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COMMODORE SCHLEY WAS NOT IN COMMAND

Thus Opens the Protest Filed by Admiral Sampson's Counsel.

THEY ARGUE THE POINT

And Ask That Dewey's Opinion be Either Stricken Out or Disapproved.

POINT TO DISPOSITION OF VESSELS

Declare This Showed Sampson in Command, But Maintain That Question of Who Commanded at Santiago Was Outside Scope of Inquiry.

(By the Associated Press.)

Washington, Dec. 20.—The objection of Admiral W. T. Sampson to the portion of Admiral Dewey's report of the Schley Court of Inquiry, in which he says Admiral Schley was in command at the battle of Santiago and entitled to the credit for the victory, was filed with Secretary Long today. The document was brought to the Navy Department by E. S. Theall, counsel for Admiral Sampson and handed to the Secretary. It is signed by Clayton & Campbell and E. S. Theall, counsel for Admiral Sampson, and is addressed to Secretary Long. It follows:

Sir—As counsel for Rear Admiral Sampson, we have the honor to request that the department, for the reasons below stated, strike out or specifically disapprove that portion of Admiral Dewey's opinion filed in connection with the proceedings of the Schley Court of Inquiry, in which he stated his view to be that Commodore Schley was in absolute command at the naval battle of Santiago.

1. Commodore Schley was not in command at that battle.

(A.) The disposition of the forces at the beginning of the battle, according to Commodore Schley's own statement, places Admiral Sampson in command.

The Brooklyn and the Vixen were the westernmost ships of the fleet; the Indiana and Gloucester were the easternmost. The New York was nearer both of the latter than was the Brooklyn, and notably at the time when the Indiana was heavily engaged at the beginning of the action, and when the Gloucester was engaged with the Furor and Pluton.

2. The President of the United States and the Navy Department have decided that Admiral Sampson was in command at that battle and Commodore Schley second in command.

This fact was before the court; for the Secretary's letter to the Senate, dated February 6th, 1899, states that the Spanish squadron was destroyed "by our fleet under his (Sampson's) command," and "the advancement of Commodore Schley was proposed in recognition of his services as next in rank at the victory of Santiago."

3. The question as to who commanded at Santiago was not referred to the court for consideration. Evidence bearing on the point was excluded.

(A.) If Commodore Schley was in command, Admiral Sampson was not, and if the question as to which was in command was to be considered by the court, surely Admiral Sampson became an interested party and under the precept was entitled to the hearing which was repeatedly refused him.

should be overruled, but were, in every instance sustained by the court.

"One further word as to a suggestion just made, as to the intention to show that Admiral Sampson was not in this battle. I wish to say that we do not understand that the question whether Admiral Sampson was or was not in the battle of Santiago is before the court. If it is, we shall be happy to investigate it."

"If it is the desire of the court to go into these things it would, of course, be proper that we should also go into them. It would not only be proper, but it would be necessary. * * * We are thoroughly prepared to go into any discussion of them, provided the court desired to so enlarge and extend the scope of this inquiry. Counsel for the applicant again failed to press the point and the court made no objection to Mr. Hanna's view. As pages 133 and 189 there were similar rulings by the judge advocate. In the case of all these declarations there was acquiescence on the part of the court."

(D.) The court uniformly rejected evidence as to who commanded.

On all the pages herein cited from the record, the court rejected such evidence, and nowhere was it admitted against objection.

(E.) The court more than once specifically ruled that this question was not before it.

For example, at Page 1586, where the question was as to the position of the commander-in-chief, and of the New York, and as to the part they took in the battle, Admiral Dewey said: "We do not intend that we have ruled that out."

"The judge advocate then asked if the court had so ruled, and Admiral Dewey replied: "We have. We have kept the New York out of it."

