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SCHLEY'S APPEAL TO THE PRESIDENT GIVEN OUT

Review of the Court's Findings Asked on Three Grounds.

QUESTION OF COMMAND

Long Declared to be in Error in Saying Testimony on This Point Was Excluded.

AS TO THE BLOCKADE AT SANTIAGO

No Opinion Given by the Majority on This, Schley Asks That Dewey's Finding be Accepted, Also His Opinion on Dispatch Made.

(By the Associated Press.)

Washington, D. C., Jan. 29.—The Navy Department has made public Admiral Schley's appeal, delivered to the President about a week ago. The Department's "comment" will be published in a day or two.

Admiral Schley appeals to the President as the Chief Executive and commander-in-chief of the army and navy, "vested with power to regulate and direct the acts of the several officers thereof," and he asks that the President review the findings of the court. He asks this on three grounds, in each case basing his appeal on the findings of Admiral Dewey, as opposed to the majority report. These three grounds are set out compendiously in the "petition," which fills about eight printed pages of a pamphlet and is signed by Admiral Schley, and by Messrs. Kayser, Parker and Traque, of his counsel. Attached to the petition are three exhibits—"A," "B" and "C"—each made up of copious extracts from the testimony taken by the Court of Inquiry and intended to confirm the statements of fact made in the petition itself.

In this latter document the first ground of appeal is the holding of Secretary Long in his endorsement on the court's findings that "the conduct of the court in making no findings, and rendering no opinion on those questions (that of command and of credit for the victory) is approved, indeed it could, with propriety, take no other course, evidence on these questions during the inquiry having been excluded by the court."

THE QUESTION OF COMMAND.

On this point the petition says that the Secretary of the Navy was in error in stating that the court excluded testimony to show that, as Dewey said, Schley was the senior officer in the battle of Santiago; was in absolute command, and entitled to the credit due for the glorious victory which resulted in the total destruction of the Spanish ships. On this point the petition says:

"And your petitioner, the applicant," before said Court of Inquiry, now files with this petition an argument, together with a resume of the testimony taken during the inquiry in so far as it relates to the question as to who was in command at the battle of Santiago, in support of his plea that the presiding member of the said court acted within his authority and jurisdiction in reporting his opinion as hereinbefore set forth, and that the majority members of the said court failed in the discharge of a most important duty devolving upon them under the precept, in that they did not report their opinion upon the said question; that it was incumbent upon said majority members to consider and determine the said question for the reason that only by so doing could they determine the propriety of the conduct of the said Schley in said battle, since, it being a fact that he did assume command of the American forces therein engaged, his action would, in the absence of the right or duty to do, have been highly censurable, and upon the questions of such right and duty and the propriety of his conduct in the premises the said Schley was entitled, under the precept, to a finding and an opinion from the majority members as well as from the minority members of the said court; and your petitioner respectfully requests that the said argument and resume of testimony (which are attached hereto and marked "Exhibit (A)" be considered as a part of his petition and as the basis for his prayer for relief in the premises."

Therefore the petitioner asks the President to annul Secretary Long's endorsement on this point and that he specifically approve Admiral Dewey's statement declaring that Schley was in command. He says that only in this way can exact justice be done him under the precept.

THE BLOCKADE AT SANTIAGO.

The second ground relates to the alleged withdrawal of the squadron at night from Santiago Bay and the character of the blockade, and the propriety of Commodore Schley's conduct in the premises. This was one of the points upon which Admiral Dewey specifically dissented. The petition recites the findings of the court to the effect that the Flying Squadron did not withdraw at

night, and declares that, by this statement, the court obviated the necessity of expressing its opinion as to whether or not a close or adequate blockade was established, and the propriety of Commodore Schley's conduct in the premises. It is declared that under this specification—the eighth—more than a majority of all the witnesses were examined and about one-third of the whole period of the inquiry was consumed in its consideration, yet "notwithstanding the facts herein set forth, all of which appear upon the record of said court, the concurring members thereof have failed utterly and entirely to discharge the most important duty imposed upon them by the terms of the said specification, which duty was to report their opinion upon the questions of whether or not a close or adequate blockade of said harbor to prevent the escape of the enemy's vessels, therefrom was established and the propriety of Commodore Schley's conduct in the premises." Therefore Admiral Schley asks the President to annul the Secretary's endorsement which "makes valid the failure of the majority members thereof to report their opinion upon that portion of the said eighth specifications." And it is also asked that there be substituted therefor Admiral Dewey's holding:

"The blockade of Santiago was effective." Otherwise the petitioner declares that he will be without a finding or opinion upon one of the most important specifications.

