclosing those things which I had no right to state, for the reason, respectfully stated to the committee, that it would be to testify to matters confided to me as counsel, and in this I feel sure those answers will fully justify me.

The 46th and 47th questions again directly pressed for the names of the persons whose interests were confided to me as counsel. This put me squarely to consider again what were the interests of my clients; whether it could in any way prejudice them in interest or in feeling to have their names dragged into the pending investigation, however remotely they stood aloof from anything appertaining to the Government, or whether my giving up their names could in any way subject them to loss, trouble, or annoyance; and knowing the truth to be that in the very settlements that were made in their behalf, they, without exception, had yielded far the larger portion of what they respectively claimed rather than have their names brought into court where both parties could be heard, that they would not desire to be brought before a political committee, seeking political ends before the public as legislators, where the hearing was all on one side, I very readily judged, and, as I now see, judged most rightly, that the parties (my clients) would not wish to be placed in such a position and subject to such harassment, and I respectfully but firmly declined to place them in it.

In doing this I quite understood that there was no such state of case or issue before that committee as brought up the exception to the rule *where a client's name can be required to be given in order to reach him with a confession*, and to give up the name of any client merely to afford that committee an opportunity to speculate upon it, *at the option of their unbounded discretion*, as I have since seen in other cases, I felt, in addition to its being a breach of professional duty on my part, that it would be inflicting an absolute cruelty upon those who had paid me liberally to protect their rights, and from which rights I could not and would not except or separate their characters or happiness, and to do which required me to withhold their names. These reflections determined my answer; that as their counsel in all these matters, settled and closed up nearly ten years ago, I was bound to protect them from annoyance as well as from loss, when I saw

either approaching, and that I could only do by withholding all information appertaining to their affairs entrusted to me, including their names, for if I gave their names it would simply serve as a finger-board to subject them to being inconvenienced and injured by being brought before that committee, as before stated, *and had therefore just as well exposed all of their affairs myself*, which I did not and will not do, and in this action I felt then, and feel now, conscious that I was right, both legally and morally.

And I here beg to contend, with perfect confidence in the legal accuracy of my position, that the name of an attorney's client may enter just as deeply and as inviolably into the question or principle of privileged communications or confidential disclosures as any other matter or fact, and to disclose which would be equally a breach of professional duty, and in some cases more so, as it might lead to a harm beyond that of mere pecuniary losses. And when to this proposition of law, so just and reasonable within itself, I bear in mind the fact as stated, that all of those whom I represented yielded much to escape notoriety, and paid me liberal fees to save them from it, I felt that when I give up their names I should give them back their money.

Take this case: one of my clients had a good claim in writing for \$50,000 in full paid stock, and \$25,000 in cash upon certain conditions, and which was available and valid in a court of justice; but for reasons quite sufficient to him he accepted \$10,000 of bonds and paid me \$3,000 out of the \$10,000 for my services, thus making an enormous sacrifice and yielding the major part of his rights rather than have his name handled in court, as he desired to engage in certain financial pursuits, in which he is now occupied; and shall I now expose him to the annoyance, not to a court where there are rules to protect him, but to a committee of Congress, which, so far as I can see, observe no rules except their own will? My answer, as a lawyer, has been given, and is verified by my presence in this prison.

And I will here state that the committee had just as well have closed this issue at the forty-seventh question, on the 28th day of January, as to have extended it to the one hundred and thirty-fifth question on the 29th, as there was not the slightest possibility of my changing my position. And as they in their report only chose to use a part of my answers to seventeen questions, they had more information at the forty-seventh question than they required or used in their report to the House and for introducing their Bastille resolution.

But I was asked :

“Q. 48. Well, Mr. Stewart, we have traced into your hands a certain amount of bonds of the U. P. railway?”

“A. Allow me to say in the first place that I object to the use of the language of ‘having traced anything into my hands.’ YOU HAVE TRACED NOTHING INTO MY HANDS.”

I refer to this question and answer because of the attempt evinced to do me injustice by assuming that the bonds I received from Hallett and Durant had been only ascertained to have come to my hands by the committee after a great deal of cautious investigation, when the truth was, that I had of my own volition, in the early part of my examination, declared fully all about the bonds I had received, but which, as elsewhere stated, I would not have done had not Mr. Durant consented to my doing so, and sat before me when I testified, and I therefore promptly repelled the insinuation of the committee that they had “*traced*” anything into my hands.

From the 51st to the 59th question I was closely interrogated as to whether I knew of any bonds being used or paid to any member of Congress or Government official, which I answered that I had not; when I was then pressed in a most extraordinary manner to state whether I had ever heard anybody say that they knew or had heard of such a thing, and I was happy to be able to assure the “Select Committee” that I had not been the recipient of any such gossip. And there it seems to me my examination should have legitimately ended.

The 60th, 62d, and 63d questions were addressed to me, in-

quiring about the method of my settling with Hallett and Durant, which I answered according to the facts, in the presence of the last-named gentleman, who would have corrected me had I stated erroneously, and I presume the committee will accept that as true.