(F.) The court went so far as to rule at page 1421 that Admiral Schley was not in command during the battle. The matter then before the court related to the periods during which Admiral Schley has been in absolute command, and the judge advocate said:

"Mr. Rayner, you are confining yourself to July 3rd, are you? Mr. Rayner in reply acquiesced in this view, and the court ruled that "all questions" * * * shall be confined to between the 18th of May and the first of June, relating to the organization, management and control of that squadron when he was actually commander in chief." Matters referring to his alleged command on July 3rd were excluded.

(G.) All proposed questions on this subject were either rejected by the court or withdrawn by the applicant, who finally acquiesced in the decisions of the court and gave up his efforts in this behalf, saying:

"I bow respectfully to the decision of the court, and I know exactly what it means."

(H.) The minority opinion expressed by Admiral Dewey in this matter is at variance with all the rulings of the court in this regard and directly contradicts the letters, wherein Admiral Dewey, for the court defines Admiral Sampson's status.

The Navy Department in its precept had justly provided that any person "interested" might be given an opportunity of appearing before the court in person or by counsel and protecting his rights.

GAGE IS READY TO QUIT THE CABINET

Waits For Roosevelt to Find Successor.

TO LEAVE BEFORE SPRING

Roosevelt, However, is Urging Him to Remain.

WAKEMAN REMOVED AT GAGE'S REQUEST

This May Cause the Secretary to Reconsider the Matter. He Says He Would do Almost Anything the President Might Ask.

(By the Associated Press.)

Washington, Dec. 20.—It is Secretary Gage's intention to relinquish the Treasury portfolio as soon as President Roosevelt can find a suitable successor, and he has so informed the President. Mr. Gage would like to be relieved before spring. The President has done all he could to dissuade Secretary Gage from retiring and will probably continue to use his efforts in that direction.

Secretary Gage's determination to retire was made known to the President some little time ago, just how long is not known.

A long conference between the President and Secretary Gage was held before the Cabinet meeting today. But it had nothing to do with the question of the Secretary's resignation. It related to the matter of the removal of Appraiser Wakeman, whose resignation Secretary Gage requested a few days ago.

Appraiser Wakeman wrote a letter to Secretary Gage declining to resign, and in the course of which he took occasion to refer upon the secretary. The President did not approve the spirit of the letter, and at the conference it was decided to summarily remove Mr. Wakeman.

After the Cabinet meeting Secretary Gage declined to say anything about the rumor of his resignation beyond the simple statement that he had not "formally" resigned. "What I may or may not do eventually, I am not prepared to say now," said the Secretary. "But I can say that the relations between the President and myself are perfectly cordial. He would do almost anything I ask, and I would do almost anything he might ask."

Later the official announcement was made at the White House that Mr. Wakeman had been removed and that George W. Whitehead, late Collector of Customs, of Porto Rico, had been appointed to succeed him. No further announcement was made at the Treasury Department Secretary Gage decline to make public.

Mr. Wakeman's letter, Alfred W. Brown, the appraiser of merchandise at the Port of Boston, has been ordered to New York to take charge of the appraiser's office there, pending the nomination of George W. Whitehead to succeed Mr. Wakeman, which will be sent to the Senate on its reconvening January 6. Mr. Wakeman will vacate his office tomorrow.

SOUTHERN FURNITURE MEN ARE TO HOLD AN EXPOSITION.
An Enthusiastic Meeting at Which Thirty-Five Factories Were Represented Was Held at High Point.

(Special to News and Observer.)

High Point, N. C., Dec. 19.—What will be known as the Southern Furniture Exposition will probably open in High Point the coming spring. There was a large and enthusiastic meeting of our manufacturers in the mayor's office when this question came up.

Thirty-five of the factories here were represented and all of them gave the movement their hearty endorsement. A committee composed of Mr. M. J. Wrenn, Dr. W. G. Bradshaw and Mr. Chas. Ragun were appointed to look after a suitable location and ascertain the cost of buildings, etc. It is thought a building 100 by 200, four stories, will answer the purpose. The exposition will be under the direction of a stock company, and the very best building that can be had will be erected. It will require plenty of space and excellent light.