FROM KEY WEST TO CIENFUEGOS.

The third ground recites Admiral Dewey's opinion to the effect that the passage from Key West to Cienfuegos was made by the Flying Squadron with all possible dispatch, having in view the importance of arriving off Cienfuegos with sufficient coal; that the blockade of Cienfuegos was effective; that the Adula was permitted to gain information; and finally that the passage from Cienfuegos to a point off Santiago was made with as much dispatch as possible, while keeping the squadron united. The petition declares that this opinion, being a declaration in certain points with the majority opinion, is the only one justified by the evidence and facts before the court, and it is asked that the Secretary's approval of the majority findings be set aside and annulled in each instance where it is at variance with Admiral Dewey's opinion, and that the latter's opinion should be approved for the reasons heretofore set out in the bill of exceptions filed with the Secretary of the Navy. It is also asked that the President annul that portion of Secretary Long's endorsement which states:

"As to points on which the presiding member differs from the opinion of the majority of the court, the opinion of the majority is approved," and that in its place be substituted and approved the declaration of Admiral Dewey on these points above referred to, connected with the passage from Key West to Cienfuegos and thence to Santiago. The petition concludes:

"And your petitioner most respectfully states that only by the action for which he prays in this relation can exact justice be done, within the contemplation of the precept under which the said court sat and whence it derived its authority."

AGAIN THE QUESTION OF COMMAND.

Exhibit A is an argument and a resume of testimony concerning the question of command during the battle of Santiago, and comprises full two-thirds of the 82 printed pages which make up the petition and exhibits. It is stated that the precept and instructions directed the court to "thoroughly inquire into all the circumstances bearing upon Schley's conduct and the subject of the investigation."

Therefore counsel hold that it is an incontestable fact that the court was authorized to determine the question of command at the battle of Santiago. The counsel then take up the question of fact as to whether the court did actually entertain and consider the question of command, and to determine this point they submit a great number of excerpts from the official record of the court. These are based on testimony given by many officers.

As to the general obligation on the court to determine the question of command, the counsel declare that they should have done so because the question had never been considered and determined by a body of competent jurisdiction having before it all the facts and all the parties interested.

(B)—That a doubt existing as to who was actually in command at the battle of Santiago, there arose in the Navy of the United States, and among the people at large, a controversy over this point, which controversy, without being instigated, fostered, or countenanced by your petitioner, has waged for more than three years to the great detriment of the good of the service and to the hurt of those most concerned in the said question.

(C)—That in the course of the said controversy your petitioner was made the object of most unjust accusations, affecting his personal and public character, which accusations were inspired by those who sought to establish the fact that he did not command at said battle, and that owing to said accusations he has suffered much injury.

(D)—That the said controversy brought about a condition which resulted in all to those persons present and participating in said battle being denied the rewards which a generous country is disposed to grant those who serve it well in war.

(E)—That the said controversy can only be terminated and justice done to those to whom justice is due upon the rendition by a body of competent jurisdiction, having before it all the facts and parties concerned, of the decision upon this question, which decision shall be final and conclusive.

(F)—That such a decision will result in the betterment of the service by closing a deplorable controversy, which now divides the service into hostile factions; that, further, such a decision will perpetuate in history the true facts surrounding one of the greatest naval conflicts

of modern times and one of the greatest naval victories ever achieved by this country.

It is further stated that in asking for a court the petitioner expected to secure a judgment so final and conclusive as to terminate the controversy, and that it was the duty of the court to pass upon the question of command.

