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NO. 47

VOL. IV.

THE

Is Now Under Way .-- Judge Pound Arraigns the Accused State Officers.

The Defense Raises many Technical Objections, but are Over-ruled .- Question of Jurisdiction not yet Settled.

Tuesday Morning.

The third sitting of the supreme court of Nebraska as a court of impeachment was held yesterday afternoon, for the opening of the main trial and for the taking of evidence in the cases of the three defendants, Attorney-General Hastings, Land Commissioner Humphrey and Secretary of State Allen. Defendants were represented by J. R. Webster of Lincoln, John L. Webster of Omaha, M. L. Hayward of Nebraska City and C. A. Atkinson of Lincoln, while ex-Treasurer Hill and ex-Auditor Benton and ex-Attorney General Hastings were represented by other attorneys, nearly all of whom were present awaiting a decision on their plea to the court's jurisdiction.

Judge Pound, G. M. Lambertson, and Judge Doane were present as attorneys for the impeachment committee. com-posed of Representatives Casper, Barry and Colton.

ANSWERS FILED. The replications of the state to an-

and Humphrey were filed in the supreme court yesterday. They are identical in every particular and comprise seventeen pages of type written matter, one more page than was devoted by the respondents in answering. The state de-nies that the matters charged in the erticles are of a legislative or judicial character, but avers that the officials are not vested with any legislative or judicial functions, and denies that the state officers did not in-tentionally omit or leave undone anything that was required of them; that respondents when accepting office took an oath to faithfully perform said duties, and if they have failed or neglected any of said duties they are guilty of misdemeanor in office and should not receive immunity for failure by reason of the nature or number of the same; that if the duties were of such a nature that it was neither practicable or possithe for them to perform the same they should have resigned.

After a good deal of legal quibbling over minor legal questions, the trial of Humphrey, Ailes and Hastings began in earnest. Judge Pound made the opening statement of the state's case:

Judge Pound Opens the Case,

Judge Pound, for the managers of the impeachment, in stating the law and the evidence, said that he was pleased to know that the trial would be held before the highest tribunal in the state. The court, he said, could not be unmindful of the character of the trial, the importance of the event; the prominent position of the accused made the event one that was being watched with interest throughout the entire country. The impeachment, he said, was of a purely political nature, to punish officials for misdemeanors committed Impeachment trials could not be confined to the close rules of evidence as cases at common law. discretion. It was not a proceeding misconduct, such open violation of admitted as bearing on either criminal or civil. It was a law could not be overlooked. Impeach-ceil house transaction, special proceeding, it was not a criminal case: it was not an indictment; if it the past, and must be adopted as the later, relative to exhaustion of the fund was, then the accused would be entitled to a jury trial. While there was something about impeachment trials that resembled criminal proceedings, it was accused parties are innocent, the peoon account of the severe penalty attached if the charges were sustained. If the charges were sustained the impeached officials would be disqualified from holding office.

The judge then devoted some time to reading from the statutes which define the duties of the Board of Public Lands and Buildings and then read at length the charges preferred, together with the findings of the legislative com-

HOW DORGAN WAS HANDLED.

When the members of the board emwas the agent for two parties, the agent for the state and the agent for Mosher. If they had been going to erect a ceil house for themselves would they have who was representing two parties? \$1.00 per day, while other convices life produced papers and books and will were working for other parties at +> probably be on the stand during the en-

ed to serve the interests of the state they should have called a halt. It was a case of gross negligence, to say the

"Possibly it may be sir," continued the judge, "that the convicts who work ed on the cell house was more skillful, but I think we shall show you that many of them were raw men, and were no more skillful than those who worked DORGAN IS PUT ON THE STAND. | for other parties at 40 and 50 cents per