It has been apparent for some time among furniture men of the South that the annual exhibit must come, and it seems to be the universal opinion that High Point is the place. It will mean much to the furniture business of the South.

W. F. Massey, \$100; R. E. L. Yates, \$50; W. A. Withers, \$100.

Pledges for the memorial building will be gladly regarded by Dr. Winston. To many of our citizens it will be a pleasure to aid in the erection of so worthy a memorial to the memory of so worthy a citizen.

TO EXPLORE THE BOTTOM OF THE PASQUOTANK RIVER

Submarine Lighting Apparatus Sent to Elizabeth City to Aid in Search for Miss Crosey's Body.

(By the Associated Press.)

Elizabeth City, N. C., Dec. 19.—A submarine lighting apparatus has just arrived from New York to be used in searching for the body of Nell Crosey, who mysteriously disappeared November 20. Andrew G. Crosey, of New York, uncle of the missing girl, sent it. The electric light apparatus will be employed in exploring the river bottom.

FOURTEEN HOUSES BURNED.

Charleston Has a Thirty Thousand Dollar Fire. Insurance Two Thirds.

(By the Associated Press.)

Charleston, S. C., Dec. 19.—Fire today destroyed fourteen buildings in the upper part of the city. They were mostly frame structures and the loss is about \$20,000. Among the places burned were several street shows, which had recently opened here for the exposition period. The loss is about two-thirds covered by insurance.

Payne Says He Won't Succeed Hanna.

(By the Associated Press.)

Milwaukee, Dec. 19.—Henry C. Payne, the new appointed Postmaster General, arrived in Milwaukee tonight. In regard to a statement that he was to succeed Senator Hanna as the head of the Republican party, Mr. Payne said:

"There is nothing whatever in that statement."

NOT RISE IN PEANUTS

Nearly Fifty Thousand Bushels Roasted.

The Suffolk Peanut Company's Storage Warehouse is Consumed While a Snow Storm is Raging.

(Special to News and Observer.)

Suffolk, Va., Dec. 20.—Nearly fifty thousand bushels of peanuts roasting at 4 o'clock this morning in the midst of a now storm, made a scene not to be forgotten by anyone here. The Suffolk Peanut Company's principal storage warehouse was blazing, and millions of white peanuts were drawn skyward in the draught, and by the glare of the conflagration they could be seen meeting and melting myriads of falling flakes. The loss is \$43,500; insurance \$28,500. The origin of the fire is unknown.

THREE NEGROES HANGED.

Two Meet Death at Birmingham and One at Bristol.

(By the Associated Press.)

Birmingham, Ala., Dec. 20.—Will Redding and Jim Hinton, alias Jim Winton, negroes, were hanged here today in the jail yard.

LEMELY AND HANNA SUBMIT A REPORT

Court Justified in Rejecting Schley's Evidence.

THIS IS THE CLAIM MADE

First Report Declared Unanimous Report of Court.

LONG WILL TAKE SOME ACTION TODAY

He Intimates That so far as the Department is Concerned the Entire Schley-Sampson Controversy Will be Then Disposed Of.

(By the Associated Press.)

Washington, Dec. 20.—Judge Advocate Lemly and Solicitor Hanna, today, submitted to Secretary Long their report upon the bill of objections filed by Admiral Schley, through his counsel, to the finding of the Schley Court of Inquiry. In substance this report is an argument supplementary to the argument made by the writers before the Court of Inquiry. The principal points are an insistence upon their contention that the first report is the unanimous report of the Court of Inquiry; that the court was justified in rejecting Admiral Schley's evidence by the number of witnesses who took issue with him and that there is no sufficient reason for re-opening of the case as requested by Admiral Schley. If adopted, the report will be forwarded to Admiral Schley.