Counsel next takes up the question of propriety and justice of Dewey's opinion that Commodore Schley was in absolute command in the battle of Santiago and is entitled to the credit of the glorious victory, and quotes many excerpts from the testimony to establish the correctness of this conclusion. It is recited that Sampson signalled to "disregard motions commander-in-chief," when he started eastward that morning, thereby conferring command upon Schley. It is asserted that the New York did not reach the scene of the last surrender of Spanish ships until one hour and thirteen minutes after the battle ended, and that at 9:35 on the morning of July 3rd the New York was out of sight of every ship of the blockading squadron but one, making it impossible for her to communicate with any of them. Counsel also cites Secretary Long's statement to the Senate that Sampson was proceeding towards Sibourne when the Spanish ships emerged, under orders from the department to confer with Shafter, and it is held that these orders detached him temporarily from his command, so that Schley was actually in command at the battle for the following reasons:

(A)—By virtue of his rank as second in command of the squadron before Santiago.

(B)—By virtue of his rank as senior line officer on the spot, authorized by the regulations for the government of the navy of the United States to assume command in such situations and to direct the movements and efforts of all persons in the navy present.

(C)—The absence from the scene of action during every moment of actual combat of the regularly appointed commander-in-chief of the American forces before Santiago.

(D)—The fact that, under orders of the department, the said commander-in-chief had been temporarily detached from duty as commander of the American forces before Santiago and assigned by the discharge of certain other duties which orders he was obeying at the time the battle began.

(E)—The fact that, being so engaged in the discharge of such detached duty at the time the Spanish ships emerged from the harbor of Santiago, the commander-in-chief found it impossible to return to any point whence, personally or by means of communication with the ships actually engaged in the conflict, he might resume his authority until after the battle at every point of such arrival had ended.

(F)—The fact that whereas the commander-in-chief could not and did not exercise command over the squadron at any time during the actual conflict, Commodore Schley, as second in command of the American forces before Santiago, and as senior line officer on the spot during every moment of actual battle, could and did exercise authority and command over the American forces actually engaged.

Further argument on this question of command is to the effect that Cook and Clark, the two ship captains present at the surrender of the Colon, recognized Schley's seniority and also that Sampson's "order of battle" failed entirely as soon as the Spanish squadron succeeded in passing beyond the western most extremity of the American vessels. All of which, it is submitted, goes to prove conclusively that the individual opinion of Dewey was eminently proper and wholly justified by the evidence and the naval regulations.

Exhibit B, elaborates and sustains the statements made in the petition respecting the passage of the Flying Squadron from Key West to Cienfuegos.

Exhibit C maintains that the majority of the court rejected all of Schley's testimony and of his witnesses, and says:

"That if this testimony was all false, they should have so announced; and if all or any part of it was true the said applicant was entitled to the benefit of it, and by declining to consider or pass upon it they have deprived him of his common-law and constitutional rights."

Libel Suit to be Brought in Raleigh.

(Special to News and Observer.)

Greensboro, N. C., Jan. 29.—The libel suit of Mr. M. H. Dooley, chief law agent of the Southern Railway, against the News and Observer, will be brought in the Federal court at Raleigh instead of this place, as was intended at first. After the summons for Mr. Daniels had been made out it was discovered that the statutes provide that such suits must be instituted in the district in which the defendant may be a resident. Mr. Dooley is represented by Byrum & Byrum, of this city. It is not now known when the complaint will be filed.

Hon. W. W. Kitchin, the able and faithful representative of the Fifth district in Congress, spent the forenoon here greeting friends. It is probably true that there are several Democrats in the district who would like to succeed Mr. Kitchin, but it is hardly probably that any of them will be able to draw any support from Guilford this year. The people here are very fond of Mr. Kitchin.

Seven Suffocated in a Fire.

(By the Associated Press.)

Boston, Jan. 28.—Seven Italians were suffocated in a tenement house fire in Fleet Street, in the north end, this morning. Three others were removed to the hospital and will probably die.

The other victims include three women, and one man jumped out of windows. The dead include men, women and children, all thought to be members of two families. The police are trying to secure identifications.

The condition of Mr. Berry C. Rogers continues critical.