I was then asked the sixty-fourth question, "What time I got the bonds?" to which I answered in the latter part of June, 1864, and extending into 1865, and then continued the answer, covering over a half page of print, aiming to be so distinct in my explanations as not to be misunderstood, being desirous that Mr. Durant should have my explanation and statement so given, which he did; and from the questions asked me from the sixty-fifth up to the seventy-fourth, I felt assured that I was understood, as the committee seemed to comprehend my explanation, as their questions and my answers when read will show. But if there is anything more than another that my examination disproves, it is the assertion in the report of the committee which I have elsewhere pointed out and condemned, that "sums of money and quantities of bonds issued by the Union Pacific Railroad Company were brought to Washington by T. C. Durant, then vice-president of said corporation, and placed in the hands of one Joseph B. Stewart just previous to the act of 1864, and by him in some way disposed of," than which a more false and unwarranted statement never was penned or uttered, and I challenge the committee or any one else to find it given out or justified in any answer of mine from the first to the seventy-fourth question. I name these numbers because the committee assumes that such appears in proof before I was asked the seventy-fifth question, which latter was the first question asked me when my examination was resumed.

Looking at this whole examination it is not easy to perceive any sufficient reason for my being further examined on the 29th day of January, unless it was designed to serve the purpose of a convenient prelude to the tragedy which followed—*that is, my being voted into a dungeon for not answering*

questions which "the committee" had no right to ask, which was to give the names of such citizens as employed me as counsel to collect or settle certain claims as far back as 1861, '62, '63, '64, and '65, together with the character and nature of those claims, and, of course, the amounts paid, and all other particulars, to "the Select Committee," of which Hon. J. M. Wilson is chairman. This, for reasons stated, I had as fully declined to do on the 18th of January, as shown by the record, as it was possible for me to do at any other time, and the Bastille should have been prepared for me at once.

There was no new inquiry inaugurated after the 18th, except it was demanded of me that I should produce the private papers that I stated I had in my personal possession relative to the interests of my clients, and the further demand that I should give the names of a couple of newspaper publishers who were clients of mine, but for what purpose "the Select Committee" desired this personal information they did not deign to tell me. But supposing it might be to investigate their private affairs, I did not feel at liberty to subject these two publishers, who are honest men and gentlemen, to such an abuse, least when they passed from the hands of "the Select Committee" they would have left their good name behind them.

Except the private papers relating to my clients' business in my possession as counsel and the names of the two newspaper publishers, there was nothing inquired about or to be inquired about, as it seems, on the 29th, which had not been fully exhausted on the 18th. When, therefore, the seventy-five mainly redundant questions which were asked on the 18th were substantially repeated on the 29th, and the manner in which they were asked, caused me at once to perceive the real situation, and to feel that it was an attempt to browbeat me into giving unauthorized answers to illegal questions, for it is not possible for any man of good common sense, and certainly any one who is a lawyer, to read the several questions from No. 75 to No. 87 inclusive, without seeing

that the questions were presuming if not offensive, and I can confidently rely upon the same intelligence to justify my answers.

Certain it is, however, I was not in the least intimidated or staggered in my sense of duty or rights in the premises by the disregard of law or the tone of authority which marked the manner of propounding the twelve questions referred to, as well as many other questions propounded to me by the committee. I had taken pains in the meantime to consider and look into my duty and carefully examine the authorities, and knew that I was standing on solid legal ground, as well as being sustained by every demand of honor.

It was indeed so plain to me that the "Select Committee" *sat there a law unto itself*, that I was more amused than surprised, (if such a feeling could possess me upon such an occasion,) after my answer to the eighty-seventh question was given, when—

"Mr. HOAR. I move that the witness be informed by the chairman that in the *opinion of the committee* a disclosure of the names of the persons to whom he delivered money or bonds is not protected by the legal privilege existing between counsel and client.

"The motion was agreed to.

"The CHAIRMAN informed the witness that 'the committee' had had that matter under consideration, and had examined the question, and that it was the opinion of 'the committee' that the witness had no right to refuse to answer the question on the ground of privileged communication, *or for any other reason.*"

It was very unnecessary to inform me, or anybody else who was present upon that extraordinary occasion, as to the opinion the *committee* had of *its own authority*, and what it assumed the right to do; that was visible to all who beheld it, and will be remembered long after those who composed the committee have ceased to encumber the places they hold. But when the distinguished chairman announced in the name of the committee that an attorney had no right to refuse to answer questions such as propounded, on the ground of privileged communication of his client, *or any other reason*, he squarely

avowed that the committee *was itself the law*, and that its wishes overrode all that was written in the books. All of which must be assumed and conceded before the *dictum* announced by the committee can be accepted and obeyed.

As the proposition announced by the committee, and is indeed the turning point in this whole *arbitrary* proceeding, I propose to meet it squarely with authority which I think must dominate over the opinion of the committee, so far as sound principle and enlightened law is to be regarded. The precise text of the law, as laid down by Greenleaf, is as follows, (see section 245:)

“The attorney may be compelled to disclose the name of the person by whom he was retained, *in order to let in the confessions of the real party in interest.*”

The language of this text at once declares *that it is not a right* to ask the question generally, but must always be done for a pre-defined and sufficient purpose, coupled with the question; the foundation for which question is laid in the pleadings, as per the example given with the text: “In order to let in the confessions of the real party in interest,” or for any other similar reason alleged and specified, which does not infringe upon any matter material to the interest of the client, and communicated to the attorney. But if the name of the client enters into the confidence or nature of the employment, then it is just as much privileged as any other matter or fact.