The report, as appears from its testimony, is solely that of Judge Advocate Lemly and Solicitor Hanna, and as such it was laid before Secretary Long. The Secretary intimated that he would not act upon the report today. He added that he would withhold action today on the other matters pending connected with this issue, namely Admiral Sampson's appeal. Admiral Schley's request to be allowed to be heard by argument on the appeal, and the findings of the Court of Inquiry itself. There was an intimation, however, that all of these matters would receive attention tomorrow and would be finally disposed of as far as the department is concerned. The report is as follows:

December 20th, 1901.

Sir—The communication, dated the 18th instant, signed by Rear Admiral W. S. Schley and Istator Rayner, and James Parker, his counsel, objecting to the approval of the findings of the Court of Inquiry in the case of Rear Admiral Schley and asking particularly that what the signers are pleased to term "the opinion of the majority of the court," be remitted to the court for further consideration, has been received by the department's reference and is returned with the following statement:

It is somewhat difficult to deal with this paper on account of its general and non-specific character, and sweeping though unsupported assertion of opinion by the applicant and his counsel, that, in their judgment, the adverse finding of the court is not justified by the evidence. The paper might be dismissed as simply a not unexpected expression of dissatisfaction with an adverse judgment, but for the fact that it contains a number of misstatements and, particularly, has woven throughout its entire structure an "inaccurate and misleading" use of the words "majority of the court."

The findings of fact and the opinion of the court of inquiry in the case of Admiral Schley upon the more important and material points before it were not reached by a majority of the members only, but by the entire court. The points of the precept upon which all the members of the court unite appear to be incontrovertibly established by the evidence; it is not understood how any other conclusions could have been reached upon them; and they constitute the essential features of the entire matter under inquiry.

The evidence adduced before the court conclusively shows:

Under the 4th clause of the precept: That on the 26 of May, 1898, when within a few miles of Santiago, to which point he was under orders to proceed with the utmost dispatch, and where he was advised that the enemy's fleet was reported to be, and where in fact it actually was, Commodore Schley commanded with the fleet under his command, consisting of some of the best vessels of the American navy, and headed for a home port, more than seven hundred miles distant, without sufficient reason or excuse for such action, taking with him at the same time the scouting vessels the department had sent there to watch the entrance, and leaving the port of Santiago, with the enemy's fleet intact and unengaged. Upon this point the court says in its opinion:

"He should not have made the retrograde turn westward with his squadron." In the face of the facts the court could not have found otherwise.

Under the 5th clause of the precept: That while thus abandoning the field of action with his fleet, Commodore Schley was overtaken by a dispatch vessel bearing an urgent order, dated May 25th, from the department, in substance directing him to proceed to Santiago, ascertain facts, report, and not suffer the enemy to escape; that, nevertheless, he continued to retreat with his squadron, telegraphing to the Secretary of the Navy:

"It is to be regretted that the department's orders cannot be obeyed." The court found that he "should have promptly obeyed the Navy Department's orders of May 25th." Disobedience of an important order in time of war having been thus virtually confessed, no other findings by the court was possible.

Under the 6th clause of the precept: Commodore Schley's explanation of the retrograde movement and of his disobedience of orders as made at the time in a full telegram to the department on the subject was, in substance, shortage of coal and inability to coast the ships of his squadron from the collier. Evidence developed before the court shows that the squadron was at the time well equipped with coal, and that coal had been and could be readily taken from the collier. There was nothing for the court but to find as it did that Commodore Schley's official reports regarding the coal supply and the sailing facilities of the Flying Squadron were "inaccurate and misleading." An attempt to justify by inaccurate and misleading official reports the turning homeward of a powerful squadron at a critical period of war in disobedience of orders is a very serious matter.