CENSORSHIP STILL EXISTS AT MANILA

Dubois Asserts it and Proceeds to Prove It.

THE DEBATE GROWS WARM

For an Hour the Matter Engages the Senate's Attention.

THE SOUTH IN THE REVOLUTIONARY WAR

Mr. Hoar's Statement That Massachusetts Furnished More Men Than the South Draws a Correction From Mr. Money and Apology From Mr. Hoar.

(By the Associated Press.)

Washington, D. C., Jan. 29.—For an hour today the State had under discussion the question whether a censorship of press dispatches in Manila. While no such turbulent scenes were enacted as were witnessed during yesterday's session, the debate for a time was very spirited. The Secretary of War was quoted as saying that no press censorship now existed in the Philippines, and a letter from General Greely, the chief signal officer of the army, was presented by Mr. Beveridge, of Indiana, making the statement officially that there was no censorship of press dispatches, and that "the press is entirely free." On the contrary it was contended by the opposition that a press censorship did exist in the Philippines, and that copies of every news dispatch with the cable company were filed with the military authorities. That, it was maintained, constituted a virtual censorship.

Mr. Cullom, Chairman of the Committee on Foreign Relations, delivered an extended speech upon the history of the reciprocity negotiations.

Mr. Cullom maintained that the Dingler Act could not limit the treaty-making power or the time in which the President shall make treaties.

Addressing the Senate, Mr. Money said the Senator from Massachusetts, (Mr. Hoar), made a statement a few days ago to the effect that the State of Massachusetts had furnished more troops in the War of the Revolution than all that section south of what is known as Mason and Dixon's line. The figures had been taken, it was stated, from a report of General Knox, the first Secretary of War, expressing his entire belief that the Massachusetts Senator would not willingly present a statement to the Senate falsifying the facts. Mr. Money read from authors to show that the southern section of the country had furnished its full quota of troops, Virginia supplying 56,722 and South Carolina 31,131. The latter State had furnished 37 out of every 42 citizens capable of bearing arms, while Massachusetts had furnished 32 out of every 42. He read extensive extracts from historical authors in maintenance of his position.

Mr. Hoar, in a statement replete with historical allusions, explained that in whatever he may have said upon the subject referred to by Mr. Money, he had no purpose of instituting a comparison between any sections of the country. He said he would be the last person in the world to disparage the efforts of the Southern States in the War for Independence.

At the conclusion of Mr. Hoar's remarks, Mr. Bacon desired to continue the discussion of the participation of the South in the Revolutionary War, but Mr. Lodge, who had the floor, thought it better to proceed with consideration of the Philippine measures. The Senator from Alabama, (Mr. Morgan), he said, had expressed a desire to speak upon his proposed amendment to the pending bill, and he ought to be permitted to proceed.

Mr. Bacon appealed to Mr. Morgan to permit him to speak briefly.

"Certainly," replied the Alabama Senator, "speak as long as you like."

Mr. Lodge, however, declined to yield the floor. His declination irritated Mr. Tillman, who said:

"You can't gag us in your effort to force this Philippine bill. How does the Senator get his own permission to be so invidious and so ungracious?"

Mr. Lodge disclaimed any intention of being ungracious. He said if Mr. Morgan did not care to go on he himself would present some matter bearing upon the Philippine bill.

"Well," interpolated Mr. Tillman, "we will discuss this historical question and we'll discuss it on the Philippine bill."

Mr. Lodge was about to proceed when he was interrupted by Mr. Hoar, who said:

"The most emphatic argument against this whole Philippine business—"

"is the healthy discussion of the patriotic impulses of our ancestors," interjected Mr. Tillman, taking the idea, perhaps, if not the words, out of the Massachusetts Senator's mouth.

During Senator Lodge's remarks Mr. Dubois declared that in his judgment there was a censorship in Manila. No newspaper man can file a dispatch with the cable company without filing an exact copy or duplicate of it with the military authorities.

"You may quibble over that fact. In my opinion that is a censorship," Mr. Lodge said that he called upon the Secretary of War last evening and had been assured by him that there was no

censorship of press dispatches in the Philippines.