> "We shall prove that the custom was to give Dorgan a large warrant before the work was done. They let him deposit the warrant in the bank and check out \$7,000 or \$8,000 without having any idea of what work had been performed aside from his own statement. It is true that there was a bond for something like \$10,000, but what kind of bond was that? After he had purchased the contract of Mosher he acted as the agent of the board for some thirty days. Placing \$6,000 to \$8,000 in Dorgan's hands to check out as he pleased was a lack of good judgment if nothing more. The duty was cast upon this board to take care of the funds; there was no authority above them to check their secounts, which made it doubly imperative upon them to use care. We shall prove that Dorgan paid for stone two or three times what it was worth and two and three times more than other parties had offered it. There was Atwood who sold Dorgan stone for 35 cents per foot, when from other parties he could have bought it for much less. They called a cubic foot of stone 100 pounds, when the true weight is 160 pounds. This appears on the account and can be read by any person. That's the way they did business.

DIVERTED TO PERSONAL USE. "We also claim that these parties committed fraud when they took \$500 which had been set apart for the cell house and used it for traveling expenses in going to Kansas and other states to visit prisons. This was in December, 1891. Instead of walting until the legislature should meet and make an appropriation, they got Mr. Dorgan to give them the money that was appropriated for the contract to W. H. Dorgan, February 1, 1892.

Cell House Vouchers. ers filed by Mcsers. Allen, Hastings give them the money that was appropriated for the cell house. If they can divert \$500 for another purpose they can divert any amount. If they had diverted money to some charitable institution, it could not have been justified, and how could they justify this diversion for traveling expenses Suppose they acted bonestly, officials who will so misconstrue the law as to honesty are unsafe parties to have in power.

ABOUT THE ASYLUM COAL.

"We think that we shall be able to show you that when these respondents were in office, the coal at the hospital in July, 1891, in the sum of \$8,000. It for the insane was paid for at nearly double what it was worth. During 1888 the board. Estimate and voucher No. the coal bill was \$10,298; in 1889, \$10, 3 were for work done and material 829; in 1890, \$15,547; in 1891, \$16,747; furnished in October, 1891, total \$8.000, and in 1892, \$8,310. This shows that This was approved by the board. Estithere was fraud, and when the returns mate and vousher No. 4 were for De doubled, was it not time for the mem- this the estimate set forth "for work" bers of this board to be on their guard? instituted as inquiry? A fraud upon by Dorgan and approved by the board. the state—one that has passed unpun. Estimate and voucher No. 5 for March the state-one that has passed unpunished. We shall show you that not 1892, were in the sum of \$5,000, certimuch more than one-half of the coal fied by Dorgan and approved by the was ever furnished. There were no ad- board. ditional heating apparatus put into the hospital, and why did they show the coal for 1891 to have cost so much more than for 1892? Take the flour purchased for the asylum: Sewell & Co. bad it was for labor and material, that no the contract and they bought of John- certificate was attached, and that it purson & Co. During one month the contractor bought 13,000 pounds and 3. charged the state with 18,000 pounds, a clear, palpable fraud which the board defendants to its introduction Lecause should have known something about if there was no charge made relative to it had been looking after the welfare of this voucher in the articles of impeachthe state and the people.

' If these charges are true, they constitute misdemeanor in office. When tion of an imaginary charge not set these reports of shortages came to the forth in the articles. A controversy enattention of the legislators, they took sued in which counsel for the state This fact, he said, gave the court just steps to correct affairs. Such plain maintained that the voucher should be ment has been an efficient engine in as bearing on evidence to be introduced only means of protection. If it shall that it would be the means of showing appear at the close of the trial that that if Hopkins properly spent the these charges are untrue, and that the ple should rejoice.

WEDNESDAY MORNING.