Touching upon the same subject, Phillips on Evidence, (vol. 1, page 130,) states the rule to be—

“That communications made on the faith of that professional confidence which a client reposes in his counsel, attorney, or solicitor are not allowed to be revealed in a court of justice to the prejudice of the client.”

Mark the words, “TO THE PREJUDICE OF THE CLIENT,” thus showing that the confidence protected reaches to whatever matter, if stated, would operate “*to the prejudice of the client,*” be it his name, occupation, place of residence, or any

matter whatsoever extending to his private interests, none of which can be inquired into through the aid of the knowledge of his counsel. The only cases where the question can be asked is, that where there is a proper foundation laid by the pleadings to which the client is a party in ultimate interest, and is then restricted to the using of the name to effect that specific interest.

Now, the question is asked, and repeatedly asked—

“Now state to the committee, as far as you can recollect, the names of the persons to whom you delivered or paid out these bonds or any part thereof, or the proceeds thereof?” (See question 75.)

“Now, I ask you to state to the committee, so far as you recollect, the names of the persons to whom you paid those bond, or any part thereof?” (See question 79.)

Again:

“Do you refuse to state to whom you paid or delivered these bonds of which you have spoken, or any part of them, or the proceeds of them?” (See question 80.)

These, and other questions to the same effect, were propounded to me on the 29th of January, repeating substantially the questions asked me in reference to the same matter on the 18th of January.

There is no reason assigned for asking the question, such as is prescribed by the authorities I have referred to, which could require the attorney to disclose the name of his client, that is to enable the adverse party to reach him with a confession or to afford any other relief, but seeks broadly to call for the names of these citizens who have employed me as their counsel for no other visible reason than to indulge a privilege of curiosity; nor is this question asked in any pending suit before a court having any jurisdiction of the subject-matter competent to grant relief or protect the rights of any party, but are asked by a *political committee* in reference to a subject to which the parties whose names are sought after are in nowise connected, and the use of whose names, if given, could only be

used to worry and harass them, contrary to any law or authority to do so. I state with confidence that the committee cannot produce an authority in any text-book or adjudicated case that will sustain their assumed right to ask the questions upon which my alleged contempt is founded.

In the case of *Chirac vs. Reinicker*, (11 Wheaton, page 280,) the following question was asked before the jury :

“Were you retained at any time as attorney or counsel to conduct the ejectment suit above mentioned, on the part of the defendant, for the benefit of said George Reinicker, as landlord of those premises?”

This question is certainly far less objectionable than those propounded to me by “the Select Committee.” It is in reference to an action pending. It indicates an interest in the party asking it. It designates the person whose name or identity is sought, imparting the reason therefor, and will thus seem to come within the rule requiring an answer, as conceded under the rule I have stated.

The question was objected to, as seeking an improper disclosure of professional confidence. The circuit court sustained the objection, and it was brought up on exception to the Supreme Court, where Mr. Justice Story, delivering the opinion of the court, said :

“The general rule is not disputed that confidential communications between client and attorney are not to be revealed at any time. The privilege, indeed, is not that of the attorney, but of the client, and it is indispensable for the purposes of private justice. Whatever facts, therefore, are communicated to counsel by client, solely on account of the relation, such counsel are not at liberty, even if they wish, to disclose, and the law holds their testimony incompetent. The real dispute in this case is, whether the question did involve the disclosure of professional confidence.

“If the question had stopped at the inquiry whether the witness was employed by Reinicker as counsel to conduct the ejectment suit, it would deserve consideration whether it could be universally affirmed that it involved any breach of professional confidence. The fact is preliminary in its own nature, and establishes only *the existence* of the relation of *client and counsel*, and therefore might not *necessarily* involve the disclosure of any communication arising from that relation after it was created.

“*But the question goes further.* It asked, not only whether the witnesses were employed, but whether they were employed by Reinicker to conduct the

ejection suit for him, as landlord of the premises. We are all of the opinion that the question in this form does involve the disclosure of confidential communications. The circuit court was therefore right in their decision on this point in excluding the question."

I think that I may safely contend, in view of the sound law and good sense announced in this decision by the Supreme Court of the United States, that if I had been examined before that tribunal, or any one of its distinguished justices, instead of a political committee, that the questions asked me would have been ruled out as illegal, and I would not now be imprisoned for alleged contempt.

The same principles I am contending for were afterwards maintained in *Foster vs. Hall*, (12 Pickering's Reports, page 80,) where the question was fully considered by justice Shaw. And a strong negative authority in the case of *Gower vs. Emory*, (18 Maine Reports, page 79,) where the testimony of the the counsel (J. D. Kinsman) disclosed the fact that Buxton and Simpson had employed him, to which objection was taken, but overruled by the circuit judge. The Supreme Court said:

"The objection made by the counsel for the defendant to the testimony of Mr. Kinsman we understand to have been overruled by the presiding judge, so far as to permit him to testify by whom he was employed. 'We cannot regard this as matter of professional confidence, at least unless counsel is apprised or has reason to believe that his client desires that this fact should be concealed. No such inference is to be drawn from the testimony of the witness. The defendant, Buxton, made no intimation of a wish not to be known in the business.'"

This decision, though in negative terms, strongly asserts that if the attorney had been requested "by his client," or even had good reason to suspect that they did not wish to have their "names" known in the business, he would not have been permitted to answer the question, and that his testimony, if given, would have been stricken out.