Mr. Beveridge said that he had requested an official statement upon the subject from General Greely, chief signal officer of the army. General Greely wrote:

"Censorship in the Philippine islands has been removed entirely between these islands and Europe and America, save in the case of code messages of unauthorized firms having no standing. The press is entirely free."

"Necessarily a limited censorship is maintained over messages in the Philippine archipelago and to adjacent points where insurgent troops and agents are in active hostility against the United States. Press messages are not censored to any place in Europe of America, but only to points where insurgents are actively engaged, through juntas or other agencies such as in Hong Kong or Singapore."

After brief remarks by Senators Wellington and Stewart, Mr. Bacon gained the floor. He criticized Mr. Lodge for declining to yield to him at the time he desired to proceed, insisting that according to the usages and proprieties of the Senate he had a right to the floor, but Mr. Lodge has seen fit to deny to him that courtesy. He then proceeded to discuss at length the historical question which had been raised by Mr. Money, concluding with a tribute to Mr. Hoar "for his loyalty to free institutions," and expressing the hope that the people of Massachusetts soon would prove themselves to be in harmony with him. Mr. Tillman said he desired to "draw a few draughts from the fount of liberty," but would postpone his remarks upon the historical subject which had been broached until tomorrow.

SAMPSON HAS IT TOO

Four Deaths Out of 22 Cases of Smallpox.

One of the Deaths Was From the Most Malignant Form of the Disease and Occurred Within 40 Hours.

The State Board of Health has received notice of twenty-two cases of smallpox in Sampson county. Four deaths have been reported up to date.

One of the fatalities was in the case of an infant. Another was a young lady, who died of confluent smallpox. The third was a gentleman, confluent smallpox being given in this case also as the cause of death. The fourth was a gentleman who died within forty hours after the first symptoms. His was genuine hemorrhagic smallpox, which is the most malignant form of all. Four deaths out of twenty-two cases is a serious percentage. It looks as if Wilson had a companion in misfortune.

A FINE WAKE COUNTY FARM SOLD BY MR. JOHN A. MILLS

The Purchaser is Mr. E. L. Green, of Yadkin College Who Will Put in a Tobacco Crop.

There was a big cash transaction in Wake county dirt yesterday.

This was the purchase from Mr. John A. Mills by Mr. E. L. Green, of Yadkin College, of the Crabtree tract of land, about three and one-quarter miles from Raleigh.

There are 667 acres in the property, and it is understood that the figures which caused the transfer were in the neighborhood of \$10,000.

Mr. Green is largely interested in tobacco, being a manufacturer, as well as grower of the weed. His opinion of the property he bought yesterday is that it is fine tobacco land, and he proposes to put in a crop there for this season.

Mr. Green will proceed at once to fully develop the land he has bought, and will open up much more of it for cultivation. It is a fine piece of property and good crops are to be expected from it.

A Surprise Marriage.

Tuesday afternoon a marriage license was issued to be used by Mr. William McF. Ruth and Miss Jessie Allen Separk, for their marriage at night, if the opposition of relatives did not delay the wedding ceremony.

This occurred, however, at 9 o'clock, at the residence of Mr. Wiley Betts, the uncle of the bride. It was a great surprise, and only the family of Mr. Betts, Mr. Wood White and Miss Vicks, a friend of the bride from Virginia, were present. The ceremony was performed by Rev. G. T. Adams, and the happy couple are now at the home of Mr. J. L. Ruth, father of the groom.

Miss Separk has been living in the city for several years with her uncle, Mr. Wiley Betts, and has a wide circle of friends. Mr. Ruth is a popular young salesman, who has just reached his majority.

Mr. James G. Covington, of Monroe, while in the city had something to say of crops, as well as of politics. "The corn crop of Union county was a failure," he said, "and as a result of this a great deal of corn has been sold lately. Our business men has in the last few weeks sold over 36,000 bushels of corn at from 80 to 85 cents a bushel, the territory covered being contiguous to Monroe, Marshall, Waxhaw and Peachland."