The court met at 10:30 yesterday and proceeded at once with the trial of Allen, Humphrey and Hastings. After | 000 and the other \$2,000, for the months a few preliminary statements by the of November and December, 1892. counsel and the court the trial proceeded with the introduction of testimony by the impeachment managers, G. M. Lambertson acting as trial lawyer for the state and John L. Webster in the same ployed Dorgan they gave him every capacity for defendants. The forencon advantage. They knew that Dorgan was occupied in introducing cell house was occupied in introducing cell house and asylum vouchers in evidence, matters with which the public is perfectly familiar. W. H. Dorgan, ex-superinemployed such a man, a superintendent tendent of construction in the cell house case was on the The judge said that he would prove that Dorgan let the con'ract labor at witness stand during the afternoon.

cents per day. The members of the board knew this, and if they had want- and checks in his possession. So far no record of the same transactions. Whennew testimony has been introduced, which probably accounts for the slack attendance of spectators and the ap-parent lack of interest felt by the public. To the surprise of all it is now stated that the cases will be ready for submission to the court by the 13th instant.

Some interest is taken by interested parties in the decision of the court in the cases of ex-Treasurer Hill and ex-Auditor Benton in which those gentlemen question the court's jurisdiction. An opinion is expected this morning, and because the court did not decide the matter in time to allow the ex-officials to join in the trial of the three incumbents and stand trial at the same time, it is predicted that the plea of jurisdiction will be sustained.

The impeachment committee is still worrying over the questionable state of the appropriation made to pay impeachment expenses, but witness fees are being paid in some cases and no trouble is anticipated over money matters.

Reviewing History.

Charles C. Caldwell, deputy and acting secretary of state, was placed on the witness stand by the state in order to identify official bonds of the defendants, records and papers passed upon by the board. Mr. Lambertson first introduced the prison contract entered into between the state and W. H. B. Stout, September 22, 1877, to take effect October 1st, 1877, and be in force for a term of ten years, the state agreeing to pay 60 cents per diem per capita for the support of each)onvict for the first two years, 55 cents for the second two years, and 50 cents for the third period of two years. The act of 1879 extending this ontract six years from October 1, 1888, was mentioned, together with the cutting down of the maintenance fee to 40 and 45 cents; also the act of 1887. tending the contract ten years, which had been assigned by Stout to C. W. Mosher, from October 1, 1889, the state

the cell house vouchers, which he did and an estimate for work done and material furnished amounting to \$6,100, bearing date May 1, 1891, was offered in evidence, also an accompanying voucher dated June 1, 1891, for the same amount for material used. The estimate was not approved but the voucher bore the approval of Messrs. Allen and Humphrey. Both documents were duly certified to by Superintendent Dorgan as just and correct. The signatures were identified by Mr. Caldwell.

Estimate No. 2 and voucher No. 2 were produced. This was for work done was certified by Dorgan and allowed by showed that the amount had nearly cember, 1891, in the sum of \$5,000. In done and material furnished, \$3,000." Was it not a circumstance that should | The sum of \$2,000 was set down without have caused any honest official to have any item opposite it. It was certified 1892, were in the sum of \$5,000, certi-

When a voucher for \$1,200 in favor Y Dan Hopkins, successor to Dorgan as superintendent, was offered Mr. Lambertson called attention to the fact that ported to have been approved October 1892.

Objection was made by counsel for ment, and because introduction of such matters would necessitate an investiga-

and money, the shortage accurred during Dorgan's time. Before the discussion ended nearly every attorney was on the floor.

The court took the matter under ad visement. Subsequently the same action was taken on two other vouchers of the same nature, one amounting to \$3,

Dorgan's Appointment.

That part of the record of the board, on page 205, book C, relating to the ap-pointment of Dorgan on May 4, 1891, was offered in evidence to show that Allen, Hill and Humphrey were present; that Hill moved Dorgan's appointment, seconded by Allen; that Allen moved that Dorgan be required to furnish a bond in the sum of \$10,000, Hill seconding; that on motion of Allen, Dorgan's salary was made \$50 per month.

counses for the state then proceeded to offer that part of the board's record showing that certain members were present and the allowing of the various ell house vouchers previously submit Opposing counsel consented with understanding that they would be

ever the state offered a part of the record of any one meeting, counsel for de fendants asked leave to subsequently offer in evidence the entire record of

such meeting. When the state came to the record of the Hopkins vouchers, defendants raised the same objection made to introduction

of the vouchers themselves.