Apply this decision, with the others referred to, to my position, where I am pressed with questions for the disclosing of the names of various parties who employed me, with the express understanding and request on their part that, if possible,

I should adjust their matter without using their names before any judicial tribunal if it could be helped, and to accomplish which, as I have testified, large concessions were made, when the matter was ended in a manner acceptable to all parties, and it seems to me impossible to sanction the action of the "Select Committee" in arraigning me for contempt, because their questions are asked in violation of law.

In answering question No. 106, when correcting the previous statement, that Mr. C. P. Huntington had paid \$2,000 instead of \$10,000, I spoke of some memorandum I had made in reference to the transactions of my clients, when the committee at once demanded I should produce and deliver that memoranda to them. I of course declined to accede to any such unwarranted demand. I was asked :

"Q. 107. How long since you came across that memorandum?

"A. About a year ago I came across it among my professional papers and laid it away.

"Q. 108. Where is that memorandum?

"A. That memorandum is in my possession.

"Q. 109. Will you produce it to the committee?

"A. I will not, because it relates to my clients' business.

"Q. 110. Is that memorandum in this city?

"A. That memorandum is in this city at this time.

* * * * *

"Q. 113. You refuse to produce this memorandum?

"A. *I do refuse to produce any memorandum that has reference to business between me and my clients.*

I surely need not repeat the proposition or refer to authorities more than I have done to show that the "Select Committee" had no shadow of right to ask me any such questions or to call for the production of any such paper. It nevertheless was done, and my refusal to comply is an element of my "CONTEMPT."

But I committed yet another *sin* in the eyes of the committee and the House of Representatives. I was asked :

"Q. 125. Did you deliver any of these bonds to newspaper correspondents?

"A. That is repeating the question I have declined to answer; but from a sense of justice to these gentlemen I will say that I did not.

“ Q. 126. Did you deliver any of them to newspaper publishers ?

“ A. I decline to answer.”

The astute committee, being quick in the smell, seemed to think that my refusing to answer an *absurd* and *unauthorized* question admitted the truth of its ridiculous assumption, and at once asked :

“ Q. Were these newspaper men your clients ?

“ A. Two of them were.”

(It indeed so happened that I am favored with the business of a few of that respectable class of gentlemen.)

“ Q. 128. Where did they live ?

“ A. That is immaterial to the purposes of this examination.” * * *

This is another part of my “ *contempt*.”

Having exhausted correspondents and publishers, I was taken in hand by the honorable Samuel Shellabarger who addressed me in the way of a question, as follows :

“ Mr. SHELLABARGER to witness.

“ Q. 133. You may not have observed carefully that part of the resolution under which the committee is acting, which requires the committee to investigate the interests of the Government in the proper and legal disposition of the assets of the road, and in so far as that branch of our resolution is concerned it has no special relation to influences brought to bear on members of Congress. Now it may not be amiss to state to you that one object of these inquiries is to ascertain and report to the House on the matter of the just and legal disposal of the assets affecting the solvency of the corporation, and it is partly in that view that the committee desires, in obedience to the order of the House, to get information as to what was done with those assets. In that view I trust that you will see that the committee is not desiring anything else than faithfully to discharge its duties to the House. We, therefore, desire to find out what disposition has been made of the assets, which it is the concern of the Government to know, whether or not they have been used according to law.

“ *The witness still declines to answer.*”

So says the report of the “ Select Committee ” for my arraignment on the 29th day of January, but which statement, like the most of their report, will not stand the test of truth, for

the witness, comprehending every word of this *tangled and cross-purpose* proposition or harangue put in the way of a question, and studying both its terms and the face of its author while it was labored out, did not stand mute as the report pretends, but did then and there answer as follows:

“A. *In answer to that suggestion, put in the way of a question, I beg to state that I, as a citizen of the United States, know of no other rights than legal rights vested in the Government, and that by the laws of the land as they exist I am willing to abide and obey. I know of no rights the Government has in regard to this inquiry beyond those provided by existing law, applicable alike to all parties. Let Congress take proper care of the legal and equitable rights of every individual AMERICAN CITIZEN, according to the law as written, and fully protect and respect the same, and the Government will already have been provided for to the utmost that it can demand and to the greatest measure of its interests. It can have no legal rights above the CITIZEN.*”

This was my answer, given distinctly to Mr. Shellabarger's "question," if it be one, and it shows I was not struck dumb by this elaborate admonition burst upon me by the Nestor of the "Select Committee," and why my answer was suppressed by the committee when they were pleased to report Mr. Shellabarger's advisory question is more than I can say, unless they deemed *that* the most *persuasive* way to get all the facts before the House, as it was asserted by Mr. Wilson when moving the previous question upon their resolution for my imprisonment.

But there is an exposure made and lesson taught by Mr. Shellabarger's question that may be profitably referred to and appropriated. Why did it require a recital of terms covering two sides of a sheet of legal cap paper from the lips of Mr. Shellabarger to impart to me the object of the "Select Committee" in pressing upon me those illegal questions? He is a clear-headed man, and one of whose ability and character I entertain a high opinion, and could not fail to perceive how he was compelled to labor for terms to express what could be stated in a sentence, if when so briefly stated it did not fail to justify the object aimed at.