Under the 7th clause of the precept: The evidence adduced before the court shows that during the whole of the 29th and 30th of May the Cristobal Colon and other vessels of the Spanish squadron, "lay in the entrance to Santiago harbor, the Colon moored in plain sight, broadside to the entrance, that this harbor was defended by weak batteries, and there was nothing to prevent the Flying Squadron from destroying the Colon and perhaps other of the enemy's vessels as they lay at anchor; that no effort whatever was made to do so on the 29th or on the 30th of May; and that the attempt made on the 31st, was brief and abortive. It is complained in paragraph 16 of the paper above mentioned, that certain cautionary orders issued by the department were not "in the slightest degree" referred to by the court.

These cautionary orders were introduced in evidence, and fully discussed in argument. We contended that, quite obviously, they had no application to the conditions existing at Santiago on the 29th, 30th and 31st of May, and the finding of the court, that Commodore Schley "should have endeavored to capture or destroy the Spanish vessels at anchor near the mouth of Santiago harbor on the 29th and 30th," and that "he did not do his utmost with the force under his command to capture or destroy the Colon or vessels of the enemy which he attacked on May 31st." Show that the court reached such conclusion.

It may very properly be added that the claim of the applicant and counsel that the effect of May 31st was intended to be a reconnaissance, is not borne out by the evidence, for while testimony was introduced to show that it was so designated by Commodore Schley in conversation with a naval cadet and with a newspaper correspondent prior to entering upon it, none of the commanding officers of the vessels engaged was so advised, and no instructions were given relative to the taking of notes of the engagement. The commanding officers were, on the contrary, informed, in effect, that the purpose was to destroy the Colon, and the officers in charge of the turrets of the Massachusetts were instructed accordingly by the Commodore in pertinent terms.

Under the 9th clause of the precept: The evidence adduced before the court, from the bridge, and from the engine room, showing that the Texas was stopped and backed "to avoid possible collision" with the Brooklyn is indisputable. That danger and delay to the Texas and loss of distance and position by the Brooklyn were the immediate results of the stoppage of the Texas, is too clearly shown to admit of doubt, and the finding of the court upon this point is fully sustained by the evidence.

Under the 10th clause of the precept: It was established by the introduction before the court of the original letters themselves that Rear Admiral Schley obtained from Lieutenant Commander Hodgson, a junior officer who had served under him, a categorical statement of fact, and the finding of the public press to have taken place on the bridge of the "Brooklyn," July 3rd, between himself and Commodore Schley, "never occurred," although Mr. Hodgson had assured the Admiral that the facts as published were "substantially correct," that the Admiral gave out for publication the categorical denial thus obtained, but did not publish the accompanying explanatory and qualifying letter; and that subsequently, although repeatedly appealed to by Mr. Hodgson, Admiral Schley failed to do justice in the matter.

All members of the court agree in finding that Admiral Schley "did no justice to Lieutenant Commander Hodgson in publishing only a portion of the correspondence which passed between them."

Upon the points above set forth, which appear to embrace substantially the important matters covered by the inquiry, the court is united, and its findings are unanimous; they are sustained by the unimpeached and unimpeachable testimony of Commodore Schley's brother officers, who served with and under him, by official telegrams, letters, and reports, by the logs of the several vessels of his squadron, and it would accordingly be idle to permit the matters to be again brought for reconsideration upon the same evidence.

The court is a unit upon all points, except that as to which the admiral expressed individual, but not in all cases contradictory, views. It does not appear that any good purpose will be served by asking the court to reconsider these.

Aside from the "inaccurate and misleading" use of the term, "the majority of the court," the next prominent feature of the paper before us is the broad and sweeping fashion in which the applicant and his counsel declare that the court has "ignored" or not "considered" evidence. A simple sentence is the following from paragraph 27, although the paper is largely made up of such remarkable statements:

"The majority of the court have recommended that the Secretary of the Navy should be advised that the department's orders cannot be obeyed."

(Continued on Second Page.)

HOLIDAY TRADE IS AT ITS MAXIMUM

Conditions in General Business Active.

THE CAR QUESTION AGAIN

Severe Storms Have Made it More Complicated.