That part of page 361, showing that Hopkins was appointed Dorgan's successor at \$5 per day, with instructions to settle with Dorgan, was offered. Defendants objected to that part showing Hopkins had been instructed to settle with Dorgan in regard to property.

Attorneys Cross Swords, Mr. Lambertson said it must be of vital importance as it had been written in the record since impeachment pro ceedings began.

John L. Webster assailed Mr. Lam bertson's assertion as not based on any evidence, and in a mild way intimated that statements not borne out by evidence were thrown in to predjudice the case He said the case ought to be tried on the record and all irrelevant matter which was coming in should be excluded.

Mr. Lambertson contended that the state had a right to follow up and see whether this delegated authority for settlement had ever been exercised.

The objection raised was submitted with the understanding that the court would render a decision upon convening

after dinner. Is It Dorgan's Reportf Considerable delay ensued after Mr Lambertson offered what he said pur ported to be a report of Dorgan, containing vouchers and papers, some of which related to the stone bought of Atwood.

John L. Webster objected. He said there was no signature to the documents and there was nothing showing that Dorgan made such report, nor that the board ever saw it or acted upon it. He de-clared it an attempt to introduce evidence illegitimately, when the means were in the hands of the state to introduce it in the ordinary way, but for some reason these means were disdained. That Dorgan did make a report, Mr.

Lambertson said the records proved and he questioned Mr. Caldwell as to where the document was found. Mr. Caldwell testified that he found it among the cell house papers, in the vault, but he was unable to identify the hand writing. On cross examination Mr. Caldwell

testified that he was not a member of the board; that the papers were never in his charge previous to the time he became acting secretary of state, that he had never seen the papers prior to the day before, when he found them among others in a box; that he had no knowl edge that they were ever before the

Other documents purporting to be reports of Dorgan were offered, objected to, and the objection taken under advisement by the court.

The tilt between Lambertson and Webster over these reports caused a broad smile to creep over the facts of spectators. No one doubted that the reports were exactly what they purported to be, but in order to have them ruled out, the attorney for the state officers showed that Dorgan had never signed them, nor had the board ever placed any mark on them that would indicate that they had been received, considered or approved. This itself was a most damaging admission. It certainly showed that the board did business in a most loose and irregular

The lawyers for the impeached officers have adopted the policy of raising ever possible technical objection. The lawyers for the state on the otherhand go on the theory that all the facts which will throw light on the case should be admitted. The court has uniformly approved ht latter policy.

Asylum Coal Bills.

Passing on the state offered in evidence a voucher for \$1,132 for coal furnished the Lincoln hospital for the insane, ap-

proved by the board May 2, 1891. Council for the defendants were about to object, but after bringing out the fact that each voucher was rtifled to by Superintendent Knapp as proper and correct and not paid before passed on by the board, the objection was not made. One of the vouchers was certifled to by Dr. Knapp per Dr. Hay. vouchers were for various sums in payment of coal purported to have been furnished by Betts, Weaver & Co. One in the sum of \$1,496 bore a correction of something over \$2, which was deducted. Attention was called to this by John L. Webster to show that the correction was made by Superintendent Knapp and that therefore the board had reason to trust him.

The state called attention to the meagerness of the vouchers there being no car numbers or other facts set forth Objection was raised to a coal voncher which originally represented \$1,671.28, but had been corrected in red ink to read \$1,588.03. Defendants stated that the vouchers in hand were merely duplicates and that the original on file in the auditor's office would show in

detail what the nature of corrections. The state asked leave to send for the original vouchers. The court then took a recess until 2 o'clock.