What are the "legal rights" of the Government in "the as-

sets of the corporation" which the committee seeks to ascertain? By virtue of what law does the Government seek to claim such "rights" in said "assets?" And if such "rights" and such law exists, why not proceed in the courts according to the rules of law, where the citizen and Government can be heard upon equal footing? Does Congress propose to assume the exercise of judicial functions, or vest its "Select Committees" with such power? If not, what remedy does it propose to apply? And if no remedy, then do we understand that Congress exercises a mere assumed power for no practical end? All these propositions, with others, flashed into my mind while I looked Mr. Shellabarger in the face during his efforts to tell me what the "Select Committee" meant, and what the Government wished, each time coming to a halt, and starting afresh, but to halt again, because he could not see his way very clearly, and at last concluded, further from the point than when he started. And as soon as he concluded I gave the answer which his language called to my mind, and upon which I am willing to abide the judgment of men.

I am frank to say, however, that neither *question* nor *answer* has anything to do with the matter of legitimate inquiry before the committee, and would both be struck out before a court. All I claim is that this question called for the answer, and that this answer *answered* the question, and that the committee had no right to *report* the question and *suppress* the answer.

The record shows, when read in full, that I answered every question properly and legally. I stated what I received and from whom; why I received it, and how I appropriated it; and that my action was approved by all who employed me, giving the names of one part of them, because, and only because the man whose hand delivered to *my order* the bonds and money gave me leave to do so, went with me to the committee room, and sat before me while I testified; that was Mr. Thomas C. Durant. All that I have not told is the names of my clients who employed me to prosecute and collect their

claims, and which were adjusted by me, and I am asked to give the names of these people, and refuse to do it. I am asked to produce private papers appertaining to my clients' interests, and refuse to do it. And I am asked to give the names of a certain two newspaper publishers, who are clients of mine, and refuse to do it. And for this, and upon a record that I have proved to *be false*, I am declared to be in contempt, and deprived of my liberty.

Note.—Since the above was written I have received the following two telegrams, confirming my statement that the Union Pacific Railroad Company had no bonds issued in 1864, and hence it was not possible that Mr. Durant brought any to Washington and delivered them to me, or to anybody else, in June, 1864, as reported by the Select Committee, viz :

“NEW YORK, *February* 17, 1873.

“J. B. STEWART,

“*Bastile* :

“First issue dated January 1st, 1866.

“J. S. BAKER.”

—
“NEW YORK, *February* 17, 1873.

“J. B. STEWART,

“*Bastile* :

“Company parted with no bonds until after January, 1867.

“J. S. BAKER.”

The gentleman who sent me the above telegrams was in the employment of the company in 1864-'5-'6-'7, and speaks from the record.

Will the Select Committee deem it their duty, or do *themselves* the justice, to correct their report ?

THE CONSTITUTION.

DOES IT SECURE THE RIGHTS AND LIBERTIES OF THE PEOPLE, OR MERELY CLOTHE THE HOUSES OF CONGRESS WITH ARBITRARY AND DISCRETIONARY POWER?

What authority is there in the Constitution of the United States for the House of Representatives, or any committee it can appoint, calling any citizen before it and inquiring into his private affairs, and imprisoning him for alleged contempt if he refuses to answer such questions? Surely such arbitrary power could not have been *intended*, but passed over in silence by the framers of our Government; or are we getting too large or too reckless to be governed by the wise provisions of that instrument? The *second* paragraph of the *fifth* section of the Constitution provides that—

“Each House of Congress may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.”

But there is not in the whole instrument a sentence or a word that imparts a hint of authority for punishing a citizen for any purpose, be his conduct never so “*disorderly*.” Congress cannot impose upon him any penalties by virtue of any delegated authority known to the Constitution, and the strides that Congress has made and is making in usurping such power is a noteworthy fact, that will lead to serious mischief if not abandoned.

That there was no such delegated power was distinctly announced and decided by the Supreme Court of the United States in the case of Anderson against Dunn, in 1822. In that case the court used the following language:

“It is certainly true that there is no power given by the Constitution to either House to punish for contempt, except when committed by their own members. Nor does the judicial or criminal power given to the United States in any part expressly extend to the infliction of punishment for contempt of either House, or any co-ordinate branch of the Government.” (6 Wheaton’s Reports, page 225.)

This language of the Supreme Court, like the language of the Constitution itself, is square, distinct, and unequivocal, and is as truthful as plain; and it may be a matter of regret that the court had not have finished the paragraph, and the decision in the case before it, right there. But evidently not foreseeing the grasp for power that would be assumed under so slight an allowance or concession, added the following sentence:

“ Shall we, therefore, decide that no such power exists ? ”

and acting upon this assumption and concession, proceeded to borrow the authority from the English Parliament, preceded, however, with the following very appropriate announcement against the propriety of doing so, that—

“ It is true that such a power, if it exists, must be derived from implication, and the genius and spirit of our institutions are hostile to the exercise of implied powers.”

And pursuing this theory, found that the implied power did exist. But for what? Why, to punish for contempt, rudeness, and annoyance committed in the presence of either House, or in a manner to obstruct their respective proceedings. This intended scope of implied power is plainly shown, not only by the general reasoning, but by the very language of the court. Referring to certain objections urged by counsel, the court said:

“ The argument of counsel obviously leads to the total annihilation of the power of the House of Representatives to guard itself from contempts: and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy may meditate against it.”