COTTON CHANGES LITTLE IN PRICES

Dun Says That if the Official Estimate of the Current Crop is Accurate Present Prices are Cheap. Two Cents Below Last Year's.

(By the Associated Press.)

New York, Dec. 20.—R. G. Dun & Co.'s weekly Review of Trade tomorrow will say:

"Holiday trade reached its maximum this week, nearly all sections of the country reporting exceptional distribution. While the class of goods especially stimulated by Christmas demand occupied the position of greatest prominence, general merchandise was not far behind in activity. Transporting interests were just beginning to overcome congested conditions when severe storms made the situation more complicated than before. In many industries it is not a question of finding buyers, but securing the privilege of postponing deliveries beyond the date originally specified."

"Retarded shipments caused higher prices for prompt delivery of pig iron and steel products at western cities, but conservatism still marks the course of producers regarding contracts for the future. In a few cases the enlarged capacity makes it possible to promise concessions on future business. Pig iron has risen slightly on account of the short fuel supply and injury to furnaces by the storm. Despite the present unpaired demand, prices are 33 per cent lower than during the inflation of 1900."

"In cotton goods there is much business offered but sellers are unwilling to accept large contracts for future delivery while the raw material markets remain unsettled. Print cloths are unchanged for regulars with narrow odds firm and cotton yarns generally higher. Last week's gains in these lines are fully maintained."

"In the grain market which has held fairly steady at some reaction from last week's exceptionally high point, there is still much evidence of a firm undertone."

"Cotton is little changed at about 2 cents below the price of a year ago. Either last year's price was too high or the present figure is too low. Mill conditions both here and abroad, indicate a good consumptive demand, and the size of port receipts during the next few weeks should decide the question of prices, although there is always the possibility of delayed shipments by planters. If the official estimate of the current crop was approximately accurate present prices are cheap. Failures for the week numbered 25 in the United States against 23 last year and 27 in Canada against 18 last year."

COMPARATIVE COTTON STATEMENT.

New York, Dec. 20.—For the week ending Friday, December 20: Net receipts at all United States ports during week, 289,477; net receipts at all United States ports during same week last year, 285,550; total receipts to date since September 1st, 4,270,931; total receipts to same date last year, 4,227,765; exports for the week, 455,849; exports for same week last year, 448,175; total exports to date since September 1st, 3,107,945; total exports to same date last year, 2,931,135; stock at all United States ports, 956,757; stock at all United States ports same time last year, 985,578; stock at all interior towns, 686,974; stock at all interior towns same time last year, 765,384; stock at Liverpool, 629,000; stock at Liverpool same time last year, 542,000; stock of American afloat for Great Britain, 352,600; stock of American afloat for Great Britain same time last year, 314,000.

TOTAL NET RECEIPTS.

New York, Dec. 20.—The following are the net receipts of cotton at all ports since September 1st, 1901:

Galveston, 1,233,527 bales; New Orleans, 1,191,883; Mobile, 111,762; Savannah, 749,315; Charleston, 176,631; Wilmington, 199,025; Norfolk, 237,124; Baltimore, 42,182; New York, 81,688; Boston, 45,131; Newport News, 7,144; Philadelphia, 12,573; Fernandina, 2,600; Brunswick, 66,576; Port Arthur, 14,130; Pensacola, 70,206; total, 4,270,931.

TOTAL BANK CLEARINGS.

New York, Dec. 20.—Total bank clearings week ending December 20: \$2,371,918,952, an increase of 6.6 per cent outside New York, \$790,310,428, increase 5.3 per cent.

Dead in an Instant.

(Special to News and Observer.)

Fayetteville, N. C., Dec. 20.—"I have killed myself," cried John Carter, 18 years old, and in a few minutes was dead.

Yesterday morning Mr. H. C. Carter and his son, John, went to the country after a load of wood. As they were returning, seeing a squirrel in a tree John reached for his gun, pulling it to him by the muzzle. It caught against the wagon and the load entered the young man's body.