Admitted in Evidence. Upon reconvening after dinner the court announced that the purported reports of Dorgan would be admitted in

evidence merely as having been found in the office with other papers; that the Hopkins vouchers would be admitted to show that a part of the \$40,000 appropriation was grawn by him; that that part of the testimony relating to the board instructing Hopkins to make settlement with Dorgan would also be admitted. In making this statement Chief Justice Maxwell said the court recognized that there were no charges against Hopkins in the articles of im-

peachment. Continuing, Mr. Lambertson offered in evidence a number of vouchers for coal furnished the Lincoln asylum for the insane, varying in amounts from \$949 to \$1,400, which had been approved by the board. In each instance defendant's counsel required the state to admit the signature of the asylum superintendent to the certificate attached to each voucher. Some were for coal furnished by the Whitebreast company, and several bore corrections made in red ink by the asylum accountant before

they came before the board. Before They Were in Office.

The state brought out an objection when an original voucher, approved April 10, 1891, was presented. John L. Webster made the objection because the voucher was for supplies bought prior to Mr. Lambertson. the induction into office of defendants. He "I had to have explained further that a duplicate of the voucher was presented to the legisture with the statement that there was a deficiency. The legislature referred it to a committee, which investigated the claim, reported and recommended its allowance, and thereupon the legislature made an appropriation which was intended to cover the voucher. The board formally allowed the claim, so that a warrant could be drawn. The clain was really allowed by the legislature, and the board performed merely a formal duty. This was not controverted by the state's reply to defendant's answers. Judge Doane interposed by saying that

it was not denied. Chief Justice Maxwell answered the objection by saying that the voucher could be admitted to sustain the charge that the board audited the claim.

The state offered a voucher for coal furnished the asylum to the amount of \$11,421.95, in favor of the Whitebre company, to which the same objection was interposed. It was admitted that defendants were in office when the voucher was audited, but it was claimed that the claim was covered like the former one by a legislative appropriation, and that the legislature really did the

auditing.

As in the cell house vouchers the state offered in evidence that part of the re-cords of the board which showed that the board had audited asylum vouchers, and as in the other case the defendants gave notice that when the proper time came they proposed to present the entire record of the meetings cited by the

On cross examination Mr. Caldwell testified that vouchers were carefully gone over in the office of secretary of state, that the computation on each item was verified and prices charged were compared with the contracts to ascertain whether or not they corresponded. Changes made by the clerks were acted on by the board. Testimony of Dorgan. W. H. Dorgan was placed on the

witness stand. He was questioned first by Mr. Lambertson and testified that he had lived in the state sixteen years, had lived at the penitentiary for six years past; that about six years ago he was made Mosher's manager of the prison contract; that he was at present prison contractor, having taken posession sometime in February, 1892; cometime in February, that his duties required to look after the business generally. Mr. Dorgan testified that he was appointed superintendent of construction of the new cell house in May at a salary of \$50 per month by the board of public lands and buildings; that he was then Mosher's manager: that it was his duty to assign convicts to labor, and also his duty to look after the convict labor for the board. He had not solicited the appointment of superintendent of construction, but did not know just how it came about; that he got \$1 per day for each convict, just what was always received for state work. Sometimes thirty men were at work, but they came and went and the number varied. He did not

keep any account of time for the state other than that kept by the guards in Books were charge of the men. kept with the state and subcontractors, being made up, however, from books kept by the guards. When convicts are assigned to work their time is counted unless they are excused by the doctor, whether they work or not; if they are in the hospital their time should not be counted. Witness did not remember ever asking the board anything about charging time of the men. During the month of January the men were at work, some of them did not because there was no stone. It was true that their time was charged whether they worked or not. Price of Convict Labor.