And again:

“ That such an assembly should not possess the power to suppress rudeness or repel insult, is a supposition too wild to be suggested.”

As well as by many other terms and expressions in the course of the decision, showing that the court was dealing

with the case at bar—a case where Anderson stood directly charged by the plea in justification of his arrest of having committed—

“A breach of the privilege of the said House, and of a high contempt of the dignity and authority of the same.” (See page 209, 6 Wheaton, *supra*.)

Thus showing that Anderson had been charged with an absolute breach of the privileges of the House, presenting a question and cause of commitment far different to that which has led to my presence in this prison.

But there is another important fact shown by the record in Anderson's case which relieves *that* Congress from the total disregard of individual right which has been exhibited toward me by the *present* Congress. In that case, although the party was charged with committing a direct trespass upon the proceedings of the House, he was allowed to produce proof and have a full hearing in his defence, which continued for eight days, he having every means for a fair trial; while in my case, I having in no manner infringed upon the rights of the House or its dignity, was committed without being able to get my own testimony before the House, much less offer any proof to justify myself, and that, too, under a charge of contempt, the evidence of which contempt existed in my own testimony, if it (the contempt) existed at all. It is agreeable, nevertheless, to know that Congress did not leap the whole length at once, and started out with showing the disposition of allowing the citizen to be at least fully heard in his defence, instead of proposing to cast him directly into prison, as was attempted by the “Select Committee” in my case.

There being no *delegated* power in the Constitution to punish or commit for contempt, as decided by the Supreme Court of the United States, it was implied and borrowed from the British House of Parliament, to be exercised as a *necessity*, (which is a very doubtful proposition.) But concede it to be so; then let us have the *whole* rule, and not a *part* of it, and with the exercise of the *power* please observe its *relief*. No *Brit-*

ish subject ever was or ever can be either arraigned for the cause or condemned in the manner that I was. When brought to the bar of either House of Parliament, the British subject stands before them with the right to be heard as long as he has a fact to offer or a word to say. If proceeded against for contempt, the precise matter of fact, be it never so unimportant, and if as a witness, his whole statement, be it ever so lengthy, must be adduced, and he be heard upon the whole and not a part of it. The extraordinary spectacle never could occur of his being asked a *hundred and thirty-five questions* by a committee of Parliament, all of which he answered in some manner, and then have *only sevnsnteen answers* out of so large a number partially presented as the evidence he had given, and that, too, to justify the charge of contempt, as in my case. I did not *ask* the questions, *I only answered them*; and those answers either justify or condemn me, and the whole, and not a part of them, should have been presented to the House of Representatives, as would have been done had I been a *British subject* brought to the bar of the House of Commons on a like charge. And, furthermore, I could have my remedy in the common-law courts for redress in the way of damages.

This right of the British subject was fully recognized in the case of *Burdett vs. Abbott*, (14 East. Reports, 1,) and *Burdett vs. Colman*, (*Ibid*, 163.) That was a case for contempt in the matter of a writing by Sir Francis Burdett reflecting upon the House of Commons, for which he was arrested, and had a full hearing before the bar of the House, where every word that he had written was produced and read, he having the opportunity to explain and justify upon his whole statement, and not a part of it selected by a committee for his arraignment. He was condemned and committed to the Tower, and brought his action against the Speaker and Sergeant-at-Arms, and the case was finally carried to the House of Lords. It was given out before the trial that the House of Commons would not submit to the jurisdiction of the *court*, but, like our House of Representatives, resolve itself *amenable to no law except*

its own will, which created great excitement throughout the Kingdom.

But the House of Commons *did* appear, and submitting to the jurisdiction of the court put in a plea *not to the jurisdiction* but of *justification, or in bar*, pleading the libel, and sufficiently proved it, to justify the arrest, and got a verdict. In stating the law of the case, and defining what was alike the rights of the House of Commons and the right of the British subject under the common law of England, Lord Erskine said :

“ When this matter was first agitated, I understood the House of Commons intended to pursue a very different course. I was therefore alarmed. I expressed myself because I felt with warmth. I have changed none of the opinions I then entertained. I then said that the House of Commons ought to be jealous of such privileges as were necessary for its protection. *My opinion is that these privileges are part of the law of the land*, and upon this record there is nothing more than the ordinary proceeding. The Speaker of the House of Commons, *like any other subject*, putting himself upon the country as to the fact, and pleading a justification in law, for this was not a plea to the jurisdiction, but a plea in bar. This course of proceeding gave rise to the most heartfelt satisfaction, for, if the judgment had been adverse to the defendants, the House would no doubt have submitted. It would be a libel on the House of Commons to suppose that it would not. *Therefore, by this judgment, it appears that it is the law which protects the just privilege of the House of Commons, AS WELL AS THE RIGHTS OF THE SUBJECTS.*”

We therefore see that the common law of England could assert the rights of the British subject in the face of the power of the House of Commons, which dare not refuse to appear and submit to the jurisdiction of the court, and hence the English judge could triumphantly say—

“ *Therefore by this judgment it appears that it is the law which protects the just privilege of the House of Commons as well as the RIGHTS OF THE SUBJECTS.*”

See, also, the opinions of the five Judges—Lord Chief-Justice Denman, and Littledale, Patterson, Williams, and Coleridge, of Queen’s Bench—in 1839, in the case of Stockdale against Hansard, where the arrogance of “*Privilege*” was examined and stripped of some of its conceit by the *British Jurists*. (9 Adolphus and Ellis’s Reports, pages 1–295.)