Mr. Covington took occasion to say during his stay that there was no better water to be had than the artesian supply in Monroe and that the school in arrests there were going forward splendidly. He never fails to tell about the advantages of his thriving town.

APPALACHIAN PARK BILL FINDS FAVOR

Pritchard's Measure Wins in Committee.

ITS PASSAGE EXPECTED

Small Introduces a Bill For a Life Saving Station.

THIS IS TO BE ON OCRACOE ISLAND

Southern Democrats Are Ready to Fight Crumpacker's Bill or the Southern Republicans' Substitute to a Finish if Either Measure is Pressed.

(Special to News and Observer.)

Washington, D. C., Jan. 29.—The Senate Committee on Forest Reservations today unanimously agreed to favorably report Senator Pritchard's bill for the Appalachian Park.

The bill provides for the purchase of not more than two million acres of land and appropriates five million dollars. Both our Senators are members of the committee, and both, it is needless to say, attended the meeting. It looks like this bill will pass at this session.

Representative Small today introduced a bill to establish a life saving station on Ocracoke Island, near Ocracoke Inlet. The station will be ten miles from a station on the north and six miles from the one on the south, and is separated from the latter by an inlet. Many wrecks have occurred there in recent years.

Representative Pou has the promise that a rural free delivery inspector will again be sent into his district in a few weeks.

The effort of Southern Republicans to turn our elections over to Federal judges as a compromise for the notorious Crumpacker Bill to retire Southern Representatives. As a choice of evils the Crumpacker Bill is preferable and Southern Democrats will fight both to a finish if either of these bills is pressed.

The next House will elect a Democratic speaker. Watch the prediction. Representative Blackburn has decided to recommend John M. Hull for postmaster at Morganton in place of D. C. Pearson, the present incumbent, and the appointment will probably be made soon. This appointment will raise a pretty fight among Burke county Republicans as Col. Pearson has many friends.

The plan to nominate our candidate for United States Senator by the Democratic State Convention is growing in strength in the State. It is learned from visiting North Carolinians that this plan will practically leave the choice to the people and avoid the objectionable features of a primary.

Marshal Dockery is here to try to get the salary of some of his deputies increased.

Dr. Abbott, who is here to see Senator Pritchard, says that a meeting of the Republican executive committee will be called about the middle of February to consider naming a sub-committee to have charge of the distribution of offices in Eastern North Carolina.

Marcellus Stubbs has been commissioned as postmaster at Jamesville. A new postoffice called Hyco has been established in Greene county with Mason E. Dal postmaster and a new one at Loomis, Stokes county, with Wesley G. McAnally as postmaster.

Representative Bellamy has opened the eyes of Congress to the need of a Hall of Records for the use of the Government. His speech the other day was convincing in its facts and figures, and made a most powerful and favorable impression. In fact, judging from Representative Mercer's remarks, it seems likely that the Hall of Records bill, which was not reached last year because of the shortness of the session, will be the first measure by the Committee on Public Buildings and Grounds.

Some of Mr. Bellamy's remarks were as follows:

"I have taken the occasion, Mr. Chairman, to ascertain that this Government is now paying out in Washington nearly \$200,000, or more accurately \$199,505, a year for the rent of offices and buildings for the purposes of storage and the use of the various departments. From the estimate of appropriations for the fiscal year ending June 30, 1902, the following is the amount needed for buildings rented by the various departments in Washington:

"It does seem to me that business sense requires this Government to own buildings sufficiently large and commodious for the use of the various departments, instead of paying extravagant rents. This Government is rich and powerful. We have today probably \$175,000,000 surplus money in the Treasury.

"Business prudence would require that we should at least take two and a half millions of that amount and use it in the construction of a public building for the use of these various departments. "If it costs \$2,500,000 or even \$5,000,000, 2 per cent would be only \$100,000 a year, and thereby at least \$400,000 be saved out of the annual appropriations for this purpose. I am informed that the present postoffice building cost about \$3,000,000, and the new Government Printing Office is to cost \$2,000,000. It strikes me that this matter ought to be called to the attention of the country, and some economy practiced in this respect."