The \$1 per day dated back to the time he first began at the pen and was the

price always charged the state. Objection was ruised by defendants' counsel to permitting Dorgan to tell what the prison contractor charged W. H. B. Stout for convict labor in building the brick house. The court overruled the objection, but states that unless the evidence was connected in

some way it would not harm defendants

Mr. Dorgan testified that the price made for Stout was the result of a contract growing out of the assignment of the prison contract to Mosher, but he did not know the price charged. The average price now charged was from forty to fifty cents per day; he did not care to tell what the Western Manufacturing company or any other person or company paid.

Drew Money in Advance,

Witness said that \$1 per day was charged Mr. Korsmeyer & Co. during the time the cell house was being erected, that it might have amounted to only \$18 in all but it was at the rate of \$1 per day. Witness could not say that he always drew money either before or after the work was done; that he had no money to carry on the work, and before becoming responsible for material he had to have the money advanced; that he wanted the money on hand before making him-self liable for contracts which had to be

entered into. In reply to a question as to one item in an estimate for "blank, \$2,000" wit-ness said: "That was made in order to draw \$5,000.

'Wasn't that the chief object of all these vouchers and estimates?" asked

"I had to have the money to carry on the work," replied Mr. Dorgan.
Checks as Receipts.
Witness said he always placed the

money in the bank to his own credit, and that he was willing to produce the bank book; that he made reports to the board, but some of the items were the board, but some of the items were not accompanied by vouchers, especially salary claims; that he believed checks would be receipt enough.

Witness testified that the board told

thin he must furnish vouchers for every-thing, but that he told the members of the board that he had not filed the checks, but had them in his possession. He did not remember whether the board asked him for the checks and vouchers. Got His Salary.

"W. H. Dorgan, salary, \$50," said Mr. Lambertson, reading from some papers. "Did you receipt for that?"
"Yes, sir," replied Dorgan.
"I don't see it," suggested Mr. Lamberson.

"I got it," retorted Dorgan with an emphasis which made the spectators

"I don't doubt it," replied the ques-

Further testifying Dorgan said he had filed vouchers for freight on materia and the board ought to have them; that he put money drawn from the state in with his private funds, but he never overdrew on the bank account. Witness identified the various reports filed by him with the board, but said he had filed no final report; that according to his last report he had received in all \$32,100, but turned over \$6,300 of that amount to his successor; that May 81,1 three months after he had taken the prison contract, he made the last pay-ment to Hopkins, who in turn paid him back what was due for convict labor; that he believed he had made a full ac-counting of the money handled by him. The Board's Trip.

In regard to the item "board, \$500," Dorgan said that in looking at the check stub he found that it was to be used to examine cells, that he did not have the check, as he found since the grand jury investigation that he was short two checks. He admitted that during the recent investigation he had found but one check; that he never asked the board for an accounting for the money; but he understood that the memb wished to examine various cell as an aid in putting in eighty new cells.

Contracts in Dorgan's Name. Dorgan declared no settlement had been made with his successor, Mr. Hop-kins excepting a compliance with the board's order to pay over what money he held for the state, together with tool and other property. Why did you make all contracts in

your own name, while an agent of the

state board?' was asked. Dorgan said he did not feel like writing the name of Nebraska on his own responsibility; that it was true that he practically receipted to himself while acting for the board and prison con-

Prices for Stone.

Dorgan said he knew very little about stone, and in looking around he met Mr. Atwood at Omaha and saw samples of stone from the Cedar creek quarry. and made an appointment to meet him at the quarry next day, Conrad Veiscel being present; he had no memory out-side of the prices in vouchers, but remembered that 55 cents was paid for one kind; he did not know cubic foot of stone weighed and paid 16 cents or 35 cents per 100 pounds for some stone, neither did he know that the Nemaha stone weighed 150 pounds per cubic foot; that railroad vouchers said the of proving only through Atwood and the freight bills: witness said it never occurred to him that it was impossible to put 400 feet of stone on a car he believed there were cars which he 60,000 pounds; if the vouchers said he received the cars it was certainly true, but he did not know whether the freight paid was at the rate of 40,000 pounds

(Continued on Eighth Page.)