But how is it here in our proud land of constitutional liberty at this late day? What judge can emphasize the rights of an American citizen in 1873 as Lord Erskine did those of a British subject in 1814, the former under a "*lex scripta*," the latter under a "*lex non scripta*," against which our forefathers rebelled and waged a bloody war? And what were the fruits of that rebellion? It gave us a Constitution containing specified and defined powers, which were to be exercised by the three co-ordinate branches of the Government, *and none other*. Article I, section 8, of the Constitution, defining the specific powers of the legislative department, provides that Congress shall have power to collect and regulate, 1st, Taxes; 2d, Borrow money; 3d, Regulate commerce; 4th, Naturalization; 5th, Coin money; 6th, Punish for counterfeiting; 7th, Post-offices and post-roads; 8th, Letters patent; 9th, Tribunals inferior to the Supreme Court; 10th, Piracy; 11th, War, letters of marque; 12th, Raise armies; 13th, Navy; 14th, Make rules and regulations for same; 15th, Militia; 16th, For arming and disciplining the same; 17th, Exclusive legislation for the District of Columbia; and—

"18th, To make all laws which shall be necessary for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or any department or officer thereof."

Such are the specified powers of Congress, and are *all its powers*. The words *other powers* refer to those vested in the co-ordinate branches of the Government as a whole, which require legislative action to move them or to put them into operation. But *never, NEVER* to adjudicate any question or determine any matter involving the civil rights or personal liberty of any citizen; on the contrary, expressly to prevent such it was provided that no citizen should—

"Be deprived of LIFE, LIBERTY, or PROPERTY without due process of law."

And that—

"The privilege of the writ of Habeas Corpus shall not be suspended, unless when in case of rebellion and invasion the public safety may require it."

By what process of law or legal proceedings of any sort am I in this prison? And is not the privilege of the *writ of Habeas Corpus* as far from me as if I was in Siberia? The unchallenged decision of the Supreme Court of the United States, announced by Chief Justice Marshall, repeating the language of the Constitution, in the cases of Boleman and Swartout, (4 Cranch, p. 75,) that the writ of *Habeas Corpus* was a "*privilege*" founded in the Constitution, which no power could gainsay or deny, may form interesting reading for the student in learning the meaning of terms and phrases; but it is well that he should understand that it is a dead letter, so far as either House of Congress is concerned. That when *they* appear all "*privilege*" is *theirs*, and that their *resolves*, joint or single, rise above the Constitution, which may serve well enough to point out and provide their position, but beyond that it becomes a mere flexible rule, existing in name but disregarded in practice.

It is a necessary consequence with all rules of action which have *no authorized beginning* that you can prescribe or define for them *no fixed limit*. Such is the case with Congress. The moment it has been allowed to leap over its defined powers and duties, and assume authority not delegated to it, it may go just where it pleases, injure whom it pleases, and, having injured, cannot relieve or correct its wrong doing, because that would be self-condemnation, and therefore it is not likely to retrograde, but, on the contrary, is impelled forward by the gravitation of its own errors, justifying itself by precedents founded in its own usurpations of power, until it destroys the *popular confidence*, and thereby *destroys* itself.

If the action of the House of Representatives in voting me into this prison in a matter involving no question of privilege is to be allowed, or is authorized by anything known to its powers, then I see nothing to prevent the majority from imprisoning the minority of either House, or the President, or Secretary of State, or any other member of the Cabinet, or even may drag the Judges from the Supreme Court Bench,

and confine them where I now sit, *authorized by no other power than their OWN RESOLVES.*

It is no answer to this proposition to say that Congress will not do these things. If the power is conceded, the danger is always pending, and each aggressive step, as I have just stated, but paves the way for another one, and neither experience nor observation, present or past, offers any assurance that the final leap, which admits of no rebound, will not be taken. This is what I think, feel, and fear when I see the CONSTITUTION *trampled under foot* and the LAW *frowned into a dead letter.*

But it is painful to speak of the Constitution when men who have sworn to support it smile with ridicule at its mention; and it is yet more painful to feel that you must turn your back upon it, for then, indeed, all becomes a fathomless void; but this alternating feeling and anxiety is this day written in the minds of more men than care to express it.

Who and in *what* have I offended? Is it the *dignity* of the gentlemen assembled in the upper part of this Capitol to make laws for the people? If it is, they had better take the advice of *Junius*, that members "would consult their real dignity much better by appealing to the laws when they are offended than by violating the first principles of natural justice, which forbids us to be judges when we are parties to the cause." Is it "*privilege*" that is rising so far above the instrument—the Constitution—that creates and confers the office under which it is exercised? If so, the *honorable* gentlemen might do well to refer to the remarks of LORD DENMAN, C. J., in the Queen's Bench, in 1839, who observed that "*privilege* is more formidable than *prerogative*, which must avenge itself by indictment or information, involving the tedious process of the law; while '*PRIVILEGE*,' with one voice, accuses, condemns, and executes, and the order to '*take him*' addressed to the Sergeant-at-Arms may condemn the offender to persecution and ruin." No wonder, then, that even in England it has been thought necessary to the preservation of the

Constitution, though *unwritten*, that the *privileges* of PARLIAMENT should be strictly ascertained, and confined within the narrowest bounds the nature of the institution will admit of.

But it is now nearly fifty years since we were told by the *supreme judicial tribunal of the United States* "that the American legislators have never possessed or pretended to the omnipotence which constitute the leading features in the legislative assemblies of Great Britain." (6 Wheaton, 231.) But this half century has produced other alterations in our country, besides a civil war and the emancipation of the slaves. It seems to be inspiring the House of Representatives, the popular branch of the Government, with the desire to rise *above* and *enslave* all. As well remarked in the preface to the sixth volume of Robinson's Practice, by its able author, (to which I am indebted for many useful suggestions,) that—

"It is not to be admitted that members of the House of Representatives of the United States, heretofore regarded as the servants of the people, have in law greater privileges than the members of the House of Commons. Nor can it be permitted that the rights of the American citizen, the personal liberty, and the safeguards against its violation shall be practically *less than British subjects*. It cannot be in a country which has boasted of adding such safeguards, unless there be a want of counsel to do their proper part or a want of judges, able, willing, and ready to follow the footsteps of Lord Chief-Justice Holt, or his worthy successor, Lord Denman"—

who said :

"*I will not become an accomplice to the destruction of the liberties of the country, and expose every individual in it to a tyranny to which no man ought to be called upon to submit.*"

That the ground assumed by the House of Commons was—

"*Wholly untenable, and abhorrent to the first principles of the CONSTITUTION OF ENGLAND.*"

Will the American jurists or the American people fall beneath this standard of right, proclaimed by those whom we are taught to distrust in our republican temple, because they wear the title and bear the stamp of the English aristocracy ?

Had we not better school our Republican and Democratic legislators in the *Mother Land*?

I have aimed in this paper to state *facts* and refer to some authorities of law as written in the books, and as decided by the courts—a task which would have been rendered wholly unnecessary had the Select Committee or the House of Representatives done me the justice to present my whole testimony and make it part of the record of my arraignment and imprisonment; but it was not done, and I can well see how they may further attempt to do me injustice by the report they make, so far as they may allude to me; and as I claim to be the peer of any man in that House or elsewhere, I shall resist such abuse and wrong in whatever shape it is attempted to the utmost of my ability. My own imprisonment will soon pass away, but that of my fellow-citizens is yet to come.

JOS. B. STEWART.

Note.—I should like all members of the legal profession who may see fit to read the facts in this case to favor me with their opinion as to whether I am right or wrong in the position I have taken in refusing to answer the questions addressed to me by the committee.

As I have alluded to the means resorted to by "the Select Committee" to reach matters and information respecting myself, I present the following affidavit without comment, as each reader will properly estimate the fact it discloses.

J. B. STEWART.

CITY OF WASHINGTON, }
District of Columbia, } ss.:

Mary V. Quinn, being sworn, states she is forty-six years of age, and resides in the city of Washington, D. C.

That in the early part of February, about the fifth or sixth, to the best of her recollection, that she was called upon at her residence by a gentleman who said his name was Le Barnes; that he was an officer of the House of Representatives, in the office of the Sergeant-at-Arms, who had sent him to see and interrogate deponent as to any knowledge she might have in reference to the affairs of Joseph B. Stewart, and asked deponent many questions which she was not able to answer, when he remarked that witnesses generally knew nothing until they were put upon their oath, and that such would be the case with deponent.

That deponent then went to the office of the Sergeant-at-Arms, and saw Mr. Ordway, who advised or directed her to make her presence known to the Hon. Luke P. Poland, at his committee-room, which she did, presenting a letter of introduction from a member of the House. That said Poland further interrogated deponent to the same effect as the said Le Barnes had done, to which she gave similar replies, informing said Poland that said Stewart had acted as counsel in very important matters for herself and her orphan children in a very satisfactory manner, and had been very kind in so doing, but that she had no knowledge of the existence or use of any such bonds as were spoken of, and inquired of said Poland why she was so interrogated, who said he had received a letter or letters of such a character as to induce him to make the inquiry. Deponent then inquired who the said letters were written by or received from, to which inquiry said Poland replied that the letter or letters were confidential, and that he would not name the party or parties, and that he had sent the letters or communications to the committee of which Hon. J. M. Wilson was chairman, and advised her to appear before said committee, which she did, and was again interrogated as to deponent's supposed knowledge about the affairs of said Stewart, and certain bonds about which deponent had never before heard, and so stated to said Wilson, who replied that the best way to test that would be to put deponent on oath, which he would defer doing then, but would or might at some other time.

That deponent, while still in the Capitol, had a further conversation and was interrogated by the Hon. William T. Merrick, who she is advised is a member of said committee, and who insisted that deponent should give

the desired information. When deponent again stated she had no such knowledge about the business affairs of said Stuart, who had been her counsel, and would not disclose it if she had it. When she was informed that if she refused to answer questions and disclose any information that she had, that she would be imprisoned like Mr. Stewart then was, or like they had Mr. Stewart. And further sayeth not.

M. V. QUINN.

Subscribed and sworn to before me, this 21st day of February, A. D. 1873.

JAS. H. MCKENNEY,

[L. s.]

Notary Public, District of Columbia.

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